

# SEXUAL HARASSMENT PREVENTION

# **SECTION 1**

## **WHAT IS SEXUAL HARASSMENT?**

# DISCRIMINATION LAW

- Federal

- Title VII: 1964 Civil Rights Act.

- Prohibits discrimination based on specified categories, including sex, in the employer/employee context.

- State

- California Fair Employment and

- Housing Act: Prohibits discrimination based on specified categories, including sex, and sexual orientation, in the employer/employee context

# DISCRIMINATION LAW

- Sexual harassment is a type of sex discrimination.
- The definition of sexual harassment is essentially the same under both state and federal law:
  - Unwanted and unwelcome;
  - Sexual in nature; and,
  - Detrimental effect on working conditions.

# TWO TYPES OF SEXUAL HARASSMENT

- Quid Pro Quo: Person in position of authority conditions job benefits on submission to sexual conduct or advances.
- Hostile Work Environment: Frequent discussions of sexual matters; sexual “humor”; persistent social invitations.

# HOSTILE WORK ENVIRONMENT

- Conduct must be “severe and pervasive”
  - How frequent is the conduct? What about the “stray remark”?
  - How severe is the conduct?
  - Does it unreasonably interfere with an employee’s work performance?
- Courts judge these factors under the Reasonable Man/Woman Standard

# FORMS OF HARASSMENT

- Verbal
- Non-Verbal
- Written
- Physical



# HOSTILE WORK ENVIRONMENT

- Term has become a “catch all” for complaints about general work environment.
- A bad work environment alone does not rise to the level of “harassment” or “discrimination” unless coupled with a protected trait.
- How do you handle complaints about “Equal Opportunity Jerks”?



## **SECTION 2**

# **SEXUAL ORIENTATION AND TRANSGENDER ISSUES**

# FEDERAL LAW vs. STATE LAW

- Federal and state law differ on whether an employer may discriminate against employees or job applicants because of their sexual preference or orientation.
- Title VII of the Civil Rights Act provides that it is unlawful to discriminate against an employee or potential employee “because of such individual’s ...sex...”

# FEDERAL LAW vs. STATE LAW

- Federal courts interpreting Title VII are divided on whether to extend its protections to include a prohibition against discrimination on the basis of sexual orientation.
- However, federal courts have provided Title VII protection for gender expression.

# FEDERAL LAW vs. STATE LAW

- SO WHAT DOES THIS MEAN? ...
  - Under Title VII, it is unlawful to discriminate against an individual for failing to conform to a gender stereotype.

(Price Waterhouse v. Hopkins (1989) 490 U.S. 228.)

## FEDERAL LAW vs. STATE LAW

- Failure to conform to a gender stereotype can include behavior as well as appearance.
- Includes employees who are viewed as being “girly men” or “manly girls”.
- Also includes employees who identify as transsexuals and dress accordingly.

# FEDERAL LAW vs. STATE LAW

- California's FEHA Law explicitly provides protection based on "sexual orientation", as well as "gender identity," "gender expression," and "transgender" status.
- The Education Code explicitly provides protection based on "gender" and "sexual orientation".

## **SECTION 3**

# **STUDENTS AND SEXUAL HARASSMENT**

# EDUCATION CODE(S)

- Education Code § 210.7:
  - “Gender” means sex, and includes a person’s gender identity and gender related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.
- May allege harassment based upon any of the protected classifications under California law, which include:
  - Disability, **gender, gender identity, gender expression**, nationality, race or ethnicity, religion, **sexual orientation**. (Ed. Code, § 220 (a).)



# STUDENTS AND SEXUAL HARASSMENT

Generally, standards for sexual harassment liability are the same when students are involved.

- Federal Title IX of the Education Amendments of 1972; Ca. Education Code § 212.5
- Board Policy/ Regulation 5145.7
- Student Behavior/Discipline Guidelines

# STUDENTS AND SEXUAL HARASSMENT

"Sexual harassment" means...

- Unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone in the work or educational setting, when:
  - Submission to the conduct is explicitly or implicitly made a term or condition of an individual's academic status or progress.
  - Submission to or rejection of the conduct by an individual is used as the basis for academic decisions affecting the individual.

