

**DISTRICT SUPERINTENDENT’S REGULATION
REPORTING COMPLAINTS OF DISCRIMINATION OR HARASSMENT**

Complaint Procedures

Any individual who believes that a) (s)he has been subjected to unlawful discrimination or harassment, or b) who is made aware of and/or witnesses a possible occurrence of unlawful discrimination or harassment, shall report such actions as soon as possible after the alleged incident occurs in order to enable the BOCES to promptly and effectively investigate and resolve the complaint. In order to facilitate a thorough investigation, those discriminated against, targeted, and/or harassed, and/or any witnesses, should document the discrimination or harassment as soon as it occurs, providing as much detail as possible.

Reports of discrimination or harassment should be made by completing the BOCES Complaint Form (see #0100F) and then filing that form with the Human Resources (“HR”) Office

CONTACTS

Director of Human Resources	School Attorney	District Superintendent
900 Watervliet-Shaker Road	900 Watervliet-Shaker Road	900 Watervliet-Shaker Road
Albany, NY 12205	Albany, NY 12205	Albany, NY 12205
Email address TBD	Email address TBD	Email address TBD
Phone number TBD	Phone number TBD	Phone number TBD

School Board
900 Watervliet-Shaker Road
Albany, NY 12205
Email address TBD
Phone number TBD

General Complaints:

Upon receipt of a complaint that a program, facility, or information is not accessible, the HR Director and/or the School Attorney or designee shall request an investigation of the complaint.

Upon completion of the investigation, the Director of HR and/or School Attorney shall provide the District Superintendent or designee with a report of the investigation's findings. The District Superintendent or designee shall determine what action, if any, is appropriate based on the outcome of the investigation and the applicable Board Policies, as well as state and federal laws and any applicable collective bargaining agreements. The District Superintendent or designee shall issue a written determination within 90 days of the receipt of the complaint, unless extenuating circumstances warrant an extension of the time period.

Complainant and material parties shall be informed in writing of the determination. The information regarding the written recommendations may remain confidential.

It is the responsibility of the District Superintendent or designee to ensure that any appropriate corrective action is implemented.

Employee Complaints or Student Complaints Against Employees:

Upon receipt of the complaint, the Director of HR or designee shall request an investigation of the complaint. If the Director of HR or designee believes that irreparable harm may occur before the investigation can be completed, then (s)he may recommend appropriate interim relief, including temporary reassignment of job duties pending completion of the investigation. The complainant, material parties, and any witnesses shall be directed to refrain from communicating with others about the investigation while it is pending.

Upon completion of the investigation, the Director of HR and/or School Attorney shall provide the District Superintendent or designee with a report of the investigation's findings. The District Superintendent or designee shall determine what action, if any, is appropriate based on the outcome of the investigation and the applicable Board Policies, as well as state and federal laws and any applicable collective bargaining agreements. The District Superintendent or designee shall issue a written determination within 90 days of the receipt of the complaint, unless extenuating circumstances warrant an extension of the time period. Complainant(s) and respondent(s) shall be informed in writing of the determination. The information regarding the written recommendations may remain confidential.

If a violation of Board Policy is substantiated in the case of a complaint against an employee, the respondent's supervisor shall confer with the Director or HR or designee to determine what, if any, disciplinary action or corrective measures are appropriate.

It is the responsibility of the Director of HR or designee to ensure that any appropriate corrective action is implemented.

Student Complaints:

If the complaint is filed by a student against another student, the Director of HR and/or School Attorney, shall, except in unusual circumstances, refer the complaint to the student's Principal or designee for investigation and appropriate action. If the Principal or designee believes that irreparable harm may occur before the investigation can be completed, then (s)he should implement appropriate interim relief pending completion of the investigation (e.g., minimizing or eliminating contact between complainant and accused). A Principal who investigates a student complaint shall also determine what, if any, disciplinary or corrective actions are appropriate at the conclusion of the investigation according to applicable laws and Board Policy. If the complainant or material party to the investigation is dissatisfied with the outcome of the Principal's or designee's investigation, (s)he may seek review of the investigation and determination made by the Principal or designee by filing a BOCES Complaint Form (0100F) with the Director of HR and/or School Attorney within ten (10) school days, requesting such a review. The Director of HR or designee, shall notify the building principal/supervisor, complainant and material parties in writing of the determination after review within ten school days of receipt of the 0100F BOCES Complaint Form, unless extenuating circumstances warrant an extension to the time period. Complainant and material parties shall be notified in writing of any extension, if needed.

