

# CHANGING TIMES IN EDUCATION AND ANNUAL SEXUAL HARASSMENT TRAINING

## A Look At History

October 4, 1957 – Sputnik

Russians catapult to the forefront of the race for space and technological advancement.

America mobilizes to avoid falling behind.

- ⑥ "No matter what we do, now the Russians will beat us to the moon – maybe within a week."

John Rinehart – Smithsonian Astrophysical Observatory

- ⑥ "America lost a battle more important than Pearl Harbor."

Edward Teller – Inventor of the H-bomb

- ⑥ "The race for control of the universe has started."

George Reedy – Aide to Senator L. Johnson

- ⑥ 11 Days Later – President Eisenhower meets 14 prominent weapons scientists to discuss a response to the crisis and the need to boost American education.

- ⑥ 3 Weeks Later – Eisenhower meets with top officials tells them to draft the bill.

- ⑥ Within 3 Months – emergency spending measures are outlined for defense, space and the National Defense Education Act, approved within the year.

## National Defense Education Act

"... The security of the Nation requires the fullest development of the mental resources and technical skills of its young men and women. The present emergency demands that additional and more adequate educational opportunities be made available. The defense of this Nation depends upon the mastery of modern techniques developed from complex scientific principles. ..."

## Kennedy's Task Force on Education

"The national interest demands a first-rate system of schools and that every child has full opportunity to benefit from that system. Present standards must be improved... The first priority should be a rigorous program to lift schools to a new level of excellence."

- Financial assistance to public schools
- Additional assistance for underprivileged youth.

## A Nation At Risk

- President Reagan's National Commission on Excellence in Education seeks to address "failing schools" which are not producing a competitive workforce.

- Content
- Standards and Expectations
- Time
- Teaching
- Leadership and Fiscal Support

"The educational foundations of our society are being eroded by a rising tide of mediocrity that threatens our very future as a Nation and a people. If an unfriendly foreign power had attempted to impose upon America the mediocre educational performance that exists today, it might be viewed as an act of war."

- James J. Harvey, Author of A Nation At Risk

## NCLB

Premise: that setting high standards and establishing measurable goals can improve individual outcomes in education.

- ⊗ State-wide standardized tests
- ⊗ Adequate Yearly Progress
- ⊗ Highly Qualified Teachers

## The More Things Change ....

- ⊗ Improved teaching
- ⊗ Better student results
- ⊗ Declining resources
- ⊗ Graduation rates
- ⊗ Increase college track
- ⊗ Higher quality workforce
- ⊗ More Financial support

## ... The More They Stay The Same.

- ⦿ RACE TO THE TOP
- ⦿ APPR

## And Then ...

- ⦿ COVID-19

## COVID-19 – Phase 1

- ⦿ Distance Learning Plans
- ⦿ Meals and Child Care
- ⦿ Snow Days and Vacations
- ⦿ 180 Days and State Aid
- ⦿ Essential Workers
- ⦿ Hazardous Duties
- ⦿ APPR
- ⦿ Elections and Budgets

© YOU FIGURED IT OUT....

© YOU MADE IT WORK.

## COVID-19 – Phase 2

- © In-Person, Hybrid, Remote
- © Masks and Barriers
- © Health Screening
- © Contact Tracing
- © School Bus Safety
- © Sports
- © Opting Out
- © etc, etc, etc ...

## Seven Steps to Stagnation

1. WE HAVE NEVER DONE IT THAT WAY.
2. WE ARE NOT READY FOR THAT YET.
3. WE ARE DOING ALRIGHT WITHOUT IT.
4. WE TRIED THAT ONCE BEFORE AND IT DIDN'T WORK.
5. IT COSTS TOO MUCH.
6. THAT IS NOT OUR RESPONSIBILITY.
7. IT JUST WILL NOT WORK HERE.

## Crisis or Opportunity?

1. A crisis pushes people to determine what really matters most.
2. A crisis enables people to focus & think critically.
3. A crisis can filter out outdated commitments.
4. A crisis can create a breakthrough.

