

ESSAA

Insights

Food for Thought from the ESSAA Legal Team

Empire State Supervisors and Administrators Association
Legal Update - September 2023



Sexual Harassment and Bullying

We hope that your school year has gotten off to a good start. ESSAA considers it our foremost responsibility to safeguard the welfare and dignity of all our members. In the pursuit of this commitment, we closely monitor the various challenges our members face navigating the work environment on a daily basis.

Sexual harassment and bullying continually surface as major issues affecting the time and well-being of our members. Therefore, ESSAA is offering all members practical guidance on how to best respond to these situations when you encounter them.

Please take the time to carefully read the following information so you can be well prepared to address workplace issues involving you, your students and staff should they arise. We urge you to print out this document and keep it in your desk for quick reference. Complaints get filed regularly and are usually unexpected. Having these guidelines readily available will prove invaluable, especially if you or a colleague find yourself on the receiving end of such a complaint.

Sexual Harassment in the Workplace:

Sexual harassment is illegal and violates school district policy. Review your district's sexual harassment>Title IX policies and keep a hard copy in your office. We strongly recommend that you contact your ESSAA attorney for advice on next steps before you take further action regarding issues of sexual harassment.

What to do if you receive a sexual harassment complaint:

If an administrator receives a complaint regarding sexual harassment, the administrator is **required** to report it. This applies even if the complainant states he/she doesn't want to make an issue out of the matter. Depending on your individual district's policy, you may be required to investigate the matter as well.

What to do if you become aware of sexual harassment: if you **learn** about any instance of sexual harassment from a third party, the same requirements to report it or investigate it apply. Failure to follow up can result in discipline against the administrator, including Education Law § 3020-a charges. Probationary administrators have been terminated for failing to follow through on sexual harassment complaints.

Bullying in the Workplace:

What to do if you receive a complaint about bullying in the workplace:

Bullying violates the law, regulations and school district policy. Familiarize yourself with your district's DASA policy and keep a hard copy in your office for reference. If an administrator receives a complaint regarding bullying, whether between students or staff, the administrator is **required** to report it. This applies even if the complainant states he/she doesn't want to make an issue out of the matter. Depending on your individual district's policy, you may be required to investigate the matter as well. If unsure or if you have any questions of concerns, contact your ESSAA attorney for advice on the next steps.

What to do if you become aware of bullying in the workplace:

If you **learn** about any instance of bullying from a third party such as another student, a parent or staff member, the same requirements to report it or investigate it apply. Failure to follow up can result in discipline against the administrator, including Education Law § 3020-a charges. Probationary administrators have been terminated for failing to follow through on bullying incidents.

Examples of conduct that requires reporting:

Inappropriate Comments: An employee/supervisor making comments about a colleague's appearance, clothing, or body in a suggestive or uncomfortable manner, even under the guise of compliments.

Unwanted Advances: Repeatedly inviting a coworker or subordinate to social events outside of work, despite them declining and showing disinterest.

Innuendos and Jokes: Sharing sexually suggestive jokes, innuendos, or content with a colleague or subordinate, even if done subtly.

Unwanted Physical Contact: Touching a colleague or subordinate in ways that make them uncomfortable, such as unnecessary or prolonged hugging, patting, or touching their arm, back, or shoulders.

Personal Questions: Persistently asking personal questions about a colleague's or subordinate's intimate life, relationships, or sexual preferences, even if disguised as friendly curiosity.

Leering or Staring: Staring at a colleague or subordinate in a way that makes them uncomfortable, particularly if the gaze is focused on specific body parts.

Subtle Isolation: Creating situations where a colleague or subordinate is isolated with the intention of discussing or making advances of a sexual nature.

Unwanted Gifts: Giving gifts of a sexual or suggestive nature to a coworker or subordinate, even if they appear harmless or humorous.

Online Harassment: Sending inappropriate messages or emails, sharing explicit content, or making sexual comments through digital communication platforms.

Comments on Appearance: Making comments about a colleague's or subordinate's appearance, or body changes that are sexual in nature and create discomfort.

Insinuations about Professional Opportunities: Implied or explicit suggestions that a colleague's or subordinate's career advancement or job security is contingent on engaging in sexual acts or maintaining a certain type of relationship.

Displaying Inappropriate Material: Leaving or sharing sexually explicit material in the workplace, such as magazines, posters, or digital content.

Sexual Harassment and Bullying

Bullying can take various forms, both among students and between staff, within a school setting. It's important to note that bullying behavior can manifest differently in different situations. It's crucial to recognize these behaviors and address them promptly to create a safe and supportive environment within schools and workplaces.

