AN INVESTIGATION OF SEXUAL HARASSMENT PROVISIONS IN VIRGINIA SCHOOL DISTRICT POLICY

by

Michaele Paulette Penn

Dissertation submitted to the Faculty of the
Virginia Polytechnic Institute and State University
in partial fulfillment of the requirements for the degree of
DOCTOR OF EDUCATION
in
Educational Administration

APPROVED:

Dr. M. David Alexander, Chairman

Dr. Glen I. Earthman

Dr. Jimmie C. Fortune

Dr. Frank J. Polakiewicz

Dr. Robert R. Richards

May, 1989

Blacksburg, Virginia

AN INVESTIGATION OF SEXUAL HARASSMENT PROVISIONS IN VIRGINIA SCHOOL DISTRICT POLICY

by

Michaele Paulette Penn

Committee Chairman: M. David Alexander

Educational Administration

(ABSTRACT)

PURPOSE OF THE STUDY

The purpose of the study was to determine how many school divisions in the Commonwealth of Virginia had adequate policies which addressed sexual harassment specifically and to determine why school divisions had either developed or failed to develop such policies. An additional purpose was the development of a paradigm to guide school divisions in the construction of policy governing sexual harassment.

PROCEDURE

All 133 superintendents in Virginia were identified and 119 superintendents participated in the study. Data were collected using a survey questionnaire and copies of policies were requested. All survey data were analyzed using crosstabulation commands on the App-Stat statistical package. Policies which were returned were analyzed in comparison to evaluation criteria taken from the Equal

Employment Opportunity Commission (EEOC) Guidelines that prohibit sexual harassment and from the research of sample policies from the public and private sectors.

CONCLUSIONS

1. Sixty-eight percent of the school divisions in the Commonwealth indicated they did not have policies and/or administrative regulations which specifically prohibit sexual harassment.

2. Thirty-four of the 81 school divisions in Virginia which did not have sexual harassment policies indicated they were aware of the need for such policy. Twenty of the respondents indicated they had other policies which they believed adequately addressed sexual harassment, and fourteen of the respondents indicated they were developing such policy.

3. Most school divisions that had developed policies had done so because they were aware of their liability or the possibility of litigation.

4. Most policies were inadequate in that they failed to communicate that employers were serious about sexual harassment or they failed to indicate that employees would be made aware of sexually harassing behaviors through awareness training.

ACKNOWLEDGEMENTS

Sincere appreciation is expressed to all the people who made the completion of this dissertation a reality. A special thanks to members of my doctoral committee who were unrelenting sources of guidance and leadership.

A special thanks to Dr. M. David Alexander, committee chairman, whose vast knowledge, quiet encouragement, and unwavering faith have been an important part of my existence throughout this study. To Dr. Frank Polakiewicz for whose friendship, informative suggestions and encouragement I am eternally grateful. To Dr. Robert R. Richards who made me believe I could do it, many thanks. To Dr. Jimmie Fortune my thanks for sharing his insight. Finally, I am grateful to Dr. Glen Earthman who gave balance to this study through his astute observations and his ability to ensure humility.

To my family I extend my deepest thanks for your encouragement, faith, sacrifices, patience, and understanding, but most of all for instilling in me the ability to appreciate the value of an education.

I dedicate this dissertation first to one who watches over us all. I also dedicate this dissertation to my daughter who taught me the lessons of unconditional love and parenting; and to my best friend, my mentor, and my husband, , whose love is the one constant in my life and who, in my every waking moment, is my inspiration.

TABLE OF CONTENTS

TABLES

CHAPTER ONE

Introduction

Sexual harassment is a form of sex discrimination which, as of 1981, has come to be prohibited by Title VII of the Civil Rights Act of 1964. It is perceived to be a pervasive phenomenon in the workplace today and while it may be directed at either gender, there is more harassment of females by males.[1] Dayle Nolan inferred that sexual harassment has existed since women first entered the work force.[2] However, statistical evidence was not available to support this inference until 1976 when the first nationwide statistics concerning sexual harassment were reported.[3] In this survey of 9000 women, approximately 90% responded that sexual harassment was a serious problem and reported some form of sexual harassment from male bosses or colleagues.[4] Though this sample was self-selected and the results could not be generalized to the entire population, it did support the premise that sexual harassment was an important issue and a considerable problem in the workplace.

In addition, Catherine MacKinnon,[5] Lin Farley[6] and the Bureau of National Affairs[7] conducted numerous surveys and studies concerning sexual harassment. These studies also indicated that sexual harassment is indeed a widespread and serious social problem which affects men and women of all ages, races, occupations and socio-economic groups. To

emphasize the extent to which the threat of sexual harassment had spread, Eric Mondschein and Loel Greene observed simply that sexual harassment, while once considered a joke or of little importance, had now been identified as being "a widespread and significant workplace problem that needs to be eliminated."[8]

Speculation on how sexual harassment can be eliminated or prevented has been the topic of much research. Since the late 1970s sexual harassment has been recognized as a cause of action that violates Title VII of the Civil Rights Act of 1964.[9] Therefore, it is indisputable that sexual harassment is a type of sexual discrimination in terms, conditions, or privileges of employment prohibited by Title VII. Nolan, however, attributes the increase in legal claims against sexual harassment to the fact that feminist activities have given women the courage not to endure the pain and degradation of sexual harassment as an unavoidable term of her employment.[10]

The pursuit of legal redress by women has resulted in legal actions designed to eliminate sexual harassment. Sue Read, an advocate of sexual harassment prevention, pointed out that since Bundy v. Jackson[11] ". . . a woman may claim illegal sexual discrimination without having to prove that her boss's sexual harassment cost her her job or her other employment benefits."[12] She pointed out further that the

theory of respondeat superior[13] could also apply in private sector cases. She said, ". . . it has now been established in the United States that [private] employers . . . can be held liable for acts committed by their agents and supervisory employees, regardless of the fact that it didn't know about them or had prohibited them, unless they can show they took 'immediate and appropriate corrective action'."[14] The pursuit of legal redress has not been limited to the private sector. Nolan said, "This emergence has occurred in education as well, particularly as women in increasing numbers seek administrative positions."[15]

Statement of the Problem

The question this study attempted to answer was as follows: Are the school divisions in the Commonwealth of Virginia prepared, with adequate policies, to deal with and eliminate sexual harassment in the workplace?

The elimination or prevention of sexual harassment becomes more critical where a predominance of women are employed. In the field of education where there is a predominance of female teachers, clerical and support staff, the potential for sexual harassment problems is magnified. Yet, few have studied the extent of the problem of sexual harassment in public education. These conditions intensify the need for this study. For although most studies have largely been confined to the private sector, the potential

for allegations of sexual harassment looms large and employers in school divisions are not immune from becoming victims.

Background of the Study

An individual is offered protection against sexual harassment by the following bodies of law: (1) The Equal Protection Clause of the Fourteenth Amendment; (2) The Civil Rights Act of 1871, Title 42 U.S.C. Section 1983; (3)Title VII of the Civil Rights Act of 1964; and (4) Title IX of the Education Amendments of 1972.[16] Also included are the EEOC's 1980 Guidelines on Discrimination Because of Sex.[17] Although the EEOC has no formal rule-making authority and its guidelines do not independently have the force and effect of law, they constitute a body of experience and informed judgement on which courts rely. The guidelines (Appendix C) are significant because they specifically recognize sexual harassment as a cause of action.

Relevant literature indicates that what may constitute sexual harassment is, to a certain extent, in the eyes of the beholder. Susan Omilian put it this way: "There is a definite line between flirtation and harassment, and that line is crossed when the victim perceives it to have been crossed".[18] Barbara Gutek agreed and advised setting limits to what constitutes sexual harassment. She said "Defining sexual harassment means setting boundaries on the term,

differentiating sexual harassment from expressions of sexual interest. Not all expressions of sexuality in the workplace could possibly be called sexual harassment."[19]

The EEOC recognized that the line is not the same for all when they included in the Guidelines the following:

> In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.20

The EEOC Guidelines also recognize that the best way to achieve an appropriate environment is to prevent the occurrence of sexual harassment by alerting the employee to the problem and stressing that sexual harassment in any form will not be tolerated. They state the following:

> Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.21

Thus, employers are encouraged by EEOC to take all steps necessary for the prevention of sexual harassment. Others offer the same advice. Omilian, a proponent of sexual harassment prevention, pointed out that "court decisions that clear employers of liability cast management

as responsive to complaints, sensitive to the plight of the victims and active in ridding the workplace of illegal sexual harassment."[22] Other proponents of the prevention of sexual harassment in the workplace are of the same voice. They indicated that promoting awareness through the development of sexual harassment policy is one of the best means an employer has of preventing sexual harassment in the workplace. Betty Licata and Paula Popovich observed that "grievance and disciplinary procedures and organizational policies prohibiting sexual harassment are important mechanisms."[23] Susan Strauss reported that "the importance of having such a policy cannot be stressed enough."[24] Omilian polled employers following sexual harassment awareness training and they (the employers) recommended publicizing and enforcing sexual harassment policy.[25] David Nagle said "any manager . . . should take steps to minimize the likelihood of a sexual harassment charge. Prevention is neither extreme nor difficult it merely involves recognition of a potential problem and adoption of a company policy".[26]

Others encourage not only the development of a policy as a means of prevention but, just as importantly, the dissemination of that policy. Arthur Marinelli wrote that the language of the supreme court decision in Meritor Savings Bank, FSB v Vinson[27] stressed the importance of a "well drafted sexual nondiscrimination policy that is widely disseminated and has a formal grievance procedure that is

acted upon promptly by the employer when grievances are filed."[28] Mondschein and Green suggested that school districts need policies and procedures to handle complaints of sexual harassment by employees. They point out that school districts may easily amend their existing nondiscrimination policies required under Title IX to include provisions for sexual harassment. They further suggested that those school districts which do not have policy "risk allegations that they are insensitive to the issue and may make them vulnerable to allegations condoning sexual harassment."[29]

Perhaps Elsa Cole stated it most forcibly when she said the following concerning employers of educational institutions:

> Supervisors . . . may be aware of the more obvious forms of prohibited quid pro quo harassment. After Meritor, however, they probably need to be educated about the more subtle forms of sexual harassment which create an offensive environment . . .. Educational employers should therefore create and widely promulgate among their employees . . . policies and procedures specifically directed towards elimination of sexual harassment. . . .to protect employees . . . and to limit educational institutions' liability in sexual harassment cases.[30]

Purpose of the Study

The purpose of the study was to determine if school divisions in the Commonwealth of Virginia are prepared to effectively and efficiently deal with and eliminate sexual harassment. In order to determine the preparedness of

Virginia School Divisions this study was designed to determine whether or not school divisions had adequate sexual harassment policy. In addition, this study was designed to develop a paradigm or evaluative criteria which school divisions could use to either develop policy or assess the adequacy of existing policy. A second purpose was to determine why school divisions that did not have a policy had failed to develop such a policy.

Significance of the Study

There were only three cases involving sexual harassment litigated in Virginia courts under Title VII in 1987. They were Swentek v. U.S. Air, Inc.,[31] EEOC v. FLC & Brothers Rebel, Inc.,[32] and Delgado v. Lehman, Secretary of the Navy.[33] While literature reveals much sexual harassment litigation in the private sector, and in higher education institutions, in the Commonwealth of Virginia, a search of state case law did not reveal that public school divisions have been confronted with sexual harassment issues.

However, it must be noted that with increased litigation surrounding sexual harassment, and with increased interest in employer liability issues, to wait for charges of gender discrimination based on sexual harassment is to ignore a societal concern that is becoming more pervasive every day. Also, with the establishment of sexual harassment under Meritor[34] and the Supreme Court's

recognition of the hostile environment claim, sexual harassment is a very likely source of Title VII litigation in the future. All employers including school divisions should be cognizant of ways to limit sexual harassment claims. Public educational institutions would do well to examine their policies and practices and assess to what extent sexual harassment policy communicates to employees that sexual harassment is a prohibited behavior and will not be tolerated.

In summary, although most research has been confined to the private sector, the potential for allegations of sexual harassment is immense and employers and employees in school divisions are not immune from becoming victims. Given these facts, the conditions that support the need for this study are as follows: (1) Few have assessed the adequacy of existing school board policy concerning sexual harassment; (2) The employees in public education are predominantly females and therefore the potential for allegations of sexual harassment is greater; (3) Employers in school divisions are not immune from becoming victims of sexual harassment claims; (4) There is a need to bring to the attention of educators the laws concerning sexual harassment so that the laws can be obeyed; and (5) For educators who are role models for the communities they serve, there is an inherent obligation to prevent and eliminate sexual harassment.

Definitions

The following definitions were used to clarify the meanings of specific terms as they were used in this study:

Quid pro quo sexual harassment:[35] One of the two types of sexual harassment recognized by federal courts. The term "quid pro quo" is itself defined as "What for what; something for something. Used in law for the giving one valuable thing for another."[36] This type of sexual harasssment is one in which a supervisor demands sexual consideration in exchange for tangible job benefits such as hiring, promotion, pay and evaluation.

Condition of work sexual harassment:[37] One of the two types of sexual harassment recognized by federal courts. This type is one in which the acts of verbal abuse, physical touching, sexual demands or other conduct of a sexual nature are so pervasive and persistent as to have the effect of interfering with an individual's work performance and so creates an offensive, hostile, and intimidating working environment.

