
**Sexual Harassment
of Other Employees**

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

42 U.S.C. 2000e-2(a); 29 CFR 1604.11(a); Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 106 S.Ct. 2399 (1986); Harris v. Forklift Systems, Inc., 510 U.S. 17, 114 S.Ct. 367 (1993)

Same-sex sexual harassment is prohibited. Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 118 S.Ct. 998 (1998)

Standard of Care

The ESC shall exercise reasonable care to prevent and correct promptly any sexually harassing behavior and develop preventive or corrective measures to address sexually harassing behavior.

A supervisor with immediate (or successively higher) authority over an employee shall not create an actionable hostile environment for that employee nor take a tangible employment action (hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits) based on an employee's sex.

Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 118 S.Ct. 2257 (1998); Faragher v. City of Boca Raton, 524 U.S. 775, 118 S.Ct. 2275 (1998)

**Sexual Harassment
of Students**

Sexual harassment of students includes such activities as engaging in sexually oriented conversations for purposes of personal sexual gratification, telephoning students at home or elsewhere to solicit inappropriate social relationships, physical contact that would reasonably be construed as sexual in nature, and enticing or threatening students to engage in sexual behavior in exchange for grades or other school-related benefit. 20 U.S.C. 1681(a); Franklin v. Gwinnett County Public Schools, 503 U.S. 60, 112 S. Ct. 1028 (1992)

An ESC official who has authority to take corrective action on the ESC's behalf and who has actual notice of teacher-student sexual harassment or abuse shall take corrective measures to address

the harassment or abuse. See Gebser v. Lago Vista ISD, 524 U.S. 274, 118 S.Ct. 1989 (1998)

**Sexual Abuse of
Students**

Sexual abuse of a student by an employee, when there is a connection between the physical sexual activity and the employee's duties and obligations as an ESC employee, violates a student's constitutional right to bodily integrity. Sexual abuse may include, but is not limited to, fondling, sexual assault, or sexual intercourse. *U.S. Const. Amend. 14; Doe v. Taylor ISD*, 15 F.3d 443 (5th Cir. 1994) [See also ED]