# STUDENTS AND SEXUAL HARASSMENT

- The conduct has the purpose or effect of having a negative impact on the individual's academic performance, or of creating an intimidating, hostile or offensive educational environment.
- Submission to or rejection of the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the school.

# STUDENTS AND SEXUAL HARASSMENT

- Harassment so severe that it effectively bars the student's access to an educational opportunity or benefit
- For legal liability to attach -District has actual knowledge of harassment, and
- District acts with deliberate indifference



# INCIDENTS OUTSIDE OF SCHOOL JURISDICTION

- ▶ If the alleged bullying/harassment is *outside* of the school's jurisdiction to impose discipline, consider notifying the student victim's parent or guardian of their option of contacting law enforcement.
- ▶ **Remember**, whether or not within the school's jurisdiction to discipline, there are likely still requirements to make investigation findings and a decision, and possibly to institute non-disciplinary alternative measures discussed above to address harassing conduct and to ensure the safety of the student within a non-hostile environment.
- ▶ If any act or incident appears to threaten student safety in such a manner that is so immediate, imminent and/or serious, consider contacting law enforcement.
- ▶ **If unclear on the proper next steps regarding an incident of alleged bullying/harassment, contact the Student Hearing and Placement Department immediately.**




# TRANSGENDER STUDENT RIGHTS UNDER TITLE IX AND CAL LAW

- ▶ Effective January 1, 2012, among other changes, AB 887 amended Education Code section 220 to specifically prohibit discrimination in any school program or activity based upon gender identity or gender expression.
- ▶ Effective January 1, 2014, AB 1266 amended Education Code section 221.5, subdivision (f), which now provides: "a pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records." This change in the law made clear the scope of protections afforded to transgender students, and in particular their legal right to access school programs and facilities based upon their gender identity, not their sex at birth.



# TRANSGENDER STUDENT RIGHTS UNDER TITLE IX AND CAL LAW

- ▶ Schools must provide all students with a safe, supportive and inclusive learning environment, free from discrimination, harassment, and bullying. Transgender students may commonly experience harassment and abuse such as: being teased for failing to conform to sex stereotypes, being deliberately referred to by the name and/or pronouns associated with the student's assigned sex at birth, being deliberately excluded from peer activities, and having personal items stolen or damaged.
  - ▶ To address harassment and bullying school districts must: maintain strong local policies and procedures for handling complaints of harassment; consistently and effectively implement those policies; and encourage members of the school community to report incidents of bullying and harassment.
  - ▶ **Resources:** District AR 5145.31, CDE Legal Advisory and FAQs, accessible at <http://www.cde.ca.gov/re/di/eo/legaladvisory.asp> and <http://www.cde.ca.gov/re/di/eo/faqs.asp>
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## **SECTION 4**

# **PREVENTING AND CORRECTING SEXUAL HARASSMENT**



# PREVENTION THROUGH EDUCATION

- Title VII, Title IX, and Cal law requires a notice be posted in conspicuous places on the premises, setting forth the pertinent sections and information pertaining to the filing of a complaint
- Managers and supervisors can help the Human Resources Department by:
  - Notifying all employees of their rights
  - Immediately reaching out to the Human Resources as soon as you are notified of a violation or potential violation



# PREVENTION THROUGH EDUCATION

- Managers and supervisors are role models
- You should demonstrate equal treatment and respect to both genders and never engage in sex-based jokes or banter



# INVESTIGATING COMPLAINTS

# RESPONDING TO COMPLAINTS

- Review District policies- Employees: AR 4119.11; Students: ARs 5145.3, 5145.3, and 5145.7; Uniform Complaint Procedures, BP/AR 1312.3
- Process employee and student/parent complaints in accordance with Policy
- Evaluate need for police/CPS involvement

# RESPONDING TO COMPLAINTS

- Listen to the complainant with an open mind
- Do not prejudge the complainant or the accused
- Advise the complainant and accused of any relevant policies and provide copies of same
- Advise the complainant and accused of the investigation

# DURING THE INVESTIGATION

- Keep the complainant informed  
(i.e., Who will investigate? When they may be called? General time line for resolution?)



# AFTER THE INVESTIGATION

- A response would be provided to the complainant
- Supervisors or Managers will check in with complainant periodically
- Ensure and ask if behavior has stopped

THANK YOU  
FOR ATTENDING!