

# VENABLE

**VAIS Legal Issues Institute**

***Community Challenges:  
Navigating relationships with students, parents,  
and colleagues***

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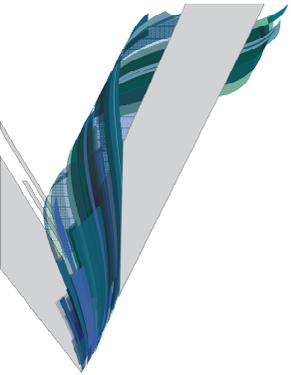
**Nothing is perfect. Life is messy. Relationships are complex. Outcomes are uncertain. People are irrational.**

~ Hugh Mackay

Dealing with people gets messy.

At the end of the day, personnel relationships = personal relationships. Everyone comes to work/school with their own backgrounds, experiences, perspectives, and sensitivities.

Add to this the reality of human impulses, power imbalances, and biases, and you realize that workplaces are actually ripe for issues related to human interactions.



## Today's Topics

**Boundaries**

**Child grooming**

**Mandatory Reporting**

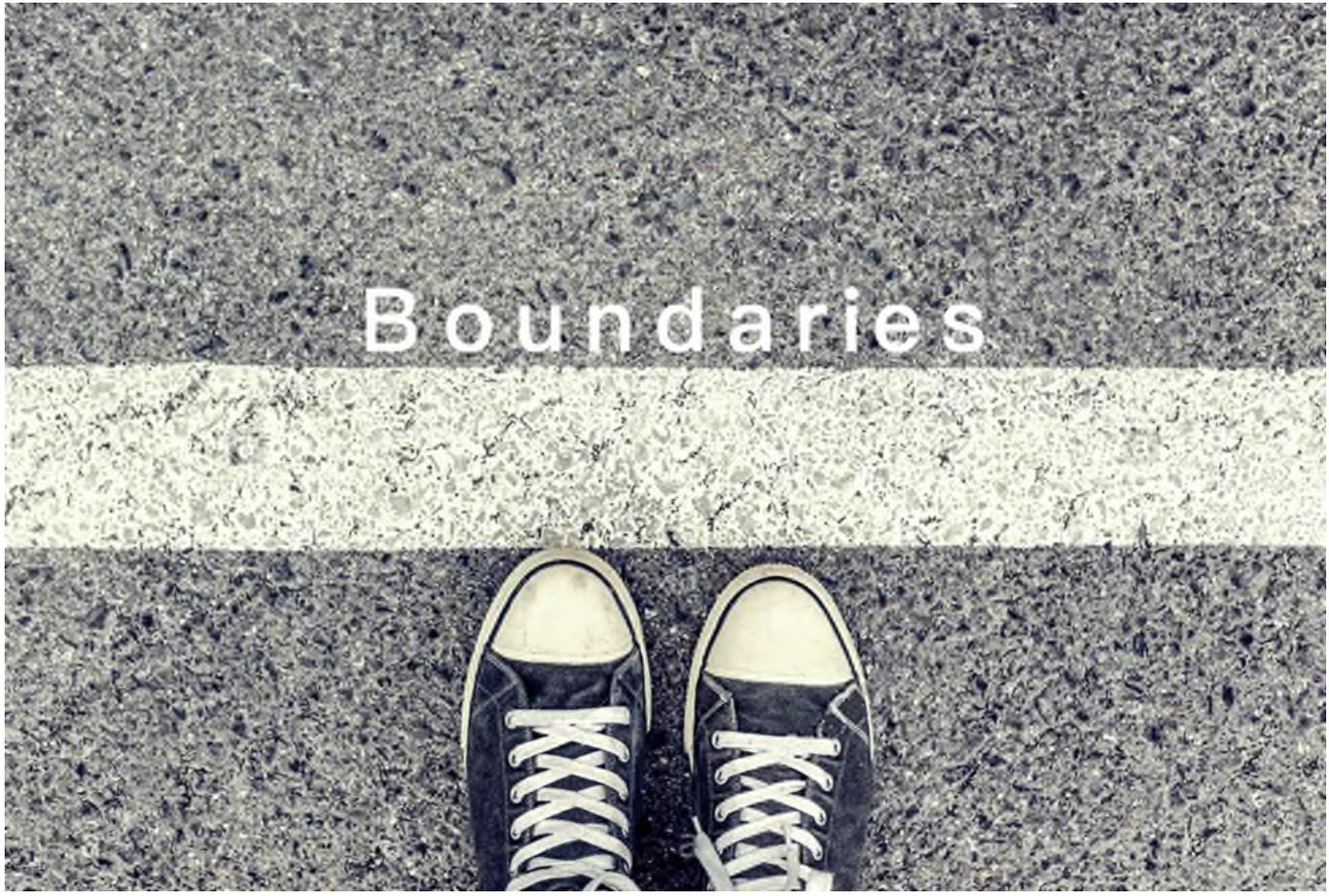
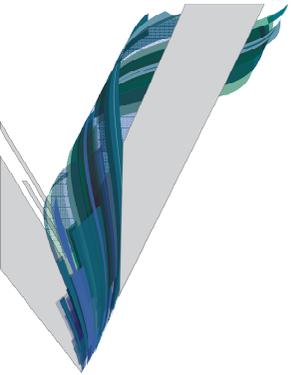
**Harassment (Employee & Student)**

