HOW TO CONDUCT CIVIL RIGHTS INVESTIGATIONS

PARTICIPANTS’ MANUAL

Fargo, North Dakota

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Presented by:

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REGION VIII EQUITY ASSISTANCE CENTER
AT THE METROPOLITAN STATE UNIVERSITY OF DENVER

NORTH DAKOTA DEPARTMENT OF CAREER AND TECHNICAL EDUCATION

NORTH DAKOTA DEPARTMENT OF PUBLIC INSTRUCTION

NORTH DAKOTA COUNCIL OF EDUCATIONAL LEADERS
INTRODUCTION

PAUL & RAUL

Part 1

Paul is several inches shorter than his classmates, owing, in part, to the decision to place this precocious young man in kindergarten prior to his fifth birthday. Paul’s quick, and edgy sense of humor, sometimes gets him into conflicts with his less witty classmates. A somewhat effeminate boy, Paul is interested in the arts, rather than athletics, and he’s more concerned with his appearance than many of his classmates, especially the other boys in his school. This has prompted some of the other students in school to call Paul “pretty boy,” “queer” and “fag.”

Academically, Paul has been very successful, until this school year. Recently, however, Paul’s school performance has suffered since starting to attend seventh grade in the junior high school. Paul has begun to miss school, particularly on days when he has gym class. By the end of the second grading period, Paul’s grades dropped from straight “A’s” in the first term, to “B’s” and “C’s” with a “D” in P.E.

One day in late January, Paul’s P.E. teacher came around the corner of the Boy’s Gym Locker room and found Paul slumped on the floor tearfully holding his broken glasses and his bruised cheek. When the teacher asked Paul what had happened, Paul told him he had hit his face on a locker door and broke his glasses. The teacher thought Paul’s version was suspect, so he helped him onto his feet, and took him to the school’s assistant principal.

When interviewed by the AP, Paul stuck to his story. Eventually, the AP told Paul that he just didn’t believe him because he seemed so nervous and afraid. The AP told Paul that there was a problem they needed to fix, and Paul could tell him the truth without having to fear retribution. Paul appeared about ready to start talking when a secretary rushed the AP’s office reporting that there was an irate parent in the outer office demanding that she immediately see the principal, who happened to be out of the building that day at a bullying prevention workshop. The AP told the secretary he would be right out, and that she should call Paul’s parents to pick him up to see if he needed medical attention.

QUESTIONS:

1) What, if anything, should school officials do to follow-up on Paul’s situation?

2) If this incident took place in your school district, which of your district’s policies would be applicable?

3) What laws may be relevant in this situation?
The irate parent turned out to be Ms. Torres, mother of a seventh grade student, Raul Torres. The mother was furious that her son had been the object of ongoing bullying since transferring into the school in October, when her family moved into the community. When she registered Raul at the beginning of the school year, Ms. Torres had disclosed that her son had qualified for special education services in the previous school, and requested services at the new school. The previous IEP had provided services in reading and interpersonal skills, and Raul’s mother asked for those to continue.

This day, Raul had called his mother thirty minutes earlier, after he had an altercation with a gang of boys who had been taunting him. The mother said she had told the principal about the problem weeks before, and that the principal had promised to address the problem, but she obviously had done nothing about it.

Ms. Torres made an appointment with the principal for the next day when she was scheduled to be back in the building. She took Raul, and left the school.

QUESTIONS:

1) What, if anything, should school officials do to follow-up on Raul’s situation?

2) If this incident took place in your school district, which of your district’s policies would be applicable?

3) What laws may be relevant in this situation?
Part 3

The AP returned to Paul’s situation. He got the class list for Paul’s P.E. class, and spoke, with several of the kids in the class to find out what had gone on earlier that day. The AP learned that Paul, and several friends, liked to joke about other students’ names that they thought were funny. They thought of nicknames for many of their classmates, most of whom took their teasing more or less good-naturedly. Not so, Raul, whom they dubbed, “Raul, the Fool.”

Raul had told Paul to stop calling him a fool or he would “kick his ass.” Their conflict usually stayed on the dodge ball battlefield. Raul would always take special delight in hitting Paul with as much force as he could muster. He would then brag about being able to hit such a small target.

The AP also learned that Paul and his friends, had been posting their classmates’ names on Facebook linked to pictures of animals in humorous costumes and poses. The photo they had associated with Raul showed a Chihuahua with a dunce cap on it. The incident earlier that day began with Paul asking Raul if he had seen how many of his classmates had “liked” his picture on Facebook. Raul told Paul he was a jerk and a fag. Paul ignored the reference to his sexual orientation and responded that he’d rather be a jerk than a fool. At that point, Raul pushed Paul’s face against his locker and left the locker room to call his mother.

QUESTIONS:

1) What, if anything, should school officials do to follow-up on this situation?

2) If this incident took place in your school district, which of your district’s policies would be applicable?

3) What laws may be relevant in this situation?
1. PREVENTIVE STEPS TO REDUCE THE RISK OF CIVIL RIGHTS VIOLATIONS:

Are the jokers too wild? Henry and Harriet have shared an offbeat sense of humor since they were assigned to the same office staff last year. Harriet seems to remember every joke she ever heard, and she loves to share them with others. Henry is constantly egging her on. Others in the office, including Sandy, the office manager, seem to greatly enjoy her humor.

Henry’s struggles with the dating scene have been quite the topic of discussion in the work group, lately. Harriet teases Henry that he wouldn’t be so lonely if he knew how to be nicer to women. Henry responds by making up outrageous stories about his supposed sexual “conquests” from the previous weekend, then admitting he was stood up, again.

Others in the office join into the fun, and no one seems bothered – that is until Melanie was hired last year. She’s a fairly quiet person, who tries hard to fit in. When she first encountered Henry and Harriet, she was amused, and smiled shyly at their sometimes bawdy humor. After a while, however, Melanie became uncomfortable enough to try showing her displeasure by not laughing or even smiling at jokes she felt were inappropriate. In response, Henry and Harriet tried harder to make Melanie laugh by explaining the jokes to her. When she still didn’t laugh, they would playfully tease her for not having a sense of humor.

Sandy hoped that Melanie would loosen up, so she didn’t say anything to Harriet or Henry at first. When Melanie remained aloof, however, Sandy became concerned. She told the jokers to “cool it” before Melanie filed a sexual harassment complaint. After that, Henry and Harriet tried to be careful and not say much when Melanie was around.

QUESTION: If Melanie quits and sues the district for discriminatory harassment and wrongful discharge, should she win?

ANSWER:
DISCRIMINATORY HARASSMENT IN EMPLOYMENT

SUGGESTED ANALYSIS

1. Determine whether there has been unwelcome discriminatory conduct that is “severe” or “pervasive” enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. If the conduct is neither severe nor pervasive, Title VII does not create legal liability. Nonetheless, once on notice, the district is obligated to curtail the unwelcome conduct or it could face liability in the future.

2. If the unwelcome discriminatory conduct was severe, and/or pervasive, determine whether the nature of the relationship between the harasser and the victim was that of supervisor/subordinate (principal/teacher) or something else (peers, co-workers, vendors, etc.). If there is no supervisory relationship between the complainant and the respondent, determine:

   a. Whether the district had adequate notice of the harassment (for example, because an administrator or director knew about it), and

   b. Whether the district responded appropriately once it had notice by conducting a proper investigation, preventing such conduct in the future, conducting necessary training, imposing appropriate discipline for those involved, etc.

If the district did not have proper notice of the harassment, or if it acted properly once it received notice of peer harassment, liability is unlikely.

3. If there was a supervisor/subordinate relationship, did the pattern of harassing conduct include a tangible action that was related to employment or education (refusal to hire, demotion, etc.)? If so, strict liability will apply, and liability is likely.

4. If a supervisor engages in discriminatory harassment of a subordinate but the harassment did not include a “tangible” action, the district has the possibility of taking advantage of a two-part “affirmative defense” if it can prove that:

   a. The district took sufficient steps to prevent discriminatory harassment, including developing and distributing policies prohibiting harassment and establishing grievance procedures for handling such complaints, and dealing in a serious and fair manner with such complaints in the past, and

   b. The complainant failed to take reasonable steps to notify the district of the problem.

If both these elements can be proven by the district, liability is unlikely.
TITLE IX BASICS AND OCR’S DEAR COLLEAGUE LETTERS

Major Areas of Title IX Impact:

1. The duty to identify the district’s Title IX Coordinator

2. The duty to conduct a gender equity self-assessment

3. Non-discriminatory Counseling & Guidance

4. Non-discriminatory Career Education

5. Athletics

6. Single-sex education limits, and

7. Pregnancy & Parenting restrictions

OCR Dear Colleague Letters:

1. Sexual Assault

   http://www.whitehouse.gov/sites/default/files/dear_colleague_sexual_violence.pdf

2. Bullying

   http://www2.ed.gov/print/about/offices/list/ocr/letters/colleague-201010.html
DISCRIMINATORY HARASSMENT OF STUDENTS

SUGGESTED ANALYSIS

1. Was the relationship between the complainant and the respondent student-to-student or employee-to-student?

2. If employee-to-student:

   Was the conduct at issue severe or pervasive enough to constitute harassment?

