

Francis Howell School District

Building Administrator

Harassment/Discrimination Training

Emily Omohundro & Tom Smith



Roadmap

- The Board Policies
- Understanding Protected Classifications
- The Nature of Harassment/Discrimination/Retaliation
- Identifying Prohibited Conduct
- Responsibilities and Duties
- Informal Resolutions
- Scenarios



Applicable Policies

Equal Opportunity

Policy 1300	Contains general prohibition against harassment, discrimination, and retaliation.
Regulation 1300	Describes the reporting and investigation process.

Prohibition against Sexual Harassment & Retaliation under Title IX

Policy 1301	Prohibits sexual harassment under Title IX.
Regulation 1301	Describes the reporting and investigation process.

Board Policy 1300

- “The District is committed to maintaining a workplace and educational environment that is free from discrimination, harassment, and retaliation in admission or access to, or treatment or employment in, its programs, services, activities and facilities. The District is committed to providing equal opportunity in all areas of education, recruiting, hiring, retention, promotion and contracted service.”
- “In its programs and activities, the District does not discriminate on the basis of race, color, national origin, ancestry, religion, sex, sexual orientation, gender identity, disability, age, genetic information, or any other characteristic protected by law and as required by Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and Title II of the Americans with Disabilities Act of 1990, and state law.”
- “This Policy governs the District’s compliance with the laws identified above, outside Title IX.”
- Compliance Officers under Policy 1300 are Lisa Simpkins and Mark Delaney.

Board Policy 1301

- "Sexual harassment under Title IX is prohibited in the District."
- "The District also prohibits retaliation against any person who files a complaint of sexual harassment under Title IX or who participates in an investigation of allegations of sexual harassment under Title IX."
- "This Policy governs the District's compliance with Title IX of the Education Amendments of 1972."
- Title IX Coordinator under Policy 1301 is Mark Delaney.

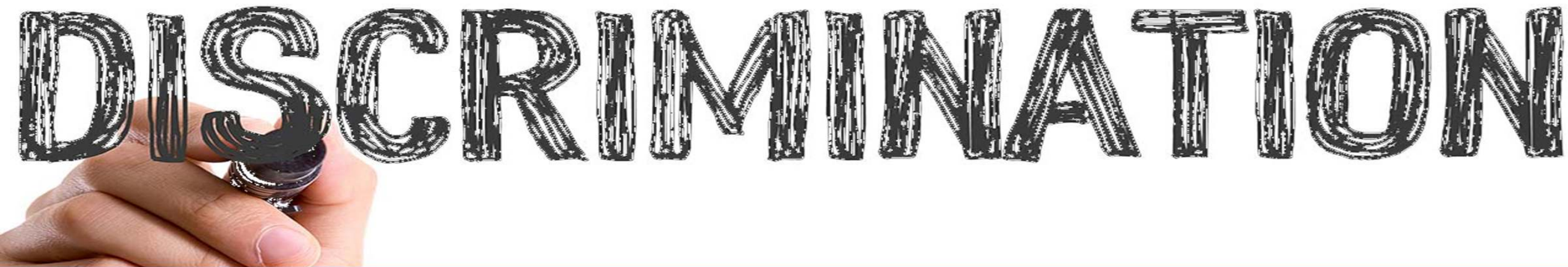
Understanding Protected Classifications

- Race
- Color
- Religion
- Sex
- Ethnicity
- National Origin
- Ancestry
- Disability
- Sexual Orientation
- Gender Identity
- Age
- Genetic Information
- Any other characteristic protected by law or based on belief that such characteristic exists



Nature of Discrimination/Harassment

- Not limited to conduct by norms – for example, in cases of sexual harassment males toward females.
- May occur between any or all of the following, for example:
 - Student to student
 - Staff to student
 - Student to staff
 - Between opposite genders
 - Within the same gender



DISCRIMINATION

1300 – Prohibited Conduct

- Discrimination
- Harassment
- Sexual Harassment
- Retaliation



1300 – Prohibited Conduct (cont.)

- Encompasses a wide range of allegations:
 - Racial Slurs
 - Gender-specific name-calling
 - Failure to Promote
 - Teacher transfers to “less desirable buildings or positions”
 - Transgender rights
 - Name calling, slurs, acts of physical aggression, comments about an individual’s body, theft, graffiti, written material, sexual advances, etc.
 - Harassing conduct so severe or pervasive that it: affects ability to participate in or benefit from education program/activity; and creates an intimidating, threatening, abusive hostile or offensive environment; or has the purpose or effect of substantially or unreasonably altering the work or educational environment.



