



School administrators need to recognize sexual harassment and respond to both its victims and perpetrators.

# Preventing Sexual Harassment of School Employees

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**I**t began when he said, "This is going to be our year. I plan on going to bed with you, so think about when and where." Although she told him she found his behavior objectionable, he continued.

One day she found a note on her desk listing the qualifications necessary to be his secretary; one was "willing to go to bed with Supt." He often showed her a note that read, "Smile if you would like to get laid now." And on several occasions he grabbed and forcibly kissed her, attempted to touch her breasts, or tried to put his hand under her skirt.

She continued to resist. He tried to defame her character, accusing her of having a "foul mouth" and of dress that was "in bad taste and most suggestive." She sued him and the board of education; the board fired her.<sup>1</sup>

Is this New Jersey (Kittatinny Regional Board of Education) case a fluke, or is it an example of a problem many schools now face?

Consider the Pinellas County, Florida, incident. The facts are similar, only the characters change. According to a *Today's Education* article, an elementary teacher complained to her local

education association that the principal of her school was harassing her. After that, some 14 other teachers came forward with similar charges against the man. A local newspaper reported that the principal had "fondled a teacher's breasts; written a critical evaluation of a teacher who rejected his advances; showed a teacher a magazine photograph of a nude



# Summary of the EEOC Guidelines

## Definition of sexual harassment

"Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly 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 employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

## Employer liability

An employer "is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence."

"With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have

known of the conduct, unless it can show that it took immediate and appropriate corrective action."

"An employer may also be responsible for the acts of nonemployees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action."

## Steps for prevention

"An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned."

## Other related practices

"Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit."

woman, saying, 'She reminds me of you'; and suggestively held a pair of girl's underpants in front of another female teacher." The article reports that the principal testified that he was "a man first, a principal second."<sup>2</sup>

Several years ago these incidents would have been considered personal or private. Now such behavior is termed sexual harassment, a form of sex discrimination prohibited by federal law as well as by statutes in many states. The resolutions of these cases illustrate that such behaviors are no longer personal proclivities, and that the cases are not flukes. The New Jersey secretary received \$14,000 from the board of education and the superintendent. In addition, the superintendent had to write her a letter of apology. In both instances the administrators were relieved of their duties, and the Florida principal had his certificate revoked.<sup>3</sup> These actions point out that what once had been considered a private matter is now clearly "another dimension of the public order."<sup>4</sup>

Sexual harassment was explicitly brought under the purview of Title VII (Civil Rights Act of 1964) by the Equal Employment Opportunity Commission's "Final Amendment to Guidelines on Discrimination Because of Sex" (hereafter referred to as the EEOC guidelines). Prior to the enactment of the EEOC guidelines, a growing body of case law supported charges of sexual harassment as a form of sex discrimination. Although federal guidelines do not carry the force of law, courts do give

them great deference.

Since virtually all school districts are covered by Title VII and many are subject to state statutes prohibiting sexual harassment, school personnel need to know what behaviors constitute sexual harassment, where sexual harassment can be found, the extent to which schools may be liable for such charges, and, especially, what steps administrators need to take to protect themselves and their employees.

## What Is Sexual Harassment?

The EEOC definition (see box) is wide

in scope, covering both nonverbal and verbal behavior that interferes with a person's work performance or creates a debilitating environment. According to the guidelines, each case is decided on its own merits. Since this definition is so general, reviewing a more explicit listing of behaviors clarifies just what sexual harassment is or can be.

The federal government's study of sexual harassment, conducted by the Merit Systems Protection Board, classifies rape and sexual assault as the most severe forms of sexual harassment. These forms are traditionally prohibited

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by state criminal codes. Severe forms including pressure for sexual favors; unsolicited touching, cornering, leaning over, and pinching; and sexually oriented materials, unsolicited letters, or telephone calls. Less severe forms of sexual harassment can include pressure for dates, sexually suggestive looks or gestures; and sexual remarks, questions, jokes, or teasing that are unsolicited.<sup>5</sup> Although it is unlikely that a single instance of the less severe forms would constitute sexual harassment, a repeated pattern of such behavior or several such incidents would likely be considered sexual harassment.