   If another school district employee was aware of the harassment, did they properly report the problem to a responsible administrator, the Title IX Coordinator or the district’s EEO officer?

   Did the administrator respond appropriately?

3. If student-to-student:

   Was it so “severe, pervasive, and objectively offensive” as to deprive the victim of access to the educational opportunities or benefits provided by the district?

   Were administrators who had the authority to correct the problem aware of the harassment?

   Were they deliberately indifferent to it?

   If so, liability is likely.
FRANKLIN V. GWINNETT COUNTY PUBLIC SCHOOL
503 U.S. 60, 75-76, 117 L. Ed. 2d 208, 112 S. Ct. 1028 (1992)

Franklin attended North Gwinnett High School, Gwinnett County Public School District, in the State of Georgia. In September of 1986, Coach Andrew Hill, Franklin's economics teacher, became friends with her. Indications of this friendship included Franklin being allowed to grade class papers, private meetings between her and Hill during and between classes, notes written by Hill authorizing her late admittance to other classes, and private visits by her and Hill to Hill's office, which was separated from the main school building.

According to the complaint, during this period of time, Hill initiated discussions of a sexual nature with Franklin. Dr. William Prescott, band director at the school, was told by Douglas Kreeft, Franklin's boyfriend, about these discussions. Franklin was excused from several classes at the request of Hill. At one point after an argument in the school parking lot, Hill grabbed Franklin and kissed her. In October of 1987, an assistant principal was told by other students of "involvement" between Hill and Franklin. The student was "admonished." During this period of time, certain female students indicated to teachers and a guidance counselor at the school that Hill was directing sexual remarks at other female students, as well.

Ultimately, according to the complaint, Hill and Franklin engaged in two or three episodes of sexual intercourse on school grounds between October and December of 1987. On February 29, 1988, the school's principal was informed of the alleged sexual activity between Hill and Franklin.

After she reported the above circumstances to school authorities, Prescott tried to discourage Franklin from pursuing the matter by talking to her about the negative publicity which could result. Prescott also spoke to Kreeft in an effort to enlist his assistance to discourage Franklin from pursuing the matter. Sometime between March 2 and March 14, 1988, Gwinnett began an investigation. At the termination of the 1987-88 school year, Hill resigned and Prescott retired. At this point, Gwinnett closed its investigation.

In August of 1988, Franklin filed a complaint against Gwinnett with the Office of Civil Rights ("OCR"), United States Department of Education, alleging that she had been subjected to sexual discrimination in violation of Title IX. Following a six-month investigation, OCR found Gwinnett in violation of Title IX. However in a letter signed by its regional director and addressed to Franklin's counsel in December 14, 1988, OCR stated that due to assurances of affirmative actions designed to prevent any future violations it considered Gwinnett as of that date in compliance with Title IX. Therefore, the OCR investigation was closed.

QUESTION: Does Title IX provide a remedy of damages for a plaintiff in a private action?

ANSWER:
In the spring of 1991, when Alida Star Gebser was an eighth-grade student at a middle school in respondent Lago Vista Independent School District (Lago Vista), she joined a high school book discussion group led by Frank Waldrop, a teacher at Lago Vista's high school. During the book discussion sessions, Waldrop often made sexually suggestive comments to the students. Gebser entered high school in the fall and was assigned to classes taught by Waldrop in both semesters. Waldrop continued to make inappropriate remarks to the students, and he began to direct more of his suggestive comments toward Gebser, including during the substantial amount of time that the two were alone in his classroom. He initiated sexual contact with Gebser in the spring, when, while visiting her home ostensibly to give her a book, he kissed and fondled her. The two had sexual intercourse on a number of occasions during the remainder of the school year. Their relationship continued through the summer and into the following school year, and they often had intercourse during class time, although never on school property.

Gebser did not report the relationship to school officials, testifying that while she realized Waldrop's conduct was improper, she was uncertain how to react and she wanted to continue having him as a teacher. In October 1992, the parents of two other students complained to the high school principal about Waldrop's comments in class. The principal arranged a meeting, at which, according to the principal, Waldrop indicated that he did not believe he had made offensive remarks but apologized to the parents and said it would not happen again. The principal also advised Waldrop to be careful about his classroom comments and told the school guidance counselor about the meeting, but he did not report the parents' complaint to Lago Vista's superintendent, who was the district's Title IX coordinator. A couple of months later, in January 1993, a police officer discovered Waldrop and Gebser engaging in sexual intercourse and arrested Waldrop. Lago Vista terminated his employment, and subsequently, the Texas Education Agency revoked his teaching license. During this time, the district had not promulgated or distributed an official grievance procedure for lodging sexual harassment complaints; nor had it issued a formal anti-harassment policy although it received federal funds.

QUESTION: In an action under Title IX for a teacher's sexual harassment of a student, are damages recoverable from the school district, absent school officials’ actual notice and deliberate indifference?

ANSWER:
LaShonda Davis, was allegedly the victim of a prolonged pattern of sexual harassment by one of her fifth-grade classmates at Hubbard Elementary School, a public school in Monroe County, Georgia. According to LaShonda’s complaint, the harassment began in December 1992, when the classmate, G. F., attempted to touch LaShonda’s breasts and genital area and made vulgar statements such as "I want to get in bed with you" and "I want to feel your boobs." Similar conduct allegedly occurred on or about January 4 and January 20, 1993. LaShonda reported each of these incidents to her mother and to her classroom teacher, Diane Fort. LaShonda, in turn, also contacted Fort, who allegedly assured LaShonda that the school principal, Bill Querry, had been informed of the incidents. LaShonda contends that, notwithstanding these reports, no disciplinary action was taken against G. F.

G. F.’s conduct allegedly continued for many months. In early February, G. F. purportedly placed a door stop in his pants and proceeded to act in a sexually suggestive manner toward LaShonda during physical education class. LaShonda reported G. F.’s behavior to her physical education teacher, Whit Maples. Approximately one week later, G. F. again allegedly engaged in harassing behavior, this time while under the supervision of another classroom teacher, Joyce Pippin. Again, LaShonda allegedly reported the incident to the teacher, and again LaShonda contacted the teacher to follow up.

LaShonda alleged that G. F. once more directed sexually harassing conduct toward LaShonda in physical education class in early March, and that LaShonda reported the incident to both Maples and Pippin. In mid-April 1993, G. F. allegedly rubbed his body against LaShonda in the school hallway in what LaShonda considered a sexually suggestive manner, and LaShonda again reported the matter to Fort.

The string of incidents finally ended in mid-May, when G. F. was charged with, and pleaded guilty to, sexual battery for his misconduct. The complaint alleges that LaShonda had suffered during the months of harassment, however; specifically, her previously high grades allegedly dropped as she became unable to concentrate on her studies, and, in April 1993, her father discovered that she had written a suicide note. The complaint further alleges that, at one point, LaShonda told her parent that she "didn't know how much longer she could keep [G. F.] off her."

Nor was LaShonda G. F.’s only victim; it is alleged that other girls in the class fell prey to G. F.’s conduct. At one point, in fact, a group composed of LaShonda and other female students tried to speak with Principal Querry about G. F.’s behavior. According to the complaint, however, a teacher denied the students’ request with the statement, "If [Querry] wants you, he’ll call you."

LaShonda’s mother alleges that no disciplinary action was taken in response to G. F.’s behavior toward LaShonda. In addition to her conversations with Fort and Pippin, LaShonda’s mother alleges that she spoke with Principal Querry in mid-May 1993. When LaShonda’s mother inquired as to what action the school intended to take against G. F., Querry simply stated, “I guess I'll have to threaten him a little bit harder." Yet, LaShonda’s mother alleges, at no point during the many months of his reported misconduct was G. F. disciplined for harassment. Indeed, Querry allegedly asked LaShonda’s mother why LaShonda "was the only one complaining."

"DAVIS V. MONROE COUNTY BOARD OF EDUCATION
536 U.S. 629 (1999)"
Nor, according to the complaint, was any effort made to separate G. F. and LaShonda. On the contrary, notwithstanding LaShonda's frequent complaints, only after more than three months of reported harassment was she even permitted to change her classroom seat so that she was no longer seated next to G. F. Moreover, LaShonda’s mother alleges that, at the time of the events in question, the Monroe County Board of Education (Board) had not instructed its personnel on how to respond to peer sexual harassment and had not established a policy on the issue.

QUESTION: Does a private action lie against a public school board for Title IX sex discrimination if the board acted with deliberate indifference to acts of student-on-student sexual harassment which were sufficiently severe, pervasive, and objectively offensive?

