Monroe 2-Orleans BOCES Policy
Series 6000 – Students
Policy #6463 – TITLE IX AND SEX DISCRIMINATION

SUBJECT: TITLE IX AND SEX DISCRIMINATION

A. OVERVIEW

Title IX prohibits discrimination on the basis of sex in any education program or activity operated by BOCES that receives federal financial assistance.

The Board is committed to creating and maintaining education programs and activities which are free from sex discrimination and sexual harassment and does not discriminate on the basis of sex in its education programs and activities. This policy addresses complaints of sex discrimination, including sexual harassment, made under federal law, Title IX of the Education Amendments Act of 1972, and its implementing regulations.

This policy provides for the prompt and equitable resolution of complaints of sex discrimination, including sexual harassment complaints filed under Title IX. The investigations will be conducted within a reasonably prompt time frame which provides due process protections to complainant and respondent, impose sanctions when warranted and implement remedies when warranted.

Inquiries about this policy or the application of Title IX may be directed to the BOCES Title IX Coordinators, who are the Assistant Superintendent for Human Resources and the Assistant Superintendent for Finance and Operations, or to the Assistant Secretary for Civil Rights of the United States Department of Education, or all three.

B. SCOPE AND APPLICATION OF POLICY

This policy applies to any individual student or employee participating in or attempting to participate in a BOCES education program or activity, provided the student or individual is in the United States.

Other policies, procedures and documents (like the Code of Conduct) address sex-based misconduct and may have different definitions, standards of review, and grievance procedures than this policy. Those policies and procedures must be read in conjunction with this Title IX policy as those policies may cover incidents of sex-based misconduct not addressed by Title IX.

If the Title IX Coordinator reviews the allegations and determines the allegations are proven, the allegations constitute prohibited conduct under Title IX, then the grievance process outlined in this policy would be applied to the investigation and adjudication of all the allegations. Depending on the nature of the allegations, additional grievance procedures may apply.

The dismissal of a complaint under Title IX does not preclude action under another policy, procedure, collective bargaining agreement, or other document.

C. DEFINING SEX DISCRIMINATION INCLUDING SEXUAL HARASSMENT

Title IX prohibits various types of sex discrimination including, but not limited to: sexual harassment; the failure to provide equal athletic opportunity; sex-based discrimination in a science, technology, engineering, and math (STEM) course and/or program; and/or discrimination based on pregnancy.

Under Title IX, sexual harassment includes conduct on the basis of sex that satisfies one or more of the following elements:

a) An employee of BOCES or of a component District conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;

b) Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the BOCES education program or activity;

c) Sexual assault, meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation;

d) Dating violence, meaning violence committed by a person:

1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

2. Where the existence of such a relationship will be determined based on a consideration of the following factors:

(a) The length of the relationship;

(b) The type of relationship; and

(c) The frequency of interaction between the persons involved in the relationship.

e) Domestic violence, meaning felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction; or

f) Stalking, meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. Fear for their safety or the safety of others; or

2. Suffer substantial emotional distress.

D. TITLE IX COORDINATORS

The Board has designated and authorized the following BOCES employees to serve as its Title IX Coordinators who are responsible for coordinating BOCES efforts to comply with Title IX:

Steve Roland, Assistant Superintendent for Finance and Operations
Monroe 2-Orleans BOCES
3599 Big Ridge Road, Spencerport, NY 14559
sroland@monroe2boces.org; 585-352-2413

Karen Brown, Esq.
Assistant Superintendent for Human Resources
Monroe 2-Orleans BOCES
3599 Big Ridge Road, Spencerport, NY 14559
kbrown@monroe2boces.org; 585-352-2420

The Title IX Coordinator may seek the assistance of the Civil Rights Compliance Officer (CRCO(s)) and/or Dignity Act Coordinator(s) (DASA(s)) in investigating, responding to, and remedying complaints of sex discrimination, including sexual harassment.

