U.S. DEPARTMENT OF EDUCATION

It's *Not* Academic

Sexual Harassment

It's Not Academic

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Introduction

Sexual harassment of students is illegal. A federal law, *Title IX of the Education Amendments of 1972* (*Title IX*), prohibits discrimination on the basis of sex, including sexual harassment, in education programs and activities. All public and private education institutions that receive any federal funds must comply with *Title IX*. *Title IX* protects students from harassment connected to any of the academic, educational, extracurricular, athletic, and other programs or activities of schools, regardless of the location. *Title IX* protects both male and female students from sexual harassment by any school employee, another student, or a non-employee third party.

Preventing and remedying sexual harassment in schools is essential to ensure a nondiscriminatory, safe environment in which students can learn. Unfortunately, students, parents, and school staff may not know what sexual harassment is, how to stop it, and what can be done to prevent it from happening. This pamphlet uses a question-and-answer format to provide students, parents, school administrators, school employees, and others with fundamental information on recognizing and addressing sexual harassment under *Title IX* as it is interpreted by the U.S. Department of Education's Office for Civil Rights (OCR). OCR is the federal agency responsible for enforcing *Title IX* in schools that receive federal funds from the U.S. Department of Education.

Part One: Defining Sexual Harassment

What is sexual harassment?

Sexual harassment is conduct that:

1) is sexual in nature;
2) is unwelcome; and
3) denies or limits a student's ability to participate in or benefit from a school's education program.

Sexual harassment can take different forms depending on the harasser and the nature of the harassment. The conduct can be carried out by school employees, other students, and non-employee third parties, such as a visiting speaker. Both male and female students can be victims of sexual harassment, and the harasser and the victim can be of the same sex.

The conduct can occur in any school program or activity and can take place in school facilities, on a school bus, or at other off-campus locations, such as a school-sponsored field trip or a training program at another location. The conduct can be verbal, nonverbal, or physical.

The judgment and common sense of teachers and school administrators are very important elements in determining whether sexual harassment has occurred and in determining an appropriate response, especially when dealing with young children.

What are some examples of sexual conduct?

Examples of sexual conduct include:

- making sexual propositions or pressuring students for sexual favors;
- touching of a sexual nature;
- writing graffiti of a sexual nature;
- displaying or distributing sexually explicit drawings, pictures, or written materials;

- performing sexual gestures or touching oneself sexually in front of others;
- telling sexual or dirty jokes;
- spreading sexual rumors or rating other students as to sexual activity or performance; or
- circulating or showing e-mails or Web sites of a sexual nature.

Example: A school official sends a student a text message to arrange a time to meet for a sexual encounter. Sending such a text message would constitute sexual conduct.

Is all physical contact sexual in nature?

No. Legitimate nonsexual touching or conduct generally will not be considered sexual harassment. However, it may rise to that level if it takes on sexual connotations.

Example: A high school athletic coach hugs a student who makes a goal. This by itself is not considered sexual conduct. However, a coach's hugging of a student could be considered sexual conduct if it is unwelcome and occurs under inappropriate circumstances.

What if the sexual conduct is criminal in nature?

Sexual harassment includes conduct that is criminal in nature, such as rape, sexual assault, dating violence, and sexually motivated stalking. Even if a school reports possible criminal conduct to the police, that does not relieve the school of its responsibilities under *Title IX*, which are discussed in Part Two.

Must the sexual conduct be unwelcome?

Yes. Conduct is considered unwelcome if the student did not request or invite it and considered the conduct to be undesirable or offensive. The age of the student, the nature of the conduct, and other relevant factors affect whether a student was capable of welcoming the sexual conduct. A student's submission to the conduct or failure to complain does not always mean that the conduct was welcome.

Example 1: A middle school student makes offensive sexual jokes to another student, but the student does not object to the jokes or speak out against them. The student's failure to object does not mean that he or she has welcomed the comments.

Example 2: A female high school student willingly kisses a male student on one occasion. When the student subsequently attempts to kiss her again, she objects, but he kisses her anyway. This subsequent kiss is considered to be unwelcome despite the welcomeness of the first kiss.

When does sexual conduct "deny or limit a student's ability to participate in or benefit from a school's education program?"

Two general types of sexual conduct can deny or limit a student's ability to participate in or benefit from a school's program. As discussed below, teachers and other school employees can engage in either type of conduct, while students and third parties can engage in only one type.

One form of sexual harassment occurs when a teacher or other school employee conditions an educational decision or benefit on the student's submission to unwelcome sexual conduct. If this

occurs, it does not matter whether the student resists and suffers the threatened harm or submits to and avoids the threatened harm.

