

# SEXUAL HARASSMENT

## *A Workbook for Mid-Year Hires, Substitute Teachers, and Volunteers*

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Sexual harassment continues to make the national headlines. Even with the vast media coverage and countless discussions and studies of sexual harassment, the behavior continues. Schools are especially vulnerable because of the opportunities for sexual harassment to / by / and between students. More and more parents are filing lawsuits against Texas school districts demanding school environments where their children are never subjected to any unpleasantness. All school personnel, including substitute teachers and volunteers, must have an understanding of the standards courts and regulatory agencies expect schools to meet in preventing sexual harassment in the schools. You also need to understand what you can do to defend against claims of sexual harassment.

This workbook will walk you through the legal definitions of sexual harassment with illustrations and explanation. You will learn your reporting obligations and what policies and procedures apply. Some of the illustrations you may find offensive. They are based on actual cases and are included in this workbook to show you the realities of sexual harassment in the schools. Please note that when we use the term “school personnel” or “employee” we mean all district employees, whether full-time or part-time, substitute teachers, and all volunteers. Throughout the workbook, there are questions that you need to answer. Also, at the conclusion of the workbook, there is a questionnaire that must be completed and returned to your supervisor.

### Sexual Harassment Generally \_\_\_\_\_



At the outset we want to dispel a common myth: sexual harassment is not a single act that someone finds offensive. We cannot read one another’s minds and inevitably are going to offend a colleague at some time by our choice of words or gestures. Rather, think of sexual harassment as inappropriate conduct that has a sexual element to it, which, if done often enough and with sufficient tackiness, is actionable.

### Sexual Harassment Defined \_\_\_\_\_



Sexual harassment is *unwelcome conduct, either verbal or physical, that would not occur but for the sex of the individual.*

Conduct that can amount to sexual harassment comes in many forms, for example:

- sexual advances
- requests for sexual favors
- jokes or comments with sexual content or implications
- gestures with sexual content
- statements that “put down” someone based on gender or stereotypes about gender
- pictures or posters with sexual content
- hugs, massages or other touching

Remember, the conduct must be *based on the sex* of the individual. Let’s look at the following example.

1. Theresa is Polish. A male co-worker tells a Polish joke at work. Theresa is offended.
2. Theresa is female. A male co-worker tells a sexist joke at work. Theresa is offended.

Only in the second scenario is the male co-worker’s behavior *based on sex*. Therefore, only in scenario two was Theresa the potential victim of sexual harassment.

Inappropriate sexual conduct is not limited to supervisors and their subordinates. Inappropriate sexual conduct or sexual harassment can occur between co-workers, school personnel and students, and between personnel and visitors and patrons, such as postal workers or customers. Furthermore, potential sexual harassment is not limited to male-female interactions. Males can harass other males just as females can sexually harass other females. And the fact that fewer males than females report sexual harassment does not mean that males are not sexually harassed – they can be and sometimes are.



Of the two examples below, mark the one that illustrates behavior that is based on sex.

- Bobby is a freshman. The first day of school his locker is spray painted green with “FROG” across the front. Bobby is offended.
- Bobby is a freshman. Bobby has long hair and wears a ponytail. Bobby is also in theatre and sometimes wears makeup to school. Bobby gets “FAG” spray painted on his locker. Bobby is offended.

Here again, only the second scenario is *based on sex*. School personnel must not overlook teasing and taunting based on perceived homosexuality when identifying potential victims of sexual harassment.



## The key word is UNWELCOME \_\_\_\_\_

In order for actions to be considered “sexual harassment,” the conduct must be unwelcome. The problem here of course is that we do not always know how our actions will be received and whether the person we are interacting with will welcome our comment, hug, joke, etc. Therefore, when any unwanted or unsolicited sexual behavior is imposed on a person who does not like it, the courts require that the person tell the actor to STOP. If the behavior continues beyond that point, that is when the behavior could become sexual harassment. Please note that an *intention to harass* is not required and the response “but that’s not what I meant” won’t cut it if you’ve been told to stop the behavior.

But wait. It is not as easy as you might think. Board policy says that sexual harassment of *students* by *staff* is defined to include “welcome or unwelcome advances.” Therefore, although a student may appear to welcome an employee’s flirting or overtures of romantic interest, the employee’s acts are still sexual harassment and prohibited by policy.



Of the statements below, mark those that are true.

- School personnel who find themselves personally involved with a student risk not only losing their jobs and professional certificates, but also face potential civil and criminal liability.
- Sexual harassment of a student by school personnel can include both welcome and unwelcome conduct.
- The victim of sexual harassment has an obligation to inform the harasser that the conduct is unwelcome.

