



HANEY PHINYOWATTANACHIP  
PLLC

# MODULE 1

## Title IX: Identifying and Reporting Sexual Harassment

HANEY PHINYOWATTANACHIP PLLC

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# The Purpose of this Training

## Why are you here?

- All employees are now mandated reporters

## Why is it important?

- Protect our students (see prevalence data)

## What are your responsibilities?

- Know who the Title IX Coordinator is
- Know the applicable policy
- Know how and when to report



# What is Title IX?

Title IX of the Education Amendments of 1972 provides that:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

20 U.S.C. § 1681



# New Title IX Regulations

- U.S. Department of Education promulgates regulations to implement Title IX.
- New regulations were adopted on May 6, 2020, effective August 18, 2020.
- The new regulations, for the first time, specifically define sex discrimination to include sexual harassment.
- The regulations impose new and significant requirements on school divisions to identify and respond to reports of sexual harassment.



# Applicable School Board Policies

- Policy JBCC – Title IX Policy
- Policy GBCC – Title IX Policy
  - Policy prohibits sexual harassment
  - Policy applies to employees, students, volunteers, others
- <https://wjccschools.org/about-wjcc/title-ix/>



# Prevalence Data



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# Prevalence Data

- The commentary to the regulations reference a number of sources of “prevalence data” that demonstrates the prevalence of sexual harassment against children and adolescents in elementary and secondary schools.
- This data includes the following:
- “Data show that sexual assault is most prevalent among adolescents as compared to any other group. School was reported as the most common location for this peer-on-peer victimization to occur. Fifty-one percent of high school girls and 26 percent of high school boys experienced adolescent peer-on-peer sexual assault victimization.”



# Prevalence Data

- “One study found that ten percent of children were targets of educator sexual misconduct by the time they graduated from high school.”
- “Nearly half (48 percent) of U.S. students are subject to sexual harassment or assault at school before they graduate high school (56 percent of girls and 40 percent of boys).”



# Prevalence Data

- “In one study designed to examine sexual harassment victimization among American middle school youth (grades five through eight), verbal victimization was more frequent than physical victimization and sexual assault; the types of sexual harassment experienced and the perpetrators varied by sex, race, and grade level; nearly half (43 percent) of middle school students experienced verbal sexual harassment the previous year; 21 percent of middle school students reported having been pinched, touched, or grabbed in a sexual way, 14 percent reported having been the target of sexual rumors, and nine percent had been victimized with sexually explicit graffiti in school locker rooms or bathrooms.”



# Prevalence Data

- “A survey of 2,064 students in grades eight through 11 indicated: 83 percent of girls have been sexually harassed; 78 percent of boys have been sexually harassed; 38 percent of the students were harassed by teachers or school employees; 36 percent of school employees or teachers were harassed by students; and 42 percent of school employees or teachers had been harassed by each other.”



# Prevalence Data

- “Analysis of the Civil Rights Data Collection for 2015-16, with data from 96,000 public and public charter K-12 educational institutions including magnet schools, special education schools, alternative schools, and juvenile justice facilities showed that: more than three-fourths (79 percent) of the 48,000 public schools with students in grades seven through 12 disclosed zero reported allegations of harassment or bullying on the basis of sex, showing that students experience far more sexual harassment than schools report.”



# #MeToo

- The #MeToo movement started in 2006 by Tarana Burke, when she created Just Be Inc. to help victims of sexual harassment and abuse.
- The movement gained prominence approximately 10 years later following heightened attention on college campuses regarding sexual assault and a wave of sexual harassment allegations in the media industry.
  - Intensified focus after October 15, 2017, when actress Alyssa Milano famously tweeted the hashtag #MeToo to encourage victims of sexual harassment and assault to speak out.



# Definition of Sexual Harassment



## Definition of Sexual Harassment

- “Sexual Harassment” is defined in three ways under the new regulations:
  - (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;
  - (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or
  - (3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).



## Definition of Sexual Harassment

- Three-prong definition (34 C.F.R. § 106.3(a))
  - Quid pro quo
  - “Unwelcome conduct” (or “Hostile environment”)
  - Sexual violence as defined by Federal law



# Quid pro quo

- "An **employee** of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct"



Quid pro quo:

"An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct"

- Example 1:
  - A principal tells a teacher that the teacher will receive a favorable performance evaluation if the teacher submits to the principal's sexual advances.



