

Legal, Ethical, and Professional Issues Pertaining to Illegal Discrimination, Sexual Harassment and Mandatory Child Abuse Reporting

Department: School of Education

Faculty: Dr. Erma Jean Sims, J.D.

Seminar Description:

To discuss the importance of legal rights, responsibilities and procedures all teachers must abide by in an educational setting regarding Illegal Discrimination, Sexual Harassment and Child Abuse Reporting.

Seminar Goals

- To develop knowledge of what Illegal Discrimination, Sexual Harassment and Mandatory Child Abuse Reporting are and be able to identify instances thereof.
- To gain an awareness and understanding of the laws and court cases pertaining to illegal discrimination, sexual harassment and child abuse reporting in an educational setting.
- To understand the teacher's legal, ethical and professional responsibilities pertaining to illegal discrimination, sexual harassment and child abuse reporting in an educational setting.

Required Text

California Education Code

California Penal Code

California Code of Regulations

Local School District Policies on Illegal Discrimination, Sexual Harassment & Child Abuse

Websites for Sexual Harassment:

<http://www.de.psu.edu/harassment/legal/>

http://encarta.msn.com/encyclopedia_761579949/Sexual_Harassment.html

<http://www.now.org/issues/harass/gebser.html>

<http://supct.law.cornell.edu/supct/html/97-843.ZS.html>

Candidate Outcomes

Upon completion of this seminar, candidates will be able to:

- Understand and demonstrate knowledge of the duty to warn and protect;
- Understand and be able to perform the legal mandates regarding illegal discrimination, sexual harassment and child abuse;
- Demonstrate knowledge of the California Education Code, California Penal Code and California Code of Regulations relating to illegal discrimination, sexual harassment and/or child abuse reporting procedures;
- Demonstrate knowledge of individual legal rights as a reporter of any such illegal discrimination, sexual harassment and/or child abuse witnessed or suspected of students or teachers.

Seminar Handouts

- Illegal Discrimination
- Sexual Harassment Handout
- Child Abuse Handout
- Legal References Handout

Legal References

California Commission on Teacher Credentialing
TPE 12: Professional, Legal, and Ethical Obligations

Sexual Harassment References

California Education Code

Section 212.5 Sexual harassment, defined
Section 230 Particular Practices prohibited

California Code of Regulations

CCR 80337

Websites

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Child Abuse References:

California Education Code

Section 33308.1 - Guidelines on procedure for filing child abuse complaints
Section 44690-44691 - Staff Development in the detection of child abuse and complaint
Section 48906 - Notification when student released to peace officer

California Penal Code

Section 273a Willful cruelty or unjustifiable punishment of child; endangering life or health
Section 11164-11174.3 Child Abuse and Neglect Reporting Act
Section 11165-11165.15 Definitions relating to child abuse
Section 11166-11170 Reporting known or suspected cases of child abuse
Section 11172 Immunity from liability

Illegal Discrimination:

California Education Code

Section 200 illegal discrimination

California Code of Regulations

80338 Discrimination, prohibited.

California Penal Code

Section 422.55 illegal discrimination

Illegal Discrimination, Sexual Harassment and Mandatory Child Abuse Reporting Legal Seminar

Presented by: Dr. Erma Jean Sims, J.D. – Sonoma State University

I. INTRO/ IMPORTANCE

- It is important that teachers know and understand their legal, ethical and professional obligations pertaining to illegal discrimination, sexual harassment and mandatory child abuse reporting within an educational setting. – (See TPE 12)

II. ILLEGAL DISCRIMINATION

- A. Definition
- B. Legal Responsibility and Liability

III. SEXUAL HARASSMENT

- B. Definition
- C. Court Decisions
 - I. 1999 Supreme Court Case: Davis, as next friend of LaShonda D v. Monroe County Board of Education et al.
 - II. 1998 Supreme Court Case: Gebser v. Lago Vista Independent School District
- D. Typical Examples
- E. Scenarios & Questions for Discussion

IV. MANDATORY REPORTING OF ABUSE

- A. Definition
- B. Documentation
 - I. Reporting Procedures
 - II. Legal Responsibility and Liability
 - III. When School Employees are Accused of Child Abuse
- C. Typical Examples
- D. Scenarios & Questions for Discussion

V. FREQUENTLY ASKED QUESTIONS

VI. LEGAL REFERENCES

ILLEGAL DISCRIMINATION HANDOUT

California Code of Regulations

80338 Discrimination Prohibited.

A certificated person shall not, without good cause, in the course and scope of his or her certificated employment and solely because of race, color, creed, gender, national origin, handicapping condition or sexual orientation, refuse or fail to perform certificated services for any person.