1300 – Prohibited Conduct (cont.)

- Student-on-Student
 - No cause of action for bullying
 - Trend is to classify bullying as discrimination or harassment to bring claim under MCHR
 - Not just clear discriminatory conduct that should be reported to Compliance Officer
 - Claims right now where conduct is gender-specific name calling
 - Must show that the “bullying” was because of victims protected class
 - Administrators when investigating the “bullying” should be asking the “why” question to help determine if discriminatory intent



What is Sexual Harassment under 1300?

- Sexual harassment is defined as unwelcome conduct of a sexual nature or based upon sex when
 - a) benefits or decisions are implicitly or explicitly conditioned upon submission to, or consequence is applied for refusing to comply with, unwelcome sexual advances, requests for sexual favors or conduct of a sexual nature; or
 - b) the school or work environment becomes permeated with intimidation, ridicule or insult that is based on sex or is sexual in nature and that is sufficiently severe or pervasive enough to alter the conditions of participation in the District's programs and activities or the conditions of employment.

What is Sexual Harassment under Title IX?

- *Sexual harassment* under Title IX is conduct on the basis of sex within the scope of the district's education programs or activities that satisfies one or more of the following:
 - An ***employee*** of the district conditioning the provision of an aid, benefit or service of the district on an individual's participation in ***unwelcome sexual conduct***,
 - Unwelcome conduct determined by a reasonable person to be ***so severe, pervasive and objectively offensive*** that it effectively denies a person equal access to the district's education program or activity; or
 - "***Sexual assault***" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "***dating violence***" as defined in 34 U.S.C. 12291(a)(10), "***domestic violence***" as defined in 34 U.S.C. 12291(a)(8) or "***stalking***" as defined in 34 U.S.C. 12291(a)(30).

Sexual Assault under Title IX

- An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation
 - Sex Offense: Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
 - Fondling – The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
 - Incest – Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Statutory Rape – Sexual intercourse with a person who is under the statutory age of consent.
 - Rape – The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Dating Violence under Title IX

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
- The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- For the purposes of this definition:
 - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence under Title IX

- A felony or misdemeanor crime of violence committed:
 - By a current or former spouse or intimate partner of the victim;
 - By a person with whom the victim shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
 - By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.





Stalking under Title IX

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - Fear for the person's safety or the safety of others; or
 - Suffer substantial emotional distress.
- For the purposes of this definition:
 - Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 - Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
 - Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