Respondeat Superior: The term "respondeat superior" is literally defined "Let the master answer."[38] This maxim means that a master is liable in cerain cases for the wrongful acts of his servant, and a principal for those of his agent.[39] For the purpose of this study, the theory of "respondeat superior" refers to the determination that an employer is liable for the acts of supervisory employees in offensive environment cases.[40]

Limitations

This was a descriptive study which was limited to employer-employee relationships in the 133 school divisions in the State of Virginia. Research of case law considered only cases that had been litigated by September 1, 1988. The study was also limited to sex discrimination in the form of sexual harassment and not sex discrimination in the form of job equity, age, pay, etc. It was further limited to how

policies compared to evaluative criteria with a 90% compliance rate for the assignment of a good rating. Due to evolving case law involving sexual harassment, there is some discrepancy among the judiciary concerning whether private sector law applies to the public sector. Finally, the findings can be generalized only to the population from which they were drawn.

Organization of the Study

The main body of this study is organized into five chapters. Chapter 1 presents a statement of the problem, the background of the study, the purpose of the study, the significance of the study and its limitations.

Chapter 2 presents a review of the literature from a historical aspect of the laws that prohibit sexual discrimination and case law as it pertains to sexual harassment.

Chapter 3 describes the methodology including the type of research, the population, the data gathering instruments, data gathering procedures, and methods of analysis and presentation of data.

Chapter 4 presents an analysis and presentation of data plus a summary of the findings.

Chapter 5 summarizes the study and offers conclusions, implications for practice, and recommendations for further research.

NOTES

[1] Catherine MacKinnon, Sexual Harassment of Working Women: A Case of Sex Discrimination (New Haven, Conn.: Yale University Press, 1979), P. 25.

[2] Dale Nolan, "Sexual Harassment in Public and Private Employment," West's Education Law Reporter, Vol. 3 (1982), p. 227.

[3] Claire Safran, "What Men do to Women on the Job. A Shocking Look at Sexual Harassment," Redbbok (November 1979), pp. 217-224.

[4] Ibid.

[5] Catherine MacKinnon, "Sexual Harassment: The Experience", The Criminal Justice System and Women (Price & Sukoloff eds., 1982). MacKinnon, Sexual Harassment of Working Women.

[6] Lin Farley, Sexual Shakedown: The Sexual Harassment of Women on the Job (New York: McGraw-Hill, 1978).

[7] Sexual Harassment and Labor Relations: A BNA Special Report (Bureau of National Affairs, Inc., Washington, D.C., 1981).

[8] Eric S. Mondschein and Loel L. Greene, "Sexual Harassment in Employment and Educational Practices," School Law Update 1986 (ERIC Document Reproduction Service No. ED 272 996), p. 47.

[9] Barnes v. Costle 561 F.2d 983 (D.C.Cir. 1977).

[10] Nolan, p. 227.

[11] Bundy v. Jackson, 641 F.2d 934 (D.C.Cir. 1981).

[12] Sue Read, Sexual Harassment at Work, (Middlesex, England, Hamlyn Publishing Group Ltd., 1982), p. 128.

[13] Respondeat Superior: The term "respondeat superior" is literally defined "Let the master answer." This maxim means that a master is liable in certain cases for the

wrongful acts of his servant, and a principal for those of his agent. For the purpose of this study, the theory of "respondeat superior" refers to the the determination that an employer is liable for the acts of supervisory employees in offensive environment cases.

[14] Read, p. 129.

[15] Nolan, p. 227.

[16] Kern Alexander and M. David Alexander, American Public School Law (St. Paul, MN: West Publishing Company, 1985), pp. 625, 643, 644, and 509.

[17] EEOC Guidelines 29 C.F.R. Section 1604.11.

[18] Susan M. Omilian, What Every Employer Should Be Doing About Sexual Harassment (Madison CT., Business and Legal Reports, 1986), p. 12.

[19] Barbara A. Gutek, Sex and the Workplace (San Francisco, Jossey-Bass Publishers, 1985), p. 7.

[20] EEOC Guidelines 29 C.F.R. Section 1604.11 (b).

[21] EEOC Guidelines 29 C.F.R. Section 1604.11 (f).

[22] Omilian, p.41.

[23] Betty Jo Licata and Paula M. Popovich, "Preventing Sexual Harassment: A Proactive Approach", Training and Development Journal Vol. 41 (May, 1987), p. 35.

[24] Susan Strauss, "Sexual Harassment in the School: Legal Implications for Principals", NASSP Bulletin (March 1987), p. 96.

[25] Omilian, p. 63.

[26] David E. Nagle,"Code of Conduct for Avoiding Sexual Harassment," The Richmond News Leader, Monday Oct. 20, 1986.

[27] Meritor Savings Bank v. Vinson 106 S.Ct. 2399 (1986).

[28] Arthur J. Marinelli, Jr., "Title VII: Protection Against Sexual Harassment," Akron Law Review Vol 20:3 (Winter, 1987), p. 390.

[29] Mondschein and Greene, p. 59.

[30] Elsa Kircher Cole, "Recent Legal Developments in Sexual Harassment," Journal of College and University Law Vol. 13, No. 3, (1986), p. 284.

[31] Swentek v. U.S. Air 830 F.2d 552 (1987). Flight attendant bought claim against employer alleging sexual harassment and against employer and pilot under state law alleging intentional infliction of emotional distress, assault and battery, and invasion of privacy.

[32] EEOC v. FLC & Brothers Rebel, Inc. 663 F.Supp. 864 (1987). The EEOC brought sex discrimination action against employer on behalf of female bartender. The District Court held that: (1) discharge of bartender for "unladylike" language constituted prima facie case of intentional discrimination; (2) employer's later allegations that he would nevertheless have discharged bartender due to lying and insubordination were pretextual; (3) bartender was entitled to "make-whole" relief; and (4) the EEOC was entitled to injunction enjoining employer from engaging in practices which discriminate against persons because of their sex.

[33] Delgado v. Lehman, Secretary of the Navy 665 F.Supp. 460 (1987). Former female naval employee brought action against navy alleging that she had been subjected to continued course of sexual harassment that resulted in denial of ther within-grade increase in salary and in her discharge in violation of Title VII. The District Court held that: (1) she established prima facie case by showing that her supervisor treated men and women differently; (2) diminished performance was a direct result of supervisor's discriminatory behavior; and (3) navy was guilty of sexual harassment in violation of Title VII due to supervisor's course of sexual harassment and discrimination with its knowledge. (Emphasis added.)

[34] Meritor Savings Bank v. Vinson 106 S.Ct. 2399 (1986).

[35] Henson v. City of Dundee 682 F .2d 897 (1982).

[36] Black's Law Dictionary, 5th Edition

[37] Ibid.

[38] Ibid.

[39] Ibid.

[40] Katz v. Dole 709 F.2d 251 (4th Cir. 1983); Henson v City of Dundee 682 F.2d 897 (11th Cir. 1982).

CHAPTER TWO

REVIEW OF THE LITERATURE

Introduction

Litigation involving sexual harassment of employees has been initiated through the application of the Equal Protection Clause of the Fourteenth Amendment and the Civil Rights Act of 1871, Title 42 U.S.C. Section 1983. More recently cases have been filed under Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.[1] Courts have also relied on the EEOC guidelines in defining sexual harassment at the workplace. The guidelines are significant for two reasons: (1) because they are recognized by the U.S. Supreme Court and (2) because they specifically recognize sexual harassment as a cause of action. Many cases have been filed by the EEOC on behalf of clients who alleged sexual harassment.[2]

Fourteenth Amendment

The Fourteenth Amendment to the Constitution says: "Nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[3] In addressing claims under the equal protection clause, in Estate of Scott by Scott v. DeLeon,[4] the Federal Court of Michigan found that the denial of equal protection by allowing sexual harassment to occur could violate rights

protected by the equal protection clause of the Fourteenth Amendment because harassment was "the sort of invidious gender discrimination that the equal protection clause forbade."[5] In Bohen v. City of East Chicago,[6] the Federal District Court also used the equal protection clause to support a claim of sexual harassment. The court held that under the equal protection clause the employee only had to establish intentional discrimination, that is, that it was an accepted practice, and not that the harassment altered the conditions of employment which is a requirement under Title VII.[7]

Civil Rights Act of 1871

An individual's rights may also be protected through application of the Civil Rights Act of 1871, Title 42 U.S.C. Section 1983. The law states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.[8]

Under this law, (herein referred to as 42 U.S.C. Section 1983) the abridgement of an individual's constitutional rights can result in federal courts assessing injunctive or monetary relief against entities such as the school board or

its individual members, public officials, municipalities and any other local governmental units, or any individual responsible for "deprivation of any rights . . . secured by the Constitution and laws" . . . .[9]

The establishment of this protection is supported by the case of Wood v. Strickland (1975)[10] in which the U.S. Supreme Court established the potential liability of school board members as individuals for damages under Section 1983 of the Civil Rights Act of 1871. While this case specifically addressed another constitutional right, that of due process, it left open to the discretion of the district courts, the interpretation of the Act in regard to the abridgement of other constitutional rights. From 1961 to 1978, school board members, under the immunity of school districts, were protected from suits seeking relief under Section 42 U.S.C. Section 1983 as a result of the case of Monroe v. Pape (1961)[11] in which the U.S. Supreme Court held that Congress, in its passing of 42 U.S.C. Section 1983, did not intend the word "person" to include municipalities. However, after the case of Monell v. The Department of Social Services of the City of New York (1978),[12] Monroe was reversed by the U.S. Supreme Court to include municipalities among those "persons" to whom 42 U.S.C Section 1983 applied if the municipality adopted a policy or custom that was unconstitutional. The Supreme Court in Monell made it clear that municipalities cannot be

held liable under 42 U.S.C. Section 1983 solely on a respondeat superior theory (Emphasis Added). However, any public employee may file a claim against an institution or municipality under 42 U.S.C. Section 1983, alleging a violation of the equal protection clause of the Fourteenth Amendment[13] provided the "public employer acts so as to discriminate intentionally against one person because of the person's membership in a discrete class."[14](Emphasis Added) The alleged injury must result from a policy statement, ordinance, regulation or custom of the municipality, school board, or other political subdivision or by some other official act by the employer which is discriminatory.[15]

Title VII

Protection against sexual harassment is most often sought by invoking Title VII of the 1964 Civil Rights Act, as amended, which provides, in part, the following:

> It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.[16]

McCarthy explains how courts initially concluded that claims of sexual harassment were "beyond the purview of this civil

rights law"[17] until the mid-1970s when courts began interpreting Title VII as "providing a remedy for sexual harassment that has adverse employment consequences"[18] in the form of demotion, termination, or the denial of benefits. This in known as quid pro quo sexual harassment.[19] In addition, in the cases of Barnes v. Train[20] and Tomkins v. Public Service Electric and Gas Co.,[21] circuit courts began to recognize quid pro quo sexual harassment as being actionable under Title VII.

In the latter 1970s and early 1980s courts did not agree whether Title VII gave relief for sexual harassment that created a hostile working environment if economic losses were not an issue. However, the three circuit courts in Bundy v. Jackson,[22] Henson v. City of Dundee,[23] and Katz v. Dole[24] found that Title VII was, indeed, intended to offer a remedy for such hostile environment claims even if they did not involve tangible job losses. Specifically the D.C. Circuit Court, in Henson,[25] established the five criteria for a Title VII claim against an employer for a hostile work environment. Elsa Cole summarized the criteria as follows:

> First, the employee must belong to a group which Title VII protects. This only means, in a sexual harassment case, that the employee must be either male or female. Second, the employee must have experienced sexual harassment. The employee must have experienced sexual advances, requests for sexual favors, or other verbal or physical sexual conduct which the employee did not solicit or incite and found undesirable or offensive. Third, the harassment must have been based on sex; in

> other words, the employee would not have been harassed except for his or her sex. . . . Fourth, the harassment must have affected a "term, condition, or privilege" of employment. The harassment must have been so pervasive that it altered the conditions of employment and created an abusive environment.
>
> Henson established respondeat superior as the fifth criterion. The employee must show that the supervisor knew or should have known of the sexually hostile environment before a court can hold the employer responsible.[26] (Emphasis added.)

Thus, Henson[27] distinguished between employer liability in a case of "quid pro quo" sexual harassment and employer liability in a "hostile environment" sexual harassment case. According to the court that heard Henson,[28] strict liability would apply, in a quid pro quo case, to the supervisor and the employer for sex discrimination because the employer should be be liable for the acts of his agent, the supervisor, because at common law a master is liable for the tortious acts of his servant if the agency relationship aids the servant in accomplishing the tort.[29]

The United States Supreme Court issued its first decision regarding sexual harassment in Meritor Savings Bank, FSB v. Vinson.[30] The Court held that Title VII provides a remedy for offensive environment sexual harassment but it left "somewhat undecided" the liability of employers indicating that courts must scrutinize the employers delegation of authority in harassment cases before holding an employer liable.[31] In addressing the issue of an employer's liability, Justice Rehnquist wrote that before an employer could be held strictly liable in every case of

sexual harassment, it must be established that an employee-supervisor exercises authority which is actually delegated by the employer to make or threaten to make employment decisions affecting subordinates.[32] (Emphasis added.) Thus, while sexual harassment is actionable under Title VII, employer liability is determined on a case by case basis with regard to how authority has been delegated by the employer.

Remedies for sexual harassment violations of Title VII include remedies such as injunctive relief, attorney's fees, back pay, actual damages and reinstatement.[33] However, plaintiffs in a Title VII sexual harassment case cannot recover damages for mental anguish and emotional distress. Therefore, remedies are sometimes sought not only under Title VII but as a tort action under state laws providing monetary damages for intentional infliction of emotional distress.[34] Tort remedies can complement or even be an alternative to a Title VII sexual harassment action, but they are not identical. In a tort action the plaintiff can possibly recover compensatory damages and/or punitive damages which in some cases has been more appropriate than the relief granted by Title VII.[35] It is, however, the availability of the two types of actions that give the victims of sexual harassment a greater range of alternatives when considering a suit.

