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Sample Policies

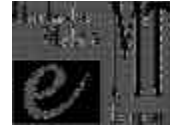
- Policy No. 290 C Discrimination Prohibited**
- Policy No. 294 C Civil Rights Grievance Procedure**
- Policy No. 414 C Sexual Harassment**
- Policy No. 506 C Student Harassment**

Attachments

- A. Conducting a Harassment Investigation**
- B. Record of Harassment Complaint**
- C. Selected Sources for Bullying Information**

BULLYING & HARASSMENT: A CURRENT PERSPECTIVE

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“Bullying is the best predictor of adult criminality. If someone is a bully and that behavior is not challenged, the odds of the bully ending up in jail are fairly good.” Quoted from Stan Davis, elementary school guidance counselor at James H. Bean School, Sidney, Maine.

- I. **Bullying**¹ X Repeated exposure over time to negative actions on the part of one or more students. When someone keeps doing or saying things to have power over another person.
 - A. Bullying is characterized by:
 1. Aggressive behavior, or intentional harm-doing;
 2. Carried out repeatedly and over time;
 3. Imbalance of power;
 4. Often occurs without apparent provocation.
 - B. Bullying takes three forms:
 1. Direct Bullying (Physical) - Hitting, kicking, pushing, choking; taking belongings;
 2. Verbal Bullying - Name calling, threatening, taunting, malicious teasing, making faces, obscene gestures;
 3. Indirect Bullying - spreading nasty rumors, writing anonymous notes, intentional exclusion from groups.

¹Information for this topic was excerpted from: Olweus, D., Limber, S. & Milhalic, S.F., *Blueprints for Violence Prevention, Book Nine: Bullying Prevention Program*; Boulder, CO: Center for the Study and Prevention of Violence (1999).

Note - Conflict between two students having somewhat equal physical and psychological powers or friendly, playful teasing is not bullying.

C. Profile of a bully:

1. Is not a social outcast;
2. Is often an attention seeker;
3. Is usually more popular than the victim;
4. Is not always a boy; girls bully too;
5. Is less likely to empathize with the victim;
6. Is less likely to understand other people's point of view;
7. Is self-important; has high self-esteem;
8. Enjoys control over others;
 - a. Establishes power base by testing response of less powerful members of his group; watches how they react when small things happen;
 - b. Observes how teachers react to minor transgressions;
 - c. Waits to see if the victim will complain. If the victim doesn't complain and the peer group acquiesces, the bullying will continue.
9. Often comes from a family that uses harsh discipline;
10. Often have parents who verbally abuse each other;
11. May be sexually aroused by tormenting others;
12. Might be sadistic and enjoy seeing others suffer.

D. Profile of a victim:

1. Has difficulty defending himself/herself;
2. Is somewhat helpless against bullying student(s);
3. Is usually a single student;
4. Is a loner; but sometimes is desperate to "fit in";

5. Stands-out - has unusual physical characteristics (i.e., is too tall, overweight, has red hair, wears glasses, etc.);
6. Is traditionally passive and emotionally vulnerable; but can also be a “provocative victim” (i.e., poor social skills which agitate/aggravate others);
7. Is often bullied by a group of two (2) or more students with a “leader”;
8. Often blames themselves and believe the bullying is their fault;
9. Often refuses to admit that they are being bullied;
10. Doesn’t have support from teachers or classmates because they are seen to be unappealing.

E. Bullying Statistics:

1. 76% of kids are bullied;
2. 20% of kids admit to being a bully, or doing some “bullying”;
3. 8% of kids miss 1 day of school per month in fear of bullies;
4. 160,000 kids stay home every day fearing bullies;
5. 80% of arguments with a bully result in a physical fight;
6. A kid is bullied every 7 minutes;
7. Most incidents of bullying occur among students of the same grade, but an increasing number of bullying incidents are perpetrated by older students towards younger kids.

F. Location of bullying:

1. Bullying occurs on the way to and from school, but the greater number of incidents occur at school.
2. Bullying occurs in hallways/corridors, near student lockers, the gymnasium, locker room and bathrooms.

G. Bullying by boys:

1. Boys are more likely to bully than are girls;
2. More boys than girls report being victims of bullying;
3. Boys engage in direct (physical) bullying more than girls do.

H. Bullying by girls:

1. Girls bully to a lesser degree than boys;
2. Girls engage in indirect bullying more than boys, which is more difficult for adults to detect;
3. Girls are more apt to use slander, spreading rumors, intentionally excluding others from the group, manipulating friendship relations (i.e., depriving a girl of her “best friend”).

I. Bullying studies:

1. The suicide of three Norwegian 10-14 year old boys, believed to be the victims of frequent incidents of bullying, led to the first systematic study of the effects of bullying in 42 schools located in the city of Bergen, Norway (1983-1985).
2. The first United States systematic evaluation was conducted in 1998 and involved nearly 6,400 elementary and middle school students (4th through 6th grades) from non-metropolitan communities in South Carolina.
 - a. 23% said they had been bullied “several times” by other students during a three (3) month time span;
 - b. Nearly 20% said that they had bullied other students with about the same frequency;
 - c. Most bullying occurs on the playground and in the classroom (26% and 29% respectively).
3. The 1999 Maine Project Against Bullying survey of 4,500 Maine 3rd graders were released in January, 2000. The purpose of the survey was to help schools make assessments about the following:
 - a. Nature and extent that bullying is occurring;
 - b. How children are reacting to bullying;
 - c. What are the consequences of bullying on the kids’ feelings of safety and well-being;
 - d. Whether victims of bullying have informed anyone, and what were the outcomes, if any;
 - e. How students perceived their own aggressive behaviors;
 - f. What if any differences gender produced;

g. To determine if there is a need for more assistance in the prevention of aggressive behavior in the early grades.

4. The Maine Project Against Bullying found that:

a. 44% feel “very happy and good” when at their school;

(1) More girls and students from larger schools versus smaller schools were more likely to feel this way.

b. Kids felt safer in adult controlled situations (classrooms, lunch room, hallways) than they did at bus stops, walking to and from school, or the playground.

c. 22% reported being threatened frequently (every day, one or two times a week, one or two times a month).

d. 37.5% said they were hit, kicked, or pushed (every day, one or two times a week, one or two times a month).

e. Students from smaller schools reported a higher frequency of bullying than those attending larger schools.

f. 14% of students said that they had hit, kicked or pushed other kids at least one or two times a month. (More than 80% said they never did such things.)

g. Nearly 20% of boys said they bullied other kids frequently. (9% of girls admitted to same.)

h. 42% of the 3rd graders said they were bullied by students in higher grades.

i. 90% said they do something when bullied.

j. 44% said they told an adult when they were bullied.

(1) Nearly 50% said things got better after telling an adult; but,

(2) 37% said thing either stayed the same or even got worse.

J. Sample Legislation:

1. Many states have anti-hazing laws (*see* Section II). Georgia is believed to be the singular state having an anti-bully law.

a. The statute was prompted by an increasing number of reported bullying incidents capped by the 1998 deaths of two teens from

Woodstock, Georgia, a fast growing suburb 30 miles north of Atlanta.

- (1) Josh Belluardo was attacked at a bus stop on or about November 2, 1998. He was punched in the back of the head, and later died from the injuries;
- (2) 15-year-old Brian Head had been teased and bullied for a number of years mainly because of his weight. While in class, he told his classmates and teacher, "I can't take it any more!" and shot himself in the head.

b. The two deaths resulted in the introduction of a bill before the 1999 Georgia legislature. The result was "bullying" being officially defined as:

- (1) "Any willful attempt or threat to inflict injury on another person, when accompanied by an apparent present ability to do so;
- (2) Any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm." Georgia Code § 20-2-751.4.
- (3) The statute also directed each local board of education to adopt policies applicable to grades 6 through 12 that "prohibit bullying of a student by another student" and to include the prohibition in the student code of conduct for middle and high schools.
- (4) A third bullying offense requires the student to be reassigned to an alternative school.
- (5) School districts are required to develop methods to discourage bullying and violent acts against fellow students. The methods must be incorporated and included in the general "character curriculum" and be applied to all grade levels beginning in the 2000-2001 school year.

II. Hazing - Any action or situation created that causes or is reasonably likely to cause harassment, bodily danger, or physical harm, severe mental or emotional harm, extreme embarrassment or ridicule, or personal degradation or loss of dignity to any student or other person associated with a school.

Note - In order for "hazing" to be "harassment," the actions must be directed at an individual or group on the basis of race, national origin, religion, color, disability, or sex, or the unwelcome behavior of a sexual nature.

- A. Public school hazing incidents are on the rise, including both the number and type.
- B. Federal courts have held that public schools face liability under 42 U.S.C. § 1983.
- C. Examples of hazing include but are not limited to:
 - 1. Any act that a reasonable person could foresee would bring physical harm (i.e., whipping, beating, branding, electric shocking, paddling, tying, taping, or otherwise restraining an individual against his/her will; excessive calisthenics; or exposure to the elements);
 - 2. Morally degrading pranks, stunts, or practical jokes;
 - 3. Forcing or coercing the consumption of alcohol, drugs, or foreign or unusual foods;
 - 4. Throwing or applying whipped cream, shaving cream, toothpaste, paint, honey, eggs, or other food substances on a person's body;
 - 5. Requiring personal servitude;
 - 6. Harassment such as pushing, shoving, cursing, shouting, or yelling at an individual;
 - 7. Requiring an individual to wear uncomfortable, ridiculous, humiliating, or embarrassing clothing or underclothing;
 - 8. Compelling an individual to participate in any activity that is illegal, perverse, publicly indecent, or contrary to an individual's genuine moral or religious beliefs, or contrary to rules, policies, and regulations of the school district.
- D. Idaho Code § 18-917 prohibits "hazing" by fraternities, sororities, or other living or social student organizations organized or operated on or near a college or university campus, and defines hazing as subjecting a person to bodily danger or physical harm or a likelihood of bodily danger or physical harm, or require, encourage, authorize, or permit that a person be subjected to any of the following:
 - 1. Total or substantial nudity;
 - 2. Compelled ingestion of any substance;
 - 3. Wearing or carrying of any obscene or physically burdensome article;
 - 4. Physical assaults upon or physical contact with the person;

5. Participation in boxing matches, excessive number of calisthenics, or other physical contests;
 6. Transportation and abandonment of the person;
 7. Confinement to unreasonably small, unventilated, unsanitary, or unlighted areas;
 8. Sleep deprivation; or,
 9. Assignment of pranks to be performed by the person.
- E. I.C. § 33-1901 - Fraternities, sororities, and other student organizations, including secret societies, whose membership is comprised in whole or in part of pupils enrolled in public elementary or secondary schools of Idaho are unlawful.
1. It is unlawful for any person to solicit an elementary or secondary school pupil to become a member of any such organization; and,
 2. No pupil enrolled in a public or secondary school shall be or become a member, or pledge himself to become a member, of any such organization.
- F. Fraternity, sorority or secret society defined - A student organization comprised in whole or in part of pupils enrolled in a public elementary or secondary school. Members are selected on the basis of decisions by the membership and not on the basis of the right of any student qualified by rules and regulations of the school to be a member. I.C. § 33-1902.
1. Organizations such as the Boy Scouts of America, Girl Scouts of America, Campfire Girls, DeMolay, YMCA, YWCA, and other similar organizations are not included in the above definition.
- G. Any public school student found to be in violation of the provisions pertinent to fraternities, sororities, and secret societies at the elementary and secondary school levels may suffer revocation of the rights and privileges of the school, denial of graduation, deprivation of credit, suspension, or expulsion through proceedings by the board of trustees. I.C. § 33-1903.
- H. Many states have anti-hazing legislation on the books. For a list of states that do have anti-hazing laws (and for those that don't) see <http://www.stophazing.org/laws.html>.