> **Example:** A high school drama teacher tells a student that if she engages in sexual activity with the teacher, she will be given the lead part in a school play. The student agrees to participate in the sexual act but without desiring to do so. The drama teacher thus has limited the student's ability to benefit from the school's education program by conditioning the benefit of receiving the lead role in the school play on the student's submission to unwelcome sexual conduct.

Sexual harassment also occurs when a teacher, school employee, other student, or third party creates a hostile environment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the school's program. Whether such a hostile environment has been created depends on the particular circumstances of the incident(s). Relevant considerations include, but are not limited to:

- how much of an adverse effect the conduct had on the student's education;
- the type, frequency, or duration of the conduct;
- the identity, age, and sex of the harasser(s) and the victim(s), and the relationship between them;
- the number of individuals who engaged in the harassing conduct and at whom the harassment was directed;
- the size of the school, location of the incidents, and context in which they occurred; and
- whether other incidents occurred at the school involving different students.

The conduct does not necessarily have to be repetitive. If sufficiently severe, single or isolated incidents can create a hostile environment.

Example 1: Throughout the school year, Student A repeatedly passes sexually explicit photographs to Student B during class. The photographs are offensive to Student B, and, consequently, Student B is unable to concentrate during class or focus on the subject. Student A has created a hostile environment that limits Student B's ability to participate in the class.

Example 2: A high school student sexually assaulted another high school student on one occasion when the two were alone in a classroom. As a result, the victim is afraid of attending any classes or coming into contact with the harasser. Although this was an isolated incident, it is sufficiently severe to create a hostile environment.

Can young school children engage in sexual harassment?

School personnel should consider the age and maturity of students in responding to allegations of sexual harassment. When determining whether a young child has committed sexual harassment, it is important for teachers and school administrators to use good judgment and common sense.

Example 1: On one occasion, a first-grade student kisses another first-grade student on the cheek in the playground. This behavior does not constitute sexual harassment.

Example 2: On numerous occasions over a period of several months, a fifth-grade student inappropriately touches another fifth-grade student and makes overtly sexual comments and gestures to that student. The conduct is unwelcome and results in the victim's grades falling because he or she is unable to concentrate on studying. This behavior constitutes sexual harassment.

Are gay and lesbian students protected from sexual harassment?

Title IX prohibits harassing conduct that is of a sexual nature if it is unwelcome and denies or limits a student's ability to participate in or benefit from a school's program, regardless of whether the harassment is aimed at gay or lesbian students or is perpetrated by individuals of the same or opposite sex. *Title IX* does not address discrimination or other issues related to sexual orientation.

Example 1: Throughout football season, a male member of the high school football team makes unwelcome sexual advances toward another member of the football team, who is a homosexual male. As a result, the victim quits the football team. This conduct is sexual in nature, unwelcome, and has denied the victim the ability to participate on the school football team. This is sexual harassment covered by *Title IX*.

Example 2: Students heckle another student with comments that are based on the student's sexual orientation but are not sexual in nature (e.g., "gay students are not welcome at this table in the lunch room"). Even if these comments are unwelcome and deny the student's ability to benefit from or participate in the school's education program, the conduct is not sexual, and this is not sexual harassment covered by *Title IX*.

Part Two: Responding to Sexual Harassment

How should a school respond when it receives information about alleged sexual harassment?

If a student, his or her parent, or a responsible employee reports the harassment, or a school employee observes the harassment, the school should inform the harassed student (and the student's parent depending on the student's age) of the options for formal and informal action and of the school's responsibilities, which are discussed below. Regardless of whether the victim files a formal complaint or requests action, the school must conduct a prompt, impartial, and thorough investigation to determine what happened and must take appropriate steps to resolve the situation.

If other sources, such as a witness to the incident, an anonymous letter or phone call, or the media, report the harassment, the school should respond in the same manner described above if it is reasonable for the school to conduct an investigation and the school can confirm the allegations. Considerations relevant to this determination may include, but are not limited to, the:

- source and nature of the information;
- seriousness of the alleged incident;
- specificity of the information;
- objectivity and credibility of the source that made the report;
- ability to identify the alleged victims; and
- cooperation from the alleged victims in pursuing the matter.

What if the victim requests confidentiality or asks that the complaint not be pursued?

The school should take all reasonable steps to investigate and respond to the complaint in a manner consistent with a request for confidentiality from a student. If a student insists that his or her

name not be disclosed to the harasser, the school's ability to respond may be limited. The school also must consider its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the school must weigh the confidentiality request against the following factors:

- seriousness of the alleged harassment;
- age of the harassed student; and
- other complaints that the same individual has harassed others.