E. REPORTS OF ALLEGATIONS OF SEX DISCRIMINATION

Any person may report sex discrimination, including sexual harassment, regardless of whether they are the alleged victim. Reports may be made in person, by using the contact information for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's oral or written report. This report may be made during business or non-business hours by using the telephone number or email address, or by mail to the office address listed for the Title IX Coordinators.

Reports of sex discrimination may also be made to any BOCES employee. All reports of sex discrimination, including sexual harassment, will be forwarded to the BOCES Title IX Coordinator. The report will be redirected to the alternate Title IX Coordinator if the Title IX Coordinator is unavailable due to a conflict of interest or other disqualifying reason.

If any employee witnesses or receives an oral or written report of sex discrimination, they must immediately inform the Title IX Coordinator and, if not, subject the employee to possible discipline up to and including termination in accordance with law and collective bargaining agreements. Requests for confidentiality or use of anonymous reporting may limit how the BOCES is able to respond to a report of sexual harassment.

Reporting a sexual discrimination incident is not the same as filing a formal complaint. A formal complaint is a document filed either by a complainant or a parent or legal guardian who has a right to act on behalf of the complainant or by the Title IX Coordinator which alleges sexual discrimination against a respondent and requests that the BOCES investigate the allegations. BOCES will respond to all reports of sexual discrimination, but the Title IX grievance process herein is only followed with the filing of a formal complaint.

The Title IX Coordinator may file and sign a complaint if initiating this process is not clearly unreasonable and the filing is necessary to comply with the obligation not to be deliberately indifferent or the complainant withdrew the complaint out of fear.

F. AFTER A REPORT OF SEXUAL HARASSMENT HAS BEEN MADE

After receiving a report of sexual harassment, the Title IX Coordinator will:

a) Promptly contact the complainant (and if complainant is a student, notify parent/legal guardian) to discuss and offer supportive measures;

b) Inform the complainant both of the range of supportive measures available and indicate that these measures are available regardless of whether a formal complaint is filed;

c) Consider the complainant's wishes with respect to supportive measures;

d) Explain to the complainant the process for filing a formal complaint; and

e) Contact the respondent to discuss and offer and implement supportive measures.

G. FILING AND INVESTIGATING A FORMAL COMPLAINT

A complainant may file a formal complaint with the Title IX Coordinator in person or by mail, email, or by phone. The complainant must be participating in or attempting to participate in the education program or activity of the BOCES at the time of filing the complaint. The filing of a formal complaint initiates the grievance process.

A formal complaint must be signed by the complainant, the complainant parent or legal guardian as appropriate, or the Title IX Coordinator in limited circumstances. Where a parent or legal guardian signs the complaint, the parent or legal guardian does not become the complainant; rather the parent or legal guardian acts on behalf of the complainant. The Title IX Coordinator may sign the formal complaint, but their signature does not make them a complainant or a party to the complaint. If the formal complaint is signed by the Title IX Coordinator, the Title IX Coordinator is still obligated to comply with the grievance process outlined in this policy.

The complainant, or the complainant parent or legal guardian, must physically or digitally sign the formal complaint, or otherwise indicate that the complainant is the person filing the formal complaint. When a formal complaint is filed, the Title IX Coordinator must send a written notice of allegations to all parties which includes the identities of all known parties.

The formal complaint form may be obtained from the BOCES Title IX Coordinator or found on the BOCES website.

1. Consolidation of Formal Complaints

The BOCES may consolidate formal complaints of sexual harassment against more than one respondent, or by more than one complainant against one or more respondent, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

2. Written Notice of Allegations

Upon receipt of a formal complaint, the BOCES will send all known parties written notice of:

a) The BOCES grievance process, including any informal resolution process; and

b) The allegations of sexual harassment which will:

1. Provide sufficient details known at the time and sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties

involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known;

2. State that the respondent is presumed not to be responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;

3. Inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney;

4. Inform the parties that they may inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint;

5. Include notice of any provision in any applicable BOCES policy, procedure, collective bargaining agreement, or other document such as the Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process; and

6. Notice of Title IX grievance process.

If, in the course of an investigation, the BOCES decides to investigate allegations about any complainant or respondent that were not included in the initial notice, the BOCES will provide another notice of the additional allegations to the parties whose identities are known.