III. Peer harassment – Any conduct by a student – whether verbal, written, graphic, or physical – relating to another student's race, national origin, religion, color, disability, or sex that is sufficiently severe, pervasive, or persistent as to:

- A. Interfere with or limit the ability of a student to participate in or benefit from the district's programs or activities;

- B. Create an intimidating, threatening, or abusive educational environment;
- C. Substantially or unreasonably interfere with a student's academic performance; or
- D. Otherwise adversely affect a student's educational opportunities.
- E. Harassment also includes an act of retaliation taken against:
 - 1. Any person bringing a complaint of harassment;
 - 2. Any person assisting another person in bringing a complaint of harassment;
 - 3. Any person participating in an investigation of an act of harassment.
- F. School districts' responsibilities regarding peer harassment include:
 - 1. School district policy, including:
 - a. Prohibit harassing conduct by students;
 - b. Explain what conduct may constitute harassment;
 - c. Provide for a system of reporting and investigating alleged harassment; and
 - d. Outline the consequences for harassing conduct.
 - 2. Training, consisting of:
 - a. Age-appropriate education to students regarding tolerance and the inappropriateness of harassment; and
 - b. Education for staff members to assist in recognizing and addressing harassing conduct, and policy review to inform staff of the district's expectations regarding reporting incidents of harassment.
 - 3. Investigation. (*See* Section XVIII.)
 - 4. Intervention and discipline. The age of the harasser may be an important element in determining whether or not peer harassment has occurred, and the appropriate remedial action to be taken.

IV. Racial, Color and National Origin Harassment - Harassment based on an individual's race, color, or national origin.

- A. Determined by two standards:

1. *Different Treatment* - Unwanted behavior based on a student's race, color, or national origin that is sufficiently severe so as to interfere with or limit the individual's ability to participate in or benefit from services, activities, or privileges;
2. *Hostile Environment* - Behavior based on race, color or national origin that is unwelcome, repeated, and causes harm, and which has the purpose or effect of creating an intimidating, hostile/offensive working or learning environment. Such behavior includes:
 - a. Intimidation and implied/overt threats of physical violence;
 - b. Physical acts of aggression or assault, or damage to property;
 - c. Demeaning racial jokes, taunting, racial slurs, derogatory racial nicknames, racial innuendos;
 - d. Graffiti, slogans, or visual displays, cartoons, posters depicting racial/ethnic slurs or racial/ethnic sentiments;
 - e. Criminal offenses directed at people because of their race or national origin;
 - f. Use of language and symbols of ethnic hate such as swastikas and burning crosses, racial and ethnic slurs;
 - g. Harassment because of an individual's association with others of a particular national origin.

V. Religious/Anti-Semitic Harassment - Harassment based on an individual's ethnicity, national origin, and religious beliefs.

- A. Examples of anti-Semitic harassment:
1. Anti-Jewish slurs;
 2. Physical assault;
 3. Anti-Semitic flyers, leaflets left on cars or in mailboxes;
 4. Anti-Jewish/Holocaust denying letters to the editor;
 5. Anti-Jewish advertisements in newspapers;
 6. Verbal/written threats (including death and bomb threats) directed against individuals or Jewish institutions;
 7. Increasing anti-Semitic messages sent by e-mail.

- B. Although the above examples are specific to anti-Semitic harassment, similar situations may apply to any religious organization.

VI. Disability Harassment – “Disability harassment under Section 504 and Title II [ADA] is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student’s participation in or receipt of benefits, services or opportunities in the institution’s program.” Joint letter issued by OCR and OSERS dated July 25, 2000.

- A. Hostile environment is created by unwanted behavior directed at the individual with a disability including:
 - 1. Jokes, derogatory remarks, imitating an individual’s manner of speech or movement, interfering with necessary equipment;
 - 2. Involving or attempting to involve an individual with limited comprehension in dangerous or criminal activity.

VII. Sexual Harassment - Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct of a sexual nature when such misconduct has the purpose or effect of:

- A. Unreasonably interfering with an individual’s ability to study or participate in school activities; or
- B. Creating an intimidating, hostile, or offensive educational environment.
- C. Examples of sexual harassment include, but are not limited to, the following:
 - 1. Unwelcome verbal statements of a sexual or abusive nature, including requests or demands for sexual activity, sexual jokes, obscene comments, etc.;
 - 2. Unwelcome, sexually motivated, or inappropriate touching, pinching, or other physical contact;
 - 3. Unwelcome sexual behavior or communications accompanied by implied or overt threats concerning an individual’s education;
 - 4. Unwelcome behavior or communications directed at an individual because of his or her gender; and
 - 5. Stalking or unwelcome sexually-motivated attention.

VIII. Statistics Regarding Sexual Harassment and Discrimination Generally:

- A. The Wall Street Journal (WSJ) and the National Broadcasting Network (NBC) surveyed 2,010 people across the U.S. between June 14 - 18, 2000, showed:

Women Victimized by Sexual Harassment & Discrimination

Percentages of Women Experiencing			Locations Where Women Experienced		
Category	Sexual Harassment	Discrimination	Location	Sexual Harassment	Discrimination
All Women	31%	44%	Workplace	73%	58%
High School Education	25%	31%	Shopping	7%	38%
Some College	34%	49%	Social Setting	35%	27%
College Degree	36%	55%	Bank/ Financial	2%	20%
Professionals/ Managers	37%	58%	School	20%	16%
White-Collar	29%	43%			
Blue-Collar	39%	46%			
Retirees	20%	27%			
18-34 years	34%	50%			
35-49 years	41%	54%			
50-64 years	26%	41%			
Over 65 years	17%	22%			

- B. It is blue-collar women and those earning less than \$30,000 per annum who are more often sexually harassed. Pay discrimination is also more widespread with these groups.
- C. Women still think that the workplace and the marketplace are two of the most hostile areas when it comes to harassment and discrimination.
- D. Half of Americans think women are treated professionally in the workplace, but the majority of women say that perception is wrong.
- E. Women cite sexual harassment and discrimination as the overwhelming workplace issues as opposed to school or social settings.

IX. Statistics Regarding Sexual Harassment in Public Schools:

- A. American Association of University Women (AAUW) Survey (1993) - A study was conducted of 1,600 students who were attending public schools in the 8th through 11th grades:
1. 80% of public school students (85% of girls and 76% of boys) reported experiencing some type of sexual harassment by the time they reached the 12th grade. Most reports of sexual harassment were by fellow classmates.
 2. The harassment happens in the hallway (66%), in a classroom (50%), on the school grounds (43%), in the cafeteria (34%), on the school bus (26%), in the parking lot (23%), and in the locker rooms (19%).
 3. 65% of female students reported incidents of touching, pinching, or grabbing. 42% of male students reported incidents of touching, pinching, or grabbing.
 4. 58% of students reported that they were subjected to sexual harassment often or occasionally.
 5. 18% of students reported that sexual harassment occurred by a school staff member. Female students were primary targets of school staff harassment.
 6. Of the female victims of sexual harassment, it was reported that:
 - a. 33% did not want to attend school;
 - b. 32% did not want to talk in class as often as previous;
 - c. 24% cut classes or cut school to avoid harassment.
- B. In the AAUW study, students gave the following excuses for engaging in sexual harassment:
1. 42% - "It's just part of school life. A lot of people do it. It's no big deal."
 2. 27% - "I thought the person liked it."
 3. 24% - "I wanted a date with the person."
 4. 18% - "My friends encouraged me . . . pushed me into doing it."
 5. 20% - "I wanted something from that person."
 6. 7% - "I wanted the person to think I had some sort of power over them."
- C. The AAUW has categorized distinct forms of sexual harassment that students experience in schools. These include:

1. Sexual comments, gestures, jokes, or looks;
2. Being touched, grabbed, or pinched in a sexual way;
3. “Flashing” or “mooning”;
4. Spreading sexual rumors;
5. Clothing pulled at, off, or down in a sexual way;
6. Being shown or given sexual messages, pictures, or notes;
7. Forced kissing;
8. Being called gay or lesbian;
9. Forced to do something sexual other than kissing;
10. Being spied on while dressing or showering.

X. Actions Held to be Sexual Harassment:

- A. The following cases set forth some of the types of behavior held by various courts to constitute sexual harassment:
 1. Sexual jokes/cartoons. *Broderick v. Ruder*, 685 F. Supp. 1269 (1988);
 2. Love letters and repeated requests for a date. *Ellison v. Brady*, 924 F.2d 872 (9th Cir. 1991);
 3. Intercourse or invitations for such. *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986);
 4. Attempted kissing. *Carrero v. NYC Housing Authority*, 690 F.2d 569 (6th Cir. 1978);
 5. Nude or suggestive pictures and posters. *Hall v. Gus Construction Co.*, 842 F.2d 1010 (5th Cir. 1988);
 6. Behavior that can be shown would be different if the victim were the opposite sex. *Belgado v. Lehman*, 665 F. Supp. 460 (E.D. Va. 1987).

XI. Anti-Gay Harassment:²

- A. Title IX prohibits harassing conduct of a sexual nature, regardless of gender or sexual orientation of people involved.
1. 1997 - U. S. Department of Education issues guidelines that state sexual harassment directed at gay or lesbian students may constitute sexual harassment prohibited by Title IX;
 2. “. . . harassing conduct of a sexual nature directed at gay or lesbian students (e.g., if a male student or a group of male students target a lesbian student for physical sexual advances) may create a sexually hostile environment and, therefore, may be prohibited by Title IX.” *“Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties”*, Federal Register, U.S. Department of Education, OCR, March 13, 1997.