**Bullying**

**Consent**

**Real world examples not from your school!**

**\*Questions\***



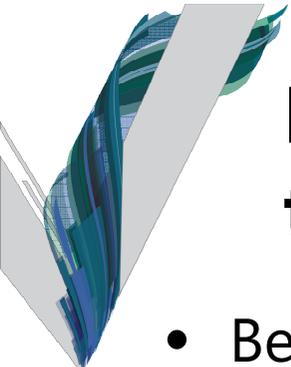


# What is a “boundary”?

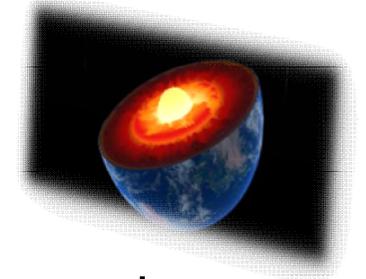


- Technically, it's a limit. And often drawn as a line or circle around something
  - Can be material, physical, mental, emotional
- Two types of circles are important (think of a gumball machine)
  - Inclusion (keeping someone outside of the circle is bad)
    - Side note: proactive work on inclusion is as important as proactive work on excluding bad behaviors (boundaries)
  - Safety (once they are in the circle, they need to feel safe)
- The word “boundary” is *very* misleading
  - Less of a limit and more like a band of fog emanating from a limit (*not* very CLEAR)





# Boundaries = the discussion of healthy relationships



- Because the so-called “boundaries” are murky, vulnerabilities and liabilities are enhanced
  - Being aware of these vulnerabilities helps EVERYONE
- Not necessarily intuitive
  - We need to educate
    - No list of rules
      - We need to think, talk, develop policies
        - » Thinking & talking now helps us make better choices later
        - » We owe it to our community to engage in this work
      - We can help each other (benefits everyone in the community); promote professionalism and approachability without line-crossing; limit liability

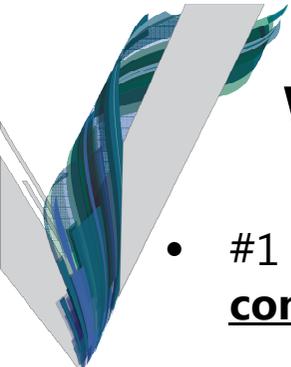




# Boundary-crossing has consequences



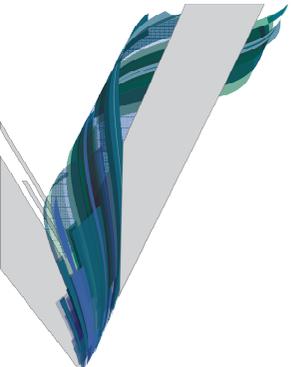
- Risk with boundary-crossing is reputational and legal – we do not want to give rise to even the appearance of favoritism or impropriety
  - The reputational and legal risks apply to adult and student interactions
- Legal claims – *easy to file; hard to forget*
  - Conduct with students may give rise to claims of discrimination in education and services; bullying; negligent supervision; emotional distress; abuse
  - Conduct between adults may give rise to discrimination/harassment claims



# What should schools be doing?

- #1 most important thing: **make your school a safe space for boundary discussions and complaints**
  - For the kids, the adults, the parents (I know, I know, some of our parents don't need any more encouragement!)
    - Make room for questions, initiate dialogue, be open to discussions
      - How?
        - » START THE DISCUSSION
          - TRAIN. TALK. DEVELOP POLICIES. AND MOST IMPORTANTLY, LISTEN!
          - Empower people to take these issues seriously and raise concerns
- #2 = where there are actual boundaries (limits):
  - Establish the boundary
  - Communicate the boundary
  - Honor the boundary





**Let's unpack these concepts, shall we?**





# How do we make our school a safe place for boundaries discussions?

- **Regular training**

- Group training

- For the faculty and staff – before/during the school year

- This makes them more mindful, more aware of the vulnerabilities of their position, helps to educate, helps facilitate discussion

- » THIS IS A FACT, NOT AN OPINION

- For the students

- We are literally teaching them how to be people; we spend more time with them than some of their parents

- » Learning to be a person means more than just teaching math and science

- For the parents

- This can come in a variety of forms – as part of a larger safety education or town hall, but can focus on questions such as: “are you normalizing behaviors that should not be normalized” (e.g., “pantsing” aka “shanking”) and discussing consent and other student to student boundaries topics



## Promoting boundary awareness, continued

- **1:1 Training**

- This can benefit an employee or student

- **Discussion**

- This often happens naturally following a training, but help it along!
- Raise issues at faculty meetings; make sure your chaperones have met with a member of leadership before a trip; etc.
  - Don't assume that your team knows they can come to you
- Are we on the same page about approaches to challenging situations?
- About expectations for employees, parents, students, chaperones?
- Are we on the same page about consequences?