3. Investigation of a Formal Complaint

The Title IX Coordinator will oversee the BOCES investigation of all formal complaints. During the investigation of a formal complaint, another BOCES employee may serve as the BOCES investigator or the Title IX Coordinator provided the Title IX Coordinator is not the decision-maker. The BOCES may also outsource all or part of an investigation to appropriate third parties. The outsourcing of all or part of an investigation does not relieve the BOCES from its obligation to comply with law and regulation.

Most investigations will be completed within 90 days after the signing of a formal complaint or after completion of the informal process if unsuccessful.

During the investigation of a formal complaint, the investigator will, as appropriate:

a) Collect, review, and preserve all evidence including, but not limited to, any relevant documents, videos, electronic communications, and phone records.

b) Interview all relevant persons including, but not limited to, any complainant, respondent, and witnesses. Interviews of complainant and respondent will be conducted separately. If a student is involved, the BOCES will follow any applicable BOCES policy, procedure, or other document such as the Code of Conduct regarding the questioning of students.

c) Create written documentation of the investigation (such as a letter, memo, or email), which contains 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, using initials for students;

3. A timeline of events; and

4. A summary of prior relevant incidents, reported or unreported.

d) Keep any written documentation and associated documents in a secure and confidential location.

e) Send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The parties will have at least ten days to submit a written response, which the investigator will consider prior to completion of the investigative report.

f) Require the parties and their advisors to sign an agreement not to disseminate, photograph or copy any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process.

g) At least ten days prior to a hearing (if applicable) or other determination regarding responsibility, the investigative report will be sent to each party and the party's advisor, if any, in an electronic format or a hard copy, for their review and written response.

h) At the end of the investigation and the ten (10) day period, an investigative report will be created that fairly summarizes all relevant evidence and may make a recommendation but the decision maker is obligated to objectively review the relevant evidence and cannot defer to the recommendation.

i) This report will be sent to the decision maker within ten (10) days.

4. Dismissal of a Formal Complaint

a) Dismiss Prior to Formal Complaint

The BOCES must dismiss a formal complaint prior to conducting the investigation under Title IX if the conduct alleged:

i) Would not constitute sexual harassment even if proven;

ii) Did not occur in the BOCES education program or activity; or

iii) Did not occur against a person in the United States.

b) Dismiss During Complaint

The BOCES may dismiss a formal complaint or any of its allegations under Title IX, if at any time during the investigation or hearing if:

i) A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any of its allegations;

ii) The respondent is no longer enrolled or employed by the BOCES; or

iii) Specific circumstances prevent the BOCES from gathering evidence sufficient to reach a determination as to the formal complaint or any of its allegations, such as passage of several years between the allegations and incident or complainant's failure to cooperate.

Upon a dismissal of a formal complaint, the BOCES must promptly send written notice of the dismissal and reason(s) for the dismissal simultaneously to the parties. Any party may appeal the dismissal of the complaint.

The dismissal of a formal complaint under Title IX does not preclude action under another related BOCES policy, procedure, collective bargaining agreement, or other document such as the Code of Conduct.

5. Informal Resolutions

Before reaching a determination regarding responsibility, but only after a formal complaint is filed, the BOCES may offer and facilitate the use of an informal resolution process, such as mediation, that does not involve a full investigation and adjudication of the formal complaint.

Most informal resolutions will be completed within twenty (20) days. The 90-day formal complaint time frame begins if the informal process does not resolve the complaint.