Exempted from both the EEOC guidelines and case law are mutually desired romantic relationships. As the National Education Association (NEA) states in its policy regarding sexual harassment, "It is not NEA's intention to regulate the legitimate social activities that its officers, employees, and other representatives choose to engage in. NEA believes, however, that it is obligated to provide each employee with a work environment that is free from unsolicited and unwelcome sexual overtures, and this policy has been adopted in an effort to fulfill that obligation."<sup>6</sup>

Although reciprocal office romances are exempted from the EEOC guidelines, there is legal precedent suggesting that both the female and male employee involved in a romance should not be treated differently on the basis of sex.<sup>7</sup> For example, reassigning the woman because of her involvement in a relationship but simply "talking to" the man would be an instance of differential treatment solely on the basis of sex. That would be an example of sex discrimination, a probable violation of Title VII.

Although not explicitly stated, the EEOC guidelines have been interpreted to cover situations of males sexually harassing females, females sexually harassing males, and homosexuals sexually harassing others of their own sex.<sup>8</sup> This coverage is also set forth in Title VII case law, especially the 1977 *Barnes v. Costle* decision.<sup>9</sup> This opinion affirms that sexual harassment is sex discrimination because members of one sex are being treated differently from members of the opposite sex. Whether the perpetrator is heterosexual or homosexual is not a decisive factor. On the other hand, bisexuals who harass both sexes equally are not guilty of sexual harassment. They may, however, have committed an act of harassment, usually a

prohibited personnel practice.

### Where Is Sexual Harassment Found?

To what degree does sexual harassment of employees exist in public elementary and secondary schools? We simply do not know because of lack of research in this area. However, we do get an indication of the extent of this problem from data gathered for business and industry, the military, and federal and state government.

To assess the extent of the problem in the federal government, Congress directed the Merit Systems Protection Board to conduct a systematic study of sexual harassment in the federal workforce. Eighty-five percent of a random sample of 23,000 federal civilian employees responded to the survey conducted in 1980. Forty-two percent of the women and 15 percent of the men responding had experienced some form of sexual harassment within a two-year period.

The findings of this study indicate that sexual harassment is a problem encountered by significant numbers of federal workers; that it is usually perpetrated by men toward women; that it is experienced by women of various backgrounds, positions, ages, and geographic areas; and that it has a marked impact on the lives of those who are its victims. In addition, more than 80 percent of the respondents to the Merit Systems Protection Board Study who had held positions outside the federal government indicated that there was the same amount of sexual harassment or more in nonfederal jobs.<sup>10</sup>

Other surveys have produced similar results. In an informal survey of women on a naval base and in the neighboring town of Monterey, California, 80 percent of the respondents indicated that they had personally experienced sexual harassment.<sup>11</sup> A 1980 study of state employees in Maryland revealed that 41 percent of the female employees had experienced sexual harassment during their employment in state service.<sup>12</sup>

In a 1976 *Redbook* survey, the first ever reported on sexual harassment, nine out of ten women reported experiencing some type of sexual harassment on the job, and most had experienced the more subtle forms. Almost half of all respondents said that either they themselves or a woman they knew had quit a job or had been fired because of sexual harassment. These women were employed in all segments of society. *Redbook's* timing and the overwhelming

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response to the survey (9,000 women) served to bring sexual harassment out of the closet, exposing its pervasiveness in American society.<sup>13</sup>

Given these studies, along with the anecdotes introducing this article, we can assume that sexual harassment of employees exists in elementary and secondary schools. Considering normal school staffing patterns, we might suspect that sexual harassment is more likely to be found in administrative offices and junior and senior high schools than in elementary schools. A possible hypothesis is that the likelihood of sexual harassment increases as the number of men supervising women and the number of women and men working together increases. However, as the Pinellas County case illustrates, sexual harassment can happen in elementary schools, many of which have a staffing pattern of a single male supervisor and a primarily female staff. The extent and types of sexual harassment found in educational institutions need to be documented.