Title VII is probably the more advantageous route to use when filing a claim alleging sexual harassment according to Christopher Barton who pointed out that the difficulty in winning a suit claiming intentional infliction of emotional distress lies in the courts having to decide issues about the validity and sufficiency of injury and the amount of outrageousness necessary for a successful claim.[36] This view is supported in the case of Womack v. Eldridge[37] where the Supreme Court of Virginia, citing Samms v. Eccles,[38] adopted the following view:

> . . . a cause of action will lie for emotional distress, unaccompanied by physical injury, provided four elements are shown: One, the wrongdoer's conduct was intentional or reckless. This element is satisfied where the wrongdoer had the specific purpose of inflicting emotional distress . . . and knew or should have known that emotional distress would likely result. Two, the conduct was outrageous and intolerable in that it offends against the generally accepted standards of decency and morality. This requirement is aimed at limiting frivolous suits and avoiding litigation in situations where only bad manners and mere hurt feelings are involved. Three, there was a causal connection between the wrongdoer's conduct and the emotional distress. Four, the emotional distress was severe.
>
> 'It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery, or whether it is necessarily so. Where reasonable men differ, it is for the jury, subject to the control of the court, to determine whether, in the particular case, the conduct has been sufficiently extreme and outrageous to result in liability.'[39]

Barton also implied that the concept of respondeat superior does not generally apply in tort cases.[40] A Title VII claim, therefore, has two advantages over the tort. First, it specifically recognizes sexual harassment as a cause of action and second, it gives a broader definition of employer to include agents of the employer in cases where this concept might apply.[41]

EEOC Guidelines

The Equal Employment Opportunity Commission (EEOC) is the enforcement agency for Title VII and issued the final guidelines in 1980 which define sexual harasssment in the workplace as a violation of Title VII. The Guidelines on Discrimination Because of Sex provide, in part, the following:

> (a) Harassment on the basis of sex is a violation of Sec. 703 of Title VII. 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 such 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]

Mondschein and Green suggest that the guidelines do not clearly specify a difference between offensive and

inoffensive behaviors but say that the acquiescence to sexual advances and requests for sexual favors, contrary to Sections (1) and (2), constitutes sexual harassment when it is made a term or condition or employment, that is, they are so frequent or abusive that they become part of the working conditions of the employer.[43] Further, under Section (3), even sexual advances not directly linked to compensation, training, promotion, termination or other terms of employment may be considered unlawful if they interfere with the person's work performance or create a hostile working environment in which a person's work performance would likely be adversely affected.[44]

In delineating an employer's responsibilities in cases of sexual harassment the EEOC guidelines stipulate that an employer is held responsible ". . . for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurence."[45] Also, an employer is held responsible for acts of sexual harassment between fellow employees where the employer ". . . knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action."[46] Moreover, an employer may also be responsible for sexual harassment of

its workers by non-employees in the workplace where the employer ". . . knows or should have known of the conduct and fails to take immediate and appropriate corrective action."[47] Finally, in a seeming effort to cover all contingencies in which an employer may be found liable, the EEOC stipulated that "Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunitiy or benefit."[48]

In writing the opinion for the Supreme Court in Meritor v. Vinson,[49] Justice Rehnquist referred to the EEOC Guidelines when he said "these guidelines, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgement to which courts and litigants may properly resort for guidance."[50] He stated further "Since the guidelines were issued, courts have uniformly held, and we agree, that a plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work environment."[51]

Title IX

In addition to the Title VII provisions, employees of educational institutions may also have redress for alleged

sexual harassment under Title IX of the Education Amendments of 1972 which specifies the following:

> 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 . . . .[52] (Emphasis Added).

The U.S. Supreme Court in Grove City v. Bell[53] ruled that only specific programs or activities that directly received federal aid are required to comply with Title IX. In reaction to the Grove City[54] case, the United States Congress passed The Civil Rights Restoration Act of 1987[55] which specifies if any program within the educational institution receives federal aid, then the entire institution must be in compliance with Title IX.[56]

The question of whether Title IX applies to employees of educational institutions was addressed by Alexander and Alexander who wrote the following:

> Since Title IX is patterned after Title VI, and covers students in educational institutions, some courts have ruled that Title IX did not cover employees. But the Supreme Court, in North Haven Board of Education v. Bell, stated, 'while section 901(a) does not expressly include or exclude employees within its scope, its broad directive that no person may be discriminated against on the basis of gender includes employees as well as students.'[57]

It is clear that Title IX applies to employment throughout public elementary and secondary education and although it does not specifically mention sexual harassment in its regulation, courts at every level have interpreted the

application of Title IX in the same manner in which they have applied Title VII to sexual harassment.[58]

Summary

Sexual harassment is a complex issue that involves much more than the "sleep with me or lose your job" syndrome. A review of case law illustrates that the U.S. Supreme Court recognizes sexual harassment as a form of sex discrimination in violation of Title VII and Title IX. The decisions handed down by courts at every level indicate a willingness to redress complaints of sexual harassment in employment and in education. Although the government and judicial involvement in prohibiting sexual harassment is a tremendous impetus to aid the victim of sexual harassment, neither the government nor the courts can force a morality. In the final analysis, they can only support individual initiative. The potential for allegations of sexual harassment is present wherever men and women work together. When employers do not develop adequate policy standards that prepare them to deal with and eliminate sexual harassment of employees, the potential is increased.

NOTES

[1] Kern Alexander and M. David Alexander, American Public School Law (St. Paul, MN: West Publishing Company, 1985), p. 643, 509.

[2] EEOC Guidelines 29 C.F.R. Section 1604.11.

[3] Alexander and Alexander, p. 509.

[4] Estate of Scott by Scott v. DeLeon 603 F. Supp. 1328 (E.D. Mich. 1985). A pharmaceutical assistant at the University of Michigan alleged that her supervisor sexually harassed her by sending letters, notes, and threats aimed at coercing her into sexual relations. Although she complained to three university administrators nothing was done because she did not file a formal complaint. She later died of a drug overdose allegedly related to the harassment.

[5] Id. at 1332.

[6] Bohen v. City of East Chicago 799 F.2d 1180 (1986). Female fire dispatcher alleged she had suffered numerous incidents of harassment by supervisory personnel and that these incidents represented the acccepted practice of the department. In fact she had been warned of the sexually oppressive working conditions in her hiring interview.

[7] Id. The court held that the employee could show intentional discrimination by the employer's conscious failure to protect her from the abusive conditions of employment created by other employees. The court also held that the employer would have a good defense if it could show the employee suffered harassment because of personal factors and not because she was a woman, or that the harassment was justified or had a legitimate business purpose.

[8] 42 U.S.C.A. Section 1983 enacted 1871.

[9] Alexander, pp. 509-525.

[10] Wood v. Strickland 420 U.S. 308, 95 S.Ct. 992 (1975). School board members may be liable as individuals for damages under Section 1983 of the Civil Rights Act of 1871.

[11] Monroe v. Pape 365 U.S. 167, 81 S.Ct. 473 (1961). In Monroe the Court first held that Congress did not intend the word "person" to include municipalities or agencies of the government. After Monell v. New York City (1978), this was reversed to include that municipalities and even school districts could be held liable under 42 U.S.C.A. 1983 if it adopts a policy or custom that is unconstitutional.

[12] Monell v. Department of Social Services of the City of New York 436 U.S. 658, 98 S. Ct. 2018 (1978). Municipalities and other local governmental units are included among those "persons" to whom 42 U.S.C. 1983 applies.

[13] See Huff v. County of Butler, 524 F.Supp. 751, (D.C.Pa.1981); Woerner v. Brzeczek, 519 F.Supp. 517 (D.C.N.D.Ill. 1981); Reed v. Reed, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971).

[14] Dayle Nolan, "Sexual Harassment in Public and Private Employment," West's Education Law Reporter, Vol. 3 (1982), pp. 233-234.

[15] Ibid.

[16] Civil Rights Act of 1964, Title VII 42 U.S.C.A. 2000e---e2.

[17] Martha M. McCarthy, "The Developing Law Pertaining to Sexual Harassment," West's Education Law Reporter Vol. 36 (1987), p. 7.

[18] Ibid.

[19] Ibid.

[20] Barnes v. Train 13 FEP Cases 123 (D.D.C. 1974), rev'd sub nom. Barnes v. Costle 561 F.2d 983 (D.C.Cir. 1977). Female employee received repeated solicitations for after hours social activities with a promise that her employment status would be enhanced. When she refused she was harassed and stripped of job duties and her job was abolished.

[21] Tomkins v. Public Service Electric and Gas Co. 568 F.2d 1044 (3rd Cir. 1977). Female employee complained that luncheon invitation was pretext to make verbal sexual advances that were, she was told, to enhance a satisfactory working relationship. When employee refused she was

physically restrained and her resistance led to her transfer to an inferior position, false and adverse employment evaluations, disciplinary lay-offs and ultimately to her dismissal.

[22] Bundy v. Jackson 641 F.2d 934-944 (D.C. Cir. 1981). The court held that sexual harassment, in and of itself, is a violation of the law and does not require proof that the employee was penalized or lost specific tangible job benefits.

[23] Henson v. City of Dundee 682 F.2d 897,902,904 (11th Cir. 1982). The court held that the existence of an offensive or hostile working environment could violate Title VII regardless of whether a plaintiff suffered tangible job detriment. This case along with Katz was the leading federal court case in which respondeat superior applied.

[24] Katz v. Dole 709 F.2d 251, 254-255 (4th Cir. 1983). Katz, an air traffic controller, successfully sued the Secretary of the Department of Transportation alleging she had been subjected to vulgar and offensive epithets by her co-workers and her supervison on the job. The court held an offensive environment actionable under Title VII and adopted Henson's respondeat superior theory.

[25] Henson, id.

[26] Elsa Kircher Cole, "Recent Legal Developments in Sexual Harassment," Journal of College and University Law Vol. 3, No. 3, 1986. pp. 270-271. Citing, 42 U.S.C. 2000e-2(a) (1982); Henson, at 904; and Barnes, at 983, 990.

[27] Henson, id.

[28] Ibid.

[29] Miller v. Bank of America 600 F.2d 211 (9th Cir. 1979).

[30] Meritor Savings Bank v. Vinson 106 S.Ct. 2399 (1986). (Slip Opinion.) Employee Mechelle Vinson brought action against Sidney Taylor, a vice president of the bank, claiming that she had constantly been subject to sexual harassment by Taylor. The Court held that sexual harassment due to a hostile environment claim is actionable under Title VII. As to employer liability, the Court concluded that the Court of Appeals was wrong to impose absolute liability on employers for the acts of their supervisors with no regard for agency principles. (Emphasis added.)

[31] Cole, p. 273.

[32] Meritor v. Vinson (Slip Opinion), p. 15.

[33] Nolan, p. 234.

[34] Cole, p. 278.

[35] Christopher P. Barton, "Between the Boss and a Hard Place: A Consideration of Meritor Savings Bank, FSB v. Vinson and the Law of Sexual Harassment," Boston University Law Review Vol. 67:445 (1987), pp. 463-465.

[36] Ibid.

[37] Womack v. Eldridge 210 S.E.2d 145-215, Va. 338 (1974).

[38] Samms v. Eccles 11 Utah 2d 289, 293, 358, P.2d 344, 346-347 (1961).

[39] Womack v. Eldridge.

[40] Barton, p. 465.

[41] 42 U.S.C. Section 2000e (1985).

[42] Sexual Harassment and Labor Relations: A BNA Special Report (Bureau of National Affairs, Inc., Washington, D.C., 1981); EEOC Guidelines 29 C.F.R. Section 1604.11(a).

[43] Mondschein and Greene, pp. 48-49.

[44] Ibid.

[45] EEOC Guidelines 29 C.F.R. Section 1604.11 (c).

[46] EEOC Guidelines 29 C.F.R. Section 1604.11 (d).

[47] EEOC Guidelines 29 C.F.R. Section 1604.11 (e).

[48] EEOC Guidelines 29 C.F.R. Section 1604.11 (g).

[49] Meritor v. Vinson, p. 15.

[50] Ibid. p. 6.

[51] Ibid. p. 8. (Citing Henson v. Dundee.)

[52] Title IX of the Education Amendments of 1972 20 U.S.C.A. Section 1681(a).

[53] Grove City v. Bell 465 U.S. 555, 104 SCt 1211, 79 L.Ed. 2d 516 [15 Ed.Law 1079] (1984).

[54] Ibid.

[55] U.S. Congress The Civil Rights Restoration Act of 1987, Section 908.

[56] Ibid.

[57] Alexander, p. 644. In reference to North Haven Board of Education v. Bell 456 U.S. 512 (1985).

[58] Mondschein and Greene, p. 58.

CHAPTER THREE

METHODOLOGY

Introduction

The purpose of this study was to determine if school divisions in the Commonwealth of Virginia are prepared to effectively and efficiently deal with and eliminate sexual harassment. In order to determine the preparedness of Virginia School Divisions, this study was designed to determine whether or not school divisions had adequate sexual harassment policy. In addition, this study was designed to develop a paradigm or evaluative criteria which school divisions could use to either develop policy or assess the adequacy of existing policy. A second purpose was to determine why school divisions that did not have a policy had failed to develop such a policy.

The design of this study consisted of three phases. The first phase involved the research and analysis of case law related to sexual harassment from a historical, procedural, and substantive perspective. The second phase involved the analysis of school division sexual harassment policies to determine if the policy was adequate. The third phase involved a survey to determine why policy was or was not developed.

The Population

The population involved in this descriptive study were the superintendents from the 133 school divisions in the Commonwealth of Virginia. An amended listing of superintendents found in the Virginia Educational Directory 1988 was used to identify the population to be surveyed.

