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BOCES POLICY PROHIBITING DISCRIMINATION OR HARASSMENT OF STUDENTS OR EMPLOYEES

General Policy Overview

The Board of Education affirms its commitment and responsibility to provide equal educational and employment opportunities in an environment which is free from discrimination, including harassment and intimidation and to comply with all applicable laws which prohibit unlawful discrimination. The Board of Education strictly prohibits and condemns all forms of unlawful discrimination, including harassment, on the basis of actual or perceived race, color, religion, creed, ethnicity, national origin, citizenship status, age, marital status, partnership status, disability, predisposing genetic characteristics, sexual orientation, gender (sex), military status, veteran status, domestic violence victim status or political affiliation by employees (including Board of Education members and contractors), volunteers and students, as well as any third parties who are participating in, observing, or otherwise engaging in activities subject to the supervision and control of BOCES.

Specifically with respect to students, the Board prohibits unlawful discrimination or harassment on the basis of actual or perceived race, color, national origin, ethnicity, disability, weight, sex, sexual orientation, religion, religious practice and gender, including gender identity and gender expression. The Board also prohibits retaliation based on an individual’s opposition to discrimination or participation in a related investigation or complaint proceeding under this policy or anti-discrimination statutes. Further, BOCES shall provide equal access to the Boy Scouts and other designated youth groups.

It is a violation of this policy for BOCES students or employees (including contractors) to engage in behavior that subjects any student, employee or applicant for employment to discrimination and/or harassment at a school/worksite location or in connection with an education or work-related function on the basis of any of the above-noted grounds where such conduct: (1) adversely affects any aspect of a student's educational opportunities, including the opportunity to participate in school activities; (2) adversely affects any aspect of an employee's/applicant's employment or the compensation, terms, conditions or privileges of employment; or (3) creates a hostile, offensive, or intimidating educational or work environment. It is also a violation of this policy for BOCES employees to engage in unlawful discriminatory behavior and/or harassment with respect to applicants for employment and other individuals who do business with BOCES.

Enforcement

BOCES shall act to promptly and equitably investigate and respond appropriately to all complaints or allegations of unlawful discrimination, including harassment, based on any of the characteristics described above. BOCES personnel shall take appropriate action to protect individuals from retaliation and to promptly and equitably investigate and respond appropriately to all complaints of retaliation. BOCES makes no promise or warranty about the outcome of an investigation, nor any promise or assurance that it will exercise its discretion in a manner which will meet the desires or preferences of any particular party.

In order for the Board to enforce this policy and to take corrective measures as may be necessary, it is essential that any employee, prospective employee or student who believes (s)he has been a victim of unlawful discrimination, including harassment, in the school environment and/or at programs, activities and events under the control and supervision of BOCES, as well as any individual who is aware of and/or who has knowledge of, or witnesses any possible occurrence of unlawful discrimination, including harassment, immediately report such alleged act. Such report shall be directed to or forwarded to BOCES's designated compliance officer(s) through informal and/or formal complaint procedures as developed by BOCES. Such complaints are recommended to be in writing, although verbal complaints of alleged unlawful discrimination, including harassment, shall also be promptly investigated in accordance with the terms of this policy. In the event that the compliance officer is the alleged offender, the report shall be directed to the next level of supervisory authority.

Upon receipt of a complaint, BOCES shall conduct a prompt, thorough, and equitable investigation of the charges. However, even in the absence of a complaint, if BOCES has knowledge of any occurrence of unlawful discrimination, including harassment, BOCES shall conduct a prompt, equitable, and thorough investigation and respond appropriately. To the extent possible all complaints shall be treated as confidential and private. However, disclosure may occur to the extent necessary to complete a thorough investigation of the charges, follow through with corrective action and/or to notify law enforcement officials as warranted.