The first two statements are true and should be marked. The third statement is true only when the victim is an adult. While case law has told us that victims of sexual harassment are required to inform the harasser that they do not welcome the behavior, the rules change when we’re dealing with children as victims. Courts recognize that students, because of their age and maturity level, are not always able to convey to others (whether adult or student) their distaste for behavior. This is doubly true when the inappropriate behavior is caused by another student. Peer pressure is a strong force and often stands in the way of a student’s ability to speak his or her mind. For that reason, when school personnel observe inappropriate behavior by and between students, STOP the conduct, regardless of whether it appears welcome by all parties.



## Quid Pro Quo Harassment Defined

The courts recognize two distinct types of sexual harassment, quid pro quo and hostile environment. A quid pro quo occurs when a person of authority offers a benefit in exchange for a sexual favor. But don't let the term "sexual favor" throw you off. The term is defined very loosely and includes any request with a sexual or inappropriate motivation.

For example, a quid pro quo is created when a teacher offers a student a better grade or a particular position on an athletic team in exchange for a date.

With regard to employees, a quid pro is created, for example, when a supervisor offers a subordinate a higher evaluation or job promotion if the employee accompanies the supervisor to a happy hour.

The danger of quid pro quo harassment is that it is not generally as blatant as the above examples. More often than not, a victim *perceives* quid pro quo based upon statements or innuendoes made by the teacher or supervisor. The victim fears that if they refuse to comply with the request, a bad thing will happen or the good thing they are hoping for will not. Let's look at these examples.

- Sandy is a first year teacher. Her principal invites her to ride with him to Saturday's in-service training at the Educational Service Center, some 45 minutes away. Sandy does not want to offend her new boss, but at the same time, she doesn't want to be alone with him in a car for such an extended period of time. In an effort to remedy the problem, Sandy invites a co-worker to ride along. The principal is quiet the entire ride to and from the training.
- Jennifer is the starting guard on the varsity basketball team. Coach Smith asks her to stay after practice one afternoon to discuss with him last week's stats. Feeling uncomfortable, Jennifer tells the coach that she has to baby-sit her little sister. The following week, Jennifer sits the bench 3/4<sup>th</sup> of the basketball game.

There are any number of reasons to account for the principal or coach's behavior in the above scenarios, only one being sexual harassment. The critical thing to understand, however, is that the *perception* by the employee and student will always be that the actions were linked to their failure to comply with the request of their supervisor.



True or False? Mark with a "T" or "F"

- ❑ Because perception is not always reality, it is imperative that school personnel in any type of supervisory setting keep all actions job related and not ask special favors of any student or staff member.

This is a true statement and wise advice for all school personnel, including parent volunteers.



## Hostile Environment Harassment Defined

A hostile environment is created when unwelcome sexual advances, requests, or conduct have the effect of interfering with an individual's performance or creating an intimidating, hostile, or otherwise offensive learning or working environment.

Hostile environment, to be actionable, must be severe and pervasive. It is an **environment** caused by *repeated* acts of taunting, teasing, name-calling, sexual innuendoes, advances, gestures, dirty jokes, touching, etc. This behavior, occurring sometimes daily, has the effect of deflating an individual's enthusiasm and interest in his or her work or in learning. For example, you may see a high level of absenteeism from employees and students who are the victims of hostile environment sexual harassment. An employee's performance may slip and a student's grades may fall. These could be warning signs and evidence of a connection between the harassment and the damage to the employee or student. Swift action must occur by school personnel to address the behavior.

In order to avoid the existence of a hostile environment claim, all acts of inappropriate behavior based on sex, regardless of number, must be stopped. School personnel should set the example in tone and conduct in all school settings.



Which of the examples below could create a hostile environment?

- Cindy Martin, a substitute teacher, sees a male student passing a love note to a female student. The girl reads the note, turns red, and tears it up.
- Dan Johnson, the chair of the technology department, continues to send graphic email with sexual innuendo and jokes to all faculty members.
- Joanne Martin, a parent of a 9<sup>th</sup> grade flute player, volunteered to chaperone the band members on a school-sponsored trip. While on the bus, Joanne witnesses a boy flipping the bra straps of many girls and then advising his male friends the girls' estimated cup size.
- Patty, a fifth grade student, weighs 145 lbs. She is referred to by other students as Patty Pig.