Instrumentation

In order to assess the adequacy of policy from each school division, an instrument was designed using the EEOC Guidelines and the research of sample policies provided by Omilian.[1] The policies researched were from a wide range of public and private sector employers and in order to determine what criteria were included, each was listed in a table and compared to determine which items were common to all policies. A copy of the policies used can be found in Appendix C.

The instrument was also partially developed from section (f) of the EEOC Guidelines which states:

> Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.[2]

Twelve categories of items were gleaned from the policies which were researched and from the EEOC guidelines.

These twelve categories were used to develop the evaluative criteria for the determination of an all-inclusive policy. They may be used at some later time to develop an instrument which could possibly be used by drafters of sexual harassment policy or by those wishing to assess the adequacy of present policy. It was from these criteria that the following checklist of questions was derived:

1. Does the sexual harassment policy address the philosophy of the school division? (e.g., "The district is committed to providing an environment free of verbal, physical, and psychological harassment.)

If the policy contained any statement pertaining to the district's committment relative to sexual harassment as a form of sex discrimination, this item was checked as being present in the policy.

2. Does the sexual harassment policy state a purpose? (e.g., "To ensure a workplace free of sexual harassment . . .")

If the policy contained any reference in regard to maintaining a work environnment free of sexual discrimination in general or sexual harassment in particular, this item was checked as being present in the policy.

3. Does the policy include a definition of sexual harassment? (e.g., "Sexual harassment is any repeated or unwanted verbal or physical sexual advances . . .")

If the policy included a general definition of sexual harassment as defined by EEOC, this item was checked as being present in the policy.

4. Does the policy include examples of the different types of sexual harassment behaviors? (e.g., "Repeated unwelcomed advances include . . . ")

If the policy included specific examples of sexual harassment such as making sexual comments, displaying sexually suggestive pictures or objects in the workplace, this item was checked as being present in the policy.

5. Does the policy include provisions for filing a grievance specifically for sexual harassment or other types of discrimination? (e.g., "Any person who believes that they are being subject to sexual harassment should: (1) report . . .")

If the policy included the school district's procedures for filing grievances or any reference to where grievance procedures could be found, this item was checked as being present in the policy.

6. Does the policy state that there will be disciplinary action against the offender? (e.g., "Any personnel found to have engaged in sexual harassment will be severly dealt with . . .")

If the policy stated that offenders would be disciplined for acts of sexual harassment or other forms of sex discrimination, this item was checked as being present in the policy.

7. Does the policy include possible sanctions for offenders? (e.g., "Offenders will be subject to the following disciplinary actions . . .")

If the policy included references to possible outcomes resulting from a breech of the policy, this item was checked as being present in the policy.

8. Does the policy state that management takes sexual harassment seriously? (e.g., "This school division prohibits any form of sexual harassment and view such actions in the most serious manner.")

If the policy specifically mentioned that any form of sexual discrimination (and in particular sexual harassment) was prohibited, this item was checked as being present in the policy.

9. Does the policy state that its aim is the promotion of good employee relations? (e.g., "This policy reinforces our committment to develop an atmosphere that fosters good relations between . . . ")

If the policy stated that it encourages the fostering of good relations between employees, this item was checked as being present in the policy.

10. Does the policy mention that sexual harassment is a source of possible liability? (e.g., "Legally, employers and employees are liable for acts of . . .")

If the policy stated or inferred that this offense was unlawful, this item was checked as being present in the policy.

11. Does the policy state how employees will be made aware of the policy? (e.g., "This division, annually, conducts sexual harassment awareness training programs during . . . ")

If the policy in any way stated how employees would be made aware of or sensitized to the policy, this item was checked as being present in the policy.

12. Does the policy state that it is made available to all employees? (e.g., "A copy of this policy will be made available to all employees . . . ")

If the policy stated that it was, by any means, made available to all employees, this item was checked as being present in the policy.

Policies meeting at least 90 percent (at least 11 out of 12) of the criteria from the checklist were assigned a rating of good. If they met from 50 to 89 percent (from 6 to 10) of the criteria, they were assigned a rating of fair. If they met less than 50 percent (5 or fewer) of the criteria from the checklist they were assigned a rating of poor.

In order to collect data concerning reasons why policy was or was not developed, a self-administered questionnaire was developed which was designed to yield information concerning the following:

1. Why policy was developed;
2. Why policy was not developed; and
3. As a point of interest, the data were analyzed in reference to demographic information.

The one-page questionnaire was composed of eight questions. For seven of the questions the respondents had

only to check a response. The first question asked if the school division had a policy. If the response was "no" the respondent was directed to an open-ended question designed to elicit reasons why they had no policy. If the response was "yes" the respondent was directed to the questions designed to elicit responses related to why they developed a policy. Length of time a policy was in place was determined from the dates of the policies. System size was determined by assigning school divisions small (less than 3,000), medium (3,000 to 10,000), or large (more than 10,000) status based on the number of students listed in the publication Facing Up 1988. A copy of the questionnaire may be found in Appendix A.

Data Collection

The survey instruments were mailed with a self-addressed, stamped envelope and a cover letter explaining the purpose and importance of the study. Respondents were assured that neither their name nor the name of their system would be used.

As suggested by Dillman,[3] a second mailing was prepared and mailed to collect information from nonrespondents to the first mailing. Following that, any nonrespondents would be contacted and asked to check a response that best represented their reasons for not responding to the request.

However, with a response rate of 89.47% this step was unnecessary.

To ascertain how division policies compared with the evaluative criteria the following procedure was used:

1. The Guidelines of the EEOC and sample policies were analyzed and the criteria were categorized and formulated into an instrument which was used as a checklist for evaluating the policies from each school division to determine adequacy of the policy.

2. Sexual harassment policies and/or administrative regulations pertaining to those policies were obtained from school divisions indicating they had such a policy.

3. Each policy was analyzed and rated by three reviewers who were familiar with the evaluative criteria by which each policy was to be measured. To establish consistency between reviewers ten policies were randomly chosen and assigned a number. All ten were analyzed by the three reviewers. Each reviewer worked independently of the others after training. They ascertained which of the criteria were met by the individual policies. They were instructed to count, only once, each category item. If the policy items in the checklist were counted similarly by two of the three reviewers they would be deemed to be present in the policy.

There was 100% agreement between reviewers on the presence or absence of the policy items concerning purpose,

definitions, examples, grievance, disciplinary action, sanctions, seriousness, employee relations, liability, awareness and availability. For the item concerning philosophy on two of the policies one reviewer counted philosophy as being present in both of the policies, two reviewers counted philosophy as not being present in either of the policies. Both felt that if the philosophy did not specifically mention sexual harassment, or sex discrimination that it should not be counted. The policies in question stated that the school divisions prohibited "any form of discrimination" but did not mention sex discrimination or sexual harassment specifically. Before proceeding, the reviewers established that "philosophy" would include a mission statement or any statement of goals or aims of the organization against discrimination whether or not the philosophy specifically mentioned sexual harassment.

Following the establishment of consistency between reviewers, each analyzed all 33 policies following the established guidelines. A sample of the instruments used by the reviewers may be found in Appendix C.

Data Analysis

Data were coded on prepared data coding sheets and analyzed with an APP-STAT statistical package on the Apple

IIe computer using the crosstabulation command for obtaining frequency distribution. This command provided frequencies and percentages for each item.

NOTES

[1] Susan M. Omilian, What Every Employer Should Be Doing About Sexual Harassment (Madison CT., Business and Legal Reports, 1986), pp. 71-79.

[2] EEOC Guidelines 29 C.F.R. section 1604.11 (f).

[3] Don A. Dillman, Mail and Telephone Surveys, (New York: John Wiley and Sons, 1978), p. 86.

CHAPTER FOUR

Introduction

The purpose of this chapter was to present an analysis of the data which were collected in the study to determine if school divisions in the Commonwealth of Virginia had adequate sexual harassment policy and why divisions that did not have policy had failed to develop such a policy. The data were collected through the use of a survey questionnaire. Respondents were requested to complete the questionnaire and to return a copy of their present policy and/or administrative regulations which addressed sexual harassment. The initial mailing was sent to the entire sample. This mailing consisted of the survey instrument, a cover letter and a self-adressed, stamped envelope. As second mailing followed which asked those who had not responded to please do so.

The population involved in the descriptive study were the 133 superintendents in the Commonwealth of Virginia, therefore the results of this study cannot be inferred to other populations. Out of the 133 questionnaires mailed, 119 responded representing an 89.47 percent response rate. Of the 38 superintendents who responded positively to having a policy, 33 returned copies of policies and/or administrative regulations 25 of which specifically regarded sexual harassment and 8 which were regulations regarding sex

discrimination in general. When an 89.4% return rate had been received, data were entered in the App-Stat statistical package and crosstabulated. This command provided frequencies and percentages to enable the researcher to determine the percent of responses for each item. Open-ended responses were categorized and reported. Further, policies and/or administrative regulations received were analyzed to determine how they conformed to the twelve categories of items which were gleaned from other policies researched and from the EEOC guidelines and incorporated into a set of evaluative criteria by which to judge the adequacy of policy.

Using this criteria, policies were analyzed by three reviewers who were trained using ten randomly chosen policies to establish consistency. Each reviewer worked independently of the others and they were instructed to attempt to locate each category item in each policy. If the evaluative criteria item was located by at least two reviewers, that particular criteria was considered to be present in the policy. The following guidelines were used to determine if the policies reflected items incorporated in the evaluative criteria:

1. If the policy contained any statement pertaining to the district's committment relative to sexual harassment as

a form of sex discrimination, item one was checked as being present in the policy.

2. If the policy contained any reference in regard to maintaining a work environnment free of sexual discrimination in general or sexual harassment in particular, item two was checked as being present in the policy.

3. If the policy included a general definition of sexual harassment as defined by EEOC, item three was checked as being present in the policy.

4. If the policy included specific examples of sexual harassment such as making sexual comments, displaying sexually suggestive pictures or objects in the workplace, etc., item four was checked as being present in the policy.

5. If the policy included the school district's procedures for filing grievances or any reference to where grievance procedures could be found, item five was checked as being present in the policy.

6. If the policy stated that offenders would be disciplined for acts of sexual harassment or other forms of sex discrimination, item six was checked as being present in the policy.

7. If the policy included references to possible outcomes resulting from a breech of the policy, item seven was checked as being present in the policy.

8. If the policy specifically mentioned that any form of sexual discrimination (and in particular sexual harassment) was prohibited by the school division, item eight was checked as being present in the policy.

9. If the policy stated or implied that it encouraged the fostering of good relations between employees, item nine was checked as being present in the policy.

10. If the policy stated or inferred that this offense of sexual harassment or any form of sex discrimination was unlawful, item ten was checked as being present in the policy.

11. If the policy in any way stated how employees would be made aware of the policy or sensitized to the policy, item eleven was checked as being present in the policy.

12. If the policy stated that it was, by any means, made available to all employees, item twelve was checked as being present in the policy.

The remainder of this chapter is organized to report the findings of the study. The first section is an analysis of the research instrument items and their relationship to the objectives of the study. The next section is an analysis of the 33 policies and/or administrative regulations which were returned. The final section is a summary of the findings. Frequency distributions of many of the items will be presented in table form. The data will be summarized and findings discussed.

The demographic variable of division size was not included in the questionnaire. Size was assigned based on the number of pupils enrolled in each division. Small systems were designated as those with fewer than 3,000 students, medium systems were designated as those with 3,000 to 10,000 students, and large systems were designated as those with more than 10,000 students. Of 119 responses, 38 (31.9%) indicated they had policies and 81 (68.0%) indicated they did not have such policy. Sixty-one of the responding school divisions were of small size representing 51.2 percent of the respondents, 30 were of medium size representing 25.2 percent, and 28 were large representing 23.5 percent of the respondents. There were 14 non-respondents to the survey. Six were small divisions (42.8%), five were medium divisions (35.7%), and three were large divisions (21%).

Table 1 shows an overview of the relationship between system size and whether or not the school division responded they had developed a sexual harassment policy. Table 1 also shows the number of small systems responding was greater than the number of medium or large systems. However, the percent of large systems which reported having policies was twice that of the percent of small or medium systems. Of the 61 school divisions assigned small status, 16 (26.2%) had policies and 45 (73.7%) did not. Of the 30 school divisions assigned medium status, 7 (23.0%) had policies and

23 (77.0%) did not. Of the 28 school divisions assigned large status, 15 (53.5%) had policies and 13 (46.4%) did not.

TABLE 1

Relationship of School Size to Policy Development

Size	Have Policy #	Have Policy %	No Policy #	No Policy %	Total #	Total %
Small	16	26.2	45	73.7	61	51.2
Medium	7	23.0	23	77.0	30	25.2
Large	15	53.5	13	46.4	28	23.5
Total	38	(31.9%)	81	(68.0%)	119	(99.9)

Presentation and Analysis of Data

Analysis of the Research Instrument

The first question sought to determine if the school division had a policy specifically regarding sexual harassment. As shown in Table 1, of the 119 responses, 38 systems, comprising 31.9 percent of the return, reported their divisions did have policies or administrative regulations which addressed sexual harassment while 81 divisions, comprising 68.0 percent of the return, reported they had no such policy.

Question two was an open ended question directed to those who indicated they did not have a policy. The question asked if they would give a brief statement as to why the division had not developed a policy specifically regarding sexual harassment. Responses were compiled and categorized into ten subgroups based on statements as follows: (1) No need existed at the present time or the issue had not been raised; (2) There were other administrative regulations or policies that adequately addressed complaints of this nature; (3) Policy manuals were currently undergoing revisions or the policy was currently being developed; (4) They did not know why policy was not developed; (5) Other things seemed more important at the time or no response was given; (6) There had been no time to develop such a policy; (7) There was a belief that it was understood that sexual harassment would not be tolerated; (8) There was a fear that such a policy would be misinterpreted by the public; (9) It was believed that employers and employees were responsible for their own actions; and (10) There was a belief that if such a problem arose it would be handled administratively. A compilation of the open ended responses given for question two in reference to why policy has not been developed, can be found in Appendix D.

