



Targeted Harassment Training for School Administrators

Naugatuck Public Schools



- Public Act 19-166: An Act Concerning School Climates
- Overview of Targeted Harassment
- Responsible Employees
- Appropriate Steps to Address Harassment
- Scenarios
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School Climate Public Act 19-166



Requires school district to post on their internet website training materials for school administrators "regarding the prevention of and intervention in discrimination against and targeted harassment of students" based on such students' actual or perceived differentiating characteristics.

The discrimination or harassment may also be based on a student's "association with individuals or groups who have or are perceived to have one or more of [the] characteristics" defined on the next slide Differentiating Characteristics (actual or perceived) include :

Public Act 19-166

Race	Gender Identity
Color	Gender Expression
Religion	Socioeconomic Status
Ancestry	Physical Appearance
National Origin	Mental or Physical Disability
Gender	Developmental Disability
Sexual Orientation	Sensory Disability

What is Targeted Harassment?

Targeted harassment includes three elements:



verbal or physical act toward a student based on such students actual or perceived differentiating characteristics, or association with individuals or groups with one or more of such characteristics,



that is **threatening**, **harmful**, **demeaning**, **or humiliating**, and



creates a **hostile environment** that **interferes with or limits a student's ability to participate** in or benefit from the services, activities, or opportunities offered by a school.

"Targeted Harassment" Does NOT Require:



Intent to harm



Harm directed toward a particular student



Repeated incidents*

* To meet the "hostile environment" standard, a single incident would have to be sufficiently severe so as to alter the student's access to education.

Harassment vs. Bullying



Hostile Environment

Depends on "totality of the circumstances," including but not limited to:



How much of an adverse effect the conduct had on 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 way in which the incidents occurred; and



Whether other incidents occurred at the school involving different students

What does harassment look like?



Responsible Employees

Employees who are responsible to take immediate and effective corrective action include any employees who:



OCR Dear Colleague Letter (October 2010)

Responsible Employees

Must immediately report the misconduct so that the school may begin an investigation.

Reach out to building safe school climate specialist (building principal), and/or district's Title IX coordinator (Melissa Cooney for Students, John Lawlor for staff) and Section 504/Title II coordinators (Nicole Reichardt), as appropriate.



Should report even just one act, as an investigation may discover additional acts that, together, may constitute a hostile environment.



Be aware of warning signs, such as behavior and attendance issues, that may signal that potential harassment is affecting a student's ability to participate in his/her educational program.

District Liability

Peer-On-Peer Harassment



Schools may be found liable for *failing to prevent* peer-on-peer harassment.

Responsible employees must *appropriately respond* when they become *aware*, or are provided with *"notice."*

Notice of Peer-on-Peer Harassment

- May include obvious signs, such as harassment occurring in hallways, during academic or physical education classes, during extracurricular activities, at recess, on the bus, or through graffiti.
- May be less obvious, such as student misconduct, which triggers an investigation that could lead to the discovery of additional incidents.
- Prior notice of a student's past harassing conduct may trigger a school district's obligation to prevent recurrence of harassment on future victims, but only if the school has actual notice of such prior history.

Legal Standard for Peer-to-Peer Harassment for Damages in Court

Davis v. Monroe Cty. Bd. of Educ., 526 U.S. 629 (1999)

- 1. Is the student a member of the protected class?
- 2. Was the student harassed based on his or her protected class status?
- 3. Was the harassment sufficiently **severe**, **pervasive and objectively offensive** that it deprived the victim of access to the school's educational opportunities or benefits (or created an abusive environment)?
- 4. Did the school know of the harassment? (actual knowledge)
- 5. Was the school deliberately indifferent to the harassment?

Office for Civil Rights (OCR) Dear Colleague Letter October 2010

U.S. Department of Education Office for Civil Rights



Dear Colleague Letter Harassment and Bullying (October 26, 2010) Background, Summary, and Fast Facts

What are the possible effects of student-on-student harassment and bullying?

- Lowered academic achievement and aspirations
- Increased anxiety
- Loss of self-esteem and confidence
- Depression and post-traumatic stress
- General deterioration in physical health
- Self-harm and suicidal thinking
- Feelings of alienation in the school environment, such as fear of other children
- Absenteeism from school

What does the Dear Colleague letter (DCL) do?