Based upon the results of an investigation, if BOCES determines that an employee and/or student has violated the terms of this policy and/or accompanying regulations, immediate, corrective action shall be taken as appropriate. Should the offending individual be a student, appropriate disciplinary measures shall be imposed, up to and including suspension or expulsion in accordance with applicable laws and/or regulations, BOCES policy and regulation, and BOCES *Code of Conduct*. Should the offending individual be a BOCES employee, appropriate disciplinary measures shall be imposed, up to and including termination of the offender's employment in accordance with legal guidelines, BOCES policies and regulations, and any applicable collective bargaining agreement(s). The imposition of such disciplinary measures by BOCES does not preclude the filing of civil and/or criminal charges as may be warranted.

The Board prohibits any retaliatory behavior directed against complainants, accused individuals, witnesses, and/or any other individuals who participated in the investigation of a complaint of unlawful discrimination, including harassment. Reasonable actions shall be taken to prevent intimidation or retaliation against complainants, targeted individuals, witnesses, and/or any other individuals who participated in the investigation of a complaint of unlawful discrimination, including harassment. Any student or staff who believes that intimidation or retaliation has occurred or is occurring should make a report to BOCES Compliance Officer, the Human Resources ("HR") Director, so that an investigation and any necessary corrective action can be undertaken.

Regulations corresponding with this policy shall be developed for reporting, investigating, and remedying allegations of unlawful discrimination, including harassment, based on the characteristics described above.

This policy should not be read to abrogate other BOCES policies and/or regulations or BOCES *Code of Conduct* prohibiting other forms of unlawful discrimination or inappropriate behavior. It is the intent of BOCES that all such policies and/or regulations be read in conjunction with each other to provide the highest level of protection from unlawful discrimination in the provision of employment/ educational services and opportunities. However, different treatment of any student or employee which

has a legitimate, legal purpose shall not be considered a violation of BOCES policy.

General Overview of Discrimination

Discrimination refers to the treatment or consideration of, or making a distinction in favor of or against, a person based on the group, class, or category to which that person belongs, rather than on individual merit, individual need, or other lawful purpose. Discrimination can occur in individual circumstances or as the result of an established practice which has the effect of conferring privileges on a certain class or denying privileges to a certain class because of criteria such as age, race, color, sex, religion, national origin, or disability.

Federal and state laws prohibit unlawful discrimination based on several characteristics, including race, color, national origin, sex, disability, gender and other characteristics.

Unlawful discrimination also includes harassment, including sexual harassment and/or sexual violence. Discrimination might mean that a person, or a group of persons, are excluded from a place or an activity, or are being denied benefits and/or services afforded others based on protected characteristics such as race, color, national origin, sex, and/or disability.

Overview of Harassment

Harassment includes unwelcome verbal, written, graphic or physical conduct that offends, denigrates or belittles an individual based on that individual's actual or perceived race, color, religion, creed, ethnicity, national origin, citizenship status, age, marital status, partnership status, disability, predisposing genetic characteristics, sexual orientation, gender (sex), military status, veteran status, domestic violence victim status or political affiliation, and specifically with respect to students, on the basis of weight, gender identity, gender expression, and religious practices that:

- A. Has the purpose or effect of substantially or unreasonably interfering with an individual's work performance or is used as a basis for employment decisions (including terms and conditions of employment) affecting such individual; and/or creates an intimidating, hostile or offensive work environment, or;
- B. Has the purpose or effect of substantially or unreasonably interfering with a student's academic performance or participation in an educational or extracurricular activity, or creates an intimidating, hostile or offensive learning environment; and/or effectively bars the student's access to an educational opportunity or benefit, or;
- C. Otherwise adversely affects the employment and/or educational opportunities and benefits provided by BOCES.

Such prohibited conduct may include, but is not limited to, unsolicited derogatory remarks, jokes, demeaning comments or behavior, slurs, mimicking, name calling, graffiti, innuendo, gestures, physical contact, stalking, threatening, bullying, extorting or the display or circulation of written materials or pictures.

Examples of Specific Types of Harassment

1. Racial and/or Color Harassment: unwelcome verbal, written, graphic or physical conduct directed at the characteristics of an individual's race or color, such as nicknames

emphasizing stereotypes, racial slurs, comments on manner of speaking, and negative references to racial customs.