Of the 81 respondents who indicated they had not developed a policy, 37% indicated they had no evidence for

the need for such a policy or that the issue had not been raised in their school district. Second to that, 24.6% responded there were other administrative regulations or policies in the school district that addressed sexual harassment complaints. Following the two most frequent responses was the indication, by 17.2%, that policy manuals were being revised to include such a policy or that they were in either the planning or developmental stages. The range of responses to question two are found in Table 2 in order from the highest frequency of responses to the lowest.

TABLE 2

Reasons Why Sexual Harassment Policy Had Not Been Developed

Reason	Number of Responses	Percent
No need evidenced.	30	37.0
Have other policies.	20	24.6
Outdated policy manual.	14	17.2
No response/other.	6	7.4
Don't know.	4	4.9
No time to develop.	2	2.4
Will not be tolerated.	2	2.4
Fear of misinterpretation.	1	1.2
Employers/employees are responsible.	1	1.2
Handle problems administratively.	1	1.2
TOTAL	81	99.5

Questions 3 through 8 were directed to those 38 systems which responded positively about having policies. Question 3 asked how long the division policy had been in place. Three levels of responses were possible: Less than one year, one to five years, and more than five years. Table 3 shows that 15.7% of the divisions responded they had policies less than one year while 42.1% of the divisions responded they had policies one to five years and 42.1% responded they had policies more than five years.

TABLE 3

How Long Policy Has Been in Place

Length of time	Number	%
Less than one year	6	15.7
One to five years	16	42.1
More than five years	16	42.1

Questions 4-6 were designed to elicit responses concerning why school divisions had developed a sexual harassment policy. More than half of the school divisions responding indicated that they developed policy because they were aware of the possibility of liability or litigation.

Question 4 asked if the policy had been developed because of a directive from the state department.

Only one division (2.6 %) indicated that they were directed to develop a policy while 94.7 percent of the divisions indicated they did not develop policy due to any state department directive. One division did not respond to the question.

Question 5 inquired if the school division had developed a sexual harassment policy because of an awareness of possible liability or litigation. 57.8 percent of the divisions indicated they had while 39.4 percent of the divisions said no. One division did not respond to this item.

Question 6 asked if the school division had developed a sexual harassment policy because of a sexual harassment complaint within the system. Of the 38 divisions which responded they had policies, only one (2.6%) stated they had developed policy due to a sexual harassment complaint while thirty-seven (94.7%) divisions indicated they had not developed their policies for this reason. The one school division which responded yes was not the same division which indicated that its policy was developed by a directive from the state department. One division did not respond to the question.

The last two questions were designed to compare the number of sexual harassment complaints that were registered prior to the development of policy to the number of

complaints registered subsequent to the development of policy. Three levels of response were possible for each question: None, one to five, and more than five. Out of the 38 divisions indicating they had policies 28 (73.6%) said they had never received a sexual harassment complaint. Of the ten divisions that indicated they had received complaints (26.3%), none had received more than five complaints either before or after the policy was developed. The results indicated that seven school divisions had received from one to five complaints before the policy was developed while three of the divisions indicated they had received from one to five complaints after the policy was developed. It is interesting to note that fewer complaints were received after policies were developed. A closer look at the seven divisions which indicated they had received from 1-5 complaints before policy was developed revealed that 6 had not received any complaints after the policy was in place, an 85.7% improvement. A closer look at the three divisions which responded they had received from 1-5 complaints after policy was developed revealed the following: One indicated having 1-5 complaints before as well as 1-5 complaints after; and two divisions that indicated they had no complaints before policy was developed had received from 1-5 complaints after policy was developed.

Analysis of Policies

In response to the request made in the cover letter to each school division superintendent to send a copy of the present policy against sexual harassment and the administrative regulations pertaining to that policy, 33 school divisions out of the 38 that indicated in question one that they had a policy, sent copies of their present policy. These policies were analyzed and assigned a good, fair or poor status based on the percent of items they included from the checklist of evaluative criteria. They were then compared based on other variables such as system size and how long the policy had been in place.

An analysis of the 33 policies received was accomplished by having policies rated by three independent reviewers. The explanation of how consistency between reviewers was established is fully explained in Chapter 3. However, for this Chapter, it should be noted that they rated each policy using the evaluative criteria which were developed to establish a criteria for judgement of the adequacy of existing policy or as a paradigm for policy development. It was established that policies which met at least 90 percent of the evaluative criteria (at least 11 criteria) would be assigned a rating of good. Policies which met from 50 to 89 percent (from 6 to 10 criteria) of the evaluative criteria would be assigned a rating of fair. Policies which met less

than 50 percent of the evaluative criteria would be assigned a rating of poor.

Data were entered in the App-Stat Statistical package and crosstabulated to produce frequencies and percents of responses. Table 4 contains the results of the policy analysis.

TABLE 4

Results of Policy Analysis
N = 33

Criteria	Criteria Addressed in Policy YES	%	NO	%
Philosophy addressed	28	84.4	5	15.6
Purpose addressed	16	48.4	17	51.5
Definition given	24	72.7	9	27.2
Examples given	2	6.0	31	93.3
Grievance procedure	27	81.8	6	18.1
Disciplinary action	19	57.5	14	42.2
Sanctions given	16	48.4	17	51.5
Management serious	16	48.4	17	51.5
Employee relations	10	30.3	23	69.6
Reference to liability	21	63.6	12	36.3
Employees made aware	10	30.3	23	69.6
Available to new emp.	13	39.3	20	60.6

An analysis of data revealed the following for each of the criteria:

Criteria 1 - Philosophy

If the policy contained any statement pertaining to the district's committment relative to sexual harassment as a form of sex discrimination, this item was checked as being present in the policy. Twenty-eight of the 33 policies or 84.8 percent included such a statement.

Criteria 2 - Purpose

If the policy contained any reference in regard to maintaining a work environnment free of sexual discrimination in general or sexual harassment in particular, this item was checked as being present in the policy. A purpose was stated in 16 of the policies (48.4%) but did not appear in 17 of the policies (51.5%).

Criteria 3 - Definition

If the policy included a general definition of sexual harassment as defined by EEOC, this item was checked as being present in the policy. Twenty-four policies out of 33 or 72.7 percent stated a definition of sexual harassment while 27.2 percent did not.

Criteria 4 - Examples

If the policy included specific examples of sexual harassment such as making sexual comments, displaying sexually suggestive pictures or objects in the workplace,

etc., this item was checked as being present in the policy. In 31 of the policies (93.3%), specific examples of sexual harassment were not given. Two policies, comprising 6 percent, included such statements.

Criteria 5 - Grievance Procedure

If the policy included the school district's procedures for filing grievances or any reference to where grievance procedures could be found, this item was checked as being present in the policy. In 81.8 percent (27) of the policies a grievance procedure was included. Six of the policies or 18.1 percent, did not include such a statement.

Criteria 6 - Disciplinary Action

If the policy stated that offenders would be disciplined for acts of sexual harassment or other forms of sex discrimination, this item was checked as being present in the policy. Statements to the effect that disciplinary action would be taken were found in 19 of the policies (57.5%). This statement was not found in 14 of the policies (42.2%).

Criteria 7 - Sanctions

If the policy included references to possible outcomes resulting from a breech of the policy, this item was checked as being present in the policy. Only 48.4 percent (16) of the policies mentioned what disciplinary would be taken for offenders. Seventeen of the policies, 51.5 percent, made no mention of possible sanctions.

Criteria 8 - Employer Serious

If the policy specifically mentioned that any form of sexual discrimination (and in particular sexual harassment) was prohibited, this item was checked as being present in the policy. This item was mentioned in 16 (48.4%) of the policies while 17 (51.5%) made no mention of this item.

Criteria 9 - Employee Relations

If the policy stated that it encourages the fostering of good relations between employees, this item was checked as being present in the policy. Only ten or 30.3 percent of the policies stated that good employee relations were encouraged. Twenty-three policies comprising 69.6 percent made no mention of this item.

Criteria 10 - Liability

If the policy stated or inferred that this offense was unlawful, this item was checked as being present in the policy. Reference to the illegality of sexual harassment was mentioned in 63.6 or twenty-one of the policies. The item was not mentioned in 36.3 percent of the policies.

Criteria 11 - Awareness

If the policy in any way stated how employees would be made aware of or sensitized to the policy, this item was checked as being present in the policy. Twenty-three of the policies (69.6%) did not mention how employees would be made aware of policy. Ten of the policies (30.3%) did mention

this item.

Criteria 12 - Available

If the policy stated that it was, by any means, made available to all employees, this item was checked as being present in the policy. Only 13 of the 33 policies, 39.3 percent, mentioned that by some means the policy would be made available to all employees. Twenty policies, 60.6 percent, made no mention of this item.

Data revealed that 9 policies (27.2%) included at least 90 percent of the criteria from the checklist and were assigned a rating of good. Of these 9 policies, 6 came from small divisions, 2 from medium sized divisions and 1 from a large division. Eight other policies (24.2%) included from 50 to 89 percent of the criteria, they were given a rating of fair. Of these 8 policies, one came from a small division, one from a medium division and 6 came from large divisions. Sixteen policies (48.4%) met less than 50 percent of the criteria from the checklist and they were assigned a rating of poor. Of these 16 policies, 6 were from small divisions, 3 were from medium sized divisions, and 7 were from large divisions. A crosstabulation to determine if there was a relationship between size of school system and policy rating was done and the results are shown in Table 5.

TABLE 5

Relationship of Policy Rating and System Size

	Policy Rating			
	Good	Fair	Poor	Total
Small				
Frequency	6	1	6	13
Row %	46.1	7.7	46.1	99.9
Column %	66.6	12.5	37.5	
Medium				
Frequency	2	1	3	6
Row %	33.3	16.6	50.0	99.9
Column %	22.2	12.5	18.7	
Large				
Frequency	1	6	7	14
Row %	7.1	42.8	50.0	99.9
Column %	11.1	75.0	43.7	
Totals	9	8	16	33
	99.9	100.0	99.9	

The highest percent of good policies were from small systems (46.1%) with medium systems next with 33.3 percent and large systems with 7.1 percent. The percent of policies rated as poor were distributed fairly equally among the systems irrespective of size with the medium and large systems having 50 percent of their policies rated as poor and small systems having 46.1 percent rated as poor.

Other Relationships

When rated policies were crosstabulated with how long

policies had been in place data revealed that good policies had been in place for either one to five years (67%) or more than five years (33%). Half of the poor policies (eight out of sixteen) had been in place for less than one year indicating that those systems with the better policies have had more time to up-grade and make improvements in their policies. Table 6 shows a breakdown of the data.

TABLE 6

Relationship of Policy Rating to How Long Policy Had Been in Place

	Policy Rating					
# years	Good	%	Fair	%	Poor	%
0 - 1 yr.	0	0.0	3	37.5	8	50.0
1 - 5 yrs.	6	67.0	2	25.0	2	12.5
> 5 yrs.	3	33.0	3	37.5	6	37.5
Totals	9	100.0	8	100.0	16	100.0

When size of system and how long policy had been in place were crosstabulated the findings indicated that small systems had policies in place for less time than had the medium or large systems. This implies that larger systems may have had more sexual harassment exposure than small systems. Table 7 shows a breakdown of that relationship.

TABLE 7

System Size and How Long Policy Had Been in Place

	System Size					
Years	Small	%	Medium	%	Large	%
0 - 1	5	38.5	2	33.3	4	28.5
1 - 5	4	30.7	1	16.6	5	35.7
> 5	4	30.7	3	50.0	5	35.7
Totals	13	99.9	6	99.9	14	99.9

When crosstabulations for policy rating and numbers of complaints before and after policy development were done the findings indicated a relationship between policy rating and numbers of complaints before and after policy development. The number of divisions receiving from 1-5 complaints was reduced after policies were developed. However, the number of divisions with poor policies which received complaints was almost as high as the number of divisions which received

complaints before they developed policy. This implies a strong relationship between having a poor policy and having no policy.

Table 8 shows that 5 of the 33 divisions received from 1-5 complaints before policy was developed. However, after they developed policy, 60% of them were only rated fair. The table also shows that 19 divisions received no complaints before policy was developed. Of those nineteen, 47% have developed good policies with fair and poor policies being equally divided among the rest.

TABLE 8

Policy Rating and Number of Complaints Before Policy was Developed

	Policy Rating							
# Comps.	Good	%	Fair	%	Poor	%	Total	%
None	9	47.3	5	26.3	5	26.3	19	100
1 - 5	0	0.0	3	60.0	2	40.0	5	100
No resp.	0	0.0	0	0.0	9	100.0	9	100

Table 9 shows that 4 of the 33 divisions received from 1-5 complaints after policy was developed. However, three of the four policies (75%) were rated as poor which implies a relationship between having a poor policy and receiving complaints.

TABLE 9

Relationship of Policy Rating and Number of Complaints After Policy was Developed

# Comps.	Policy Rating Good	%	Fair	%	Poor	%	Total	%
None	8	40.0	8	40.0	4	20.0	20	100
1 - 5	1	25.0	0	0.0	3	75.0	4	100
No resp.	0	0.0	0	0.0	9	100.0	9	100

Summary of Findings

Findings relative to the objectives of this study were as follows:

1. A majority of the school divisions (68%) in the Commonwealth of Virginia do not presently have policies that specifically address sexual harassment. However, of those that do have such policy the greatest percent are in large systems.

2. The possibility of liability or litigation was the foremost reason for development of policy.

3. The three top ranked reasons given for not having developed a policy were (1) No need has been evidenced, (2) Have other policies that cover sexual harassment, (3) Outdated policy manuals currently under revision.

