

Monroe 2-Orleans BOCES Regulation**Series 5000 —Personnel****Regulation #5121R – SEXUAL HARASSMENT OF BOCES PERSONNEL**

The Board is committed to creating and maintaining a working and learning environment which is free of discrimination and intimidation. Based upon the principle that every employee is entitled to be treated with dignity and respect, and recognition that sexual harassment and sexual violence is a violation of law and BOCES policy, the Board strictly prohibits conduct which constitutes sexual harassment in any form. Anyone who is in violation of BOCES policy and/or regulation will be subject to sanctions and/or disciplinary action, up to and including termination, in accordance with law and/or applicable collective bargaining agreements.

Any retaliation against a person for filing a harassment charge or making a harassment complaint is prohibited; and any employee who complains about harassment or participates in investigations of such complaints will be protected against retaliation. Employees found to be retaliating against another employee shall be subject to disciplinary action, up to and including termination, in accordance with legal guidelines and contractual mandates.

The Board strictly prohibits all forms of sexual harassment and sexual violence on BOCES grounds and at all BOCES-sponsored programs, activities and events including those which take place off BOCES premises.

Definitions/Examples of Prohibited Conduct

Sexual harassment consists of unwanted and unwelcome sexual or gender-based behavior including but not limited to overt or implicit bribes, requests for sexual favors, and other verbal and/or physical conduct of a sexual nature or that is based on sexual/gender stereotypes which interferes with an individual's ability to work; professional performance; productivity; physical security; or career opportunities, services or other benefits of employment.

Sexual harassment does not depend on the "voluntary" nature of the behavior or activity, but instead focuses on whether the alleged advances or behavior were unwelcome.

Sexual harassment can originate from a person of either sex against a person of the opposite or same sex, and from supervisors, co-workers and third parties such as visitors and BOCES volunteers. Prohibited conduct can be verbal, non-verbal, or physical (the latter may qualify as criminal sexual assault). Examples of such conduct include, but are not limited to, the following:

- Verbal abuse or ridicule, including innuendoes, stories and jokes, which are of a sexual nature and/or gender-related. This might include inappropriate sex-oriented comments on appearance, including dress or physical features.
- Direct or indirect threats or bribes for unwanted sexual activity.
- Asking or commenting about a person's sexual activities.

Unwelcome and unwanted physical contact of a sexual nature including, but not limited to, physical acts such as assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement.

Displaying or distributing pornographic or other sexually explicit materials such as magazines, pictures, internet material, cartoons, etc.

The use of profanity and/or other obscenities that are sexually suggestive or degrading in nature.

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Demanding sexual favors of an employee, insinuating that refusal to acquiesce in such favors will adversely affect an employee's evaluation, wages, advancement, assignment of duties or shifts, or any other condition of employment, benefits or career development.

Unwelcome staring, leering, or gesturing which is sexually suggestive in nature.

Any other unwelcome and unwanted sexually oriented and/or gender-based behavior which is sexually demeaning, belittling, intimidating, or perpetrates sexual stereotypes and attitudes.

Behavior that is sexual violence shall be considered unwelcome and unwanted if the employee did not initiate, request or invite such conduct and the employee who is subjected to the behavior regarded such conduct as undesirable or offensive.

Authority and Responsibility

It is the responsibility of all BOCES employees to ensure that their behavior and environment are maintained free of sexual harassment. Furthermore, each administrator and supervisor has the responsibility to maintain a non-threatening environment which includes discussing the BOCES' policy and regulation pertaining to sexual harassment with all employees, and assuring employees that they are not required to endure insulting, degrading or exploitative sexual treatment.

All complaints of sexual harassment, whether written or verbal, formal or informal, will be thoroughly investigated to determine whether the totality of the alleged behavior and circumstances may constitute sexual harassment. It is recommended that any employee, who believes he/she has been subjected to sexual harassment, or has reason to know of and/or witnesses any incident of sexual harassment, submits a written complaint; however, the absence of a written complaint does not negate the BOCES' responsibility to investigate such allegations as thoroughly as possible. School officials are required to provide a written report of investigation findings and any action taken to resolve the complaint within time frames as established by the BOCES.

Any employee, who believes he or she has been subjected to sexual harassment, or has knowledge of and/or witnesses any incident of sexual harassment or sexual violence, should promptly report such conduct to the designated complaint officer or designee. If the employee is in doubt as to the "seriousness" of the incident and/or whether such behavior constitutes sexual harassment, the employee is still encouraged to immediately report such conduct for resolution. If the complaint officer or designee is the alleged offender, the report shall be made to the next level of supervisory authority as indicated below. Allegations of sexual harassment may be reported through informal and/or formal complaint procedures; and utilization of the BOCES' grievance guidelines does not preclude the employee from pursuing other avenues of legal recourse including the right to register complaints with the federal Equal Employment Opportunity Commission and the New York State Department of Human Rights. These regulations are further not to be construed as to limit the right of any employee to file a lawsuit in either federal or state court.