# What are we discussing?

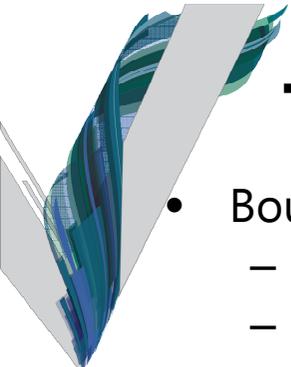
- **For kids: We want to teach them about personal space, responsible and respectful touching, use of other people's belongings, language, consent, social media**
- **For employees: (read above!) and also we need to be discussing what we are doing with our bodies, our space, our eyes, our voice, our words when we are around these kids!**
  - A reminder of what it means to work with kids
    - Little Brother Warning
    - Scrutiny from all eyes
    - Power imbalance
    - Kids have individual needs
    - Being aware of the perception & reality of the situation is extremely important
    - Being aware of the factors that can impact boundaries
      - Age
      - Frequency of conduct
      - Combined behaviors
      - Location

# What are we discussing? (continued)

For everyone: there is no exhaustive list of rules, so the goal of discussions and training is to get everyone THINKING!

- Am I present and aware in different situations?
- Have I thought in advance about sticky situations?
- Do I know what the school expects?
- Does the school know what it expects?
  - Common blind spots include:
    - Social media use
    - Texting
    - Cars & kids
    - 1:1 time (including meetings, tutoring, babysitting)
    - Trips and travel
      - » Bathroom plan, sleeping plan, ratios, chaperone drinking
- Are you aware of rooms that don't have windows, are you planning construction, do kids need to walk unattended between buildings, are there situations where adults are not readily visible with kids? Have we walked these paths (literally) and discussed how to enhance safety?
- Has the school communicated what it expects?





# The devil is in the details



- Boundaries discussions and trainings should be about more than just philosophy
  - We need to discuss actual situations and give practical advice
  - We want our employees to share stories & ask questions (in a safe & healthy way)
- Employee training/discussion topics include:
  - Eye contact, staring, eye travel
  - Body movements (e.g., Elvis Pelvis)
  - Personal space
  - Visibility when with kids, generally
  - 1:1 time
    - Meetings, driving, tutoring, babysitting
  - Singling out kids (e.g., nicknames, gifts, secrets)
  - Word choice & content of discussions (e.g., banter)
  - Digital communications (e.g., texting, social media)
  - Trips & Travel
  - Oversharing





## Details, continued: Let's get physical!



- There are acceptable levels of assistance and affection in the workplace
  - **Always be aware of *why* you are touching**
  - Curiosity about someone's physical features is rarely a good excuse (e.g., eyebrows, hair)
  - Are you normalizing something you shouldn't be normalizing?
- Are there ways you can make the contact more professional?
  - E.g., generally:
    - Less lingering, less "touchy-feely"
    - Hand or body adjustments
    - Space while touching
    - Verbal cues ("call the game")
  - Hugs (think about context, length, body position, other options)
- Have we communicated hard limits?
  - Lap sitting, sharing beds, massaging, touching out of anger

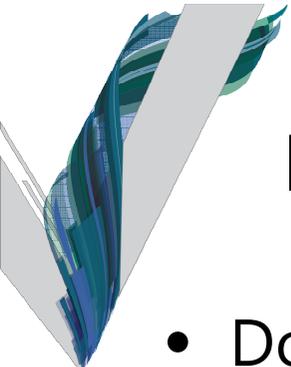




# Promoting and documenting boundary awareness

- **Policies**

- May be developed/changed through discussion
  - Internal discuss makes sure we are all on the same page about rules & our approach to certain issues
    - E.g., from thinking about 1:1 meetings to chaperoned trips
- **Remember: establish boundaries, communicate boundaries, honor boundaries!**
  - This means we need to think ahead about potential consequences
    - With people, kids especially, we cannot control behavior but we can control consequences



## Boundary-related policies

- Do you have written documents which discuss:
  - Your open door/issue-raising/complaint-raising policies?
  - Your philosophy on boundaries with students?
    - Between students?
  - Child grooming?
  - Mandatory reporting?
  - Harassment?
  - Bullying?
  - Hazing?
  - The relationship with counselors
    - Limited confidentiality



## **I have a policy, now what?**

- Where are these written documents?
- How easily accessible are they?
  - Once accessed, are they in 50 different documents? Yikes!
- How are we disseminating them?
- Are we educating our community on them?
- Are we dusting them off and revisiting them?
  - Are they consistent with applicable laws?
  - Are they consistent with our culture?
  - Do they include protections and flexibility for the school as well?
  - Can we really live by them?

# Child Grooming: why we need to be hyper-vigilant

**90%**

OF CHILD  
SEXUAL  
ABUSE  
VICTIMS  
**KNOW  
THEIR  
ABUSER**



**ONE IN 10** CHILDREN  
WILL BE SEXUALLY ABUSED  
BEFORE AGE 18.



Of children who are  
**SEXUALLY ABUSED**

**20%** are  
abused  
before  
the  
age  
of





## “Child Grooming” behaviors

- **When an adult established and builds an emotional connection with a student, and sometimes the student’s family, in order to build trust which can be exploited for illicit sexual purposes (sexual abuse and the exploitation of the child)**
- **Signs that may give rise to a concern:**
  - Wanting to be alone with children, discouraging other adults from being present, engaging in peer-like behavior, treats kids as if they are older, gifts/money, wrestling, tickling, overly-affectionate or playful, secrets/collusion, initiates physical contact, inappropriate jokes or comments, very personally involved with kids (serves as a confidant), disregards rules, sees kids in personal or private settings (even when parents know about it)
- Remember, 90% of child sexual abuse victims know their abuser