4. 48% of the policies returned by school divisions were rated as poor. The next highest percent of policies were rated as good and fair policies ranked in the lowest percent.

5. 46% of the policies which were rated as good came from small divisions. Poor policies were distributed equally among all three sized systems.

6. Policies rated as poor had been in existence less than one year and those rated as good were either in existence from one to five or more than five years.

7. Only one fewer complaint was registered after policies were developed than before policies were developed.

8. Divisions with poor policies received as many complaints as some divisions received before they developed policy.

Findings relative to the analysis of policies yielded the following:

1. Items from the evaluative criteria most often included in policies were (1) a statement of philosophy, (2) a definition of sexual harassment, (3) a procedure for filing grievances, (4) stating that a violation would warrant discipline, and (5) stating that the violation was against the law.

2. Most policies lacked any reference to (1) examples of sexual harassment, (2) the fact that the policy is

intended to foster good relations between employees, (3) how employees will be made aware of the policy, and (4) how the policy would be made available to employees.

3. The policies were essentially split in (1) the mention of their purpose, (2) possible sanctions to offenders, and (3) the seriousness with which the school division viewed sexual harassment.

4. There appears to be a relationship between size of system and policy rating with small systems having a larger percent of good policies.

5. Good policies had been in place longer than poor policies.

6. Divisions with poor policies received more complaints after policies were developed than they received before policies were developed.

CHAPTER FIVE

Introduction

The purpose of this chapter was to present a summary of the findings of the study, provide an overview of the study, present conclusions based on the findings in the study, and to offer implications and recommendations for further research.

Summary

Purpose

The purpose of the study was to determine if school divisions in the Commonwealth of Virginia are prepared to effectively and efficiently deal with and eliminate sexual harassment. In order to determine the preparedness of Virginia School Divisions, this study was designed to determine whether or not school divisions had adequate sexual harassment policy. In addition, this study was designed to develop a paradigm or evaluative criteria which school divisions could use to either develop policy or assess the adequacy of existing policy. A second purpose was to determine why school divisions that did not have a policy had failed to develop such a policy.

Procedure

The design of this study consisted of three phases. The first phase involved the research and analysis of case law related to sexual harassment from a historical,

procedural, and substantive perspective. The second phase involved the analysis of school division sexual harassment policies to determine if the policy was adequate. The third phase involved a survey to determine why policy was or was not developed.

Population

The population involved in this descriptive study were the superintendents from the 133 school divisions in the Commonwealth of Virginia. An amended listing of superintendents found in the Virginia Educational Directory 1988 was used to identify the population to be surveyed.

Instrumentation

In order to assess the adequacy of policy from each school division, an instrument was designed using the EEOC Guidelines and the research of sample policies provided by Omilian.[1] The policies researched were from a wide range of public and private sector employers and in order to determine what criteria were included, each was listed in a table and compared to determine which items were common to all policies. (Appendix C).

Limitations

This was a descriptive study which was limited to employer-employee relationships in the 133 school divisions in the State of Virginia. Research of case law considered

only cases that had been litigated by September 1, 1988. The study was also limited to sex discrimination in the form of sexual harassment and not sex discrimination in the form of job equity, age, pay, etc. It was further limited to how policies compared to evaluative criteria with a 90% compliance rate for the assignment of a good rating. Due to evolving case law involving sexual harassment, there is some discrepancy among the judiciary concerning whether private sector law applies to the public sector. Finally, the findings can be generalized only to the population from which they were drawn.

Summary of Findings

Findings relative to the objectives of the study were as follows:

1. Sixty-eight percent of the school divisions in the Commonwealth of Virginia did not have policies that specifically regarded sexual harassment. However, 53.5 percent responding positively to having policies were large systems.

2. The possibility of liability or litigation was the major reason divisions said they had developed policy.

3. The three top ranking reasons the divisions gave for not having developed a policy were (1) No need has been evidenced, (2) Have other policies that cover sexual

harassment, (3) Outdated policy manuals currently under revision.

4. Forty-eight percent of the policies returned by school divisions were rated as poor. The next highest percent of policies were rated as good (27.2%) and fair policies ranked in the lowest with 24.2%.

5. The majority of policies which were rated as good (46.1%) came from small divisions. Poor policies were distributed equally among all three sized systems.

6. Policies rated as poor had been in existence less than one year and those rated as good were either in existence from one to five or more than five years.

7. Only one fewer complaint was registered after policies were developed than before policies were developed.

8. Divisions with poor policies received nearly as many complaints as some divisions received before they developed policy.

In the analysis of policies findings were as follows:

1. Criteria from the checklist most often included in policies were (1) a statement of philosophy, (2) a definition of sexual harassment, (3) a procedure for filing grievances, (4) stating that a violation would warrant discipline, and (5) stating that the violation was against the law.

2. Most policies lacked any references to (1) examples

of sexual harassment, (2) the fact that the policy is intended to foster good relations between employees, (3) how employees will be made aware of the policy, or (4) how the policy would be made available to employees.

3. The policies were essentially split in (1) the mention of their purpose, (2) possible sanctions to offenders, and (3) the seriousness with which the school division viewed sexual harassment.

4. There appeared to be a relationship between size of system and policy rating with small systems having a larger percent of good policies.

5. Good policies had been in place longer than poor policies.

6. Divisions with poor policies received more complaints after policies were developed than they received before policies were developed.

Conclusions

To the question -- Are the school divisions in the Commonwealth of Virginia prepared, with adequate policies, to deal with and eliminate sexual harassment in the workplace? -- the answer is a resounding no. Most school divisions in the Commonwealth of Virginia do not have policies that specifically address sexual harassment and those that do are not prepared with adequate policies.

Eighty-one of the 119 responding school divisions indicated they do not have policies and/or administrative regulations which specifically prohibit sexual harassment. This represents a majority (68%) of those participating in the study but more importantly it represents a majority of the school divisions in the Commonwealth (61%). This indicates that most Virginia school divisions are willing to take a more reactive than proactive approach since most divisions also indicated that they had not developed such policies because they had not evidenced a need.

Twenty-four percent of the school divisions in Virginia which did not have sexual harassment policies indicated they had other policies which they felt would address sexual harassment claims, or they indicated they were working on policies. This indicates a need for the examination of existing policies for the determination of their adequacy for dealing with or preventing sexual harassment.

Most divisions which had developed policies had done so because they were aware of possible liability or litigation. This was evidenced in the fact that a majority of the policies analyzed included not only a statement of the division philosophy and a definition of sexual harassment, but also a procedure for filing grievances, a statement that violators would be disciplined, and a statement that the violation was against the law. This indicates a need for a

more widespread awareness training for administrators to gain information concerning sexual harassment claims.

Most policies failed to communicate that employers were serious about sexual harassment or were willing to make employees aware of sexually harassing behaviors. They also failed to convey how employees would be made aware of policy or have it made available to them. This indicates a need for guidance in the development of sexual harassment policy which will communicate an employer's commitment to deal seriously with sexual harassment.

Implications for Practice

Both the results of this study and the literature indicate that there is a need for school divisions to develop adequate policies which prohibit sexual harassment because employers can best achieve an appropriate environment free of sexual harassment by (1) recognizing sexual harassment as a potential problem, and (2) adopting a policy which will alert employees to the problem by stressing that sexual harassment in any form will not be tolerated. Those who have policies should analyze them to determine their adequacy.

It should be the task of the State Board of Education through the State Department of Education to issue guidelines, perhaps in the form of a Self-Assessment Instrument, so that those who are responsible for writing

policy will be certain to include criteria which would preclude employers becoming victims of sexual harassment claims.

Teacher training institutions and schools of education are in a position to impress upon aspiring teachers and administrators the importance of formulating policy for the welfare and protection of their employees. With the establishment of sexual harassment under Meritor[2] and the Supreme Court's recognition of the hostile environment claim,[3] sexual harassment is a potential source of Title VII litigation. Employers in Virginia school divisions should be cognizant of ways to limit sexual harassment claims. School divisions would do well to examine their policies and practices and assess to what extent sexual harassment policy communicates to employees that sexual harassment is a prohibited behavior and will not be tolerated.

Recommendations for Further Research

The following recommendations were suggested by the results of this investigation:

1. A study should be made of the schools of education in the Commonwealth especially in classes such as School Law and Administration, to determine the degree of emphasis placed on increasing awareness about sexual harassment.

2. A study should be done to determine how employees are sensitized and made aware of sexual harassment policy.

3. Since sexual harassment claims made in public schools seldom get to court, a study such as this one should be carried out to assess whether or not sexual harassment actually exists.

4. A study should be done with the State Department, the VEA and the Virginia School Boards Association to determine what they are doing to eliminate sexual harassment in the workplace.

5. A study similar to this one could be conducted to explore reasons why employees who have been targets of sexual harassment have reported or have not reported the incidents.

NOTES

[1] Susan M. Omilian, What Every Employer Should Be Doing About Sexual Harassment (Madison CT., Business and Legal Reports, 1986), p. 12.

[2] Meritor Savings Bank v. Vinson 106 S.Ct. 2399 (1986).

[3] Bundy v. Jackson 641 F.2d 934-944 (D.C. Cir. 1981). The court held that sexual harassment, in and of itself, is a violation of the law and does not require proof that the employee was penalized or lost specific tangible job benefits.

BIBLIOGRAPHY

Books

Alexander, Kern, and M. David Alexander. American Public School Law. St. Paul, MN.: West Publishing, 1985.

Black's Law Dictionary. 5th Edition.

Bureau of National Affairs. Sexual Harassment and Labor Relations: A BNA Special Report. Washington: 1981.

Dillman, Don A. Mail and Telephone Surveys. New York: John Wiley, 1978.

Farley, Lin. Sexual Shakedown: The Sexual Harassment of Women on the Job. New York: McGraw-Hill, 1978.

Gutek, Barbara A. Sex and the Workplace. San Francisco: Jossey-Bass, 1985.

MacKinnon, Catherine. Sexual Harassment of Working Women: A case of Sex Discrimination. New Haven, Conn.: Yale University Press, 1979.

Omilian, Susan M. What Every Employer Should Be Doing About Sexual Harassment. Madison, CT.: Business and Legal Reports, 1986.

Read, Sue. Sexual Harassment at Work. Middlesex, England: Hamlyn Publishing Group, 1982.

Periodicals

Cole, Elsa Kircher. "Recent Legal Developments in Sexual Harassment." Journal of College and University Law, 3, No. 3 (1986).

Licata, Betty Jo, and Paula M. Popovich. "Preventing Sexual Harassment: A Proactive Approach." Training and Development Journal, 41 (May, 1987).

McCarthy, Martha M. "The Developing Law Pertaining to Sexual Harassment." West's Education Law Reporter, 36 (1987).

Marinelli, Arthur J., Jr., "Title VII: Protection Against Sexual Harassment." Akron Law Review, 20:3 (Winter, 1987).

Mondschein, Eric S., and Loel L. Greene, "Sexual Haassment in Employment and Educational Practices." School Law Update 1986, ERIC ED 272 996.

Nagle, David E., "Code of Conduct for Avoiding Sexual Harassment." The Richmond News Leader, Monday, October 20, 1986.

Nolan, Dale, "Sexual Harassment in Public and Private Employment." West's Education Law Reporter, 3 (1982).

Safran, Claire, "What Men Do to Women on the Job: A Shocking Look at Sexual Harassment." Redbook, November, 1979.

Strauss, Susan, "Sexual Harassment in the School: Legal Implications for Principals." NASSP Bulletin, March, 1987.

Government Publications

U. S., Civil Rights Act of 1871, 42 U.S.C.A. 1983, Enacted 1871.

U. S., Civil Rights Act of 1964, Title VII, 42 U.S.C.A. 2000---e2.

U.S. Congress, The Civil Rights Restoration Act of 1987 100th Congress, 2d Session.

U. S., Education Amendments of 1972, Title IX, 20 U.S.C.A. 1681(a).

U. S., Equal Employment Opportunity Commission. EEOC Guidelines. 29 C.F.R. 1604.11 (a-f).

Other Sources

Westlaw. Data Base, A Registered Service of West Publishing, St. Paul, MN.

Cases Cited

Barnes v. Costle 561 F.2d 983 (D.C. Cir. 1977).

Barnes v. Train 13 FEP Cases 123 (D.C.Cir. 1974).

Bohen v. City of East Chicago 799 F.2d 1180 (1986).

Bundy v. Jackson 641 F.2d 934-944 (D.C.Cir. 1981).

Delgado v. Lehman, Secretary of the Navy 665 F.Supp. 460 (1987).

EEOC v. FLC & Brothers Rebel, Inc. 663 F.Supp. 864 (1987).

Estate of Scott by Scott v. DeLeon 603 F.Supp. 1328 (E.D. Mich. 1985).

Grove City v. Bell 465 U.S. 555, 104 S Ct 1211, 79 L. Ed. 2d 516, [15 Ed. Law 1079] (1984).

Henson v. City of Dundee 682 F.2d 897, 902, 904 (11th Cir. 1982).

Huff v. County of Butler 524 F.Supp. 751, (D.C. Pa. 1981).

Katz v. Dole 709 F.2d 251, 254-255 (4th Cir. 1983).

Meritor Savings Bank v. Vinson 106 S.Ct. 2399 (1986).

Miller v. Bank of America 600 F.2d 211 (9th Cir. 1979).

Monell v. Department of Social Services of the City of New York 436 U.S. 658, 98 S.Ct. 2018 (1978).

Monroe v. Pape 365 U.S.167, 81 S.Ct. 473 (1961).

Reed v. Reed 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed. 2d 225 (1971).

Swentek v. U.S. Air 830 F.2d 552 (1987).