Complaints of harassment will be investigated thoroughly, promptly and impartially in accordance with applicable law and regulations as well as any applicable collective bargaining agreement(s).

Members of the certified staff will submit complaints or reports of sexual harassment to the building principal/program supervisor. Members of the classified staff will submit such complaints to their

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immediate supervisor. If the principal/program administrator or supervisor are implicated in the allegations, complaints should be submitted to the next level of supervisory authority. If there is some reason why an employee cannot make a report to the designated complaint officer or designee, the employee may report the matter to any other administrator or supervisor as appropriate. The principal/program administrator who is made aware of the occurrence of possible sexual harassment, whether or not a complaint has been filed, is required to promptly report the incident(s) to the District Superintendent and/or designated complaint officer or designee as appropriate.

The District Superintendent is to be informed as soon as possible regarding all complaints and/or reports regarding sexual harassment, and the status of any investigations.

Reporting of Complaints by Employees - General Guidelines

Any employee who believes that he or she has been subjected to sexual harassment or who is made aware of and/or witnesses any possible occurrence of sexual harassment should report such complaint as soon as possible after the alleged incident occurs in order to help BOCES effectively and promptly investigate and resolve the complaint. In order to assist in the investigation, victims and/or witnesses should document the harassment as soon as it occurs, providing as much detail as possible including, but not limited to, the following:

- The name, address and telephone number of the complainant.
- The name and/or description of the alleged offender or offenders.
- The specific nature of the alleged harassment including the complainant's explanation of why he/she believes it to be harassment.
- A thorough and detailed account of the actions and/or dialogue which occurred between the alleged harasser(s) and the complainant. This account should include the frequency of the conduct, the date, time, location of the incident, and the complainant's actions and responses during the incident(s).
- The names of witnesses or of persons who have knowledge of the incident, including the names of persons with whom the complainant discussed the incident, and the time and date of this discussion.
- Written material, documents, or other evidence related to the incident.

In investigating the complaint, the designated complaint officer or designee will meet separately with the complainant and the alleged harasser, and will follow applicable law and regulations as well as any applicable collective bargaining agreement(s).

All parties will be assured that complaints and discussions will remain as confidential as possible, and will be disclosed only on a "need to know" basis in order to effectively investigate the complaint and/or as mandated by law or court order. However, a written record of the investigation and any action taken will be established.

The complainant, the alleged harasser(s) and any witnesses will be directed to refrain from communicating about the investigation while it is pending and thereafter.

The designated complaint official or a designee will begin investigating the allegations of sexual harassment within three (3) working days following receipt of the complaint; and will report the findings of the investigation to the District Superintendent no later than twenty (20) working days

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following receipt of the complaint. In the case of extenuating circumstances, the complaint officer or designee will file a status report with the District Superintendent/designee if it becomes necessary to extend the timeline for investigation and completion of the investigation.

During the course of the investigation and thereafter, the complaint officer or designee will instruct the alleged harasser(s) to have no contact or communication regarding the complaint with the victim and/or any witnesses; and that retaliation, whether direct or indirect, against the victim and/or witnesses is prohibited and may be subject to disciplinary action. Similarly, the complaint officer or designee will instruct the victim and/or witnesses to refrain from contacting or communicating with the alleged harasser(s) regarding the complaint. The complaint officer or designee will ask the victim what specific action the victim wants taken by BOCES in order to satisfactorily resolve the complaint.

If the complainant attempts to withdraw a complaint, the complaint officer or designee will determine that the withdrawal is not caused by retaliation and then document the complainant's reasons and ask the complainant to sign the documentation. The complaint officer or designee may choose to move forward regardless of a request for withdrawal.

A copy of all written material pertaining to the case/investigation will be retained in a separate confidential file in the personnel office. Such records will be maintained permanently.

