

0110 SEXUAL HARASSMENT

Nassau BOCES is committed to maintaining a workplace free from sexual harassment for all employees, applicants for employment, interns - whether paid or unpaid, non-employees¹ and persons conducting business with Nassau BOCES, regardless of immigration status (hereinafter referred to as "individuals"). Sexual harassment is a form of workplace discrimination and this policy is one component of the Agency's commitment to a work environment free from discrimination. Sexual harassment is illegal and all individuals have a right to a workplace free from sexual harassment. Individuals are urged to report sexual harassment by filing a complaint internally with a supervisor, manager or the Agency's Civil Rights Compliance Officer(s). Individuals can also file a complaint with a government agency or in court under Federal, New York State and/or local antidiscrimination laws.

Sexual harassment will not be tolerated. Any individual covered by this policy who engages in sexual harassment or retaliation shall be subject to sanctions, remedial and/or disciplinary action (e.g., counseling, suspension, termination) as permitted by law and may also be individually subject to liability.

Retaliation Prohibition: No person covered by this policy shall be subject to adverse action because he/she reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. Nassau BOCES shall not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected sexual harassment. Any Nassau BOCES employee who retaliates against anyone involved in a sexual harassment investigation shall be subject 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 the Agency's Civil Rights Compliance Officer(s). Additionally, all employees who believe they have been a target of such retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.

Nassau BOCES shall conduct a prompt and thorough investigation that ensures due process for all parties whenever management receives a complaint of sexual harassment or otherwise knows of possible sexual harassment occurring. Nassau BOCES shall keep the investigation confidential to the extent possible. Effective corrective action shall be taken whenever sexual harassment is found to have occurred. All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment.

¹ 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-individuals 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.

All individuals are encouraged to report any harassment or behaviors that violate this policy. Nassau BOCES shall provide all individuals a complaint form to report harassment and file complaints. Additionally, sanctions shall be enforced against such personnel who knowingly allow said behavior to continue.

Supervisory and managerial personnel are **required** to report any complaint that they receive, or any harassment that they observe or become aware of, to the Agency's Civil Rights Compliance Officer(s).

This policy shall be disseminated to all new and current employees and posted prominently in all work locations to the extent practicable.

What is "Sexual Harassment"?

Sexual harassment is a form of sex discrimination and is unlawful under Federal, New York 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.

Sexual harassment includes unwelcomed conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- 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;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence that are of a sexual nature or that 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 that are offensive or objectionable to the recipient, that cause the recipient discomfort or humiliation or that interfere with the recipient's job performance.

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 called “quid pro quo” harassment.

Any individual who feels harassed should report such harassment so that any violation of this policy can be corrected promptly.

Examples of Sexual Harassment

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical acts of a sexual nature, such as:
 - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another individual’s body or poking another individual’s body;
 - Molestation, sexual battery, rape or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
 - 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;
 - Subtle or obvious pressure for unwelcomed sexual activities.
- Sexually oriented gestures, noises, remarks or jokes or comments about a person’s sexuality or sexual experience, that create a hostile work environment.
- Sex stereotyping 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.
- 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.
- Hostile actions taken against an individual because of that individual’s sex, sexual orientation, gender identity and the status of being transgender, such as:
 - Bullying, yelling, name-calling;
 - Sabotaging an individual’s work;
 - Interfering with, destroying or damaging a person’s workstation, tools or equipment, or otherwise interfering with the individual’s ability to perform the job.

Who can be a target of sexual harassment?

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects all employees, applicants for employment, interns - whether paid or unpaid, non-employees and persons conducting business with Nassau BOCES, regardless of immigration status. 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.

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 premises, on personal devices or during non-work hours.

The Nassau BOCES condemns and strictly prohibits all forms of sexual harassment at Nassau BOCES facilities, on school buses and at all Nassau BOCES-sponsored activities, programs and events regardless of the location, or outside the school setting if the harassment impacts the individual's education or employment in a way that violates their legal rights.

Under New York State and Federal laws, students and individuals have legal protections against sexual harassment in the school environment as described above. The Nassau BOCES' Code of Conduct also addresses appropriate behavior in the school environment.

Retaliation

Any action that might discourage a worker from coming forward to make or support a sexual harassment claim may constitute unlawful retaliation. 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).

Such retaliation is unlawful under Federal, New York 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:

- made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;

- 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 sexually harassed; or
- encouraged a fellow employee to report harassment.

Even if the alleged harassment does not 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.

Reporting Sexual Harassment

Preventing sexual harassment is everyone's responsibility. The Nassau BOCES cannot prevent or remedy sexual harassment unless the Agency is made aware of it.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this policy; all individuals are encouraged to use this complaint form. Individuals who are reporting sexual harassment on behalf of other individuals should use the complaint form and note that it is on another individual's behalf.

Individuals who believe they have been a target of sexual harassment may also seek assistance in other available forums as explained below in the section on Legal Protections.

Supervisory Responsibilities

Supervisory and managerial personnel who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, **are required** to report such suspected sexual harassment to the Agency's Civil Rights Compliance Officer(s).

In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers shall be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.

Supervisors and managers shall also be subject to discipline for engaging in any retaliation.

