

Identifying Discrimination and Harassment in Schools

SB23-296 Training – Module 1 for All School Employees

Agenda for this Module

- Why we do this work
- Identifying Discrimination and Harassment
 - Offensive Unwelcome Conduct or Communication
 - Connected to a Protected Class
 - Meeting a Defined Standard of Harm
- Practice
 - Examples Based on Protected Classes
 - Bullying versus Discrimination and Harassment

Why we do this work

Strong systems to prevent and respond to discrimination and harassment ensure that every student feels welcome, safe, and valued – allowing them to learn, thrive, and grow.



Discrimination and harassment disrupts and undermines that vision for all students.

**Lowered academic
achievement and
aspirations**

Increased anxiety

**Loss of self-
esteem and
confidence**

**Depression and
post-traumatic
stress**

**General
deterioration in
physical health**

Sleep disruption

**Self-harm and
suicidal thinking**

**Feelings of
alienation in the
school
environment**

**Absenteeism and
avoidance**

Seeing the impact through individual narratives.

I'm Jasmine and I've been dealing with harassment from a group of boys at school. They make inappropriate comments about my body, spread rumors, and follow me in the halls. Then it got even worse: a boy created a fake AI picture of me naked and texted it to his friends. I can't sleep, I can't focus on my classes, I am too embarrassed to tell anyone. Sometimes it feels easier to not get out of bed and just pretend I am sick. Some days, I have even darker thoughts.

I am Carlos, and this is my brother Luis. We just got here last year and the one thing we were really excited about was joining our middle school soccer team. We went to the tryouts, and I think we did great. We've learned enough English that we don't have any problems interacting with the other players. At the end, the coach typed something into his Google translate and showed us in Spanish. It said: "You boys are playing well. But come try out next year when you are fluent in English so it will be easier to communicate."

The kids weren't any better. There was this one kid who would walk the halls and point at any kid who looked Hispanic, tap them on the head, and say: "you're deported," and "you're deported." Another kid had a sign where he wrote "ICE" and then he'd point at us and make a pretend calling sign with his hand. It's so hard to focus and stay motivated in school when we feel scared, anxious, and excluded.

I'm Sean, and I'm in fifth grade. I'm one of the few Black kids in the school. When I was younger, kids said stuff they didn't realize was offensive. Now I feel like they are learning what has the most impact on me and they are doing it intentionally. They've been calling me the N-word, touching my hair because they know it annoys me, and blaming me for things that I didn't even do. The worst part is that my teacher always believes them. When I told my teacher about the N-word, he apologized but made excuses for kids, saying they don't really know what it means. I got so angry last week, I pushed one of the bullies and I was the one that ended up with a suspension for a day.

Why we do this work:

Because you play a role in what happens next in each of these stories.

- Building culture in your school to make students feel safe, welcome, and valued.
- Responding in the moment to show that bullying, discrimination, and harassment are not ok.
- Reporting potential discrimination or harassment to the designated individual in your school or district and cooperating with any future investigation.
- Ensuring that a student does not experience retaliation for reporting discrimination or participating in an investigation.
- Supporting students through this process to eliminate the disruptions and harms caused by discrimination and harassment.

And this work is required by law.

- In 2023, the Colorado legislature passed SB23-296.
- It sets a specific definition for discrimination and harassment in Colorado public schools.
- Schools must have a policy and procedure on how discrimination and harassment is reported, investigated, and remediated.
- Students and their families can file a complaint with the school or district if they are experiencing discrimination or harassment from other students or from the employees and contractors working in schools.
- It requires this training!
- These definitions and legal obligations live in [Colorado Revised Statutes 22-1-143](#). You'll see that citation a lot in this training.
- There are other state and federal laws on discrimination. However, this training focuses on the definitions and obligations in this state law focused on schools.

What did the legislature require for this training?

- Recognizing harassment or discrimination, including indicators of grooming and child sexual abuse
- The appropriate immediate response when harassment or discrimination is reported to or witnessed by an employee
- Reporting harassment or discrimination to the public school or school district

What did the legislature require for this training?