ANSWER:
“During the 2000–2001 school year, the daughter of petitioners Lisa and Robert Fitzgerald was a kindergarten student in the Barnstable, Massachusetts, school system, and rode the bus to school each morning. One day she told her parents that, whenever she wore a dress, a third-grade boy on the school bus would bully her into lifting her skirt. Lisa Fitzgerald immediately called the school principal, Frederick Scully, who arranged a meeting later that day with the Fitzgeralds, their daughter, and another school official, Lynda Day. Scully and Day then questioned the alleged bully, who denied the allegations. Day also interviewed the bus driver and several students who rode the bus. She concluded that she could not corroborate the girl’s version of the events.

The Fitzgeralds’ daughter then provided new details of the alleged abuse to her parents, who relayed them to Scully. Specifically, she told her parents that in addition to bullying her into raising her skirt, the boy coerced her into pulling down her underpants and spreading her legs. Scully scheduled a second meeting with the Fitzgeralds to discuss the additional details and again questioned the boy and other students.

Meanwhile, the local police department conducted an independent investigation and concluded there was insufficient evidence to bring criminal charges against the boy. Based partly on the police investigation and partly on the school’s own investigation, Scully similarly concluded there was insufficient evidence to warrant discipline. Scully did propose remedial measures to the Fitzgeralds. He suggested transferring their daughter to a different bus or leaving rows of empty seats between the kindergarteners and older students on the original bus. The Fitzgeralds felt that these proposals punished their daughter instead of the boy and countered with alternative proposals. They suggested transferring the boy to a different bus or placing a monitor on the original bus. The Barnstable school system’s superintendent, Russell Dever, did not act on these proposals.

The Fitzgeralds began driving their daughter to school to avoid further bullying on the bus, but she continued to report unsettling incidents at school. The Fitzgeralds reported each incident to Scully. The Fitzgeralds’ daughter had an unusual number of absences during the remainder of the school year.”

QUESTION: Does Title IX preclude an action under 42 U. S. C. Section 1983, alleging unconstitutional gender discrimination in schools?

ANSWER:
Joann Trader, 39 years old, and Karen Smith, 43 years old, were nontraditional students enrolled in the dental assistant program at the Hennepin Technical Center (now college) in the Twin Cities. One of the courses they were required to take included bridge and crown work taught by David Beranek.

Beranek, apparently, was attracted to Trader, as evidenced by the following behaviors:

- He would place his chair next to Trader in the lab so that his leg touched hers, and would intentionally rub his leg against hers in a sexual manner.
- He would place his hand on Trader’s upper thigh and squeeze it.
- He would frequently touch Trader on her shoulders and back, rubbing and squeezing both.
- He discussed inappropriate sexual subjects with Trader and told her sexual jokes.
- He revealed aspects of his personal sex life with Trader, and inquired about hers.
- He commented to Trader about other female students’ breast size.

Trader complained to Beranek’s supervisor, Dr. Pucel, the director of the program. Pucel was able to get written instructions for Trader to complete the course. These requirements included more time-consuming, in depth lab work than was required of other students for completion of the course, but Trader was able to time the work so she could complete it while Beranek was not in the lab.

Beranek stopped making advances toward Trader, but his treatment of her became negative. Where Beranek had lavished Trader with attention before, now he refused to give her help, stared and glared at her, followed Trader to her other classes and stood outside the classroom door, glaring at her through the glass. Beranek also filed numerous frivolous disciplinary reports against Trader. During this time, Trader and two other students met, repeatedly, with administrators trying to get Beranek to stop his negative behavior.

QUESTION: Can school officials be found personally liable for punitive damages for failing to properly respond to sexual harassment of students by school employees?

ANSWER:
In an action for breach of an implied contract of employment by an employee who was discharged for sexual harassment, in which he alleged his discharge was not for good cause as required by the contract, the trial court ruled, and instructed the jury, that the defendant could not defend on the ground that its decision to terminate the plaintiff was reached honestly and in good faith, but that defendant had to prove that the acts of sexual harassment actually occurred. The jury returned a verdict for plaintiff. (Superior Court of Los Angeles County, No. EC014711, S. James Otero, Judge.) The Court of Appeal, Second Dist., Div. One, No. B092285, reversed.

The Supreme Court of California affirmed the judgment of the Court of Appeal. The Court held that it was not the jury's function to decide whether the acts that led to the decision to terminate actually occurred. Rather, the court held, it is the jury's role to assess the objective reasonableness of the employer's factual determination of misconduct. The jury must determine whether the factual basis on which the employer concluded a dischargeable act had been committed was reached honestly, after an appropriate investigation and for reasons that were not arbitrary or pretextual. The termination decision must be a reasoned conclusion supported by substantial evidence gathered through an adequate investigation that includes notice of the claimed misconduct and a chance for the employee to respond. All of the elements of this standard are triable to the jury.

"We conclude the objective standard exemplified by Cotran is the better approach for assessing an employer's decision about whether an employee actually committed the acts leading to discharge, and, if so, whether the act constituted cause for termination. We adopt the objective good-faith standard under which an employer is justified in terminating an employee for good cause for 'fair and honest reasons, regulated by good faith on the part of the employer, that are not trivial, arbitrary or capricious, unrelated to business needs or goals, or pretextual. A reasoned conclusion, in short, supported by substantial evidence gathered through an adequate investigation that includes notice of the claimed misconduct and a chance for the employees to respond.' We also agree with the California Supreme Court that the parameters of an adequate investigation do not compel the same formal proceedings as a court trial. Id. Cf. Beckler v. North Dakota Workers Comp. Bur., 418 N.W.2d 770, 775 (N.D. 1988) (due process does not require pretermination evidentiary hearing). Rather, an adequate investigation may be satisfied by a variety of flexible procedures which afford employees a fair opportunity to present their position. Cotran, at 422." Thompson at 20. (Some citations omitted)
ADOPTING ANTI-HARASSMENT AND CIVIL RIGHTS GRIEVANCE PROCEDURES:

Critical Elements of a civil rights grievance and anti-harassment policy:

$ Clear explanation of prohibited conduct
$ Requires employees to report any conduct that is likely to be harassment
$ Encourages students to report harassment complaints early
$ Complaint procedures that are clear and accessible
$ Provides both informal and formal procedures
$ Identifies more than one place where an employee or student who believes they are being harassed can report the conduct in case one of the individuals is the alleged harasser
$ Protection of confidentiality, as much as possible - (“We will proceed with confidentiality as to those who do not ‘need to know.’”)
$ Assurance of prompt, thorough and impartial investigations
$ Requires cooperation with the investigation process
$ A commitment to take prompt corrective action when and how it is appropriate as well as a description of the disciplinary measures the district may use
$ Provide employees and students with clear assurance that they are protected against retaliation for making a good-faith harassment complaint

EXERCISE: Policy Evaluation
COMMUNICATING THE POLICY AND PROCEDURE TO ALL EMPLOYEES, STUDENTS AND OTHERS

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<th>Faragher v. Boca Raton Requirements:</th>
<th>Consider signed receipts</th>
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<td>Post on the district’s web-site</td>
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<td>Include in employee handbooks</td>
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<td>Include in student handbooks, registration materials</td>
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<td>Combine with rape awareness sessions</td>
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<td>Use signs and posters</td>
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Other suggestions:
**TRAIN PERSONNEL, ESPECIALLY ADMINISTRATORS AND OTHER SUPERVISORS, ON POLICY, PREVENTION:**

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<th>Training should include:</th>
<th>$ The substance of your policies prohibiting harassment and discrimination;</th>
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<tr>
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<td>$ Coverage that includes all students, employees and visitors against harassment and discrimination</td>
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<td>$ Definitions with examples of the prohibited behaviors;</td>
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<td>$ Procedures for reporting discrimination and harassment;</td>
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<td>$ How to prevent discrimination and harassment, and</td>
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<td>$ The definition of retaliation and the fact that it is illegal following the reporting of a discrimination or harassment complain.</td>
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<th>Training should be:</th>
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<th>Attendance records must be:</th>
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<th>Training is most critical for:</th>
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<td>$ they need to demonstrate support for the training,</td>
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<td>$ not ridicule or demean it.</td>
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| Training should be updated: | $ every year or two, at the most. |

| Test for understanding: | $ insist that employees demonstrate understanding of key concepts and policies. |

| Part-time and “casual” employees: | $ need to be exposed to the district’s policies in these areas, even if they are not required to attend “in-class” sessions. |
2. WHEN TO INITIATE AN INVESTIGATION: HOW TO DEVELOP A TRACK RECORD OF FAIRLY ENFORCING YOUR POLICIES

Where complaints of prohibited harassment in the workplace have been made, the employer's obligation to investigate is well established. The U.S. Equal Employment Opportunity Commission has issued comprehensive policy guidelines concerning sexual harassment in Policy Guidance On Current Issues of Sexual Harassment. Eq. Empl. Compl. Man. No. 120(Oct 25, 1988). In that document, the EEOC specifically provides that "[w]hen an employer receives a complaint or otherwise learns of alleged sexual harassment in the workplace, the employer should investigate promptly and thoroughly."
**SCENARIO Part 1:**

Central High School is a class AA high school with just less than 400 students. The administration consists of Principal, Julie Jones, who has been at the school three years, and her newly-appointed Assistant Principal, Bob Baxter.

