

POLICY

Year: 2022

Policy #: 5188

TITLE IX AND SEX DISCRIMINATION

PROTECTION OF EMPLOYEES AND STUDENTS FROM SEXUAL HARASSMENT BY IMPLEMENTATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

Overview

The BOCES is committed to creating and maintaining education programs and activities which are free from discrimination and harassment. This policy specifically addresses complaints of sex discrimination, including sexual harassment, made under Title IX of the Education Amendments of 1972 and its implementing regulations (Title IX). It is just one component of the BOCES overall commitment to maintaining a discrimination and harassment-free educational and work environment. Other policies intended to prevent and redress discrimination include Board Policy 5180 (“Protection of Employees, Contractors and others from Discrimination, Sexual Harassment and Retaliation”), Board Policy 6180 (“Protection of Students from Discrimination, Sexual Harassment and Retaliation”) and Board Policy 6215 (“Dignity for All Students Act”). The BOCES Code of Conduct also advances the BOCES efforts in this regard. These other BOCES documents address sex-based misconduct and may have different definitions, standards of review and procedures. These documents must be read in conjunction with this policy as they may cover incidents of sex-based misconduct not addressed by Title IX. Formal Complaints of sexual harassment as defined under this policy will trigger the specific requirements of this policy. Other complaints of sex discrimination may simultaneously trigger the application of this and other BOCES policies. The dismissal of a Formal Complaint of sexual harassment under Title IX does not preclude action under another BOCES policy, procedure, collective bargaining agreement, Code of Conduct or other document.

Title IX prohibits discrimination on the basis of sex in any education program or activity operated by the BOCES that receives federal financial assistance. Sexual Harassment is a form of discrimination on the basis of sex. The BOCES does not discriminate on the basis of sex in its education programs and activities or when making employment decisions.

The BOCES will promptly respond to reports of sexual harassment, will ensure that all investigations are conducted within a reasonably prompt time frame and under a predictable fair grievance process that provides due process protections to complainants and respondents, and will impose sanctions and implement remedies when warranted.

Inquiries about this policy or the application of Title IX may be directed to either of the BOCES Title IX Coordinators named below, to the Assistant Secretary for Civil Rights of the United States Department of Education, or both.

Scope and Application of Policy: This policy is limited to addressing complaints of sex discrimination, including sexual harassment, that fall within the scope of Title IX which, among other things, has a specific definition of sexual harassment. This policy applies to any individual participating in or attempting to participate in the BOCES education programs or activities including students and employees.

If the allegations forming the basis of a Formal Complaint of sexual harassment, if proven, would 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.

What Constitutes Sex Discrimination Including Sexual Harassment

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

- a) An employee of the BOCES conditioning the provision of an aid, benefit, or service of the BOCES on an individual's participation in unwelcome sexual conduct;
- b) Unwelcome 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;
 - (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 his or her safety or the safety of others; or
 - 2. Suffer substantial emotional distress.

Title IX Coordinators

The BOCES has designated and authorized the following BOCES employees to serve as its Title IX Coordinators:

- 1. Deputy Superintendent Dr. Julie Donlon, 80 Munson Street, Le Roy, New York 14482, whose phone number is 585-344-7902 and whose email address is jdonlon@gvboces.org, and
- 2. Labor Relations Coordinator Stephen M. Mahoney, Esq., 80 Munson Street, Le Roy, New York 14482, whose phone number is 585-344-7904 and whose email address is smahoney@gvboces.org

The Title IX Coordinators will coordinate the BOCES efforts to comply with its responsibilities under Title IX. However, the District Superintendent may delegate the responsibilities of the Title IX Coordinators to other trained personnel or to outside legal counsel.

Reporting Allegations of Sex Discrimination

Any person may report sex discrimination including sexual harassment, regardless of whether they are the alleged victim or not. Reports may be made to a Title IX Coordinator in person or by using the contact information for the Title IX Coordinators provided above.