- ⑥ Are you a “problem spotter” or a “problem solver”?
- ⑥ Leaders are not born: Washington, Lincoln, T. Roosevelt, F. Roosevelt, Truman
- ⑥ We are the leaders – like it or not.

“You do not need to know precisely what is happening, or exactly where it is all going. What you need is to recognize the possibilities and challenges offered by the present moment, and to embrace them with courage, faith and hope.”

- Thomas Merton

"One of the great liabilities of history is that all too many people fail to remain awake through great periods of social change. Every society has its protectors of status quo and its fraternities of the indifferent who are notorious for sleeping through revolutions. Today, our very survival depends on our ability to stay awake, to adjust to new ideas, to remain vigilant and to face the challenge of change."

- Martin Luther King, Jr.

"When we least expect it, life sends us a challenge to test our courage and willingness to change; at such a moment, there is no point in pretending that nothing has happened or in saying that we are not yet ready. The challenge will not wait. Life does not look back. A week is more than enough time for us to decide whether or not to accept our destiny."

- Paulo Coelho

## Points to Remember

- ⑥ You make a difference.
- ⑥ Align values with your efforts.
- ⑥ Credibility is key.
- ⑥ Focus on the future.
- ⑥ Do not close the book on learning.

## More Points to Remember

- ⑥ Not Insurers of Safety
- ⑥ Reasonably Prudent Parent
- ⑥ May Need to Disappoint
- ⑥ Will Return to Normal (or a version of it)
- ⑥ Most Kids are Resilient

## What to Expect?

- People with Symptoms
- Case in the Building
- School Closure May Occur
- Essential/Non-Essential - 50%
- Substitute Staff
- Contracts Still Apply
- APPR Still Applies
- Code of Conduct Still Applies

## What to Expect?

- Past Practice Still Applies
- ADA and Vulnerable Populations
- Interactive Process
- Parental Concerns
- Educational Malpractice

# Sexual Harassment

- ⑥ Sexual harassment is a form of sex discrimination or gender-based employment discrimination.
- ⑥ It violates the following:
  - Title VII of the federal Civil Rights Act of 1964, which prohibits employment discrimination on the basis of sex (42 U.S.C. 2000e-2).
  - Title IX of the 1972 Educational Amendments (20 U.S.C. 1681), which prohibits discrimination in educational programs and activities that receive federal funds.
  - New York's Human Rights Law, which prohibits discrimination in employment on the basis of certain immutable characteristics such as gender and sexual orientation (Human Rights Law § 296).

## Sexual Harassment Defined

- ⑥ EEOC Definition:
  - Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature . . . when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
  - (2) submission to or rejection of such conduct by an individual is used as the basis for the employment decisions affecting such individual, or
  - (3) such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. 29 C.F.R. 1604.11(a).

## Quid Pro Quo Sexual Harassment

- ⑥ Involves situations where an employee's submission to or rejection of unwelcome sexual conduct is used by an employer to determine that person's terms or conditions of employment (*Karibian v. Columbia Univ.*, 14 F.3d 773 (2d Cir. 2004)).
- ⑥ To be liable, an individual need not directly supervise the employee but must be someone with the power and authority to affect the individual's employment (*Mack v. Otis Elevator Co.*, 326 F.3d 116 (2d Cir. 2003)), including a school board member (*Ragin v. Newburgh Enlarged City Sch. Dist.*, 2009 U.S. Dist. LEXIS 118704 (S.D.N.Y. Dec. 17, 2009)).
- ⑥ Examples of this kind of sexual harassment would include being given or denied a raise, transfer, or being disciplined for refusing to accede to the sexual advances of a supervisor.