Step 1–Informal Complaints

An employee who believes that he/she has been subjected to sexual harassment or sexual violence or anyone who has knowledge of or witnesses an occurrence of sexual harassment may file an informal complaint, whether verbal or written, by requesting a meeting between himself/herself and the complaint officer or designee in order to discuss the allegations and further appropriate actions, if any. The complaint officer or designee will next discuss the complaint with the alleged offender; if the alleged offender is a BOCES employee, the investigation will be in accordance with any applicable collective bargaining agreement. All complaints, whether formal or informal, concerning allegations of sexual harassment are to be reported immediately to the District Superintendent for his/her information; and the complaint officer or designee will keep the District Superintendent informed throughout all stages of the investigation. The District Superintendent will be kept informed of the complainant's and/or accused's response and recommended course of action, if any.

If the initial investigation results in a finding that sexual harassment/sexual violence did occur, the complaint officer or designee will notify the District Superintendent of his/her recommendations. If the District Superintendent concurs with the report of the complaint officer or designee, the District Superintendent will then take prompt disciplinary action in accordance with the terms of BOCES policy and regulations, federal and state law, and/or the applicable collective bargaining agreement. The complaint officer or designee will notify the complainant and the accused, in person and in writing, as to the finding and/or course of action within twenty (20) working days following receipt of the complaint.

If the complainant is satisfied with the report of the complaint officer or designee, the complainant will so indicate in writing. If not satisfied with the complaint officer's or designee's report, the complainant and/or the accused may proceed to file a formal complaint.

Informal complaint procedures will generally take place at the building level and involve resolution

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steps short of a comprehensive investigation and/or formal hearing. For example, in attempting to resolve a complaint informally, the complaint officer or designee may interview the alleged harasser(s), inform the alleged harasser(s) of the complaint, question the harasser(s) about the alleged incidents, and review the BOCES' policy and regulations regarding sexual harassment. The complaint officer or designee will inform the alleged harasser(s) that he or she must immediately stop any offensive conduct or face appropriate disciplinary action. The complaint officer or designee will follow the provisions of any applicable collective bargaining agreement(s) throughout the course of such investigation(s).

Some types of informal actions which may be instituted if agreeable to the victim include the following:

- Conducting a workshop on the recognition and prevention of sexual harassment for the building or department.
- Speaking to the alleged offender.
- Separating the parties, if possible and appropriate.

Mediation

Where appropriate, the designated complaint officer or designee may suggest mediation as an alternative means of resolving the complaint. The use of mediation is not intended to replace but, rather, is a supplement to utilization of the BOCES' informal/formal complaint procedures. If mediation is requested and agreed to by the victim and the accused, the BOCES will use qualified mediators as provided by an outside agency to help resolve the complaint.

Step 2—Formal Complaint

An employee may file a formal written complaint of sexual harassment as an initial step or as a result of an unsatisfactory resolution of an informal complaint. The formal complaint should include all applicable information as indicated in this regulation as well as any other pertinent information which may be helpful in the course of the investigation.

As noted above, the complainant, the alleged harasser(s) and any witnesses will be directed to refrain from communicating about the investigation while it is pending. Disclosure of information will be on a "need to know" basis.

The formal complaint will be filed with the designated complaint officer or designee who will submit a copy of the complaint to the District Superintendent. The complaint officer or designee will, in accordance with federal or state laws and regulations and any applicable collective bargaining agreement(s), conduct a prompt and thorough investigation no later than three (3) working days following receipt of the complaint.

If the formal investigation results in a finding that sexual harassment did occur, the complaint officer or designee will notify the District Superintendent of his/her recommendations.

If the District Superintendent concurs with the report of the complaint officer or designee, the District Superintendent will then take prompt disciplinary action in accordance with the terms of BOCES policy and regulations, federal and state law, and/or the applicable collective bargaining agreement. The complaint officer or designee will notify the complainant and the accused, in

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person and in writing, as to the finding and/or course of action within twenty (20) working days following receipt of the formal complaint.

If the complainant is satisfied with the report of the complaint officer or designee, the complainant will so indicate in writing. If not satisfied with the complaint officer's or designee's report, the complainant and/or the accused may appeal the determination to the District Superintendent. The appeal should be in writing and submitted no later than ten (10) working days following receipt of the complaint officer's or designee's decision.

Step 3—Appeal to the District Superintendent

All formal complaints, if not satisfactorily resolved at the initial stage of investigation, may be appealed by any party to the District Superintendent.

If the District Superintendent issues a finding that no sexual harassment has occurred, the complainant, if not satisfied with this resolution, may appeal the decision to the Board within ten (10) working days following receipt of the report. If the complainant is satisfied with the District Superintendent's finding, the complainant will so indicate in writing.

Should the District Superintendent determine that corrective action is necessary, the District Superintendent will follow all applicable law and regulations, BOCES policy and guidelines, and appropriate collective bargaining agreements in the resolution of the complaint. If the accused is not satisfied with this resolution; he/she may appeal the decision to the Board within ten (10) working days following receipt of the report.