- Clarifies the relationship between bullying and discriminatory harassment under the civil rights laws enforced by the Department of Education's (ED) Office for Civil Rights (OCR).
- Explains how student misconduct that falls under an anti-bullying policy also may trigger responsibilities under one or more of the anti-discrimination statutes enforced by OCR.
- Reminds schools that failure to recognize discriminatory harassment when addressing student
 misconduct may lead to inadequate or inappropriate responses that fail to remedy violations
 of students' civil rights. Colleges and universities have the same obligations under the antidiscrimination statutes as elementary and secondary schools.
- Discusses racial and national origin harassment, sexual harassment, gender-based harassment, and disability harassment and illustrates how a school should respond in each case.

Districts may violate federal civil rights statutes when peer-on-peer harassment based on race, color, national origin, sex or disability is sufficiently serious that it creates a hostile environment, and such harassment is:

- Encouraged
- Tolerated
- Not adequately addressed, or
- Ignored by school employees

OCR uses a lower standard for harassment*:

- Whether the district knew or *should have known*
- Conduct that is severe, persistent, or pervasive

*As of August 2020, Title IX requires a school to respond when it has actual (not constructive) knowledge of sexual harassment or allegations that may constitute sexual harassment. Under these regulations, the conduct must be "severe, pervasive, <u>and</u> objectively offensive," or meet the definitions of *quid pro quo* harassment, sexual assault, dating violence, domestic violence, or stalking to constitute sexual harassment.

Discipline

Q. Is disciplining the perpetrator *enough?*A. No! Although this is usually *necessary*, it is *not sufficient*.

Why is discipline not enough?

A school must eliminate the hostile environment created by the harassment, address its effects and take steps to ensure the harassment does not happen again. Immediate Protective Measures to Ensure Safety of Alleged Victim

- \checkmark
- Consider whether immediate safety measures are necessary, even before investigation is complete
- Depends on the circumstances, including the nature of the allegations



Review class schedules, passing time, locker assignments



- Is there a need for additional adult supervision during investigation?
- Is there a need for a "no contact" agreement during investigation?

* Under Title IX, a school must provide "supportive measures" to an alleged victim when it has actual knowledge of sexual harassment or allegations thereof.

Appropriate Steps to Address Harassment*



* These steps should not penalize the student who was harassed. For example, any separation of the target from an alleged harasser should be designed to minimize the burden on the target's educational program (e.g., not requiring the target to change his/her schedule).

Harassment Directed Toward Students with Disabilities

May trigger additional obligations related to the student's right to a free appropriate public education (FAPE)

- Section 504
- PPT process

Notify the student's case manager and/or the district's Section 504 coordinator



Sample Scenarios - Slide 29

Scenario 1: Section 504/ Title II Several classmates repeatedly called a student with a learning disability "stupid," "idiot," and "r-word" while in school and on the school bus. On one occasion, they tackled him, hit him with a school binder and threw his personal items into the garbage.

The student complained to his teachers and guidance counselor that he was continually being taunted and teased. School officials offered him counseling services and a psych eval, but did not discipline the offending students. As a result the harassment continued. (cont.)

Scenario 1: Section 504/ Title II

The student, who had been performing well academically, became angry, frustrated and depressed, and often refused to go to school to avoid the harassment.

What do you think?

Analysis: Section 504/ Title II 1.

School failed to recognize the misconduct as disability harassment under Section 504/Title II. The harassing conduct included behavior based on the the student's disability, and limited the student's ability to benefit fully from the school's education program (e.g. absenteeism). In failing to investigate and remedy the misconduct, the school did not comply with its obligations under Section 504 and Title II.

Analysis: Section 504/ Title II

2.

Response should have included
disciplinary action, consultation with
the district's Section 504/Title II
coordinator to ensure a
comprehensive and effective
response, training for the staff, and
monitoring to ensure that the
harassment did not resume.

See OCR Dear Colleague Letter (Oct. 2010)

Scenario 2: Title VI

A new student, who is dark-skinned and biracial, receives unwanted attention from fellow classmates, who tell the new student, "We don't want your kind here," and tell him to go back to where he came from.

A few weeks later a fellow classmate stripped a necklace from the student's neck, breaking it. The classmate claimed the incident was merely a joke and offered an apology: "Whoops, didn't mean to break your piece of fake rapper bling bling." The new student reports the incident to school officials. (cont.)

Scenario 2: Title VI

Beyond disciplining each harasser involved in incidents during the semester with a warning or suspension, the district did not implement other remedial measures in response to the harassment.

What do you think?



- 1. Although it disciplined many of the harassers, it did not promptly implement non-disciplinary remedial action.
- 2. The additional remedial actions either did not focus on racial bias or prejudice, or made attendance optional. (The district's training focused on bullying and sexual harassment, rather than racial discrimination. The first bias-specific training was optional, and none of the student's harassers attended.)
- 3. The district ignored many signals that greater, more directed action was needed.