The high school has an indoor swimming pool that is used for PE classes during the school day, and is used by the public after hours. The pool operation is supervised by Greg Gates, who is also Central’s Athletics Director. The pool employs about a dozen students in various capacities, including life guards and cashiers. Darren Dirks is a twenty-five-year-old Water Safety Instructor Greg hired to run the community swim lessons, including the Red Cross Lifesaving class and to coach the high school’s swim team.

Carrie Charlesworth is a senior at Central High School. She works as a lifeguard at the pool and is one of the best swimmers on the school’s swim team.

One day Bob came to Julie and asked her how well she knows Darren. He told Julie that he didn’t want to jump to conclusions, but he had an uneasy feeling about Darren. When Julie probed Bob for specifics, he told her that he went out to the pool earlier that afternoon to find Greg and saw Darren in the pool with Carrie, supposedly showing her how to do the backstroke. Carrie was floating on her back in the water, supported by Darren with one hand under her back and the other under her buttocks. Bob stated that when he saw Darren come into the pool area, he looked surprised, and quickly backed away from Carrie, and started demonstrating the stroke while standing several feet away from her. Carrie seemed awkward, as well. Bob couldn’t say for sure if there was anything improper about what he had seen, but his gut told him he should check into it.

**QUESTION:** Is Principal Jones under any obligation to do anything with this knowledge, and, if so, what is she required to do?

**ANSWER:**
SCENARIO Part 2:

This is not the first time someone raised a question about Darren Dirk’s relationships with the students he coaches and supervises. Last year, a pool patron mentioned that she had heard Darren using what she called, “adult” language with the students who worked in the pool. Julie knew that Darren had grown up in Minneapolis so she hadn’t worried about it at the time.

More recently, Greg Gates repeated a comment made to him by a student in Dirks’s Red Cross lifesaving class. The student had told Gates that Darren had made a joke to him about the breast size of a girl in the class. Later in the course, Darren had picked the girl he had made the joke about twice to demonstrate lifesaving techniques. In the first, Darren demonstrated an old-fashioned water rescue technique where the rescuer places his arm across the victim’s chest and supports the victim with the rescuer’s hip and swims to safety. Darren had also selected this girl to show how to administer mouth-to-mouth resuscitation.

QUESTION: Is Principal Jones now under any obligation to do anything with this knowledge, and, if so, what is she required to do?

ANSWER:
**SCENARIO Part 3:**

Jones decides to ask Gates to try to find out more about the appropriateness of Darren’s teaching techniques. She suggests that Gates casually talk to several of the girls who work in the pool, swim on the team, or have taken Dirk’s WSI course. Carrie Charlesworth seemed like a logical choice to Gates, because she fit all three categories.

In his conversation with Carrie, Gates learned that Carrie was planning on attending college at Dirk’s alma mater, the University of Minnesota, on a generous swimming scholarship that Dirk had been very helpful in getting for her. Gates also took note that Carrie referred to Dirk by his first name and that in addition to personally contacting the Gophers’ coach, and writing a strong letter of recommendation, Dirk had taken her to the Twin Cities to visit the school.

Gates tried to delicately ask Carrie how close her relationship was with Darren. Gates thought that Carrie seemed to become more distant at that point. Gates decided to trust Carrie’s discretion and he told her that he was concerned that Darren might allow himself to become a little too close to his students and student-athletes. Carrie gave no opinion, but looked down nervously, an unusual demeanor for this normally confident and outgoing student. Shortly after that, Carrie said she had to get going and left.

The next day, Carrie found Gates in his office and came in and shut the door. She said that she wanted to talk about the subject Gates had brought up the other day, but she wouldn’t say anything unless Gates promised her that he wouldn’t do anything, and that their conversation would be absolutely confidential.

**QUESTIONS:** What should Gates do? Should Gates promise not to do anything? Should he promise confidentiality? If he feels he can’t and Carrie won’t say anything, what should he do?

**ANSWERS:**
SCENARIO Part 4:

Greg Gates reassured Carrie Charlesworth that while he couldn’t guarantee inaction or confidentiality, he promised to do everything possible to treat his discussion with her as privately as possible. He also gave her his word that if he did need to take some action he would notify her, in advance. With that assurance Carrie reluctantly told Gates her story.

Darren Dirks taught and coached Carrie in junior high school. At first, he hadn’t shown any greater or different attention to her than any of the others in her class or team. Over the next several years, he began giving Carrie more attention than the others, asking her to help him with putting the equipment away after team practices. When Carrie reached 10th grade, Darren began treating Carrie more and more as a confidant. At first, Darren sought Carrie’s opinion about which swimmers should compete in which events. Then, Darren began taking interest in which boys Carrie was dating. By the time Carrie was in 11th grade, Darren was sharing details about his marriage with her. By the end of Carrie’s junior year, Darren was meeting Carrie off the school’s campus. Shortly after Carrie’s 18th birthday last October, their relationship became sexual.

Carrie had come to feel more negatively about their relationship when she heard that Darren had been flirting with a sophomore in his lifesaving class. When Gates spoke to her the day before, it started her thinking about how many others Darren probably had sexual relationships with and how many more he would in the future, if something wasn’t done. After speaking further with Gates, she felt like she should do something. She just wasn’t sure what she should do.

QUESTIONS: Does Greg Gates have an obligation to take some action, regardless of Carrie’s preference? If so, what action is appropriate or required? Should Gates tell Carrie, as he promised he would?

Should Greg Gates or other school officials try to convince Carrie to file a sexual harassment grievance?

If the relationship was consensual, does it constitute sexual harassment?

ANSWERS:
### OTHER CONSIDERATIONS BEFORE CONDUCTING AN INVESTIGATION:

<table>
<thead>
<tr>
<th>THE ISSUES:</th>
<th>THE CONSIDERATIONS:</th>
</tr>
</thead>
</table>
| Should the grievance be handled informally versus following formal grievance procedures: | $ Are informal grievances provided for by policy?  
$ Should the complainant decide or should the district? |
| The “reluctant complainant”                                               | Is the district “pregnant with knowledge?”                                           |
| The complainant insists on confidentiality                                 | Could an administrative investigation or lawsuit result in investigation records being subpoenaed? (Thank the complainant for making administration aware of possible violation of district policy and state and federal law, but explain that the district must proceed with an investigation that will be as discreet and confidential as possible.) |
| Off-work time conduct (Privacy concerns)                                  | Is the conduct complained of so unrelated to the business of the district that the district lacks a legitimate basis for getting involved? |
| Pandora’s Box                                                             | Do the advantages of conducting an investigation outweigh the disadvantages?          |
## 3. GOALS FOR INVESTIGATIONS:

<table>
<thead>
<tr>
<th>GOAL</th>
<th>IMPORTANCE</th>
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<tbody>
<tr>
<td>Providing the factual bases for decisions</td>
<td>Reduces subjective decision-making</td>
</tr>
<tr>
<td>Improve educational excellence by protecting morale (“Leave No Student or Employee Behind”)</td>
<td>Objective decision-making is the most reliable means for carrying out the school district’s mission</td>
</tr>
<tr>
<td>Building records to defend decisions</td>
<td>Investigations document the fairness (or unfairness) of the district’s actions</td>
</tr>
<tr>
<td>Protect civil rights</td>
<td>Best preserves the rights of all parties</td>
</tr>
<tr>
<td>Identify student and employee misconduct</td>
<td>Investigations provide a vehicle for surfacing and dealing with inappropriate conduct on the part of both students and staff of the district</td>
</tr>
<tr>
<td>Reduce liability exposure</td>
<td>The <em>Faragher/Ellerth</em> affirmative defense and punitive damage protections can flow from properly performed investigations</td>
</tr>
<tr>
<td>Protect privacy rights</td>
<td>Investigations handled properly provide maximum privacy for all parties</td>
</tr>
<tr>
<td>Limit negative publicity</td>
<td>Parties with grievances will most often choose to resolve problems internally if they feel they can trust the investigative process</td>
</tr>
<tr>
<td>Prevent violence</td>
<td>With proper training, investigators are able to identify potential violence and intervene in timely and effective ways</td>
</tr>
<tr>
<td>Preserve insurance coverage</td>
<td>Some insurance coverage excludes reckless or intentional culpability, which may be constituted by failing to investigate known risks</td>
</tr>
</tbody>
</table>
## 4. CHOOSING AN INVESTIGATOR