The BOCES will not require that parties participate in an informal resolution process. The BOCES will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student, BOCES will not require the waiver of the right to an investigation and adjudication of formal complaints of sexual harassment as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right.

If the use of an informal resolution process, is implemented, the Title IX Coordinator will:

a) Provide written notice to all known parties which details:

1. The allegations in the formal complaint;

2. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint;

3. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared in the formal resolution process; and

4. Whether the facilitator could be a witness in a proceeding.

5. Note the facilitator could be the Title IX Coordinator.

b) Obtain the parties' voluntary, written consent to the informal resolution process.

H. GRIEVANCE PROCESS FOR FORMAL COMPLAINTS

BOCES will respond to allegations of sexual harassment in a manner that is not deliberately indifferent whenever it has actual knowledge of sexual harassment in an education program or activity of the BOCES.

Imposition of any disciplinary sanctions or other actions that are not supportive measures against the respondent will be implemented only after following the grievance process herein.

The BOCES will conduct the grievance process in a time frame designed to provide all parties with a prompt and equitable resolution pursuant to this policy.

1. Definitions

a) "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any official of the BOCES who has authority to institute corrective measures on behalf of the BOCES, or for elementary and secondary students notice can be made to any BOCES employee. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the BOCES with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the BOCES.

b) “Education Program or Activity” means occurring on BOCES owned or leased premises; any off-campus location that BOCES has substantial control over, this includes work based learning sites; activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of BOCES programs and activities over which the BOCES has substantial control.

c) "Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual discrimination as defined in this policy.

d) "Days" means business days, but excludes any weekday during which the BOCES facilities are closed.

e) “Deliberately Indifferent” means the response is unreasonable in light of the known circumstances.

f) "Formal complaint" means a document filed by the complainant or signed by the Title IX Coordinator alleging sexual harassment against the respondent and requesting that the BOCES investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the BOCES. A formal complaint may be filed with the Title IX Coordinator in person, by mail, by phone, or by email, by using the contact information required to be listed for the Title IX Coordinator. As used in this paragraph, the phrase "document filed by the complainant" means a document or electronic

submission (such as by email or through an online portal provided for this purpose) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.

g) "Respondent" means an individual who has been reported to be the respondent of conduct that could constitute sexual harassment as defined in this policy.

h) "Supportive measures" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. These measures are designed to restore or preserve equal access to the BOCES education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the BOCES educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, changes in work or building locations, safe rooms, change in classroom transition rules, mental health services, leaves of absence, increased security and monitoring of certain areas, and other similar measures. The BOCES must maintain as confidential any supportive measures provided, to the extent that maintaining such confidentiality would not impair the ability of the BOCES to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

i) "Relevant" evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true. "Relevant" evidence and questions do not include the following types of evidence and questions, which are deemed "irrelevant" at all stages of the Title IX Grievance Process:
   - Evidence and questions about the complainant's sexual predisposition or prior sexual behavior unless:
     - The evidence is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
     - The evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
   - Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
   - Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

j) Inculpatory and exculpatory evidence implicates or tends to implicate an individual in a crime or wrongdoing. Exculpatory evidence frees or tends to free an individual from blame or accusation.

2. General Requirements for the Investigative and Grievance Process

During the investigation of a formal complaint and throughout the grievance process, the BOCES will ensure that:

a) Complainant and respondent are treated equitably. This includes applying any provisions,

rules, or practices incorporated into the BOCES grievance process, equally to both parties.

b) All relevant evidence is objectively evaluated, including both inculpatory and exculpatory evidence.

c) The Title IX Coordinator, investigator and decision-maker involved in the grievance process, or any person designated by the BOCES to facilitate any informal resolution process does not have a conflict of interest or bias for or against complainant or respondent generally or an individual complainant or respondent.