# Community accountability

- **We are ALL charged with the responsibility of keeping kids safe**
  - Part of creating a safe space for discussion is letting all employees know that if they have any concerns or questions about their own behavior, or the behavior of another adult in the community, raise those concerns or questions immediately





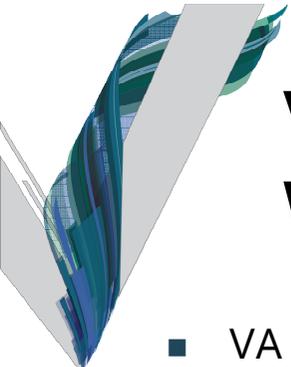
# Mandatory Reporting





# Mandatory Reporting of Child Abuse and Neglect

- **Each state has a law regarding mandatory reporting of child abuse and neglect**
  - Defines what constitutes abuse and neglect
  - Defines who is considered a mandatory reporter
    - May be particular school employees, all school employees or, in some states, all people
  - Creates a reporting procedure for reporting abuse and neglect to the state child protective services agency and/or the police
- **Schools also develop mandatory reporting policies that are in line with the mandatory reporting laws**
  - Create a centralized reporting mechanism for the school, *i.e.* a single individual who is designated as the school's "reporter" and procedures for documenting the report made (even if not made by the designated reporter)
- **Create a culture that encourages people to report their concerns, even (and especially) where someone might not be sure whether it rises to the level of abuse or neglect**
- **Know: Who, What, When, Where and How**



# Virginia's Mandatory Reporting Law Who Must Report?

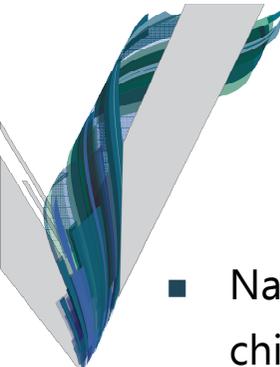
- VA Code § 63.2-1509
- “The following persons who, **in their professional or official capacity**, have reason to **suspect** that a child is an abused or neglected child, **shall report the matter immediately**. . .”
  - Doctors, EMS workers and social workers
  - “Any **teacher or other person employed** in a public or **private school**, kindergarten or nursery school”
  - “Any **athletic coach**, director or other person 18 years of age or older **employed** by or **volunteering** with a private sports organization or team”
  - “Administrators or **employees** 18 years of age or older of public or **private day camps**, youth centers and youth recreation program”



# Virginia's Mandatory Reporting Law

## What Must Be Reported?

- VA Code § 63.2-100: Definition of “abused or neglected child”
- “any child less than 18 years of age”
  - Whose **parents or other person responsible** for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a **physical or mental injury** by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions
  - Whose **parents or other person responsible** for his care neglects or refuses to provide care necessary for his **health** (limited exception for religious reasons)
  - Whose **parents or other person responsible** for his care **abandons** such child
  - Whose **parents or other person** responsible for his care commits or allows to be committed any act of sexual exploitation or **any sexual act** upon a child in violation of the law
  - Whose **parents or other person** responsible for his care creates a substantial risk of physical or mental injury by knowingly **leaving the child alone in the same dwelling. . .** with a **person** to whom the child is **not related** by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which **registration** is required as a violent sexual offender



# Virginia's Mandatory Reporting Law

## What Must Be Reported?

- Name, address, and telephone number of the child and parents or other person(s) responsible for the child's care
- Child's birth date or age, sex, and race
- Names and ages of other persons who live with the child and their relationship to the child
- Name, address, and telephone number of the suspected abuser and his/her relationship to the child
- Details of Abuse/Neglect:
  - Who last saw child
  - Condition of child
  - Where child is located now
  - Whereabouts of caretaker
  - Alleged Abuser/Neglector's Access to Child
  - Family Support System
  - Condition of Home Environment
  - Medical or Mental Health Treatment Needed
- Other Factors:
  - Prior Abuse/Neglect/DV
  - Access to weapons
  - Current or past Substance Abuse
  - Mental or physical disabilities
  - Medical diagnoses



# Virginia's Mandatory Reporting Law When and Where to Report

- VA Code § 63.2-1509
- Immediately and to DSS
  - “Any person required to file a report pursuant to this section who **fails** to do so **as soon as possible, but not longer than 24 hours** after having reason to suspect a reportable offense of child abuse or neglect, shall be **fin**ed not more than \$500 for the first failure and for any subsequent failures not less than \$1,000.”
- Which DSS?
  - Mandatory reporters are required to report “**immediately** to the **local department** of the county or city wherein the **child resides** or wherein the abuse or neglect is believed to **have occurred** or to the Department’s toll-free **child abuse and neglect hotline**”
  - “If neither the locality in which the child resides nor where the abuse or neglect is believed to have occurred is known, then such report shall be made to the **local department** of the county or city where the abuse or neglect **was discovered** or to the Department's toll-free child abuse and neglect hotline.”