Tomkins v. Public Service Electric and Gas Co. 568 F.2d 1044 (3rd Cir. 1977).

Woerner v. Breczek 519 F.Supp. 517 (D.C.N.D.Ill. 1981).

Wood v. Srtickland 420 U.S. 308, 95 S.Ct. 992 (1975).

APPENDIX A

QUESTIONNAIRE

1. Does your school division have a policy specifically regarding sexual harassment?

   A. _____ Yes (if YES, go to questions 3 - 8.)
   B. _____ No (if NO, go to question 2.)

2. Please give a brief statement as to why the division has not developed a policy specifically regarding sexual harassment.

_____

_____

3. How long has the division policy been in place?

   A. _____ Less than one year.
   B. _____ One to five years.
   C. _____ More than five years.

4. Did the school division develop a sexual harassment policy because of a directive from the state department?

   A. _____ Yes
   B. _____ No

5. Did the school division develop a sexual harassment policy because of an awareness of possible liability/litigation?

   A. _____ Yes
   B. _____ No

6. Did the school division develop a sexual harassment policy because of a sexual harassment complaint within the system?

   A. _____ Yes
   B. _____ No

7. How many sexual harassment complaints have been registered since the development of the policy?

   A. _____ None
   B. _____ One to five.
   C. _____ More than five.

8. How many sexual harassment complaints were registered before the development of the policy?

   A. _____ None
   B. _____ One to five.
   C. _____ More than five.

QUESTIONNAIRE CODING SHEET

COLUMN	VARIABLE NAME	VALUE LABEL
1	Have Policy	1 = Yes 2 = No
3	Years policy in place	1 = Less than 1 2 = 1 to 5 3 = More than 5
4	Developed by directive	1 = Yes 2 = No
5	Developed by awareness	1 = Yes 2 = No
6	Developed by complaint	1 = Yes 2 = No
7	Complaints since policy	1 = None 2 = one to five 0 = more than 5
8	Complaints before policy	1 = None 2 = one to five 0 = more than 5

APPENDIX B

Michaele P. Penn

Date

Dear Superintendent,

In recent years, sexual harassment has been litigated under Title VII not only on the basis of claims of "quid pro quo" sexual harassment, but also, in a recent Supreme Court case, the Court held that sexual harassment is actionable under Title VII on the basis of a "hostile environment" claim. Employers are, therefore, encouraged to take an active role in the prevention of sexual harassment by developing and disseminating appropriate policy against sexual harassment. To date, no one has assessed the opinions of educators as regards the development of policies specifically regarding sexual harassment nor have they assessed policies that are now in place insofar as they meet EEOC guidelines.

You are being asked to share with me your present policy against sexual harassment and answer the 10 questions on the enclosed questionnaire. In order that the results of this study represent the policymakers in the Virginia school divisions, it is important that each questionnaire be returned along with a copy of the current policy.

All questionnaires and policies will be kept completely confidential. Each questionnaire has an identifying number for mailing purposes only. This will allow me to check your division off the list of respondents when your questionnaire is returned. Your name nor that of your division will ever appear on the questionnaire or be reported in the study.

The results of this research will be made available to educators and policymakers throughout the Commonwealth. Hopefully, the results will provide some insights necessary for objective and enlightened policymaking concerning sex discrimination policy as it specifically applies to sexual harassment.

Sincerely,

Michaele P. Penn

Enclosure

Michaele P. Penn

Date

Dear Superintendent,

On _____ you received a correspondence requesting that you send a copy of your school division's Sex Discrimination Policy and a request that you return a questionnair seeking information concerning that policy. If you have completed and returned the questionnaire along with the policy, please accept my thanks for your assistance. If not, please do so today. It is important if the results are to accurately reflect the results of Virginia school division policymakers.

If you have misplaced the questionnaire, or did not receive one, please return the enclosed card and I will mail you another immediately. Thank you for your prompt response in this matter.

Sincerely,

Michaele P. Penn

Enclosure

APPENDIX C

SEXUAL HARASSMENT POLICY EVALUATIVE CRITERIA

1. Does the sexual harassment policy address the philosophy of the school division? (e.g., "The district is committed to providing an environment free of verbal, physical, and psychological harassment.)

2. Does the sexual harassment policy state a purpose? (e.g., "To ensure a workplace free of sexual harassment . . .")

3. Does the policy include a definition of sexual harassment? (e.g., "Sexual harassment is any repeated or unwanted verbal or physical sexual advances . . .")

4. Does the policy include clear examples of the different types of sexual harassment behaviors? (e.g., "Repeated unwelcomed advances include but are not limited to . . . ")

5. Does the policy include a grievance procedure specifically for sexual harassment? (e.g., "Any person who believes that they are being subject to sexual harassment should: (1) report . . .")

6. Does the policy state that there will be disciplinary action against the offender? (e.g., "Any personnel found to have engaged in sexual harassment will be severly dealt with . . .")

7. Does the policy list all possible sanctions for offenders? (e.g., "Offenders will be subject to the following disciplinary actions . . .")

8. Does the policy state in clear terms that management takes sexual harassment seriously? (e.g., "This school division prohibits any form of sexual harassment and view such actions in the most serious manner.")

9. Does the policy emphasize that its aim is the promotion of good employee relations? (e.g., "This policy reinforces our committment to develop an atmosphere that fosters good relations between . . . ")

10. Does the policy mention that sexual harassment is a source of possible liability? (e.g., "Legally, employers and employees are liable for acts of . . .")

11. Does the policy state how employees will be made aware of the policy? (e.g., "This division, annually, conducts sexual harassment awareness training programs . . . ")

12. Does the policy state that it is made available to all new employees? (e.g., "A copy of this policy will be made available to all new employees.")

Instrument Used by Reviewers for Analysis of Policies

Instructions: Check the YES column if the item appears in the policy being analyzed. Check the NO column if the item does not appear in the policy. As soon as you have completed each policy go to the Data Coding Sheet and enter the results for that policy. Enter the number one (1) in the appropriate space if the response is YES. Enter the number two (2) in the appropriate space if the response is NO. Please double check your entries on the Data Coding Sheets.

POLICY NUMBER _____

		YES	NO
Philosophy addressed	1		
Purpose addressed	2		
Definition given	3		
Examples given	4		
Grievance procedure	5		
Disciplinary action stated	6		
Sanctions given	7		
Management serious	8		
Employee relations	9		
Reference to liability	10		
Employees made aware	11		
Available	12		

Data Coding Sheet

REVIEWER NUMBER ______

INSTRUCTIONS: Enter the results of each policy analyzed on this sheet. If the numbered criteria are marked YES place the number one (1) in the corresponding column. If the numbered criteria are marked NO place the number two (2) in the corresponding column. Place the total (the total number 1s ONLY) in the appropriate column on the far right. If there are eleven (11) or more number ones, assign the policy a rating of GOOD. If there are from six (6) to ten (10) ones, assign the policy a rating of FAIR. If there are five (5) or less ones, assign the policy a rating of POOR.

CRITERIA

POLICY #	1	2	3	4	5	6	7	8	9	10	11	12	TOTALS

EEOC GUIDELINES ON SEXUAL HARASSMENT
29 CFR Part 1604

Discrimination Because of Sex Under Title VII of the Civil Rights Act of 1964, as Amended; Adoption of Final Interpretive Guidelines

Agency: Equal Employment Opportunity Commission

Action: Final Amendment to Guidelines on Discrimination Because of Sex

Section 1604.11 Sexual Harassment

(a) Harassment on the basis of sex is a violation of Sec. 703 of Title VII.1 [Footnote: The principles involved here continue to apply to race, color, religion or national origin.] 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 such individuals, 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.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

(c) Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job junctions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in

the workplace where the employer (or its agents or supervvisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where thhe employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate ccorrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the cconduct of such non-employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified but denied that employment opportunity or benefit.

Sample Policy # 1
Courtesy of a Texas-Based Service Organization

	ACTION	EFFECTIVE DATE	POLICY PROCEDURE NUMBER	PAGE NUMBER
	NEW	08/25/80	032-I	1 OF 2
	SUPERCEDES			OF
SUBJECT: SEXUAL HARASSMENT				
APPLICATION: ALL EMPLOYEES		APPROVED		

I. PURPOSE

Sexual harassment, either physical or verbal, is a violation of the law. The intent of this policy is to clarify the company's position in matters relating to compliance, discovery, and remedy.

II. POLICY

It is the intent of the company to maintain a work place free of sexual harassment from any source, either supervisors or co-workers, and to discourage any instance of malicious accusation.

III. DEFINITION

Sexual harassment is any repeated or unwanted verbal or sexual advances, sexually explicit derogatory remarks, or statements made by someone in the work place which are offensive or objectionable to the recipient, or which cause the recipient discomfort or humiliation, or which interfere with job performance, and which can be reasonably determined to constitute unlawful behavior as follows:

1. Submission to the conduct is either an explicit or implicit term or condition of employment; or,
2. Submission to or rejection of the conduct is used as a basis for employment decisions affecting the recipient; or,
3. The conduct has the purpose or effect of substantially interfering with work performance, or creating an intimidating, hostile or offensive work environment.

IV. RESPONSIBILITY

A. The Employee

1. To be certain beyond a reasonable doubt that harassment exists, and is clearly directed toward the person objecting. Whenever possible, witnesses or other substantiating information should be provided.
2. Advise the offending individual that the conduct in question is offensive, and request that it be discontinued immediately.
3. If the offending conduct continues, or recurs, an official complaint may be placed through the office of the personnel director, or through the office of the chief executive officer.

B. The Company

1. The complaint will be reduced to written form by the company officer handling the complaint.

	ACTION	EFFECTIVE DATE	POLICY PROCEDURE NUMBER	PAGE NUMBER
	NEW	08/25/80	032-1	2 OF 2
	SUPERCEDES			OF
SUBJECT: SEXUAL HARASSMENT				
APPLICATION: ALL EMPLOYEES		APPROVED		

2. A conference will be scheduled within 5 working days, with the understanding that the most immediate time practical will be utilized. Employees participating in the conference may choose to be accompanied by a co-worker, if that is felt to be desirable.
3. The company officer conducting the conference will make every reasonable effort to determine the facts pertinent to the complaint. If the complaint can be resolved to the satisfaction of all parties, the matter will be considered closed, pending further complaint or additional information. In cases of recurrent complaint, or in cases of flagrant unlawful behavior, additional sanctions shall be employed.
4. The company will make every reasonable effort to insure that no retaliation occurs.

V. SANCTIONS

The company will engage all or any combination of the following sanctions to remedy instances of sexual harassment:

1. Conference
2. Transfer
3. Suspension
4. Termination

Sample Policy #2
Courtesy of a Nationwide Retail Organization

HARASSMENT

Harassment of employees due to their age, ancestry, color, creed, marital status, medical condition, national origin, physical handicap, race, religion, or sex by fellow employees and non-employees is demeaning to both the victims and the Company; it can result in high turnover, absenteeism, low morale and productivity, and an uncomfortable atmosphere to work in. Therefore, the Company will not tolerate any such harassment of its employees and will take affirmative steps to stop it.

Sexual harassment is behavior that is unwelcome and personally offensive; it can consist of sexually oriented "kidding" or jokes, physical contact such as patting, pinching or purposely rubbing up against another's body, demands for sexual favors tied to promises of better treatment or threats concerning employment for refusal, discriminating against an employee for refusing to "give in", or granting favors to one who submits. Other harassment can be jokes, comments, or other personally offensive and unwelcome behavior based on a person's age, ancestry, color, creed, marital status, medical condition, national origin, physical handicap, race, or religion that results in the loss of tangible job benefits or creates a hostile, obnoxious, or intimidating work atmosphere.

If you think another employee is harassing you because of your age, ancestry, color, creed, marital status, medical condition, national origin, physical handicap, race, religion, or sex, tell him or her that you find such behavior offensive, that such behavior is against Company policy, and ask him or her to immediately stop that behavior. It is important to let your fellow employees know when you consider such behavior offensive, as the Company hires people from a wide variety of cultural and ethnic backgrounds, and that person may not realize behavior he or she thinks is proper could be seen by others as offensive. If that employee continues to "pester" you, immediately contact your supervisor, in writing, about the problem. If you feel you cannot seek help from your supervisor, contact his or her supervisor or your district personnel office, in writing, for assistance.

If you see another employee being harassed because of his or her age, ancestry, color, creed, marital status, medical condition, national origin, physical handicap, race, religion, or sex, tell him or her that the Company has a policy prohibiting such behavior, that he or she can demand the other stop such behavior, and that he or she can contact his or her supervisor, in writing, for help.

If another employee tells you he or she finds your behavior offensive, do not get angry or insulted. People have different ethnical values and standards, and may be offended by behavior you think is proper. Tell the employee you did not realize he or she would be offended by your behavior and stop the complained of conduct.

If you are harassed by a non-employee, contact your supervisor, in writing, for help. The Company cannot control the offensive behavior of all non-employees, but it will try to remedy the situation if it can.

Upon being told of such possible harassment, supervisory employees are expected to take prompt effective action to determine whether harassment has or is taking place, and to stop such behavior where it does exist. Supervisory employees are to submit a written report, including statements from the employees involved and any other relevant documentation, reporting the incident and detailing what actions they took to the district personnel manager. Any supervisory employee who condones, participates in, or initiates such harassment will be severely disciplined, including possible demotion or termination. Any employee knowing of a supervisory employee abusing his or her official position by condoning, participating in, or initiating such harassment should inform a higher level supervisor or appropriate personnel official, in writing, so the Company can take action against that supervisory employee.

No employee will be disciplined or otherwise retaliated against for complaining about such harassment. It is important that you inform the Company about such harassment, as the Company cannot do anything to remedy the situation if it does not know it exists.