### When Is an Employer Liable?

Boards of education and administrators should be aware of their potential liability in cases of sexual harassment. These standards are set forth in the EEOC guidelines (see box). Employers (including boards of education) are liable for the sexually harassing acts of their "agents and supervisory employees" as well as sexually harassing acts between coworkers or between nonemployees and employees under the following conditions:

• *Agents and supervisory employees:* Employers are liable regardless of whether the acts were "complained of, were authorized, or even forbidden," and regardless of whether the employers had knowledge of the sexually harassing acts.

# Help in Eliminating Sexual Harassment

**A**dministrators seeking advice or assistance in any aspect of eliminating sexual harassment, such as policy development or supervisory training, can contact their area sex desegregation assistance center. These 11 centers, funded under the Civil Rights Act of 1964, provide public school personnel with technical assistance and training services designed to eliminate sex bias and discrimination in educational programs and activities and in employment. For the name of the center in each region, contact the Mid-Atlantic Center for Sex Equity, School of Education, The American University, Washington, DC 20016. The telephone number is (202) 686-3511.

• **Coworkers:** Employers are liable for sexually harassing acts between fellow employees where they knew or should have known of the conduct, unless they can demonstrate that they took "immediate and appropriate corrective actions."

• **Nonemployees:** Employers may be liable for sexually harassing acts by non-employees or employees where they knew or should have known about the conduct, unless they can show that they took "immediate and appropriate corrective action." (Nonemployees could be vendors or delivery persons having contact with school personnel. Whether students could be considered nonemployees has not been addressed.)

Initially, the courts held that for an employer to be liable the sexual harassment had to be related to a job benefit such as a raise or promotion. However, in a landmark decision in 1981, the U.S. Court of Appeals in Washington, D.C., ruled that the plaintiff did not have to show any loss of tangible job benefits. The "psychological and emotional work environment" was indeed part of the conditions of employment, according to this decision, and employees had the right to a work environment free from sexual harassment.<sup>14</sup>

Moreover, in finding employers liable under Title VII or state laws, courts have ordered back pay, front pay,<sup>15</sup> damages, reinstatement, promotion, and attorney's fees. They have also ruled that persons quitting their jobs because of sexual harassment are entitled to unemployment compensation.

Thus, it's apparent that boards of education can be held liable for the sexually harassing acts of school employees in a variety of instances. The

situation could be that of a principal denying his secretary a promotion because she refuses to sleep with him; it could be a male custodian putting pictures of naked women in the locker of a female coworker; or it might be a student repeatedly propositioning a teacher.

## How Can an Employer Be Protected from Charges of Sexual Harassment?

The EEOC guidelines state that prevention is the best approach and stress that an employer should take all steps necessary to prevent the occurrence of sexual harassment. So far, that's been the strategy taken by business, industry, and federal, state, and local governments. For example, major industries, such as Hewlett-Packard Company, General Motors Corporation, Bank of America, and IBM, have issued anti-harassment policies, provided training for supervisors, reviewed and strengthened their internal grievance procedures, and reprimanded or fired known harassers. Moreover, the cities of New York, Philadelphia, and Los Angeles as well as many state and federal agencies have begun programs to eliminate and prevent sexual harassment in the workplace.<sup>16</sup> In December 1979 the Office of Personnel Management (OPM) issued a policy statement on sexual harassment applicable to each federal agency and department. OPM recommended that this policy be part of new employee orientation on the code of conduct and that agencies inform employees of avenues for seeking redress and actions that will be taken against employees violating the policy.<sup>17</sup>

Are the same types of responses appropriate for educators?