> **Example:** A female elementary school student describes an incident to her teacher that involved another teacher forcing her to engage in sexual activity. The student begs the teacher to not tell anybody what happened. This is a situation in which the school's duty to provide all students with a safe environment might outweigh the student's request.

Additionally, state or local laws may require schools to report incidents to the police.

Does a school have to do anything about sexual harassment if a particular incident is not reported to the school?

If the harasser is a teacher or another school employee and if the harassment occurs while the school employee is acting, or reasonably appears to be acting, in the context of his or her responsibilities to provide aid, benefits, and services to students, the school is directly responsible for and must remedy the harassment regardless of whether the school knew or should have known that the incident occurred.

If the harasser is another student, a third party, or a school employee who is not acting within the context of his or her responsibility to provide aid, benefits, or services to students, then the school is responsible for investigating the conduct and taking appropriate steps to resolve the situation only when it knows or should have known that the harassment occurred.

Example: It is well-known to students and staff that graffiti of a sexual nature appears on the sides of buildings throughout a school's campus in plain sight. The pervasiveness of this harassment may be enough to conclude that the school should have known that the harassment occurred. If so, then the school is responsible for investigating and responding to the harassment regardless of whether it received a specific complaint about the graffiti.

What actions, if any, should schools take while investigating a complaint?

It may be necessary for schools to take interim measures during the investigation of a complaint. For instance, if a student alleges harassment by another student, the school may keep those students separated until the investigation is complete. If a teacher is the alleged harasser, it may be appropriate for the student to transfer to another class.

It is a good practice for schools to keep the student who alleged the harassment informed of the status of the investigation.

What does a school have to do once the investigation is complete?

The school must notify the victim (and his or her parents depending on the age of the victim) of the outcome of its investigation and of any punishments imposed that directly relate to the victim, such as an order for the harasser to stay away from the victim.

If the school determines that a student was sexually harassed, the school must take reasonable, prompt, age-appropriate, and effective action to end the harassment and prevent it from happening again to the victim or to others. If the school fails to do so, it must remedy the effects of the harassment on the victim that could have been avoided if the school had responded promptly and effectively.

In addition, if the harasser is a school employee and if the harassment occurs while the employee is acting, or reasonably appears to be acting, in the context of carrying out his or her responsibilities to provide aid, benefits, and services, the school must remedy the effects of the harassment on the victim.

Example 1: A teacher sexually harasses an eighth-grade student in the school hallway. The student is not in any of the teacher's classes and the teacher is not a hall monitor. However, in light of the age and educational level of the student and the status and degree of influence of teachers in secondary schools, the student could reasonably believe that the teacher had at least informal disciplinary authority over him or her. Therefore, this conduct is considered to have occurred in the context of the teacher's responsibility to provide aid, benefits, and services to students, and thus the school must remedy the effects of the harassment in addition to stopping it and preventing it from recurring.

Example 2: A faculty member of a university's history department repeatedly, over several weeks, touches and makes sexually suggestive remarks to a female graduate engineering student while waiting for the university shuttle bus, riding on the bus, and exiting the bus. As a result, the student stops using the bus and walks the long distances between her classes. This conduct occurred outside of the context of the faculty member's duties to provide aid, benefits, or services to the student, and thus the school is not required to remedy the effects of the harassment. However, if the school fails to take reasonable and effective action to end the harassment after it has received notice of the harassment, the school must remedy the effects of the harassment that could have been avoided if the school had responded promptly and effectively.

What are some examples of the steps a school should take to end harassment and prevent it from happening again?

The appropriate steps should be tailored to the specific situation. For example, the school may need to develop and publicize new policies or conduct training. Depending on the nature and severity of the harassment, counseling, discipline, or further separation of the victim and harasser may be necessary.

Responsive measures should be designed to minimize the burden on the victim as much as possible. If the school's initial response does not stop the harassment and prevent it from happening again, the school may need to take additional, stronger measures.

What are some examples of how a school can remedy the effects of sexual harassment?

If the school is required to remedy the effects of the harassment on the victim, the types of action required will vary depending on the circumstances.

Example 1: A college professor sexually harassed a student in his or her class in the context of the professor's duty to provide services to the student. Consequently, the student was unable to concentrate during class and did not learn the course material. To remedy the effects of the harassment, the school may be required to take such actions as:

- arranging for an independent assessment of the student's work;
- arranging for the student to take the course again with a different instructor;
- providing tutoring;
- making tuition adjustments; or
- offering reimbursements for professional counseling.