XII. Federal Laws Dealing with Harassment:

- A. Title IX of the Education Amendments of 1972:
1. Prohibits discrimination in public schools on the basis of sex.
 2. “No person in the United States, shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”
 3. OCR has included sexual harassment as discrimination under Title IX as verbal or physical conduct of a sexual nature, imposed on the basis of sex by an employee or agent of a recipient that denies, limits, provides different, or conditions the provision of aid, benefits, services, or treatment protected under Title IX.
 4. The congressional intent of Title IX “is to provide for the women of America something that is rightfully theirs - an equal chance to attend the schools of their choice, to develop the skills they want, and to apply those skills with the knowledge that they will have a fair chance to secure jobs of their choice with equal pay for equal work.” 18 Congressional Record 5806-5807 (1972).
 5. “Congress enacted Title IX in 1972 with two principal objectives in mind: ‘to avoid the use of federal resources to support discriminatory practices’ and ‘to provide individual citizens effective protection against those

²Complied from, “A Report on the Five Year Anti-Violence Research Project of the Safe Schools Coalition of Washington State, January 1999, Legal Definitions, Laws, and Policies by Karen Kane.”

practices.” *Gebser v. Lago Vista Independent School District*, 118 S. Ct. 1989 (1998), quoting from *Cannon v. University of Chicago*, 99 S. Ct. 1946 (1979).

6. Monetary damages are available for violations of Title IX. *Franklin v. Gwinnett County Public Schools*, 112 S. Ct. 1028 (1992).
- B. The Women’s Education Equity Act of 1994 - This act seeks to:
1. Promote gender equity in education;
 2. Provide funding to assist schools in meeting Title IX requirements; and
 3. Provide equal educational opportunities to women and girls who are victims of sexual, racial, ethnic, age, and disability discrimination. 30 U.S.C. §§ 7231-7238.
- C. Section 1983 of the 1871 Civil Rights Act:
1. Prohibits the deprivation of federal constitutional and statutory rights “under color of state law.” 42 U.S.C. § 1983.
 2. Plaintiff must prove that the public educational institution itself supported the alleged violation of the victim’s rights or was deliberately indifferent to the violation of a student’s constitutional rights.
 3. The harassment must result from a custom, pattern, behavior, or policy of the governing body.
 4. Plaintiff must prove that the constitutional harm suffered was actually and proximately caused by the defendant’s conduct. *Chapman v. Musich*, 726 F.2d 405 (8th Cir. 1984), *cert. denied*, 469 U.S. 931 (1984).
- D. Title VI of the Civil Rights Act of 1964:
1. Prohibits discrimination in public schools on the basis of race, color, and national origin. “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”
- E. Title VII of the Civil Rights Act of 1964:
1. Prohibits discrimination in the workplace on the basis of race, color, national origin, religion, or sex.
 2. It is an unlawful employment practice for an employer to discriminate on the basis of sex. “It shall be an unlawful employment practice for an

employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual's race, color, religion, *sex* or national origin." (Emphasis added.) 42 U.S.C. § 2000(e)-2(a)(1) (1964).

3. Intent is not required for a finding of sexual harassment because "Title VII is aimed at the consequences or effects of an employment practice and not the . . . motivation."

F. Section 504 of the Rehabilitation Act of 1973:

1. "No otherwise qualified individual with a disability in the United States, . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . ." 29 U.S.C. Chapter 16, § 794.
2. Section 504 prohibits any recipient of federal funds from discriminating against individuals with disabilities. Included in the definition of recipient are all public school districts.

XIII. State Laws Dealing with Harassment:

- A. Idaho Code Section 33-512(4) - The board has the duty to protect the morals and health of students. This is not a discretionary function of the board or its employees. *Czaplicki v. Gooding Joint School District No. 231*, 775 P.2d 640 (1989).
- B. Idaho Code Section 33-1208A - Reporting requirements and immunity. The board of a school district is required, within 10 days, to report to the Professional Standards Commission the name and circumstances of any educator who is dismissed, resigns, or is otherwise severed from employment for reasons which could constitute grounds for revocation, suspension or denial of a teaching certificate. Immunity is provided for any person reporting in good faith.
- C. Idaho Code Section 18-1501 - Injury to children. "Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one (1) year, or in the state prison for not less than one (1) year nor more than ten (10) years."
- D. Idaho Code Section 18-1506 - Sexual abuse of a child under the age of 16. "It is a felony for any person eighteen (18) years of age or older, with the intent to gratify the lust, passions, or sexual desire of the actor, minor child or third party, to:

1. Solicit a minor child under the age of sixteen (16) years to participate in a sexual act, or
 2. Cause or have sexual contact with such minor child, not amounting to a lewd conduct as defined in section 18-1508, Idaho Code, or
 3. Make any photographic or electronic recording of such child.”
- E. Idaho Code Section 18-6101 - Rape of a child. “Rape is defined as a penetration, however slight, of the oral, anal or vaginal opening with the perpetrator’s penis accomplished with a female - where the female is under the age of eighteen (18) years.”
- F. Idaho Code Section 18-6108 – Male rape. “Male Rape is defined as the penetration, however slight, of the oral or anal opening of another male, with the perpetrator’s penis, for the purpose of sexual arousal, gratification or abuse, . . .”
- G. Idaho Code Section 18-6608 – Forcible sexual penetration by use of foreign object. “Every person who causes the penetration, however slight, of the genital or anal opening of another person, by any object, instrument or device, against the victim’s will by use of force or violence or by duress, or by threats of immediate and great bodily harm, accompanied by apparent power of execution, for the purpose of sexual arousal, gratification or abuse”
- H. Idaho Human Rights Commission – Idaho Code § 67-5901, *et seq.*, provides that all individuals within the state should be free “from discrimination because of race, color, religion, sex or national origin in connection with employment, public accommodations, education and real property transactions, discrimination because of age or disability in connection with employment”

XIV. Investigative agencies regarding harassment:

- A. U.S. Department of Education, Office for Civil Rights (OCR) - The primary federal administrative agency within the Department of Education charged with the responsibility of regulating, interpreting, and enforcing Title IX and Section 504 violations.
1. Victims of sexual harassment or sexual discrimination in an educational context may file a complaint with the OCR to initiate the investigative process.
 2. OCR requirements for administrative determination of violation of Title IX:
 - a. The existence of sexual harassment;
 - b. Sufficient severity to interfere with educational benefit or to create a hostile environment;

- c. Knowledge or reason to know on the part of the recipient of federal funds;
 - d. Lack of prompt, effective remedial action.
 3. Federal funding may be terminated if an educational institution, after receiving notice of the violation and an opportunity to voluntarily remedy its noncompliance, fails or refuses to address the areas of noncompliance.
- B. The Human Rights Commission has jurisdiction to investigate harassment complaints against Idaho school districts.
- C. Idaho State Department of Education - any person employed by an Idaho school district to serve in a teaching capacity must have a valid teaching certificate. An investigation may occur for any allegation of inappropriate conduct, regardless of whether the holder of a teaching certificate has surrendered the certificate without a hearing or failed to renew the certificate. The certificate can be revoked, suspended or denied for a variety of unethical conduct, including:
 1. Making any material misstatement of fact in the application for a certificate, which the applicant knows to be false.
 2. A conviction, finding of guilty, withheld judgment, or suspended sentence in Idaho or in any other state of a crime involving moral turpitude.
 3. Willful violation of any professional code or standard of ethics or conduct.
 4. The State Board of Education will permanently revoke a teaching certificate or deny the application to any individual who pleads guilty or is found guilty of:
 - a. The sexual abuse of children under age 16; lewd conduct with a child under the age of 16; the rape of a child.

XV. Necessary Components for a discrimination/harassment claim:

- A. The parents must show that they have notified a school person about the harassment;
- B. The person notified must have the authority to investigate the complaint;
- C. The person notified must have the authority to correct the problem;
- D. The complaint should state what the discriminatory action is;
- E. The school district must exercise control over the site where the discrimination or harassment occurred (or is occurring);

- F. The school district must exercise control over the personnel who allegedly have committed (or are continuing to commit) the discriminatory or harassing acts;
- G. The complaint must allege that the discrimination or harassment was not a single act but was severe and pervasive;
- H. The complaint must allege that the discrimination or harassment denied the student access to an education;
- I. The complaint should state what federal laws are being violated (504, ADA, IDEA, etc.);
- J. The complaint should suggest what the school should start doing differently.³

XVI. Case Law

A. Bullying:

- 1. *Mickelsen v. School District No. 25*, 901 P.2d 508 (1995).
 - a. Negligence action brought against school district, Board, Superintendent, Principal and Dean of Students, alleging serious, permanent head injuries suffered by female student during a fight involving two other students.
 - (1) Fight involved two other students;
 - (2) Fight took place in hallway during school hours.
 - b. Court ruled that:
 - (1) A supervisory relationship existed between the school and the students based on both statutes and case law;
 - (2) Idaho Code Section 6-904A(2) absolutely insulated the school district and employees from liability:
 - (a) “A governmental entity and its employees while acting within the course and scope of their employment and without malice or criminal intent and without reckless, willful and wanton conduct . . . shall not be liable for any claim which: . . .
 - (2) Arises out of injury to a person or property by a

³Compiled from the outline entitled *Special Education Law Update: 1999-2000 Year in Review*, presented by Reed Martin, J.D., at the University of Washington’s 17th Annual Pacific Northwest Institute on Special Education and the Law, September 25-27, 2000.

person under supervision, custody or care of a governmental entity . . .”

- (3) Idaho Code Section 6-904A(2) also barred plaintiffs’ claim alleging that the school defendants failed to provide adequate hallway supervision which breached the supervisory duty of Idaho Code Section 33-512(4).
2. *Stevenson v. Martin County Board of Education*, 93 F. Supp. 2d 644 (E.D.N.C. 1999).
 - a. Suit brought against school district by former student and his parents alleging the school’s inability to control bullies who beat up the student violated his constitutional rights, including:
 - (1) 14th Amendment of the U.S. Constitution for deprivation of property without due process of law;
 - (2) An untitled claim under Section 1983 alleging deprivation of a right to public education and impliedly alleging deliberate indifference to a known duty under Title IV of the Safe and Drug-Free Schools Act.
 - b. During the first two months of the 1998-99 school year, Alex was robbed during lunch, assaulted during first period art class, repeatedly harassed and threatened by a fellow student and that student’s friends on school campus during school hours, and assaulted during first period while in the school hallway.
 - c. The student’s parents alleged that the final assault upon Alex caused him physical damage and the combination of taunting and assaults caused him mental suffering. The parents withdrew Alex and enrolled him in a private school.
 - d. The federal district court held that other circuits have uniformly rejected the position that a student is entitled to affirmative protection, under a due process liberty interest, while at school. “An affirmative duty only arises when ‘the state has exercised its power so as to render an individual unable to care for himself or herself.’”
 - e. Compulsory education does not render school children so helpless that an affirmative constitutional duty to protect arises. “At most, the state might require a child to attend school . . . but it cannot be suggested that compulsory school attendance makes a child unable to care for basic human needs. The parents still retain primary responsibility. . . .”