## Hostile Environment Sexual Harassment

- ⑥ Usually, a pattern of unwelcome sexual conduct sufficiently severe to interfere with an individual's performance or to create an intimidating, hostile, or offensive working environment.
- ⑥ Examples: repeated sexual remarks aimed at an individual who finds the remarks offensive; and physical assault and sexual intimidation such as unwelcome sexual touching and contact (see *Maher v. Alliance Mortg. Banking Corp.*, 650 F.Supp.2d 249 (E.D.N.Y. 2009)).
- ⑥ As a general rule a few isolated incidents would not be sufficient to support a hostile environment sexual harassment claim. However, a single incident would be sufficient if it was extraordinarily severe, and so would separate incidents if they were sufficiently continuous and concerted so as to alter the work environment (*Clark Cnty. Sch. Dist. v. Breeden*, 532 U.S. 268 (2001); *Terry v. Ashcroft*, 336 F.3d 128 (2d Cir. 2003)).
- ⑥ Courts will look at the totality of the circumstances (*Harris v. Forklift Sys. Inc.*, 510 U.S. 17 (1993); *Durkin v. Verizon N.Y., Inc.*, 678 F.Supp.2d 124 (S.D.N.Y. 2009)).

## Who can be the Target of Sexual Harassment?

- Sexual harassment can occur between males and females, or between persons of the same sex.
  - The term "sex" includes sexual orientation, gender identity and the status of being transgender.
- Sexual harassment that occurs because the victim is transgender is also unlawful.
- The law protects employees, unpaid interns, and non-employees who work in the workplace, including independent contractors, and those employed by companies contracting to provide services in the workplace.

## Who can be the Perpetrator of Sexual Harassment?

- The perpetrator of sexual harassment can be anyone in the workplace:
  - The harasser can be a **coworker** of the recipient
  - The harasser can be a **supervisor** or **manager**
  - The harasser can be any third-party, including: a **non-employee, intern, vendor, building security, client, customer** or **visitor**.

## Where Can Workplace Sexual Harassment Occur?

- Harassment can occur **whenever and wherever** employees are fulfilling their work responsibilities, including in the field, at any employer-sponsored event, trainings, conferences open to the public and office parties.
- Employee interactions during off hours, such as at a hotel while traveling or at events after work can have an impact in the workplace.
- Locations off site and off-hour activities can be considered extensions of the work environment.
- Harassing behavior that in any way affects the work environment is rightly the concern of management.

## Sex Stereotyping

- Sex stereotyping occurs 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 the opposite sex, is sex discrimination.

## Retaliation

- Any employee who has engaged in "protected activity" is protected by law from being retaliated against because of that "protected activity."
- "Protected activities" with regard to harassment include:
  - Making a complaint to a supervisor, manager or another person designated by your employer to receive complaints about harassment
  - Making a report of suspected harassment, even if you are not the recipient
  - Filing a formal complaint about harassment
  - Opposing discrimination
  - Assisting another employee who is complaining of harassment
  - Providing information during a workplace investigation of harassment, or testifying in connection with a complaint of harassment filed with a government agency or in court

## The Supervisor's Responsibility

- Supervisors and managers are held to a high standard of behavior. This is because:
  - They are placed in a position of authority by the employer and must not abuse that authority.
  - Their actions can create liability for the employer without the employer having any opportunity to correct the harassment.
  - They are required to report any harassment that is reported to them or which they observe.
  - 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.

## The Supervisor's Responsibility – Mandatory Reporting

- Supervisors **must report any harassment** that they observe or know of, even if no one is objecting to the harassment.
- If a supervisor or manager receives a report of harassment, or is otherwise aware of harassment, it must be promptly reported to the employer, without exception.
  - Even if the supervisor or manager thinks the conduct is trivial
  - Even if the harassed individual asks that it not be reported
- Supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.
- Supervisors and managers will also be subject to discipline for engaging in any retaliation.

## What Should I Do If I Am Harassed?

- You are encouraged to report harassment to a supervisor, manager or other another person designated by your employer to receive complaints (as outlined in our sexual harassment prevention policy) so the employer can take action.
- Behavior does not need to be a violation of law in order to be in violation of the policy.
- We will provide you with a complaint form to report harassment and file complaints, but if you are more comfortable reporting verbally or in another manner, we are still required to follow the sexual harassment prevention policy by investigating the claims.