d) Respondent is presumed not to be responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

e) The grievance process, including any appeals or informal resolutions, is concluded within a reasonably prompt time frame and the process is only temporarily delayed or extended for good cause shown. Good cause includes, but is not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; legal or administrative holidays; law enforcement activities, or the need for language assistance or accommodation of disabilities. Whenever the time frame is temporarily delayed or extended, written notice will be provided to all parties about the delay or extension and the reasons for the action.

f) The range of possible disciplinary sanctions and remedies that may be implemented by the BOCES following any determination regarding responsibility are described to any known party.

g) The same standard of evidence is used to determine responsibility in all formal complaints.

h) The procedures and permissible bases for an appeal are known to the complainant and respondent.

i) The range of all available supportive measures are explained to the complainant and respondent.

j) There is no requirement, allowance of, reliance on, or otherwise use of questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege.

k) The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests with the BOCES and not with the parties.

l) The Title IX Coordinator, the investigator, any decision-maker, or any other person participating on behalf the BOCES does not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the BOCES obtains that party's voluntary, written consent to do so for the grievance process. If the party is not an eligible student, as defined in FERPA as a student who has reached 18 years of age or is attending a post-secondary institution, the BOCES will obtain the voluntary, written consent of a parent/legal guardian.

m) The parties have an equal opportunity to present relevant witnesses, including fact and expert witnesses, and other relevant inculpatory and exculpatory evidence.

n) Credibility determinations are not be based on a person's status as a complainant, respondent, or witness.

o) The ability of either party to discuss the allegations under investigation (however to be cautious to avoid a retaliation charge) or to gather and present relevant evidence is not restricted.

p) The parties are provided with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for any complainant or respondent in any meeting or grievance proceeding. However, the advisor cannot directly participate in the process and BOCES may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties. A meeting or interview will not be delayed more than five (5) days due to the advisor's unavailability.

q) Written notice of the date, time, location, participants, and purpose of all hearings (if applicable), investigative interviews, or other meetings, is provided to any party whose participation is invited or expected with sufficient time for the party to prepare to participate.

r) The parties are provided with equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the BOCES does not intend to rely on in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

s) Any document sent to a minor or legally incompetent person is also sent to the party's parent or legal guardian.

t) Any document sent to a party is also sent to the party's advisor, if known.

I. HEARINGS AND DETERMINATION REGARDING RESPONSIBILITY

The BOCES will designate an individual decision-maker or a panel of decision-makers to issue a written determination regarding responsibility. A decision-maker can either be a BOCES employee or, where appropriate, a third-party, but cannot be the same individual as either the Title IX Coordinator or the investigator(s).

A live hearing will be conducted where the formal complaint is filed by an adult student at the Center for Workforce Development Adult Education Program where the allegations are related to an adult student in the Center for Workforce Development Adult Education Program. Title IX does not require a live hearing for allegations filed by a student in the kindergarten through 12th program setting. If a live hearing is held, the BOCES will make all evidence subject to the parties' inspection

and review available to give each party equal opportunity to refer to this evidence during the hearing, including for purposes of cross-examination.

With or without a live hearing, before reaching a determination regarding responsibility, the decision-maker(s) will afford each party the opportunity to:

a) Submit written, relevant questions that a party wants asked of any party or witness within five days after the parties have received the investigative report;

b) Provide each party with the answers given by any party or witness within five days of receiving the questions;

c) Allow for additional, limited follow-up questions and responses from each party to occur within three days after the parties have received responses to their initial questions;

d) Questions and evidence about a complainant's sexual predisposition or prior sexual behavior will not be considered, unless the questions and evidence about the complainant's prior sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent;

e) The decision-maker(s) will explain to the party proposing the questions any decision to exclude a question as not relevant and why; and

f) The decision maker will not draw an inference about responsibility based on a party's refusal to answer a relevant question and may not rely on the party or third party's statement in reaching a determination of responsibility where the party did not submit to cross-examination.

g) Independently evaluate the relevant evidence including the evidence summarized in the investigative report and consider all relevant evidence.