- f. In addressing the Safe Schools Act, the court found that since Congress enacted it in 1994, the U.S. Department of Education has not promulgated any regulations that explain a student's rights under the Act, and no federal court has relied upon the Act for any purpose. The Act is a grant program and "to contend that this act places defendants on notice that they could be held liable for student on student violence is severely misplaced."

B. Racial Harassment:

1. The Equal Employment Opportunity Commission (E.E.O.C.) has received numerous complaints about threats to blacks and other members of minority groups involving the display of hangman's nooses in the workplace. Racial harassment lawsuits have been brought against approximately 20 companies where hangman's nooses were believed to be involved. Nine cases were pending in July 2000. A sampling of the cases include:
 - a. *E.E.O.C. v. Crowder Construction Company* - A supervisor approached a black employee holding a noose, and said, according to the suit, "this is what we used to do to you." The company disputed the charge, and alleges that the supervisor had approached a crew of employees to give them instructions about rigging construction equipment with a noose.
 - b. *E.E.O.C. v. Asplundh Tree Expert Company* - E.E.O.C. alleges a black employee in Gainesville, Florida, says that a noose was wrapped around his neck and then pulled. The company had no comment.
 - c. *E.E.O.C. v. Sanctuary Golf Club* - A black employee of the golf course in Florida alleges that several co-workers held a noose and asked him whether he wanted to go for a ride. A member of the club's board stated the suit was completely without merit.

C. Anti-gay harassment:

1. June 28, 2000 - *Boy Scouts of America, et al., v. Dale*, No. 99-699, U.S. Supreme Court:
 - a. U.S. Supreme Court reversed the New Jersey Supreme Court ruling that Boy Scouts wrongly ousted assistant scoutmaster after learning he was gay and ruled that Boy Scouts may ban gays from serving as troop leaders.
 - b. Decision states accepting gay troop leaders violates Boy Scouts rights of free expression and free association under U.S. Constitution, First Amendment.

- (1) Chief Justice William Renquist writes for the Court “that requiring the Boy Scouts to accept a gay scoutmaster would significantly burden the organization’s right to oppose or disfavor homosexual conduct [T]he Boy Scouts asserts that homosexual conduct is inconsistent with the values it seeks to instill.”
- (2) The Boy Scouts is a private association with the right to set its own standards for membership and leadership.
- (3) Lower court reasoned Boy Scouts was a public organization and had to follow New Jersey’s anti-discrimination laws.

D. Sexual harassment of students by employees:

1. U.S. Supreme Court Case: *Franklin v. Gwinnett County Public Schools*, 112 S. Ct. 1028 (1992).
 - a. A former student who was repeatedly harassed and sexually assaulted by a male teacher sought \$6 million in damages.
 - b. The student contended that sexual harassment occurred against her by a teacher who repeatedly used sexually oriented conversation, forcibly kissed her, and eventually subjected her to coercive sexual intercourse. The student reported these actions to the school district administration and teachers. No action was taken to protect the student and end the improper conduct.
 - c. U.S. Supreme Court ruled that schools and colleges may be ordered to pay money awards for gender discrimination. Congress “did not intend to limit the remedies available” under Title IX.
 - d. U.S. Supreme Court held that damages as a remedy were available for an action brought under Title IX, and in *Franklin* equitable remedy of prospective relief was inadequate because the teacher in question no longer taught at the school and the student no longer attended that school.
2. U.S. Supreme Court Case: *Gebser v. Lago Vista Independent School District*, 118 S. Ct. 1989 (1998).
 - a. In 1991, an 8th grade female student (Alice Gebser) joined a high school book discussion group led by Frank Waldrop, a high school teacher. During the book discussion sessions, Waldrop often made sexually suggestive comments to students.

- b. When Gebser entered high school, she was assigned two classes taught by Waldrop. He continued to make inappropriate remarks to students, and began directing some of his suggestive comments toward Gebser, including during the substantial amount of time the two of them were alone in his classroom.
- c. In spring 1992, Waldrop initiated sexual contact with Gebser, while visiting her home ostensibly to give her a book. He kissed and fondled her.
- d. Waldrop and Gebser had sexual intercourse on a number of occasions during the remainder of the school year, and their relationship continued through the summer and into the following 1992-1993 school year. They often had intercourse during class time, but never on school property.
- e. Gebser never reported her relationship with Waldrop to school officials, and testified that she knew Waldrop's conduct was improper, but she was uncertain how to react and she wanted to continue having him as a teacher.
- f. In October 1992, parents of two other students complained to the high school principal about Waldrop's comments in class. Waldrop met with the principal and parents, and although he indicated that he did not believe he had made offensive remarks, he apologized to the parents and said it would not happen again.
- g. The principal advised Waldrop to be careful about his classroom comments and told the school guidance counselor about the meeting.
- h. The principal did not report the incident to the superintendent, who was the Title IX coordinator.
- i. In January 1993, a police officer discovered Waldrop and Gebser engaging in sexual intercourse, and arrested Waldrop.
- j. Waldrop's employment with the school district was terminated, and his teaching certificate was revoked.
- k. The school district did not have any promulgated or distributed official grievance procedure for lodging sexual harassment complaints; nor had it issued a formal anti-harassment policy.
- l. Suit was filed against the school district and Waldrop seeking compensatory and punitive damages under various claims, including § 1983, Title IX, and state negligence law. The issue on

appeal to the U.S. Supreme Court was whether the school district violated Title IX.

- m. The U.S. Supreme Court reviewed its prior decision in *Franklin*, whereby it had established that a school district can be held liable for damages in cases involving a teacher's sexual harassment of a student. However, *Franklin* did not define the contours of that liability.
 - n. Petitioners sought not just to establish a Title IX violation, but to also recover damages based on theories of *respondeat superior* (vicarious or imputed liability) and constructive notice (where the district knew, or should have known).
 - o. The Supreme Court concluded "that it would 'frustrate the purposes' of Title IX to permit a damages recovery against a school district for a teacher's sexual harassment of a student based on principles of *respondeat superior* or constructive notice, *i.e.*, without actual notice to a school district official."
 - p. The Supreme Court also stated that "in cases like this one that do not involve official policy of the recipient entity, we hold that a damages remedy will not lie under Title IX unless an official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the recipient's [School District] behalf has actual knowledge of discrimination in the recipient's programs and fails adequately to respond. We think, moreover, that the response must amount to deliberate indifference to discrimination."
 - q. The court also held that the school district's failure to have adopted policies did not establish the requisite actual notice and deliberate indifference. "[T]he failure to promulgate a grievance procedure does not itself constitute 'discrimination' under Title IX."
3. Idaho case - *Doe v. New Meadows Valley School District No. 11* (D. Idaho Feb. 14, 1997).
- a. A student sued the school district and sought monetary damages under Title IX for alleged sexual harassment by peers and district employees.
 - b. The student alleged that the district ignored numerous requests by her and her parents asking the district to deal with other students who subjected her to sexual harassment.

- (1) The student alleged that one of her teachers told “dumb blond jokes” in class and had called the student a “dumb blond” on several occasions.
 - (2) The comments by the teacher were found by the court as active encouragement of subsequent peer harassment, which occurred on and off school grounds.
 - (3) The comments were found by the court to be sexual harassment, noting that the jokes were told on a regular basis over a period of three years.
 - (4) A substitute teacher allegedly told the student that he had dreamt about her and woke up and thought she was his wife.
- c. The alleged harassment continued for three years and ended when the student transferred to an alternative school in a neighboring school district.
- d. The court found that the student presented evidence that the school district had actual knowledge that the student was being harassed by peers and the district failed to take steps to remedy the harassment.
- e. The school district argued that a single incident by a substitute teacher did not create a hostile environment. However, the court held that “a single incident can form the basis of a sexual harassment claim. . . .”
- (1) Evidence showed that the student had ongoing contact with a school counselor and the counselor failed to take action to remedy the peer harassment - in part because the counselor felt it might make things worse for the student.
- f. The court held there were sufficient issues to move forward to trial. The case subsequently settled out of court.
- E. Sexual harassment of students by students:
1. U.S. Supreme Court Case: *Davis v. Monroe County Bd. of Education* 119 S. Ct. 166 (1999).
 - a. During the 1992-93 school year, LaShonda Davis was a 5th grade student. Another 5th grade student, G.F. sat next to LaShonda in several of her classes. On December 17, 1992, G.F. allegedly tried to touch LaShonda’s breasts and vaginal area. He also allegedly stated “I want to get in bed with you” and “I want to feel your

boobs.” LaShonda complained to her teacher, and told her mother about G.F.’s conduct. In January 1993, G.F. engaged in similar behavior, which again was reported to her teacher and her mother.

- b. In February 1993, G.F. allegedly placed a doorstop in his pants and behaved in a sexually suggestive manner toward LaShonda during P.E. class. LaShonda reported the conduct to her teacher. Further misbehavior also occurred, and LaShonda reported each incident.
- c. In March, LaShonda’s classroom teacher allowed her to change assigned seats away from G.F., but the unwelcome attentions continued. On April 12, 1993, G.F. rubbed his body against LaShonda in a manner she considered sexually suggestive; she complained to her teacher.
- d. On May 19, 1993, LaShonda and her teacher visited the principal to discuss G.F.’s conduct. The principal asked why no other students had complained about G.F. and also stated “I guess I’ll have to threaten [G.F.] a little bit harder.” G.F. was charged with sexual battery, a charge which he did not deny.
- e. Asserting a Title IX violation, LaShonda argued that a school employee intentionally discriminates on the basis of sex when he fails to prevent one student from sexually harassing another.
- f. The U.S. Supreme Court reviewed the facts presented and held “[w]e thus conclude that funding recipients [under Title IX] are properly held liable for damages *where they are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.*” (Emphasis added.)
- g. The standard set by the U.S. Supreme Court is one of reasonableness, stating that *the school “must merely respond in a manner that is not clearly unreasonable in light of the known circumstances.”* The school is not expected to prevent harassment when they do not have knowledge of the situation. Of course, actual knowledge by any employee, whether a result of witnessing the conduct or having it reported to him/her, may be imputed to the district. Upon receiving the knowledge, the district has a responsibility to determine whether the allegation is valid and take appropriate action to prevent repetition of harassment. Such action may consist of suspension and/or expulsion. (Emphasis added.)