California Education Code

Section 200

It is the policy of the State of California to afford all persons in public schools, regardless of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, or regardless of any actual or perceived characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal **Code**, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.

California Penal Code

Section 422.55.

For purposes of this title, and for purposes of all other state law unless an explicit provision of law or the context clearly requires a different meaning, the following shall apply:

- (a) "Hate crime" means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:
 - (1) Disability.
 - (2) Gender.
 - (3) Nationality.
 - (4) Race or ethnicity.
 - (5) Religion.
 - (6) Sexual orientation.
 - (7) Association with a person or group with one or more of these actual or perceived characteristics.

SEXUAL HARASSMENT HANDOUT

DEFINITION:

Unwanted verbal or physical behavior of a sexual nature that makes someone feel uncomfortable or unwelcome that occurs in the workplace or in an educational setting.

Such behavior is illegal if it creates a hostile or intimidating environment, if it interferes with an individual's work or school performance, or if acceptance of the harasser's behavior is made a condition of employment or academic achievement.

California Education Code

Section 212.5.

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:

(a) Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.

(b) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.

(c) The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.

(d) Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

California Code of Regulations

80377 - Sexual Harassment and Retaliation Prohibited

No certificated person shall directly or indirectly use or threaten to use any official authority or influence in any manner whatsoever which tends to discourage, restrain, interfere with, coerce, or discriminate against any subordinate or any certificated person who in good faith reports, discloses, divulges, or otherwise brings to the attention of the governing board of a school district, the Commission on Teacher Credentialing or any other public agency authorized to take remedial action, any facts or information relative to actual or suspected violation of any law regulating the duties of persons serving in the public school system, including but not limited to these rules of professional conduct.

Examples of other types of conduct that are prohibited in many school districts and which may constitute sexual harassment include:

1. Unwelcome leering, sexual flirtations or propositions.
2. Unwelcome sexual slurs, epithets, threats, verbal abuse, derogatory comments or sexually degrading descriptions.
3. Graphic verbal comments about an individual's body, or overly personal conversation.
4. Sexual jokes, stories, drawings, pictures, or gestures.
5. Spreading sexual rumors.
6. Teasing or sexual remarks about students enrolled in a predominantly single-sex class.
7. Touching an individual's body or clothes in a sexual way.
8. Purposefully limiting a student's access to educational tools.
9. Cornering or blocking of normal movements.
10. Displaying sexually suggestive objects in the educational environment.
11. Any act of retaliation against an individual who reports a violation of the district's sexual harassment policy or who participates in the investigation of a sexual harassment complaint.

Certificated School Personnel Responsibilities

It is the teacher's responsibility to take appropriate actions to prevent and report incidents of sexual harassment to their school site administration. Be sure to consult and follow your school district's policies and procedures on sexual harassment.

Suggested Reporting Procedures Guidelines

- Keep accurate and detailed records of the sexual harassment incident.
- Report sexual harassment to the appropriate person at your school site.
- Follow your school district's policies and procedures on sexual harassment reporting.

CHILD ABUSE HANDOUT

DEFINITION:

1. A physical injury inflicted, not by accident, on a child by another person
2. Sexual abuse of a child
3. Willful cruelty or unjustifiable punishment of a child, or willfully inflicting unjustifiable physical pain or mental suffering, or failure to safeguard a child from these injuries when the child is under a person's care or custody
4. Unlawful corporal punishment or injury resulting in a traumatic condition
5. Neglect of a child or abuse in out-of-home care

Mandated Reporters of Child Abuse

"Mandated Reporters" include virtually all school employees. The following school personnel are required to report:

Teachers, administrators, supervisors of child welfare and attendance, certificated student personnel employees, employees of a child care institution, headstart teachers, school psychologists, licensed nurses, counselors, presenters of child abuse prevention programs and those instructional aides or other classified employees trained in child abuse reporting.

