

# PROMOTING A DISCRIMINATION & HARASSMENT FREE SCHOOL & WORK SETTING

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Online In-Service

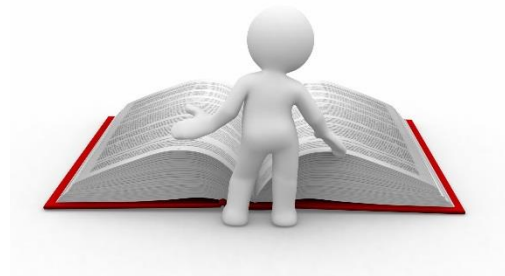


2019-20

- This training provides general information intended to promote a discrimination and harassment free work and school environment.
- Your school/BOCES maintains policies and procedures to address unlawful discrimination and harassment which may be obtained through your supervisor, HR or District office.
- **You should review and remain familiar with your school/BOCES policies.**

# Objectives

- Understand the definition of, and be able to identify, unlawful discrimination and/or harassment.
- Understand your role and responsibility to promote a discrimination and harassment free school and work setting.
- Identify follow-up questions, if any, to ask your supervisor, or other appropriate person in your school/BOCES.



# Unlawful Discrimination & Harassment

- Defined by state (NYS Human Rights Law) and federal law (e.g., Title VII of the Civil Rights Act of 1964).
- Based upon protected classifications.
- Discriminatory or harassing actions result in:
  - Unfair (disparate) treatment (being treated differently);
  - Hostile environment; or
  - Retaliation.



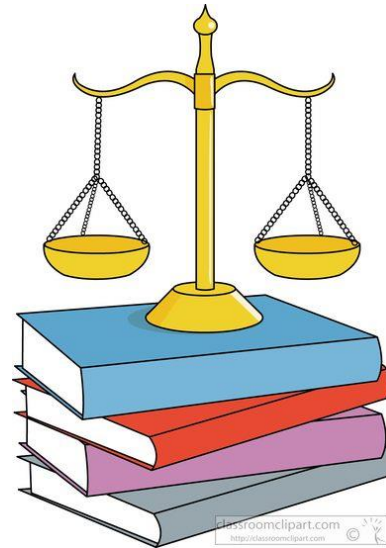
# Laws

- State and federal laws (e.g., New York State Human Rights Law and Title VII of the Civil Rights Act of 1964) prohibit workplace discrimination and/or harassment based upon protected classifications, such as:
  - Race
  - Color
  - National Origin
  - Religion
  - Sex
  - Sexual Orientation
  - Disability
  - Age
  - Citizenship status
  - Genetic information
  - Creed
  - Military Status
  - Marital Status
  - Domestic Violence Victim Status
  - Criminal History
  - Gender Identity



# Laws (Cont.)

- Other laws (e.g., the Dignity for All Students Act and Title IX) prohibit discrimination and/or harassment of students in a school setting based upon protected classifications, such as:
  - Race
  - Weight
  - National Origin
  - Religion
  - Sex
  - Disability
  - Sexual orientation
  - Gender identity



# Discrimination

Discrimination is, generally, the practice of **conferring or denying privileges** on the basis of **membership in a legally protected class**.

# Harassment

Harassment, generally, consists of subjecting an individual, **on the basis of his/her membership in a protected class**, to conduct and/or communications that are **sufficiently severe, pervasive or persistent** as to have the purpose or effect of:

- creating an intimidating, hostile, or offensive environment;
- substantially or unreasonably interfering with an individual's work or a student's educational performance, opportunities, benefits or well-being; or
- otherwise adversely affecting an individual's employment or educational opportunities.

New York State has passed a law that goes into effect on October 11, 2019, which sets the standard for state harassment claims to: whether the conduct subjects an individual to "inferior terms, conditions or privileges of employment" based upon membership in a protected class.