<table>
<thead>
<tr>
<th>POSSIBLE INVESTIGATORS:</th>
<th>ADVANTAGES</th>
<th>DISADVANTAGES</th>
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<tr>
<td>Central Administrators</td>
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<td>HR staff</td>
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<tr>
<td>Building Administrators</td>
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<tr>
<td>In-house counsel</td>
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<td>Outside counsel</td>
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<td>Outside consultant</td>
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<td>Others- Specify:</td>
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<tr>
<td>Others- Specify:</td>
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<tr>
<td>FACTORS TO CONSIDER WHEN CHOOSING AN INVESTIGATOR:</td>
<td>THE QUESTION TO ASK:</td>
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<td>--------------------------------------------------</td>
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<tr>
<td>COMPETENCE</td>
<td>Is the proposed investigator competent to perform the investigation, i.e., familiar with the differences between direct, circumstantial, anecdotal, statistical and comparative evidence?</td>
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<tr>
<td>NEUTRALITY</td>
<td>Does the potential investigator have an actual or apparent conflict of interest?</td>
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<tr>
<td>IMPARTIALITY</td>
<td>Are there circumstances in your school district that could create the appearance of bias on the part of this investigator?</td>
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<tr>
<td>INTERPERSONAL SKILLS</td>
<td>Does the proposed investigator have the ability to deal sensitively with highly emotional issues without creating greater anxiety, animosity and suspicion?</td>
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<td>DISCRETION</td>
<td>Can the proposed investigator be relied upon to conduct the investigation with the greatest protection for the privacy of all concerned?</td>
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<td>DEDICATION</td>
<td>Has the proposed investigator demonstrated reliability with large and challenging projects?</td>
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<tr>
<td>DATE COMPLETED:</td>
<td>BEFORE BEGINNING:</td>
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<td>Determine the burden of proof that will be applied</td>
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<td>Clearly establish who will be in charge of the investigation</td>
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<td>Identify who will receive the report</td>
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<td>Determine who will decide what action(s) if any will be taken</td>
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<td>Suspend the school district’s record retention policy regarding any potentially relevant documents</td>
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<td>Quickly and properly invoke the attorney-client privilege, if possible</td>
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<td></td>
<td>Adopt procedures to protect the attorney-client privilege</td>
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<td>Make arrangements to protect “attorney work product”</td>
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<td>Plan for the possibility of a potential conflict if a district employee is also sued or threatened to be sued, along with the district</td>
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<td></td>
<td>Assure that all those involved with the investigation understand the obligation to avoid retaliation and protect confidentiality</td>
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<td></td>
<td>Identify the district’s policies and procedures that may substantively and procedurally bear on the investigation</td>
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<td>Prepare for the possibility of ex-parte contacts with district employees</td>
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</table>
5. BEGINNING THE PROCESS: THE COMPLAINT AND RESPONSE

SCENARIO Part 5:

Carrie discussed the matter with her parents, and is willing to file a formal grievance with the district. The thrust of her complaint is that Darren “groomed” her for a relationship over several years, abusing the trust she placed in him. She contends in her complaint that their sexual relationship was not welcome by her. Rather, she alleges that Darren used his position as her supervisor, coach and teacher to manipulate and intimidate her into having a sexual relationship. She contends that, as a result, she has been emotionally and psychologically harmed. She requests that all of Dirk’s employment with the district be terminated.

ROLE-PLAY: Interview Carrie Charlesworth, and help her to draft her complaint.
<table>
<thead>
<tr>
<th>TAKING THE COMPLAINT</th>
<th>CONSIDERATIONS</th>
</tr>
</thead>
</table>
| Should anyone else be present when the complaint is taken? | $ Allow the complaint to bring a support person to the interview if she wishes  
$ If the complainant is a student, they should not be allowed to bring another student with them, but should be permitted to bring an adult  
$ If the complainant is a student, consider contacting their parent and inviting them to be present |
| Begin with an explanation: | $ The district is committed to creating a fair, non-discriminatory, harassment-free environment in which to learn and work  
$ Describe the step-by-step procedures that the investigation will follow  
$ The role of the investigator is neutral, rather than an advocate for either side  
$ Indicate that the responding party will be asked for a written response and that to prepare that, the respondent will have the right to see the complaint  
$ The investigation will end with a written investigation report that will be forwarded to the administrator responsible for making any decisions  
$ The final decision will be communicated to the complainant and respondent  
$ Take care to avoid making any promises about confidentiality  
$ Indicate whether the parties will be given the opportunity to review the report |
| Let the lid off of emotions | $ Complainants may need to express feelings that include fear, anger, humiliation, apprehension, mistrust, etc.  
$ Don’t assume that expressing these feelings is negative or to be avoided |
<table>
<thead>
<tr>
<th>What should the complaint include:</th>
<th>The complaining party(ies) identity</th>
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<tbody>
<tr>
<td></td>
<td>The responding party(ies) identity</td>
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<td>A clear description of the type of discrimination or harassment</td>
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<td>A detailed description of the events complained of</td>
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<td>The witnesses who can corroborate the complainant’s version of the events, including contact information and the areas that should be covered with each witness</td>
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<td></td>
<td>Witnesses the complainant spoke with shortly after the events</td>
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<td>A full description of the harm caused (see, below)</td>
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<td></td>
<td>The remedy or goal being sought</td>
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<tr>
<td></td>
<td>Whether the complainant has taken any other action relative to the complaint (OCR, EEOC, lawsuit, etc.)</td>
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<tr>
<td></td>
<td>Notices</td>
</tr>
<tr>
<td></td>
<td>Verification and signature</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>What is the harm:</th>
<th>Emotional upset</th>
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<tbody>
<tr>
<td></td>
<td>Prompted to talk to a counselor</td>
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<td>Physical illness</td>
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<td>Medical care received</td>
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<td></td>
<td>Missed school or work</td>
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<td></td>
<td>Effects on studies or job performance</td>
</tr>
<tr>
<td></td>
<td>Effects on other aspects of the complainant’s life</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The complainant’s remedy sought:</th>
<th>Cease and desist</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Special assistance</td>
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<td></td>
<td>Credit or grade change</td>
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<td></td>
<td>Temporary or permanent transfer</td>
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<td></td>
<td>Reinstatement</td>
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<tr>
<td></td>
<td>Compensation</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>Discipline of the respondent sought:</th>
<th>Reprimand</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Transfer</td>
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<tr>
<td></td>
<td>Suspension or expulsion</td>
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<tr>
<td></td>
<td>Mandatory training</td>
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<td></td>
<td>Mandatory counseling</td>
</tr>
</tbody>
</table>
Assess the complainant’s credibility:

- Answered all questions
- Motive to lie
- Believability
- Note non-verbals such as body language and demeanor, but recognize cultural differences

Discuss retaliation:

- Define and give examples
- Have the complainant promise to immediately report
- Caution the complainant not to attempt to influence potential witnesses

**SAMPLE NOTICES FOR COMPLAINTS:**

*I understand the following:*

1. *I have the right to be free of retaliation for filing this complaint. I agree to report, immediately, any conduct which I believe is motivated by retaliation for filing this complaint.*

2. *The Equal Opportunity office [or whatever office is investigating] will try to protect my identity from public exposure. Those I accuse, however, will be given a copy of this complaint so that they have an opportunity to respond to its contents. Others may have the legal right to obtain this statement through a request under state or federal law or through court action.*

3. *I have received a copy of the school district’s discrimination policy. I may have the right to file a complaint with state or federal civil rights agencies or to file legal actions in a court of law. The Equal Opportunity office will further explain these rights if I request.*

4. *I understand that the Equal Opportunity office is not an advocate for either the complaining or the responding parties. The role of the Equal Opportunity office is to investigate complaints, from a neutral position, to determine whether violations of the district’s discrimination policy have occurred.*

*I verify that this statement is true and accurate. [I understand that if this complaint contains statements which I know are false, I may be subject to disciplinary action within the district and/or external legal action from those I have falsely accused*].

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The **bold-bracketed** statement may be accurate, but is disapproved by federal agencies, and, therefore, is not recommended. Consult with your district’s attorney regarding this language as well as other provisions.
**SCENARIO Part 6:**

District officials place Dirk on non-disciplinary suspension with pay, pending the resolution of the complaint, and Dirk is directed to prepare a written response to the complaint. Dirk asks if anyone from the district can help him put his response together.

