Monroe 2-Orleans BOCES Policy
Series 5000 – Personnel
Policy #5121 – SEXUAL HARASSMENT AND NON-DISCRIMINATION OF BOCES PERSONNEL

Overview

BOCES is committed to maintaining a workplace free from both harassment and discrimination. Sexual harassment is a form of workplace discrimination that subjects an employee to inferior conditions of employment due to their gender, gender identity, gender expression (perceived or actual), transgender, and/or sexual orientation. New York State Human Rights Law also prohibits discrimination based on other protected classes such as sex, age, race, creed, color, national origin, military status, disability, pre-disposing genetic characteristics, familial status, marital status, prior criminal history, hairstyle, ~~or~~ status as a victim of domestic violence and hair styles. This policy is focused on sexual harassment and gender discrimination, however, the methods for reporting and investigating alleged discrimination for other protected classes are the same. All employees are required to work in a manner designed to prevent sexual harassment and discrimination in the workplace. This policy is one component of BOCES commitment to a discrimination-free work environment.

This policy applies to all employees, applicants for employment, and interns (whether paid or unpaid). Anyone who is employed by a contractor, vendor, subcontractor or consultant; volunteers; parents/legal guardians, or anyone providing services in BOCES setting and/or environment. These individuals include persons commonly referred to as independent contractors, gig workers, and/or temporary workers. The term "covered individual" will be used to refer to these individuals collectively who are not direct employees of BOCES. This policy must be provided to all employees in person or digitally through email upon hiring and will be posted prominently on the internal portal.

Sexual Harassment Definition

Sexual harassment is a form of gender-based discrimination that is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis or perceived basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender. Sexual harassment is not limited to sexual contact, touching, or expressions of a sexually suggestive nature. Sexual harassment includes all forms of gender discrimination including gender role stereotyping and treating employees differently because of their gender or perceived gender.

The gender spectrum is nuanced, but the three most common ways people identify are cisgender, transgender, and non-binary. A cisgender person is someone whose gender aligns with the sex they were assigned at birth. Generally, this gender will align with the sex assigned at birth as a male or female. A transgender person is someone whose gender is different than the sex they were assigned at birth. A non-binary person does not identify exclusively as a man or a woman. They might identify as both, somewhere in between, or completely outside the gender binary. Some non-binary persons may identify as transgender, but not all do.

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Sexual harassment in New York State is prohibited when the behavior subjects an individual to inferior terms, conditions, or privileges of employment. Harassment needs to be severe or pervasive to be prohibited under Federal law. The Human Rights Law specifies that whether harassing conduct is considered petty or trivial is to be viewed from the standpoint of a reasonable victim of harassment/discrimination with the same protected characteristics. Generally, any behavior in which an employee or covered individual is treated worse because of their gender (perceived or actual), sexual orientation, gender identity or in any other protected class, or gender expression is considered a violation of BOCES policy. The intent of the behavior, for example, making a joke, does not neutralize a harassment claim. Not intending to harass is not a defense. The impact of the behavior on a person is what counts. Sexual harassment includes any unwelcome conduct which is either directed at an individual because of that individual's gender, gender identity or expression (perceived or actual), sexual orientation, or is of a sexual nature when:

1. The purpose or effect of this behavior unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment. The impacted person does not need to be the intended target of the sexual harassment;

2. Employment depends explicitly or implicitly on accepting such unwelcome behavior; or

3. Decisions regarding an individual's employment are based on an individual's acceptance to or rejection of such behavior. Such decisions can include what shifts and how many hours of comp time an employee might work, project assignments; summer work.

There are two main types of sexual harassment:

1. <u>HWE</u>
   Behaviors that contribute to a hostile work environment include, but are not limited to, words, signs, jokes, slurs, pranks, intimidation, touch which is of a sexual nature, or which are directed at an individual because of that individual's sex, sexual orientation, gender identity, or gender expression. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit, derogatory, or discriminatory statements that interfere~~s~~ with the employee's job performance.

2. <u>QUID PRO QUO</u>
   Sexual harassment 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.

<u>Examples of Sexual Harassment</u>

This list is just a sample of prohibited behaviors and should not be considered exhaustive. Any employee who believes they have experienced sexual harassment, even if it does not appear on this list, should feel encouraged to report the behavior, noting a single occurrence can make

out a claim of sexual harassment. All of these examples can occur during the workday or while working remotely or while on other virtual platforms.