According to Sam W. Ray, associate superintendent of the Norfolk City Schools, the first step is enacting a policy prohibiting sexual harassment. "We recognize sexual harassment as a national problem," he said. "It was in our best interests as well as those of our employees for us to act in concert with business and industry by incorporating a statement on sexual harassment into our board of education policies."

George Margolies, legal counsel for the District of Columbia Public Schools, also believes strongly that a district should have a policy statement prohibiting sexual harassment. He said, "We should avoid demeaning employees and ourselves by such behavior. Sexual harassment in schools results in a debilitating environment that certainly contributes to low morale as well as lower productivity. Eliminating sexual harassment helps ensure that employees can work together to achieve the schools' mission."

District of Columbia public schools issued a superintendent's directive prohibiting sexual harassment in August 1979. It was a confirmation of the D.C. Mayor's Order, which read in part:

The purpose of this order is to establish clearly and unequivocally that the policy of the District of Columbia government prohibits sexual harassment of its employees in any form; to establish procedures by which allegations of sexual harassment may be filed, investigated and adjudicated; and to require agencies to establish affirmative programs within each agency, including internal procedures and monitoring so that work sites will be maintained free from sexual harassment.<sup>18</sup>

Such a policy on sexual harassment may be a separate statement, or it may simply be an addition to the board of education's already existing policy on equal opportunity in employment practices.

Once a policy is in place, the next step is developing guidelines to implement it. These guidelines should detail the rights and responsibilities of employees and include grievance procedures and consequences of violations of the policy. During the development of these guidelines, the district's existing grievance procedure should be reviewed to ensure its applicability to cases involving sexual harassment.

## Grievance Procedures

Since harassers are often immediate supervisors, an effective grievance procedure should allow employees to file complaints with someone other than their supervisor. George Johnston, of

the Baltimore law firm of Venable, Bacter, and Howard, suggests that the internal procedure for filing and processing employee complaints of harassment provide at least two alternative routes. That gives employees a route for processing their complaints other than through the perpetrator of the harassment. Johnston also indicates that sanctions be developed for those guilty of sexual harassment: "Harassment should be treated as a major disciplinary offense, so that depending upon the circumstances and the degree of harassment, the offender might be disciplined with a suspension subject to discharge."

The third step is for administrators to disseminate the policy and guidelines for implementation. All employees should receive a copy and be aware of their obligations to conduct themselves in accordance with the policy. That means raising the subject even if it hasn't been openly discussed in the school district.

Enacting and publicizing a policy will eventually serve to reduce or eliminate sexual harassment, although it may result in a temporary increase of complaints since employees have just become aware of their rights. For example, before Western Michigan University in Kalamazoo enacted a policy statement condemning sexual harassment, it had never had a complaint. Afterwards, however, more than a dozen of its 2,500 workers filed complaints; and most of the accused male employees admitted their inappropriate behavior.<sup>19</sup>

As part of implementation, training should be provided to administrators and supervisors in handling incidents of sexual harassment. Attorney George Johnston, whose major clients are public schools, states that administrators need to "train supervisors as to what conduct they are not permitted to engage in, and also . . . what conduct . . . employees are not permitted to engage in, so that disciplinary action can be taken by supervisors when appropriate." That training may include skill development in discussing sensitive issues with employees and in confronting known harassers.

District of Columbia public schools' George Margolies believes that although a policy statement is necessary, it is insufficient to "prevent and preclude sexual harassment." To that end, the District has conducted training sessions for both its top- and mid-level administrators and managers on the topic of

sexual harassment. Such sessions have addressed identifying sexual harassment, requirements of the EEOC guidelines, Title VII case law, the superintendent's directive, and the District's own internal procedures for handling complaints of sexual harassment.