1300 – Responsibilities & Duties

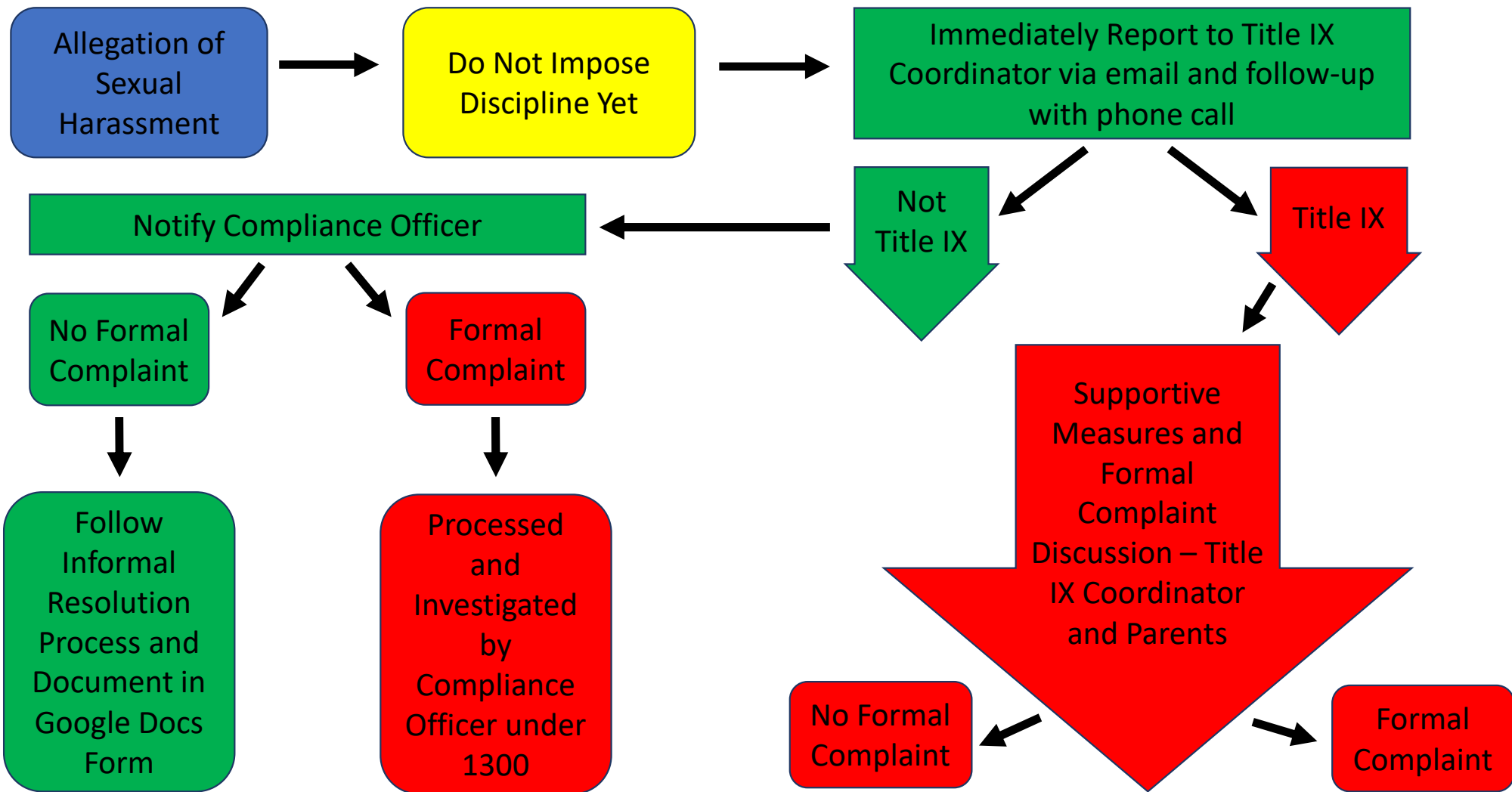
“Unless a concern is informally resolved, staff and students shall report all incidents of discrimination, harassment and retaliation to the Compliance Officer as set forth in this Regulation. When a formal complaint is filed with the Compliance Officer, the investigation and complaint process detailed below will be used, including a possible determination by the Compliance Officer that the incident has been appropriately addressed through the informal process. Reports of discrimination, harassment and/or related retaliation must contain as much specific information as possible to allow for proper assessment of the nature, extent, and urgency of preliminary investigative procedures.”

1300 – Responsibilities & Duties

- What does this mean on the building level?
- Reporting Process:
 - Incident is reported to or witnessed by you and does not involve sexual harassment.

 - Contact a Compliance Officer.

 - Log the incident into the shared Google Docs form for review by the Compliance Officers.

 - Unless directed otherwise by a Compliance Officer, proceed with informal resolution if available.

 - Log the informal resolution into the shared Google Docs form for review by the Compliance Officers OR refer back to the Compliance Officers for formal investigation if an informal resolution cannot be reached.

1301 – Responsibilities & Duties

“Staff with actual knowledge of behaviors that may constitute sexual harassment under Title IX and related retaliation as defined in this Regulation shall immediately report it to the Title IX Coordinator. When a formal complaint is filed with the Title IX Coordinator, the grievance process detailed below will be used. Reports of sexual harassment under Title IX and/or related retaliation must contain as much specific information as possible to allow for proper assessment of the nature and extent of the investigative procedures.”



Big Picture

- We will generally need to continue to process allegations of discrimination and harassment as we did before, by contacting the Compliance Officers and logging the incidents into the shared Google Docs form for review by the Compliance Officers.
 - But with allegations of sexual harassment, the process changes.
- We have 2 separate policies that deal with sexual harassment.
 - 1301 (Title IX)
 - 1300 (harassment generally, including sexual harassment)
- Sexual harassment under Title IX will only involve sexual harassment that meets the specific definitions under 1301 (i.e., it will be an extraordinary case).