If the employee has direct supervision of students, the following:

- The public school's procedure for responding to allegations of harassment or discrimination
- The difference between the public school's harassment or discrimination policy adopted pursuant to this section and other federal civil rights laws as well as mandatory reporting requirements in state law
- Best practices for avoiding victim-blaming; the effect of trauma on victims of harassment or discrimination; communicating with victims sensitively, compassionately, and in a gender-inclusive and culturally responsive manner; and the impact of harassment or discrimination on students with disabilities
- The types of supportive measures available to students and the provision of effective academic, mental health, and safety accommodations for students who report harassment or discrimination

Identifying Discrimination and Harassment

Let's start with the basic concept from C.R.S. § [22-1-143](#)

[Offensive Unwelcome Conduct or Communication]

+

[Connected to a Protected Class]

+

[Meeting a Defined Standard of Harm or Impact to the Student]

=

Discrimination or Harassment under C.R.S. § [22-1-143](#)

Offensive Unwelcome Conduct or Communication

Unwelcome Conduct or Communication

Type	Examples
Physical conduct	Physical assaults; damaging personal property; or sexual contact.
Verbal conduct	Verbal harassment; stereotyping by protected class; use of slurs; intentional refusal to use a chosen name or form of address; or denial of a benefit or opportunity.
Written communication	Text messages; online messaging; or messages on bathroom stalls.
Pictorial or visual communication	Drawings of offensive images such as swastikas or nooses; AI-created images; or nude photos.

Objectively Offensive

The unwelcome conduct or communication must be “objectively offensive to a reasonable individual who is a member of the same protected class.” C.R.S. § [22-1-143](#)(1)(d)(I).

Example: If the communication is directed toward a Jewish student, you would consider whether most individuals identifying as Jewish would agree that the communication was offensive.

Example: If the conduct is directed toward students with disabilities, you would consider whether it was objectively offensive to individuals with disabilities.

Connected to a Protected Class



A protected class is a group of people who are legally protected from discrimination and harassment under federal or state civil rights laws because of specific characteristics they have.

Protected Classes Covered in § 22-1-143

Disability	Race	Color	Sex
Sexual Orientation	Gender Identity	Gender Expression	Religion & Creed
Age	National Origin	Ancestry	Family Composition

Meeting a Defined Standard of Harm or
Level of Impact to the Student

Harm Category #1:

Unreasonably interferes with access to a service, opportunity or benefit.

- **Focus on the impact to the student.**
 - Did the conduct or communication have the purpose or effect of **unreasonably interfering with the student's access to their educational service, opportunity, or benefit?**
- **Example:** Student decides not to join the robotics club after some students repeatedly make comments like: "This club isn't for girls." "And especially not Mexican girls."
 - **Protected classes:** sex, national origin.
 - **Harm or impact:** student loses out on the opportunity to participate in the school's robotics club.

Harm Category #2: Hostile Environment

- **Focus on the impact to the student.**
 - Did the conduct or communication have the purpose or effect of creating an intimidating, hostile, or offensive educational environment?
- **Note:** “Petty slights, minor annoyances, and lack of good manners” do not generally constitute harassment or discrimination.

Consider a hypothetical about Sarah..

I'm Sarah, and I'm a junior in high school. I posted on social media about freeing the hostages because I care deeply about what's happening in Israel — my family is Jewish, and we have family and friends in Israel. I just wanted to express my feelings. But after that post, some classmates started making comments at school. It was particularly bad with one student. She told me that Hitler was justified in targeting my people. She called me names like 'baby killer' and told me to 'go back to Israel.' It has been really scary. One day she confronted me at an afterschool event, got in my face and said some truly horrible things. I had to leave. I am afraid to tell my parents or any of my teachers. I am pretending to be fine, but I am not fine. My parents are asking me why my grades have dropped. I don't know what to do.

What do you see and hear?

- **Conduct:**
 - Unwelcome and objectively offensive verbal harassment.
- **Protected classes:**
 - Antisemitism, anti-Zionism, and anti-Israel bias can include elements of religion, national origin, and ancestry discrimination.
- **Meeting Standard of Harm or Impact:**
 - Feelings of fear and anxiety at school. She's not ok.
 - Her grades are dropping as a result.
 - Had to leave an afterschool event.
 - The environment is intimidating, hostile, and offensive. And it is interfering with her access to education and educational opportunities.

