

Prohibited Conduct, Discrimination, and Harassment

A. Equal Opportunity Employer

BOCES provides equal employment opportunities to all employees and applicants for employment and prohibits discrimination based upon membership in a protected class, which protected classes are defined by federal, state, or local law. This includes discrimination based upon age, creed, race, color, religion, sex, sexual orientation, national origin, citizenship, marital status, disability, genetics, military or veteran status, gender, gender identity or expression, domestic violence victim status, criminal or arrest record. This prohibition applies to all terms and conditions of employment, including hiring, placement, promotion, discharge, pay, fringe benefits, job training, classification, referral, leaves of absence, and other aspects of employment.

B. Harassment

Federal and state law defines protected classes as age, creed, race, color, religion, sex, sexual orientation, national origin, citizenship, marital status, disability, genetics, military or veteran status, gender, gender identity or expression, domestic violence victim status, criminal or arrest record. BOCES' employees are expected to act fairly and with respect and cooperation in every occasion. Standards of discipline, decorum, and performance must be observed strictly by all employees. Interactions with students, parents, community members, and other employees in a respectful and appropriate manner.

C. Sexual Harassment

BOCES is committed to maintaining a workplace free from sex-based discrimination and sexual harassment, including sexual violence and intimidation. Sexual harassment is a form of workplace discrimination. All employees are required to work in a manner that prevents harassment based on gender, race, color, religion, national origin, age, disability, gender orientation or any other characteristic protected by local, state or federal law.

What Is "Sexual Harassment"?

1. Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.
2. Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

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- a. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
 - b. Such conduct is made either explicitly or implicitly a term or condition of employment; or
 - c. Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.
3. A sexually harassing hostile work environment includes, but is 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. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job performance.
4. Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called "quid pro quo" harassment.

Examples of Sexual Harassment

5. The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:
 - a. Physical acts of a sexual nature, such as:
 - i. Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body;
 - ii. Rape, sexual battery, molestation or attempts to commit these assaults.
 - b. Unwanted sexual advances or propositions, such as:
 - i. Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
 - ii. Subtle or obvious pressure for unwelcome sexual activities.
 - c. Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.

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- d. Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- e. Sexual or discriminatory displays or publications anywhere in the workplace, such as displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- f. Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
 - i. Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
 - ii. Sabotaging an individual's work;
 - iii. Bullying, yelling, name-calling.
- g. Sexual harassment can occur between any individuals, regardless of their sex or gender. 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. 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.
- h. 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 premises, on personal devices or during non-work hours.

D. Consensual Relationships

- 1. In furtherance of this policy, BOCES prohibits supervisors and managers from engaging in a romantic or intimate relationship with any individual of whom they exercise supervisory or managerial authority. Such relationships can be disruptive to the work environment, create a conflict or the appearance of a conflict of interest, and lead to charges of favoritism, discrimination, and claims of sexual harassment. While Jefferson-Lewis BOCES has no desire to interfere with the private lives of its employees, or their off-duty conduct, where such conduct impacts upon the work environment in a negative manner, such as noted above, BOCES reserves the right to take whatever action is appropriate, in its discretion, to protect BOCES' interests.

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2. If a prohibited consensual relationship develops between employees the supervisor or managerial involved must immediately disclose the relationship to the appropriate Director and/or Assistant Superintendent in order to avoid or mitigate conflicts of interest in connection with the supervision and evaluation of the employees with whom they have a consensual relationship. Mitigation may involve the transfer of either the supervisor or employee or other appropriate action.

E. Purpose and Application

1. The policy applies to all employees, applicants for employment, paid or unpaid interns, contractors, and persons conducting business, regardless of immigration status, with BOCES. The term “employees” refers to this collective group. A non-employee is someone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services in the workplace. Protected non-employees include persons commonly referred to as independent contractors, “gig” workers and temporary workers. Also included are persons providing equipment repair, cleaning services or any other services provided pursuant to a contract with the employer.
2. This policy must be provided to all employees and should be posted prominently in all work locations to the extent practicable and be provided to employees upon hiring. Additional information regarding BOCES’ discrimination and harassment complaint and grievance procedures, including, but not limited to, the designation of the Compliance Officer can be found on BOCES’ website.
3. Harassment of members of a protected class in any form will not be tolerated. Any employee or individual covered by this policy who engages in harassment or retaliation will be subject to remedial and/or disciplinary action (e.g., counseling, suspension, termination). All complaints will be handled in a manner consistent with BOCES’ procedures, and/or regulations regarding the investigation of discrimination and harassment complaints.
4. No person covered by this Policy shall be subject to adverse action because the employee reports an incident of harassment, provides information, or otherwise assists in any investigation of a harassment complaint. BOCES will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected harassment. Any employee of BOCES who retaliates against anyone involved in a harassment investigation will be subjected to disciplinary action, up to and including termination. All employees, paid or unpaid interns, or non-employees working in the workplace who believe they have been subject to such retaliation should inform a supervisor, manager, or with BOCES’ Compliance Officer. In the event that the Compliance Officer is the alleged offender, the report will be directed to another Compliance Officer, if BOCES has designated an additional individual to serve in that capacity, or to the Superintendent.

