

SUBJECT: NON-DISCRIMINATION AND ANTI-HARASSMENT IN THE BOCES

The Board of Education affirms its commitment to non-discrimination and recognizes its responsibility to provide an environment that is free of harassment and intimidation as required by federal and state law. Harassment is a violation of law and stands in direct opposition to BOCES policy. Therefore, the Board prohibits and condemns all forms of discrimination and harassment in its employment and admission to programs and activities as applicable, on the basis of actual or perceived race, color, creed, religion, national origin, political affiliation, sex, gender, gender identity or the status of being transgender, sexual orientation, age, marital status, military status, veteran status, disability, use of a recognized guide dog, hearing dog or service dog, domestic violence victim status or other classifications protected under federal or state law by employees, BOCES volunteers, students, and non-employees such as contractors and vendors as well as any third parties who are participating in, observing, or otherwise engaging in activities subject to the supervision and control of the BOCES. Furthermore, the BOCES provides equal access to the Boy Scouts of America and other designated youth groups. The Board further contends that administration shall be responsible for maintaining compliance with Standards Governing Civil Rights in Vocational Education Programs.

The Board also prohibits harassment based on an individual's opposition to discrimination or participation in a related investigation or complaint proceeding under the anti-discrimination statutes. This policy of non-discrimination and anti-harassment will be enforced on BOCES premises and in BOCES buildings; and at all BOCES-sponsored events, programs and activities, including those that take place at locations off BOCES premises and in another state.

It is intended that this policy apply to the dealings between or among employees with employees; employees with students; and employees with vendors/contractors and others who do business with the BOCES, as well as BOCES volunteers, visitors, guests and other third parties regardless of immigration status. All of these persons are hereinafter referred to collectively as "the named group."

For purposes of this policy, harassment shall mean communication (verbal, written or graphic) and/or physical conduct based on an individual's actual or perceived race, color, creed, religion, national origin, political affiliation, sex, gender, gender identity or the status of being transgender, sexual orientation, age, marital status, military status, veteran status, disability, use of a recognized guide dog, hearing dog or service dog, domestic violence victim status or other classifications protected under federal or state law when:

- a) Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or access to education at the BOCES;
- b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;
- c) Such conduct has the purpose or effect of substantially or unreasonably interfering with an individual's work performance and/or creates an intimidating, hostile or offensive work environment;

With respect to sexual harassment, 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 employee who feels harassed should report the incident so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical acts of a sexual nature, such as:
 - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body;
 - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
 - 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;
 - Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping 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.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
 - Displaying 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.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
 - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
 - Sabotaging an individual's work;
 - Bullying, yelling, name-calling

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

Complaints by Employees

Any employee who believes that he/she has been subjected to unlawful discrimination or harassment shall report all incidents of such conduct to the BOCES designated Compliance Officer(s) through informal and/or formal complaint procedures developed by the BOCES. For formal complaints, the BOCES encourages employees to use the Complaint Form that is part of Administrative Regulation 5165, Complaints Concerning Discrimination or Harassment. In the event the Compliance Officer(s) is the alleged offender, the complainant shall report his/her complaint to the District Superintendent. All BOCES personnel shall have the opportunity to present their discrimination and/or harassment complaints free from interference, coercion, restraint, discrimination or reprisal.

Administration shall be responsible for establishing rules and regulations for the redress of complaints of discrimination and/or harassment through proper administrative channels. In addition, the administration shall be responsible for developing an appeals process, ensuring that employees have full understanding and access to these regulations and procedure, and providing prompt, thorough and equitable consideration and determination of employee complaints through BOCES established procedures.

The BOCES will act to promptly investigate all complaints, either verbal or written, formal or informal, of allegations of discrimination or harassment based on any of the characteristics described above; and will promptly take appropriate action to protect individuals from further discrimination or harassment. The BOCES will designate, at a minimum, two (2) Compliance Officers, one of each gender.

Investigation of Complaints

In order for the Board to enforce this policy, and to take corrective measures as may be necessary, it is essential that any employee, or other member of the above named group who believes he/she has been a victim of discrimination or harassment in the BOCES environment and/or at programs, activities and events under the control and supervision of the BOCES, as well as any individual who is aware of and/or who has knowledge of, or witnesses any possible occurrence of discrimination or harassment, immediately report such alleged discrimination or harassment; such report shall be directed to or forwarded to the BOCES designated Compliance Officer(s) through informal and/or formal complaint procedures as developed by the BOCES. Such complaints are recommended to be in writing, although verbal complaints of alleged discrimination or harassment will also be promptly investigated in accordance with the terms of this policy. In the event that the Compliance Officer is the alleged offender, the report will be directed to the next level of supervisory authority. Supervisors are required to report any complaints they receive, or any harassment they observe, to a Compliance Officer. In addition to being subject to discipline if they engaged in conduct prohibited by this policy themselves, supervisors will be subject to discipline for failing to report suspected harassment prohibited by this policy or to otherwise allow such harassment to continue.