2. Religious (Creed) Harassment: unwelcome verbal, written, graphic or physical conduct directed at the characteristics of an individual's religion or creed, such as derogatory comments regarding surnames, religious tradition, religious clothing, or religious slurs or graffiti.
3. National Origin Harassment: unwelcome verbal, written, graphic or physical conduct directed at the characteristics of an individual's national origin, such as negative comments regarding surnames, manner of speaking, customs, language, or ethnic slurs.
4. Marital Status Harassment: unwelcome verbal, written, graphic or physical conduct directed at the characteristics of an individual's marital status, such as derogatory comments regarding being single or divorced, or being a single parent.
5. Disability Harassment: harassment based on an individual's disabling mental or physical condition and includes any unwelcome verbal, written, graphic or physical conduct directed at the characteristics of an individual's disabling condition, such as imitating manner of speech or movement, or interference with necessary equipment.
6. Sexual Harassment: unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:
 - a. Submission to that conduct is made either explicitly or implicitly a term or condition of an educational or employment benefit or detriment; or
 - b. Submission to or rejection of the conduct is used as the basis for any educational or employment decision affecting the harassed individual; or
 - c. The conduct has the purpose or effect of unreasonably interfering with the harassed individual's educational or work performance, or creating an intimidating, hostile or offensive learning or working environment.

This applies whether the harassment is between individuals of the same or different gender. Sexual harassment includes unwelcome verbal, written, graphic or physical conduct directed at or related to an individual's gender such as sexual gossip or personal comments of a sexual nature; sexually suggestive or foul language; sexual jokes; whistling; spreading rumors or lies of a sexual nature about someone; demanding sexual favors; forcing sexual activity by threat of punishment or offer of an educational or job reward; obscene graffiti; exhibition or distribution of pornographic pictures or objects; offensive touching, pinching, grabbing, kissing or hugging; or restraining someone's movement in a sexual way.

Examples of Specific Types of Sexual Harassment

1. Sex/Gender Harassment: unwelcome verbal, written, graphic or physical conduct directed at the characteristics of an individual's sex/gender, such as derogatory comments regarding pregnancy, or individual's participation in a non-traditional job or activity;

2. Sexual Orientation Harassment: unwelcome verbal, written, graphic or physical conduct directed at the characteristics of an individual's sexual orientation, such as negative name calling and imitating mannerisms.

Retaliation - is a separate and distinct violation of this policy. Members of the BOCES school community are prohibited from retaliating against any person who reports alleged unlawful discrimination or harassment or against any individual who testifies, assists or participates in an investigation, proceeding, action or hearing relating to unlawful discrimination/harassment. An alleged harasser may be found to have violated this anti-retaliation provision even if the underlying complaint of unlawful discrimination/harassment is not found to be a violation of this policy.

Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment. It may be redressed through application of the same reporting, investigation, and enforcement procedures as for unlawful discrimination/harassment.

Knowingly Makes False Accusations

Employees and/or students who *knowingly* make false accusations against another individual as to allegations of unlawful discrimination, harassment or retaliation shall also face appropriate disciplinary action.

Because of the damage that can be done to someone falsely accused, any individual who in bad faith knowingly makes a false complaint or report of unlawful discrimination, harassment or retaliation shall be subject to disciplinary action up to and including suspension or termination in accordance with legal guidelines, BOCES policy, and any applicable collective bargaining agreement(s). The term "false report" refers only to those made in bad faith and does not include a complaint that could not be corroborated or which did not rise to the level of unlawful discrimination, harassment or retaliation.

Reporting Acts Constituting Child Abuse

Several behaviors listed as sexual harassment (i.e., sexual touching, grabbing, pinching, being forced to kiss someone, etc.) may also constitute child abuse. Sexual abuse of a child includes sexual molestation or exploitation of a child including, but not limited to, incest, prostitution, rape, sodomy, or lewd or lascivious conduct involving a child. Thus, under certain circumstances, alleged harassment may also constitute child abuse under state law. New York State law and Board Policy 5460 require school employees to report all incidents of child abuse and neglect, including sexual abuse.