The decision-maker(s) will issue a written determination regarding responsibility to the Title IX Coordinator, the District Superintendent (if not the decision maker), and all parties simultaneously within ten days after all follow-up questions have been responded to or after the live hearing (if applicable).

To reach this determination, the decision-maker(s) will use the preponderance of the evidence standard which is the standard of evidence that will be applied in all formal complaints of sexual harassment. This standard is understood to mean that the party with the burden of persuasion must prove that a proposition is more probably true than false meaning a probability of truth greater than 50 percent.

The written notice of the determination regarding responsibility will include:

a) Identification of the allegations potentially constituting sexual harassment;

b) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held

(if applicable);

c) Findings of fact supporting the determination;

d) Conclusions regarding the application of any applicable BOCES policy, procedure, collective bargaining agreement, or other document such as the Code of Conduct to the facts;

e) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the BOCES is imposing on the respondent, and whether remedies designed to restore or preserve equal access to the BOCES education program or activity will be provided by the BOCES to the complainant; and

f) The procedures and permissible bases for the complainant and respondent to appeal.

J. EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE

At any point after receiving a report or formal complaint of sexual harassment, and during the process the BOCES may immediately remove the respondent, who is a student, from the BOCES education program or activity on an emergency basis provided that the BOCES:

a) Undertakes an individualized safety and risk analysis;

b) Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal;

c) Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal; and

d) Coordinates with home district special education staff when initiating an emergency removal of a student with a disability from an education program or activity as the removal could constitute a change of placement under the IDEA or Section 504.

An employee and a non-student employee may be placed on a paid or unpaid leave in accordance with law and/or collective bargaining agreement.

K. LIVE HEARINGS (IF APPLICABLE)

1) General Rules of Hearings

The live hearing may be conducted with all parties physically present in the same geographic location, or, at BOCES discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through a virtual video conferencing format that will be recorded. This technology will enable participants simultaneously to see and hear each other. At its discretion, BOCES may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through audio recording or audiovisual recording depending on whether the hearing is conducted in-person or remotely. That recording will be made available to the parties for inspection and review.

Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process, or photograph or record the hearing or pieces of evidence themselves. Once signed, this Agreement may not be withdrawn.

2) Continuances or Granting Extensions

BOCES may determine that multiple sessions, an extension or a continuance (i.e. a pause on the current hearing until a later date or time) is needed to complete a hearing. If so, BOCES will notify all participants and accommodate all participants' schedules and complete the hearing as promptly as practicable.

3) Participants in the live hearing

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

1. *Complainant and Respondent (The Parties)*
   - The parties cannot waive the right to a live hearing.
   - BOCES may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party.
   - For example, a verbal or written statement constituting part or all of the sexual harassment itself is not a "prior statement" that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint. [See, OCR Blog (May 22, 2020), available at *https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html*].
   - BOCES will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation. See 34 C.F.R. § 106.71.
   - If a party does not submit to cross-examination, the District Superintendent/designee cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that party.
   - The District Superintendent/designee cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross-examination or other relevant questions. See 34 C.F.R. §106.45(b)(6)(i).

2. *The Decision-maker*
   - The decision-maker will consist of the District Superintendent/designee.
   - The hearing officer could be the Title IX Coordinator, provided their rule is limited to controlling order and decorum.
   - The hearing officer will not have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
   - The hearing officer will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
   - The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

3. *Advisor of choice*
   - The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
   - The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination.
   - The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the BOCES will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party and the advisor may be a BOCES employee.
   - The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
   - The advisor is not prohibited from being a witness in the matter.
   - If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf. [85 Fed. Reg. 30026, 30340 (May 19, 2020)].
   - If neither a party nor their advisor appear at the hearing, BOCES will provide an advisor to appear on behalf of the non-appearing party. See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).