PROCEDURE

1. Anyone who wishes to file a complaint regarding discrimination or harassment shall, if possible, make such a complaint in writing using the **Complaint Form 0100F**.
 - The 0100F complaint form may be obtained by accessing the "Notice of Non-discrimination" box below the Quick Links on the BOCES' website, **website address to be determined**

- You may translate the 0100F complaint form using the “Google Translate” feature on the “Notice of Non-discrimination” page of the BOCES website.
- The 0100F complaint form is also available in Principal’s main office, and at the District Superintendent’s office.

If unable to make the complaint in writing, students may contact a teacher, counselor, administrator or the Compliance Officer, and employees may contact their department head or the Compliance Officer to assist with putting the complaint in writing.

Anyone else unable to make the complaint in writing may contact the Director of HR. and/or the School Attorney.

The written complaint must be signed by the complainant, dated, and include at a minimum, the following information:

- Date(s), time(s), place(s) of alleged incident(s)
 - Nature of the claim
 - Alleged perpetrators of the discrimination or harassment (names, identifiers, etc.)
 - Description of each incident, by date
 - Witnesses, if any (names and identifying information)
 - Other relevant information
 - Desired resolution – what you’d like to see change as a result of the investigation
2. The written complaint (form 0100F) should be forwarded to the Director of HR and/or the School Attorney by yourself or the administrator or department head assisting you. If forwarded to the principal or other administrator, s/he shall forward the complaint form to the Director of HR and/or the School Attorney.
 3. The Director of HR and/or the School Attorney or designee shall:
 - Begin a fact-finding investigation which shall be prompt and equitable to all parties. The investigation may include interviews of appropriate witnesses.
 - Render a decision within ten (10) school days after receipt of complaint, and notify the complainant and material parties, District Superintendent, and others who need to be advised of the decision. If additional time is needed for good cause, (e.g., key witnesses cannot be interviewed in a timely manner), the decision shall be made as soon as reasonably possible. If the decision is to be delayed for good cause, the complainant, District Superintendent, and other material parties shall so be notified and an estimated date for a decision shall be noted.
 - Within five (5) school days of the decision, enact or implement the changes/recommendations, if any, based on the decision.
 - The complainant and material parties have five (5) school days to accept or appeal the decision.
 - a. Accept the decision: By notifying the District Superintendent in writing;
 - b. Disagree with the decision: Appeal the decision by notifying the District Superintendent in writing (see First Appeal Level below).
 - c. If complainant fails to notify the District Superintendent of acceptance or disagreement with the decision, it shall be assumed that the resolution is acceptable, and the District Superintendent shall ensure the changes / recommendations are implemented appropriately.

First Appeal Level: District Superintendent-level appeal

1. The Director of HR and/or the School Attorney shall forward all materials, including the letter requesting appeal of the initial decision, to the District Superintendent for review.
2. The District Superintendent or designee shall schedule a meeting within ten (10) school days of receipt of the request for review/appeal.
3. The participants at the scheduled meeting shall be, at a minimum, the complainant, and the District Superintendent and/or designee. The accused may be in attendance as well.
4. The District Superintendent, or designee(s), shall conduct a prompt, impartial, equitable and thorough review of the materials. S/he shall have the right to re-interview witnesses, e.g., if testimony is unclear or new evidence has been brought to light, or to interview additional witnesses if needed to ensure an equitable decision.
5. The District Superintendent, or designee, shall present the decision within fifteen (15) school days after the meeting of the parties unless additional time is needed for good cause. If additional time is needed, complainant and material parties shall so be notified and provided with an estimated date of the appeal decision.
6. The decision of the District Superintendent or designee shall be in writing, and sent to the complainant and material parties, the principal of the school of the complainant, if applicable, and the Director of HR, and/or the School Attorney.
7. The complainant or material party has five (5) school days to accept or appeal the District Superintendent-level decision. The complainant or material parties shall notify the District Superintendent's office, in writing, whether s/he accepts or wishes to appeal the decision. If the complainant or material party fails to notify the District Superintendent of the acceptance or disagreement with the decision, it will be assumed that the resolution is acceptable, and the District Superintendent or designee shall ensure the changes / recommendations are implemented appropriately.

Second Appeal Level: School Board-level appeal

1. Should the complainant or material party not be satisfied with the District Superintendent-level decision and wish to pursue the matter further, the material party shall compose a letter stating the reason for disagreement with the District Superintendent's decision and request an appeal. The letter of appeal should be sent to the School Board *in addition* to the District Superintendent's office. A record should be made of the date the letter is sent by the complainant or material party, and the date the BOCES Board received the letter requesting further review.
2. The BOCES Board shall hire or appoint persons who are impartial and who have not been otherwise involved in the investigation of this complaint to conduct a prompt, fair, equitable, and thorough investigation. The person(s) hired or appointed to conduct this investigation shall be knowledgeable in the civil rights laws pertaining to the alleged violation by the complainant, and be knowledgeable in conducting investigations of alleged violations of said law(s).
3. A decision shall be made by the BOCES Board based on the recommendation and findings of the investigator(s) appointed by the BOCES Board within twenty (20) school days from the date the complainant's letter requesting further review is received. If a decision cannot be made within four (4)

calendar weeks for good cause, complainant or material parties shall so be notified and provided with an estimated date for the decision to be made.