# Virginia's Mandatory Reporting Law

## How to Report

- VA Code § 63.2-1509
- Call DSS – initial report may be oral (DSS will write it down or may ask you to fill out a form)
- Special Provisions for Schools:
  - “If the information is received by a **teacher, staff member**, . . . in the course of professional services in . . . **school** or similar institution, such person may, in place of said report, immediately **notify the person in charge of the institution** or department, or his designee, **who shall make such report** forthwith. If the initial report of suspected abuse or neglect is made to the person in charge of the institution or department, or his designee. . . such person shall **notify the teacher, staff member**. . . who made the initial report when the report of suspected child abuse or neglect is made to the local department or to the Department's toll-free child abuse and neglect hotline, and of the name of the individual receiving the report, and shall forward any communication resulting from the report, including any information about any actions taken regarding the report, to the person who made the initial report.”



# Virginia's Mandatory Reporting Law After the Report is Made

- May be asked to make available additional information to DSS in connection with their investigation
  - “All persons required by this subsection to report suspected abuse or neglect who maintain a record of a child who is the subject of such a report shall cooperate with the investigating agency and shall make related information, records and reports available to the investigating agency unless such disclosure violates the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g).”
- May be asked to testify in a subsequent proceeding
- Immunity from liability (civil, criminal, administrative)
  - Unless the report was made in bad faith or with malicious intent
- There is no requirement to subsequently report if you actually know that that the **same matter** has already been reported



# Mandatory Reporting Policy



- Define what abuse is (briefly)
- Set forth the process for reporting – including the requirement that individuals who suspect abuse must first bring that information to the HoS to develop a reporting strategy
  - Allows you to consider all factors that will affect timing of report
  - Allows you to piece together parts of information that, individually, don't give rise to a reporting obligation but collectively, do
- Explain how to report –
  - Gather all necessary information to make the report (refer back to what is required)
- Designate who will actually make the report
- Require internal documentation be created to confirm a report was made
- Set forth a protocol for “exigency reporting”



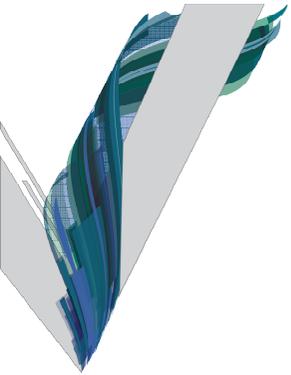
# Mandatory Reporting Policy in Action

- Make sure everyone knows what the policy actually is
- Everyone means everyone – don't forget your new employees, staff members, maintenance employees or seasonal employees
- House it in your Employee Handbook
- Provide periodic training on mandatory reporting
- Remind employees what the mandatory reporting policy is (periodic emails)
- Make sure your counselors in particular understand the mandatory reporting policy and understand to whom they owe an obligation of confidentiality
- Tarasoff "Duty to Warn"
- Confused about whether to report?



# Case in Point: Mandatory Reporting of Child Abuse and Neglect

Max Mandate is a teacher at a Spanish language immersion school, where many of the students and teachers (Max included) are of Hispanic descent. Max teaches in the second grade and seems to be very friendly with his students. Other teachers occasionally see him wrestling with them on the playground, or letting them sit in his lap. He's often seen hugging his students and giving them little treats or presents. Some of the teachers feel unnerved by the closeness of his interactions with his students, and bring their concerns directly to Max. Max is dismissive of them, telling them that they just do not understand his culture. One day, one of the teachers observes Max go down into the school basement with 4 of his students. When Max is gone for longer than she thinks would be necessary to retrieve materials from the basement, the teacher goes down the basement as well. She sees that a closet door in the basement is closed, and goes to open it. When she does, Max is inside with the students and the students look guilty, as though they feel they've been caught.



# Employee & Student





# Harassment

***Of note, in VA, there is criminal and civil harassment***

- Criminal harassment generally includes acts of repeated annoyance or attacks intended to, or which do, cause anxiety or fear for safety

***Today, we are focusing on harassment of employees and students under federal law and state law (VA Human Rights Act) and there are additional applicable local laws that may provide protections for workers and students as well***

**Unlawful workplace harassment (aka a “hostile environment”) is, generally:**

- Conduct that is unwelcome, offensive or objectionable
  - To the victim & a reasonable person
- And which causes discomfort or humiliation, or which interferes with the workplace
  - Severe and pervasive
- *And is based on a protected characteristic*



## Workplace Harassment is *not* ...



**Being told to do your job, being told how to do your job, equal opportunity meanings, merely disliking or being disliked for reasons unrelated to protected characteristics**

- It is also not bullying, which is not necessarily based on a protected characteristic and usually involves more repetitive behaviors and an actual or perceived power imbalance and is intentional (harassment is not always intentional)



# Employment harassment traits

- Harassment can be:
  - Verbal, physical, visual conduct or thing; can be an activity (team bonding at the strip club)
  - Directed at an individual, affect an individual, directed at a group based on stereotypes or contempt
  - Intentional or unintentional
    - Bystander, joking, everyone seemed to go along with it, etc.
  - One severe act, or a series of acts that constitute pervasive behavior
  - Conduct that becomes unwelcome over time
  - Conduct that occurs outside of work but affects the work place
  - Between members of the same protected class, between peers, subordinate to supervisor, etc.