4. *Witnesses*
   - Witnesses cannot be compelled to participate in the live hearing, and have the right to participate in the hearing free from retaliation. [See, 85 Fed. Reg. 30026, 30360 (May 19, 2020)].
   - If a witness does not submit to cross-examination, as described below, the District Superintendent/designee cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing. [85 Fed. Reg. 30026, 30347 (May 19, 2020)].

4) Hearing Procedures

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

- The District Superintendent/designee will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- The District Superintendent/designee will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after District Superintendent/designee conducts its initial round of questioning; During the Parties' cross-examination, District Superintendent/designee will have the authority to pause cross-examination at any time for the purposes of asking the District Superintendent/designee's own follow up questions; and any time necessary in order to enforce the established rules of decorum.
- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the District Superintendent/designee. A Party's waiver of cross-examination does not eliminate the ability of the District Superintendent/designee to use statements made by the Party.

5) Live Cross-Examination Procedure

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live cross-examination, the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, District Superintendent/designee will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by District Superintendent/designee may be deemed irrelevant if they have been asked and answered.

6) Review of Recording

The recording of the hearing will be available for review by the parties within 5 business days of the hearing, unless there are any extenuating circumstances. The recording of the hearing will not be provided to parties or advisors of choice.

7) General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the decision-maker.

Decision-makers shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

Decision makers will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Witness testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

Parties may call "expert witnesses" for direct and cross-examination. While the expert witness may be allowed to testify and be crossed, the decision-maker may determine the relevance of non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case may be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross-examination and regardless of whether all parties present experts as witnesses.

Character witnesses in these proceedings will not be allowed to testify, however, the decision-maker may consider whether written character statements will be accepted.

Polygraph tests ("lie detector tests") may be admitted and allowed and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed, the decision-maker will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the decision-maker may draw an adverse inference as to that party or witness' credibility.

L. FINALITY OF DETERMINATION REGARDING RESPONSIBILITY

The determination regarding responsibility becomes final either on the date that the BOCES provides the parties with the written determination of the result of an appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Where a determination regarding responsibility for sexual harassment has been made against the respondent, remedies will be provided to a complainant and disciplinary sanctions may be imposed on a respondent. Remedies will be designed to restore or preserve equal access to the BOCES education program or activity. Remedies and disciplinary sanctions will be implemented in

accordance with applicable laws and regulations, as well as any BOCES policy, procedure, collective bargaining agreement, or other document such as the Code of Conduct.

The Title IX Coordinator is responsible for the effective implementation of any remedies and/or disciplinary sanctions. The Title IX Coordinator will work with other individuals as necessary to effectively implement remedies and/or disciplinary sanctions.

M. APPEALS

Either party may file an appeal from a determination regarding responsibility or from the BOCES dismissal of a formal complaint or any of its allegations. Appeals must be submitted in writing to the Title IX Coordinator within ten days of the written notice of the determination regarding responsibility or dismissal of the formal complaint or any of its allegations. The bases on which a party is seeking an appeal should be specifically stated in the party's written appeal.

An appeal may only be based upon one or more of the following bases, but cannot be based on a finding of responsibility:

a) Procedural irregularity that affected the outcome of the matter;

b) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;

c) The Title IX Coordinator, investigator, or decision-maker(s) had a conflict of interest or bias for or against complainant or respondent generally or the individual complainant or respondent that affected the outcome of the matter;

d) Facts demonstrate the conclusion was clearly unfounded; and

e) Sanction is unreasonably severe in light of the offense.

Upon receipt of an appeal, which meets the basis in (a) through (e) above, the BOCES will:

a) Notify the other party in writing that an appeal has been filed and implement appeal procedures equally for both parties;

b) Continue supportive measures;

c) Ensure that any decision-maker for the appeal:

   1. Is not the same person as any decision-maker that reached the initial determination regarding responsibility or dismissal, investigator, or Title IX Coordinator; and

   2. Does not have any conflict of interest or bias for or against complainant or respondent generally or an individual complainant or respondent.

d) Give all parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. Parties will have to submit these written statements within 15 days after the parties have been notified of the appeal and will be limited to three written pages;

e) Issue a written decision describing the result of the appeal and the rationale for the result; and

f) Provide the written decision and its rationale simultaneously to the Title IX Coordinator, the District Superintendent, and all parties within 20 days after receiving the parties written statements in support of, or challenging, the outcome.