The complainant and the accused will receive a copy of a report issued by the District Superintendent pertaining to the investigation/outcome of the formal complaint within thirty (30) working days following receipt of the complaint. If additional time is necessary to either complete the investigation or institute disciplinary/remedial action, the District Superintendent will provide all parties and the Board with a written status report requesting additional time to complete the investigation. The timeline herein may be extended at the discretion of the District Superintendent.

Step 4—Appeal to the Board

In the event that a complainant and/or accused files an appeal with the Board following an investigation by the District Superintendent, such appeal must be in writing and submitted within ten (10) working days of receipt of the District Superintendent's report.

The Board will conduct a hearing and issue a written response to the complainant and the accused following completion of the hearing within thirty (30) days of receipt of the complaint. If additional time is needed, a written status report shall be submitted to all parties, indicating the need for additional time.

Prohibition of Retaliation

Regardless of the stage of the investigation, the victim will be instructed by the complaint officer or designee to report immediately if the offensive behavior occurs again and/or if the alleged harasser(s) retaliates against him/her. Any witnesses who cooperated in the investigation of the complaint will be similarly instructed to report to the complaint officer or designee immediately as to any retaliatory action(s). Additionally, the designated complaint officer or designee will make

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follow-up inquiries to ensure that harassment has not resumed and that no reprisals or retaliatory behavior has occurred to those involved in the investigation. Any act of retaliation is prohibited and subject to appropriate disciplinary action by the BOCES.

Discipline/Penalties for Non-BOCES Employees

Vendors/contractors and other individuals who do business with the BOCES, who have been found to violate the terms of the sexual harassment policy and/or regulation by engaging in prohibited conduct, will be subject to appropriate sanctions up to and including loss of BOCES business. Volunteers who are found to have violated BOCES policy and regulation may face loss of volunteer status. 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 against another individual as to allegations of sexual harassment may also face appropriate disciplinary action.

BOCES Responsibility/Training

Regardless of whether a complaint has been filed, if the BOCES knows of, or has reason to know of or suspects, the occurrence of any sexual harassment, the BOCES will require a prompt and thorough investigation by appropriate personnel.

Principals in each school building and/or program administrators will be responsible for informing staff of BOCES policy and regulations regarding the prohibition of sexual harassment in the workplace, including the procedures established for the investigation and resolution of sexual harassment complaints, the general legal issues pertaining to sexual harassment, and the rights and responsibilities of employees.

Those principals and/or program administrators who have specific responsibilities for the investigation and resolution of sexual harassment complaints will receive specialized training on conducting such investigations and application to applicable laws and collective bargaining agreements.

Dissemination of BOCES Policy/Regulation and Evaluation

A copy of BOCES policy and regulations pertaining to sexual harassment will be available upon request. Additionally, the BOCES' policy and regulations will be published in appropriate school publications such as teacher/employee handbooks.

The District Superintendent, or his/her designee(s), has a responsibility to review BOCES policy and regulations to ensure continued effectiveness and compliance with applicable law. The District Superintendent will recommend revisions as may be warranted to the Board.

Note: Please refer to Form 5121F.

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**Monroe 2-Orleans BOCES
SEXUAL HARASSMENT COMPLAINT FORM**

New York State Labor Law § 201-g 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, you are encouraged to complete this form and submit this form to the Director of Human Resources. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting the alleged harassment verbally or in another manner, the Director of Human Resources or designee should complete this form on your behalf, provide you with a copy and follow the Monroe 2-Orleans BOCES sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

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

COMPLAINANT INFORMATION

Name: _____

Work Address/Building: _____ Work Phone: _____

Program/Department: _____

Job Title: _____ Email: _____

Select Preferred Communication Method: Email Phone In Person

SUPERVISORY INFORMATION

Immediate Supervisor's Name: _____

Title: _____

Work Phone: _____ Work Address: _____

COMPLAINT INFORMATION

1. Your alleged complaint of Sexual Harassment is made regarding:

Name: _____ Title: _____

Work Address: _____ Work Phone: _____

Relationship to you: Supervisor Subordinate Co-Worker Other _____
Please specify

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2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.
3. Date(s) sexual harassment occurred:
- Is the sexual harassment continuous or ongoing? Yes No
4. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

Question number five (5) is optional, but may assist with the investigation.

5. Have you previously complained or provided information (verbal or written) about related incidents? If yes, when and to whom did you complain or provide information?

If you have retained legal counsel and would like us to work with them, please provide their contact information.

Signature: _____ Date: _____