Significant Differences in the 1301 Process

- During the investigation and the grievance process, the District will:
 - Allow the complainant or the respondent to discuss the allegations under investigation and gather and present relevant evidence;
 - Provide opportunity to have an advisor present during any grievance proceeding;
 - Provide written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, in which the complainant or respondent's participation is requested; and
 - Provide the complainant and the respondent an equal opportunity to inspect and review any evidence directly related to the allegations in the formal complaint.

Removal of Respondent

- Schools must conduct a threat assessment before removing a student from campus pending a decision in the case,
 - and there must be a mechanism for the student to immediately challenge the removal.
- The District is not precluded from removing a Respondent from the education program or activity on an emergency basis.
- The requirement of supportive measures does not preclude the District from placing an employee on administrative leave during the grievance process.

Discipline under 1301

Disciplinary measures when there is an allegation of sexual harassment

- The District can discipline students for violations of the student conduct code that are not related to sexual harassment under Title IX.
 - For instance, if a student is being sexually harassed on social media due to pictures taken at school, we could discipline the student for improper cell phone use, cyberbullying perhaps, or disruptive conduct.
- The District's student conduct code allows for a wide range of disciplinary consequences for the types of misconduct that could arise related to claims of sexual harassment (cell phone use, bullying/cyber bullying, disruptive conduct, etc.) so the District has the ability to impose the proper level of discipline, which could include suspension, for the conduct.

Discipline under 1301

Disciplinary measures when there is an allegation of sexual harassment

- Otherwise, **discipline will need to be delayed if the conduct falls under the Title IX definition of “sexual harassment.”** That’s why it’s important to discuss any such issues with the Title IX Coordinator immediately, so the Title IX process can begin. If the alleged victim decides to move forward with a formal complaint, discipline will be delayed until the investigation and all appeals have been exhausted.
- If the alleged victim decides not to move forward with a formal complaint under Title IX, discipline can be rendered for sexual harassment concerns after a disciplinary investigation into the incident occurs, as the District typically does now. The District will also complete an investigation under Board Policy 1300.

Informal Resolution under 1300

- Any staff member can attempt to resolve a complaint informally. However, the Compliance Officers should still be notified prior to engaging in the informal resolution process.
- Building administrators/supervisors will report informal resolutions to the Compliance Officers on a regular basis.
- Informal complaints may become formal complaints at the request of the complainant, parent/guardian, or the District.
- During the course of the informal complaint process, the District will take prompt and effective steps reasonably calculated to end the harassment, discrimination, and retaliation and to correct any effects on the complainant.
- The District will inform the complainant how to report any subsequent problems and may conduct follow-up inquiries.

Informal Resolution under 1300

- Informal remedies may include, but are not limited to:
 - If the complainant so desires, an opportunity for the complainant to explain to the alleged harasser that his or her conduct is unwelcome, offensive or inappropriate, either in writing or face-to-face;
 - A statement from a staff member to the alleged harasser that the alleged conduct is not appropriate and could lead to discipline if proven or repeated;
 - A general public statement from an administrator in a building reviewing the District's nondiscrimination and harassment policy without identifying the complainant;
 - Developing a safety plan;
 - Separating students; or
 - Providing staff and/or student training.

Informal Resolution under 1301

- Not available for formal complaints of employee on student sexual harassment.
- Can be used any time after a formal complaint is filed – not before.
- Voluntary and both complainant and respondent must agree to it in writing.
- All timeframes and deadlines suspended during process.

Informal Resolution under 1301

- Upon initiation of the informal resolution process, the District shall provide a written notice to the parties, which includes the following:
 - The allegations;
 - A statement explaining that a resolution of the complaint precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that either party may withdraw from the informal process at any time prior to agreeing to a resolution; and,
 - A statement explaining that the District will maintain, and may disclose, in accordance with Board Policy and the law, all investigative records gathered as a result of the complaint.

Informal Resolution under 1301

- An informal resolution may include, but is not limited to the following:
 - If the complainant so desires, an opportunity for the complainant to explain to the respondent that his or her conduct is unwelcome, offensive or inappropriate, either in writing or face-to-face;
 - A statement from a staff member to the respondent that the alleged conduct is not appropriate and could lead to discipline if proven or repeated;
 - Developing a safety plan;
 - Separating students; or
 - Providing staff and/or student training.