The first three examples illustrate behavior that, if allowed to continue, could create a hostile environment for those affected. Therefore, all instances of inappropriate behavior based upon sex, whether isolated or otherwise, must be addressed immediately. The final example is not based on sex so it cannot create a claim of hostile environment sexual harassment. Rather, the behavior should be addressed through other provisions of your student code of conduct.



## **Our Sexual Harassment Policy**

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Our Board of Trustees has adopted a strong “zero tolerance” policy prohibiting sexual harassment. The policies can be found at DHC and FNCJ. Critical elements of the policies are as follows:

- Students and staff are required to report all known or suspected instances of harassment or abuse to appropriate district administrators.
- The Title IX Coordinator is identified as the person to be contacted if an employee or student believes they are being sexually harassed. Complaints may also be directed to the supervisor or campus principal.
- School officials who have authority to take corrective action must do so once learning of sexual harassment or abuse.
- Employees and students who engage in sexual harassment are subject to immediate disciplinary measures.
- Retaliation for reporting sexual harassment is prohibited and may be grounds for dismissal.



## **Victim Responsibility**

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The following steps should be taken by individuals who feel they are being sexually harassed.

1. Become familiar with your rights. Look to board policy DAA, DHC and FNCJ.
2. Educate yourself regarding the district’s procedures for reporting sexual harassment.
3. Practice saying, “Stop, I don’t like what you are [saying, doing, etc.]” Then be direct and candid with the person. Let your feelings be known and let them be known right away.
4. Report the conduct to the proper authorities in your building or to the administration office, such as the Title IX Coordinator, immediately or as soon thereafter as possible. If at all possible, the report should be in writing. List what happened, when, and who were the witnesses.
5. If the behavior continues, file a grievance using the district’s grievance procedure.



## Preventing an Accusation \_\_\_\_\_

Allegations of sexual harassment can permanently damage your career or reputation. It is very difficult for an individual to recover personally or professionally from an allegation of sexual harassment, particularly if the accused is an educator. Take note of these preventive steps and incorporate them into your interaction with students, school officials, and parents.

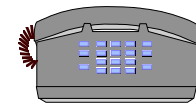
1. Educate yourself. Learn what is inappropriate behavior for the workplace.
2. Be sensitive and perceptive when interacting with others. Watch students' and staff's facial expressions and body language when communicating to them. Sometimes even a harmless compliment can be offensive.
3. Keep all actions job-related. Dirty jokes are never job related, nor is flirting.
4. Avoid inappropriate or unprofessional personal relationships. Fraternizing with students is prohibited by board policy. Sometimes, even personal relationships with staff can be wrongly interpreted.
5. Touch students and school personnel only when necessary. Today, even hugs can be dangerous.
6. Try to never be alone with a student. Without a witness, it is your word against the child's as to what occurred. Do not set yourself up for this. It is a no-win situation.
7. Ask yourself the following questions before speaking:
  - Would I make the same comment in front of my spouse?
  - Would I want my spouse to hear the same comment made to him/her?
  - Would I make the same comment (or act the same) if it was going to be broadcast on the local news?
8. *Think Smart!*



## Protection of Students \_\_\_\_\_

Non-administrator district personnel should do the following to protect themselves from being held accountable for the sexual harassment committed to students by a fellow staff member or student.

1. If you see sexual harassment occurring, stop it!
2. Be familiar with and **enforce** district policy. Check your student code of conduct and make the appropriate discipline referral.
3. Pass the buck to your supervisor. That is, report the conduct and your actions of remediation to your supervisor. Be sure that the report is in writing.
4. Make the appropriate report within 48 hours to the Texas Department of Protective and Regulatory Services or your local law enforcement agency if you believe a child is the victim of abuse.



## Reporting Obligations \_\_\_\_\_

### A. Report to the Commissioner

- A superintendent is required to file a report to the State Board for Educator Certification not later than the 7<sup>th</sup> day after the Superintendent first learns about an alleged incident of sexual or physical abuse by an educator. The report must be in writing and in a form prescribed by SBEC. A Superintendent who in good faith and while acting in an official capacity files a report with SBEC is immune from civil or criminal liability that might otherwise be incurred or imposed. TEC 21.006, 19 TAC 249.14
- A superintendent is required to report to the State Board for Educator Certification whenever a certified employee's employment is terminated because he or she committed an act involving any form of sexual or physical abuse of a minor or other illegal conduct with a minor. 19 TAC 137.587(b).
- A superintendent is also required to notify the State Board for Educator Certification when a certified employee resigns and reasonable evidence exists which would support a recommendation for termination based on sexual or physical abuse with a minor or other illegal conduct with a minor. Before accepting an employee's resignation under these circumstances, the superintendent must notify both the board of trustees and the employee that a report, which



could result in sanctions against the employee's certificate, is being made to the State Board for Educator Certification. 19 TAC 249.14