# What does harassment look like?

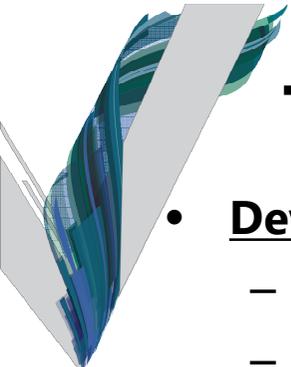
- **Verbal**: often see comments that are graphic, gratuitous, degrading
  - Think of comments about appearance, identity, association
    - “You are too sexy to be a teacher” or “What color is your lingerie?”
    - Racial slurs
    - Invasive inquiries
    - Explaining moods or performance in the context of a woman’s menstrual cycle or assuming women will not want to work after having children (or assuming that men will)
    - “You People” comments
    - Referring to a black people in the community as “breakdancers”
    - Jokes (verbal or printed)
- **Visual**: often see offensive or graphic or degrading images that cause discomfort or offense
  - Racy memes, scantily-clad photos (of self or others), phallic object collection
  - Picture of a noose
  - Klan materials; swastikas
- **Physical**: sexual or non-sexual: impeding movement, threatening gestures, physical touching/poking/massaging/grabbing (of self or others)





# There are two types of sexual harassment

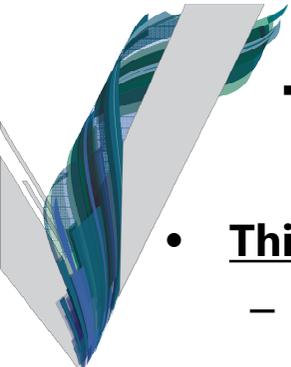
- Hostile work environment
  - Unwanted verbal or physical advance, sexually explicit or derogatory statement, or sexually discriminatory remark that is offensive or objectionable to the recipient, or which interferes with his or her job performance
    - Obscene notes, lewd comments, invasive inquiries, gratuitous comments
    - Physical touching, impeding of movement
  - May take the form of sex stereotyping
  - Conduct may or may not be sexual in nature to be tied to sex/gender
- Quid Pro Quo
  - A trade: something for something
  - Can only be inflicted by a person with the authority to grant or withhold employment benefits
    - Pressure for dates, sexual activity, threats, withholding employment, benefits, making promises (or even implying them)
      - “I could make your life easier”



# The school's responsibilities

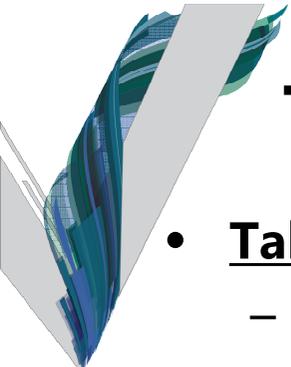
- **Develop harassment policies in the employee and family handbooks**
  - Required for VAIS accreditation
  - Policy elements
    - Define what the prohibited conduct is, including examples
    - Reporting mechanism
    - Investigation
    - Prohibit retaliation
- **Distribute the policies, make them accessible, and make sure they are more than just wasted paper**
  - Do supervisors understand their responsibilities?
  - Do we know how to investigate?
  - Can we live with the policy we have drafted?
  - How often are we reviewing these policies?
  - Do they work in conjunction with our other policies?





# The school's responsibilities, continued

- **This is part of our boundaries discussion: Train & Discuss!**
  - Provide harassment awareness & prevention training
    - This goes back to the point about empowerment – we create a safer, better environment for our community members when we make space for these discussions
      - These steps limit liability as well
    - Can be a standalone training, part of a professionalism session, part of boundaries – so many options!
    - Train on bystander accountability/responsibility
    - Train supervisors to recognize and respond to complaints
      - Bonus tip: supervisor training can be a great time to teach them about recognizing and responding to FMLA and ADA complaints/requests as well
    - Identify who will be authorized to conduct investigations and train them how to effectively and appropriately investigate
    - Discuss and understand what and how to document and where to store that documentation



## The school's responsibility, continued

- **Take all complaints seriously**
  - Immediately assess the allegations
  - Take any interim steps deemed appropriate
  - Investigate
    - Attempt to maintain discretion
    - Review relevant documents or other evidence; conduct interviews
- **Determine corrective action (*which will not be a public witch trial*)**
  - Anyone who engages in harassment or retaliation will be subject to remedial and/or disciplinary action, up to and including termination/expulsion
    - Be consistent with your written policies & make sure those policies work together
- **Prohibit retaliation**



# Student Harassment

- **Identifying Harassment**

- Well defined in the law
- Harassment: Based on a protected class, creates an offensive environment, is severe or pervasive
- Teachers are in a unique position to be able to identify harassing and bullying behaviors – they are with the students all day, and see them in the hallways
- Everyone has a “duty to adequately supervise”

- **Create a Culture of Accountability**

- If you see harassing behavior, it is important to address it quickly, bringing in other help if need be
- The responsibility for reporting harassment extends to all students, regardless of whether they are the victim or a witness

- **We are a community, and we are all responsible for one another**



# Student Harassment – Developing a Policy

- Define Harassment
  - verbal **conduct**, physical conduct, or conduct using technology such as social media that is based on a **protected class** and is so **severe or pervasive** that it has the purpose or effect of **unreasonably interfering** with an individual’s education program **participation**, or that **creates** an **intimidating**, hostile or offensive educational **environment**.
- Establish a Reporting Mechanism
  - Confidential versus non-confidential
- Establish an Investigation Protocol – and Follow It
  - Who to interview, with whom
  - Document the investigation
- Explicitly Prohibit Retaliation
  - Both for reporting harassment and for participating in an investigation





# Student Harassment – Case in Point

Chris is a middle school student, and one of a handful of Jewish students in his class. Chris' classmates often make derogatory remarks about Chris' religion, both when they are talking to Chris and when they are talking behind his back. Such remarks are made constantly – before class, in the gym and in the lunchroom. All of the teachers hear and are aware of the other students' derogatory remarks when talking to and about Chris, but do nothing to address it – they do not correct the students or report it to the Head of School. One day, Chris has simply had it. When one of his classmates, Brian (who is African-American), accidentally bumps into him in the hall, Chris yells at him "Stupid [Racial Slur]!" Chris is given a two-day suspension. Chris' mom voices her concern that Brian provoked Chris, and Brian's mom is concerned that the punishment does not fit the crime.



