SUBJECT: SEXUAL HARASSMENT (PERSONNEL)

All forms of harassment including sexual harassment, by or against employees, school volunteers, students, visitors, and non-employees such as contractors and vendors which occur on SWBOCES grounds and at all SWBOCES-sponsored events, programs and activities including those that take place at locations off SWBOCES premises is prohibited.

Definitions

Generally, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

a) Submission of such conduct is made, either explicitly or implicitly, a term or condition of an individual’s employment;

b) Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individuals;

c) 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; and

d) Sexual harassment includes, but is not limited to, the following behaviors:

   1. Unwelcome statements or gestures of a sexual nature, including sexual innuendoes, suggestive comments, telephone calls, or other electronic communications, whistling, obscene gestures, or pictures of a sexual nature;

   2. Unwelcome solicitation or pressure for sexual activity;

   3. Intentional brushing against, patting or pinching of another’s body;

   4. Requests for sexual favors accompanied by implied or overt threats concerning an individual's employment, education or business with SWBOCES;

   5. Requests for sexual favors accompanied by implied or overt promises of preferential treatment of an individual's employment, education or business with SWBOCES;

   6. Any sexually motivated unwelcome touching;

   7. Gender related demeaning comments;

   8. Jokes of sexual nature;

   9. Displaying of sexually suggestive objects or pictures.

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In determining whether sexual harassment has occurred, the totality of the circumstances should be evaluated. Sexual harassment can originate from a person of either sex against a person of the opposite or same sex, and from co-workers as well as supervisors, and from a third party such as a school visitor, volunteer, or vendor, or any other individual associated with SWBOCES. SWBOCES will designate, at a minimum, two (2) Compliance Officers, one of each gender.

Complaints

Any individual who believes he/she has been a victim of sexual harassment as well as any other person who is aware of and/or who has knowledge of or witnesses any possible occurrence of sexual harassment, should report immediately such alleged harassment to SWBOCES' designated Compliance Officers through informal and/or formal complaint procedures as developed by SWBOCES. Such complaints are recommended to be in writing, although verbal complaints of alleged sexual harassment will also be promptly investigated in accordance with the terms of this policy. In the event the Compliance Officer is the alleged offender, the employee should report his/her complaint to the next level of supervisory authority.

All allegations of sexual harassment will be promptly and thoroughly investigated. In the absence of a complaint, if SWBOCES has knowledge of or has reason to know of or suspect any occurrence of sexual harassment, SWBOCES will investigate such conduct. The District Superintendent will be kept informed of the status of all formal complaints.

As part of the investigation, SWBOCES has the right to search all school property and equipment including SWBOCES computers. Rooms, desks, cabinets, lockers, computers, etc. are provided by SWBOCES for the use of students and staff, but the users do not have exclusive use of these locations or equipment and should not expect that materials stored therein will be private.

All complaints will be treated as confidentially and privately as possible within legal constraints. Disclosure may be necessary to complete a thorough investigation of the charges, and any disclosure will be provided on a "need to know" basis.

Informal Procedure

a) Individuals who believe they are being harassed are encouraged to notify the offender that his/her behavior is unwelcome.

b) An individual who does not want to confront the offender directly may notify any one or more of the following:

1. Supervisor;
2. Principal;
3. Compliance Officer;

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4. District Superintendent, Deputy Superintendent, Assistant Superintendent;
5. District Superintendent.

This is an informal complaint procedure, which may include, but is not limited to, discussion with the alleged victim, meeting with the alleged offender, meeting with both parties as a form of mediation, or any other procedures deemed appropriate. Although this is an informal procedure, an individual reporting harassment or sexual harassment should be aware that the District may deem it necessary to take further action to address the harassment beyond the informal discussion.

Formal Procedure

An individual who is not satisfied with the outcome of the informal procedures may file a written complaint with the Compliance Officer, the Assistant Superintendent for Human Resources or the District Superintendent. Complaints must be made within 180 days of the most recent incident of alleged harassment.

Corrective Action

Based upon the results of the investigation, if the SWBOCES determines that an employee has violated the terms of this policy and/or accompanying regulations, immediate corrective action will be taken, as warranted, up to and including termination of the offender's employment in accordance with legal guidelines, SWBOCES policy and regulation, and the applicable collective bargaining agreement(s). Third parties (such as volunteers, visitors, vendors, etc.) who are found to have violated this policy and/or accompanying regulations will be subject to appropriate sanctions as warranted and in compliance with law.

Protection Against Retaliation

Anyone who retaliates against an individual who reports harassment or sexual harassment will be disciplined. Anyone who retaliates against an individual who testifies, assists or participates in an investigation, proceeding or hearing relating to a complaint of harassment or sexual harassment will be disciplined. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment.

Complaint Forms

A complaint form will be developed for reporting allegations of sexual harassment. Copies of the form will be available in the Personnel Office.

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Appeal Procedure

An individual who wishes to appeal the results of the investigation may do so within ten (10) days of receipt of those results. Such appeal must be made in writing to the Board of Education or its designee. The individual shall be permitted to present evidence as to why the investigation results are incorrect. The individual should be prepared to report what happened; when it happened; where it happened; how he/she felt; what, if anything, he/she did or said in response to the alleged harasser; and the names of the witnesses, if any. Following a review of the evidence and the information obtained in the investigation process and the conclusions derived therefrom, the Board of Education or its designee shall render a decision. The individual has the right to pursue, at any time, other options of recourse, including filing a complaint with the U.S. Commission on Civil Rights, the New York State Division for Human Rights, or the Equal Employment Opportunity Commission (EEOC).

Awareness

The District Superintendent/designee(s) will discuss affirmatively the topic of sexual harassment with all employees and explain the sanctions for harassment. Training programs will be established for employees to ensure awareness of the issues pertaining to sexual harassment in the workplace, and to disseminate preventative measures. Special training in the investigation of sexual harassment complaints may be provided for supervisors and managerial employees, as necessary.

A copy of this policy will be distributed to employees and will be posted at SWBOCES owned buildings in each center. SWBOCES' policy on sexual harassment will be published in appropriate school publications such as teacher/employee handbooks and/or school calendars.

Finding That Harassment Did Not Occur

At any level/stage of investigation of alleged harassment, if a determination is made that harassment did not occur, the Compliance Officer will so notify the complainant, the alleged offender and the District Superintendent or designee of this determination. Such a finding does not preclude the complainant from filing an appeal pursuant to SWBOCES policy or regulation and/or pursuing other legal avenues of recourse.

However, even if a determination is made that harassment did not occur, the District Superintendent/designee reserves the right to initiate staff awareness and training, as applicable, to help ensure that the school community is not conducive to fostering harassment in the workplace.

Knowingly Makes False Accusations

Employees and/or students who knowingly make false accusations against another individual as to allegations of harassment may also face appropriate disciplinary action.

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Title VII of the Civil Rights Act of 1964,
42 United States Code (USC) Section 2000e et seq.
Civil Rights Act of 1991
42 United States Code (USC) Section 1981(a)
29 Code of Federal Regulations (CFR) Section 1604.11(a)
Executive Law Sections 296 and 297

NOTE: Refer also to Policies #2420 -- Anti-Harassment in the Southern Westchester BOCES
#6440 -- Sexual Harassment (Students)

Adopted: 6/23/10