**ROLE-PLAY:** Interview Darren Dirk and help him draft his response to the complaint.

<table>
<thead>
<tr>
<th>TAKING THE RESPONSE</th>
<th>CONSIDERATIONS</th>
</tr>
</thead>
</table>
| Should anyone else be present when the response is taken? | $ If the respondent is an employee, she or he may be entitled to have a representative present, depending on the district’s contract and federal law (*Weingarten* rights) so check with your district’s attorney  
$ If the respondent is a student and requests their parent, that request should be granted, but not another student |
| Begin with an explanation:                   | $ The district is committed to creating a fair, non-discriminatory, harassment-free environment in which to learn and work  
$ Describe the step-by-step procedures that the investigation will follow  
$ The role of the investigator is neutral, rather than an advocate for either side  
$ The investigation will end with a written investigation report that will be forwarded to the administrator responsible for making any decisions  
$ The final decision will be communicated to the complainant and respondent  
$ Take care to avoid making any promises about confidentiality |
| Be prepared for negative emotions:           | $ It is virtually universal for respondents to feel anger and anxiety when they are informed someone has filed a complaint against them  
$ Acknowledge that such feelings are normal and allow the respondent to express them |
<table>
<thead>
<tr>
<th>Inform the respondent of the specifics of the complaint:</th>
<th>Let the respondent know who filed the complaint</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Inform the respondent of the specifics of the complaint</td>
</tr>
<tr>
<td></td>
<td>Consider whether to give the respondent a copy of the complaint at the beginning of the interview or the end</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Allow the respondent the opportunity to reply to each element of the complaint:</th>
<th>Does the responding party identify him/herself?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Is there a detailed response to the factual allegations complained of?</td>
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<tr>
<td></td>
<td>Does the respondent offer any other explanation for the allegations?</td>
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<tr>
<td></td>
<td>Does the respondent know of a reason the complainant would distort or falsify?</td>
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<td></td>
<td>Does the respondent list the witnesses she or he feels would corroborate his/her version of the relevant events?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Assess the respondent’s credibility:</th>
<th>Answered all questions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Explore respondent’s motive to lie</td>
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<tr>
<td></td>
<td>Believability</td>
</tr>
<tr>
<td></td>
<td>Note non-verbals such as body language and demeanor, but recognize cultural differences</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Handling an uncooperative respondent:</th>
<th>Acknowledge and respond to respondent’s concerns</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Failure to provide respondent’s side of the story will result in the investigator missing that perspective</td>
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<tr>
<td></td>
<td>Remind respondent that district policy requires cooperation with civil rights investigations</td>
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<td></td>
<td>Refusal to cooperate may be independent grounds for discipline</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Discuss retaliation:</th>
<th>Define and give examples</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Have complainant promise to immediately report</td>
</tr>
<tr>
<td></td>
<td>Secure respondent’s promise not to retaliate</td>
</tr>
<tr>
<td></td>
<td>Caution respondent not to attempt to influence potential witnesses</td>
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<tr>
<td>Elements of the document:</td>
<td>$</td>
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</table>
SAMPLE NOTICES FOR RESPONSES:

I understand the following:

1. I understand that all those involved in this complaint, including the complaining party and all witnesses who provide information or support in investigating this complaint, have the right to be free of retaliation for their involvement herein. I agree not to retaliate against these individuals in any way. I also agree not to contact the complaining party, either directly or through others, unless I have arranged to do so through the Equal Opportunity office [or whatever office is investigating].

2. The Equal Opportunity office will try to protect my privacy in this investigation. I understand, however, that the parties involved in this complaint (and their counsel), as well as those involved in this investigation (including witnesses), those involved in any disciplinary actions resulting from this investigation, and those involved in any appeals from such disciplinary actions may receive copies of this response and other documents prepared in conjunction therewith. Others may have a legal right to obtain this and other documents prepared in conjunction with this complaint through a request under law or through judicial action.

3. I have received a copy of the district’s discrimination policy.

4. I understand that the Equal Opportunity office is an advocate for neither the complaining nor the responding parties. The role of the Equal Opportunity office is to investigate complaints from a neutral position to determine whether violations of the district’s discrimination and harassment policy have occurred.

I verify that this statement is true and accurate.
## 6. DECIDING WHO TO INTERVIEW

<table>
<thead>
<tr>
<th>WITNESS CONSIDERATIONS:</th>
<th>STRATEGIES:</th>
</tr>
</thead>
</table>
| Ask the parties for their suggestions as to witnesses: | $\$ Ask the complainant and respondent who they think will corroborate or, otherwise support their version of events. $\$
| | $\$ Have the parties describe the specific events they witnessed or can otherwise clarify $\$
| | $\$ Have the parties include contact information, if they know it $\$
| Determining additional witnesses as the investigation proceeds: | $\$ Ask successive witnesses to help identify other potential witnesses who might be able to help resolve remaining discrepancies $\$
| Preventing testimony contamination: | $\$ Sequence witness interviews to reduce the likelihood that those contacted early in the investigation will not divulge information to witnesses to be interviewed later $\$
| “Circling back”: | $\$ After taking a complaint, response or witness statement, consider re-interviewing that individual if additional facts are discovered that raise questions about that statement $\$ |
## INVESTIGATION WITNESS LIST

<table>
<thead>
<tr>
<th>WITNESS NAMES</th>
<th>WORK PHONE</th>
<th>CELL PHONE</th>
<th>E-MAIL</th>
<th>AREAS TO COVER</th>
<th>NOTES</th>
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7. INTERVIEWING SKILLS

SCENARIO Part 7:

Wendy Wilson is a junior who, like Carrie Charlesworth, swims on the school’s swim team, and works at the pool. Wendy and Carrie had been close friends until recently. When Wendy seemed to become closer to Darren Dirk, it caused friction between them. There was a tense moment between them when Carrie went into the pool office while Wendy and Dirk were both in the pool “horsing around” with each other. Carrie didn’t say anything, at the time, but on her Facebook page, Carrie called Wendy a “whore” who would do anything to be the captain of the team. Wendy posted a response, “Out with the old, and in with the new.”

ROLE-PLAY: Interview Wendy Wilson and help her draft her witness statement.

<table>
<thead>
<tr>
<th>INTERVIEWING CORROBORATIVE WITNESSES</th>
<th>CONSIDERATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preparation:</td>
<td>$ Determine where the areas of factual dispute exist between the complaint and response</td>
</tr>
<tr>
<td></td>
<td>$ Based on conflicts identified, list questions to be answered by this witness</td>
</tr>
<tr>
<td></td>
<td>$ Interviews should be individual rather than in groups</td>
</tr>
<tr>
<td>Begin with an explanation</td>
<td>$ The district is committed to creating a fair, non-discriminatory, harassment-free environment in which to learn and work</td>
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<tr>
<td></td>
<td>$ The role of the investigator is neutral, rather than an advocate for either side</td>
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<tr>
<td>Find out what the witness knows about the investigation:</td>
<td>$ Some witnesses will have no idea why they are being interviewed, while others will have detailed information</td>
</tr>
<tr>
<td></td>
<td>$ If witnesses come into the interview with knowledge about it, find out who spoke to them and what they said</td>
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</tbody>
</table>
| How much to tell the witness: | $ Consider informing the witness that the school or district is engaging in a review of the learning or working environment to assure that students/employees can study/work comfortably.  
$ Sometimes it will be necessary to share the specifics of the complaint in order to allow the witness to evaluate them. |
| Move from the general to the specific: | $ Allow the witness to offer more general perceptions before being probed for specifics. |
| Ask open-ended questions that do not call for simple “yes” or “no” answers: | $ “What kind of language did you hear John use?” versus “Did you hear John use vulgar language?” |
| Avoid asking questions in a way that suggests a particular answer (leading the witness): | $ “How would you describe the relationship between Kerry and Sandy?” versus “You saw Kerry pressuring Sandy to date him, didn’t you?” |
| Distinguish firsthand from secondhand knowledge: | $ What did the witness directly observe through seeing, hearing, and any other direct sensory perception? |
| Ask only one question at a time: | $ “Is that when Jake kissed you? And is that also when he fondled you?” versus “Is that when Jake kissed and fondled you?” |
| Avoid accusatory or “no-win” questions: | “Do you micro-manage your employees or do you let them do whatever they want?” |
### Use probing techniques:

- Follow up with additional questions to clarify witnesses’ recollection
- Repeat questions that are important if there is doubt about the witness’s recollection
- Consider asking the witness to help explain motivation with questions like, “If Ned liked Carol’s advances, why would he file a complaint against her?”
- Allow pauses and silences
- Reflect and summarize to verify understanding and reassure the witness they are being heard
- Ask the witness if there is anything that they were not asked about that might be relevant
- Ask if there are any documents, notes or other physical evidence that they can identify
- Ask if there are other witnesses who should be interviewed

### Distinguish fact from opinion:

- Clarify what witnesses directly observed and what they have come to believe based on their interpretation of those observations

### Handling reluctant witnesses:

- Acknowledge and respond to witnesses’ concerns
- Discuss protections against retaliation
- Remind witnesses that district policy requires cooperation with civil rights investigations
- Never detain a witness against their will
- Consider whether to accept and document a witness’s refusal to cooperate or to indicate that such conduct may be independent grounds for discipline

### Credibility:

- Answered all questions
- Motive to lie
- Believability
- Note non-verbals such as body language and demeanor, but recognize cultural differences

### Retaliation:

- Define and give examples
- Have witnesses promise to immediately report
Privacy and confidentiality:
- $ Promise to handle the investigation as privately and discreetly as possible
- $ Secure a promise from the witness not to discuss the subject with others
- $ Do not to promise confidentiality

Elements of the witness statement:
- $ Name
- $ Summary of events witnessed
- $ Notices
- $ Signature
SAMPLE NOTICES TO WITNESSES

I understand the following:

1. I have the right to be free of retaliation for providing this statement. I agree to report any conduct which I believe is motivated by retaliation for filing this statement. [I understand, however, that if this statement contains accusations which I know are false, I may be subject to disciplinary action within the university, and/or external legal action from those I have falsely accused.*]

2. The affirmative action office will try to protect my identity from public exposure. Those involved in this complaint, however, will be given a copy of this statement so that they have an opportunity to respond to its content. Others with a need to know will also have access to this statement.

