



Preventing Sexual Harassment and Preparing for Claims

School districts have an obligation to provide a positive, productive workplace free of harassment for staff and students. Thanks to social media and a recent strong public outcry, including the #MeToo movement, victims of sexual harassment have felt empowered to speak up. As a result, there has been an increase in sexual harassment investigations and claims. School districts should be actively working to prevent any harassment but should be prepared in case a claim arises.

There is a myriad of costs associated with a sexual harassment claim. In addition to the litigation costs, there may be an impact on the workplace environment and on the ability of the district to recruit and retain valuable employees as well as the public perception of the district.

When claims arise, districts must handle them quickly and tactfully in accordance with the organization's internal policies and procedures and legal requirements while respecting the weight of the situation, the concerns of the alleged victim, the rights of the accused individual(s), and the district's policies regarding a workplace that is free of unlawful harassment and sexual misconduct. What's more, alleged sexual misconduct, regardless of whether it is against an employee or student, can result in a wide variety of litigation claims against a district.

As such, school districts need to take the appropriate steps to prevent harassment but be prepared to handle these situations with great care should they occur. A few paragraphs in your handbook are not enough. You should have proper handbook policy (including acknowledgement of receipt), ongoing training, and internal written procedures that dictate the steps once the district learns of a potential issue. Just as important, the culture and work environment established by the administration and school board play a significant role in the process.

What is Sexual Harassment?

The U.S. Equal Employment Opportunity Commission (EEOC) is the federal agency that enforces both discrimination and sexual harassment. They define sexual harassment as follows:

"Sexual harassment is a form of sex discrimination that violates [Title VII of the Civil Rights Act of 1964](#). Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- *The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.*
- *The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee (student).*

- *The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.*
- *Unlawful sexual harassment may occur without economic injury to or discharge of the victim.*
- *The harasser's conduct must be unwelcome.”*

In addition, school districts that receive federal funds are covered by Title IX. Title IX prohibits sex-based harassment by peers, employees, or third parties that is sufficiently serious to deny or limit a student’s ability to participate in or benefit from the district’s education programs and activities (i.e., creates a hostile environment).

Underneath Title IX, when a district knows or reasonably should know of possible sex-based harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred.

If an investigation reveals that the harassment created a hostile environment, the district must take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent the harassment from recurring, and, as appropriate, remedy its effects.

How Should You Protect Your District?

Prevention is the best tool to eliminate harassment in the workplace along with creating a productive workplace environment. Protecting your district and employees from unlawful harassment requires a dedicated, annual review of the policies and procedures. Some districts overlook providing adequate education and training to allow staff and volunteers to understand the risk of unlawful harassment and sexual misconduct. In order to make sure that such education and training is not overlooked, districts may do an annual refresher class during an in-service day that reinforces the training given at employee orientation or offer online training with a completion requirement.

You need to be prepared to create a productive workplace environment that is free of unlawful harassment. In addition, you need to handle allegations in accordance with the organization’s internal policies and procedures and legal requirements. This is not the time to “see where this goes.” Your district should already have (or put in) a system in place for handling these types of situations, including:

1. Training certain employees, including the designation of a Title IX coordinator, who will receive sexual harassment claims and know how to conduct an investigation.
2. Protecting private information in the event that the complaint would become the subject of litigation.
3. Considering any conflicts of interest between the employer, harasser, investigator and others involved in the investigation.
4. Seeking legal guidance.
5. Maintaining confidentiality, as permitted by law, throughout the investigation amongst all parties involved.
6. Keeping written records of the following (at minimum):
 - a. Details of the complaint;
 - b. Preliminary investigation plan;
 - c. Responses to the complaint;
 - d. Witness statements;

- e. Adjustments or amendments made;
- f. Investigator's findings;
- g. Conclusions as a result of investigations;
- h. Discipline administered; and
- i. Harasser monitoring efforts.

It is paramount to take action immediately after receiving a sexual harassment complaint to stop potentially unlawful conduct. This includes notification of law enforcement (if applicable), the board (as detailed in your policy and as recommended by district legal counsel), and the person authorized to speak to the media. This may be a good time to review (or add) a media relations policy to your handbook as well.

You are not alone!

The good news is you're not alone to do this work. Check with your insurance broker to see if they offer or have access to materials and/or staff from their carriers that can provide sexual harassment staff training, sample template policies, training guides for administrators, and necessary forms. In addition, there are a number of online resources including safeschools.com that offer tools. In addition, the WASB has online training for Title IX coordinators.

Lastly, it is time to check your current insurance policies. A number of Property and Casualty carriers offer insurance products including "Employment Practices Liability Insurance" that may offer various levels of protection including covering legal costs, claims and back wages. As always, take an opportunity to take time to speak with the legal staff at WASB or your own legal counsel to outline what your responsibilities are and how they may assist you in the event an allegation arises.

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