

CLINTON-ESSEX-WARREN-WASHINGTON BOCES

TITLE IX SEXUAL HARASSMENT POLICY

It is the policy of the BOCES that no person in the BOCES shall be excluded on the basis of sex from participation in, denied benefits of, or be subjected to discrimination under any education program or activity. This includes the following types of sexual harassment:

Quid Pro Quo Harassment: No employee may condition the provision of aid, benefit, or service of the BOCES on an individual's participation in unwelcome sexual conduct.

Hostile Environment Harassment: No person may engage in unwelcome sexual conduct which a reasonable person would find to be so severe and objectively offensive so as to deny a person's equal access to the BOCES' educational program or activity. Sexual assault, domestic violence and stalking are considered hostile environment harassment.

For purposes of this policy, the BOCES' educational program or activity is defined as any location, event, or circumstance over which the BOCES exhibits substantial control over both the alleged harasser and the context in which the harassment occurred.

The BOCES will provide notice of this policy and the related grievance procedure on an annual basis and the policy and related procedure will be posted on the BOCES' website.

Reporting Sexual Harassment:

Any person believing they have been the victim of sexual harassment may report the harassment to the BOCES' Title IX Coordinator. BOCES employees who have knowledge of sexual harassment under this policy are required to report the harassment to the BOCES' Title IX Coordinator promptly even if the person reporting is not the victim. The report may be made in person, by email, telephone or in writing.

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 employee's body or poking another employee's body;
 - Rape, sexual battery, molestation 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 unwelcome sexual activities.
- 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 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.

- 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:
 - 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, name-calling.

Once the Title IX Coordinator has notice of the sexual harassment, the Coordinator must respond promptly to the report of harassment. The Title IX Coordinator will promptly reach out to the victim of the alleged harassment to discuss the formal complaint procedure, availability of supportive measures and to determine the victim's wishes regarding supportive measures. The Title IX Coordinator will treat both parties equitably and will offer supportive measures to both parties. Supportive measures include, but are not limited to non-disciplinary, non-punitive, individualized services such as counseling, course modification, schedule changes or increased monitoring or supervision. Supportive measures will be designed to restore or preserve equal access to education programs or activities without unreasonably burdening the other party.

The Title IX Coordinator will also conduct an individualized safety and risk analysis to determine whether removal of the respondent is necessary to protect a student or another individual from an immediate threat to physical health and safety. If there is an immediate threat to physical health or safety, the respondent can be removed on an emergency basis. If the respondent is removed, the respondent must be given notice and opportunity to challenge the decision immediately after the removal. Removal for an employee is administrative leave.

For purposes of this policy, the respondent is the individual who has been reported to be the perpetrator of the conduct that could be considered sexual harassment.

Formal Complaint:

A formal complaint may only be filed by the victim of the alleged harassment during the time that the victim is participating in or attempting to participate in the BOCES' educational program. Once the victim is no longer participating in the BOCES' educational program or attempting to participate, a complaint may no longer be filed under Title IX. Parties other than the victim, with the exception of the BOCES' Title IX Coordinator, may not file a formal complaint on behalf of the victim. A person may still have the right to file a complaint using BOCES other anti-discrimination policies, where the person can't under Title IX. The Title IX Coordinator may file a formal sexual harassment complaint on behalf of the victim. A formal complaint must be written and signed on the BOCES' Title IX Complaint form.

Once the formal complaint has been filed, the BOCES will ensure that the parties are treated equitably during the grievance procedure, evidence will be evaluated objectively, and the Title IX Coordinator or investigator does not have a conflict of interest against a party. Further, the Title IX Coordinator and the investigator will presume that the respondent is not responsible for the alleged conduct and that the grievance procedure moves forward in a reasonably prompt manner. Both parties will be advised of the

procedures and advised about the possible disciplinary outcomes and remedies which may be implemented following a determination of responsibility.

Upon filing of a formal complaint, the Title IX Coordinator will provide both parties with a Notice of Formal Complaint.

The Notice of Formal Complaint will include the following:

- a. Supportive measures available
- b. Appeals procedures
- c. Notice of allegations in sufficient detail to allow the respondent to prepare a response
- d. Informal resolution process, if any
- e. A statement that the respondent is presumed not responsible for the conduct and responsibility will be determined at the conclusion of the grievance process
- f. The parties' right to be represented by an attorney or other representative
- g. The right to review and inspect the evidence
- h. Notice of any provision of the Code of Conduct that prohibits making false statements or providing false information during the grievance process
- i. The right to be notified of any new allegations occurring during the grievance process.

The Notice will be provided to the parties prior to the initial interview and early enough to allow the respondent to prepare a response to the complaint. The Notice will be sent separately to each party.