Quid pro quo:

"An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct"

- Example 2:
  - A teacher agrees to write college recommendations for a student only if the student submits to the teacher's romantic advances.



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- Example 3:
  - Student A agrees to help Student B with homework only if Student B submits to Student A's romantic advances.
  - Is this a quid pro quo?



Quid pro quo:

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- Example 3:
  - Student A agrees to help Student B with homework only if Student B submits to Student A's romantic advances.
    - No, because it does not involve an "employee."
    - Nevertheless, this must be analyzed under the "unwelcome conduct" prong.



"Unwelcome  
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- "Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it **effectively denies** a person equal access to the recipient's education program or activity."



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- After several more weeks, the student's grades decline drastically.



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- The teacher asks about the student's romantic and sexual relationships.



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- The teacher asks about the student's romantic and sexual relationships.
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- The teacher urges the student not to tell anyone about their relationship.
- After the student's parent learns of the relationship, the student becomes depressed and talks about committing suicide.



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- Counseling and other supports were provided to both students and they both have continued to do well in school.
- Probably does not meet the definition of sexual harassment, but CAUTION, this is a determination that is not made at the outset. Report this to the Title IX Coordinator.





# Sexual Violence as Defined in Federal Law (Four types)

- “‘Sexual assault’ as defined in 20 U.S.C. 1092(f)(6)(A)(v), ‘dating violence’ as defined in 34 U.S.C. 12291(a)(10), ‘domestic violence’ as defined in 34 U.S.C. 12291(a)(8), or ‘stalking’ as defined in 34 U.S.C. 12291(a)(30).”



# Sexual Assault

- “The term “sexual assault” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.”

20 U.S.C. 1092(f)(6)(A)(v).

- Forcible sex offenses are rape, sodomy, sexual assault with an object, and forcible fondling.
- Nonforcible sex offenses are incest and statutory rape.



# Dating Violence

- The term “dating violence” means violence committed by a person—
  - (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - (i)The length of the relationship.
    - (ii)The type of relationship.
    - (iii)The frequency of interaction between the persons involved in the relationship.
- 34 U.S.C. 12291(a)(10).



# Domestic Violence

- The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
- 34 U.S.C. 12291(a)(8).
- You must look to state law.



# Domestic Violence

- In Virginia, “family abuse” is defined as “any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member.”
- Includes “any forceful detention, stalking, criminal sexual assault[], or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.”
- Va. Code § 16.1-228



# Stalking

- The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
  - (A) fear for his or her safety or the safety of others; or
  - (B) suffer substantial emotional distress.
- 34 U.S.C. 12291(a)(30).



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  - Recipient = school system
  - A person in the United States = A person in the United States



# Reporting Requirements

- All school employees are required to immediately report suspected instances of sexual harassment directly to the Title IX Coordinator.
- Williamsburg-James City County Public Schools  
Title IX Coordinator
  - Stephanie Bourgeois, Senior Director of Student Services
  - Email: [Compliance.Officer@wjccschools.org](mailto:Compliance.Officer@wjccschools.org)
  - Phone: (757) 604-6533
  - Mail: P.O. Box 873, Williamsburg, VA 23187
- If the sexual harassment involves the Title IX Coordinator, then the report is made to the Superintendent.

# How to Report

In person

By mail

By telephone

By email

By any other means that results in the Title IX Coordinator receiving the report

May use form JBCC-F/GBCC-F



# When to Report



Report may be made at any time, including after business hours.



Reports must be made immediately.