B. Report to Law Enforcement

- Chapter 261 of the Texas Family Code contains the Texas Child Abuse Reporting Act. Within that chapter, § 261.101 provides that “**any person** having cause to believe that a child’s physical or mental health or welfare has been or may be adversely affected by abuse or neglect shall report” to any local or state law enforcement agency. Volunteers, therefore, have the same obligation as school officials.
- The statute further provides that “professionals” shall make the report within 48 hours after the professional has cause to believe that the student has been or may be abused or neglected. Teachers, including substitute teachers, come within this definition.
- Generally, “abuse” involves any act or a failure to act that places a child in jeopardy of physical, mental, or emotional injuries.
- Reports can be made to the Texas Department of Protective and Regulatory Services by calling 800-252-5400. The obligation is yours, individually, to report suspected abuse. We do, however, encourage you to discuss your belief with your supervisor prior to making the report.
- Reports must reflect the reporter’s belief that a child has been or will be abused or neglected. The report must contain the name and address of the child, the name and address of the person responsible for the care of the child, if available, and “any other pertinent information.”
- The identity of the person making the report is confidential and may be disclosed only on the order of a court or to a law enforcement officer for the purposes of conducting a criminal investigation of the report.
- Investigation by the Texas Department of Protective and Regulatory Services, Child Protective Division, will include an interview with and examination of the child, as well as a visit to the child’s home, unless the abuse can be confirmed or clearly ruled out without such risk.
- Section 261.106 affords immunity from both civil and criminal liability to those who report or assist in the investigation of reports pursuant to Chapter 34.
- Failure to report is a class B misdemeanor punishable by a fine of up to \$2000 and/or up to 180 days in jail. Likewise it is an offense to make a false report.

C. Report to Supervisor

Your knowledge of sexual harassment, in some circumstances, could be irrupted to the school district. If you “turn a blind eye” to conduct constituting sexual harassment, a court could find

that the school district acted with deliberate indifference to the behavior. To avoid this finding, school personnel having knowledge of sexual harassment occurring by and between students should report the matter to their supervisor. This obligation applies to all personnel, including full-time *and* part-time employees, substitute teachers and volunteers. The report can be oral, but should be followed up with a written memo explaining the incident and outlining all actions you took to address the conduct.

D. Administrative Response

If you are a supervisor and learn of sexual harassment committed by a student or subordinate employee, you are obligated by law to respond to information and take action reasonably necessary to stop or prevent the abuse. Document your actions in all instances and involve parents when applicable. Be familiar with and follow policies DHC and FNCJ.

*These materials are for informational and educational purposes only. They should not be relied upon as legal advice for any specific situation.*

# How Much Do You Know?

Take this quiz below. Fill in the blanks using the word choices at the bottom of the page. Once completed, return the workbook to your supervisor.

1. Sexual harassment complaints should be brought to the attention of \_\_\_\_\_ to investigate allegations of sexual harassment. This person is identified in policy by name and title.
2. Sexual harassment is defined as \_\_\_\_\_ behavior based on sex.
3. School personnel violate the law and policy if they sexually harass \_\_\_\_\_, \_\_\_\_\_, or \_\_\_\_\_.
4. School personnel have a \_\_\_\_\_ to work in an environment where they are not subjected to unwelcome sexual conduct.
5. Sexual jokes or comments have no place in the schools because they are not \_\_\_\_\_-related.
6. School personnel observing sexual harassment by and between students have a \_\_\_\_\_ to report sexual harassment to their \_\_\_\_\_.
7. Sexual harassment of a student may be sexual \_\_\_\_\_ which must be reported to the proper authorities within \_\_\_\_\_ hours.
8. Students may sue and claim school personnel showed a \_\_\_\_\_ to claims of sexual harassment.
9. Sexual harassment may come in two forms: \_\_\_\_\_ and \_\_\_\_\_.
10. All school personnel should \_\_\_\_\_ any inappropriate behavior between students that is based on sex, regardless of whether the conduct appears welcome.

## Word Choices

Quid pro quo	Unwelcome	Duty
Right	Deliberate indifference	Students
Staff	Stop	Title IX Coordinator
Visitors	Abuse	Hostile Environment
48 hours	Work	Supervisors