Reports of sex discrimination may also be made to any other BOCES employee including a supervisor, building principal, or other administrator. All reports of sex discrimination, including sexual harassment, will be forwarded to a BOCES Title IX Coordinator. Reports may also be forwarded to other BOCES employees depending on the allegations.

All BOCES employees who witness or receive an oral or written report of sex discrimination must immediately inform a Title IX Coordinator. Failure to immediately inform a Title IX Coordinator may subject the employee to discipline up to and including termination.

Making a report of sexual harassment is not the same as filing a Formal Complaint of sexual harassment. A Formal Complaint is a document either filed by a complainant or a parent or legal guardian who has a right to act on behalf of the complainant which alleges sexual harassment against a respondent and requests that the BOCES investigate the

allegations. While the BOCES must respond to all reports it receives of sexual harassment, the Title IX grievance process is only initiated with the filing of a Formal Complaint.

If a Title IX Coordinator is unavailable, including due to a conflict of interest or other disqualifying reason, the report will be directed to another Title IX Coordinator. If neither Title IX Coordinator is available, the District Superintendent will appoint another trained person to fulfill certain of the responsibilities of a Title IX Coordinator. Such other person may include outside legal counsel.

Grievance Process for Complaints of Sex Discrimination Other than Formal Complaints of Sexual Harassment

The BOCES will provide for the prompt and equitable resolution of reports of sex discrimination other than Formal Complaints of sexual harassment utilizing this policy and, as applicable, Board Policy 5180 ("Protection of Employees, Contractors and others from Discrimination, Sexual Harassment and Retaliation), Board Policy 6180 ("Protection of Students from Discrimination, Sexual Harassment and Retaliation"), Board Policy 6215 ("Dignity for All Students Act"), the BOCES Code of Conduct and any other applicable BOCES policy, procedure, statute, regulation, collective bargaining agreement or other document.

Grievance Process for Formal Complaints of Sexual Harassment

For purposes of Formal Complaints of sexual harassment in a BOCES "education program or activity" under Title IX, the term "education program or activity" includes locations, events, or circumstances over which the BOCES exercised substantial control over both the respondent(s) and the context in which the sexual harassment occurred.

The BOCES will follow a grievance process that complies with law and regulation before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

The BOCES will conduct the grievance process in a timely manner designed to provide all parties with a prompt and equitable resolution. It is anticipated that, in most cases, the grievance process will be conducted within the time frames established in this policy.

Definitions

- a) "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to a BOCES Title IX Coordinator or any official of the BOCES who has authority to institute corrective measures on behalf of the BOCES, or to any BOCES employee. This standard is not met when the only official of the BOCES with actual knowledge is the respondent.
- b) "Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- c) "Business Days" means weekdays; however, from September through June, Business Day excludes any weekday during which school is not in session. For example, during September through June, Business Day would not include a day on which school is closed due to inclement weather or Thanksgiving Day.
- d) "Formal Complaint" means a document filed by a complainant or signed by a Title IX Coordinator alleging sexual harassment against a 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 a Title IX Coordinator in person, by mail, or by email, by using the contact information provided above. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission (such as by email or through an online portal provided for this purpose by the BOCES) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the Formal Complaint.
- e) "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- f) "Supportive measures" means non-disciplinary, non-punitive individualized services offered as appropriate 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 those designed to protect the safety of all parties or the BOCES educational environment, or to 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 locations, 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 complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the BOCES to provide the supportive measures. Title IX Coordinators are responsible for coordinating the effective implementation of supportive measures.