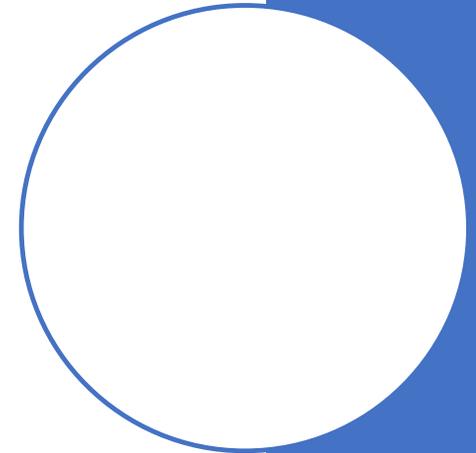
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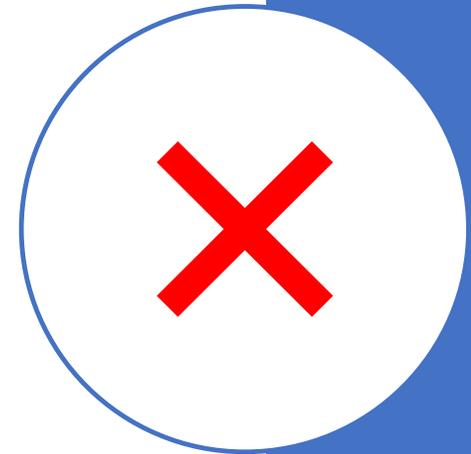
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- Teacher A tells Teacher B to “knock it off” and does nothing further.
- Did Teacher A do the right thing?





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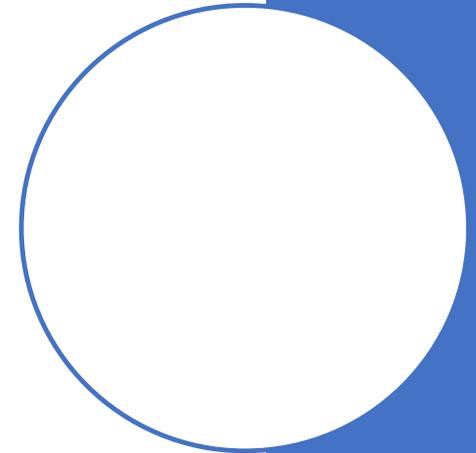
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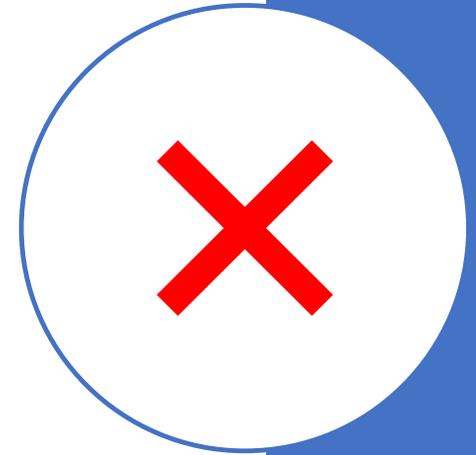
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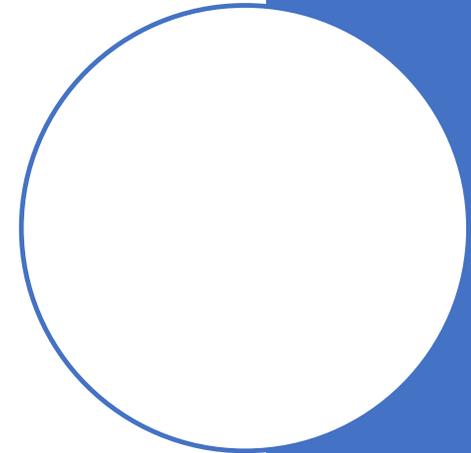
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- Teacher A reports the situation to the Principal, who tells Teacher B to “knock it off.”
- Teacher A then remembers some training she attended and contacts the Title IX Coordinator two days later.
- Did Teacher A do the right thing?
- Did the Principal do the right thing?