BOCES Responsibility for Training

Regardless of whether a complaint has been filed, if BOCES knows of the occurrence or the possible occurrence of unlawful discrimination or harassment, BOCES shall require a prompt, equitable and thorough investigation by appropriate personnel. In the event an anonymous complaint has been filed, BOCES shall respond to the fullest extent possible.

The District Superintendent or designee shall be responsible for informing students and staff on a yearly basis of BOCES policy and regulations regarding the prohibition of unlawful discrimination and/or harassment, including:

- the procedures established for making a complaint;
- the procedures established for the investigation and resolution of complaints,
- the general legal issues pertaining to unlawful discrimination and harassment, including age-appropriate examples in age-appropriate language, and
- the rights and responsibilities of employees and students.

Dissemination of BOCES Policy/Regulation and Evaluation

A copy of BOCES policy and regulations pertaining to unlawful discrimination, including harassment, shall be posted on the website; shall be published in appropriate school publications such as teacher/employee handbooks, student handbooks, and/or school calendars; shall appear on brochures and other appropriate BOCES publications; and may be posted in various locations throughout each school building. A copy of BOCES policy and regulations pertaining to prohibition of unlawful discrimination, including harassment, shall be available upon request at BOCES Central Office, at school building principals' offices, and in counselors' offices.

Annual Notification

At the beginning of each school year, the district shall publish a notice of the established grievance procedures for resolving complaints of discrimination to parents/guardians, employees, students and the community.

The public notice shall:

1. inform parents, employees, students and the community that education programs, including but not limited to vocational programs, are offered without regard to actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sex; sexual orientation, or gender (including gender identity and expression);
2. provide the name, address and telephone number of the person designated to coordinate activities concerning discrimination; and
3. be included in announcements, bulletins, catalogues, and applications made available by the district.

Definitions

The following information is offered to provide guidance; this list is not exhaustive. Defined terms are listed in alphabetical order.

1. Age: actual or perceived age.
2. Alienage/Citizenship: actual or perceived immigration status or status as a citizen of a country other than the United States of America. It shall not be an unlawful discriminatory practice for any person to discriminate on the ground of alienage or citizenship status or to make inquiry as to a person's alienage or citizenship status or to give preference to a person who is a citizen or native of the United States when such preference is expressly permitted or required by a federal, city or state law or regulation.
3. Color: the apparent pigmentation of the skin, especially as an indication or possible indication of race.

4. Disability: actual or perceived disability, or history of disability. The term "disability" means any physical, medical, mental, or psychological impairment or history or record of such impairment, or a condition regarded by others as a disability. It is not discriminatory for an employer to require that an employee or applicant be able to perform the essential functions of a job with or without reasonable accommodation.
5. Ethnicity/National Origin: actual or perceived national origin or ethnic identity. National origin is distinct from race/color or religion/creed because people of several races and religions or their forbearers may come from one nation. The term "national origin" includes members of all national groups and groups of persons of common ancestry, heritage, or background; it also includes individuals who are married to or associated with a person or persons with a common heritage including language, culture, and often a shared or common religion and/or ideology that stresses ancestry.
6. Gender: actual or perceived gender/sex; socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for men and women. The prohibition against gender discrimination includes sexual harassment.