# Student Bullying

- Is a **safety and security** issue
- Based on a power dynamic, generally occurs over time, intended to harm, intimidate or humiliate the victim
- Bullying does not have a legal definition in Virginia, but some of the behaviors associated with bullying are (or can be) criminal offenses:
  - Threats
  - Harassment
  - Extortion
  - Hazing
- Guidance from the public schools:
  - Virginia’s DOE has issued comprehensive guidance on the prevention of bullying
  - Virginia public schools are required to have anti-bullying policies - such policies can be a useful starting point for your own, but should not necessarily be adopted in their entirety
- Encourage students to report bullying, even if they are just witnesses



# Student Bullying – Developing and Enforcing Your Policy

- Define what bullying is
  - Make sure to explicitly reference cyber-bullying
- Establish a Reporting Mechanism
  - Confidential versus non-confidential
- Establish an Investigation Protocol – and Follow It
  - Who to interview, with whom
  - Document the investigation
- Explicitly Prohibit Retaliation
  - Both for reporting bullying and for participating in an investigation



# Student Bullying – Defining Bullying

“Bullying” is the **repeated** use by one or more students of a written, verbal, or electronic expression or a physical act or gesture or any combination thereof, **directed at a victim** that:

- (i) causes physical or emotional **harm** to the victim or damage to the victim’s property;
- (ii) places the victim in reasonable **fear of harm** to himself or herself or of damage to his or her property;
- (iii) creates a **hostile environment** at school for the victim;
- (iv) **infringes** on the rights of the victim at school; or
- (v) materially and substantially **disrupts** the education process, orderly operation of a school, or the working environment at a school.



# Student Bullying – Defining Bullying

**Bullying** includes **cyber-bullying** and means any **severe or pervasive** physical or verbal act or **conduct**, including communications made in writing or electronically, directed toward a student or students that has or can be reasonably predicted to have the effect of one or more of the following: (1) placing the student or students in reasonable **fear** of harm to the student's or students' person or property; (2) causing a substantially **detrimental effect** on the student's or students' physical or mental health; (3) substantially **interfering** with the student's or students' ability **academic** performance; or (4) substantially **interfering** with the student's or students' ability to **participate** in or benefit from the services, activities, or privileges provided by the Schools.

Not all social conflict is bullying or harassment per se, although it might be inappropriate behavior that would be addressed by the school.

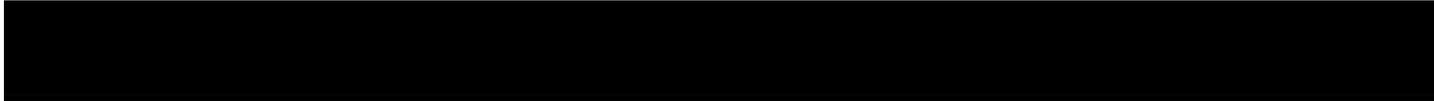
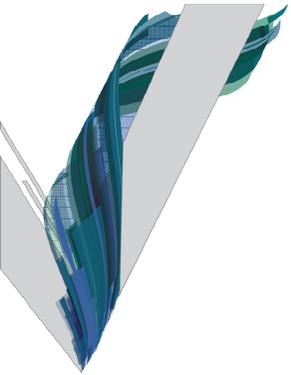


# Student Bullying – Case In Point

Penelope is a freshman, starting her first year at Perfection High School. Penelope is advanced in French, and is placed in a French class with sophomores and juniors (très bien!). On the first day of class, all the students are asked to introduce themselves and share something about themselves. When Penelope introduces herself, she shares that she has a deathly allergy to popcorn.

Two junior boys – Michael and Carter – snicker. Every day for the next week, Michael and Carter make some comment to Penelope about popcorn each time they see her, and at one point, say that they are going to have a popcorn party in French class.

Penelope stops attending class, fearful that there will be popcorn in class.



