

Maiello Brungo & Maiello

ATTORNEYS AT LAW



*Tools to Combat
Workplace Harassment*

April 1, 2022

*Falco A. Muscante, Esquire
Christina L. Lane, Esquire*

Maiello Brungo & Maiello

ATTORNEYS AT LAW

Objectives

- At the close of this session, you will be able to:
 1. Define harassment
 2. Explain the difference between harassment that violates policy/law and certain behavior that is inappropriate/unprofessional
 3. Understand your responsibility to report and preventing harassment in the workplace
 4. Be aware of the laws that prohibit and provide protection against harassment
 5. Describe the Riverview School District policies and procedures on harassment
 6. Understand the role of the Title IX Coordinator and Compliance Officer

CIVILITY IN THE WORKPLACE

- Workplace harassment is unacceptable conduct and is not tolerated at any level within Riverview School District. You each have responsibility for maintaining high standards of honesty, integrity, and conduct as faculty and staff members of Riverview School District.
- The prevention/ elimination of harassment is EVERYONE'S responsibility.

Why is this training important?

Harassment harms us all. An important part of Riverview's values is to ensure that all employees are treated with respect and dignity. Engaging in, condoning, or failing to report harassment are in direct conflict with Riverview's values and legal obligations.



[Watch my Powtoon: Prevent Sexual Harassment](#)

Laws forming the basis of Discrimination Claims

- Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of a person's race, color, religion, sex or national origin.
- Title IX of the Education Amendments of 1972 (Title IX), and the regulations promulgated by the United States Department of Education prohibits discrimination on the basis of sex.
- Americans with Disabilities Act 1990 prohibits discrimination based on physical or mental impairment, and also requires reasonable accommodations.
- Equal Pay Act of 1963 protects men and women who perform substantially equal work in the same establishment from sex-based discrimination.
- Age Discrimination in Employment Act of 1967 protects individuals who are 40 years and older against age discrimination.

Sexual Harassment Defined

"Sexual harassment" is defined as conduct on the basis of sex that satisfies one or more of the following:

- (1) 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;
- (2) 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 Harassment Defined

(3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v) of the Clery Act, "dating violence" as defined in 34 U.S.C. 12291(a)(10) of the Violence Against Women Act (VAWA), or stalking as defined in 34 U.S.C. 12991(a)(30) of the VAWA.

Unwelcome sexual conduct defined

"Unwelcome sexual conduct" may include but is not limited to:

making sexual propositions or pressuring others for sexual favors; touching of a sexual nature; writing graffiti of a sexual nature; displaying or distributing sexually explicit drawings, pictures, or written materials; performing sexual gestures or touching oneself sexually in front of others; telling sexual or dirty jokes; spreading sexual rumors or rating others as to sexual activity or performance; and circulating or showing emails or websites of a sexual nature.

Myths of Sexual Harassment

Myth #1 – Sexual Harassment is only physical in nature

It can be direct, indirect, verbal and non-verbal. A colleague writing explicit content about another on the office whiteboard is considered as sexual harassment. It doesn't necessarily need to be physical. Other common subtle sexual behaviors are: whistling, unwelcome complimenting, inappropriate brushing against you, gesturing, commenting on things of sexual nature.

Myths of Sexual Harassment

Myth #2 – It's ok as long as humiliation was not intended

Sexual gesturing and comments directly or indirectly towards another in the name of a bit of fun, or just being friendly just as a joke is still sexual harassment. So when the offender apologizes and says that they did not mean it to cause humiliation, that does not mean that the behavior was acceptable or okay.

Myths of Sexual Harassment

Myth #3 – But it was only a one-off incident, I’m sure it will never happen again

Unlike workplace bullying which is repeated unreasonable behavior towards another person or group which creates a risk to health and safety, sexual harassment can be a one-off incident where conduct is unwelcome, of a sexual nature and the kind of behavior that a reasonable person would think would offend, humiliate or intimidate the person who was harassed.

So just as the law defines sexual harassment, any victim should not think that it just happened once, that is okay, and it probably won’t happen again. You should always seek to report such incidents, either bringing it to the attention of the person if you feel comfortable or reporting that behavior to the District’s Title IX Coordinator or to whomever you feel most comfortable with.

Myths of Sexual Harassment

Myth #4 – If unwelcome conduct of a sexual nature is carried out by a work colleague outside of the workplace it is not workplace sexual harassment

If an employee is off-site for work-related activities, for example, at an off –campus school event, if they misbehave in a way that is sexual in nature and that causes another to be offended, humiliated or intimidated, then it is considered as workplace sexual harassment.

Myths of Sexual Harassment

Myth #5 – Lewd commenting, tagging or any behavior on social media is not workplace sexual harassment if it happens outside of the hours of work

Regardless of the time of day, if an employee is tagged in inappropriate pictures by another employee without consent, or is bad-mouthed using sexually explicit slurs, through social media, messaging or emailing the victim and it is sufficiently related to the workplace, this behavior could be considered to be workplace sexual harassment.

Myths of Sexual Harassment

Myth #6 – Sexual harassment only happens to women

Men and women can be victims and perpetrators as well. Sexual harassment happens to all genders and could be from a man to a woman, man to man, woman to woman or woman to man.

Myths of Sexual Harassment

Myth #7 – Unreasonable state of mind is excused

Misbehaving when under pressure, or when angry can't be used as an excuse for incidents of sexual harassment and do not stack up in a court of law!

Stopping Sexual Harassment

Today, workplace experts consider **bystander intervention** one of the most effective ways to stop misconduct before it rises to the level of illegal harassment and discrimination.

Step in-Step Up and Be an Ally

Are you okay?

Do you need help?

Is that person bothering you?

Respond to Harassment

- Step 1: Act immediately
 - Tell the individual that the behavior is unwelcome and to stop the behavior.
- Step 2: Document the incident.
 - Date, time, place of incident;
 - Specific unwelcome behavior;
 - Your response;
 - Names of witnesses; and
 - Copies of documentation (e.g. notes, e-mails, pictures, etc.)

How to deal with Unwanted Attention

- Step 3: Report the behavior
 - Immediately report the behavior to your supervisor or Superintendent's office.
- When Reporting Unwanted Behavior:
 - BE SPECIFIC:
 - Who?
 - What?
 - Where?
 - When?
 - Why?

How to deal with Unwanted Attention

- Step 3: Report the behavior
 - BE SPECIFIC:
 - How many times has this happened?
 - Any witnesses?
 - What were your feelings?
 - Was your work affected?
 - Did you document the incident?
 - What remedy do you want?
- Step 4: Report Retaliation
 - If you believe that you are the subject of retaliation, immediately report this to your supervisor.

RSD policies

- The School District's Policies 103.2, and 104, prohibit discrimination and/or harassment on the basis of protected characteristics. Policy 103.2 is specific to sexual harassment.
- The Just Cause provision of the parties' CBA (Article XVI) states that "no employees covered by this Agreement shall be discriminated against with respect to any terms or conditions of employment....because of such individual's.....gender..."

Maiello Brungo & Maiello

ATTORNEYS AT LAW



Questions?

Questions and Comments can be directed to:

Falco A. Muscante, Esq.
Christina L. Lane, Esq.

(Telephone) 412-242-4400
(Facsimile) 412-242-4377

Maiello Brungo & Maiello

ATTORNEYS AT LAW

SouthSide Works
424 South 27th Street, Suite 210
Pittsburgh, PA 15203