2. Same sex sexual harassment: U.S. Supreme Court case: *Oncale v. Sundowner Offshore Services, Inc*, 523 U.S. 75 (1998).
 - a. Male plaintiff was subjected to sexual assault and threats of rape by three male members of offshore oil crew;
 - b. Court ruled “harassing conduct need not be motivated by sexual desire”;
 - c. Same-sex sexual harassment is actionable under Title VII;
 - d. Harasser need not be homosexual, although proof of such sexual preference will establish that the conduct was because of gender;
 - e. Clarified that sexual harassment is the conduct that is at issue, not the sex or sexual desires of people involved;
 - f. Reemphasized that hostile environment sexual harassment must be so pervasive and objectively offensive that the conditions of the employee’s employment is altered so that an objectively hostile or abusive work environment is created.

XVII. Monetary Payments for Alleged Sexual Harassment:

- A. In 1991, a Minnesota student received a \$15,000 settlement for “mental anguish” after the student alleged that sexual harassment occurred when school officials failed to remove graffiti about her from the wall of a boys’ bathroom.
- B. In 1994, the Berkeley United School District in California paid \$800,000 to settle allegations that a high school band leader sexually molested two female students, one of the first and largest settlements of a sexual harassment claim involving a public school.
- C. In 1994, a federal jury awarded \$400,000 to a female student at a vocational school in Brooklyn, New York, after she filed a lawsuit alleging that the school director told her she could have her schedule reduced only if she had sex with him every week until she graduated.
- D. In 1995, the Stayton, Oregon, high school district agreed to pay \$104,000 to settle a lawsuit in which female employees alleged repeated sexual harassment by the school principal.
- E. In 1996, a U.S. District Court of Appeals upheld Wisconsin student’s right to sue school officials (14th Amendment). Student was subjected to anti-gay harassment through middle and high school years. Three school principals held personally liable for failing to enforce policies. The school district settled with the student for \$900,000.

- F. In 1998, a U.S. District Court reinstated an Ohio teacher. The teacher alleged he was denied a contract renewal because of his sexual orientation. The court granted the teacher \$46,492 in back pay and \$25,000 for emotional distress.
- G. In 1998, a Washington school district settled (out-of-court) with graduated student. Student alleged that during his last six years of school he was subjected to escalating anti-gay harassment which led to physical assault by eight (8) students his senior year. School settled with student for \$40,000 and series of written commitments regarding policies, procedures and training.

XVIII. School District Policy and Investigation:⁴

- A. It is important to have a school district policy on harassment and for staff to follow that policy. Although schools are not directly responsible for all harassing conduct they do have a responsibility to provide a non-discriminatory environment.
- B. Staff should be aware of all harassment policies, understand what they mean, and intervene when they see or hear inappropriate behavior.
- C. The school should be proactive.
 - 1. Have and enforce a strong anti-harassment policy;
 - 2. Publicize the policy and the reporting process;
 - 3. Ensure the use of non-biased curricula, assessment, and instructional strategies;
 - 4. Educate the staff, students, and parents.
- D. Provide specific information about how the student can obtain continued guidance and support.
- E. In-district investigations of harassment allegations should be handled with care. The investigator needs to:
 - 1. Be knowledgeable of the applicable state and federal laws;
 - 2. Possess the skills and temperament to be able to conduct an unbiased investigation;
 - 3. Be trusted by the students or staff so they will talk freely;

⁴The information pertaining to investigations may also be applicable to bullying situations. School districts may also wish to develop policies pertaining to bullying, although there is currently no legal requirement mandating bullying policies in Idaho.

4. Be in a position of authority so his or her findings will be given serious consideration by the decision maker if disciplinary actions are necessary;
 5. Be given the time and resources to investigate thoroughly;
 6. Conduct the investigation in a timely manner.
- F. Depending on the circumstances, a school district may wish to retain a qualified third party to conduct the investigation regarding allegations of harassment.
- G. Explain grievance procedures to the student(s) and follow such procedures. OCR regulations require schools to have grievance procedures which apply to all forms of discrimination, including racial and sexual harassment.
- H. Inform the student of any outside agency that can assist if the complaint is not resolved satisfactorily.
- I. When a complaint is received, it must be taken seriously and investigated in a thorough, timely manner.
1. Begin the investigation as soon as possible;
 2. Conduct the interview in a private setting/room;
 3. Allow the complainant to have a support person of his/her choosing during the interview;
 4. Explain the investigation process:
 - a. The alleged perpetrator and any witnesses will be interviewed;
 - b. A written report to the harassment officer will be prepared;
 - c. After the interview, the complainant should be informed of the results of the investigation; however, if disciplinary action will be taken against the harasser, the complainant cannot be informed of the disciplinary measures without prior written consent;
 - d. Do not promise absolute confidentiality, but confidentiality should be maintained to the extent possible;
 - e. Explain grievance procedures to the student(s) and follow such procedures.
 5. Do not tell a victim to ignore the harassment.
 6. Find out what happened:
 - a. Consider the alleged circumstances from the victim's perspective.

- b. Get specific details - such as:
 - (1) Is something bothering you? What is concerning you? What happened? Who was involved? Where did it happen? When did it happen? How many times? How did you respond each time? Who saw or heard what happened? Did you tell anyone about the incident(s)? Do you have any evidence relating to the incident(s)?
 - (2) Determine the names of any witnesses.
- c. Assess the credibility of the complainant:
 - (1) Is the complainant believable? Does the story sound fabricated? Does the complainant have any motive to lie? What is the complainant's demeanor during the interview?
 - (2) Lack of perceived credibility of the complainant is not grounds to abandon an investigation. The investigation policies and procedures must be followed.
- 7. Ask the complainant what she/he wants:
 - a. How do you want the situation handled? What assistance can the school give you? Is there any temporary/immediate action you think is appropriate/necessary?
- 8. Document any refusal by the complainant to divulge information.
- 9. Ask the complainant to write and sign a statement setting forth the allegations and facts.
- 10. Ask the complainant to immediately alert the school if any more incidents occur.
- 11. Interview the alleged perpetrator and give a brief summary of the nature of the meeting to the alleged perpetrator.
 - a. Explain that the alleged perpetrator is being investigated because of a complaint of sexual harassment against him/her;
 - b. Inform the alleged perpetrator that no retaliation is allowed; that it is illegal;
 - c. Identify the complainant and the specifics of the complaint;
 - d. Ask the alleged perpetrator to respond to the charges;

- e. Determine any corroborating witnesses;
 - f. Ask the alleged perpetrator to write and sign a statement setting forth his or her version of the facts.
12. Interview Corroborative Witnesses.
- a. Ask broad questions;
 - b. Inform the witness that retaliation is illegal;
 - c. Do not identify either the complainant or alleged perpetrator at the beginning of the interview;
 - d. If witness does not volunteer information, prompt with general questions whether the witness has observed any activities that might be harassment;
 - e. Distinguish between firsthand and secondhand (hearsay) knowledge;
 - f. Have the witness submit a written statement;
 - g. Remind the witness to keep the interview confidential.
13. If appropriate, report alleged harassment to law enforcement. Whenever school staff have reason to believe a child under 18 has been abused, abandoned, or neglected, a report must be made within 24 hours to law enforcement or the Idaho Department of Health and Welfare. I.C. § 16-1619.
14. If necessary, separate the parties involved until a solution is found.
15. Prevent public disclosure of names of all involved except as necessary to find out what happened.
16. Pay close attention to due process and other rights of the accused.
17. Thoroughly document all details of the incident and the action(s) taken by the school and retain the documentation permanently.
18. Take steps to prevent retaliation by anyone and inform the complainant and alleged perpetrator that retaliation is prohibited by law.
19. Respect confidentiality but be prepared to take quick action to prevent others from being harassed.
20. Track incidents so repeat offenders can be identified and necessary action can be taken.

- J. Disciplining and remedial actions which may be taken include, but are not limited to:
1. Oral/written warnings;
 2. Counseling;
 3. Suspension;
 4. Transfer; or
 5. Expulsion.

**BULLYING OR JUST GETTING
A PICKED-ON@?**

SCENARIO NO. 1

Rosalie attends Russell Junior High School. Recently, Rosalie has been approached by some of her friends and asked to join an all girls club that was being formed. Rosalie asked her friends which other girls were also going to be members. When she was told that Janie was going to be asked Rosalie freaked and said she wouldn't be a member of any club that Janie was a member of. Rosalie then told her friends that Janie was stuck-up and had stolen other girls' boyfriends in the past, and that Janie was popular because she did things that good girls wouldn't do. Rosalie's friends said they wouldn't ask Janie to join the club.

Thereafter, whenever the group of girls, led by Rosalie, encountered Janie they began calling her cruel names and accused her of all kinds of wrongdoing. This name-calling went on for about a month. Staff members have seen some of the encounters, but thought intervention would just make things worse.

Now, three months have passed and whenever the group sees Janie they whisper things to each other, just loud enough so that Janie knows that they are talking about her, but not so loud that Janie can understand what is being whispered. Otherwise, the group no longer talks directly to Janie at all. The group doesn't invite Janie to any of their functions or activities and encourages others to exclude Janie also.

1. Is this an example of bullying? If so what type?
2. Is this just a matter of girls being unkind?
3. If you were called to review this situation what steps (if any) would you take?
4. Do you think any action(s) is/are necessary?

SCENARIO NO. 2

Robert is in the eighth grade at Fremont Middle School. Robert considers himself quite popular among his peers and usually is accompanied by three or four "buddies." Some of the other students have occasionally described Robert and his friends as troublemakers.

Frank is a sixth grader at Fremont. Frank is one of the smaller kids in his class and is not too athletic. In fact, Frank might be considered a "geek" because of the thick horn-rimmed glasses he wears and the fact that he is near the top of his class academically.

You've noticed that whenever Robert and his "buddies" encounter Frank on the playground there seems to be a confrontation which usually results in lots of laughter by the eighth graders and sometimes tears from Frank. You have witnessed some pushing of Frank by Robert but nothing that has resulted in any physical harm. These confrontations seem to be increasing in frequency and have been going on now since the beginning of the school year. It is now nearing the Christmas break.

1. Is there enough information to suggest that Frank is a victim of bullying?
2. Should you question Frank?
3. Should you question Robert? What about Robert's friends?
4. Would it be advisable to question Frank or Robert in the presence of the other?
5. What action(s) would you take?

**HARASSMENT
YES? - NO? - MAYBE?**

SCENARIO NO. 1

Russell Junior High School provides transportation for its students both to and from school. On one particular route, several male students make a point of brushing up against female students and making physical contact with them when the boys get up from their seats to exit the school bus.

Nothing is generally said by the girls, except that on occasion an angered female student will speak up and confront the offending boy(s). When this does happen, the boys accuse the girl of being a poor sport, or making more out of the situation than is called for.

These incidents have been going on for about six months when one girl finally complains about the boys' behavior to the female school bus driver. The bus driver listens intently and assures the girl that she won't tell anyone.

