

POLICY	Year: 2023	Policy #: 5180 Section: Personnel
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SUBJECT: Protection of Employees, Contractors and others from Discrimination, Sexual Harassment and Retaliation

This policy must be provided to all employees in person or digitally through email upon hiring and will be posted prominently in all work locations.

PROHIBITIONS

Discrimination and Harassment Prohibited: The Genesee Valley BOCES (the "BOCES") prohibits discrimination including sexual harassment against employees, applicants for employment, contractors, subcontractors, vendors, consultants, volunteers, guests, interns (paid or unpaid) and visitors on all illegal bases including sex, race, creed, color, sexual orientation, gender identity or expression, military status, national origin, age, religion, disability, pre-disposing genetic characteristics, familial status, marital status, criminal history or status as a victim of domestic violence. These prohibitions apply to all persons, in all BOCES program and on all BOCES premises. Such discrimination and sexual harassment are illegal under federal and state law, and are forms of misconduct. The Genesee Valley BOCES is committed to providing all employees with a respectful, appropriate and comfortable workplace and an organizational culture free from all forms of illegal discrimination, including sexual harassment. This endeavor requires recognition that our different identities impact our understanding of the world and how others perceive us. For example, an individual's race, ability, or immigration status may impact our experiences with gender discrimination in the workplace. While this policy includes focus on sexual harassment and gender discrimination, the methods for reporting and investigating discrimination based on other protected identities are the same. One purpose of this policy is to teach employees to recognize discrimination, including discrimination due to an individual's intersecting identities, and provide the tools to take action when it occurs. All employees, managers and supervisors are required to work in a manner designed to prevent sexual harassment and discrimination in the workplace. This policy is one component of the Genesee Valley BOCES commitment to a discrimination-free work environment.

Scope of Policy: This policy applies to all employees, applicants for employment, and interns, whether paid or unpaid. The policy also applies to additional persons who are not employed by the BOCES, such as contractors, gig workers, and temporary workers. Also included are persons providing equipment repair, cleaning services, or any other services through a contract with the BOCES.

Sexual Harassment: Sexual harassment is a form of gender-based discrimination that is unlawful under federal and state law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, the status of being transgender, gender role stereotyping, and treating employees differently because of their gender. Sexual harassment is unlawful when it subjects and individual to inferior terms, conditions or privileges of employment. Sexual harassment is not limited to the physical workplace itself; it may occur by or to employees working from remote locations. Harassment does not need to be severe or pervasive to be illegal. Rather, it may be any harassing behavior that rises above petty slights or trivial inconveniences. There are two main types of sexual harassment. They are:

1. Behaviors that contribute to a **hostile work environment** that include, but are not limited to, words, signs, jokes, pranks, intimidation, or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex, gender identity, or gender expression. Sexual harassment also consists of unwanted verbal or physical advances, sexually explicit derogatory or discriminatory statements which an employee finds offensive or objectionable, causes and employee discomfort or humiliation, or interferes with the employee's job performance.
2. Sexual harassment also occurs when a person in authority attempts to trade job benefits for sexual favors. These job benefits may include but are not limited to hiring, promotion, continued employment or any other terms, conditions, or privileges of employment. This is called **quid pro quo** discrimination.

Understanding Gender Diversity in Relation to Sexual Harassment: Understanding gender diversity is essential to recognizing sexual harassment because discrimination based on sex stereotypes, gender expression and perceived identity are all forms of sexual harassment. The gender spectrum is nuanced, but the three most common ways people identify are cisgender, transgender, and non-binary. A cisgender person is someone whose gender aligns with the sex they were assigned at birth. Generally, this gender will align with the binary of male or female. A transgender person is someone whose gender is different than the sex they were assigned at birth. A non-binary person does not identify exclusively as a man or a woman. They might identify as both, somewhere in between, or completely outside the gender binary. Some may identify as transgender, but not all do. Respecting an individual's gender identity is a necessary first step in establishing a safe workplace.

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

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

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

Sexual harassment can occur when employees are working remotely from home as well. Any behaviors outlined above that leave an employee feeling uncomfortable, humiliated, or unable to meet their job requirements constitute harassment even if the employee is at home when the harassment occurs. Harassment can happen on virtual meeting platforms, in messaging apps, and after working hours between personal cell phones.

In summary: Any behavior in which an employee is treated worse because of their gender (perceived or actual), sexual orientation, or gender expression is considered sexual harassment and a violation this policy.

RETALIATION

Retaliation is any adverse action taken against a person due to that person having engaged in protected activity. Protected activity includes:

- Making a complaint of harassment or discrimination, either internally or with any government agency;
- Testifying or assisting in a proceeding involving sexual harassment or discrimination under the Human Rights Law or any other anti-discrimination law;
- Opposing sexual harassment or discrimination by making a verbal or informal complaint to management, or by simply informing a supervisor or manager or suspected harassment;
- Reporting that another employee has been sexually harassed or discriminated against; or
- Encouraging a fellow employee to report harassment.