Duty to Report

A mandated reporter shall make a report to a child protected agency, whenever the mandated reporter, in his or her professional capacity or within the scope of his/her employment, has knowledge of or observes a child whom they know or reasonably suspect has been the victim of child abuse. The mandated reporter shall make a report to the agency immediately or as soon as practically possible by telephone, and shall prepare and send a written report thereof **within 36 hours** of receiving the information concerning the incident.

"Reasonable Suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his/her training and experience, to suspect child abuse.

"Child Protective Agencies" are law enforcement and child protective services responsible for investigating child abuse reports, including the local police or sheriff department, county welfare or juvenile probation department and child protective services.

Legal Responsibility and Liability

1. Mandated reporters have **absolute immunity**. School employees required to report are not civilly or criminally liable for filing a required or authorized report of known or suspected child abuse.
2. If a mandated reporter fails to report an instance of child abuse he/she knows to exist or reasonably should know to exist, he/she is **guilty of a misdemeanor** punishable by confinement in **jail for up to six months, a fine of up to \$1000, or both**. The mandated reporter may also be held civilly liable for damages resulting from any injury to the child after a failure to report.
3. When two or more persons who are required to report have joint knowledge of a suspected instance of child abuse, and when they so agree, the telephone report may be made by either of them and a single report made and signed by that person. However, if any person knows or should know that the designated person failed to make the report, that person then has a duty to do so.

4. The duty to report child abuse is an individual duty and no supervisor or administrator may impede or inhibit such reporting duties. Furthermore, no person making such a report shall be subject to any sanction.

Reporting Procedures

To report known or suspected child abuse, any employee shall report by telephone to the local child protective agency. The telephone report must be made immediately, or as soon as practically possible, upon suspicion. This report will include:

1. The name of the person making the report
2. The name of the child
3. The present location of the child.
4. The nature and extent of any injury
5. Any other information requested by the child protective agency, including the information that led the mandated reporter to suspect child abuse.

When the verbal report is made, the mandated reporter shall note the name of the official contacted, the date and time contacted, and any instructions or advice received.

Within 36 hours of making the telephone report, the mandated reporter will complete and mail a written report which must include a completed Department of Justice form (DOJ SS 8572) to the local child protective agency. Mandated reporters may obtain copies of DOJ form from the district or local child protective agency. Instructions are included on the form and site administrators may help in completing and mailing form. However, the mandated reporter is personally responsible for ensuring that the written report is correctly filed.

Employees reporting child abuse to a child protective agency are encouraged to notify the site administrator as soon as possible after the initial verbal report by telephone. When notified, the site administrator will inform the Superintendent. Notified administrators shall provide the mandated reporter with any assistance necessary to ensure that reporting procedures are carried out in accordance with law and district regulations. The principal may assist in completing and filling these forms at the mandated reporter's request.

If the mandated reporter does not disclose his/her identity to a district administrator, he/she shall at least provide or mail a copy of the written report to the district without his/her signature or name.

When School Employees are Accused of Child Abuse...

Regardless of who child abusers may be, the major responsibility of mandated reporters are to

- (1) identify incidents of suspected child abuse, and
- (2) comply with laws requiring the reporting of suspected child abuse to the proper authorities.

Determining whether or not the suspected abuse actually occurred is not the responsibility of the school employee. Such determination and follow-up investigation will be made by a child protective agency. Pending the outcome of an investigation by a child protective agency and before formal charges are filed, the employees may be subject to reassignment or a paid leave of absence.

Upon filing formal charges or upon conviction, the district may take disciplinary action in accordance with the law, district policies, regulations and/or collective bargaining agreements. The Superintendent or designee shall seek legal counsel in connection with either the suspension or dismissal of the employee.

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California Code of Regulations

80377 - Sexual Harassment and Retaliation Prohibited

No certificated person shall directly or indirectly use or threaten to use their authority or influence to discourage, restrain, interfere with, coerce, or discriminate against any subordinate or any certificated person who in good faith reports sexual harassment. This provision specifically prohibits retaliation for reporting or disclosing incidents of sexual harassment.

Mandatory Child Abuse Reporting

California Penal Code 11166

Section 11166 of the Penal Code requires any child care custodian, medical practitioner, non-medical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse to report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and to prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.