Harm Category #3:

- Was submission to, objection to, or rejection of the conduct used against the student or threatened to be used as a basis for educational decisions affecting the student?
- Was submission to the conduct or communication explicitly or implicitly made a term or condition of the student's access to an educational service, opportunity, or benefit?

Harm Category #3: Examples

- **Retaliation is prohibited.**
 - A student files a complaint about a teacher repeatedly using stereotypes of the student's protected class. Afterward, the teacher lowers the student's participation grade and calls them "disruptive."
- **Includes "quid pro quo" discrimination. You do this for me, I will do this for you.**
 - A student with ADHD is told by a teacher that if they agree to not use their extra time accommodations, they can stay in the honors program.

Now that you know more about each category,
let's loop back to the standard one more time.

[Offensive Unwelcome Conduct or Communication]

+

[Connected to a Protected Class]

+

[Meeting a Defined Standard of Harm]

=

Discrimination or Harassment under C.R.S. § [22-1-143](#)

What about federal laws?

- **Yes! There are federal laws that prohibit discrimination and harassment in schools too.**
 - **Title VI of the federal “Civil Rights Act of 1964”** – prohibits discrimination on the basis of **race, color, and national origin or ancestry**
 - **Title VII of the federal “Civil Rights Act of 1964”** – prohibits discrimination in **employment**
 - **Title IX of the Education Amendments of 1972** -- prohibits discrimination on the basis of **sex**
 - **Section 504 of the federal “Rehabilitation Act of 1973” and Title II of the Americans with Disabilities Act** and the **Individuals with Disabilities Act (IDEA)** – prohibit discrimination against students with **disabilities**

Can you simplify all this for me?

Know your local policies!

1

Both state and federal laws should be incorporated into your school or district policies on discrimination and harassment. **If you are following your policies, you should be following the law.** You should always go back to those policies to remind yourself of the protected classes and the definitions and standards for discrimination and harassment under all the laws.

Can you simplify all this for me?

Consider: Is this a potential Title IX violation?

2

This is not intended to be a Title IX training. However, it is important that you always consider first whether something could be a Title IX issue – **discrimination or harassment based on sex**. Get that to your Title IX coordinator right away because the procedures to be followed under Title IX are very specific and need to be followed from the very beginning.

Can you simplify all this for me?

Consider: Do I reasonably suspect child abuse? If yes, report first to law enforcement as a mandatory report of child abuse.

3

There is some overlap between harassment and child abuse. This shows up most commonly in allegations of **unlawful sexual behavior**. Stop and report this to law enforcement first. Then immediately contact your Title IX coordinator if the abuse is sexual.

Reminder: a discrimination and harassment investigation must proceed after the law enforcement investigation, even if the report to law enforcement does not result in criminal charges.

Can you simplify all this for me?

Use your designated local experts!

4

This training is designed for all employees. Some employees should have additional training on or experience with the differences between all the state and federal nondiscrimination laws and the standards and procedures associated with all those laws. **Your primary role is to get the right information to the right people.** Let them help you implement all the nuances.

Practice!

Examples Based on Protected Classes

Sexual Harassment: Student to Student

- Think back to our first example with **Jasmine**.
- **Unwelcome conduct:**
 - Inappropriate comments about her body, spreading rumors, and making her uncomfortable by following her in the halls.
 - Another student created a fake AI picture of her naked and texted it to his friends.
- **Protected class:** Sex
- **Meeting Standard of Harm or Impact:**
 - Hostile, intimidating, and offensive environment.
 - Can't focus in class. Intentionally not going to school and missing out on educational opportunities and benefits. Impacting her mental health.

Sexual Harassment: Adult to Student

A school employee has been sending an increasing number of text messages to a student. One of the texts says that a kiss might help bring the student's grade up.

If the student shows you this text, what are your next steps.

- A. Listen actively, but don't ask the student for the whole story yet because the student will have to tell it again to a Title IX investigator.
- B. You recognize this as a type of harassment under Title IX (conditioning a benefit on unwelcome conduct, a kiss). You tell the student that you are going to report this to the Title IX coordinator so they can take some immediate steps to address this.
- C. Both A and B.

Sexual Harassment: Adult to Student

A school employee has been sending an increasing number of text messages to a student. One of the texts says that a kiss might help bring the student's grade up.