Armita Sims, educational equity specialist for the Mid-Atlantic Center for Sex Equity, and Kent Boesdorfer, senior consultant with Organizational Leadership, Inc., conduct training sessions on sexual harassment for school administrators. Says Sims: "We've noticed a reluctance on the part of some administrators to face the issue. Their fear of dealing with such a sensitive topic causes them to have an organizational blind spot. If employees know that their administrator or supervisor is reluctant to respond, they're less likely to raise the issue." And she continued, "One of the advantages of training is that administrators can strengthen their skills in recognizing sexual harassment and in responding to both its victims and perpetrators."

Boards of education and administrators who ignore the issue of sexual harassment may find their school district vulnerable to court-assessed remedies, adverse publicity, and a reputation that undermines citizen support for schools. That cost, in terms of money, time, and psychic energy, far exceeds that necessary to act affirmatively to eliminate and prevent sexual harassment. □

<sup>1</sup>*Peter v. Aiken*, Amended and Supplemental Complaint, Superior Court, New Jersey (January 1979).

<sup>2</sup>Barbara Stein, "Sexual Harassment on the Job," *Today's Education* (February-March 1981): 82GS.

<sup>3</sup>Telephone conversation with plaintiff Peter and her attorney, Naomi F. Eber, June 1981; and telephone conversation with Lou Kubler, ex-president of the Pinellas Classroom Teachers Association, August 1981.

<sup>4</sup>Catherine A. MacKinnon, *Sexual Harassment of Working Women* (New Haven: Yale University Press, 1979), p. 58.

<sup>5</sup>*Sexual Harassment in the Federal Workplace: Is It a Problem?* (Washington, D.C.: Office of Merit Systems Review and Studies, U.S. Merit Systems Protection Board, 1981), p. 4.

<sup>6</sup>Memorandum to NEA employees from Terry Herndon, Executive Director, September 9, 1980.

<sup>7</sup>EEOC Decision No. 71-2678 (1971); CCH EEOC Decisions 6287, 4 BNA FEP Cas 24.

<sup>8</sup>Paul S. Greenlaw and John P. Kohl, "Sexual Harassment: Homosexuality, Bisex-

**"Enacting and publicizing a policy will eventually reduce or eliminate sexual harassment."**

uality, and Blackmail," *Personnel Administrator*, June 1981, pp. 59-62.

<sup>9</sup>*Barnes v. Costle* (1977) 183 App DC 90, 561 F2d 983.

<sup>10</sup>*Sexual Harassment in the Federal Workplace*, pp. 97-99.

<sup>11</sup>"Sexual Harassment: A Hidden Issue" (Washington, D.C.: Project on the Status and Education of Women, Association of American Colleges, June 1978), p. 2.

<sup>12</sup>*A Survey of Sexual Harassment in Maryland State Government* (Baltimore: Maryland Commission for Women, August 1980), p. 1.

<sup>13</sup>Claire Sofran, "The Joint Redbook-Harvard Business Review Report: A Survey of 2000 Executives," *Redbook Magazine*, March 1981, p. 49.

<sup>14</sup>*Bundy v. Jackson*, 24 FEP Cas 1155.

<sup>15</sup>Front pay relief is sought when, because of the employer's legitimate business practices, there will be a substantial delay between a court order or the parties agreeing to prospective relief (hiring, promotion, or reinstatement) and the actual receipt of the relief. An award of front pay obligates the employer to pay the salary of the unlawfully denied job during the delay.

<sup>16</sup>Joann S. Lublin, "Employers Act to Curb Sex Harassing on the Job; Lawsuits, Fines Feared," *The Wall Street Journal*, April 24, 1981, p. 1.

<sup>17</sup>Memorandum to Heads of Departments and Independent Agencies from Alan K. Campbell, Director, U.S. Office of Personnel Management, December 17, 1979.

<sup>18</sup>District of Columbia Mayor's Order 79-89, May 24, 1979.

<sup>19</sup>Lublin, "Employers Act to Curb. . ."

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