# Sexual Harassment

- Form of **gender/sex** discrimination and is unlawful.
- Includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.
- Includes unwelcome conduct, either of a sexual nature or which is directed at an individual because of that individual's sex, when such conduct:
  - Is made either explicitly or implicitly a term or condition of employment;
  - Submission to or rejection of such conduct is used as the basis for employment decisions; or
  - Has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

# Types of Sexual Harassment

- Quid Pro Quo (“this for that”)
  - Grant or withhold tangible job benefits based on receipt or refusal of sexual favors.
- Hostile Environment
  - Actions create an intimidating, hostile work environment; interferes with work performance through words/deeds related to victim’s gender.
  - Working environment so sexually “polluted” that it interferes with the psychological well-being of the employee.

# Who can be involved?

- Administrators and teachers/staff.
- Teachers/staff in quasi supervisory roles and other teachers/staff.
- Teachers/staff generally amongst themselves.
- Teachers/staff and students.
- Students and other students.
- Other third parties (e.g., vendors, visitors, etc.).

# Where can it occur?

- Whenever and wherever employees are fulfilling their work responsibilities, including:
  - On school grounds.
  - Off school grounds, but at school functions, extra-curriculars, field trips, conferences, off-site or during non-work hours (e.g. hotel while traveling, calls, text messages, emails, social media), etc.
  - Off school grounds, but relates to school.



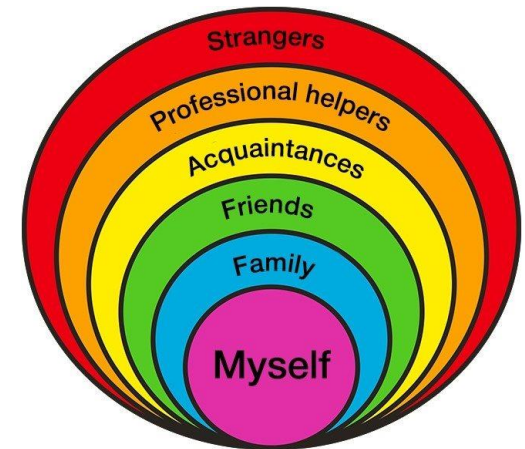
# How can discriminatory or harassing behavior take place?

- Physical – unwanted touching, groping, attempting or committing sexual assault, etc.
- Verbal – comments, innuendos, jokes, threats or bribes, sexually suggestive sounds, spreading rumors, etc.
- Non-verbal – leering, staring, etc.
- Display of offensive material, including emails.



# How can discriminatory or harassing behavior take place?

- Other forms:
  - Unintended harassment – you do not mean to offend or harass, but they take offense.
  - Same-sex harassment – harassment can occur between persons of the same sex.
  - Sex stereotyping –
    - When conduct or personality traits are considered inappropriate simply because they may not conform to other people’s ideas or perceptions about how individuals of either sex should act or look.
    - Harassing a person because that person does not conform to gender stereotypes as to “appropriate” looks, speech, personality, or lifestyle is sexual harassment. Harassment because someone is performing a job that is usually performed, or was performed in the past, mostly by persons of a different sex, is sex discrimination.



# What is the threshold/standard?

- How can I tell if it is really sexual harassment or someone being overly friendly?
  - “The Reasonable Person Standard”
  - It will be determined using the “Reasonable Person Standard” whereby it is assessed whether a “reasonable person” would perceive the conduct as being sexual harassment. Additionally, it will be viewed from the eye of the recipient, including their particular circumstance.

# YOUR INTENT MEANS NOTHING

“But...”

“I was only kidding!”


“I meant no harm!”

“She/he misinterpreted my meaning.”

Your intent means nothing.



# Supervisor's Responsibility



Supervisor

- Supervisors/Administrators are held to a high standard of behavior.
  - They are placed in a position of authority by the District and must not abuse that authority.
  - Their actions can create liability for the District without the District having any opportunity to correct the harassment.
  - They are **required to report** any harassment that is reported to them, or which they observe or know of (even if they think the conduct is trivial or the harassed individual asks that it not be reported).
  - They are responsible for any harassment or discrimination that they should have known of with reasonable care and attention to the workplace for which they are responsible.
  - They are expected to model appropriate workplace behavior.
  - They will be subject to discipline for failing to report suspected harassment or engaging in retaliation.