Retaliation may be work related, such as termination of employment, demotion, transfer, or discipline; or it may be unrelated to work, such as threats or insults. Retaliation is illegal under federal law and state law. It is a form of misconduct. It is prohibited by the BOCES. Examples of retaliation include:

- Threats of physical violence at or outside the work place or during our outside or working hours;
- Disparaging someone on social medial;
- Demotion, termination, denying accommodations, reduced hours, or the assignment of less desirable shifts;
- Publicly releasing personnel files;
- Refusing to provide a reference or providing an unwarranted negative reference;
- Labeling an employee as "difficult" an excluding them from projects to avoid "drama";
- Undermining a person's immigration status; or
- Reducing work responsibilities or passing someone over for promotion.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, these retaliation prohibitions are not intended to protect persons who make intentionally false charges of harassment.

REPORTING SEXUAL HARASSMENT AND DISCRIMINATION

Internal Victim and Witness Complaints: Victims of and witnesses to discrimination, harassment or retaliation, whether employees or non-employees, are urged to report to the District Superintendent or the Deputy Superintendent. A complaint form is provided below. However, if a complainant or witness prefers to report in any other manner - such as to a direct supervisor, verbally, using a different form or by reporting to some other BOCES administrator - that preference will be respected and the complaint will be acted upon irrespective of the manner in which it is made.

Internal Supervisory Reporting: Supervisory personnel are required to report any discrimination, harassment or retaliation complaint they receive - or any discrimination, harassment or retaliation they observe or otherwise become aware of - to the District Superintendent or the Deputy Superintendent. Supervisory personnel who fail to report or who deliberately permit discrimination, harassment or retaliation will be subject to discipline or remediation.

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

External Complaints: External forums in which discrimination, harassment and retaliation complaints may also or instead be made are identified below. (See "Legal Protections and External Remedies.")

BYSTANDER INTERVENTION

Any employee witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is **required** to report it. There are five standard methods of bystander intervention that can be used when anyone witnesses harassment or discrimination and wants to help. They are:

1. A bystander can interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior;
2. A bystander who feels unsafe interrupting on their own can ask a third party to help intervene in the harassment;
3. A bystander can record or take notes on the harassment to benefit future investigation;
4. A bystander might check in with the person who has been harassed after the incident, see how they are feeling and let them know the behavior was not ok; and
5. If a bystander feels safe, they can oppose the harasser and name the behavior as inappropriate. When opposing the harasser, the bystander should be mindful to avoid escalation, and that physical opposition is not an appropriate bystander intervention.

Though not exhaustive, and dependent on the circumstances, the guidelines above can serve as a brief guide on how to react when witnessing harassment in the workplace.

INVESTIGATIONS

Upon receipt of a complaint of sexual harassment or other forms of discrimination, the BOCES will take prompt steps to ensure a safe work environment for the employee(s) who have complained of discrimination.

All complaints and legitimate suspicions of discrimination, harassment or retaliation will be investigated in a timely manner that is fair to all parties. To every extent consistent with the law, all employees, including managers and supervisors, are required to cooperate with internal investigations. The BOCES cannot guarantee unconditional confidentiality but will endeavor to maintain confidentiality to every extent practicable. All persons involved, including complainants, witnesses and the accused will be accorded due process, as outlined below, to protect their right to a fair and impartial investigation.

While the investigatory process may vary from case to case and will be commensurate with the severity of the complaint, investigations will normally be conducted in accordance with the following steps:

- Upon receipt of a complaint, the District Superintendent or the Deputy Superintendent (or a designee) will:
 - Conduct a prompt review of the allegations, assess the appropriate scope of the investigation, and take any interim action (such as instructing the accused party not to communicate with the complainant) as appropriate. If the complaint is verbal, he or she will request the individual to complete the complaint form in writing. (If the person reporting prefers not to fill out the form, the District Superintendent or Deputy Superintendent will prepare or cause to be prepared a complaint form or equivalent document based on the verbal report.
 - Take any further action needed to curtail potential misconduct and to thereby ensure a safe and appropriate work environment, and
 - Conduct or cause to be conducted an investigation.
- If documents, emails, electronic communications or phone records are known to be relevant to the investigation, steps will be taken to obtain and preserve them.
- The complainant, the accused and witnesses will be interviewed. They will be instructed to maintain confidentiality to the extent permitted by law.
- An investigation report will be written. It will include:
 - A list of all documents reviewed, along with a copy or description;
 - A list of the names of those interviewed, along with a detailed summary of their statements;
 - A timeline of events;
 - A summary of prior relevant incidents, reported or unreported; and
 - The action recommended to be taken at the conclusion of the investigation. This section of the report may be written separately and included as an addendum to the initial report.
- Keep the investigation report and related documents and evidence in a secure and confidential location;

- Promptly notify the individual(s) who reported the harassment and the individual(s) about whom the complaint was made that the investigation has been completed and implement any corrective actions identified in the written document; and

OUTCOMES: DISCIPLINE AND REMEDIATION

Just as harassment can happen in different degrees, potential discipline for engaging in sexual harassment will depend on the degree of harassment and might include further education and counseling. Sexual harassment may also lead to disciplinary action including termination of employment when appropriate. Though the specific outcome may vary from situation to situation, nonetheless, any employee who engages in discrimination, harassment or retaliation will be subject to disciplinary and/or remedial action. Employees who sexually harass may even be found liable for the payment of monetary damages.