## What Should I Do If I Am Harassed?

- If you believe that you have been subjected to sexual harassment, you are encouraged to complete the Complaint Form and submit it to:
  - PERSON OR OFFICE SO DESIGNATED
  - CONTACT INFO
  - HOW TO SUBMIT COMPLAINT FORM
- Once you submit this form or otherwise report a complaint, our organization must follow its sexual harassment prevention policy and investigate any claims.
- You should report any behavior you experience or know about that is inappropriate, as described in this training, without worrying about whether or not it is unlawful harassment.
- Individuals who report or experience harassment should cooperate with management so a full and fair investigation can be conducted and any necessary corrective action can be taken.
- If you report harassment to a manager or supervisor and receive an inappropriate response, such as being told to "just ignore it," you may take your complaint to the next level.

## What Should I Do If I Witness Sexual Harassment?

- Anyone who witnesses or becomes aware of potential instances of sexual harassment should report it to a supervisor, manager or designee.
- It is unlawful for an employer to retaliate against you for reporting suspected sexual harassment or assisting in any investigation.

## Investigations and Corrective Action

- Anyone who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action, up to and including termination.
- All employers must investigate all reports of harassment, whether information was reported in verbal or written form.
- An investigation of any complaint should be completed within a reasonable timeframe, for example, within 30 days.
- The investigation will also be confidential to the extent possible.
- Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment.
  - It is illegal for employees who participate in any investigation to be retaliated against.

## Additional Protections and Remedies

### United States Equal Employment Opportunity Commission (EEOC)

- An individual can file a complaint with the EEOC anytime **within 300 days** from the alleged discrimination. You do not need to have an attorney to file.
- A complaint must be filed with the EEOC before you can file in federal court.
- For more information, visit: [www.eeoc.gov](http://www.eeoc.gov).
- *NOTE: If an individual files an administrative complaint with DHR, DHR will automatically file the complaint with the EEOC to preserve the right to proceed in federal court.*

### Local Protections

- Many localities enforce laws protecting individuals from sexual harassment and discrimination.
- You should contact the county, city or town in which you live to find out if such a law exists.
- Harassment may constitute a crime if it involves things like physical touching, coerced physical confinement or coerced sex acts. **You should also contact the local police department.**

## Additional Protections and Remedies

### New York State Division of Human Rights (DHR)

- A complaint alleging violation of the Human Rights Law may be filed either with DHR or in New York State Supreme Court.
- Complaints may be filed with DHR any time **within one year** of the alleged discrimination. You do not need to have an attorney to file.
- If an individual did not file at DHR, they can sue directly in state court under the Human Rights Law, **within three years** of the alleged discrimination.
- An individual may not file with DHR if they have already filed a Human Rights Law complaint in state court.
- For more information, visit: [www.dhr.ny.gov](http://www.dhr.ny.gov).

## Standard of Proof

- "By ending the absurd legal standard that sexual harassment in the workplace needs to be **'severe or pervasive'** and making it easier for workplace sexual harassment claims to be brought forward, we are sending a strong message that time is up on sexual harassment in the workplace and setting the standard of equality for women." Gov. Cuomo
- Harassment will now be defined as any conduct that subjects someone to inferior treatment—**beyond "petty slights and trivial inconveniences"**—on the basis of age, race, sex, religion and other specified categories.

## Sexual Harassment Case Studies

- Li Yan's coworker Ralph has just been through a divorce. He drops comments on a few occasions that he is lonely and needs to find a new girlfriend. Li Yan and Ralph have been friendly in the past and have had lunch together in local restaurants on many occasions. Ralph asks Li Yan to go on a date with him—dinner and a movie. Li Yan likes Ralph and agrees to go out with him. She enjoys her date with Ralph but decides that a relationship is not a good idea. She thanks Ralph for a nice time, but explains that she does not want to have a relationship with him. Ralph waits two weeks and then starts pressuring Li Yan for more dates. She refuses, but Ralph does not stop. He keeps asking her to go out with him.
  - **Question 1.** When Ralph first asked Li Yan for a date, this was sexual harassment. True or False?
  - **Question 2.** Li Yan cannot complain of sexual harassment because she went on a date with Ralph. True or False?