# Remember...File a Complaint

- If you have knowledge of unlawful discrimination or harassment occurring, you are to promptly report it to the person designated by your District to receive complaints. If there is other behavior you experience or know about that is inappropriate, you should report it without trying to determine if it is unlawful.
- If the person designated by the District to receive complaints is the offender – report to next level of supervisory authority, the Superintendent or Business Official, or other person in supervisory authority. Additionally, if the first person to whom you report provides an inappropriate response (e.g., “just ignore it”), you should report to the next level of supervisory authority.
- While not necessary, it is best to file a detailed written report, which may be on the District’s Complaint Form.
- District will promptly and thoroughly investigate (e.g., collect evidence, conduct interviews, etc.).
- To the extent possible, the complaint will be treated as confidentially and privately as possible.
- When appropriate, immediate interim or remedial action will be taken (e.g., administrative leave).

# Potential Outcome of Complaint

- If the allegation(s) is substantiated:
  - The District/BOCES may take actions including, but not limited to:
    - Counseling or disciplinary action (up to and including termination);
    - Additional training or remediation; and
    - Other remedies as necessary to prevent harassment and ensure compliance with the law and District/BOCES policies.
- If the allegation(s) is unsubstantiated:
  - The District/BOCES may take actions including, but not limited to:
    - Providing additional training/counseling regarding what constitutes harassment or proper workplace conduct; and
    - Other actions as necessary to ensure compliance with the law and District policies.
- If the complaint is a "false complaint":
  - The District/BOCES may counsel or discipline the employee who knowingly filed the false complaint without a good faith belief that the conduct constituted unlawful harassment.

# State and Federal Agencies

- New York State Division of Human Rights ([www.dhr.ny.gov](http://www.dhr.ny.gov))
  - A complaint of harassment or discrimination under New York Law may be filed with either the Division of Human Rights or State Supreme Court.
  - A complaint may be filed with the Division of Human Rights within three years of the alleged discrimination, and you do not need an attorney.
  - A complaint may be filed in State Supreme Court within three year of the alleged discrimination.
- U.S. Equal Employment Opportunity Commission (EEOC) ([www.eeoc.gov](http://www.eeoc.gov))
  - A complaint of harassment or discrimination under federal law may be filed with the local EEOC office within 300 days of the alleged discrimination, and you do not need an attorney.

# What is not Harassment?

- **Consensual Relationships**

Caution! Consensual relationships can quickly turn non-consensual and the other person could take offense.

- **Welcomed conduct**

Caution! Welcomed conduct one day could be unwelcomed another day.

- **Unkind comments/inappropriate conduct**

Caution! Comments that may not be deemed unlawful discrimination or harassment may still be in violation of workplace/school setting rules or expectations.

# Even if not unlawful, the conduct may violate a work rule:

Consider: Is it harassment...

If my boss or coworker is mean to me and everyone else without a reason?

OR

If a supervisor treats employees differently based upon unprotected characteristics (e.g., work performance)?

No. The laws governing discrimination and harassment are based upon protected characteristics and do not create a civility code.

HOWEVER...

Everyone must be mindful that there are still ethical considerations, a code of conduct, and District expectations.

Inappropriate conduct should still be reported.

# WHAT CAN I DO?

## Preventative Measures

- Become familiar with District policies.
- Monitor your own conduct.
- Do not put yourself in a vulnerable position that could be misconstrued or perceived as discriminatory in nature, or unlawful harassment.
- Always be aware of others around you, third parties may take offense.
- The best course of action is to avoid any conduct that could be interpreted as offensive in the workplace.