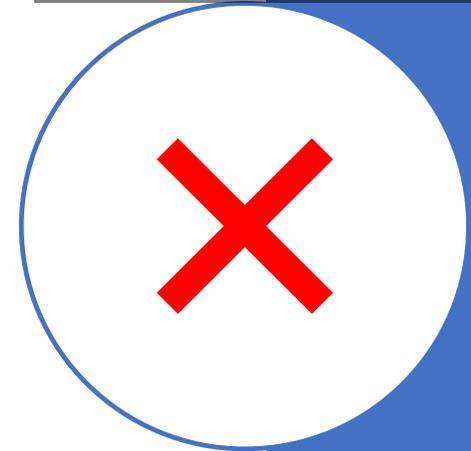




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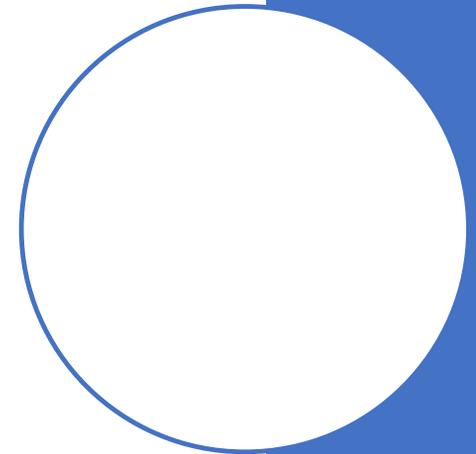
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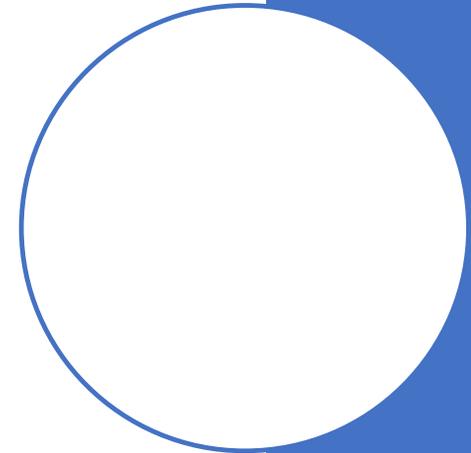
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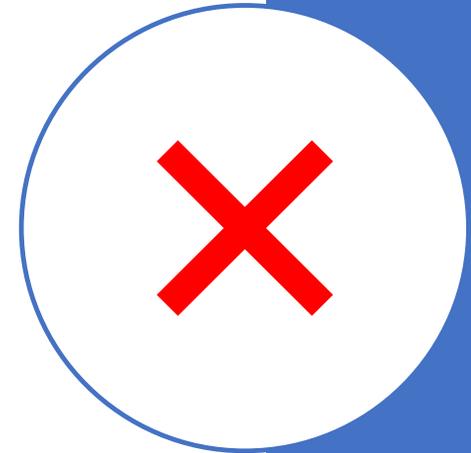
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- Teacher A reports this information to the Principal, who conducts an investigation, confiscates and searches all of the involved students' phones to see if they have the picture, and calls their parents.
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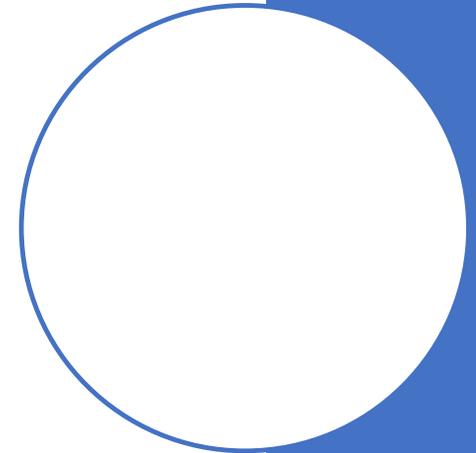
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- Teacher A reports this information to the Principal, who contacts law enforcement because the matter appears to involve child pornography.
- The Principal turns the matter over to law enforcement to handle and takes no further action.
- Did Teacher A did the right thing?
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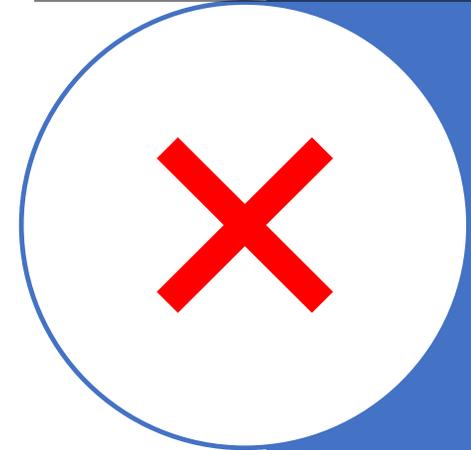