Upon receipt of an informal/formal complaint (even an anonymous complaint), the BOCES will conduct a prompt, equitable and thorough investigation of the charges. However, even in the absence of an informal/formal complaint, if the BOCES has knowledge of any occurrence of discrimination or harassment, the BOCES will investigate such conduct promptly and thoroughly. To the extent possible, within legal constraints, all complaints will be treated as confidentially and privately as possible. However, disclosure may be necessary to complete a thorough investigation

of the charges and/or to notify law enforcement officials as warranted, and any disclosure will be provided on a "need to know" basis. The District Superintendent will inform the Board of Education of investigations involving findings of discrimination or harassment.

Based upon the results of this investigation, if the BOCES determines that an employee has violated the terms of this policy and/or accompanying regulations, immediate corrective action will be taken as warranted. Appropriate disciplinary measures also will be applied, up to and including termination of the offender's employment, in accordance with legal guidelines, Education Law, BOCES policy and regulation, and the applicable collective bargaining agreement(s). Third parties (such as BOCES volunteers, vendors, etc.) who are found to have violated this policy and/or accompanying regulations and/or the Code of Conduct, will be subject to appropriate sanctions as warranted and in compliance with law. The application of such disciplinary measures by the BOCES does not preclude the filing of civil and/or criminal charges as may be warranted.

Prohibition of Retaliatory Behavior (Commonly Known as "Whistle-Blower" Protection)

The Board prohibits any retaliatory behavior directed against complainants, victims, witnesses, and/or any other individuals who participated in the investigation of a complaint of discrimination or harassment. Follow-up inquiries shall be made to ensure that discrimination or

harassment has not resumed and that all those involved in the investigation of the discrimination or harassment complaint have not suffered retaliation. The BOCES will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected harassment prohibited by this policy. Any person who believes he or she has been subject to such retaliation should inform a Compliance Officer immediately. Any person who believes he or she may have been a victim of such retaliation may also seek compensation in other available forums, as explained below in the section on Legal Protections.

Finding That Harassment Did Not Occur

At any level/stage of investigation of alleged discrimination or harassment, if a determination is made that discrimination or harassment did not occur, the Compliance Officer(s) will so notify the complainant, the alleged offender and the District Superintendent of this determination. Such a finding does not preclude the complainant from filing an appeal pursuant to BOCES policy or regulation and/or pursuing other legal avenues of recourse.

However, even if a determination is made that discrimination or harassment did not occur, the District Superintendent/designee reserves the right to initiate staff awareness and training, as applicable, to help ensure that the BOCES community is not conducive to fostering discrimination or harassment in the workplace.

Knowingly Making False Accusations

Employees who *knowingly* make false accusations against another individual as to allegations of discrimination or harassment may also face appropriate disciplinary action.

Privacy Rights

As part of any investigation, the BOCES has the right to search all BOCES property and equipment including BOCES computers. Rooms, desks, cabinets, lockers, computers, etc. are provided by the BOCES for the use of staff and students, but the users do not have exclusive use of these locations or equipment and should not expect that materials stored therein will be private.

Civil Rights Compliance Officer (Title IX/Section 504/ADA Compliance Officer)

The Civil Rights Compliance Officers are the Executive Director for Educational and Support Programs and the Chief Financial Officer designated by the Board. BOCES prominently displays the name(s) of compliance officer(s) and contact information on appropriate materials and on the BOCES website. The Board shall ensure compliance with Title IX of the Educational Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and The Americans with Disabilities (ADA). The District Superintendent shall designate Civil Rights Compliance Officers as the Title IX/Section 504/ADA Coordinators and shall implement regulations and procedures to resolve complaints of discrimination or harassment based on sex or disability. The Civil Rights Compliance Officers shall be responsible for providing information, including complaint procedures, and for handling complaints relative to civil rights (e.g., Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990) for any student, parent, employee or employment applicant.

Prior to the beginning of each school year, the BOCES shall issue an appropriate public announcement which advises students, parents/guardian, employees and the general public of the BOCES established procedures for resolving complaints of discrimination or harassment policy based on sex or disability. Included in such announcement will be the name(s), address(es) and telephone number(s) of the Civil Rights Compliance Officer(s).

The Civil Rights Compliance Officers shall also be responsible for handling complaints regarding discrimination or harassment based on race, color, creed, religion, national origin, political affiliation, gender, gender identity or the status of being transgender, sexual orientation, age, military status, veteran status, marital status, predisposing genetic characteristics, use of a recognized guide dog, hearing dog or service dog, domestic violence victim status, or access to facilities by the Boy Scouts of America or other youth group, or other classifications protected under federal and state law.

Complaints may also be filed with the New York State Division of Human Rights and the Federal Office for Civil Rights. Each agency has its own procedures and deadlines for filing complaints.

Development and Dissemination of Administrative Regulations

Regulations will be developed for reporting, investigating, and remedying allegations of discrimination or harassment based on the characteristics described above. An appeal procedure will also be provided to address any unresolved complaints and/or unsatisfactory prior determinations by the applicable Compliance Officer(s). Such regulations will be developed in accordance with federal and state law.

