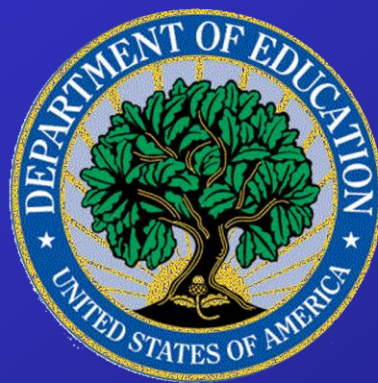


Office for Civil Rights U.S. Department of Education



This presentation provides general information and does not represent a complete recitation of the applicable law and OCR policy in this area. It does not address specific issues of compliance because determinations of compliance depend on specific facts on a case-by-case basis. The language used in these slides is approved for the purposes of this presentation only and should not be used for other purposes.

Harassment

Office for Civil Rights
U.S. Department of Education
www.ed.gov/ocr

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OCR Mission & Activities

- Mission: to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.
- Activities:
 - Complaint investigation
 - Compliance reviews
 - Policy guidance
 - Technical assistance

Laws Enforced by OCR

- Title VI of the Civil Rights Act of 1964
(race, color and national origin)
- Title IX of the Education Amendments of 1972 (sex)
- Section 504 of the Rehabilitation Act of 1973
(disability)
- Title II of the Americans with Disabilities Act of 1990
(disability)
- The Age Discrimination Act of 1975 (age)
- Boy Scouts of America Equal Access Act (patriotic youth groups)

Laws We Will Discuss

- **Race** (Title VI)
- **Sex** (Title IX)
- **Disability** (Section 504 & Title II)



Why is Harassment a Concern?

- Harassment based on race, sex, or disability is a form of discrimination that violates students' civil rights
- It can deny equal educational opportunities to the harassed student
- It can create a hostile environment that undermines the education of all students

Scope of the Problem

- 10% of students reported being the target of discriminatory words at school
- 35% reported seeing hate-related graffiti at school
- 32% of students reported having been bullied at school

Two Kinds of Harassment

- Teacher-student harassment (different treatment)
- Peer harassment (hostile environment)

Who Can Be Harassed?

- All ages, races and ethnicities
- Men and women, girls and boys
- People perceived to be of a particular race or sex, or perceived to have a disability
- People who have a relationship or association with a person of a particular race, sex or disability

Who Can Be a Harasser?

- An employee, such as a teacher, professor, or administrator
- Another student
- A third party

Same Sex/Race/Disability

- Harassment is prohibited regardless of the sex/race/disability of the harasser or the target.
 - Racial harassment may occur if the harasser and the target are the same race.
 - Sexual or gender-based harassment may occur if the harasser and the target are the same sex.
 - Disability harassment may occur if the harasser and the target have a disability.

Harassing Conduct

Harassing Conduct

- Unwelcome
- Examples:
 - Verbal abuse, such as name-calling
 - Graphic or written statements
 - Threats
 - Physical Assault

Where Harassment Occurs

- School bus
- Playground
- Athletic field
- Locker room
- Classroom
- Cafeteria
- Hallways
- Residence hall
- On internet and social networking sites

Harassment vs. Bullying

- The specific label used (e.g., bullying, hazing, teasing) does not determine whether discriminatory harassment occurred.
- The nature of the conduct itself must be assessed for civil rights implications.

First Amendment

- The statutes enforced by OCR are intended to protect students from discrimination, not to regulate the content of speech.
- OCR interprets its regulations consistent with the requirements of the First Amendment.
- OCR's regulations should not be interpreted in a way that chills or violates protected rights to free speech or expression.

Harassment Based on Race, Sex and Disability

Harassment Based on Race or National Origin (Title VI)

Examples:

- Slurs
- Taunts
- Jokes
- Insults
- Demeaning or stereotyping comments, cartoons, pictures

Harassment Based on Race or National Origin (cont.)

- Harassment against students who are members of a religious group based on
 - the group's shared ancestry or ethnic characteristics or
 - citizenship or residency in a country whose residents share a dominant religion or a distinct religious identity.