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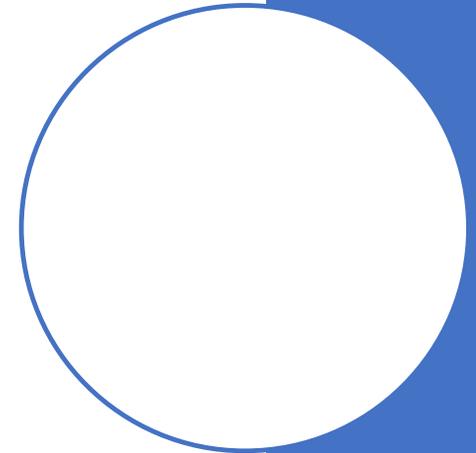
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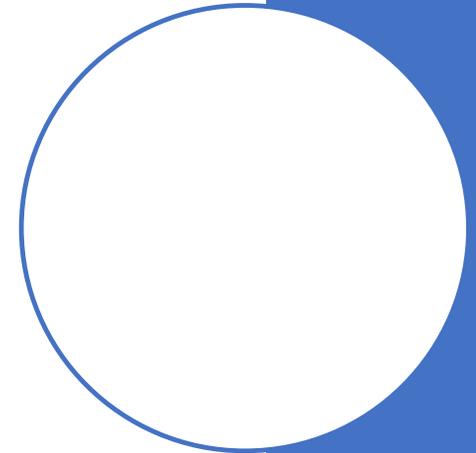
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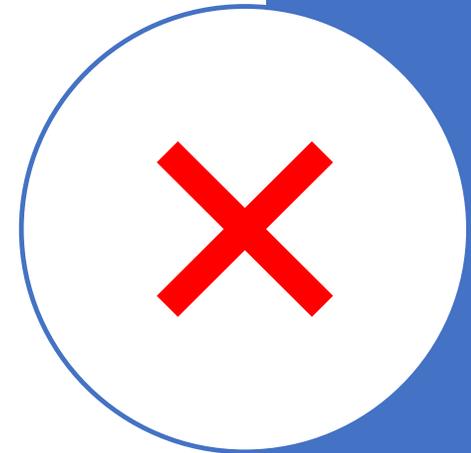
- Example 3: Parent A calls the Principal to report that her third-grade son, Student A, was touched on the buttocks by a female classmate, Student B, during lunch. The parent insists that her son was sexually assaulted.
- The Principal reviews the video footage of the cafeteria and sees that the two students are interacting playfully throughout the lunch period and that Student A appears to briefly slap at Student B's buttocks and then Student B does the same in return.
- The Principal calls Parent A back, explains what the video footage showed and tells Parent A that it was not "sexual assault."
- Did the Principal do the right thing?





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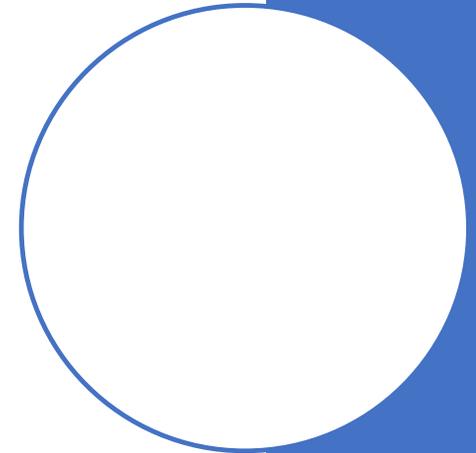
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- Example 3: Parent A calls the Principal to report that her second-grade daughter, Student A, was touched on the buttocks by a female classmate, Student B, during lunch. The parent insists that her daughter was sexually assaulted.
- The Principal immediately contacts the Title IX Coordinator to relay what Parent A has reported.
- Did the Principal do the right thing?





