

SEXUAL HARASSMENT IN THE #MeToo GENERATION

Presented by

M. Karen Kilgore and Carol S. Helms

Cuddy & McCarthy, LLP

Headlines

#metoo

#whathappenswhenjudgesjudgethemselves



Sexual misconduct
by judges kept
under wraps

#hollywoodharvey

The cost of success



#wetrustedyou



265

#closedmouthcatchesnolies

#defamingthevictim



#keepingthecreepsoutofschool



#itsuptous

#notinmyworkplace #metoo

6.60.9.9 NMAC

C. Standard II: Duty to the profession. The education profession has been vested by the public with an awesome trust and responsibility. To live up to that lofty expectation, we must continually engender public confidence in the integrity of our profession, and must strive consistently in educating the children of New Mexico, all of whom will one-day shape the future. To satisfy this obligation, we:

6.60.9.9 NMAC

(9) shall avoid conduct connected with official duties that is unfair, improper, illegal or gives the appearance of being improper or illegal;

(10) shall not sexually harass any school employee, any school visitor or anyone else we might encounter in the course of our official duties, which includes:

- (a) making any sexual advances, requests for sexual favors, repeated sexual references, and name calling by means of sexual references or references directed at any gender-specific individuals named above;

6.60.9.9 NMAC

(b) making any other verbal gesture or physical conduct with any of the above-named individuals even where the licensed educator believes they consent or they actually initiate the activity;

(c) displaying or distributing any sexually oriented materials where the above-named individuals can see them; and

(d) creating an intimidating, hostile, or offensive work/school environment by engaging in any of the prohibited behaviors set forth at Subparagraphs (a), (b) or (c), Paragraph (10), Subsection C of 6.60.9.9 NMAC, above;

6.60.9.9 NMAC

(11) shall educate oneself at least annually about avoiding sexual harassment by either attending periodic training, reviewing sexual harassment literature or the EEOC guidelines found at Title 29 Code of Federal Regulations Part 1604 (29 C.F.R. Section 1604.1 *et seq.*), or contacting appropriate school human resources personnel;

(12) shall not engage in inappropriate displays of affection, even with consenting adults, while on school property or during school events off campus;

(13) shall not, without permission of a supervisor, use public school property to conduct personal business or personal affairs;

6.60.9.9 NMAC

(14) shall use educational facilities and property only for educational purposes or purposes for which they are intended consistent with applicable policy, law and regulation;

(15) shall not discriminate against any school employee, or any other person with whom we have any dealings or contact in the course of our official duties, on the basis of race, color, national origin, ethnicity, sex, sexual orientation, disability, religion, or serious medical condition;

(24) shall report any knowledge of inappropriate contact, as provided by Paragraph (7) of Subsection B of 6.60.9 NMAC with a student ***or other school employee*** to the local school authority within 30 days of obtaining such knowledge.

What is Harassment?

As applied to adult on adult sexual harassment, school district policies may or may not have a definition of the term harassment. Generally, and borrowing from the new policy for State Legislators, “[h]arassment is a form of discrimination that is generally based on race, religion, color, national origin, age, ancestry, sex, sexual orientation, gender identity, physical or mental disability, serious medical condition or spousal affiliation. Harassment generally involves conduct, comment or display that a reasonable person would find insulting, intimidating, humiliating, hurtful, demeaning or degrading or that causes offense, discomfort or personal humiliation or embarrassment to a person or persons.”

Harassment cont.

The policy for Legislators continues, “[h]arassment can include such behavior as slurs, demeaning jokes or comments, innuendoes, unwelcome compliments of a personal or intimate nature, use of racial or ethnic epithets or racially offensive words or phrases communicated in any language, cartoons, pictures, pranks, hazing, stereotyping comments, derogatory descriptions or other similar verbal, nonverbal or physical conduct. It is not necessary that the behavior be intentional to be considered harassment. Harassment can be a single serious incident or a series of incidents over time.”

Sexual Harassment

“Sexual harassment ...
warrants separate emphasis.”