Example 2: A high school student informs the school that another student in her class has been sexually harassing her and that, to avoid him, she has been coming to class late. As a result, she has missed some pop quizzes. If the school delays its response to this complaint and the victim suffers additional effects of the harassment, such as missing additional pop quizzes because she has to continue coming to class late, the school must remedy the effects of the harassment that could have been prevented if the school had responded promptly and effectively. In this case, the appropriate remedy may include such actions as calculating the student's grade without factoring in the student's failure to take the quizzes, giving the student another opportunity to take the quizzes, or arranging for an independent assessment of the student's work.

Part Three: Reporting and Preventing Sexual Harassment

Who should report incidents of sexual harassment?

Anybody who sees sexual harassment occur should report it; the individual need not be the victim of the harassment. Schools should ensure that employees clearly understand the extent of their responsibilities for reporting sexual harassment.

To whom should a victim or other individual report the harassment?

The harassment should be reported to a responsible school employee, such as a teacher, principal, faculty member, administrator, security officer, affirmative action officer, or professional staff member in the office of student affairs. Additionally, as every school must have a *Title IX* coordinator, the harassment can be reported to this individual as well.

A student, parent, or other individual also may file a complaint with the U.S. Department of Education's Office for Civil Rights (OCR), as explained below.

What if the harasser threatens to retaliate against the victim if he or she reports the incident?

Title IX also protects students from retaliation. The school must take steps to prevent the alleged harasser or anybody else at the school from retaliating against the victim. Such steps include informing students that *Title IX* protects them from retaliation, making sure that victims know how to report any future problems, and making follow-up inquiries to see if there have been any new incidents. It also may be appropriate to counsel the harasser to ensure that he or she understands that retaliation is prohibited. If retaliation occurs, the school should take strong responsive actions.

What procedures must a school have in place to prevent sexual harassment and resolve complaints?

Every school must:

- issue a policy against sex discrimination;
- adopt and publicize grievance procedures; and
- have a *Title IX* coordinator.

What are grievance procedures?

Grievance procedures are internal school procedures that address violations of a school's policy against discrimination, including sexual harassment. Grievance procedures must provide for prompt and equitable resolution of complaints of sex discrimination.

The school should make sure that its policy against sex discrimination and grievance procedures are widely distributed and easily understood by students, parents of elementary and secondary school students, and employees. At a minimum, students must know that the grievance procedure exists, know how it works, and know how to file a complaint. When a student or parent reports sexual harassment, the school should explain how its grievance procedures work and offer the student or parent the opportunity to use them.

If a student or parent chooses to not use the school's grievance procedures, that does not relieve the school of its responsibilities to investigate and take appropriate action, as explained above in Part Two.

What does the Title IX *coordinator do?*

The *Title IX* coordinator is responsible for coordinating a school's efforts to comply with and carry out its *Title IX* responsibilities. Every school must have a *Title IX* coordinator. *Title IX* coordinators must have adequate training in sexual harassment and must be able to explain the operation of the school's grievance procedure.

How do I know who my school's Title IX *coordinator is?*

Every school must notify all students and employees of the name, office address, and telephone number of its *Title IX* coordinator(s).

What other steps can a school take to prevent sexual harassment?

OCR's experience shows that the best way for a school to deal with sexual harassment is to prevent it from occurring in the first place. In addition to the requirements explained above (well-publicized nondiscrimination policy, grievance procedures, and *Title IX* coordinator), a school may take a number of other steps to prevent harassment.

For example, a school may conduct periodic sexual harassment awareness training for all school staff, including administrators, teachers, and guidance counselors, and age-appropriate sexual harassment training for students. The training can include information on the types of conduct that will be considered sexual harassment and the range of possible consequences, the damage that results from harassment, where students can find help, ways to oppose harassment, and what to do about it.

What is OCR, and how do I report incidents of sexual harassment to that office?

OCR is the federal agency responsible for ensuring that schools comply with *Title IX* and other federal civil rights laws. One of OCR's responsibilities is to resolve complaints of discrimination, including sexual harassment complaints. OCR has 12 enforcement offices located throughout the country that carry out this responsibility.

An individual who wishes to file a complaint with OCR should do so by contacting the enforcement office responsible for the state in which that school is located. To find out which office is responsible for your state and how to contact them, call 1-800-421-3481 or

check OCR's Web site at http://www.ed.gov/ocr. Generally, the complaint must be filed within 180 days of the date of the incident. Students and parents are not required to use a school's grievance procedures before filing a compliant with OCR.

Where can I get more information about a school's responsibilities to address and prevent sexual harassment?

Please read OCR's *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, available on the Department's Web site at http://www.ed.gov/ocr/publications.html or from any OCR enforcement office.

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