In evaluating complaints, the BOCES adopts an evidentiary standard of preponderance of the evidence. The Title IX Coordinator may dismiss a complaint if the complaint does not constitute sexual harassment as defined by this policy, if the Title IX Coordinator receives a request for the complaint to be withdrawn, the respondent's employment or enrollment ends, or circumstances exist which prevent the BOCES from gathering evidence.

Once a formal complaint is received, an investigation is triggered. The Title IX Coordinator handling the formal complaint will refer the matter to the BOCES other Title IX Coordinator to act as investigator unless a conflict of interest against either party exists with that Investigator. Other investigators may be appointed as needed. In conducting the investigation, the BOCES must:

- a. Bear the responsibility for gathering the evidence and meeting the burden of proof;
- b. Provide both parties an equal opportunity to present witnesses and evidence;
- c. Refrain from restricting either party's ability to discuss the allegations or gather and present evidence;
- d. Provide both parties the same opportunity to have a representative present during the interview and subsequent hearing, if any;
- e. Provide both parties written notice of date, time, participants, purpose and location of any investigative interview, hearing or other meetings with sufficient time for the party to prepare;

- f. Provide both parties and representatives, if any, equal opportunity to review all the evidence that is directly related to the allegations in the formal complaint, including evidence the BOCES does not rely on and any exculpatory or inculpatory evidence from any source. This evidence is to be provided at least 10 days prior to completion of the investigatory report and the parties may submit a written response which will be considered prior to completion of the investigation report.

Once the investigation is complete, the investigator must prepare a written investigative report and provide the report to the parties and representatives, if any, for their review and written response. The complaint, evidence, investigation report and any written responses must then go to a Decision maker or Decision Maker's Designee for a determination regarding responsibility of the respondent for the conduct alleged.

At least 10 days prior to any hearing or other determination of responsibility by the Decision maker, each party has the opportunity to submit to the Decision maker relevant questions to be asked of another party or witness. The Decision maker will provide the answers and the parties will be given a follow-up opportunity for questions.

The Decision maker, and any designee, must be a person who is neither the Title IX Coordinator nor the investigator. Once the Decision maker reviews all the documentation, the Decision maker must issue a written response within 10 days of the last submission of documentation. The written decision must address the allegations, procedural steps taken, finding of facts, and application of the Code of Conduct to the facts and a statement of and rationale for each allegation including determination of responsibility, disciplinary sanctions and whether remedies to restore or preserve equal access to the educational program will be provided.

Appeal of Decision

If either party is unhappy with the final determination of the complaint for the following reasons, the party may appeal:

- a. A procedural irregularity existed that affected the outcome of the investigation and final determination;
- b. New evidence has been discovered which was not reasonably available at the time of the determination and which could affect the outcome;
- c. There was a conflict of interest on the part of the Title IX Coordinator, investigator or Decision maker.

The appeal must be filed with the Title IX Coordinator within 10 days of the final written determination. Upon receipt of the written request for appeal, the Title IX Coordinator will notify both parties of the appeal and given them each an equal opportunity to submit in writing a statement in support of or challenging the final determination. Within 10 days of submission of statements, the appeal will be reviewed by the BOCES District Superintendent, or his designee as the Appeals Officer. The Appeals Officer may not be the Title IX Coordinator, investigator or Decision maker and may not have a conflict of interest. Within 10 days after receipt of the submissions, a written decision will be issued by the Appeals Officer to both parties on the appeal.

If a party is not satisfied with the outcome of the appeal, either party may seek further legal remedies. Specifically, the New York State Human Rights Law protects employees, students, and non-employees from sexual harassment. Complaints may be filed with the Division of Human Rights or in New York State Supreme Court. Further, the United States Equal Employment Opportunity Commission enforces federal

discrimination laws, including Title VII of the Federal Civil Rights Act. Contact information is provided below.

New York State Division of Human Rights
1 Fordham Plaza, Fourth Floor
Bronx, NY 10458
(888) 392-3644

United States Equal Employment Opportunity Commission (EEOC)
1-800-669-4000
www.eeoc.gov

U.S. Department of Education
Office of Civil Rights
400 Maryland Avenue, SW
Washington, D.C. 20202
(800) 872-5327
www.ed.gov

All records regarding the formal complaint, investigation, remedies, sanctions and appeals must be maintained by the BOCES for at least 7 years.

Any BOCES' employee is prohibited from engaging in retaliation against any person involved in the complaint, the grievance process, appeal or investigation.