Sexual Harassment

- Form of sex discrimination involving conduct of a sexual nature
- Unwelcome sexual advance or conduct that creates an intimidating, hostile or offensive workplace
- Occurs when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment

Types of Sexual Harassment

- Quid pro quo

Submission to or rejection of such conduct by an individual is used as the basis for employment decisions

- Hostile work environment

Has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile or offensive working environment

Standards

- “Reasonable Person” - Would a reasonable person in the same or similar circumstances be offended or feel harassed?
- Continuous
- Unwanted
- Interfering with work

Where it Occurs

- In school district facilities, vehicles and on school district grounds
- School district and school-related activities whether on or off district property

How it Occurs

- Opposite sex
- Same sex
- Supervisor to employee, administrator, third party
- Employee to employee, administrator, third party
- Third party to administrator, employee, or third party
- Administrator to administrator, employee, third party
- Verbally, Non-verbally, or Physically

Examples of Verbal Sexual Harassment

- Threats or suggestions of loss of job or withholding of a benefit unless sexual favors are given
- Threats or suggestions that a person will “get ahead” if sexual favors are given
- Repeated requests to have lunch, dinner, or a cocktail
- Calling someone “doll”, “babe”, “honey”, “girl”, “boy”, etc.
- Gender-based comments

Examples of Verbal Sexual Harassment cont.

- Making sexual innuendoes
- Telling sexual jokes or stories
- Making sexual comments about a person's clothing, body, or look
- Turning discussions to sexual topics
- Gossiping/spreading rumors about sex life/topics

Examples of Non-Verbal Sexual Harassment

- Elevator eyes
- Staring at someone
- Suggestive looks
- Displaying sexual and/or derogatory materials about men or women
- Invading an individual's personal space
- Making sexual gestures with hands and/or body movements

Examples of Physical Sexual Harassment

- Massaging a person's neck, shoulders, etc.
- Brushing up against another person
- Hugging, kissing, patting, or stroking someone
- Pinning someone into a corner
- Blocking/impeding movement
- Touching oneself

Hostile or Abusive Environment

- Factors
 - Sexual conduct
 - Unwelcome
 - Interferes with work performance
- Frequency
 - Generally, repeated
 - Severity of conduct
 - Alters the conditions of victim's employment

Your Role

A person who has experienced or observed harassment is strongly encouraged to identify the offensive behavior and advise the offender to stop and to report the harassment as provided in your district policies.

Your Role

We are all responsible for a safe and professional workplace!

- Express strong disapproval of harassment
- Stop observed conduct
- Report as soon as possible
 - Effective way to resolve quickly
 - Stop bad behavior
 - Your silence may empower or enable the harasser

Your Role

- **Do Not**
 - tell jokes
 - show pictures
 - tell stories
 - make comments
 - use gestures
 - talk
- **about sexual matters**

Reporting Harassment

- Complaints against administrators, supervisors employees
- Complaints against a person who is not a district employee, which is everyone on payroll from the Superintendent down
- Complaints against a member of the Board of Education

Check policies/CBA

Complaints Against Staff/Employees

- The Complaint should be made to . . . **Check policies/CBA!**
 - The Superintendent or designated administrator
 - The accuser's site supervisor
 - Human Resources
- Investigation
 - By someone with appropriate training
 - Prompt, impartial, and discreet
- Resolution
 - Dismissal of the Complaint
 - Discipline of the harasser(s)
 - Unable to determine based on a preponderance of evidence
- Appeal process . . . **Check policies/CBA!**

Complaint against Superintendent, Supervisors, Board Member

The Complaint against supervisor or superintendent should be made to:

- The employee's direct supervisor unless the alleged harasser is the direct supervisor
- The Superintendent, unless the Superintendent is the alleged harasser, or
- HR or other administrator or supervisor
- If against a Board member, report to Board President or Superintendent

For each of the above, check policies/CBA

Considerations for Administrators/Supervisors, including but not limited to the Superintendent

- Do not do nothing!
- Determine whether to investigate further, but do not predetermine outcome, ~~even~~ including the complaints of serial complainers!
- Do not look the other way!