## Sexual Harassment Case Studies

- Li Yan complains to her supervisor, and the supervisor (as required) reports her complaint to the person designated by her employer to receive complaints. Ralph is questioned about his behavior and he apologizes. He is instructed by the designated person to stop. Ralph stops for a while but then starts leaving little gifts for Li Yan on her desk with accompanying love notes. The love notes are not overtly offensive, but Ralph's behavior is starting to make Li Yan nervous, as she is afraid he may start stalking her.
  - **Question 3.** Ralph's subsequent behavior with gifts and love notes is not sexual harassment because he has stopped asking Li Yan for dates as instructed. He is just being nice to Li Yan because he likes her. True or False?

## Sexual Harassment Case Studies

- Sharon transfers to a new location with her employer. Her new supervisor, Paul, is friendly and helps her get familiar with her new job duties. After a few days, when no one else is around, Paul comes over to Sharon's work area to chat. Paul talks about what he did last night, which was to go to a strip club. Sharon is shocked that Paul would bring up such a topic in the workplace and says nothing in response. Paul continues talking and says that all the women in the office are so unattractive that he needs to get out and "see some hot chicks" once in a while. He tells Sharon he is glad she joined the staff because, unlike the others, she is "easy on the eyes." Sharon feels very offended and demeaned that she and the other women in her workplace are being evaluated on their looks by their supervisor.

## Sexual Harassment Case Studies

- **Question 1.** Because Paul did not tell Sharon that she is unattractive, he has not harassed her. True or False?
- **Question 2.** By bringing up his visit to the strip club, Paul is engaging in inappropriate workplace behavior. True or False?
- **Question 3.** Paul should be instructed to stop making these types of comments, but this is not a serious matter. True or False?

## Sexual Harassment Case Studies

- Carla works as a licensed heavy equipment operator. Some of her male coworkers think it is fun to tease her. Carla often hears comments like "Watch out, here she comes—that crazy woman driver!" in a joking manner. Also, someone keeps putting a handmade sign on the only port-a-potty at the worksite that says "Men only."
- **Question 1.** Women in traditionally male jobs should expect teasing and should not take the joking comments too seriously. True or False?
- **Question 2.** Carla cannot complain, because the site supervisor sometimes joins in with the joking behavior, so she has nowhere to go. True or False?

## Sexual Harassment Case Studies

- Some of Carla's other coworkers are strongly opposed to her presence in the traditionally all-male profession. These coworkers have sometimes said things to her like, "You're taking a job away from a man who deserves it," "You should be home with your kids," and "What kind of a mother are you?" Also, someone scratched the word "bitch" on Carla's toolbox.
- **Question 3.** These behaviors, while rude, are not sexual harassment because they are not sexual in nature. True or False?
- Carla complains about the jokes and other behaviors, and an investigation is conducted. It cannot be determined who defaced Carla's toolbox. Her coworkers are told to stop their behavior or face disciplinary charges. The supervisor speaks with Carla and tells her to come to him immediately if she has any further problems. Carla then finds that someone has urinated in her toolbox.
- **Question 4.** There is nothing Carla can do because she can't prove who vandalized her toolbox. True or False?

