

Work Environment and Legal Issues

Creating and Sustaining a Safe and Civil Work Place

Presented by Timothy M. Baker, M.S.

Training Summary

This training will present school policies, regulations and procedures that deal with your work environment.

Examples of behaviors that can create legal as well as civil liabilities in your work environment will be presented and evaluated as to their potential conflict with school policy, state and federal laws.

Training Goals

The goals of this training are:

- a. To help the participants understand how to recognize behaviors of their own, and of others, and then which action(s) to take in order to maintain a compliant, safe and civil workplace for YCUSD employees.
- b. To prevent and eliminate certain behaviors and as a result maximize resources, productivity, and performance.

These goals will be met by a facilitated presentation, small group exercises and participant interaction.

Two Minute Drill #1



Briefly discuss with the person next to you the following questions and formulate answers to share.

1. What is the definition of a hostile work environment (HWE)?
2. What types of behavior create a HWE?
3. Who is responsible for a HWE?
4. What policies, regulations or laws address a HWE?

A Hostile Work Environment

A hostile work environment can lead to harassment which can include bullying behaviors.

HOSTILE WORK Environment Definition

A hostile work environment exists when an employee experiences workplace harassment and fears going to work because of an offensive, intimidating, or oppressive atmosphere generated by the harasser based on:

A hostile work environment is also one of the two legal categories of sexual harassment.

- Race
- Religion
- Sex
- National origin
- Age
- Disability
- Veteran status
- Sexual orientation
- Political affiliation
- Citizenship status
- Marital status
- Pregnancy
- Personal appearance

A Hostile Work Environment

Courts are likely to find an illegal hostile work environment where there is:

Pornography

Degrading Comments

Vulgar Language

Embarrassing Questions

Sexual Touching

Sexual Jokes

Sexual Propositions

A Hostile Work Environment

The anti-discrimination statutes governing hostile work environment are not a general civility code.

Thus, federal law does not prohibit simple teasing, offhand comments, or isolated incidents that are not extremely serious.

Rather, the conduct must be so objectively offensive as to alter the conditions of the individual's employment.

Hostile Work Environment Standard

Is met if:

The conditions of employment are altered if the harassment culminates in a tangible employment action or is sufficiently severe or pervasive to create a hostile work environment.

HWE Guidelines

Derive from:

- YCUSD Board Policies
- Administrative Regulations
- Education Codes
- State Laws
- Federal Statutes

District Polices

Nondiscrimination In Employment Board Policy 4030 Personnel

. . . . prohibits unlawful discrimination against and/or harassment of district employees and job applicants on the basis of actual or perceived race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, or sexual orientation at any district site and/or activity.

Nondiscrimination In Employment Board Policy 4030 Personnel cont.

Any district employee who observes or has knowledge of an incident of unlawful discrimination or harassment shall report the incident to the principal, district administrator or Superintendent as soon as practical after the incident.

Failure of a district employee to report discrimination or harassment may result in disciplinary action.

District Polices

Nondiscrimination In Employment Administrative Regulation 4030 Personnel

Unlawful discrimination or harassment of an individual includes:

1. Slurs, epithets, threats or verbal abuse
2. Derogatory or degrading comments, descriptions, drawings, pictures or gestures
3. Unwelcome jokes, stories, teasing or taunting
4. Any other verbal, written, visual or physical conduct against the individual which:
 - a. Adversely affects his/her employment opportunities, or
 - b. Has the purpose or effect of unreasonably interfering with his/her work performance or creating an intimidating, hostile or offensive work environment

District Polices

Nondiscrimination In Employment Administrative Regulation 4030 Personnel cont.

Any employee or job applicant who feels that he/she has been or is being unlawfully discriminated against or harassed should immediately contact his/her supervisor, the nondiscrimination coordinator or the Superintendent in order to obtain procedures for reporting a complaint.

Nondiscrimination In Employment Administrative Regulation 4030 Personnel cont.

Such complaints shall be filed in accordance with AR 4031 - Complaints Concerning Discrimination in Employment.

An employee may bypass his/her supervisor when the supervisor is the alleged offender.