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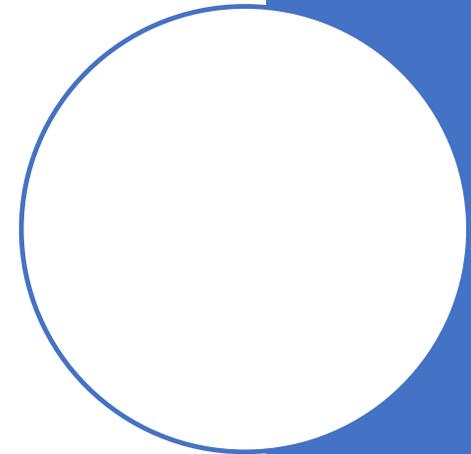
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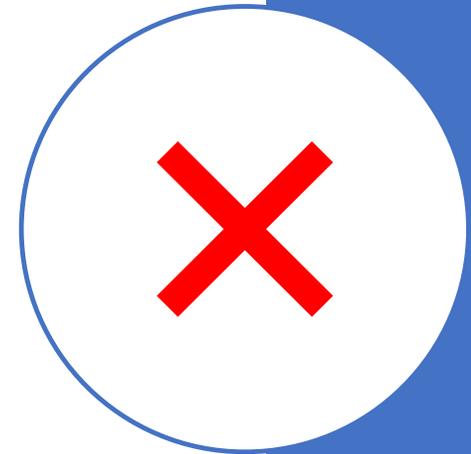
- Example 4: Bus Driver A observes a small group of students regularly bullying Student A, a transgender student who recently transitioned. The Bus Driver hears the students making inappropriate jokes about sex and gender and taunting Student A about what bathroom facilities the student should use.
- The Bus Driver writes a referral for the bullying behavior.
- Did the Bus Driver do the right thing?





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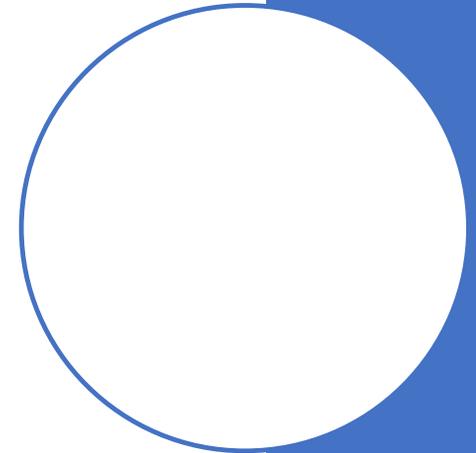
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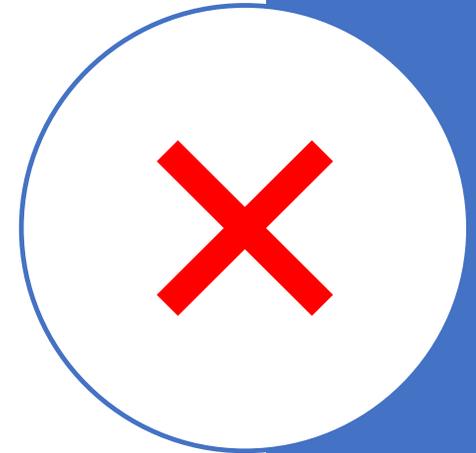
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- Did the Bus Driver do the right thing?





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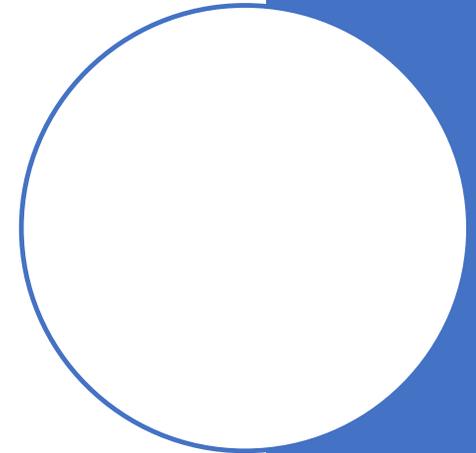
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# Reporting Examples: If In Doubt?

- Example 5: Paraprofessional A knows that last year, Paraprofessional B would regularly have one particular nonverbal male student sitting on her lap.
- At the start of this school year, all Paraprofessionals were instructed that they are not to have students sitting on their laps.
- Paraprofessional A notices that Paraprofessional B continues to have the student sitting on her lap, but now she only does it when the classroom Teacher is out of the room.
- This makes Paraprofessional A extremely uncomfortable but there does not appear to be anything overtly sexual about the behavior.
- What should Paraprofessional A do?

# Reporting

If in doubt, report the conduct to the Title IX Coordinator.



Williamsburg-James City County Public Schools  
Title IX Coordinator

Stephanie Bourgeois, Senior Director of Student Services	Email: <a href="mailto:Compliance.Officer@wjccschools.org">Compliance.Officer@ wjccschools.org</a>	Phone: (757) 604-6533	Mail: P.O. Box 873, Williamsburg, VA 23187
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# Questions?

## Contact Info

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