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5. All employees, paid or unpaid interns or non-employees who believe they have been a target of such retaliation may also seek relief in other available forums, set forth in the section on Legal Protections.
6. Harassment and/or discrimination of a protected class, is unlawful, is a violation of our policies, and may subject BOCES to liability. Harassers may also be individually subject to liability. Employees of every level who engage in harassment, including managers and supervisors who engage in harassment or who allow such behavior to continue, will be penalized for such misconduct.
7. BOCES will conduct a prompt and thorough investigation that ensures due process for all parties, whenever management receives a complaint about harassment, or otherwise knows of possible harassment occurring. BOCES will keep the investigation confidential to the extent possible. Effective corrective action will be taken whenever harassment is found to have occurred. All employees, including managers and supervisors, are required to cooperate with any internal investigation of harassment.
8. All employees are encouraged to report any harassment or behaviors that violate this policy. BOCES will provide all employees a complaint form for employees to report harassment and file complaints.
9. Managers and supervisors are required to report any complaint that they receive, or any harassment that they observe or become aware of, to the Compliance Officer. In the event that the Compliance Officer is the alleged offender, the report will be directed to another Compliance Officer, if BOCES has designated an additional individual to serve in that capacity, or to the District Superintendent.

F. Retaliation

1. Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours).
2. Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:
 - a. made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
 - b. testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;

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- c. opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment; reported that another employee has been harassed; or
 - d. encouraged a fellow employee to report harassment.
- 3. 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, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

G. Reporting Harassment

- 1. Preventing harassment is everyone's responsibility. BOCES cannot prevent or remedy harassment unless it knows about it. Any employee, paid or unpaid intern or non-employee who has been subjected to behavior that may constitute harassment is encouraged to report such behavior to a supervisor, manager or Compliance Officer. Anyone who witnesses or becomes aware of potential instances of harassment should report such behavior to a supervisor, manager or Compliance Officer.
- 2. Reports of harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy, and all employees are encouraged to use this complaint form. Employees who are reporting harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf.
- 3. Employees, paid or unpaid interns or non-employees who believe they have been a target of harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.
- 4. All supervisors and managers who receive a complaint or information about suspected harassment, observe what may be sexually harassing behavior or for any reason suspect that harassment is occurring, are required to report such suspected harassment to Compliance Officer.
- 5. In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected harassment or otherwise knowingly allowing harassment to continue.
- 6. Supervisors and managers will also be subject to discipline for engaging in any retaliation.

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7. Any employee who believes they have been harassed or discriminated against based upon their membership in a protected class should report so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.
8. All complaints or information about harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner, and will be confidential to the extent possible.
9. An investigation of any complaint, information or knowledge of suspected harassment will be prompt and thorough, commenced immediately and completed as soon as possible. The investigation will be kept confidential to the extent possible. All persons involved, including complainants, witnesses and alleged harassers will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation.
10. Any employee may be required to cooperate as needed in an investigation of suspected harassment. BOCES will not tolerate retaliation against employees who file complaints, support another's complaint or participate in an investigation regarding a violation of this policy.
11. While the process may vary from case to case, investigations should be done in accordance with the following steps:
 - a. Upon receipt of complaint, Compliance Officer will conduct an immediate review of the allegations, and take any interim actions (e.g., instructing the respondent to refrain from communications with the complainant), as appropriate. If complaint is verbal, encourage the individual to complete the "Complaint Form" in writing. If he or she refuses, prepare a Complaint Form based on the verbal reporting.
 - b. If documents, emails or phone records are relevant to the investigation, take steps to obtain and preserve them.
 - c. Request and review all relevant documents, including all electronic communications.
 - d. Interview all parties involved, including any relevant witnesses;
 - e. Create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
 - i. A list of all documents reviewed, along with a detailed summary of relevant documents;

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- ii. A list of names of those interviewed, along with a detailed summary of their statements;
 - iii. A timeline of events;
 - iv. A summary of prior relevant incidents, reported or unreported; and
 - v. The basis for the decision and final resolution of the complaint, together with any corrective action(s).
- f. Keep the written documentation and associated documents in a secure and confidential location.
- g. Promptly notify the individual who reported and the individual(s) about whom the complaint was made of the final determination and implement any corrective actions identified in the written document.
- h. Inform the individual who reported of the right to file a complaint or charge externally as outlined in the next section.

Legal Protections and External Remedies

- 12. Harassment and/or discrimination of a person based upon their membership of a protected class is not only prohibited by BOCES but is also prohibited by state, federal, and, where applicable, local law.
- 13. Aside from the internal process at BOCES, employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.
- 14. In addition to those outlined below, employees in certain industries may have additional legal protections.

State Human Rights Law (HRL)

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

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16. Complaints with DHR may be filed any time within one year of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, within three years of the alleged harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.
17. Complaining internally to BOCES does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment.
18. You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.
19. DHR will investigate your complaint and determine whether there is probable cause to believe that harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If harassment is found after a hearing, DHR has the power 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 and civil fines.
20. 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.
21. 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 can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

Civil Rights Act of 1964

22. 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.
23. 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.

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24. An employee alleging discrimination at work can file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.
25. If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

Contact the Local Police Department

26. 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.

Jefferson-Lewis-Hamilton-Herkimer-Oneida Board of Cooperative Educational Services

Cross-Reference: Personnel

Reference: Civil Rights Act of 1991, 42 USC §1981(a); 29 CFR §1604.11(a); Civil Service Law §75-B; Labor Law §§209-g, 296-d; Gen Obligations §5-336; CPLR §§5003-b, 7515; Finance §139-l; Public Officer §17-a; Executive Law §§296, 297; Title VII of the Civil Rights Act of 1964, 42 USC §2000e et seq., Title IX of the Education Amendments of 1972, 20 USC §1681 et. seq.; and 34 CFR §100 et seq.

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