The Company plans to incorporate harassment awareness training in future managerial, supervisory, and employee orientation courses. A copy of this policy will be made available to all new employees.

I hereby acknowledge that I have read and understand the above.

_____
NAME (PLEASE PRINT)

_____
NAME (SIGNATURE)

_____ _____
WITNESS DATE

78 4/83

Sample Policy # 3
Courtesy of a State University

POLICY STATEMENT ON DISCRIMINATION AND HARASSMENT INCLUDING SEXUAL HARASSMENT

It is the policy of University to provide an educational and employment environment free from all forms of intimidation, hostility, offensive behavior and discrimination, including sexual harassment. Such discrimination or harassment may take the form of unwarranted verbal or physical conduct, verbal or written derogatory or discriminatory statements, which may result in decisions affecting status, promotions, raises, favorable work assignments, recommendations, class assignments or grades. Such behavior, or tolerance of such behavior, on the part of an administrator, supervisor, faculty or staff member violates the policy of the University and may result in disciplinary action including termination. The conduct herein described is both contrary to University policy and contrary to Seventh-day Adventist Christian beliefs and practice and may be illegal under both state and federal law.

The United States Equal Employment Opportunity Commission has defined sexual harrassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature 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 such 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.

The State of has defined sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature when (1) submission to such conduct or communication is made a term or condition either explicitly or implicitly to obtain employment, public accommodations or public services, education, or housing; (2) submission to or rejection of such conduct or communication by an individual is used as a factor in decisions affecting such individual's employment, public accommodations or public services, education, or housing; (3) such conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment.

An employee (including a student employee) who believes that he or she has been subject to discrimination or harassment should report the conduct to his or her immediate supervisor, and in the event the supervisor is the aggrieving party, to the next higher responsible party. If necessary, the employee grievance procedure should be utilized.

A student who believes that he or she has been discriminated against or harassed should report the conduct to the chairman of the department to which the teacher is assigned, and if the chairman is the aggrieving party, to the dean of the college/school in which he or she is enrolled.

Adopted by the Board of Trustees August 12, 1985

Sample Policy # 4
Courtesy of a Major Food Organization

POLICY STATEMENT

It is the policy of Inc. to prohibit any harassment of, or reluctance to train employees because of their sex.

Any employee who feels that he or she is experiencing harassment on the job because of his or her sex, or who feels that he or she is experiencing sex discrimination in receiving training, should be aware that the following procedures are available and should be utilized.

1. Any employee should immediately report all matters directly to the Personnel Manager.

2. The Personnel Manager will take immediate action to investigate any and all complaints registered.

3. Following the investigation of the complaint, the Personnel Manager shall review the facts and results of the investigation with the Bakery Manager and with the other appropriate members of Management and decide upon the validity of the complaint and determine how the complaint should be resolved.

4. If it is determined that an employee has engaged in harassment or reluctance to train, the Bakery will take immediate and appropriate remedial action, the nature of which will depend upon the severity of the determined offense.

5. After an investigation and determination of the merits of any complaint registered with the Personnel Manager, the Personnel Manager will meet with the complaining employee to discuss the results of the investigation. If the employee is dissatisfied with the processing of the complaint, the decision reached or the remedial action taken, if any, the employee will be afforded the opportunity to submit a written statement of his or her position for inclusion in his or her personnel file.

6. Any personnel found to have engaged in retaliation against an employee who has registered a complaint under this procedure or retaliation against any employee for assisting in the investigation of any registered complaint will be subject to immediate disciplinary action up to and including discharge.

Sample Policy # 5
Courtesy of a Large Utility

POLICY AND PROCEDURE MANUAL

Department: ADMINISTRATION Sub-Dept.: HUMAN RESOURCES EEO/AFFIRMATIVE ACTION Authorized by: VICE PRESIDENT OPERATIONS

Subject: SEXUAL HARASSMENT Date: 11/03/81

Page: 401

1. PREFACE

Legal and moral precepts make sexual harassment in the workplace, like harassment on the basis of color, race, religion or national origin in the workplace, completely improper. The Equal Employment Opportunities Commission has amended its guidelines on employment discrimination to add a specific section on sexual harassment (29CFR 1604, April 11, 1980). The Company's policy has long been to disapprove such discrimination and this policy is written to affirm the Company's position against sexual harassment.

2. POLICY

2.1 It has long been the Company's policy that all employees have the right to work in an environment free from any type of unlawful discrimination, which includes an environment free from sexual harassment.

Our policy on the subject is as follows:

2.1.1 The Company shall not tolerate sexual harassment of employees in any form. Any such conduct shall result in disciplinary action up to and including dismissal.

2.1.2 No supervisor shall threaten, suggest or imply that an employee's refusal to submit to sexual advances will adversely affect the employee's employment, evaluation, wages, advancement, assigned duties, shifts, or any other condition of employment or career development. Nor shall any supervisor suggest or imply that an employee's acquiescence to sexual advances may favorably affect the employee's condition of employment or career development.

2.1.3 Other sexually-harassing conduct in the workplace, whether committed by supervisory or non-supervisory personnel, is also prohibited. This includes but is not limited to: offensive sexual flirtations, advances, propositions; verbal abuse of a sexual nature; graphic verbal commentaries about an individual's body; sexually degrading words used to describe an individual; and any offensive display in the workplace of sexually suggestive objects or pictures.

2.2 Employees who believe they are being subjected to sexual harassment should inform appropriate supervisory personnel or the Human Resources Department.

Effective Pages: 401-403

Revision Date: 11/03/81

Sample Policy # 6
Courtesy of a Large Manufacturer

DIVISION POLICY

SUBJECT: PERSONNEL,
EQUAL EMPLOYMENT OPPORTUNITY
AND AFFIRMATIVE ACTION

This policy outlines the responsibilities and guidelines for s commitment to Equal Employment Opportunity and Affirmative Action within the Glidden Coatings & Resins organization.

SUPERSEDES: (Number and Date) Division Policy P1-5 **DATE:** October 1, 1984
...d change in policy; change in President's signature.)

AMENDS: (Number and Date) None.

APPLICABLE TO: U.S. operations, including subsidiaries and joint ventures.

1. The Division has established an Equal Employment policy to ensure that all recruitment, placement, compensation, training and promotions are non-discriminatory and are based upon individual merit, ability and performance. All personnel actions and conditions of employment are administered without regard to race, color, religion, national origin, age, sex or handicap.

2. In addition, affirmative action will be taken to increase opportunities for minority, handicapped and female applicants and employees, as well as for veterans of the Vietnam Era.

3. Company policy is also established to insure that work environment is free of all forms of harassment including sexual harassment, that is; physical sexual advances or intimidations, and uninvited or suggestive remarks. Harassment can also include uninvited direct or suggestive remarks about an individual's age, religion, race, or handicap. Any employee who feels that he or she has been, or is being harassed, can advise his or her immediate supervisor if appropriate, or the personnel manager or administrator at his or her location. Incidents of discrimination or harassment will be promptly and thoroughly investigated and pursuant to the investigation outcome, appropriate action may be taken, up to and including discharge of the harassing employee.

4. Each Division manager and supervisor is responsible for implementing company policy to ensure compliance with the Civil Rights Act of 1964, Executive Order 11246, as amended, the Department of Labor Revised Order No. 4, the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Act of 1974. Implementation includes activities and practices designed to enhance understanding, acceptance and compliance with the intent and spirit of Equal Employment Opportunity, Affirmative Action and freedom from harassment.

5. Personnel managers and administrators at each location are responsible for reporting quarterly recruiting, employment and promotion statistics on Corporation forms 9598 and 1329. They will also prepare annually a revised Affirmative Action Plan for submission to the Division Manager-Personnel Development, Cleveland Headquarters.

/continued

6. The Division Manager-Personnel Development is responsible for ensuring that local apprenticeship programs registered by the U. S. Department of Labor or a State Apprenticeship Council are operated on a non-discriminatory basis. Each such program will include in its standards the following pledge: "The recruitment, selection, employment and training of apprentices shall be without discrimination because of race, color, religion, national origin, sex or handicap." Corporation takes affirmative action to provi[illegible]apprentice-ships and operates the apprenticeship program as required under Title 29 of the Code of Federal Regulations, Part 30."

   a. Personnel managers or administrators at locations having an apprentice-ship program with five or more apprentices are required to prepare or to revise annually an Affirmative Action Plan for its apprenticeship program.

   b. The plan will establish goals and timetables for minority and female apprentices wherever underutilization exists.

7. Questions concerning this policy should be referred to the Manager-Personnel Development or the Vice President-Employee Relations and Administration.

President

Distribution: Z 3, 5, 9, 14, 16, 18, 23, 26, 27, 28, 33, 39, 49, 50, 52 (C&R Mgmt.)
Including International and Sales Representatives

Sample Policy # 7
Courtesy of a State Government Agency

☒ POLICY		NUMBER SEC 031
☒ PROCEDURE	SEXUAL HARASSMENT	DATE EFFECTIVE 01/28/82
☐ MEMO		PAGE 1 OF 1

SUBJECT: SEXUAL HARASSMENT

General Policy

Harassment on the basis of sex is a violation of Section 703 of Title VII. Sexual Harassment, either physical or verbal, is an unlawful employment practice and will not be tolerated within.

Definition

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature 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 a rejection of such conduct by an individual is used as the basis for employment decisions affecting such 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.

Procedure

C

1. Any concern which an employe may have related to this issue should be brought immediately, through channels or directly (as the situation dictates), to the attention of the division administrator. The right of an individual to raise such issues is protected under Section 703 of Title VII of the Civil Rights Act of 1964, as amended.

2. Any employe of the Department who engages in such prohibited behavior will be subject to disciplinary action.

APPENDIX D

Compilation of Open-Ended Responses for Question Two in Reference to Why No Policy Had Been Developed From Respondents Indicating They Had No Policy

1. For the highest reported response - No need evidenced - there was little deviation in responses. Most stated variations on the theme "There has been no need for such a policy."

2. For the second highest reported response - Have other policies -

"A broad policy dealing with 'complaints' does exist. A more specific policy has not been needed."

"Our county statement of non-disecrimination (Title IX) is interpreted to include sexual harassment."

"The subject is covered under the policy regarding employee grievances (any and all alleged acts acts of discrimination prohibited by law)"

"A non-discrimination policy is in place and has been since 1977. To date, we have regarded harassment as a form of sex discrimrination. We have had no complaints, thus the issue of harassment separate from discrimination, has not arisen."

"1) Existing laws dealing with subject known by all (2) Existing grievance procedure available to all employees (3) We have no evidence of laws being violated or need for specific policy in subject area."

"It is felt that the grievance procedures for employees and policies on communicating proved avenues to pursue should problems occur. To date we have had no complaints."

"We feel that federal mandates are sufficient."

"The school division operates in accordance with applicable federal and state laws regarding the prohibition of adverse action based on race, sex, etc."

"Our policy manual was updated in 1986 by a school attorney and representatives of the VSBA. I thought we had a specific policy for this. Thanks for bringing this to our attention."

"Because [name of county withheld] does have a policy on nondiscrimination, a specific policy in sexual harassment is not felt to be warranted."

"We feel we are covered in this area under our discrimination policy and grievances."

"We have due process procedure for all personnel, plus the grievance procedure."

3. For the third highest reported response - Outated Policy Manual -

"We are now in the process of presenting it for approval."

"We are working on one and hope to have it adopted in the near future."

"In developmental stage."

"Outdated policy manual currently undergoing revision."

"A plan for board adoption is being developed."

"We are in the process of revisinng all personnel policies. A policy on sexual harassment will be included as part of this process."

"Our policy manual is now being revised to include new policies. A policy on sexual har[r]assment will be included in this revision."

"Leadership is given that sexual harassment is against the law and will not be tolerated. (We are going to develop a policy)."

"Our policy manual is presently being revised. It has not had a major revision since 1973. It will include a statement concerning sexual harassment."

"Our policy manual is in the process of being revised. I assume this item will be addressed."

"We do not have a Title IX Policy in force at the present time; however, our policy manual is being revised presently and Title IX will be a part of it.

4. Those included in the next group - No Response/Other - said:
"This school division is a very small division. At this time we are trying to keep up with basic educational problems, such as textbook adoption, curriculum development, and others. Sexual harassment can be a serious problem, however a school without a curriculum or textbooks effects more people and is even more of a serious problem. In order to keep from diluting resourses, schools must focus on what is important. Education is our focus. Certainly, I am against sexual harassment, who isn't. But I will use what little time we have, [g]oing what is most important for the division, developing a good instructional program. Oh by the way, I just received a letter from an interest group stating that we also need a program of anti-satanic ritual abuse in the schools."

"Simply haven't as yet. I would [be] interested in sample policies as you receive them."

5. For the response - No time to develop - the two responses ranged from: "Time", to . . .

"Have had no time to get it done - far too many other 'alligators to fight' these days."

6. For the response - Will not be tolerated - the two responses said:

"I believe that it is clearly understood that we will not tolerate sexual harassment. We have never had a charge made against one of our employees."

"So far, the term hasn't been brought up. Our employees understand that professional behavior doesn't include harassment of any type."

7. For the response - Fear of being misinterpreted - the one response said:

"I preseneted a policy to our supt. approximately 8 years ago. He elected not to present it to the board thinking it might be misinterpreted by the general public. Incidentally, two ajoining personnel officers presented a policy to their supt. at the same time and they were also rejected. I was also discouraged last year."

8. For the response - Employer/employee responsible -

   "All people are considered equal and responsible."

9. For the response - Handle problems administratively -

   "Such problems would be handled administratively; minor problems negotiated, major problems would be referred to the legal system."

The three page vita has been removed from the scanned document. Page 1 of 3

The three page vita has been removed from the scanned document. Page 2 of 3

The three page vita has been removed from the scanned document. Page 3 of 3