Scenario 3: Title IX

Over the course of a school year, a gay high school student was subjected to name-calling both to his face and on social networking sites, physically assaulted, threatened, and ridiculed because he did not conform to stereotypical notions of how teenage boys are expected to act and appear (e.g. effeminate mannerisms, nontraditional choice of extracurricular activities, apparel, and personal grooming). (cont.)

Scenario 3: Title IX

As a result, the student dropped out of the drama club to avoid further harassment. The school responded to complaints from the student by reprimanding the perpetrators consistent with its anti-bullying policy. The reprimands stopped those individuals, but not others from undertaking similar harassment.

What do you think?

Title IX – Response to Allegations of Sexual Harassment

If the District has **actual knowledge** of sexual harassment in a District education program or activity...

The District must respond **promptly** and in a manner that is not **deliberately indifferent**.

The District's response must treat complainants and respondents **equitably** by offering supportive measures to the complainant and by following the grievance process outlined here *before* the imposition of any disciplinary sanctions or other actions that are not supportive measures. The District is **deliberately indifferent** only if its response to sexual harassment is **clearly unreasonable** in light of known circumstances.

OCR Notice of Interpretation June 16, 2021

- OCR interprets Title IX to encompass protection against discrimination based on sexual orientation and gender identity.
- The Notice alerts boards of education that OCR will use its enforcement jurisdiction under Title IX to investigate allegations of discrimination against individuals based on sexual orientation and gender identity.
- Schools should be prepared to implement their grievance processes under Title IX when they receive allegations of sexual harassment relating to an individual's sexual orientation or gender identity.

"Deliberate Indifference" under Title IX

Once the District has "actual knowledge" of sexual harassment, it must respond in a way that is not "deliberately indifferent." Response must:





Treat the parties equitably



Include offering supportive measures to the complainant and ensuring that the Title IX Coordinator contacts the complainant to discuss supportive measures (even if no formal complaint has been filed)



Consider the complainant's wishes with regard to supportive measures



Explain the process for filing a formal complaint and the grievance process



Follow the grievance process before making a responsibility determination and before imposing any disciplinary sanctions



Implement remedies designed to restore or preserve educational access

Prevention Strategies



Use evidence-based model for school-wide prevention of harassment and bullying;



Enforce school rules prohibiting harassing behavior;



Ensure adequate supervision during less structured activities, such as hallways during passing time, outdoor areas during recess, lunchroom;



Implement school-wide training for staff and students on harassment and bullying prevention, including relevant Board of Education policies;



Instill and emphasize a positive school climate;



Implement a culturally competent school-based curriculum focusing on social-emotional learning, self-awareness and self-regulation;



Encourage parental participation in harassment prevention training and positive school climate.

Practical Suggestions

When reviewing "bullying" complaints always ask whether the conduct at issue may be based on a protected class. Is the alleged bullying based on:

- Race, national origin or color?
- Sex?
- Disability?
- Other protected classes under state law? (e.g. gender identity or expression, sexual orientation?)

If so, conduct BOTH bullying and discrimination/harassment investigations.

If you observe even just one incident of harassment (calling a student a racial slur), report it; an investigation should occur.

Responding to Potential Harassment Claims

Recognize that student-on-student conduct may constitute racial, sexual or disability harassment (or other protected class harassment)



Remember that misconduct need not be directed at a particular student to constitute discriminatory harassment that creates a hostile environment.



Involve relevant District personnel (Title IX, Title VI, or Section 504 Coordinator)



If harassment involves a student with a disability, consider obligation to convene PPT or 504 meeting to consider FAPE implications.

NPS Policy and Resources

- Board policies and regulations, including complaint procedures:
 - Harassment, including Sexual Harassment (Title IX)
 - Non-Discrimination
 - <u>School Climate/Bullying Prevention</u>
 - <u>Section 504</u>
- Office for Civil Rights, Harassment Prevention Resources available at:

<u>https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-stu</u> <u>dents/har-resources.html</u>

• Guidelines for CT Schools to Comply with Gender Identity and Non-Discrimination Laws, *available at:*

<u>https://www.ctschoollaw.com/?s=Guidelines+for+CT+Schools+to+Co</u> <u>mply+with+Gender+Identity+and+Non-Discrimination+Laws%2C</u>

Resources for Staff

- District's Title IX Coordinator: *Melissa Cooney (students), John Lawlor (Staff)*
- District's Safe School Climate Specialist: *Melissa Cooney*
- District's Section 504/Title II Coordinator: *Nicole Reichardt*
- <u>Many</u> incidents of harassment do not get reported. Training of all school staff is critical to protecting students.