District Polices

Sexual Harassment Administrative Regulation 4119.11 Personnel

(Education Code 212.5; 5 California
Code of Regulations 4916)

Prohibited sexual harassment includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite sex in the work or educational setting.

Sexual Harassment Administrative Regulation 4119.11 Personnel

(Government Code 12950.1)

Training

Every two years, the Superintendent or designee shall ensure that supervisory employees receive at least two hours of classroom or other effective interactive training and education regarding sexual harassment. All newly hired or promoted supervisory employees shall receive training within six months of their assumption of the supervisory position.

A Hostile Work Environment

Intent vs. Impact

The intent of the alleged harasser does not control.

Relevant consideration is the impact on the recipient of the behavior.

Very similar to sexual harassment – “it is not how you meant it, it is how it was perceived”

HWE Behavior

Blatant example:

A supervisor demands sexual favors in return for better treatment of a subordinate, or threatens the subordinate with firing, demotion, or transfer unless sexual favors are given.

Less obvious example:

If behavior of a sexual nature creates an offending, intimidating, or hostile work environment for another employee, it is sexual harassment.

(Bringing outside relationship problems into the work environment)

HWE Behavior

Other examples

1. Sexual harassment O-T-J by a non-employee, e.g. *Vendors, Customers or Visitors is NOT* excusable behavior.
2. Harassment O-T-J by a non-employee can lead to sexual harassment charges, just as sexual harassment by an employee would.
3. Third party harassment: A group of employees talking about each other's sex lives in the presence of another person who feels very uncomfortable about such discussion.

Harassment wrap-up

A Hostile Work
Environment includes:

Bullying Behaviors

Legislation History

In 2003, California was the first U.S. state to introduce anti-bullying legislation.

The *Abusive Work Environments bill (AB 1582)* died in committee in the same year.

Highlights of the bill included:

- Making it an unlawful employment practice to subject an employee to an abusive work environment.
- The employer is vicariously liable for a violation committed by its employee, but would prescribe certain affirmative defenses.

Legislation History

Abusive Work Environments bill (AB 1582) cont.

- Unlawful practice to retaliate against an employee, because the employee has opposed an unlawful employment practice under the bill or has made a charge, testified, assisted, or participated in an investigation or proceeding.
- Limits an employer's liability for emotional distress to \$25k where the unlawful employment practice does not result in a negative employment decision.
- Provide that an aggrieved employee may elect to seek compensation.

So far 16 states have introduced similar bills, however, no state or federal bill has become law anywhere in the U.S.

Two Minute Drill #2



Briefly discuss with the person next to you the following questions and formulate answers to share.

1. What is the definition of adult bullying in the workplace?
2. What types of tactics do adult bullies engage in?
3. What policies, regulations or laws address adult bullying in your workplace?
4. What would you do to prevent adult bullying in your work place?

Definition of Bullying

- Bullying is aggressive behavior or intentional harming of another person.
- Bullying occurs within an interpersonal relationship characterized by an imbalance of power that involves exploitation of a less powerful person by one seeking an unfair advantage.
- It is repeated over time.

Description

Bullying happens when someone with more power unfairly hurts someone with less power over and over again.

Power may be physical strength, social skill, verbal ability, education or another resource.

Workplace Bullying

Bullying is repeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators that takes one or more of the following forms:

- a. verbal abuse
- b. threatening, humiliating or offensive behavior/actions
- c. work interference – sabotage - which prevents work from getting done.

Workplace Bullying

Workplace Bullying is commonly:

- a. Driven by perpetrators' need to control the targeted individual(s)
- b. Initiated by bullies who choose targets, timing, place and methods
- c. Escalates to involve others who side with the bully, either voluntarily or through coercion
- d. Undermines legitimate business interests when bullies' personal agendas take precedence over work itself

Workplace Bullying

Is also referred to as:

Psychological Abuse

Psychological Harassment

'Status Blind' Harassment

Mobbing

Sub-Lethal

Non-Physical

Workplace Violence

Workplace Abuse/Mistreatment

4 Types of Bullying

Physical: Harm to another person or their property;
threatening

harm or gestures, assault, extortion.

Emotional: Harm to another's self worth using remarks,
insulting speech, harassing/intimidating phone calls,
public challenging.

Social: Harm to another's group acceptance by gossiping,
playing tricks, spreading rumors, racial insults, exclusion
tactics, public humiliation, undermining relationships,
ruining reputations.

Sexual: Refer to Administrative Regulation 4119.11, Sexual
Harassment.

Workplace Bullying

A nationwide study of self-identified targets:

Bullies: 58% Women, 42% Men

Targets: 80% Women, 20% Men

Women Bullying Women: 50%

Men Bullying Women: 30%

Men Bullying Men: 12%

Women Bullying Men: 8%

Workplace Bullying

Tactics Used by Workplace Bullies

The top 10 tactics:

1. Blame for "errors"
2. Unreasonable job demands
3. Criticism of ability
4. Inconsistent compliance with rules
5. Threatens job loss
6. Insults and put-downs
7. Discounting/denial of accomplishments
8. Exclusion, "icing out"
9. Yelling, screaming
10. Stealing credit

Workplace Bullying

Link between bullies and management style

Negative styles of management highly associated with having experienced or witnessed bully supervisors:

- Autocratic
- Divisive
- Laissez faire
- Unfair punishment

Positive attributes of management highly associated with those who never experienced or witnessed bullying: participative leadership, integrity of manager and individualized consideration.

Workplace Bullying

Bullying is similar to DV: an entrenched cycle of abuse

The way bosses are treated can ultimately lead to how they treat their employees.

The people most likely to bully are those who feel bullied.

One person's sense of being bullied can quickly engender a toxic workplace in which bullying spreads.

Workplace Bullying

Why is bullying common among upper management?

- Being different from most colleagues in an elemental way.
- Belonging to a discipline with ambiguous standards and objectives.
- Working under a dean or other administrator in whom the impulse to punish is powerful.
- An actual or contrived financial crunch in one's academic unit – when the watering hole gets smaller, the animals get meaner.

Workplace Bullying

Evidence of a possible bullying problem:

1. High rates of sickness and absenteeism
2. Employee turnover, resignation, early or ill-health retirements
3. Mysterious “reorganizations” or relatively frequent restructures involving 1-2 current personnel
4. Resistance/resentment of outside influences or accountability
5. Allegations of abuse of “at-will” employment doctrines
6. Previous personnel complaints and/or litigation

Workplace Bullying

Profile of bullying personalities:

1. Narcissistic
2. Climbers
3. Overachievers
4. Disgruntled employees
5. Personal life issues
6. Has been bullied

Workplace Bullying

Besides management style and bullying personalities, another aspect of workplace bullying has been linked to the pervasiveness of a Multi Generational Workforce

Two Minute Drill #3



Multi Generational Workforce

Write down where YOU fit in to the workforce?

Matures

1909-1945

Baby Boomers

1946-1964

Generation X

1965-1978

Millennials

1979-1988

Aka Nexters or Gen Y

Generation Characteristics

Generation	Characteristics	Stereotype
Matures 1909-1945	<ul style="list-style-type: none"> •Hardworking & dedicated •Respectful of rules & authority •Conservative & traditional •Believe that company will take care of them with retirement and raises 	<ul style="list-style-type: none"> •Old-fashioned, behind the times •Rigid/autocratic •Change/risk averse •Resistant to new ways
Baby Boomers 1946-1964	<ul style="list-style-type: none"> •Youthful self-identity •Optimistic •Team player •Competitive •Concerned with family and future security •May be caring for children and adult parents ("sandwich generation") 	<ul style="list-style-type: none"> •Self-centered •Unrealistic •Political •Power-driven, workaholic

