

SUBJECT: SEXUAL HARASSMENT IN THE WORKPLACE**Overview**

The BOCES is committed to creating and maintaining an environment which is free from discrimination and harassment. Sexual harassment is one form of workplace discrimination. This policy addresses sexual harassment in the workplace. It is just one component of the BOCES' overall commitment to maintaining a discrimination and harassment-free educational and work environment.

Sexual harassment is a form of employee misconduct, a violation of BOCES policy, and unlawful. Employees who engage in sexual harassment, including supervisory personnel who engage in sexual harassment, who knowingly allow such behavior to continue, or fail to report suspected sexual harassment will be subject to remedial and/or disciplinary action by the BOCES.

The BOCES adopts this policy as part of its effort to provide for the prompt and equitable resolution of complaints of sexual harassment in the workplace. The BOCES will promptly respond to reports of sexual harassment in the workplace, ensure that all investigations are conducted within a reasonably prompt time frame and under a predictable fair grievance process that provides due process protections, and impose disciplinary measures and implement remedies when warranted.

Inquiries about this policy may be directed to the BOCES' Civil Rights Compliance Officer(s) (CRCO(s)) and/or Title IX Coordinator(s). These officers/coordinators are appointed annually at the July Re-Organizational Board of Education meeting.

Scope and Application

This policy applies to all instances of sexual harassment perpetrated against a "covered person," regardless of immigration status, by anyone in the workplace, including a co-worker, supervisor, or third-party such as a non-employee, paid or unpaid intern, vendor, building security, visitor, volunteer, parent, or student. For purposes of this policy, a "covered person" includes:

- a) Employees;
- b) Applicants for employment;
- c) Paid or unpaid interns; and
- d) Non-employees, which include anyone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or other person providing services pursuant to a contract in the workplace.

Sexual harassment in the workplace can occur between any individuals, regardless of their sex or gender. Unlawful sexual harassment is not limited to the physical workplace itself. Sexual harassment can occur on BOCES property and at school functions which, for purposes of this policy, means a

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BOCES-sponsored or BOCES-authorized event or activity regardless of where the event or activity takes place, including any event or activity that may take place virtually or in another state. It can also occur while employees are traveling for BOCES business. Calls, texts, emails, and social media usage can constitute unlawful workplace harassment, even if they occur away from BOCES property, on personal devices, or during non-work hours. Accordingly, conduct or incidents of sexual harassment that create or foreseeably create a disruption within the BOCES may be subject to this policy in certain circumstances.

Other BOCES policies and documents such as regulations, procedures, collective bargaining agreements, and the BOCES' *Code of Conduct* may address misconduct related to sexual harassment and may provide for additional, different, or more specific grievance procedures depending on a number of factors including, but not limited to, who is involved and where the alleged sexual harassment occurred. These documents must be read in conjunction with this policy. Applicable policies or documents may include: Policy #3420 -- Non-Discrimination and Anti-Harassment in the BOCES; and Policy #3421 -- Title IX and Sex Discrimination.

The dismissal of a complaint under one policy or document does not preclude action under another related BOCES policy or document.

What Constitutes Sexual Harassment

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender.

Different from federal law and regulation, under New York State Human Rights Law, sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. New York Human Rights Law provides, harassment need not be severe or pervasive to be unlawful, and can be any harassing conduct that consists of more than petty slights or trivial inconveniences.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- a) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- b) Such conduct is made either explicitly or implicitly a term or condition of employment; or
- c) Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

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A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job performance.

Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions, or privileges of employment. This is also called "quid pro quo" harassment.

Any covered person who feels harassed should report the conduct so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

Examples of Sexual Harassment

The following describes some actions that may constitute unlawful sexual harassment and that are strictly prohibited:

- a) Physical acts of a sexual nature, such as:
 - 1. Touching, pinching, patting, kissing, hugging, grabbing, brushing against another person's body or poking another person's body; and
 - 2. Rape, sexual battery, molestation or attempts to commit these assaults.
- b) Unwanted sexual advances or propositions, such as:
 - 1. Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments; and
 - 2. Subtle or obvious pressure for unwelcome sexual activities.
- c) Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- d) Sex stereotyping, which occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.

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- e) Sexual or discriminatory displays or publications anywhere in the workplace, such as pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- f) Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, and the status of being transgender, such as:
 - 1. Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
 - 2. Sabotaging an individual's work; and
 - 3. Bullying, yelling, or name-calling.

Prohibition of Retaliatory Behavior (Whistle-Blower Protection)

Unlawful retaliation can be any action that could discourage a covered person from coming forward to make or support a sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours).

The BOCES prohibits any retaliatory behavior directed against complainants, victims, witnesses, and/or any other individuals who participate in the investigation of a complaint of sexual harassment. Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in "protected activity." Protected activity occurs when a person has:

- a) Made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- b) Testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- c) Opposed sexual harassment by making an oral or informal complaint of harassment to a supervisor, building principal, other administrator, or the CRCO;
- d) Reported that another employee has been sexually harassed; or
- e) Encouraged a fellow employee to report harassment.

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Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

Reporting Allegations of Sexual Harassment

Preventing sexual harassment is everyone's responsibility. The BOCES cannot prevent or remedy sexual harassment unless it knows about it. Any covered person who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, building principal, other administrator, or the CRCO. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior.

Reports of sexual harassment may be made orally or in writing. A form for submission of a written complaint is posted on the BOCES website, and all covered persons are encouraged to use this complaint form. Persons who are reporting sexual harassment on behalf of another person should use the complaint form and note that it is being submitted on another person's behalf.