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## Sexual Harassment Case Studies

- Keisha has noticed that her new boss, Harold, leans extremely close to her when they are going over the reports that she prepares. He touches her hand or shoulder frequently as they discuss work. Keisha tries to move away from him in these situations, but he doesn't seem to get the message.
  - **Question 1.** Keisha should just ignore Harold's behavior, as it is not sufficiently severe or pervasive. True or False?
- Before Keisha gets around to complaining, Harold brushes up against her back in the conference room before a meeting. She is now getting really annoyed but still puts off doing anything about it. Later Harold "traps" her in his office after they finish discussing work by standing between her and the door of his small office. Keisha doesn't know what to do, so she moves past him to get out. As she does so, Harold runs his hand over her breast.
  - **Question 2.** Harold's brushing up against Keisha in the conference room could just be inadvertent and does not give Keisha any additional grounds to complain about Harold. True or False?
  - **Question 3.** Harold touching Keisha's breast is inappropriate but is probably not unlawful harassment because it only happened once. True or False?

## Sexual Harassment Case Studies

- Tatiana is hoping for a promotion to a position that she knows will become vacant soon. She knows that her boss, David, will be involved in deciding who will be promoted. She tells David that she will be applying for the position, and that she is very interested in receiving the promotion. David says, "We'll see. There will be a lot of others interested in the position."
- A week later, Tatiana and David travel together on state business, including an overnight hotel stay. Over dinner, David tells Tatiana that he hopes he will be able to promote her, because he has always really enjoyed working with her. He tells her that some other candidates "look better on paper" but that she is the one he wants. He tells her that he can "pull some strings" to get her into the job and Tatiana thanks David. Later David suggests that they go to his hotel room for "drinks and some relaxation." Tatiana declines his "offer."
- **Question 1.** David's behavior could be harassment of Tatiana. True or False?

## Sexual Harassment Case Studies

- After they return from the trip, Tatiana asks David if he knows when the job will be posted so that she can apply. He says that he is not sure, but there is still time for her to "make it worth his while" to pull strings for her. He then asks, "How about going out to dinner this Friday and then coming over to my place?"
- **Question 2.** David engaged in quid pro quo harassment. True or False?
- Tatiana, who really wants the position, decides to go out with David. Almost every Friday they go out at David's insistence and engage in sexual activity. Tatiana does not want to be in a relationship with David and is only going out with him because she believes that he will otherwise block her promotion.
- **Question 3.** Tatiana cannot complain of harassment because she voluntarily engaged in sexual activity with David. True or False?

## Sexual Harassment Case Studies

- ④ Tatiana receives the promotion.
  - **Question 4.** Tatiana cannot complain of harassment because she got the job, so there is no discrimination against her. True or False?
- ⑤ Tatiana breaks off the sexual activities with David. He then gives her a bad evaluation, and she is removed from her new position at the end of the probationary period and returns to her old job.
  - **Question 5.** It is now "too late" for Tatiana to complain. Losing a place of favor due to the break up of the voluntary relationship does not create a claim for sexual harassment. True or False?

## Sexual Harassment Case Studies

- ③ Leonard works as a clerk typist for a large employer. He likes to wear jewelry, and his attire frequently includes earrings and necklaces. His boss, Margaret, thinks it's "weird" that, as a man, Leonard wears jewelry and wants to be a clerical worker. She frequently makes sarcastic comments to him about his appearance and refers to him "jokingly" as her office boy. Leonard, who hopes to develop his career in the area of customer relations, applies for an open promotional position that would involve working in a "front desk" area, where he would interact with the public. Margaret tells Leonard that if he wants that job, he had better look "more normal" or else wait for a promotion to mailroom supervisor.
  - **Question 1.** Leonard's boss is correct to tell him wearing jewelry is inappropriate for customer service positions. True or False?

## Sexual Harassment Case Studies

- Margaret also is "suspicious" that Leonard is gay, which she says she "doesn't mind," but she thinks Leonard is "secretive." She starts asking him questions about his private life, such as "Are you married?" "Do you have a partner?" "Do you have kids?" Leonard tries to respond politely "No" to all her questions but is becoming annoyed. Margaret starts gossiping with Leonard's coworkers about his supposed sexual orientation.
- **Question 2.** Leonard is the recipient of harassment on the basis of sex and sexual orientation. True or False?