I verify that this statement is true and accurate.

* The bold-bracketed statement may be accurate, but is disapproved by federal agencies, and, therefore, is not recommended. Consult with your district’s attorney.
8. IDENTIFYING DOCUMENTS AND OTHER NON-TESTIMONIAL EVIDENCE

<table>
<thead>
<tr>
<th>COLLECTING PHYSICAL EVIDENCE</th>
<th>CONSIDERATIONS</th>
</tr>
</thead>
</table>
| What to include:              | $ Just as when interviewing witnesses, physical evidence should be collected to resolve factual disputes between the parties  
                                | $ Collect only documents that are relevant to the claim and response |
| Records kept in the ordinary course of the school district: | $ Attendance records (students and employees)  
                                | $ Grades  
                                | $ Salary studies  
                                | $ Performance reviews  
                                | $ Personnel records |
| Governance documents:         | $ Copies of all relevant policies should be acquired  
                                | $ Collective bargaining agreements may be relevant |
| Unique documents:             | $ Previous disciplinary actions involving the parties  
                                | $ E-mail messages  
                                | $ Notes made by teachers, administrators and other supervisors |
| Document acquisition and security: | $ When, where and how was the physical evidence obtained  
                                | $ Assure physical evidence is kept secured to avoid “chain of custody” challenges  
                                | $ Carefully document e-mail communications to assure authenticity |
# 9. PRIVACY AND DEFAMATION CONCERNS

| Respect reasonable expectations of privacy: | § Review the district’s computer resource use policy to avoid invasions of privacy  
§ Do not use hidden recording devices without the advice of counsel  
§ Never exceed the district’s policy when conducting searches of students’ or employees’ persons, computers, lockers, desks, etc.  
§ Respect informational privacy (public disclosure of private facts)  
§ Never disclose false attributes of associations about the parties (false light privacy)  
§ Respect students’ and employees’ physical and psychological zones of privacy (autonomy privacy) |
| Avoid defamation: | § Do not distribute the investigation report more broadly than necessary  
§ Prohibit all those involved with the investigation from discussing outside of appropriate investigation and decision-making settings  
§ Protect the qualified privilege enjoyed by civil rights investigations by carefully verifying allegations to avoid disclosures made in bad faith  
§ The more serious the allegations, the more carefully they should be checked before including them in the report  
§ Wait until all the evidence has been collected before reporting on any of it |
| Decide how the complaint and investigation will be described to others: | § There are strong reasons not to discuss the complaint and investigation with those who are not party to the complaint  
§ Consider not saying there was a complaint, however, never lie about there not being a complaint |
## 10. THE INVESTIGATION REPORT

<table>
<thead>
<tr>
<th>PREPARING THE INVESTIGATION REPORT</th>
<th>CRITICAL ELEMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reports should include these sections:</td>
<td>$ Author of the report</td>
</tr>
<tr>
<td></td>
<td>$ Names of the parties</td>
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<tr>
<td></td>
<td>$ A description of the complaint</td>
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<td>$ A description of the response</td>
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<td></td>
<td>$ The district’s policy or policies alleged to have been violated</td>
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<tr>
<td></td>
<td>$ A description of the investigation, including witnesses interviewed, physical evidence adduced, timeliness, those involved in the investigation etc.</td>
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<tr>
<td></td>
<td>$ Findings of fact</td>
</tr>
<tr>
<td></td>
<td>$ Conclusions and recommendations</td>
</tr>
<tr>
<td></td>
<td>$ Attachments (witness statements and other critical documents)</td>
</tr>
<tr>
<td>Assess credibility</td>
<td>$ Indicate why the investigation concluded the way it did where there were factual disputes</td>
</tr>
<tr>
<td>The district’s policies are the standards</td>
<td>$ Explicitly relate the factual findings of the investigation against the standards set out in the relevant policies</td>
</tr>
<tr>
<td></td>
<td>$ Break the analysis down into as many component sub-parts as necessary</td>
</tr>
<tr>
<td>Policy violation versus legal violation</td>
<td>$ Whether the investigator is a lawyer or non-lawyer, the conclusion of the report should be stated in terms of violations of district policy, rather than violations of state or federal law</td>
</tr>
<tr>
<td>Where the investigator is not the decision-maker</td>
<td>$ The report must be complete enough to enable the eventual decision-maker to make a proper determination</td>
</tr>
</tbody>
</table>
| Consider other eventual audiences | $ The parties may well take the report to their lawyers for review to determine whether their legal rights were violated  
$ A judge or jury may ultimately review the report to determine whether the district met its legal duty to conduct a fair investigation |
Roderick Jackson had been an employee of the Birmingham school district for more than 10 years. In 1993, the Board hired Jackson to serve as a physical education teacher and girls' basketball coach. Jackson was transferred to Ensley High School in August 1999. At Ensley, he discovered that the girls' team was not receiving equal funding and equal access to athletic equipment and facilities. The lack of adequate funding, equipment, and facilities made it difficult for Jackson to do his job as the team's coach.

In December 2000, Jackson began complaining to his supervisors about the unequal treatment of the girls' basketball team, but to no avail. Jackson's complaints went unanswered, and the school failed to remedy the situation. Instead, Jackson began to receive negative work evaluations and ultimately was removed as the girls' coach in May 2001. Jackson is still employed by the Board as a teacher, but he no longer receives supplemental pay for coaching.

QUESTION: Does the private right of action implied by Title IX for victims of sex discrimination encompass claims of retaliation for those who complain about sex discrimination but were not themselves victims of the discrimination?

ANSWER:
Alisha Fabela became employed by the Socorro Independent School District in 1986. In 1991, she became the secretary at an elementary school. The school's principal, Arturo Olivas, gave her a poor work evaluation and recommended that her employment with the district be terminated. Shortly thereafter, she filed a discrimination charge with the Equal Employment Opportunity Commission (EEOC) claiming that Olivas had made unwelcome sexist and sexual remarks and that when she complained to him about his behavior, he gave her a poor work evaluation in retaliation.

In September 1992, the EEOC found that Fabela's case failed to establish a violation of the law. It sent her its "right to sue" letter, but she failed to file a lawsuit on her charge. Shortly thereafter, she wasn't discharged as Olivas had recommended but instead was transferred to another school.

Fabela worked at that school apparently without incident and received only positive evaluations from the principal. In 1996, however, Jo Reinhart became the principal. In March 1997, Reinhart offered several criticisms of Fabela's performance and identified areas in which she should improve. In October 1997, she ordered her to go to a print shop to pick up report cards. Fabela told her she couldn't drive to collect the forms because of a migraine headache, which Reinhart didn't believe. In any event, Fabela didn't follow the principal's orders. The following day, she and Reinhart had an unharmonious meeting after which she became upset and left the school.

The following Monday, Fabela was informed that Reinhart had recommended her immediate discharge and that the assistant superintendent, Tom Marcee, agreed. An official notice of dismissal was sent to her. Under the district's policy, she appealed her termination, and a "review" session was conducted. During that session, Marcee produced Fabela's employment file documents, which included the EEOC determination, and commented that she was a problem employee, including the fact that she had filed an unsubstantiated EEOC claim in 1991. The district upheld her termination.

QUESTION: Was Fabela able to show direct evidence of retaliation through Marcee’s comment that Fabela was a problem employee, as evidenced by the fact that she had filed an unsuccessful EEOC claim back in 1991?