Sexual Harassment (Title IX)

- Unwelcome conduct of a sexual nature
- Fact specific, but examples may include:
 - Unwelcome sexual advances
 - Requests for sexual favors
 - Comments about an individual's body, sexual activity or sexual attractiveness
 - Sexually suggestive touching, leering, gestures, sounds, comments
 - Spreading rumors of sexual activity

Criminal Conduct

- Includes conduct that is also criminal in nature such as:
 - Rape
 - Sexual assault
 - Stalking

Gender-Based Harassment (Title IX)

- Harassing conduct based on sex but not necessarily of a sexual nature
- May include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping

Gender-Based Harassment

- Harassment either for:
 - exhibiting what is perceived as a stereotypical characteristic for their sex, or
 - failing to conform to stereotypical notions of masculinity and femininity.
- Includes mannerisms, extracurricular activities, apparel, personal grooming

Sexual Orientation

- Title IX does not prohibit discrimination or harassment based solely on sexual orientation.
- However, when LGBT students are subjected to harassment on the basis of their LGBT status, they may also be subjected to forms of sex discrimination recognized under Title IX.

Disability Harassment (Section 504 and Title II)

Examples:

- Verbal or physical abuse
- Obstructing entry to programs
- Contempt or ridicule regarding disability or accommodations

**Employee-Student
(Different Treatment)
Harassment**

“Different Treatment” Analysis

- A school employee treated a student differently than other students
- Different treatment occurred in the course of employee’s authorized or assigned duties
- Student’s ability to participate in or benefit from a school program or activity was denied or limited
- Different treatment was based on race, sex, or disability (and there is no legitimate non-discriminatory reason for the different treatment)

Peer Harassment (Hostile Environment)

Davis v. Monroe County Bd. of Ed.

- Peer sexual harassment under Title IX
- Same standards apply to hostile environment harassment based on disability and race

Severe, Pervasive or Persistent

The determination of whether conduct constitutes a hostile environment is based on the totality of the circumstances.

Factors to Consider

- Context
- Nature (e.g. verbal or physical)
- Scope
- Frequency
- Duration
- Location of incidents
- Identity, number, and relationships of persons involved
- Particularized characteristics
- Incidents outside complaint
- Generally, the more severe the conduct, the less need to show repeated incidents.

Deny or Limit

- A person is unable to fully participate in or benefit from a school's services, programs, or activities as a result of the harassment
- Examples may include:
 - A student's grades go down
 - A student feels forced to withdraw from an activity, program, or school
 - A student continues to participate in programs and activities but does so with great difficulty

Examples of Effects on Target

- Fear
- Feelings of blame, guilt and shame
- Depression, anxiety, loneliness
- Physical illness including insomnia, high blood pressure, stomach aches, headaches
- Increased absenteeism
- Poor academic performance

Examples of Effects on School

- Unsafe school environment
- Reduced performance/productivity
- Unhappy/unmotivated staff and student body
- Increased staff turnover and student attrition
- Damaged school reputation
- Lost time and resources devoted to dealing with complaints

Notice

How Does a School Learn of Harassment?

Possible sources of notice to the school include:

- A student tells a teacher, counselor, playground supervisor, administrator
- A parent tells a site or district administrator
- A complaint or grievance is filed
- A staff member observes harassing behavior
- A report is received indirectly, perhaps from members of the community or the media

Forms of Notice

- Actual Notice
- Constructive Notice

Administrative Enforcement vs. Private Lawsuit for Money Damages

- Administrative enforcement
 - Knew or should have known
- Lawsuit for money damages
 - Actual knowledge
 - Deliberate indifference

What to Do if You Believe a Student is Being Harassed

- Immediately report the harassment to a school official
- Identify all incidents of harassment and explain how they have affected the student
- File a formal grievance with the school specifically alleging discrimination based on race, sex or disability
- Maintain good documentation and follow through

Response & Remedies

Recipient's Response

- Immediate and appropriate action to investigate or otherwise determine what happened.
- Inquiry must be prompt, thorough and impartial.

If Harassment Occurs

- School should take steps reasonably calculated to:
 - End the harassment
 - Eliminate any hostile environment
 - Prevent harassment from recurring
 - Remedy the effects of harassment
 - Prevent retaliation against the target or complainant

Appropriate Response

In evaluating the school's response, OCR examines:

- Reasonableness, timeliness, effectiveness
- Whether the response was tailored to redress the specific problems experienced in the recipient's programs and activities
- Whether the response was reasonably calculated to prevent recurrence and ensure students are not restricted in their participation or benefits as a result of the hostile environment

Confidentiality

- In any investigation or proceeding, the names of the parties and the allegations should be kept confidential to the greatest extent possible.
- If students ask that their names not be used, the school should take all reasonable steps to investigate and respond to the complaint consistent with that request as long as doing so does not preclude the school from responding effectively to the harassment and preventing harassment of other students.