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) Complainants and respondents are treated equitably. This includes applying any provisions, rules, or practices incorporated into the BOCES grievance process, other than those required by law or regulation, equally to both parties.
- b) All relevant evidence is objectively evaluated, including both inculpatory and exculpatory evidence. Inculpatory evidence implicates or tends to implicate an individual in a crime or wrongdoing. Exculpatory evidence frees or tends to free an individual from a crime or wrongdoing.
- c) The Title IX Coordinator, investigator, 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 complainants or respondents generally or an individual complainant or respondent.
- d) Respondents are 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 that the process is only temporarily delayed or extended for good cause. 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; 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 complainants and respondents of 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 all complainants and respondents.
- i) The range of supportive measures available are known to all complainants and respondents.
- 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 on the BOCES and not on the parties.
- l) The Title IX Coordinator, the investigator, any decision-maker, or any other person participating on behalf of 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.

- m) The parties have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- n) Credibility determinations are not to 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 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 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.
- q) Written notice of the date, time, location, participants, and purpose of all hearings, 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.

After any Report of Sexual Harassment Has Been Made

After receiving any report of sexual harassment, (whether in the form of a Formal Complaint or otherwise) a Title IX Coordinator will:

- a) Promptly contact the complainant to discuss and offer supportive measures;
- b) Inform the complainant both of the range of supportive measures available and that these measures are available regardless of whether a Formal Complaint is filed;
- c) Consider the complainant's wishes with respect to supportive measures; and
- d) Explain to the complainant the process for filing a Formal Complaint.

A Title IX Coordinator may also contact the respondent to discuss and/or impose supportive measures.

Requests for confidentiality or use of anonymous reporting may limit how the BOCES is able to respond to a report of sexual harassment.

Emergency Removal and Administrative Leave

At any point after receiving a report or Formal Complaint of sexual harassment, the BOCES may immediately remove a respondent 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; and
- c) Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

The BOCES will coordinate its Title IX compliance efforts with special education staff when initiating an emergency removal of a student with a disability from an education program.

The BOCES may place a non-student employee respondent on administrative leave with or without pay during the pendency of the grievance process in accordance with law and regulation and any applicable BOCES policy, procedure, collective bargaining agreement, or other document such as the BOCES Code of Conduct.

Filing a Formal Complaint

A complainant may file a Formal Complaint with a Title IX Coordinator in person or by mail or email. 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's parent or legal guardian as appropriate, or the Title IX Coordinator. 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 his or her signature does not make him or her the 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's 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 will include the identities of all known parties.

The BOCES will not discriminate on the basis of sex in its treatment of a complainant or a respondent in responding to a Formal Complaint of sexual harassment.

The Complaint Form is attached to and made a part of this policy.

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 respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

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

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, the Title IX Coordinator or another BOCES employee may serve as the BOCES investigator. The BOCES may also outsource all or part of an investigation to other properly trained BOCES personnel or 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.

It is anticipated that most investigations will be completed and submitted to the parties and to a designated decision maker within forty-five Business Days after receiving a Formal Complaint.

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 complainants, respondents, and witnesses. Interviews of complainants and respondents will be conducted separately. If a student is involved, the BOCES will follow any applicable BOCES policy, procedure, or other document such as the BOCES 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;
 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.

Prior to completion of the investigative report, the BOCES will 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.

At the end of the investigation, an investigative report will be created that fairly summarizes all relevant evidence.

At least ten days prior to a 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.

Dismissal of a Formal Complaint

The BOCES must investigate allegations of sexual harassment in a Formal Complaint. However, the BOCES must dismiss a Formal Complaint under Title IX if the conduct alleged:

- a) Would not constitute sexual harassment even if proven;
- b) Did not occur in the BOCES education program or activity; or
- c) Did not occur against a person in the United States.

Further, the BOCES may dismiss a Formal Complaint or any of its allegations under Title IX, if at any time during the investigation:

- a) A complainant notifies a Title IX Coordinator in writing that the complainant would like to withdraw the Formal Complaint or any of its allegations;
- b) The respondent is no longer enrolled or employed by the BOCES; or
- c) Specific circumstances prevent the BOCES from gathering evidence sufficient to reach a determination as to the Formal Complaint or any of its allegations.