- 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; or
    - Rape, sexual battery, molestation or attempts to commit these assaults, which may be considered criminal conduct outside the scope of this policy (please contact local law enforcement to pursue criminal charges).

- Unwanted sexual advances, or propositions, such as:
    - Requests for sexual favors accompanied by implied or overt threats concerning the victim's job performance evaluation, a promotion or other job benefits;
    - Subtle or obvious pressure for unwelcome sexual activities; or
    - Repeated requests for dates or romantic gestures, including gift-giving.

- Sexually oriented gestures, noises, remarks or jokes, or questions and comments about a person's sexuality, sexual experience, or romantic history.

- Sex stereotyping, which occurs when someone's conduct or personality traits are judged based on other people's ideas or perceptions about how individuals of a particular sex should act or look:
    - Remarks regarding an employee's gender expression, such as wearing a garment typically associated with a different gender identity; or
    - Asking employees to take on traditionally gendered roles, such as asking a woman to serve meeting refreshments when it is not part of, or appropriate to, her job duties;
    - Dress code placing emphasis on women's dress;
    - Creating different expectations based on perceived identities;
    - Bullying, yell, name call;
    - Sabotage work;
    - Damage workstation or equipment;
    - Exclude parents from meetings.

- Sexual 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;
    - This also extends to the virtual or remote workspace and can include having such materials visible in the background of one's home during a virtual meeting;

- Actions taken against an individual because of that individual's sex, sexual orientation, gender identity, or gender expression.

Who Can be a Victim of Sexual Harassment?

Sexual harassment can occur between any individuals, regardless of their sex or gender. Harassment does not have to be between members of the opposite sex or gender. New York Law protects employees and all covered individuals described earlier in the policy. Harassers can be anyone in the workplace. A supervisor, a supervisee, or a coworker can all be harassers. Anyone else in the workplace can also be harassers, including an independent contractor, contract worker, vendor, client, customer, visitor, parent/legal guardian, or volunteer, patient, constituent, or visitor.

Sexual harassment does not happen in a vacuum and discrimination experienced by an employee can be impacted by biases and identities beyond an individual's gender. For example:

- Placing different demands or expectations on black employees than white employees can be both racial and gender discrimination;
- An individual's immigration status may lead to perceptions of vulnerability and increased concerns around illegal retaliation for reporting sexual harassment; or
- Past experiences as a survivor of domestic or sexual violence may lead an individual to feel re-traumatized by someone's behaviors in the workplace.

Individuals bring personal history with them to the workplace that might impact how they interact with certain behavior. It is especially important for all employees to be aware of how words or actions might impact someone with a different experience than their own in the interest of creating a safe and equitable workplace.

Where Can Sexual Harassment Occur?

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

Retaliation

Retaliation is unlawful and is any action by BOCES that punishes an employee or covered individual upon learning of a harassment claim, that seeks to discourage an employee or covered individual from making a formal complaint or supporting a sexual harassment or discrimination claim, or that punishes those who have come forward. These actions need not be job-related or occur in the workplace to constitute unlawful retaliation. For example, threats of physical violence outside of work hours or disparaging someone on social media would be covered as retaliation.

Examples of retaliation may include, but are not limited to:

- Demotion, termination, denying accommodations, reduced hours, or the assignment of less desirable hours;
- Publicly releasing personnel files;
- Refusing to provide a reference or providing an unwarranted negative reference;
- Labeling an employee as "difficult" and excluding them from projects to avoid "drama";
- Undermining an individual's immigration status; or
- Reducing work responsibilities, passing over for a promotion, or moving an individual's desk to a less desirable office location.

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" as follows:

1. Made a complaint of sexual harassment or discrimination, either internally or with any government agency;
2. Testified or assisted in a proceeding involving sexual harassment or discrimination under the Human Rights Law or other anti-discrimination law;
3. Making a verbal or informal complaint or by simply informing a supervisor or manager or administrator of suspected harassment;
4. Reported that another employee has been sexually harassed or discriminated against; or
5. Encouraged a fellow employee to report harassment.

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 employee or covered individual had a good faith belief that the practices were sexual harassment. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment. Any BOCES employee who engages in retaliation could be subject to discipline in accordance with law and collective bargaining agreements.

Reporting Sexual Harassment

Any employee or covered individual is encouraged to report harassing or discriminatory behavior to a supervisor, administrator, manager, or to the BOCES Civil Rights Compliance Officer. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager, administrator or the BOCES Civil Rights Compliance Officer.