If the student shows you this text, what are your next steps.

- A. Listen actively, but don't ask the student for the whole story yet because the student will have to tell it again to a Title IX investigator.
- B. You recognize this as a type of harassment under Title IX (conditioning a benefit on unwelcome conduct, a kiss). You tell the student that you are going to report this to the Title IX coordinator so they can take some immediate steps to address this.

C. Both A and B.

Grooming can be sexual harassment

Educators should be vigilant for signs of grooming, such as:

- Unusual interest in a particular student by an adult.
- Excessive gift-giving or special treatment.
- Attempts to isolate the student from peers.
- Engagement in inappropriate conversations or physical contact.

ACTIONS TO TAKE:

- Report to **law enforcement** if you reasonably suspect child abuse, which includes sexual abuse, unlawful sexual behavior, and attempted unlawful sexual behavior.
- Always report to your **leadership and Title IX coordinator**.
- Follow harassment discrimination and harassment procedures.

National origin discrimination

Protects individuals based on the country they (or their family) come from, or their ethnic background. These protections extend to students who are or are perceived because of their shared ancestry or ethnic characteristics to be Jewish, Israeli, Muslim, Arab, Sikh, South Asian, Hindu, Palestinian, or any other faith or ancestry.

- **Example:** A group of middle school Muslim girls are being called terrorists and students are attempting to remove their hijabs.
- **Example:** Jewish students are exposed to swastikas on whiteboards at school and the bathroom stalls had white supremacist slogans stating conspiracy theories about Jewish people.

National Origin: Let's go back to the experience of Carlos and Luis.

**What is the
unwelcome conduct
or communication?**

Coach tells the boys that they can't join the middle school soccer team because they don't speak English fluently.

Other kids are making comments about kids that look Hispanic getting deported. Telling Carlos and Luis that they are going to call ICE and get them deported.

Let's go back to the experience of Carlos and Luis.

How is it connected to a protected class?

National origin is a protected class that covers a student's ethnicity, ancestry, country of origin, or language background.

The treatment of Carlos and Luis is connected to a protected class, their national origin. Why? Because the unwelcome conduct seems connected to the fact that they come from outside the United States and their first language is not English.

Let's go back to the experience of Carlos and Luis.

Did the unwelcome conduct impact their access to educational benefits or opportunities?

Yes. An educational service, benefit, or opportunity includes anything offered or sponsored by a school that contributes to a student's learning, growth, or development. It includes sports and extracurriculars.

Carlos and Luis weren't allowed to participate on the soccer team even though they knew enough English to participate safely and meaningfully.

Let's go back to the experience of Carlos and Luis.

Did the unwelcome conduct create an intimidating, offensive, or hostile environment at school?

Yes. This is the result of unwelcome conduct where kids are being tapped on the head and told they will be deported if they look Hispanic. And other kids are threatening to call ICE on Carlos and Luis.


Carlos and Luis are feeling scared, anxious, and excluded.

Sex, gender identity, and gender expression are protected classes under Colorado law.

Title IX and Colorado state laws protect students from discrimination on the basis of the biological characteristics of sex.

Colorado law also covers discrimination and harassment based on **sexual orientation, gender identity and gender expression**.


Gender Identity



Gender identity: “Gender identity” means an individual's innate sense of the individual's own gender, which may or may not correspond with the individual's sex assigned at birth. § 24-34-301(10), C.R.S. Transgender means the individual’s gender identity is different from their sex assigned at birth. Cisgender means the individual’s gender identity and their sex assigned at birth are the same.

- **Example:** A transgender student is physically assaulted and injured by students who told the student to “stop pretending you are something you are not.” They call the transgender student by the name the student used before transitioning (called “deadnaming”) and intentionally use the wrong pronouns with the student (“misgendering”).


Gender Expression



Gender Expression: “Gender expression” means an individual’s way of reflecting and expressing the individual’s gender to the outside world, typically demonstrated through appearance, dress, and behavior. § 24-34-301(9), C.R.S.

- **Example:** A student who identifies as male and was assigned male at birth is mocked by students because he paints his nails and keeps his hair long. Some students shoved him into a locker and told him to “stop looking like a girl.”