BOCES employees must comply with reporting requirements in any other applicable BOCES policy or document. Applicable policies or documents may include: Policy #3420 -- Non-Discrimination and Anti-Harassment in the BOCES; and Policy #3421 -- Title IX and Sex Discrimination.

Any person who believes they have been a target of sexual harassment may also seek assistance in other available forums, as explained in this policy.

Supervisory Responsibilities

All supervisors, building principals, and other administrators who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, are required to report such suspected sexual harassment to the CRCO. If the CRCO is unavailable, including due to a conflict of interest or other disqualifying reason, the report will be directed to another CRCO, if the BOCES has designated another individual to serve in that capacity. If the BOCES has not designated another CRCO, the District Superintendent will ensure that another person with the appropriate training and qualifications is appointed to act as the CRCO.

In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors, building principals, and other administrators will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.

Supervisors, building principals, and other administrators will also be subject to discipline for engaging in any retaliation.

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All complaints or information about sexual harassment will be investigated, whether that information was reported in oral or written form. Investigations will be conducted in a timely manner, and will be confidential to the extent possible.

An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, commenced immediately and completed as soon as possible. The investigation will be kept confidential to the extent possible. Disclosure may, however, be necessary to complete a thorough investigation of the charges and/or notify law enforcement officials. All persons involved, including complainants, witnesses, and alleged harassers will be accorded due process, as outlined below, and in accordance with any applicable collective bargaining agreements to protect their rights to a fair and impartial investigation.

The BOCES will not tolerate retaliation against anyone who files complaints, supports another's complaint, or participates in an investigation regarding a violation of this policy.

While the process will vary from case to case. Depending on the facts the following may be part of the BOCES response:

- a) Upon receipt of a complaint, the CRCO will conduct an immediate review of the allegations, and take any interim actions (e.g., instructing the respondent to refrain from communications with the complainant), as appropriate.

If the CRCO is unavailable, including due to a conflict of interest or other disqualifying reason, the report will be directed to another CRCO, if the BOCES has designated another individual to serve in that capacity. If the BOCES has not designated another CRCO, the District Superintendent will ensure that another person with the appropriate training and qualifications is appointed to act as the CRCO.
- b) All complaints of sexual harassment will be investigated regardless of the form in which those complaints are made.
- c) If documents, emails, or phone records are relevant to the investigation, take steps to obtain and preserve them.
- d) Request and review all relevant documents, including all electronic communications.
- e) Where appropriate, interview all parties involved, including any relevant witnesses. If a student is involved, the BOCES will follow all applicable BOCES policies and procedures regarding questioning students.

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- f) Create relevant written documentation of the investigation which may contain the following:
 - 1. A list of all documents reviewed, along with a detailed summary of relevant documents;
 - 2. A list of names of those interviewed, along with a detailed summary of their statements;
 - 3. A timeline of events;
 - 4. A summary of prior relevant incidents, reported or unreported; and
 - 5. The basis for the decision and final resolution of the complaint, together with any corrective action(s).
- g) Keep the written documentation and associated documents in a secure and confidential location.
- h) Promptly notify the individual who reported and the individual(s) about whom the complaint was made of the final determination and implement any corrective actions identified in the written document.
- i) Inform the individual who reported of the right to file a complaint or charge externally as outlined in this policy.

Additionally, other BOCES policies and documents address sexual harassment. These policies and documents may include: Policy #3420 -- Non-Discrimination and Anti-Harassment in the BOCES; and Policy #3421 -- Title IX and Sex Discrimination. All complaints will be handled in accordance with the applicable BOCES policies and/or documents.

The determination as to which BOCES policies and/or documents are applicable is fact specific, and the CRCO may work with other BOCES staff such as the BOCES' Title IX Coordinator(s) to determine which BOCES policies and/or documents are applicable to the specific facts of the complaint.

If an investigation reveals that sexual harassment has occurred, the BOCES will take immediate corrective action as warranted. This action will be taken in accordance with applicable law and regulation, as well as any applicable BOCES policy, regulation, procedure, collective bargaining agreement, third-party contract, or other document such as the BOCES' *Code of Conduct*.

Annual Training

The BOCES will provide a sexual harassment prevention training program to all employees on an annual basis. The training will be interactive and will include:

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- a) An explanation of sexual harassment consistent with guidance issued by the Department of Labor in consultation with the Division of Human Rights;
- b) Examples of conduct that would constitute unlawful sexual harassment;
- c) Information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment;
- d) Information concerning employees' rights of redress and all available forums for adjudicating complaints; and
- e) Information addressing conduct by supervisors and any additional responsibilities for such supervisors.

Notification

The BOCES will provide this policy to all employees in writing. The BOCES will post this policy prominently throughout the BOCES to the extent practicable.

At the time of hiring and at every annual sexual harassment prevention training program, the BOCES will provide each employee a notice containing this policy and the information presented at the BOCES' sexual harassment prevention training program.

This notice will be provided in English and in the language identified by the employee as his or her primary language, provided that the New York State Department of Labor Commissioner has published a template of the model materials in that language.

The notice will be delivered in writing, either in print or digitally. The notice will either link to or include, as an attachment or printed copy, the policy and training materials.

Title VII of the Civil Rights Act of 1964, 42 USC § 2000e et seq.
Title IX of the Education Amendments Act of 1972, 20 USC § 1681 et seq.
29 CFR § 1604.11(a)
34 CFR Subtitle B, Chapter I
Civil Service Law § 75-b
New York State Human Rights Law, Executive Law § 290 et seq.
Labor Law § 201-g

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NOTE: Refer also to Policies #3420 -- Non-Discrimination and Anti-Harassment in the BOCES
#3421 -- Title IX and Sex Discrimination
#6122 -- Employee Grievances
#7551 -- Sexual Harassment of Students