Reports of sexual harassment may be made verbally or in writing. A written complaint form is attached to this policy if an employee or covered individual would like to use it, but the complaint form is not required. Employees who are reporting sexual harassment on behalf of other employees may use the complaint form and should note that it is on another employee's behalf. A verbal or

otherwise written complaint (such as an email) on behalf of oneself or another employee is also acceptable.

Employees and covered individuals who believe they have been a victim of sexual harassment may at any time seek assistance in additional available forums, as explained below in the section on Legal Protections.

Supervisory Responsibilities

Supervisors, administrators, and managers have a responsibility to prevent sexual harassment and discrimination. All supervisors, administrators, and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing or discriminatory behavior, or for any reason suspect that sexual harassment or discrimination is occurring, are required to report such suspected sexual harassment to the Civil Rights Compliance Officer and should not be passive and wait for an employee to make a claim of harassment.

While supervisors, managers, and administrators have a responsibility to report harassment and discrimination, supervisors, managers, and administrators must be mindful of the impact that harassment and a subsequent investigation has on victims. Being identified as a possible victim of harassment and questioned about harassment and discrimination can be intimidating, uncomfortable and re-traumatizing for individuals. Supervisors, managers, and administrators must accommodate the needs of individuals who have experienced harassment to ensure the workplace is safe, supportive, and free from retaliation for them during and after any investigation.

Bystander Intervention

Any employee witnessing harassment as a bystander is encouraged to report the behavior. A supervisor, manager, or administrator that is a bystander to harassment is required to report the behavior. There are five standard methods of bystander intervention that can be used when anyone witnesses harassment or discrimination.

1. Interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior;
2. Ask a third party to help intervene in the harassment;
3. Record or take notes on the harassment incident to benefit a future investigation;
4. Check in with the person who has been harassed after the incident, see how they are feeling and let them know the behavior was not ok; and
5. Confront the harassers and name the behavior as inappropriate provided it is safe. When confronting harassment, physically assaulting the harasser is never an appropriate response.

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Complaint and Investigation of Sexual Harassment

All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough. The investigation will be kept confidential to the extent possible. All individuals involved, including those making a harassment complaint, witnesses and alleged harassers ~~deserve~~ will receive a fair and impartial investigation.

Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment.

BOCES recognizes that participating in a harassment investigation can be uncomfortable and has the potential to retraumatize an employee. As a result, the Civil Rights Compliance Officer will handle complaints and questions with sensitivity toward those participating.

Upon receipt of a complaint, the Civil Rights Compliance Officer will:

1. Acknowledge receipt of the complaint, ~~Will~~ conduct a prompt review of the allegations, assess the appropriate scope of the investigation, and take any interim actions (for example, instructing the alleged harasser to refrain from communications with the individual(s) who reported the harassment), as appropriate. The length of the investigation will depend on the complexity and particular circumstances of the complaint. If complaint is verbal, request that the victim completes the complaint form in writing. If the victim reporting prefers not to fill out the form, the Civil Rights Compliance Officer will prepare a complaint form or equivalent documentation based on the verbal reporting;

2. Seek to interview all parties involved, including any relevant witnesses;

3. Create written documentation of the investigation (such as a letter, memo or email), which contains the following:
    a. A list of all documents reviewed, along with a detailed summary of relevant documents;
    b. A list of names of those interviewed, along with a detailed summary of their statements;
    c. A timeline of events;
    d. A summary of prior relevant incidents disclosed in the investigation, reported or unreported; and
    e. The basis for the decision and final resolution of the complaint, together with any corrective action(s).

4. Keep the written documentation and associated documents in a secure and confidential location and be retained no less than three (3) years;

5. Promptly notify the victim and harasser that the investigation has been completed

6. Implement any corrective actions identified in the written document; and

7. Inform the victim who reported of the right to file a complaint or charge externally as outlined in the next section.

8. An investigation will vary from case to case but typically includes: steps to obtain, review, and preserve documents sufficient to assess the allegations, including documents, emails, videos, witness accounts, or phone records that may be relevant to the investigation. The Civil Rights Compliance Officer will consider and implement appropriate document request, review, and preservation measures, including for electronic communications;

Discipline for BOCES Employees

Punitive measures are not the exclusive means to remediate found prohibited discrimination. An individual found to have engaged in prohibited discrimination may receive education, training, warnings, counseling memos, reprimand, or termination. Disciplinary measures will be in accordance with law and the collective bargaining agreement.