Sexual Orientation



Sexual orientation: “Sexual orientation” means an individual's identity, or another individual's perception thereof, in relation to the gender or genders to which the individual is sexually or emotionally attracted and the behavior or social affiliation that may result from the attraction. § 24-34-301(24), C.R.S.


- **Example:** A student is harassed because they are dating someone of the same sex.

Religion

- 
- Religion:** Protects individuals because of religious beliefs, practices, or lack of religion.
- **Example:** A school refuses to make a reasonable accommodation for a Muslim student who asks for a space to pray during the day.

Race and Color

- **Race:** Protects against discrimination or harassment because of racial identity or characteristics.



Color: Protects against discrimination based on skin tone or complexion, even within the same racial group.

- **Example:** A darker-skinned Latina student is harassed by her lighter-skinned peers.

Race: Let's go back to the experience of Sean

**What is the
unwelcome
conduct?**

Kids have been calling Sean by racial slurs. They are touching his hair because they know it bothers Sean. They blame Sean for things that happen at school and the teacher doesn't believe Sean when he says he wasn't responsible.

When he told his teacher about kids calling him the N-word, the teacher apologized but made excuses for kids, saying they don't really know what it means.

Let's go back to the experience of Sean

Did the unwelcome conduct create an intimidating, offensive, or hostile environment at school?

Yes. The behavior of the other students created a hostile and offensive environment for Sean at school.

The lack of action and response by the educator allowed the hostility to continue and escalate.

The choice to suspend Sean without understanding the root of Sean's behavior only deepened the harm and deprived Sean of access to instructional time.

Disability

Unwelcome Conduct or Communication

A student with a mobility disorder is mocked by peers during PE class, and the teacher dismisses it as “just teasing.”

After a student files a complaint about inaccessible classroom materials, a teacher retaliates by removing the student from a leadership role in group projects.

Staff repeatedly ignore a student’s 504 Plan accommodations and write the student up for “defiance” when the student leaves the room to manage a panic attack.

Meet the Standard of Harm or Impact

The student stops attending PE class and receives a failing grade on the required course.

Student faces retaliation for objecting to barriers and suffers reputational harm and loss of opportunity.

The student is disciplined for following an accommodation in the Section 504 plan.

Harassment versus Bullying

What's the difference?

Bullying

School bullying researchers typically define bullying by highlighting three components that differentiate it from other forms of aggression:

- the behavior is unwanted,
- repeated or likely to be repeated, and
- marked by an observed or perceived imbalance of power

CHECK IT OUT!

CDE Bullying Prevention Model Policy:

<https://www.cde.state.co.us/mtss/bullying>

“Bullying” defined in Colorado law

“Bullying” means **any written or oral expression, or physical or electronic act or gesture, or a pattern thereof, that is intended to coerce, intimidate, or cause any physical, mental, or emotional harm to any student.**

Bullying is prohibited against any student for any reason, including, but not limited to, any bullying behavior that is **directed toward a student on the basis of the student's academic performance; any bullying behavior that is directed toward a student [based on their disability, race, creed, color, sex, sexual orientation, gender identity, gender expression, national origin, religion, ancestry, or need for special education services]; or a pattern of bullying behavior that is directed toward a student on the basis of the student's weight, height, or body size.**

C.R.S. 22-32-109.1(1)(b)

GREEN HIGHLIGHTS: BULLYING

- Bullying doesn't implicate a student's protected class.
- Not harassment.
- Follow your local policies to respond to bullying.

RED HIGHLIGHTS: POTENTIAL DISCRIMINATION OR HARASSMENT

- Treatment of the student is connected to the student's protected class.
- Could rise to the level of harassment.
- Follow your local policies on responding to harassment.

It's a lot, but don't stress. The most important part is to spot the harm occurring and connect with your experts.



When you see that a student is experiencing a harm from other students or from the adults at school and it seems like they are being targeted or treated that way because of their identity, share that information with your designated school or district expert who is trained in the nuances.

Your local expert can bring into focus whether a protected class is implicated, what laws might apply, and the specific steps that need to occur to comply with those laws.

The most important thing you can do is spot the issue and elevate it. This seems like this might be discrimination or harassment based on a protected class!

By identifying
discrimination and
harassment and
elevating to your
designated experts, you
make a difference.
Thank you.