1. Is there any harassment going on here? If so what type(s)?
2. Is this just a matter of "boys will be boys"?
3. Should the bus driver be more aware of activities on her bus?
4. What do you think of the bus driver's reaction to the girls' complaint to her?
5. Does the bus driver's reaction project any liability to the school?
6. If you were called in to review the situation, what steps would you take?

SCENARIO NO. 2

Judy and Angela are seniors at Highland High School. As part of their business class they work as tellers at a local bank three days a week as work-study trainees. The bank has seven (7) female tellers, including Judy and Angela. Mr. Wilson, the branch manager, routinely visits each of the tellers to supervise their transactions. Whenever he visits the area assigned to Judy and Angela, he always touches one or both of them, putting his arm around them as he leaves the area. Judy's and Angela's area is entirely visible to the other tellers.

Neither Judy nor Angela has rebuffed Mr. Wilson, nor has either of them complained directly to him about this behavior. Mr. Wilson has never asked Judy or Angela for sexual favors.

1. Is Mr. Wilson just being friendly, or is he a “dirty old man”?
2. Does it make any difference?
3. What should be done about Mr. Wilson’s behavior?
4. Does anyone have a duty to report Mr. Wilson’s behavior?
5. Could Mr. Wilson’s actions be imputed on the school district?

SCENARIO NO. 3

Jennifer R., a student at Lincoln High School, works as an administrative assistant trainee in the school’s main office. From her desk, she can see clearly into the teachers’ lounge. Many of the male teachers, and even a few female teachers, seem to enjoy engaging in horseplay while in the lounge. Jennifer has heard the teachers, some of whom are her instructors, exchange stories about their sexual exploits and kidding each other about their sexual prowess. She has even seen what she considers inappropriate touching and grabbing of each other’s body parts.

Jennifer is offended and embarrassed by this type of conduct. However, Jennifer has not told anyone about any of this and has on occasion even nervously laughed at the teachers’ conduct when she was caught watching them.

1. Is this an example of unlawful sexual harassment?
2. Does the school have any liability in this instance?
3. Has Jennifer followed a proper course of action?
4. If not, what should Jennifer have done?
5. What other questions can you think of that relate to this example?

SCENARIO NO. 4

Bill Man was born in Syria. He and his parents moved to the United States when he was eight (8) years old. Bill now attends Washington Junior High. While at school, he is frequently called such names as “camel jockey,” “rug peddler,” “rich Arab,” and “rag-head.” One day, one of the coaches on the track team even told him that, “you should go back to the desert where you came from. Maybe you could outrun one of your camels.”

Bill complained about the conduct of both the track coach and the students to his history teacher, but nothing happened.

1. Can Bill establish harassment?
2. If so, what type?
3. Would the situation be any different if Bill was called names only occasionally?
4. What would be the situation if Bill were the subject of taunts that were not necessarily explicit as to his national origin?
5. What actions would you take to investigate the incident?

SCENARIO NO. 5

Three friends (two guys and a girl) are walking home from a video store. School is closed for spring break. The three are recognized by four male occupants (also students at their high school) in a car that passes them. One of the passengers yells out, "Those guys are gay!" (Actually only one of the young men is openly bisexual. The other two are heterosexual.)

The three friends try to ignore the car's occupants and cut through school property to get away. They are followed onto campus. The four males jump from the car and attack the two male friends shouting, "We don't tolerate 'fags' here." The bisexual youth is stomped on the chest and kicked in the groin, and blacks out.

When he comes to, the three friends find a janitor, call 911, and the police and the mother of one of the young men arrive. The mother takes all three to the emergency room. While the three are being treated, one of the attackers shows up and is immediately arrested. The second young man calls his mother at work and his parents come to his side. The vice principal is called.

The mother later calls the local Safe Schools Project and relays that the vice principal is shocked, horrified, and really angry. She further describes how teachers and community members held a rally for her son at which they expressed their support for the three friends and their disgust for what had happened to the three. She also told how her son hoped that his two friends would never go through such an experience again but that he probably would because he was bisexual.

The support he was given from his family and the community was not enough. The young man was entered into a mental health care facility for depression. Ten days after being released from the care facility, the young man killed himself.

1. What if any liability does the school face?
2. What if anything should the school have done that you think was not done?
3. Does the fact that it was spring break have any bearing?
4. Is the school responsible for the student's suicide?
5. What if the beatings had occurred off-campus?

SCENARIO NO. 6

The end of the school year was drawing near. As a senior event, an auction was held whereby students were "sold" in order that they become the servant to the successful high bidder. This was the third annual auction.

The principal acted as the master of ceremonies. One particular Latino student was brought to the blocks and the bidding process began. The bidding was slow and the target amount was not being reached. Sensing some embarrassment on the part of the student, the principal lightheartedly commented to the audience that, "He won't even steal your hubcaps." The student was immediately aware of the racist nature of the comment, but did not want to make an issue of the principal's remark.

1. What issues are raised here?
2. Is there justification for harassment on the part of the principal?
3. What if this type behavior is part of a larger pattern of behavior at the school?
4. Would the situation be any less prejudicial if the remark had come from someone other than the principal?
5. Should other staff members have made an issue of the principal's comment?
6. Should the effects on the individual student be addressed?
7. Should the student's reluctance to confront the issue be considered?

SCENARIO NO. 7

Ashley, an eighth grade student at Jefferson Junior High School, one day comes to Vice Principal Mrs. Hanoi in tears. Ashley, who is one of the smallest girls in her class, tells Mrs. Hanoi that two of the bigger girls won't stop "bothering her." When Mrs. Hanoi asks Ashley what the problem is, Ashley says the girls threw a cut-up frog down her dress, and repeatedly snapped her bra making comments about her not needing one because of her small size. Additionally the girls had blocked her escape and had also called her the term that denotes a "female dog." This wasn't the first time they had accosted her.

1. What type if any harassment is presented?
2. If you were Mrs. Hanoi, what would you do in this situation?
3. Is there a pattern of harassment demonstrated?
4. If so, what additional actions, if any, are warranted?
5. What other considerations can you think of that are necessary in this situation?

RESOURCES USED FOR OUTLINE

The Wall Street Journal/NBC News special survey on women in the workplace, marketplace and politics, conducted June 14-18, 2000

Recent Developments in Sexual Harassment Law, George L. Lennard; Christopher A. Out (2000)

Additional Advice for Parents (Schools) on Bullying & Victims, Kathy Knoll (2000)

Olweus, D., Limber, S. & Milhalic, S.F. *Blueprints for Violence Prevention, Book Nine: Bullying Prevention Program*; Boulder, Colorado: Center for the Study and Prevention of Violence (1999)

Maine Project Against Bullying (1999)

Stop Bullying! Guideline for Schools, Prepared by Mark Cleary for New Zealand Police Youth Education Services (1999)

The Educator's Guide: Student Discipline in Idaho, Eberharter-Maki & Tappen, PA (3rd ed. 1999)

Enough is Enough: The Legal Responsibility of Public Schools and Universities to Prohibit Hazing, 134 Ed. Law Rep. 423 (1999)

Karen Kane (1999) Understanding Anti-Gay Harassment and Violence in Schools; A Report on the Five Year Anti-Violence Research Project of the Safe Schools Coalition of Washington State, *Legal Definitions, Laws, and Policies*

Death Prompts Fight Against Bullying, Augusta Chronicle (1998)

Words That Wound, Kathleen Vail, American School Board Journal (September 1999)

The United States Equal Employment Opportunity Commission Technical Assistance Program, *Sex Discrimination Issues* (1998)

Audit of Anti-Semitic Incidents, Anti-Defamation League (1998)

Brian K. Julian, *Sexual Harassment Claims* outline (April 1997)

Gail Sorenson, J.D., Ed.D., *Peer Sexual Harassment: Remedies and Guidelines under Federal Law*, 92 Ed. Law Rep. [1] (Sept. 8, 1994)

Sexual Harassment in Schools, National Association of State Boards of Education (1993)

American Association of University Women (AAUW) Survey (1993)

Lewis, Hastings, Morgan, *Sexual Harassment in Education*, National Organization on Legal Problems of Education (1992)

Harassment Guidelines, Northwest Regional Educational Laboratory, Equity Center (1992)

Coregis in the News, <http://www.coregis.com/inthenew.htm>

Case law

Federal statutes and regulations

State statutes and regulations

It is the policy of this board not to discriminate on the basis of race, color, creed, national origin, religion, age, disability or sex in its educational programs or employment practices.



LEGAL REFERENCE:

Title VII of the Civil Rights Act of 1965,
42 USC Section 2000e, *et seq.*
Title VI of the Civil Rights Act of 1964,
42 USC Section 2000d, *et seq.*
Section 1981 of the Civil Rights Act of 1866,
42 USC Section 1981
Section 1983 of the Civil Rights Act of 1871,
42 USC Section 1983
The Equal Pay Act 1963,
29 USC Section 206d
Title IX of the Education Amendments of 1972,
20 USC Section 1681
Age Discrimination and Employment Act of 1967,
29 USC Section 621, *et seq.*
Americans with Disabilities Act of 1990,
42 USC Section 12101, *et seq.*
Section 504 of the Vocational Rehabilitation Act 1973,
29 USC Section 794
Idaho Commission on Human Rights,
Idaho Code Section 67-5901, *et seq.*

ADOPTED:

AMENDED:

Grievances by employees, students or other persons alleging illegal discrimination by this district, its employees, other students, or third parties in any of the district's public facilities, programs or activities based on race, sex, national origin, color, age (persons forty (40) years of age or older), religion, or disability may be filed as follows:

FILING A CIVIL RIGHTS GRIEVANCE COMPLAINT

A complaint should be filed in writing by the complainant, by the complainant's representative, parent or guardian or both. Any complaints received by this district by telephone or verbally will be recorded by the district in written form. The complaint must be filed with the office of the superintendent within one hundred eighty (180) days of the alleged discriminatory action. The complaint should set forth the date, place, and nature of the discriminatory action and specify the remedy sought by the complainant.

INVESTIGATION AND REPORT

The school district will contact the complainant in writing within ten (10) working days of receipt of the complaint to let him or her know the complaint was received and what action the district has taken or will take in an attempt to resolve the complaint.

Within ninety (90) calendar days after receiving the complaint, the superintendent or designee must investigate the incident and issue a written finding of whether or not discrimination was found. The investigation will include, but not be limited to, interviews with the complainant and school district personnel. The investigator will allow both parties an opportunity to present written statements of witnesses and/or other evidence.

If the complainant does not agree with the findings of the superintendent or designee, he or she will have thirty (30) days to provide additional information to the designee of the superintendent to facilitate further review of the complaint.

The complainant will be notified of his or her right to appeal the findings of the district to the proper state or federal compliance agency. A complainant may at any time file a complaint directly with other agencies listed on page two of this policy.