N. PROHIBITION OF RETALIATORY BEHAVIOR (COMMONLY KNOWN AS "WHISTLE-BLOWER" PROTECTION)

BOCES prohibits retaliation against any individual in form of coercion, intimidation, or discrimination, for the purpose of interfering with his or her Title IX rights or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under Title IX.

Charging an individual with Code of Conduct or other applicable violations that do not involve sex discrimination, including sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation. Charging an individual with a Code of Conduct or other applicable violation for making a materially false statement in bad faith during a grievance proceeding does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

All complaints alleging retaliation will be handled in a manner consistent with the BOCES policies and procedures regarding the investigation of discrimination and harassment complaints.

O. CONFIDENTIALITY AND PRIVACY

Except where disclosure may be permitted or required by law or regulation, the BOCES cannot guarantee confidentiality but will keep private to the extent possible, any information reported will be disclosed only as necessary to investigate, seek resolution, implement supportive measures, and in compliance with law. The Title IX Coordinator, Investigator, decision maker, and BOCES staff will provide privacy, but disclose information as necessary to appropriate individuals and authorities. BOCES could disclose information to the other party necessary to provide due process, mandatory child abuse reports, and information to a parent or legal guardian pursuant to FERPA. Supportive measures will be kept confidential to the extent that does not impair the ability of BOCES to implement these measures. Either party may discuss the allegations to gather and present evidence. The complainant cannot remain anonymous once a formal complaint is filed. The nurse and healthcare providers will provide confidentiality, pursuant to law. Privacy and/or confidentiality will be afforded to the following individuals:

a) Complainant;

b) Respondent;

c) Witness; and

d) Person who made the report.

P. TRAINING

a) All Title IX Coordinators, investigators, decision-makers, or persons who facilitate an informal resolution process will receive training on:

1. The definition of sexual harassment as defined in Title IX;

2. The scope of the BOCES education program or activity;

3. How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable; and

4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

b) All decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant.

c) All investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of sexual harassment. Training materials will be made publicly available on the BOCES website.

Q. NOTIFICATION

The BOCES will notify students, applicants for admission to BOCES CWD programs, parents or legal guardians of elementary or secondary students, employees, applicants for employment, and all unions or professional organizations holding collective bargaining or professional agreements with the BOCES of this policy.

Further, the BOCES will prominently publish this policy and the contact information for the Title IX Coordinator(s) on its website and in other publications, including in each handbook or catalog that it makes available to the individuals and entities referenced above.

R. RECORDKEEPING

For a period of seven years, the BOCES will retain the following:

a) Records of each sexual harassment investigation including any:

1. Determination regarding responsibility;

2. Audio or audiovisual recording or transcript required under law or regulation;

3. Disciplinary sanctions imposed on the respondent; and

4. Remedies provided to the complainant designed to restore or preserve equal access

to the District's education program or activity.

b) Any appeal and its result.

c) Any informal resolution and its result.

d) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

e) For each response to sexual harassment where the BOCES had actual knowledge of sexual harassment in its education program or activity against a person in the United States, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the BOCES must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the BOCES education program or activity. If a BOCES does not provide the complainant with supportive measures, then the BOCES must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the BOCES in the future from providing additional explanations or detailing additional measures taken.

20 USC § 1092(f)(6)(A)(v)
20 USC § 1681, et. seq.
34 USC § 12291(a)(8, 10, and 30)
34 CFR Part 106
Education Law § 13
8 NYCRR § 100.2(kk)

Adopted: 4/14/2021
Revised: 12/20/2023
Revised: 8/21/2024