CONSENT

IT'S SIMPLE AS TEA





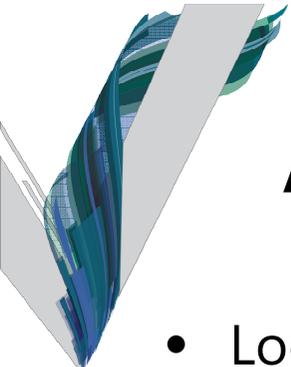
# Consent

- Are seeing increased attention to consent and discussions of “what is consent”
  - #MeToo and the Kavanaugh confirmation hearings
  - Public discourse means that students are paying more attention to consent and exactly what it is
- Helpful to look at what the public schools are doing and what is going on in higher education
  - Shouldn’t copy completely – consent education needs to be age appropriate
  - Important to prepare students for what will be expected of them in college
- Only 8 states mandate a discussion of consent in sexual education courses for public schools (Virginia isn’t one of them)
- Trends: Affirmative Consent/Circumstantial Consent



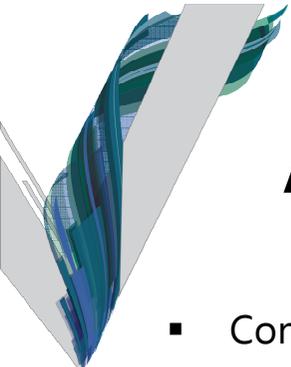
# Consent: The Law

- “Age of Consent” means that the individual is considered under the law legally able to consent to sexual activity
  - Not to be confused with the “Age of Majority”
- VA Code § 18.2-63
  - Under age 13: Legally cannot consent at all, to any sexual act
  - Between ages 13-15, and **if** consent was given, we look to the ages of the two individuals
    - If the consenting child is 3 or more years younger than the accused – it’s a felony
    - If the consenting child is less than 3 years younger than the accused – it’s a misdemeanor
  - Ages 15-18: legal so long as there is consent



# Affirmative Consent

- Look to standard Antioch College set
- “All sexual interactions at Antioch College must be consensual. Consent means **verbally asking and verbally giving or denying consent** for **all levels** of sexual behavior. Non-consensual sexual behavior, verbal and sexual harassment are not tolerated at Antioch College.”
- What is Consent? Consent is defined as the act of willingly and verbally agreeing to engage in specific sexual conduct.



# Affirmative Consent



- Consent must be obtained each and every time there is sexual activity.
- All parties must have a clear and accurate understanding of the sexual activity.
- The person who initiates sexual conduct is responsible for verbally asking for the “consent” of the individual(s) involved.
- The person with whom sexual conduct is initiated must verbally express “consent” or lack of “consent”
- Each new level of sexual activity requires consent.
- Consent is required regardless of the parties’ relationship, prior sexual history, or current activity (e.g. grinding on the dancefloor is not consent for further sexual activity).
- In order for “consent” to be valid, all parties must have unimpaired judgment and a shared understanding of the nature of the act to which they are consenting, including the use of safer sex practices.
- A person cannot give consent while sleeping.
- Silence conveys a lack of consent.
- At any and all times when time consent is withdrawn or not explicitly agreed to, the sexual activity must stop immediately.
- All parties must disclose personal risk factors and known STIs.



# Circumstantial Consent

Lack of consent occurs when one is physically forced or verbally intimidated into doing something sexual, or submitting to a sexual act, or when one has explicitly indicated a lack of consent, or when the circumstances make it clear that consent has not been given. It can also occur when someone is too intoxicated to say “no” or resist, or has fallen asleep and can therefore not consent. In addition, it may occur in other situations in which someone is deemed to be physically or mentally incapable of giving valid consent, whether due to the use of intoxicants or any other reason.



# Consent Education

- Should be age appropriate and can occur at all levels of education
- Consider including it in your curriculum
- Policy
  - But make sure you provide supplemental training/guidance on the policy
- Have counselors available to further education on issues of consent
  - Remind counselors about their duty of confidentiality and to whom it is owed
- Even if you don't have a consent policy, be prepared to respond to allegations that a sexual act occurred and consent was not obtained



## Consent – Case In Point

Katie and Carl are good friends – they are both on cross country team and share a lot of classes together. Carl has a massive crush on Katie, of which Katie is somewhat aware. In the summer, Katie and Carl began to hang out one-on-one to watch movies in Carl’s basement, and gradually, Katie starts bringing alcohol when they meet up. Both Katie and Carl drink each time they hang out – Katie more than Carl. One day, Katie and Carl have sex while they are hanging out, drinking and watching movies. This happens three more times over the course of the summer.

After the third time, Katie tells Carl that she does not want to be his girlfriend, and then reports to the school counselor that Carl had sex with her on multiple occasions, and that she never consented.

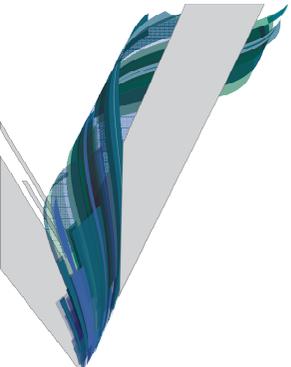


## Consent – Case In Point

Maddie and Matt are in the same class at Metropolitan High School. Matt is the class clown and is always playing jokes on people. Coincidentally, Matt also has a crush on Maddie. One day, while they are doing homework after school, Matt “steals” Maddie’s phone and runs to the theatre with it. Maddie chases after him.

While Matt and Maddie are alone in the theatre, they begin making out. Gradually, the kissing escalates when Matt reaches up under Maddie’s shirt. When Matt reached under Maddie’s shirt, Maddie became uncomfortable. She stopped kissing Matt, stood up and left.

Maddie later texted her friend to say that “something happened.” Matt also texted his friend to say that “something happened and I hope it happens again.”



(Thank you for your patience/endurance/caffeine intake)

**Whoa, that was a lot!**  
**Any questions?**

**Otherwise, you are free of  
Janice & Megan!**