Complaint against Third Party

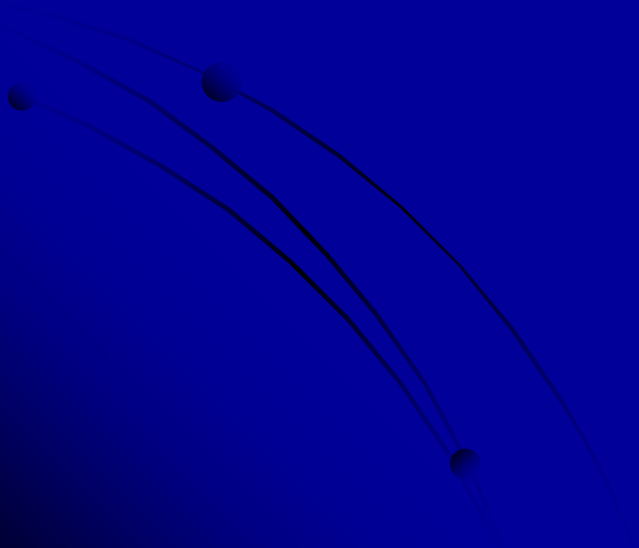
- Follow policies/CBA
- Designated investigator should work with Superintendent or HR to ascertain:
 - Was the person an invited guest with legitimate school business?
 - Was the person the employee of a contractor who provides services to the district?
 - Report the complaint to the third party's employer and ban third party from school property/events unless/until investigation is completed and the accused is exonerated.

Complaints against Third Party, cont.

- Investigation

- By someone with appropriate training
- Prompt, impartial, and discreet
- Resolution
 - Dismissal of the complaint
 - Protective order
 - Ban from district property/events
 - Notifying SRO/law enforcement

Let's see what you've learned!



A QUIZ

1. Both the accuser and accused must consider the behavior as sexual harassment in order for it to qualify as sexual harassment.



False

2. An employee who joins in sex jokes or sexual banter in the workplace can file a claim of sexual harassment.



True

3. A person who works in an office where sexual jokes or banter occurs, but to whom it is not directed, cannot file a claim of sexual harassment.



False

4. To qualify as sexual harassment, the parties must be members of the opposite sex.



False

5. The number one reason most individuals file harassment complaints is money.



False

6. Pressuring a co-worker for social activity can be considered sexual harassment.



True

7. You should never compliment a co-worker on his/her appearance.



False

8. A person who complains about/reports harassment must make the complaint/report in writing.



False

9. If no one complains about sexually explicit jokes or materials, no action is necessary.



False

10. If a co-worker tells you about an incident of sexual harassment, but asks you not to tell anyone, you should not take any further action.



False

Scenario 1

Annie really enjoyed her new job as an administrative assistant until her supervisor started making advances. He persisted in touching her and requesting she go out with him in exchange for a quick raise. She does not know what to do. She likes her new job but is afraid of losing it if she takes any action. Annie asks for your advice.

Scenario 2

Reece, the receptionist, enjoyed his job because it gave him the opportunity to meet so many women. Each morning when Trudy Teacher, a new English teacher passes the receptionist's desk, Reece comments on how great she looks. At first Trudy doesn't mind, but when Reece began whistling, and saying things like, "That dress shows off your great figure!" Trudy asked him to stop. Reece did not stop, but kept making remarks that were becoming more and more graphic.

Scenario 3

Lana and Lawrence are co-workers producing the senior play. After several weeks of working together, they found they really enjoyed each other's company and had a lot in common. Lana was excited when Lawrence asked her to dinner after working late one evening and she willingly accepted his invitation. They continue to date. You find out about their relationship through Lana's sister.

Scenario 4

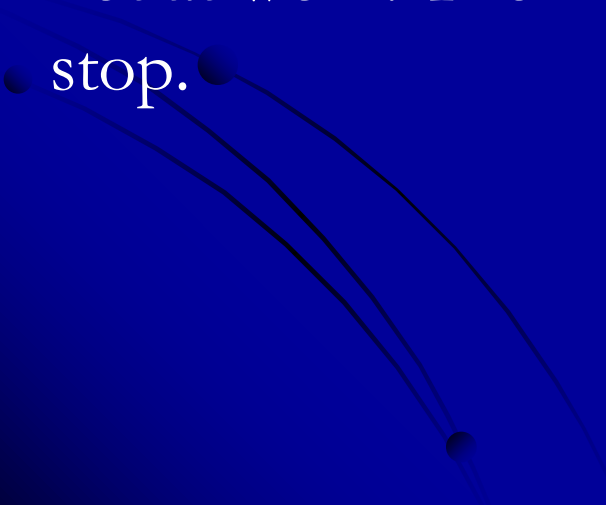
Employees who had worked at the middle school for years had put up with Coach Rex's off-color comments and jokes. When some of the new employees came to them for advice on how to deal with Coach Rex's comments and jokes, they suggested they just ignore them because Coach Rex was up in years, had just been through surgery, was from the "old school", and meant no harm. Plus, Coach Rex was quite powerful. One new temporary employee, Nola, was very offended when Coach Rex referred to her as one of the "girls" and called her "honey" and "sweetie" and called another woman a "dumb broad".