Remedies

- Appropriate remedies will depend on the facts of each case.
- Every remedy discussed in this presentation will not be appropriate in every situation.

Possible Remedies

- Discipline harassers
- Develop, revise, and/or publicize:
 - policy prohibiting harassment and discrimination
 - grievance procedures for students to file harassment complaints
 - contact information for Title IX/Section 504/Title VI coordinators

Possible Remedies

- Limit interaction between harassers and target
- Provide harassed student an additional opportunity to obtain a benefit that was denied (e.g., retaking a test/class)
- Provide services to a student who was denied a benefit (e.g., academic support services)
- Provide counseling to harassers or harassed students
- Implement harassment monitoring programs

Possible Remedies

- Publicize statements that the school will not tolerate harassment and will respond to any student who reports such conduct
- Incorporate harassment awareness and cultural tolerance training into curriculum and other education programs for staff, students, and parents
- Conduct school climate survey
- Involve parents and community groups in preventing future harassment

Proactive Steps

- Encourage communication and open dialogue among all members of the school community regarding school life and anti-harassment policies
- Develop or update policies and procedures
- Widely publish policies and procedures against harassment
- Provide training to staff and students
- Establish and sustain an environment of tolerance and respect

Examples

Title VI: How Not To Respond

- Don't inconsistently apply disciplinary code or dress code.
- Don't wait to take action until hostile environment escalates to interracial violence.
- Don't fail to respond to student and parent complaints.

Title VI: How to Respond

- Respond to each incident of harassment.
- Provide academic tutoring where harassment causes a student's absence.
- Monitor the locations of reported incidents of harassment.
- Discipline students who violate student conduct codes.

Title IX: How Not to Respond

- Don't characterize unwelcome sexual conduct as "flirtation" or "playfulness".
- Don't force a sexually harassed student to mediate with her alleged harassers.
- Don't continue to respond in ways that have proven ineffective.
- Don't fail to notify the complainant of the outcome of a complaint.

Title IX: How to Respond

- Discipline and counsel harassers.
- Notify staff of harassment policies and stress the need for vigilance in reporting and enforcement of violations.
- Respond promptly and effectively to any notice of incidents of harassment.
- Adopt new policies and educate students about the policies.

Section 504: How Not to Respond

- Don't unnecessarily isolate/punish the target.
- Don't discourage a student from using an accommodation in order to appease or deter harassers.
- Don't tell a student to handle harassment on his own, particularly when the student is developmentally disabled.
- Don't require the student to identify disability as the basis for the harassment.

Section 504: How to Respond

- Keep parents and caregivers informed of incidents and the school's response.
- Reprimand perpetrators and staff for inappropriate behavior.
- Adopt and publicize new policies addressing the particular disability issues present in the school community.
- Follow up with perpetrators and targets to ensure harassment does not recur.

Options for Involving OCR

- File a complaint.
 - A complaint may be filed by mail or fax with any OCR office or by e-mail using OCR's electronic complaint form at ed.gov/ocr.
- Request technical assistance.
 - Contact OCR by phone or email with questions, concerns, or requests.

OCR Resources

Visit OCR's reading room for additional guidance on harassment at <http://www2.ed.gov/about/offices/list/ocr/publications.html>:

- Dear Colleague Letter: Harassment and Bullying (2010)
- Sexual Harassment: It's Not Academic (2008)
- Dear Colleague Letter: Sexual Harassment Issues (2006)
- Dear Colleague Letter: Religious Discrimination (2004)
- Dear Colleague Letter: First Amendment (2003)
- Secretary Paige Letter: Muslim and Arab Students (2001)
- Sexual Harassment Guidance (Revised 2001)
- Dear Colleague Letter: Prohibited Disability Harassment (2000)
- Racial Incidents and Harassment Against Students (1994)

Other U.S. Department of Education Resources

- The Office of Safe and Drug Free Schools at the U.S. Department of Education identifies promising and exemplary programs for reducing violence
- www.ed.gov/about/offices/list/osdfs/index.html

Other Federal Resources

- Bullying Prevention and Response
www.bullyinginfo.org
- Dept. of Justice Community Relations Service
www.usdoj.gov/crs/
- Dept. of Justice Office for Victims of Crimes
www.ojp.usdoj.gov/ovc/

Thank You

How to contact us:

- OCR web site at www.ed.gov/ocr/
- Technical assistance inquiries:
(202) 453-6020