[TO BE GIVEN ONCE A FORMAL COMPLAINT IS RECEIVED]

NOTICE OF FORMAL COMPLAINT OF SEXUAL HARASSMENT UNDER TITLE IX

The Title IX Coordinator has received a formal complaint of sexual harassment to which you are a party. The complaint will now proceed to the investigation process. During that process, you have the following rights:

- ☐ You have the right to be treated equitably during the investigation and decision making process.
- ☐ You have the right to representation in all aspects of the Title IX process.
- ☐ You have the right to appeal if the complaint is dismissed or if you are unhappy with the outcome of the grievance process.
- ☐ You have the right to be free from retaliation as a result of the complaint and participation in the investigation process.
- ☐ You have the right to submit written questions to the Decision Maker and have written responses.
- ☐ You have the right to an Investigator, Decision Maker and Title IX Coordinator who does not have a conflict of interest.
- ☐ You have a right after the investigation is complete, to review the investigation report and all evidence prior to a decision of responsibility by the Decision Maker.
- ☐ All available evidence will be evaluated objectively throughout the process.
- ☐ The Title IX Coordinator, Investigator and the Decision Maker will not have a conflict of interest against either party.
- ☐ BOCES may attempt informal resolution of the complaint if all parties are open to it.
- ☐ A presumption that the respondent is not responsible for the alleged conduct.
- ☐ Timeframes for the process that are reasonably prompt.
- ☐ Disciplinary outcomes may consist of but are not limited to reassignment, suspension, termination, counseling, training and additional supervision.
- ☐ The evidence standard used to evaluate the complaint is *preponderance of the evidence*.
- ☐ Entitled to supportive measures including but not limited to counseling, reassignment, leave, additional supervision, and training. The Title IX Coordinator will contact you directly to discuss available supportive measures.
- ☐ Evidentiary questions which seek privileged information are prohibited unless the party waives the privilege.
- ☐ At the end of the investigation and at least 10 school days before the investigation report is finalized, you have the right to review all evidence and respond in writing.
- ☐ If you are untruthful during the investigation process, the following Code of Conduct provisions may be applicable: **[Insert Code of Conduct provisions]**
- ☐ If new allegations arise during the investigation, you have a right to receive notice of them in writing.

The allegations of the complaint are:

- [*List individual allegations constituting sexual harassment*]

If you are the respondent to the complaint (*the person accused of sexual harassment*) you have a right to respond to these allegations in writing within 10 school days and prior to any initial interview.

A copy of the BOCES's Grievance Procedures and Title IX policy have been attached for your review.

Matthew Slattery – Civil Rights Compliance Officer
1443 Military Turnpike
Plattsburgh, NY 12901
Phone: 518-561-0100 xt 299
Slattery_matt@cves.org

Maria Huntington – Civil Rights Compliance Officer
194 US Oval
Plattsburgh, NY 12901
Phone: 518-561-0430
Huntington_maria@cves.org

NOTICE OF DECISION

[TO BE PROVIDED WITH DECISION]

You are a party to a Title IX complaint. Attached is the final Decision which contains findings of fact and determination of responsibility for the alleged conduct. Additional supportive measures or disciplinary measures may be included.

Appeal from the decision may be granted for the following reasons:

- ☐ A procedural irregularity affected the outcome
- ☐ New evidence is now available which was not previously available but could affect the outcome
- ☐ The Title IX Coordinator, Investigator or Decision Maker had a conflict of interest
- ☐ The complaint was dismissed by the Title IX Coordinator prior to investigation, and you believe the dismissal was contrary to Title IX

You may appeal the complaint by submitting a written statement challenging the decision. The written statement must be provided within 10 school days. If you are in support of the outcome of the complaint, you may submit a written statement supporting the outcome and arguing against appeal. The BOCES will select a qualified individual to decide the appeal.

The person deciding the appeal will not have a conflict of interest against either party. Further, the person hearing the appeal will review the entire record including your statements about the decision. The person hearing the appeal will make a final decision on the complaint within 10 school days of receiving the appeal.

FORMAL COMPLAINT OF SEXUAL HARASSMENT

Name of Complainant: _____

Address: _____

Phone Number: (____) - _____ Email: _____ Grade: _____

Name of Victim: _____

Name of Respondent: _____

Location of incident/incidents: _____

Description of the Incident/Incidents: (Attach additional sheets if necessary)

Witnesses:

I understand that by signing this formal written complaint form, I am making a formal complaint of sexual harassment and, as a result, an investigation and determination of responsibility will occur.

Complainant

Date

Received by: _____
Title IX Coordinator

Date

TITLE IX CHECKLIST

[TO BE COMPLETED BY THE TITLE IX COORDINATOR]

Supportive measures discussed: _____

Complainant's preference for supportive measures:

Action taken on supportive measures: _____

Copy of Title IX policy given: _____

Copy of procedures given: _____

Investigator assigned: _____

Decision Maker assigned: _____

Notice of Formal Complaint given to both parties: _____

Supportive measures offered respondent: _____

Action taken on supportive measures: _____

Physical Health and safety risk assessment conducted? ____ Yes ____ No

If no, why not: _____

Actions taken as a result of the risk assessment, if any:
