How to Handle “Sticky” Situations

1. What should be done in a situation that hinges on the credibility of one person over another?

This is one of the hardest situations school officials face. Keep in mind that many alleged harassers will admit the facts of their conduct, but disagree as to whether it constitutes sexual harassment. Often discussing the behavior with the offender, without labeling it as sexual harassment, will result in the offender’s admitting to the behavior. Then, if appropriate, the term “sexual harassment” can be used to label the behavior and you can explain how it violates the institution’s policy.

If the alleged offender denies that the conduct occurred, consider the preponderance of evidence. What would a reasonable person believe? What motivation is there to lie? Consider as evidence whether the complainant told anyone about the situation or kept notes about it, whether there was a change in the victim's behavior after the alleged harassment, and whether there were other indications of harassment by the alleged harasser.

If the complainant wants the matter to be handled informally and allegations of assault or other serious abuse are not involved, and if you believe the conduct alleged constitutes sexual harassment but you are unsure that it occurred, speak to the alleged harasser. Say something like, “Allegations have been raised about your behavior (try to be specific about the behavior). Because it’s your word against hers/his, we are not going to proceed further at this time. However, it’s important that you realize how your behavior has been perceived, and to recognize that such behavior is illegal and violates our policy. I am keeping a record of this incident in my files which [in the case of employees] will not affect any personnel decisions affecting you, or [in the case of students] will not affect your records unless there is a subsequent allegation.” Inform the complainant of your actions.

If a formal investigation is required involving a “he said, she said” situation, interview witnesses in regular contact with the individuals or who may have knowledge of the situation involved. Try to determine the parties’ work or classroom behavior. Review personnel or permanent records for more clues to the credibility of the parties.

2. How should I deal with a complainant who requests that nothing be done in response to the complaint?

Ask what she or he is worried about. The person’s reluctance could be caused by fear of retaliation should the harasser learn of the complaint, or it could be that the person simply doesn’t want to see the alleged harasser get in trouble. Gently explain that the institution cannot ignore what is happening. It has a moral and legal obligation to deal with the problem and does not want anyone else to experience what she or he is

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experiencing. Respond that the institution will do everything possible to prevent retaliation, which also is against the law.

Complainants are more willing to go forward with a complaint if the institution clearly expresses its commitment to prevent and respond to retaliation. For example, the school official can tell the complainant, “If you want to transfer your class, even though it’s past the official time, we’ll make it possible for you. If you’re worried about your instructor’s evaluation, we’ll get a committee of three teachers/professors — even from another school if necessary — to evaluate your work. If the alleged harasser is the only one teaching the next required course, we’ll pay your tuition to take it at another institution.”

If the complainant requests that no disciplinary action be taken against the alleged harasser, place a written statement in the file documenting this request and give a copy to the complainant. This will safeguard the school or university should legal action be taken by the complainant at a later date. A thorough investigation should be made in any case, and the school or university should take action regardless of the complainant’s wishes should there be evidence that sexual harassment occurred.

If the behavior is not excessive, such as an attempted assault, the institution may send a letter to everyone in the department indicating that there are concerns about sexual harassment and that everyone needs to be sure they understand the behaviors that constitute sexual harassment. The institution may also want to require training. Check with the complainant to see if the harassment stops. If not, the institution must respond firmly to the continuing misconduct.

3. How should I handle the issue of confidentiality? Can I promise the complainant absolute confidentiality?

Never promise a complainant absolute confidentiality because you cannot always deliver it. Complainants have sued institutions that have not been able to live up to their confidentiality pledges. Offer the kinds of retaliation assurances suggested above, stressing that only those persons who need to know will know, and they are required to maintain confidentiality. Do your best to prevent any unnecessary personnel from being involved by turning the matter directly over to the investigator, who will begin a confidential file. Do not discuss the complaint with anyone but designated officials and the complainant, or, if that person is a minor, his or her parents.

Educator’s Guide to Controlling Sexual Harassment