ANSWER:
Title IX, Education Amendments of 1972

(Title 20 U.S.C. Sections 1681-1688)

Section 1681. Sex

(a) Prohibition against discrimination; exceptions. No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) Classes of educational institutions subject to prohibition

in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) Educational institutions commencing planned change in admissions

in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the later;

(3) Educational institutions of religious organizations with contrary religious tenets

this section shall not apply to any educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) Educational institutions training individuals for military services or merchant marine

this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) Public educational institutions with traditional and continuing admissions policy
in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) Social fraternities or sororities; voluntary youth service organizations

this section shall not apply to membership practices --

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of Title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association; Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) Boy or Girl conferences

this section shall not apply to--

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for--

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(8) Father-son or mother-daughter activities at educational institutions

this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) Institutions of higher education scholarship awards in "beauty" pageants

this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of
factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

(b) Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance.

Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: Provided, that this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) Educational institution defined.

For the purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college or department.

Section 1682. Federal administrative enforcement; report to Congressional committees

Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 1681 of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (l) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: Provided, however, that no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and
has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Section 1683. Judicial Review

Any department or agency action taken pursuant to section 1682 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 1682 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, United States Code, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

Section 1684. Blindness or visual impairment; prohibition against discrimination

No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity; but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

Section 1685. Authority under other laws unaffected

Nothing in this chapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

Section 1686. Interpretation with respect to living facilities

Notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.

Section 1687. Interpretation of "program or activity"

For the purposes of this title, the term "program or activity" and "program" mean all of the operations of --
(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributed such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 2854(a)(10) of this title, system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship --

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2) or (3);

any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 1681 if this title to such operation would not be consistent with the religious tenets of such organization.

Section 1688. Neutrality with respect to abortion

Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.
NORTH DAKOTA BULLYING STATUE

15.1-19-17. Bullying - Definition.
As used in sections 15.1-19-17 through 15.1-19-22:
1. "Bullying" means:
   a. Conduct that occurs in a public school, on school district premises, in a district owned or leased schoolbus or school vehicle, or at any public school or school district sanctioned or sponsored activity or event and which:
      (1) Is so severe, pervasive, or objectively offensive that it substantially interferes with the student's educational opportunities;
      (2) Places the student in actual and reasonable fear of harm;
      (3) Places the student in actual and reasonable fear of damage to property of the student; or
      (4) Substantially disrupts the orderly operation of the public school;
   b. Conduct that is received by a student while the student is in a public school, on school district premises, in a district owned or leased schoolbus or school vehicle, or at any public school or school district sanctioned or sponsored activity or event and which:
      (1) Is so severe, pervasive, or objectively offensive that it substantially interferes with the student's educational opportunities;
      (2) Places the student in actual and reasonable fear of harm;
      (3) Places the student in actual and reasonable fear of damage to property of the student; or
      (4) Substantially disrupts the orderly operation of the public school.
2. "Conduct" includes the use of technology or other electronic media.

1. Before July 1, 2012, each school district shall adopt a policy providing that while at a public school, on school district premises, in a district owned or leased schoolbus or school vehicle, or at any public school or school district sanctioned or sponsored activity or event, a student may not:
   a. Engage in bullying; or
   b. Engage in reprisal or retaliation against:
      (1) A victim of bullying;
      (2) An individual who witnesses an alleged act of bullying;
      (3) An individual who reports an alleged act of bullying; or
      (4) An individual who provides information about an alleged act of bullying.
2. The policy required by this section must:
   a. Include a definition of bullying that at least encompasses the conduct described in section 15.1-19-17;
   b. Establish procedures for reporting and documenting alleged acts of bullying, reprisal, or retaliation, and include procedures for anonymous reporting of such acts;
   c. Establish procedures, including timelines, for school district personnel to follow in
investigating reports of alleged bullying, reprisal, or retaliation;
d. Establish a schedule for the retention of any documents generated while
investigating reports of alleged bullying, reprisal, or retaliation;
e. Set forth the disciplinary measures applicable to an individual who engaged in
bullying or who engaged in reprisal or retaliation, as set forth in subsection 1;
f. Require the notification of law enforcement personnel if an investigation by school
district personnel results in a reasonable suspicion that a crime might have
occurred;
g. Establish strategies to protect a victim of bullying, reprisal, or retaliation; and
h. Establish disciplinary measures to be imposed upon an individual who makes a
false accusation, report, or complaint pertaining to bullying, reprisal, or retaliation.
3. In developing the bullying policy required by this section, a school district shall involve
parents, school district employees, volunteers, students, school district administrators,
law enforcement personnel, domestic violence sexual assault organizations as defined
by subsection 3 of section 14-07.1-01, and community representatives.
4. Upon completion of the policy required by this section, a school district shall:
a. Ensure that the policy is explained to and discussed with its students;
b. File a copy of the policy with the superintendent of public instruction; and
c. Make the policy available in student and personnel handbooks.
5. Each school district shall review and revise its policy as it determines necessary and
shall file a copy of the revised policy with the superintendent of public instruction.
Each school district shall include, in professional development activities, information
regarding the prevention of bullying and shall provide information regarding the prevention of
bullying to all volunteers and nonlicensed personnel who have contact with students.
Each school district shall provide bullying prevention programs to all students from
kindergarten through grade twelve.
1. Sections 15.1-19-17 through 15.1-19-22 do not prevent a victim from seeking redress
pursuant to any other applicable civil or criminal law. Sections 15.1-19-17 through
15.1-19-22 do not create or alter any civil cause of action for monetary damages
against any person or school district, nor do sections 15.1-19-17 through 15.1-19-22
constitute grounds for any claim or motion raised by either the state or a defendant in
any proceedings.
2. Any individual who promptly, reasonably, and in good faith reports an incident of
bullying, reprisal, or retaliation to the school district employee or official designated in
the school district bullying policy is immune from civil or criminal liability resulting from
or relating to the report or to the individual’s participation in any administrative or
judicial proceeding stemming from the report.
3. A school district and its employees are immune from any liability that might otherwise
be incurred as a result of a student having been the recipient of bullying, if the school
district implemented a bullying policy, as required by section 15.1-19-18 and
substantially complied with that policy.

1. Sections 15.1-19-17 through 15.1-19-22 do not prevent a victim from seeking redress pursuant to any other applicable civil or criminal law. Sections 15.1-19-17 through 15.1-19-22 do not create or alter any civil cause of action for monetary damages against any person or nonpublic school, nor do sections 15.1-19-17 through 15.1-19-22 constitute grounds for any claim or motion raised by either the state or a defendant in any proceedings.
2. Any individual who promptly, reasonably, and in good faith reports an incident of bullying, reprisal, or retaliation to the nonpublic school employee or official designated in the school's bullying policy is immune from civil or criminal liability resulting from or relating to the report or to the individual's participation in any administrative or judicial proceeding stemming from the report.
3. A nonpublic school and its employees are immune from any liability that might otherwise be incurred as a result of a student having been the recipient of bullying, if the school implemented a bullying policy, similar to that required by section 15.1-19-18 and substantially complied with that policy.
State of North Dakota
General Records Retention Schedule
6/27/2012

RECORDS RETENTION SCHEDULE WITH DESCRIPTIONS
INFORMATION TECHNOLOGY DEPARTMENT
RECORD MANAGEMENT
RECORD
CONTROL
NUMBER RECORD TITLE/DESCRIPTION/AND RETENTION

18 (CR) CIVIL RIGHTS

180401 CIVIL RIGHTS

This series contains documents related to the agency’s compliance with civil rights laws and regulations, including the Civil Rights Act, Equal Employment Opportunity Commission, Affirmative Action, Americans with Disabilities, etc. Records may include correspondence, reports, workplace analysis and reviews, and action plans.

Retention: Four years.

Disposition: Dispose by landfill.

Conducting Investigations  
Fargo, North Dakota  
Barry Gomberg & Kathy Rigsby  
September 2012

Superior | 5 | 4 | 3 | 2 | 1 | Inferior
---|---|---|---|---|---|---

1) Topics covered in workshop met my expectationsYYYYYYYY... 0 0 0 0 0
2) Workshop content will be useful in my workYYYYYYYY 0 0 0 0 0
3) Instructors were able to explain ideas clearlyYYYYYYYY... 0 0 0 0 0
4) The instructors demonstrated knowledge of subject matterYYYY... 0 0 0 0 0
5) The pace of the course was comfortableYYYYYYYY... 0 0 0 0 0
6) Instructors were responsive to questions and other student needsYYYY... 0 0 0 0 0
7) Student manual provided appropriate information for courseYYYY... 0 0 0 0 0
8) Course activities were helpful in understanding the materialYYYY... 0 0 0 0 0
9) The facilities were conducive to a learning environmentYYYY... 0 0 0 0 0
10) Overall, the course was a valuable experienceYYYYYYYY... 0 0 0 0 0

COURSE COMMENTS:  
11) Please indicate which part of the course will be most useful in your job:

12) Specific comments on content or instruction:

SUGGESTED FOLLOW UP:  
13) I would like to see a following training in the following areas:

14) In recommending this program to others, I would be sure to tell them:

We appreciate your comments!