REMEDY IF DISCRIMINATION IS FOUND

If the superintendent or designee finds that the alleged discrimination occurred, the superintendent will take immediate steps to remedy such discrimination and to prevent the recurrence of discrimination. The superintendent will provide the complainant with a written report of the findings and proposed remedy, if any. The superintendent will report the investigation findings and proposed remedy, if any, to the board at the next special or regular meeting.

FILING OTHER COMPLAINTS

The complainant may also file a complaint with the following state and federal agencies:

1. Idaho Human Rights Commission, 1109 Main Street, P.O. Box 83720, Boise, Idaho 83720-0040.
2. Office for Civil Rights, U.S. Department of Education, 915 2nd Avenue, Room 3310, Seattle, WA 98174-1099.
3. U.S. Department of Justice, Washington, D.C. 20530.

Employment complaints may be filed with the Equal Employment Opportunity Commission, 2815 2nd Avenue, Suite 500, Seattle, Washington 98121.

NO RETALIATORY ACTION

No individual who has filed a complaint, testified, assisted or participated in any manner in the investigation of a complaint will be intimidated, coerced or otherwise discriminated against.

RETENTION OF RECORDS

All records of complaints and investigations filed under this procedure will be retained with the district for a period of three (3) years.

SCHOOL DISTRICT ACTIONS

All employees, students, and third parties of the district will be responsible for acting in accordance with this policy.

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LEGAL REFERENCE:

- Title VII of the Civil Rights Act of 1965
 - 42 USC Section 2000e, *et seq.*
- Title VI of the Civil Rights Act of 1964
 - 42 USC Section 2000d, *et seq.*
- Section 1981 of the Civil Rights Act of 1866
 - 42 USC Section 1981
- Section 1983 of the Civil Rights Act of 1871
 - 42 USC Section 1983
- The Equal Pay Act 1963
 - 29 USC Section 206d
- Title IX of the Education Amendments of 1972
 - 20 USC Section 1681

Age Discrimination and Employment Act of 1967

29 USC Section 621, *et seq.*

Americans with Disabilities Act of 1990

42 USC Section 12101, *et seq.*

Section 504 of the Rehabilitation Act 1973

29 USC Section 794

ADOPTED:

AMENDED:

**Language in text set forth in italics is optional.*

It is the policy of this school district to maintain an environment that is free from sexual harassment. Every employee has the right to work in an atmosphere that promotes equal opportunities, free from all forms of discrimination and conduct that could be harassing, coercive, or disruptive. Likewise, every student has the right to attend school and access educational opportunities and benefits, free from all forms of discrimination and conduct that could be harassing, coercive, or disruptive.

District employees are:

- 1. Prohibited from sexually harassing other employees, students, or visitors of the district;*
- 2. Required to report to his/her supervisor, the superintendent, or the discrimination compliance officer, sexual harassment of which the employee becomes aware; and*
- 3. Required to take immediate action to discipline and/or report students who engage in conduct which may be reasonably considered to constitute harassment of another student.*

This policy applies to all conduct on the district's premises and to conduct off the district's premises that has an effect upon an employee's work environment or a student's educational environment.

As deemed appropriate, the district will provide training to employees regarding sexual harassment and will take reasonable steps to take remedial action to stop harassment and prevent its recurrence.

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is a form of misconduct that includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct of a sexual nature when:

- 1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or participation in the educational process;*
- 2. Submission to or rejection of such conduct by an individual is used as a basis for employment or educational decisions affecting the individuals; or*
- 3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or education, or creating an intimidating, hostile or offensive work or educational environment.*

Examples of sexual harassment include, but are not limited to, the following:

1. *Unwelcome verbal statements of a sexual or abusive nature, including requests or demands for sexual activity, sexual jokes, and obscene comments, etc.;*
2. *Unwelcome, sexually motivated or inappropriate touching, pinching, or other physical contact;*
3. *Unwelcome sexual behavior or communications, accompanied by implied or overt threats concerning an individual's employment or education;*
4. *Unwelcome behavior or communications directed at an individual because of his or her gender; and*
5. *Stalking or unwelcome sexually motivated attention.*

REPORTING A COMPLAINT

Individuals who believe they are being sexually harassed should firmly and promptly notify the offender that his or her behavior is unwelcome. When a direct communication with the alleged harasser is not feasible or effective, the following steps should be followed when reporting a sexual harassment complaint:

1. The individual may choose to report the complaint to his or her supervisor or building principal. If the supervisor successfully resolves the complaint in an informal manner, a confidential report will be made to the superintendent about the complaint and resolution so that the district may determine if any pattern of sexual harassment by any particular individual exists. If the supervisor is unable to resolve the complaint, the complaint will be referred to the superintendent.
2. If the individual chooses not to report the complaint to his or her supervisor, the individual may report the incident directly to the superintendent. If the complaint in any manner involves the superintendent, the individual should report the complaint to the discrimination compliance officer for this district. The discrimination compliance officer will be designated by the superintendent.

An employee, at any time, may file a sexual discrimination or harassment claim with the Idaho Human Rights Commission and/or the Equal Employment Opportunity Commission (EEOC).

The addresses of these organizations are set forth in the policy entitled Civil Rights Grievance Procedure.

PROTECTION AGAINST RETALIATION

This district will not retaliate in any way against an individual who makes a report of sexual harassment, in good faith, nor will it permit any district employee to do so. Any person found to

have retaliated against another individual for reporting an incident of harassment, in good faith, may be subject to the same disciplinary action provided for sexual harassment offenders. Individuals who are not complainants but who assist individuals who believe they have been subjected to sexual harassment or who assist or participate in an harassment investigation are also protected from retaliation.

INVESTIGATION OF A SEXUAL HARASSMENT COMPLAINT

1. Any allegation of sexual harassment will be promptly investigated in a confidential manner so as to protect the privacy of all individuals involved.
2. Confidentiality will be maintained throughout the investigatory process to the extent practical and appropriate under the circumstances.
3. Complaints will be investigated by the district superintendent, the district's discrimination compliance officer, or other designee.
4. Upon completion of the investigation of a sexual harassment complaint, the investigator will communicate his/her findings to the superintendent. If the complaint in any manner involves the superintendent, the investigator's findings will be submitted directly to the district's discrimination compliance officer.
5. If there is insufficient evidence to support the allegations, no record will be made of the allegation in the accused employee's personnel file. If the findings of the investigation determine that sexual harassment has occurred, the board will be informed of the findings in executive session.

DISCIPLINARY ACTIONS

If the investigation finds that an employee has sexually harassed another employee or a student, disciplinary actions may include probation, suspension and/or dismissal from employment.



LEGAL REFERENCE:

Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)
Gebser v. Lago Vista Independent School District, 188 S. Ct. 1989 (1998)
Mentor Savings Bank v. Winson, 477 U.S. 57 (1986)
Elison v. Brandy, 924 F.2d 872 (9th Cir. 1991)
Davis v. Monroe County Board of Education, 119 S. Ct. 1661 (1999)

ADOPTED:

AMENDED:

**Language in text set forth in italics is optional.*

It is the policy of this district to maintain a learning environment that is free from harassment. Each student has the right to attend school in an atmosphere that promotes equal opportunities and that is free from all forms of discrimination and conduct that can be considered harassing, coercive or disruptive.

Students attending district schools are:

- 1. Prohibited from engaging in any conduct which could reasonably be construed as constituting harassment on the basis of sex, race, color, national origin, age, religious beliefs, ethnic background or disability;*
- 2. Prohibited from sexually harassing other students; and*
- 3. Required to report, to the school principal or designee, harassment of which the student becomes aware.*

This policy applies to all conduct on the district's premises and at school-sponsored events, conduct during transportation to and from school and school-sponsored events, and to conduct off the district's premises that has an adverse affect upon a student's educational environment.

DEFINITION OF HARASSMENT

Harassment is defined to include verbal, written, graphic or physical conduct relating to an individual's sex, race, color, national origin, age, religious beliefs, ethnic background or disability that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the district's programs that:

1. Has the purpose or effect of creating an intimidating or hostile environment.
2. Unreasonably interferes with an individual's educational performance.
3. Otherwise adversely affects an individual's educational opportunities.

Harassment includes, but is not limited to:

1. Physical acts of aggression or assault, damage to property, or intimidation and implied or overt threats of violence motivated by victim's sex, race, color, national origin, age, religious beliefs, ethnic background or disability;
2. Demeaning racial jokes, taunting, slurs and derogatory "nicknames," innuendos, or other negative remarks relating to the victim's sex, race, color, national origin, age, religious beliefs, ethnic background or disability;
3. Graffiti and/or slogans or visual displays such as cartoons or posters depicting slurs or derogatory sentiments related to the victim's sex, race, color, national origin, age,

religious beliefs, ethnic background or disability; and

4. Criminal offenses directed at persons because of their sex, race, color, national origin, age, religious beliefs, ethnic background or disability;

Harassment also includes an act of retaliation taken against (1) any person bringing a complaint of harassment, (2) any person assisting another person in bringing a complaint of harassment, or (3) any person participating in an investigation of an act of harassment.

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is a form of misconduct that undermines the student's relationship with educators and with other students. No student, male or female, should be subject to unasked for and unwelcome sexual overtures or conduct, either verbal or physical. Sexual harassment refers to sexual overtures or conduct that is unwelcome, personally offensive, and affecting morale, thereby interfering with a student's ability to study or participate in school activities.

Sexual harassment is a form of misconduct that includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's participation in the educational process;
2. Submission to or rejection of such conduct by an individual is used as a factor for educational decisions affecting the individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's education, or creating an intimidating, hostile or offensive educational environment.

Examples of sexual harassment include, but are not limited to, the following:

Unwelcome verbal statements of a sexual or abusive nature, including requests or demands for sexual activity, sexual jokes, and obscene comments, etc.;

Unwelcome, sexually motivated or inappropriate touching, pinching, or other physical contact;

Unwelcome sexual behavior or communications, accompanied by implied or overt threats concerning an individual's education;

Unwelcome behavior or communications directed at an individual because of his/her gender; and

Stalking or unwelcome, sexually motivated attention.

REPORTING PROCEDURES

1. Any student, and/or parents of a student, who believe the student is being harassed should immediately report the situation to school personnel.
2. Any district employee who receives a report of harassment from a student, becomes aware that a student is being subjected to harassment, or in good faith believes that a student is being subjected to harassment, is required to report the matter to the building principal immediately. In the event the complaint involves the principal, the matter must be immediately reported to the superintendent.
3. Any district employee who witnesses harassment of a student should take immediate, appropriate action to intervene to stop the harassment.
4. Any student who becomes aware that a fellow student is being subjected to harassment should immediately report the incident to a counselor, teacher, or the principal.