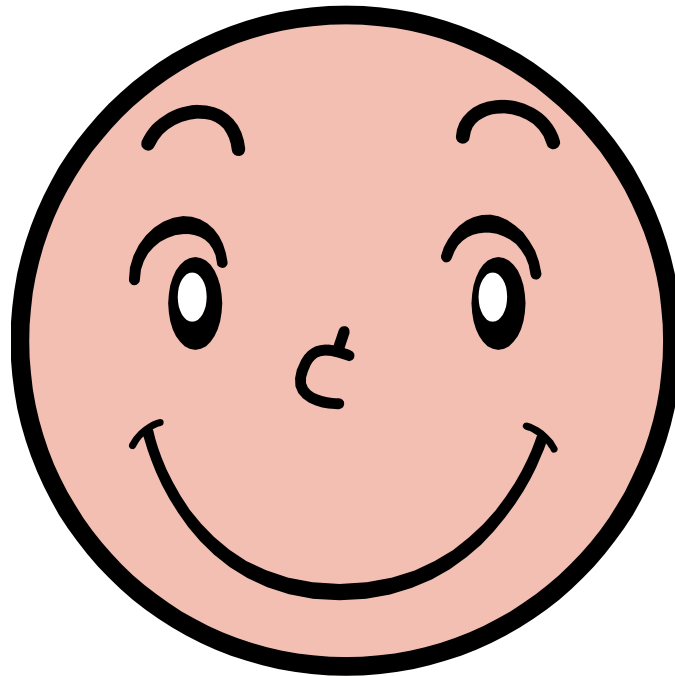


# REMEMBER . . .

- There is often disagreement in what is “Humorous”.
- Your view of the world is not necessarily shared by others.
- There is nothing to be gained by rebuffing a request to desist.



HAPPY FACES  
ARE NOT  
THE LITMUS TEST



WHAT IS  
"WELCOME" TODAY  
MAY BE  
"UNWELCOME"  
TOMORROW

# Remember...No Retaliation

- It is unlawful to take an adverse employment action (e.g., termination, demotion, sudden unfavorable change in work schedule or work location, etc.) against an employee for, in good faith:
  - filing a complaint of harassment or discrimination;
  - making a report of suspected harassment, even if you are not the recipient;
  - opposing discrimination; or
  - cooperating in an investigation (e.g., providing information during an investigation, or testifying in connection with a complaint).



# Remember...No Retaliation

- Employees should expect to be free of any negative actions by supervisors, managers or the employer motivated by these protected activities.
- Retaliation can be any adverse action taken by an employer against the employee that could have the effect of discouraging a reasonable worker from making a discrimination or harassment complaint.
- The negative action need not be work related or occur in the work place, and could occur after the termination of employment.

# What is Not Retaliation?

- A negative employment action that merely occurs after an employee engages in protected activity is not per se retaliation.
- Employees continue to be subject to all job requirements and rules of the employer after having engaged in such protected activity.

# Examples of Sexual Harassment

Teacher Aide Sally, who is assigned to Teacher John's classroom, just went through a divorce. John has always had a "crush" on Sally. When John heard Sally finalized her divorce, he mentioned to her that he is single, and on a dating website. Sally and John have taken breaks together during the school day in the past, and consider each other friends. John eventually musters up the courage to ask Sally to dinner on Friday night. Sally accepts the invitation. They have fun on their date. Sally, however, decides since they are colleagues, they should just keep their relationship professional. She explains this to John, but John continues pressuring Sally to go out again. Sally rejects his requests.

# Examples of Sexual Harassment

Question: When John first asked Sally to dinner, this was sexual harassment.

True or False?

# Examples of Sexual Harassment

Question: When John first asked Sally to dinner, this was sexual harassment.

False. John's initial comments regarding being single and on a dating website, along with asking Sally to dinner are not unlawful sexual harassment. Even if Sally declined John's invitation to go to dinner, John did nothing wrong by asking. Occasional general comments that are not sexually explicit about one's personal life are not sexual harassment. That said, one should use caution when sharing personal information.



# Examples of Sexual Harassment

John continues to pressure Sally to go out again. This makes Sally uncomfortable. Sally explains what is going on to her supervisor, the Building Principal. The Principal says, "Oh...that's just John. Just ignore him."

# Examples of Sexual Harassment

Question: Sally should follow the Principal's advise and just ignore John.

True or False?

# Examples of Sexual Harassment

Question: Sally should follow the Principal's advise and just ignore John.

False. Sally should follow up with the next person in supervisory authority, the District's/BOCES' complaint officer, human resources, the superintendent, business official or other person in supervisory authority so that the school can take action to change John's conduct.

# Follow-Up Questions:



- Do you know who is the Title IX officer in your district?
- Do you know what your district policy says about unlawful discrimination and harassment?
- Do you know the reporting obligations and procedures?

THANK YOU!