Complaint and Investigation of Sexual Harassment

All complaints or information about sexual harassment shall be investigated, whether that information was reported in verbal or written form. An investigation of any complaint, information or knowledge of suspected sexual harassment shall be prompt and thorough, commenced immediately and completed as soon as possible. The investigation shall be kept confidential to the extent possible. All persons involved, including complainants, witnesses and alleged harassers shall be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation.

Any individual may be required to cooperate as needed in an investigation of suspected sexual harassment. The Nassau BOCES will not tolerate retaliation against individuals who file complaints, support another's complaint or participate in an investigation regarding a violation of this policy.

While the process may vary from case to case, investigations should be done in accordance with the following steps:

- Upon receipt of a complaint, the Agency's Civil Rights Compliance Officer(s) shall 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 the complaint is verbal, encourage the individual to complete the "Complaint Form" in writing. If the individual refuses, prepare a Complaint Form based on the verbal reporting.
- If documents, emails or phone records are relevant to the investigation take steps to obtain and preserve them.
- Request and review all relevant documents including all electronic communications.
- Interview all parties involved including any relevant witnesses.
- Create documentation of the investigation (such as a letter, memo or email) which contains the following:
 - A list of all documents reviewed and a detailed summary of relevant documents;
 - A list of names of those interviewed and a detailed summary of their statements;
 - A timeline of events;
 - A summary of prior relevant incidents; and
 - The basis for the decision and final resolution of the complaint together with any corrective action(s).

- Keep the documentation and associated documents in a secure and confidential location.
- Promptly notify the complainant, and the individual(s) about whom the complaint was made, of the final determination and implement corrective actions, if any, identified in the document.
- Inform the employee who reported of the right to file a complaint or charge externally as outlined in the next section.

If, after appropriate investigation, the Nassau BOCES finds that an individual has violated this policy, prompt corrective action shall be taken in accordance with the applicable collective bargaining agreements, contracts, the Nassau BOCES Code of Conduct, Nassau BOCES Board policy, and New York State and Federal law.

Legal Protections and External Remedies

Sexual harassment is not only prohibited by the Nassau BOCES but is also prohibited by New York State, Federal and, where applicable, local law.

Aside from the internal process of the Nassau BOCES, employees may also choose to pursue legal remedies as indicated below. While a private attorney is not required to file a complaint with a governmental agency, individuals may seek the legal advice of an attorney.

New York 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 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.

Complaints with DHR may be filed any time **within one year** of the harassment. If an individual does not file at DHR, they can sue directly in New York 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 to the Nassau BOCES does not extend the 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.

An attorney is not needed to file a complaint with DHR, and there is no cost to file. DHR shall investigate the 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 power to award relief, which varies but may include requiring the employer to take action to stop the harassment or redress the damage caused, including paying monetary damages, attorney's fees and civil fines.

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 of the harassment. There is no cost to file a complaint with the EEOC. The EEOC shall investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC shall 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.

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 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 and the local police department should be contacted.

Implementation/Training

The Nassau BOCES District Superintendent or designee is directed to develop and implement regulations for reporting, investigating and remedying allegations of sexual harassment. In addition, training programs shall be established for students and individuals to raise awareness of the issues surrounding sexual harassment and to implement preventative measures to help reduce incidents of sexual harassment.

There shall be a periodic review of this policy.

Ref:

Education Amendments of 1972, Title IX, [20 U.S.C. §1681et seq.](#)

Title VII of Civil Rights Act (1964), [42 U.S.C. §2000-e](#); [34 CFR §100et seq.](#)

[Davis v. Monroe County Board of Education](#), 526 U.S. 629, 652 (1999)

[Gebser v. Lago Vista Independent School District](#), 524 U.S. 274 (1998)

[Faragher v. City of Boca Raton](#), 524 U.S. 775 (1998)

[Burlington Industries v. Ellerth](#), 524 U.S. 742 (1998)

[Oncale v. Sundowner Offshore Services, Inc.](#), 523 U.S. 75 (1998)

[Franklin v. Gwinnett County Public Schools](#), 503 U.S. 60 (1992)

[Meritor Savings Bank, FSB v. Vinson](#), 477 U.S. 57 (1986)

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Nassau BOCES

SEXUAL HARASSMENT COMPLAINT FORM

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form to report alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to the following Civil Rights Compliance Officers at 71 Clinton Road, Garden City, NY 11530: Cynthia Fitzgerald, Executive Director of Human Resources at 516-396-2358, cfitzgerald@nasbores.org or Selma Stoddard, Esq., Assistant Director, Department of Human Resources at 516-396-2360, sstoddard@nasbores.org . You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, your employer should complete this form, provide you with a copy and follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

COMPLAINANT INFORMATION

Name:

Work Address:

Work Phone:

Job Title:

Email:

Select Preferred Communication Method:

Email

Phone

In person

SUPERVISORY INFORMATION

Immediate Supervisor's Name:

Title:

Work Phone:

Work Address:

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

Adoption of this form does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.

COMPLAINT INFORMATION

1. Your complaint of Sexual Harassment is made about:

Name:

Title:

Work Address:

Work Phone:

Relationship to you: Supervisor Subordinate Co-Worker Other

2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) sexual harassment occurred:

Is the sexual harassment continuing? Yes No

4. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

The last question is optional, but may help the investigation.

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

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

Signature: _____

Date: _____