Generation Characteristics

Generation	Characteristics	Stereotype
Generation X 1965-1978	<ul style="list-style-type: none"> •Balanced (work/life quality) •Self-reliant •Pragmatic •Anxious about health, money, etc. •Loyal to people, not companies •Value open communication 	<ul style="list-style-type: none"> •Slackers •Selfish •Impatient •Critical •Rebellious – resistant to authority
Millennials 1979-1988 <i>Also referred to as Nexters or Gen Y</i>	<ul style="list-style-type: none"> •Fast pace/multi-tasking •Fun- & personal fulfillment-seeking •Technology savvy (grew up with computers) •Desire feedback & recognition 	<ul style="list-style-type: none"> •Short attention span (leading to references regarding attention deficit) •Spoiled & disrespectful •Question authority •Technology dependent •Unambitious

Workplace Bullying

5 Friction Points among a multigenerational workforce:

1. Ageist stereotypes, comments, jokes, teasing, and expressions
2. Communication styles
3. Use of technology
4. Work ethic and loyalty
5. Younger bosses of older workers

Workplace Bullying

Profile of bullying victims:

Generally there are two types:

Provocative and Passive

Two types of bullying victims:

1. Provocative Victims

- May pester and irritate others repeatedly
- Quick tempered and will fight back
- Gets others riled up
- Can look like a bully, but ends up a victim in the end
- May be clumsy, immature, restless
- May provoke attacks
- May be isolated, friendless
- Distressed, emotionally detached
- Has been bullied in the past

Two types of bullying victims:

2. Passive Victims

- Rarely tells others they are being bullied
- Does not invite attacks
- Sensitive, pushovers
- May lack social skills

Workplace Bullying

Why don't the bullied fight back?

- Employees who speak out and confront the bully often face retaliation (which is illegal).
- Many bullied personnel face retaliation after complaining to the employer.
- Targets who speak up are often ostracized by co-workers, who may also be fearful of attracting the bully's wrath.
- Many targets have been forced out of their jobs voluntarily or involuntarily.

Workplace Bullying

Legal Landscape for Bullying

Current discrimination laws require only that employees be treated equally. Employers are, therefore, free to do whatever they wish to their employees as long as they appear to do so in a non-discriminatory manner.

Moreover, even employees who do belong to a protected group are protected only from being harassed/fired because of their race, sex, etc.

Bullying can be form of harassment and/or discrimination per various statutes, regulations and policies covered today.

Workplace Bullying

THERE ARE NO INNOCENT BYSTANDERS TO BULLYING

If you're standing around watching, you are part of the problem not the solution.

When you report bullying, you are helping someone else (and you may be saving your own job).

Workplace Bullying

Six things to do when responding to a complaint:

1. Assure the complainant that seeking help was the right thing to do.
2. Rule out a threat of physical violence.
3. Obtain basic facts.
4. Be prepared to communicate nature of the allegation.
5. Make a prompt referral to supervisor, superintendent designee or HR.
6. Follow-Up.

How to create and sustain
a safe and civil workplace
within the YCUSD

Two Minute Drill #4



Briefly discuss with the person next to you how to create and sustain a safe and civil workplace within the YCUSD using the acronym below.

S ource

T arget

O bserver

P erson in authority

Source

The source of the disrespectful behavior has the responsibility to stop behaving in such a manner.

T

What about us.
Are we part of the problem?
Have we added to the disrespectful behavior?

O

P

S

Target

The target must help confront the bully/harassment/harasser.

O

If we are offended by other's actions or words, we need to let them know and ask/tell them to stop.

P

S

Target

O

P

The source of the disrespectful behavior may not even know that his or her behavior is offensive to us.

How can this person correct his or her behavior if he or she is **unaware** of its impact?

S

T

O
bserver

P

Those who observe bullying, disrespectful or harassing behavior have a responsibility to stop it when it occurs; and one who *notices* such is NEVER an innocent bystander.

Stopping the behavior is just the right thing to do.

S

T

O

Person in authority

Every person in authority (you) has a duty to keep the workplace free from offensive, bullying and harassing behavior.

Each person in authority is crucial to creating a respectful workplace.

Creating and sustaining a safe and civil work place
can be accomplished by:

**YOUR ACTIONS, AWARENESS AND SHARING
THIS INFORMATION WITH OTHERS!**

Training Review, Questions, Comments

Thank you for your participation!