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Sexual and General Harassment in the School Context

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Challenges to Combatting Harassment:

- A lack of understanding about what constitutes harassment
- A lack of knowledge about available options
- A reluctance to complain
- Fear of negative consequences
- Fear of escalating the situation
- Fear of impact on long-term career prospects
- Reputational risk

Objectives Today

- To recognize harassment and sexual harassment
- To understand legal obligations
- To respond appropriately
 - Reporting harassment/sexual harassment
 - Investigating harassment / sexual harassment
 - Taking appropriate corrective action

Relevant Legislation

Criminal Code, R.S.C. 1985, c. C.45

Human Rights Code, R.S.O. 1990, c. H.19 (“Code”)

Occupational Health and Safety Act, R.S.O. 1990, c. O.1
 (“OHSA”)

Education Act, R.S.O. 1990, c. E.2

Ontario College of Teachers Act, 1996, S.O. 1996 c.12

What is Harassment?

Workplace Harassment (OHSA)

workplace harassment means,

- (a) engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or
- (b) workplace sexual harassment

Workplace Sexual Harassment (OHSA)

workplace sexual harassment means,

(a) engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or

(b) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome

Code Harassment

Harassment

5. (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

10(1) “harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome;

Code Sexual Harassment

Sexual Harassment

7. (2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee

OCT – Sexual Misconduct

“sexual misconduct” means inappropriate behaviour or remarks of a sexual nature by the member that is not sexual abuse of a student, where,

- (a) one or more students are exposed to the behaviour or remarks, or the member knows or ought to know that one or more students are likely to be exposed to the behaviour or remarks, and
- (b) a reasonable person would expect the behaviour or remarks to have the effect of,
 - (i) causing distress to a student exposed to the behaviour or remarks,
 - (ii) being detrimental to the physical or mental well-being of a student, or
 - (iii) creating a negative environment at a school for a student exposed to the behaviour or remarks.

Education Act Bullying

“bullying” means aggressive and typically repeated behaviour by a pupil where,

(a) the behaviour is intended by the pupil to have the effect of, or the pupil ought to know that the behaviour would be likely to have the effect of,

(i) causing harm, fear or distress to another individual, including physical, psychological, social or academic harm, harm to the individual’s reputation or harm to the individual’s property, or

(ii) creating a negative environment at a school for another individual, and

(b) the behaviour occurs in a context where there is a real or perceived power imbalance between the pupil and the individual based on factors such as size, strength, age, intelligence, peer group power, economic status, social status, religion, ethnic origin, sexual orientation, family circumstances, gender, gender identity, gender expression, race, disability or the receipt of special education;

Education Act Bullying

Bullying includes the use of any physical, verbal, electronic, written or other means.

Cyber-bullying is bullying by electronic means, which includes:

- (a) creating a web page or a blog in which the creator assumes the identity of another person;
- (b) impersonating another person as the author of content or messages posted on the internet; and
- (c) communicating material electronically to more than one individual or posting material on a website that may be accessed by one or more individuals.

Education Act – Sexual Assault

A principal shall suspend a pupil if he or she believes that the pupil has engaged in any of the following activities while at school, at a school-related activity or in other circumstances where engaging in the activity will have an impact on the school climate:

...Committing sexual assault.

Features of Harassment

- Harassment may result from one incident or a series of incidents
- Harassment may be directed at specific individuals or groups

Examples of Harassment

- Humiliating another member in front of co-workers
- Comments which promote stereotyping on any of the prohibited grounds
- Ridiculing someone
- Threatening comments or behaviour
- Spreading rumours
- Malicious jokes or gossip about a co-worker

Examples of Sexual Harassment:

- Displays of sexually degrading, offensive, or derogatory material such as email/text messages, graffiti, or displays of suggestive pictures
- Inquiries or comments about a person's sex life or sexual behaviour
- Unwelcome sexual or gender-related comments or jokes
- Propositions of physical intimacy
- Making promises or threats in return for sexual favours

Examples of Sexual Harassment

- Sexual stories causing embarrassment or offence
- Leering (suggestive staring) or other obscene or suggestive gestures
- Conduct such as stalking
- Sexual assault or abuse
- Physical contact including unwanted touching
- Taunting about a person's body or attire relating to his or her sex

What is NOT Harassment

- Reasonable actions to manage workplace and direct workers is not harassment
- Performance management or coaching
- Discipline for misconduct
- Asking for medical documents to support absences
- Normal conflicts between people at work

Responding to Harassment Complaints

Harassment between Workplace Parties – OHSA Duties

- Policies
 - Reporting procedures
 - Investigation procedure
- Employers, supervisors have responsibilities to prevent and address harassment

Responding

- Establish policies addressing harassment and bullying
- Put in place procedures for reporting, investigating, and responding to verified incidents
- Provide regular training for staff and students regarding what constitutes general harassment, bullying, sexual harassment, sexual misconduct and sexual assault
- Provide training regarding policies and procedures, including: reporting methods, duty to investigate and potential responses (educational and disciplinary)

Investigations

- Investigate all allegations:
 - Consider whether third parties need to be involved and at what stage (CAS, police, third party for investigation, report to OCT).
- Interview complainant, ensure written statement is reviewed
- Interview respondent, ensure written statement is reviewed
- Are there any witnesses? If so, interview them.
- Collect any evidence, such as correspondence, photos, social media .
- Keep detailed notes.
- Where required, provide written decision of findings.

Investigations

- Stay objective. Do not decide in advance.
- Decision makers should be involved in investigation
- Maintain confidentiality to the extent possible.
- Complete investigation in a timely manner.
- Prepare the Investigation Report.
- Under OHSA, the complainant and respondent (if employees) must be advised of the outcome of the investigation and the corrective action, if any.
- Reprisals / retaliation is prohibited.

Maintaining a Positive Space

- Take active, conscious steps to create a positive space
- Respect boundaries and comfort zones
- Maintain and encourage a positive attitude
- Set a positive example
- Discourage gossip / inappropriate behaviour
- Conduct climate surveys
- Where there has been a significant incident, assess to identify risks and to inform future practice and training
- Ensure regular review and update of policies, procedures and training



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Questions



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MORNING RECESS

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Scenario 1

Steve, a teacher, was discussing an assignment with Sara, his student, in the hall outside his classroom. The conversation ended and Sara started to walk away, “Oh Sara”, Steve said and placed an arm around Sara’s shoulder and pulled her closer to say “I forgot to tell you about this. . .” Steve continued the conversation as they walked down the hallway together.

Scenario 2

Leena, the Vice Principal, has received a complaint from the parents of a 10th grade student, Gina. Her parents found the following texts from someone named Adam. Adam is Gina's classmate.

Adam: Hey, it's Adam

Gina: How did you get my number

Adam: what r u doing later

Adam: why aren't u responding

Adam: hey

Adam: I'm just trying to be friendly. Ur being rude

Adam: what's ur problem

Adam: ur being a bitch

Scenario 3

Three days ago, Elizabeth asked her co-worker, Thomas, to assist with scheduling. She followed up yesterday and Thomas said he would get on it. Today, Elizabeth called Thomas, yelled at him, and directed him to immediately stop what he was doing and get the information NOW.

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