Examples of bullying conduct in both contexts:

Between Students:

- **Verbal Bullying:** This involves using hurtful words, insults, teasing, or name-calling to demean or belittle another student.
- **Physical Bullying:** Physical aggression such as hitting, pushing, tripping, or other forms of physical harm.
- **Social Exclusion:** Deliberately excluding a student from social activities, groups, or conversations to isolate and alienate them.
- **Cyberbullying:** Using digital platforms to harass, threaten, or spread rumors about a student, often through social media, texts, or online messaging.
- **Intimidation:** Using fear or threats to control or manipulate another student.
- **Racial, Cultural or Gender Bullying:** Targeting someone based on their race, ethnicity, gender or cultural background, which can involve stereotypes, slurs, or discriminatory actions.
- **Sexual Harassment:** Unwanted sexual advances, comments, or behaviors that create a hostile environment for the targeted student.
- **Verbal Abuse:** Continuous and hurtful verbal attacks that undermine a student's self-esteem and well-being.
- **Blackmail or Extortion:** Forcing a student to do something against their will under the threat of exposing embarrassing or private information.
- **Indirect Bullying:** Spreading rumors, gossip, or negative information about a student indirectly, often to damage their reputation.

Between Staff:

- **Verbal Harassment:** Consistently using derogatory language, insults, or offensive comments toward colleagues or subordinate.
- **Exclusion or Isolation:** Ignoring, excluding, or isolating a staff member from conversations, meetings, or workplace activities.
- **Micromanagement:** Excessively controlling or scrutinizing a colleague's or subordinate's work, often with the intent of making them feel incompetent.
- **Undermining Authority:** Consistently challenging or undermining a colleague's or subordinate's authority, decisions, or actions in a way that undermines their credibility.
- **Cyberbullying:** Similar to students, staff members can engage in cyberbullying by using digital platforms to harass, threaten, or spread rumors about their colleagues or subordinate.
- **Sabotage:** Intentionally undermining a colleague's or subordinate's work, projects, or efforts in order to cause harm or failure.
- **Spreading Rumors or Gossip:** Sharing false or damaging information about a colleague or subordinate with the intent to harm their reputation.
- **Sexual Harassment:** Unwanted sexual advances, comments, or behaviors from one staff member to another, creating a hostile work environment.
- **Misuse of Authority:** Abusing one's position of power to unfairly target or mistreat a colleague or subordinate.
- **Intimidation:** Using fear, threats, or manipulation to control or manipulate a fellow staff member or subordinate.

What to do if a Sexual Harassment or Bullying Complaint is made against you:

If a subordinate makes a sexual harassment or bullying complaint against you as their supervisor, it's essential to handle the situation with sensitivity, professionalism, and according to established procedures.

Remember that every district **must** investigate every complaint made, even if it is patently obvious that the complaint has no substance and/or the complainant is a disgruntled staff member whom you have disciplined.

Contact ESSAA Counsel: Once you are notified – even informally that a complaint has been made, **immediately** contact ESSAA counsel. We will review the situation with you and advise you as to what to expect from the process going forward and the steps to take to protect yourself.

Stay Calm: It's natural to feel surprised, defensive, or upset when faced with such an allegation, especially if you know it is unfounded or even maliciously made. It is crucial to remain calm and composed throughout the process.

Report to Higher Authority: Report the complaint immediately to your supervisor and depending upon your discussion with ESSAA counsel, to HR as well.

Avoid Retaliation: It's imperative not to retaliate against the subordinate for making the complaint. Retaliation is illegal and will worsen the situation. Too often an administrator will find herself/himself in a situation in which the complaint is not substantiated, but the administrator is written up for retaliation for actions taken after learning of the complaint. Timely utilization of ESSAA counsel can avoid you falling into this trap.

Maintain Confidentiality: Respect the confidentiality of the process. Avoid discussing the matter with colleagues or other parties who are not directly involved. Your Association or counsel should be the ones contacting potential supportive witnesses, not you.

Cooperate Fully: When an investigation is launched, cooperate fully with the investigators but make sure you have Union representation at all interviews. If the district has its attorney conducting the interview, make sure you have ESSAA counsel with you. Discuss the situation fully with ESSAA counsel before the interview with the district and share all relevant information, documents and witnesses with Union counsel. Avoid conduct that the district could construe as obstructing the process or tampering with evidence.

Do Not Approach the Subordinate Directly: During the investigation, to the extent possible avoid direct contact with the subordinate who made the complaint. One of the talking points with the district should be what, if any, supervision/contact you should have vis-à-vis the complainant. In a secondary school, with multiple administrators this is more easily resolved. In an elementary school, which may only have one administrator, it can be more problematic. You want the district to decide this question, not you. In no event should you meet with the complainant alone. If a retaliation complaint is made after such interaction, it is imperative you have a witness.

Reflect on What Happened: Spend some time thinking about what is alleged in the complaint. Could you have chosen your words more carefully; or is the complaint baseless, frivolous or even malicious? Would you act differently if you had to do it again? What lessons can you learn for future interactions with staff? Keep your notes private, use your personal computer – not the district's.

Be Patient: The investigatory process can be slow. It may involve interviews with numerous witnesses, each of whom may tell the investigator that other individuals may have relevant information, and these individuals then have to be contacted and interviewed. Your Association or counsel can try and ascertain the likely timeframes.

Remember that each situation is unique. Following the guidelines outlined above, and promptly contacting ESSAA counsel is the best way to proceed and protect your interests. Your ESSAA support team stands ready to support you in any way we can.