The specific outcome of the investigation will depend on many factors - including the investigation findings, whether the investigation was conclusive or inconclusive, prior misconduct, prior attempts at remediation, applicable law and any applicable collective bargaining agreements. In any event, the outcome will include steps to prevent recurrence or continuation of any discriminatory or retaliatory behavior.

Any student who engages in discrimination, harassment or retaliation will be subject to disciplinary and/or remedial action, consistent with the BOCES's Code of Conduct.

Notifications of Outcome: To every extent consistent with applicable legal requirements and considerations of confidentiality, the complainant and the accused will be notified of the final determination and of any corrective action to be taken. Also, the the individual(s) who reported will be informed of the right to file a complaint or charge externally as outlined in this policy below.

EXAMPLES OF SEXUAL HARASSMENT

Examples of sexual harassment may include:

- Unwanted physical acts of a sexual nature, such as touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body.
- Unwanted sexual advances or propositions, such as:
 - Requests for sexual favors accompanied by implied or overt threats concerning the target's performance evaluation, promotion or other job benefits or detriments; or
 - Subtle or obvious pressure for unwelcome sexual activities,
 - Repeated requests for dates or romantic gestures, including gift giving.

- Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping, which occurs when conduct or personality traits are considered inappropriate simply because they may not conform to another person's ideas or perceptions about how individuals of a particular sex "should" act or look. Examples include:
 - Remarks regarding an employee's gender expression, such as wearing a garment typically associated with a different gender identity, or
 - Asking employees to take on traditional gender roles, such as asking a woman to serve meeting refreshments when it is not part of, or appropriate to, her job duties.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
 - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
 - Sabotaging an individual's work;
 - Bullying, yelling, or name-calling;
 - Intentional misuse of an individual's preferred pronouns; or
 - Creating different expectations for individuals based on their perceived identities, such as dress codes that place more emphasis on women's attire or excluding employees from meetings or projects based on assumptions about their at home care-giving responsibilities.
- Remarks regarding an employee's gender expression, such as wearing a garment more typically associated with a different gender identity.
- Having sexual or other inappropriate content visible in the background of a virtual meeting.
- Intentional misuse of an individual's preferred pronouns.
- Rape, sexual battery, molestation or attempts to commit these assaults.

WHO CAN BE THE TARGET OF SEXUAL HARASSMENT?

Sexual harassment can occur between any individuals, regardless of their sex or gender. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including

an independent contractor, contract worker, vendor, client, customer, or visitor. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace.

WHERE CAN SEXUAL HARASSMENT OCCUR?

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

FURTHER INFORMATION

Legal Protections and External Remedies

In addition to or instead of using the attached Complaint Form, employees may pursue legal remedies with the following governmental entities. A private attorney is not required.

State Human Rights Law (HRL)

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State. It protects employees, paid or unpaid interns, and non-employees, regardless of immigration status. A complaint alleging a violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one year** of the harassment. If an individual did not file with DHR, they may sue directly in state court under the HRL, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally does not extend your time to file with DHR or in court. The one year or three year deadline is counted from the date of the most recent incident of harassment.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the authority to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees if any, and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit www.dhr.ny.gov/complaint or call the DHR hotline at 1(800) HARASS3. DHR also maintains an office in Rochester, New York, at 259 Monroe Avenue, Suite 308, Rochester, New York 14607. You may call (585)238-8250.

Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that may be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

The Equal Employment Opportunity Commission (EEOC) and the Civil Rights Act of 1964:

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination" with the EEOC. To do so, go to <https://www.eeoc.gov/filing-charge-discrimination> or by call 1-800-669-400 (TTY) or call 1(800)-669-6820 or email info@eeoc.gov.

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

Local Protections

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

Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

BOARD POLICY 5180 DISCRIMINATION OR HARASSMENT COMPLAINT FORM

YOUR INFORMATION:

Name: _____
Personal Phone: _____
Work Phone: _____
Email: _____

I am (check one):

- An Employee
- A Contractor
- Other _____

SPECIFIC COMPLAINT:

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

Name: _____ Title: _____

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

2. Describe the conduct or incident(s) that are the basis of this complaint. Use additional paper if necessary.

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. Use additional paper if necessary.

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

Print Name: _____

Signature: _____

Date: _____