INVESTIGATION

When a report of harassment is received by the principal or the superintendent, immediate steps will be taken to do the following:

1. Obtain a written statement from the complainant regarding the allegations;
2. Obtain a written statement from the accused;
3. Obtain written statements from witnesses, if any; and
4. Prepare a written report detailing the investigation.

An investigator may be appointed to conduct the investigation, or the principal or superintendent may conduct the investigation. The investigation should be completed within ten (10) workdays.

DISCIPLINARY ACTION

If the allegation of harassment involves a teacher or other school employee, the principal will submit the report of the investigation to the superintendent. If there is sufficient evidence to support the allegations, disciplinary action, up to and including dismissal, may be taken against the offender.

If the allegation of harassment is against a student and there is sufficient evidence to support the allegations, disciplinary action, up to and including expulsion, may be taken against the offender.

If there is insufficient evidence to support the allegations, no record will be made of the allegations in the complaining student's permanent record. No record of the allegations will be

placed in the accused employee's personnel record or in an accused student's permanent record if insufficient evidence supports the allegations.

In the event the investigation discloses that the complaining student has falsely accused another individual of harassment knowingly or in a malicious manner, the complaining student may be subject to disciplinary action, up to and including expulsion.

In the event the harassment involves violent or other conduct which could be reasonably considered to be criminal in nature, the principal/superintendent will refer the matter to the local law enforcement agency.

PROTECTION AGAINST RETALIATION

No retaliation will be taken by this district or by any of its employees or students against a student who reports harassment in good faith. Any person found to have retaliated against another individual for reporting an incident of harassment may be subject to the same disciplinary action provided for harassment offenders. Those persons who assist or participate in an investigation of harassment are also protected from retaliation under this policy.

CONFIDENTIALITY

Any investigation will be conducted, to the maximum extent possible, in a manner that protects the privacy of both the complainant and the accused. However, if it is suspected that child abuse has occurred, such abuse will be reported to the proper authorities as required by state law.

RECORD OF ALLEGATIONS

This district will keep and maintain a written record, including, but not limited, to witness statements, investigative reports and correspondence, from the date any allegation of harassment is reported to district personnel. The information in the written record will also include the action taken by the district in response to each allegation. The written record will be kept in the district's administrative offices and will not, at any time, be purged by district personnel.



LEGAL REFERENCE:

Idaho Code Section 16-1619

Title IX of the Education Amendments of 1972

Franklin v. Gwinnett Co. Pubic Schools, 112 S. Ct. 1028 (1992)

Gebser v. Lago Vista Independent School District, 118 S. Ct. 1989 (1998)

Davis v. Monroe County Board of Education, 119 S. Ct. 1661 (1999)

ADOPTED:

AMENDED:

**Language in text set forth in italics is optional.*

Conducting a Harassment Investigation¹

_____ School District

I. Of first concern

Begin the investigation as soon as possible.

Date written/oral complaint of harassment was received: _____

Date investigation began: _____

Complaint received from: _____

Complaint received by: _____

Name of alleged victim: _____

Name of alleged harasser: _____

Names of possible witnesses: _____

Review applicable board policies, regulations and practices.

Set forth applicable time lines for conducting the investigation and issuing a report.

The investigator should be in a position of authority so that serious consideration will be given to the investigation report.

Conduct all interviews in a private setting/room.

II. Interview the alleged victim

If the alleged victim wishes, allow a support person of his/her choice to be present during the interview.

It may be appropriate, given the age of the child, or other circumstances, to interview parents, guardians, teachers, or other adults who can provide information regarding the alleged incident and its effect on the student.

¹This form may also be used to investigate allegations of bullying. This form is provided solely for assistance in the interview process. It is not intended to provide legal advice or to be all-inclusive.

Explain the investigation process. Indicate that confidentiality will be maintained to the extent possible. Inform the alleged victim that:

The alleged harasser and any witnesses will also be interviewed;

A written report will be prepared;

The final determination regarding what action, if any, will be taken as specified in the district policy.

Ask the alleged victim:

Who was involved?

What happened?

Where did it happen?

When did it happen?

Why do you think it happened?

Have the same/similar incidents occurred previously?

How many times has it happened?

What did you do when it happened?

Did you tell anyone about what happened? If yes, who?

Did anyone see or hear what happened?

Did the alleged victim provoke the alleged harasser?

Was there a prior relationship between the parties?

Determine how the harassment incident has effected the alleged victim by asking the following questions:

Why did the remarks/actions upset you?

What did you do in response to the remarks/actions?

Did the remarks/actions cause you to change the way you normally act?

Have you missed any school or school events because of the remarks/actions?

How has your school work been affected?

Have you made any changes to your participation at school or school events?

Ask the alleged victim what he/she thinks should be done.

What can be done to help you feel better/safer?

Note: Try to determine if the alleged victim is telling the truth. Remember that the alleged victim may be scared, nervous, hurt or embarrassed. These feelings can often result in unexpected and inappropriate reactions (i.e., laughing, getting angry, etc.). Lack of perceived credibility of the alleged victim is not grounds to abandon an investigation. The investigation policies and procedures must be followed.

Note the student's body language.

Does the student sound believable, or does his/her story sound made-up?

Does the student have reason to lie?

Does the student seem reluctant or refuse to relate specifics?

Ask the alleged victim to immediately tell someone in authority if the alleged harasser or anyone else confronts him/her regarding the investigation.

Ask the alleged victim to write and sign a statement setting forth his or her version of the facts.

Instruct the alleged victim to keep everything regarding the interview confidential.

Inform the alleged victim of any outside agency that can assist if the complaint is not resolved to the student's satisfaction.

Keep notes of the interview process.

III. Interview the alleged harasser

If the alleged harasser wishes, allow a support person of his/her choice to be present during the interview.

Explain that allegations of harassment/bullying have been made against the individual and that the purpose of the interview is to investigate the complaint. Tell the alleged harasser/bully that:

The school takes all allegations of harassment/bullying seriously, and that harassment/bullying is not tolerated.

Each complaint of harassment is fully investigated.

The interview will give the student a chance to tell his/her side of the story.

No decision has yet been made as to the truth of the allegations.

Explain the investigation process. Indicate that confidentiality will be maintained to the extent possible. Inform the alleged victim that:

The alleged harasser and any witnesses will also be interviewed;

A written report will be prepared;

The final determination regarding what action, if any, will be taken as specified in the district policy.

Identify the victim and provide the alleged harasser an opportunity to set forth whether he/she has had recent interactions with the alleged victim.

Ask the alleged harasser the same questions asked of the alleged victim regarding the incident(s).

Determine if the alleged harasser has any witnesses to back-up his/her statements.

If the alleged harasser denies that the incident occurred, ask if he/she has had any contact with the alleged victim.

Ask if the alleged harasser knows why the allegations would have been made against him/her.

Ask the alleged harasser to write and sign a statement setting forth his/her version of the facts.

Instruct the alleged harasser to keep everything regarding the interview confidential.

Inform the alleged harasser that retaliation against the alleged victim or any of the witnesses is prohibited.

Keep notes of the interview process.

Note: At this point, the investigator may now have enough information to determine those areas of agreement between the alleged victim's and alleged harasser's versions of the incident. If necessary, additional questions can be asked.

Note: If the investigator has reason to believe that a child under the age of 18 years has been abused, abandoned or neglected, the investigator must cause a report to be made to law enforcement or Health & Welfare within 24 hours.

IV. Interview the Witnesses

If possible, do not reveal the identity of either the alleged victim or alleged harasser to the witness at the beginning of the interview but tell him/her the reason for the interview.

Ask broad questions.

If the witness does not offer information, ask if he/she saw or heard anything that the witness may feel was harassment.

Ask the witness for all information regarding the incident(s) he/she may have.

Distinguish between firsthand and secondhand (hearsay) knowledge.

Ask each witness to write and sign a statement setting forth his/her version of the facts.

Instruct the witness to keep everything regarding the interview confidential.

Inform the witness that retaliation against the alleged victim or any of the witnesses is prohibited.

Keep notes of the interview process.

V. Evaluating the facts/making a decision

Make the written report thorough, objective and chronological.

Include when and how the investigator first learned of the bullying incident;

Provide a summary of the complaint, and attach all written and signed statements.

List all board, district and school policies, and all other pertinent school documents reviewed.

Give an overview of each relevant interview.

When possible, distinguish between personal knowledge from hearsay.

Set forth documentation and interview information that supports or negates the allegation of harassment.

State a conclusion as to whether or not an incidence of harassment occurred.

Recommend corrective action, making sure that any disciplinary action recommended is supported by the findings.

After a decision has been reached, follow-up with both the alleged victim and the alleged harasser.

If disciplinary action will be taken against the harasser, document the action taken, and the due process provided to the student.

Notify the victim of the outcome of the investigation. If disciplinary action is taken against the harasser, that is confidential information and cannot be revealed to the victim without prior written consent.

Monitor the situation to be reasonably sure harassment does not resume or continue, and that retaliation does not occur.

VI. Possible Corrective Actions to be Taken *(The following list of possible corrective actions is intended to provide suggestions; other corrective actions may be appropriate.)*

Separate the victim and harasser. Make sure that the victim is not penalized for reporting.

Oral or written warnings.

Counseling.

Suspension.

Transfer.

Expulsion.

Selected Sources for Bullying Information

Websites*

1. Bullying at School: <http://www.scre.ac.uk/bully/index.html>
2. Bullying Online: <http://www.bullying.co.uk>
3. ChildLine: <http://www.childline.org.uk>
4. ERIC Digest: <http://ericece.org/pubs/digests.html>
5. Kidscape: <http://www.kidscape.org.uk>
6. National Crime Prevention Council: <http://www.ncpc.org>
7. National Organization of Parent Teacher Associations: <http://www.pta.org>
8. Nature and Prevention of Bullying: <http://www.gold.ac.uk/tmr/#CONT>
9. University of North Carolina: <http://ericcass.uncg.edu/virtuallib/newlibhome.html>
10. University of Colorado at Boulder:
<http://www.colorado.edu/cspv/factsheets/SCSS%Bullying%200verview.html>
11. Wellesley : <http://www.wcwoonline.org/bullying/index.html>

References

1. Olweus, Dan (1993). *Bullying in Schools: What We Know and What We Can Do*. Cambridge, MA: Blackwell Publishers, Inc.
2. Olweus, Dan and Limber, Susan (1999). *Blueprints for Violence Prevention: Bullying Prevention Program*. Boulder, CO: Center for the Study and Prevention of Violence of the University of Colorado.
3. Smith, P.K., Morita, Y., Junger-Tas, J., Olweus, D., Catalano, R., and Slee, P. (Editors) (1999). *The Nature of School Bullying: A Cross-National Perspective*. New York: Routledge.
4. Grade 3 Bullying Survey may be found at: <http://lincoln.midcoast.com/~wps/against/3survey.html>

*The websites listed above are current as of 9/17/01.