Important Takeaways

- Building-Level Administrators are the gatekeepers.
 - Generally they will receive the initial allegations, then evaluate the allegations to determine appropriate next steps.
 - Allegations involving sexual harassment should be reported to the Title IX Coordinator (Mark Delaney) immediately by email and followed up with a phone call.
 - No discipline should be taken on allegations of sexual harassment without speaking to the Title IX Coordinator first.
- The Title IX Coordinator will further evaluate the allegations to determine if the 1301 process is required.
 - If so, the Building-Level Administrators will take no further action unless directed.
 - If not, the matter will be referred to the Compliance Officers for processing under 1300.

Questions for Scenarios

- What are the steps you will take in response to the allegation?
- To whom should the allegations be reported?
- What are the key pieces of parent communications here?
- What supportive or interim measures should be considered?

Elementary Scenarios

Scenario 1E

- Johnny and Jenna are 1st graders in Ms. William's class.
- During recess, Johnny and some friends are playing with a football. Jenna asks if she can play too.
- Johnny tells Jenna that she can't play with them because she's a girl and his dad says that girls shouldn't be allowed to leave the house.
- Jenna is very upset and tells Ms. William about this, who then reports it to you.

Scenario 2E

- Brittany is a 3rd grader. She is riding on the bus with Jimmy, a 4th grader.
- Jimmy tells Brittany that he wants to try something that he saw on TV that he thinks will make her feel really good.
- Brittany says she won't do it unless Jimmy tells her what he wants to do. Jimmy says "you'll have to wait and see" and then begins touching Brittany's private areas.
- Brittany immediately starts screaming and tells the bus driver what happened, who reports it to you.

Scenario 3E

- Suzie's mom calls you and says that Suzie told her about an incident at school the day before that has her very upset.
- Suzie told her mom that while Suzie was in the bathroom, another girl came up behind Suzie, pulled Suzie's skirt up, and pulled Suzie's underwear all the way down. All the other girls in the bathroom saw this happen and laughed at Suzie.

Middle School Scenarios

Scenario 1M

- Blake and Miranda are both in 7th grade and have a locker next to each other. They also share a few classes.
- During each passing period, Blake makes comments to Miranda. These started with Blake saying things like, “you’re really pretty.”
- The comments have escalated to Blake describing, in detail, sexual acts he wants to perform with Miranda.
- Blake has also started slipping drawings into Miranda’s locker that depict the sexual acts he describes to Miranda.
- This has been happening for weeks. Miranda has started skipping school. When she is present, she refuses to go to her locker. Instead, she carries all her books with her all day.

Scenario 2M

- Jake and Antonio are both 6th graders.
- During a science class on genes, Jake and Antonio are partnered together for an assignment.
- Jake tells Antonio that Antonio has bad genes, and that Antonio was probably born in a Mexican brothel.
- Antonio punches Jake and the two begin fighting. Once they are separated and brought to you, Antonio tells you what Jake said.

Scenario 3M

- Leo and Penny are both 8th graders with cell phones. One day, Leo keeps “airdropping” links to Penny’s phone.
- When Penny clicks on the links, she either gets sent to a pornographic website or is immediately shown a pornographic video.
- Penny tells a friend what Leo is doing, and her friend tells you during lunch.

High School Scenarios

Scenario 1H

- Amy and Zeke are both freshmen that share a class.
- One day, Zeke slaps Amy on the butt as he is walking by her.
- Later that same day, Amy decides that she is going to get revenge on Zeke.
- Amy walks up to Zeke and gives him a "titty-twister."
- You witness Amy's actions and, while talking to her, learn about Zeke's behavior from earlier in the day.
- Zeke admits to slapping Amy's butt.

Scenario 2H

- You receive a call from an angry mom.
- Mom tells you that she was searching her son's phone and found a text message from a female teacher.
- In the text message, her son asks if there is anything he can do to receive extra credit in the class.
- The teacher's response said, "With a body like yours, we can definitely come to an arrangement. Meet me in my classroom after school ends tomorrow and don't tell anyone."
- Mom sends you screenshots of the text messages.

Scenario 3H

- A teacher reports to you that a female student, Scarlett, is claiming that a male student, Chris, inappropriately touched her.
- You go speak to Scarlett, who tells you that her and Chris went with a group of friends to a party after the football game last Friday. They had all been drinking at the party, and on the ride home Chris started grabbing her breasts and butt until she hit him in the face.
- Scarlett and Chris do not have any classes together, and Scarlett says that when she sees Chris at school now he pretends that she isn't there.

Francis Howell School District

Building Administrator

Harassment/Discrimination Training

Emily Omohundro & Tom Smith