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.

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 BOCES Code of Conduct.

Informal Resolutions

Before reaching a determination regarding responsibility, 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.

It is anticipated that most informal resolutions will be completed within forty-five Business Days of the filing of a Formal 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. Further, the 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 BOCES offers and facilitates the use of an informal resolution process, it 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; and
- b) Obtain the parties' voluntary, written consent to the informal resolution process.

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. They cannot be the same individual as either the Title IX Coordinator or the investigator(s).

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 Business Days after the parties and the decision maker have received the investigative report, and to provide their respective written answers to said questions within five Business Days of receipt of the questions;

- b) Provide each party with the answers given by any party or witness within three Business Days of receiving both parties' answers; and
- c) Allow for additional, limited follow-up questions and responses following the same time frame as provided in paragraphs "a" and "b" above.

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 are 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. The decision-maker(s) will explain to the party proposing the questions any decision to exclude a question as not relevant.

The decision-maker(s) will issue a written determination regarding responsibility to the Title IX Coordinator, the Superintendent, and all parties simultaneously within ten business days after all follow-up questions have been responded to or after the hearing, if one has been provided.

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;
- 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 BOCES 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 BOCES procedures and permissible bases for the complainant and respondent to appeal.

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 the 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 BOCES Code of Conduct.

Title IX Coordinators are 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.

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 a Title IX Coordinator within five Business Days of the written notice of the determination regarding responsibility or dismissal of the Formal Complaint or any of its allegations.

An appeal may only be based upon one or more of the following bases:

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

The bases on which a party is seeking an appeal should be specifically stated in the party's written appeal.

Upon receipt of an appeal, the BOCES will:

- a) Notify the other party in writing that an appeal has been filed and implement the appeal procedures equally for both parties;
- b) 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;
 - 2. Does not have any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;
- c) Give all parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. The appealing Parties will have to submit these written statements within five days after the parties have been notified of the appeal;
- d) Issue a written decision describing the result of the appeal and the rationale for the result; and
- e) Provide the written decision simultaneously to the Title IX Coordinator, the Superintendent, and all parties within ten business days after receiving the parties' written statements in support of, or challenging, the outcome.

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

The BOCES prohibits retaliation against any individual 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 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.

Confidentiality

Except where disclosure may be permitted or required by law or regulation, the BOCES will keep confidential the identity of any:

- a) Individual who has made a report or complaint of sex discrimination;
- b) Individual who has made a report or filed a Formal Complaint of sexual harassment;

- c) Complainant;
- d) Individual who has been reported to be the perpetrator of sex discrimination;
- e) Respondent; and
- f) Witness.

Notification

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

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)

Adoption Date

DISCRIMINATION ON THE BASIS OF SEX
(INCLUDING SEXUAL HARASSMENT) COMPLAINT FORM

Print Your Name: _____

Please Check One:

- I would like to meet with a Title IX Coordinator in person to discuss supportive measures that BOCES may take on my behalf and to discuss how to complete this form. I will choose one of the two options below at that time. (If this box is checked a meeting will be scheduled on an immediate/priority basis.)
- This is a "Formal Complaint" and I request formal investigation as established in this Policy.
- I request action on this Complaint but do not at this time intend that it be handled as a "Formal Complaint" as established in this Policy.

SPECIFIC COMPLAINT (Please use additional paper if needed for any answer below):

1. The name of the person(s) about whom you are complaining:

Name: _____ Title: _____

This person is An employee, A student, or other, please specify: _____

2. Describe the conduct or incident(s) that are the basis of this Complaint.

3. Date(s) the conduct occurred if known: _____

Is the conduct presently continuing? Yes No

4. List the name and contact information of any witnesses or individuals that may have information related to your Complaint.

5. Have you previously complained or provided information (verbal or written) about this Complaint? If yes, when and to whom?

Your Signature: _____

Date: _____