BOCES established procedures for resolving complaints regarding discrimination or harassment covered under this policy, specifically, Administrative Regulation 5165, shall be disseminated to adequately inform employees of the existence of such procedures.

The District Superintendent/designee(s) will affirmatively discuss the topic of discrimination and harassment with all employees and express the BOCES condemnation of such conduct, and explain the sanctions for such discrimination or harassment. Appropriate training and/or "awareness" programs will be established for staff and students to help ensure knowledge of and familiarity with the issues pertaining to discrimination or harassment in the BOCES, and to disseminate preventative measures to help reduce such incidents of prohibited conduct. Furthermore, special training will be provided for designated supervisors and managerial employees, as may be necessary, for the investigation of discrimination or harassment complaints.

A copy of this policy (5165) and its accompanying regulations (AR5165) will be available upon request and may be posted at various locations in each BOCES building. The BOCES policy and regulations on non-discrimination and anti-harassment will be published in appropriate BOCES publications such as teacher/employee handbooks and/or BOCES calendars.

This policy should not be read to abrogate other BOCES policies and/or regulations or the BOCES Code of Conduct prohibiting other forms of unlawful discrimination or harassment, inappropriate behavior, and/or hate crimes within this BOCES. It is the intent of the BOCES that all such policies and/or regulations be read consistently to provide the highest level of protection from unlawful discrimination or harassment in the provision of employment/educational services

and opportunities. However, different treatment of any member of the above named group which has a legitimate, legal and nondiscriminatory reason shall not be considered a violation of BOCES

Public Notification

The BOCES shall issue an appropriate public announcement which advises students, parents, employees and the general public that all employment and educational opportunities, including those in Career and Technical Education, will be offered without regard to actual or perceived race, color, creed, religion, national origin, political affiliation, sex, gender, gender identity or the status of being transgender, sexual orientation, age, marital status, military status, veteran status, disability, use of a recognized guide dog, hearing dog or service dog, domestic violence victim status or other classifications protected under federal or state law. Included in such announcement will be the name, address, and telephone number of the person(s) designated to coordinate Title IX/Section 504 activities.

Legal Protections and External Remedies

Aside from the internal processes at the BOCES, employees may also choose to pursue legal remedies for unlawful discrimination and harassment with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, an employee may seek the legal advice of an attorney. In addition to those outlined below, employees in certain industries may have additional legal protections.

New York State Human Rights Law

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to form of harassment, including sexual harassment, and protects employees, paid or unpaid interns and non-employees regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the New York State Division of Human Right (“DHR”) or in New York State Supreme Court. Complaints with DHR may be filed any time within one year of the harassment. If an individual did not file at DHR, he or she can sue directly in state court under the HRL, within three years of the alleged discrimination. An individual may not file with DHR if they have already filed a HRL complaint in state court. Complaining internally to the BOCES does not extend the time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment.

An employee does not need an attorney to file a complaint with DHR, and there is no cost to file with DHR. DHR will investigate a complaint and determine whether there is probable cause to believe that discrimination has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination is found after a hearing, DHR has the power

to award relief, which varies but may include requiring the BOCES to take action to stop the harassment, or redress the damage caused, including paying monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, You may call (718) 741-8400 or visit www.dhr.ny.gov. You may contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

Civil Rights Act of 1984

The United States Equal Employment Opportunity Commission ("EEOC") enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court. The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination" with the EEOC. The EEOC has district, area, and field offices where complaints can be filed. An employee can contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

If an individual files an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists.

Local Police Departments

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. In those cases an employee should contact the local police department.

References:

Age Discrimination in Employment Act of 1975, 29 United States Code (USC) Section 621

Americans With Disabilities Act of 1990, 42 United States Code (USC) Section 12101 et seq.

Prohibits discrimination on the basis of disability.

Section 504 of the Rehabilitation Act of 1973, 29 United States Code (USC) Section 794 et seq.

Prohibits discrimination on the basis of disability.

Title VI of the Civil Rights Act of 1964, 42 United States Code (USC) Section 2000d et seq.

Prohibits discrimination on the basis of race, color or national origin.

Title VII of the Civil Rights Act of 1964, 42 United States Code (USC) Section 2000e et seq.

Prohibits discrimination on the basis of race, color, religion, sex or national origin.

Title IX of the Education Amendments of 1972, 20 United States Code (USC) Section 1681 et seq.

Prohibits discrimination on the basis of sex.

Equal Employment Opportunity Commission Policy Guidance

Boy Scouts of America Equal Access Act

New York State Human Rights Law

Civil Rights Law Section 40-c

Prohibits discrimination on the basis of race, creed, color, national origin, sex, sexual orientation, marital status or disability.

Civil Service Law Section 75-B

Education Law Section 2801(1)

Executive Law Section 290 et seq.

Prohibits discrimination on the basis of age, race, creed, color, national origin, sex, sexual orientation, disability, military status, marital status, use of a recognized guide dog, hearing dog or service dog, or domestic violence victim status.

Military Law Sections 242 and 243

Education Law Sections 2045(2) and 4601

Commissioner's Regulations Sections 100.2(h) and 141 et seq.

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