Discipline/Penalties for Non-BOCES Employees

Covered individuals, who have been found to engage in prohibited conduct will be subject to appropriate sanctions up to and including loss of BOCES business or barred from BOCES premises (whether leased or owned). Volunteers who are found to have engaged in prohibited activity may face loss of volunteer status and be barred from BOCES premises (whether owned or leased). The application of such disciplinary measures by the BOCES does not preclude the appropriate filing of civil and/or criminal charges as may be warranted.

Knowingly False Accusations

Employees who knowingly make false accusations as to allegations of sexual harassment may ~~also~~ face appropriate disciplinary action in accordance with law and the collective bargaining agreement.

Legal Protections and External Remedies

The internal process outlined in this policy above is one way for employees to report sexual harassment. Employees and covered individuals may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental entity, employees may seek the legal advice of an attorney.

1. New York State Division of Human Rights

The New York State Human Rights Law (HRL), N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State and protects employees and covered individuals, 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 Rights (DHR) or in New York State Supreme Court.

Complaints of sexual harassment filed with DHR may be submitted any time **within three (3) years** of the harassment. If an individual did not file a complaint with DHR, they can bring a lawsuit directly in state court under the HRL, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to BOCES does not extend your time to file with DHR or in court. The three years are counted from the date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate the complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases receive a public hearing before an administrative law judge. If sexual harassment is found at the hearing, DHR has the power to award relief. Relief varies but it may include requiring the employer to take action to stop the harassment, or repair the damage caused by the harassment, including paying of monetary damages, punitive 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.

Go to dhr.ny.gov/complaint for more information about filing a complaint with DHR. The website has a digital complaint process that can be completed on a computer or mobile device from start to finish. The website has a complaint form that can be downloaded, filled out, and mailed to DHR as well as a form that can be submitted online. The website also contains contact information for DHR's regional offices across New York State and outlines the process.

Call the DHR sexual harassment hotline at **1(800) HARASS3** for more information about filing a sexual harassment complaint. This hotline can also provide you with a referral to a volunteer attorney experienced in sexual harassment matters who can provide you with limited free assistance and counsel over the phone.

2. United States Equal Employment Opportunity Commission:

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act, 42 U.S.C. § 2000e et seq. An individual can file a complaint with the EEOC anytime within 300 days from the most

recent incident of 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.

An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. 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 filed 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. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights.

Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Those wishing to pursue criminal charges are encouraged to contact their local police department.

NYS Labor Law § 201-g
42 United States Code (U.S.C.) § 2000e et seq.
NYS Executive Law §§ 296 and 297

Refer also to Policy 6463 – Title IX and Sex Discrimination

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Monroe 2-Orleans BOCES
EMPLOYEE SEXUAL HARASSMENT COMPLAINT AND DISCRIMINATION FORM
(To be submitted to Civil Rights Compliance Officer in Human Resources Department)

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form to report alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment or gender discrimination, you are encouraged, but not required, to complete this form and submit it to the Civil Rights Compliance Officer. No employee will be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, your employer should complete this form, provide you with a copy, and follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

This form can also be used for any other discrimination or harassment in a protected class.

For additional resources, visit: ny.gov/programs/combating-sexual-harassment-workplace

A. COMPLAINANT (EMPLOYEE) INFORMATION

Name:_____

Work Address/Building:_____ Work Phone:_____

Program/Department:_____

Job Title:_____ BOCES Email:_____

Select Preferred Communication Method (check up to two methods):☐Email ☐Phone ☐In Person ☐Text

SUPERVISORY INFORMATION

Immediate Supervisor's Name:_____

Title:_____

Work Phone:_____ Work Address/Building:_____

B. COMPLAINT INFORMATION

1. Your complaint of sexual harassment or harassment is made about:

   Name:_____ Title:_____

   Work Address/Building:_____ Work Phone:_____

   Relationship to you (check one): ☐Supervisor ☐Subordinate ☐ Co-Worker☐ Other (please specify): _____.

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2. Please describe what happened and include as many details as possible and indicate if sexual harassment or harassment is ongoing. You may ~~use~~ attach additional sheets of paper if necessary. If you have any relevant documents, text messages, email, photographs, etc., please include the documents.

3. Date(s) sexual harassment or discrimination occurred:

4. If possible, please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

5. Have you previously provided information (verbal or written) about these incidents? If yes, when and to whom did you provide information? (This is optional but may help the investigation).

Please provide contact information if you retained an attorney and would like us to work with the attorney.

Employee Signature:_____ Date:_____

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