Scenario 5

Compton turned on his computer one morning to find an e-mail message saying, “You are the sexiest man in this office. I can’t wait to get my hands on you.” Two days later, someone put an obscene cartoon on his desk. Compton thinks it might be the boyfriend he broke up with a few days ago and is a little frightened. Compton tells you and asks you not to tell anyone.

Scenario 6

A courier keeps asking a maintenance worker out on a date. The maintenance worker is not interested and has told the courier. The courier is persistent – calling the maintenance worker at home, sending emails to her personal account, and even showing up at her gym, but not at work. The maintenance worker wants the courier to stop.



Scenario 7

Kevin checks his personal email at work a couple of times a day, but usually for only 2-3 minutes. Sometimes his friend, a well-known booster club member, sends him racy jokes and even pornographic pictures. Kevin does not forward them or share them with anyone at work. He just looks at them during his lunch break and when no one else is around. No one has complained about this.

Scenario 8

Mary, Annette, and Lilly are co-workers and see each other socially outside of work. One Saturday evening over dinner, Lilly tells Mary and Annette about a very embarrassing sexual encounter with her husband. The next Monday at work, Lilly notices people whispering and laughing behind her back. She confronts Mary and Annette, who say they didn't know what she told them was confidential.

Scenario 9

Jim, Joe and Jerry are co-workers. One day Jim goes to their supervisor, Alma, and says that Joe and Jerry keep making crude jokes about him and trying to grab his “private parts”. Alma tells Jim they are just messing around and that he needs to “be a man, not a girl”. You are outside in the hall and overhear all of this.

Scenario 10

Rick invites all his co-workers, male and female, out for drinks every payday and most join him. His behavior is appropriate and everyone has a good time. One of his co-workers is offended by his invitations and never accepts. She complains to you about Rick.

Scenario 11

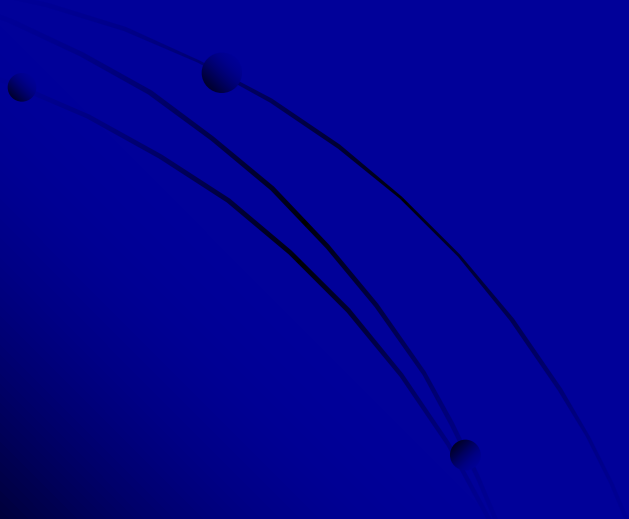
Connie had a consensual affair with Donnie, a co-worker. They stopped seeing each other weeks ago, but lately Connie has been sexually propositioning Donnie at work. Donnie is offended by Connie's conduct and has told her to stop. Connie has not stopped.

Scenario 12

Sheila the security guard enjoys her work but sometimes gets a little bored. That's why she likes it when she gets to monitor activities on the cameras. There's one attractive math teacher who she is able to watch on the camera. When no one is looking, she zooms in to look into his eyes and check out his muscles.

Scenario 13

You are working late one night and walk into the restroom before heading home. You find Principal Sinbad and Receptionist Risqué in the throes of passion.



Thank you!

kkilgore@cuddymccarthy.com

chelms@cuddymccarthy.com