The term "gender" also includes a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth.
7. Gender Expression: How one is socially perceived; may include one's behaviors, dress, mannerisms, speech patterns, and/or social interactions; a person's external characteristics and behaviors that are socially defined as either masculine or feminine.
8. Gender Identity: one's personal view of one's own gender; a person's deeply-felt internal sense of being male or female.
9. Marital Status: actual or perceived marital status.
10. Military Status: a person's participation in the military service of the United States or the military service of the state, including but not limited to, the Armed Forces of the United States, the Army National Guard, the Air National Guard, the New York Naval Militia, the New York Guard and such additional forces as may be created by the federal or state government as authorized by law.
11. National Origin: a person's country of birth or ancestor's country of birth.
12. Predisposing Genetic Characteristic: any inherited gene or chromosome, or alteration thereof, determined by a genetic test or inferred from information derived from an individual or family member that is scientifically or medically believed to predispose an individual or the offspring of that individual to a disease or disability, or is associated with a statistically significant increased risk of development of a physical or mental disease or disability.
13. Race/Color: actual or perceived race or color.

14. Religion/Creed: actual or perceived religion or creed; a set of fundamental beliefs and practices generally agreed to by large numbers of the group or a body of persons adhering to a particular set of beliefs and practices.
15. Religious practice: practices and observances such as attending worship services, wearing religious garb or symbols, praying at prescribed times, displaying religious objects, adhering to certain dietary rules, refraining from certain activities, proselytizing, etc.
16. School Community: includes but is not limited to all students, school employees (including contractors), school agents, bus drivers, volunteers, and any third party who are participating in, observing, or otherwise engaging in activities, including sporting events and other extracurricular activities subject to the supervision and control of BOCES.
17. School Employee: includes but is not limited to all teachers, support staff, administrators, custodians, cafeteria workers, coaches, contractors and School Board members.
18. Sex: a term used to describe the biological and physiological characteristics that define men and women. MALE and FEMALE denote "sex."
19. Sexual Orientation: actual or perceived sexual orientation; the sex to which a person is sexually attracted. Someone attracted primarily or exclusively to members of the opposite sex is characterized as straight or heterosexual. Someone attracted primarily or exclusively to members of the same sex is characterized as homosexual. A person with a strong or viable attraction to both genders is characterized as bisexual or pansexual.
20. Victim of Domestic Violence, Sexual Offenses. or Stalking: an actual or perceived victim of domestic violence is a person who has been subjected to acts or threats of violence, not including acts of self-defense, committed by a current or former spouse of the victim, by a person who is cohabitating with or who has cohabitated with the victim, by a person who is or has been in a continuing social relationship of a romantic or intimate nature or a person who is or has continuously or at regular intervals lived in the same household as the victim.

An actual or perceived victim of sex offenses or stalking is a person who has been subjected to such behavior as defined by the Penal Law.

An employee may request a reasonable accommodation due to status as an actual or perceived victim of domestic violence, sex offenses or stalking in order to fulfill the essential requirements of a job. The employee may be asked to provide certification that he/she is a victim of domestic violence, sex offenses or stalking. An employee requesting the reasonable accommodation shall provide a copy of such certification within a reasonable period after the request is made. The certification requirement may be satisfied by providing a police or court record, documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider that the employee or that employee's family or household member sought assistance as an actual or perceived victim of domestic violence, sex offenses, or stalking and/or the effects of the violence or stalking; or other information consistent with the employee's disclosure and the request for accommodation.

21. Weight: actual or perceived weight used in reference to a person's "size."

Cross-reference: 5300 Code of Conduct
9110 Equal Employment Opportunity

Reference: Americans with Disabilities Act, 42 U.S.C. §12101 et seq.
Title VI, Civil Rights Act of 1964, 42 U.S.C. §2000d et seq.
Title VII, Civil Rights Act of 1964, 42 U.S.C. §2000e et seq.; 34 CFR §100 et seq. Title IX,
Education Amendments of 1972, 20 U.S.C. §1681 et seq.
§504, Rehabilitation Act of 1973, 29 U.S.C. §794
Individuals with Disabilities Education Law, 20 U.S.C §§1400 et seq. Executive Law §290
et seq. (New York State Human Rights Law) Education Law §§313(3), 3201, 3201-a
8 NYCRR 100.2(c), (I), (jj), (kk); 119.6
Dignity for All Students Act, Education Law, §10- 18

Notes: Prior policy: 0100 BOCES Policy Against Harassment of Students or Employees.

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