- 4. If a complainant or material party is dissatisfied with the School Board-level decision, s/he must request a review by the Office for Civil Rights (OCR) within sixty (60) days of the Board’s decision. If complainant or material party fails to notify the School Board of the acceptance or disagreement with the decision, it will be assumed that the resolution is acceptable, and the Compliance Officer shall ensure the changes / recommendations are implemented appropriately.

Concurrent Appeals or Appeal of the Board-level appeal

A complainant can, while the investigation is happening at the school level, also contact any of the following agencies and request that an independent investigation be conducted:

New York State Office for Enforcement (for civil rights discrimination based on race, color, national origin, sex, and/or disability)	
Office for Civil Rights U.S. Department of Education 32 Old Slip, 26 th Floor New York, NY 10005-2500 http://www2.ed.gov/about/offices/list/ocr/docs/howto.html	Phone: 646-428-3900 / 800-421-3481 Fax: 646-428-3843 TDD: 877-521-2172 E-mail: OCR.NewYork@ed.gov
New York Civil Liberties Union 125 Broad Street, 19 th Floor New York, NY 10004 Web: http://www.nyclu.org	
	Phone: 212-607-3300 Fax: 212-607-3318

Limited Privacy Rights

As part of an investigation, BOCES has the right to search all school property and equipment including BOCES computers and email accounts. Rooms, desks, cabinets, lockers, computers, etc. are the property of BOCES, provided for the use of students and staff; however, the users have no reasonable expectation of privacy with respect to these locations or equipment or materials stored therein.

Retaliation Prohibited

Retaliation against any individual for filing a charge of unlawful discrimination and/or harassment, or reporting allegations of unlawful discrimination or harassment is illegal and prohibited. Regardless of the stage of the investigation, the complainant or material parties shall be instructed by the supervisor or principal and/or Director of HR, or School Attorney to report immediately if prohibited discriminatory or harassing behavior occurs again and/or if the accused or associates of said accused person(s) retaliates against the originally targeted individual(s). Any witnesses who cooperate in the investigation of the complaint shall be similarly instructed to report to the supervisor or principal and/or Director of HR immediately as to any retaliatory action(s). The supervisor or principal and/or Director of HR should also follow up with complainants and witnesses to verify that no retaliation or intimidation has occurred. Any employee or student who retaliates against another individual shall be subject to disciplinary action, as warranted, in accordance with legal guidelines, applicable contractual mandates and/or the Code of Conduct.

Penalties

Based upon the result of the BOCES investigation into a report of unlawful discrimination, harassment or retaliation, immediate corrective action shall be taken as appropriate:

Should the offending individual be a school employee, appropriate disciplinary measures shall be imposed, up to and including termination of the offender's employment in accordance with contractual and legal guidelines;

Should the offending individual be a student, appropriate disciplinary measures shall be imposed, up to and including suspension or expulsion in accordance with applicable law, regulations, and the Code of Conduct;

Vendors/contractors and other individuals who do business with BOCES who have been found to violate the terms of the non-discrimination/anti-harassment policy and/or regulations by engaging in prohibited conduct shall be subject to appropriate sanctions up to and including loss of BOCES business. School volunteers who are found to have violated BOCES policy and regulation may face termination of volunteer status;

Should the offending individual be a visitor, guest or other third party, then any corrective action deemed appropriate shall be taken including, but not limited to, expulsion and/or banishment from BOCES premises and/or school activities/events under the control and supervision of BOCES.

The imposition of such disciplinary measures by BOCES does not preclude the appropriate filing of civil and/or criminal charges as may be warranted.

Finding That Discrimination or Harassment Did Not Occur

At any level/stage of investigation of alleged discrimination, including harassment, if a determination is made that unlawful discrimination or harassment did not occur, the supervisor, principal or Director of HR, or School Attorney, or designee shall so notify the complainant and material parties of this determination. Such a finding does not preclude the complainant from pursuing other legal avenues of recourse.

Knowingly Making False Accusations

Employees and/or students who knowingly make false accusations of discrimination or harassment or knowingly provides false information in the course of investigation of a complaint shall be subject to the same range of disciplinary actions enumerated above.

Penalties. A complaint which is deemed unfounded is not considered a false accusation, so long as the complaint was made in good faith.

Confidentiality

BOCES shall keep complaints and discussions as confidential as possible; however, the need for confidentiality must be balanced against the obligation to cooperate fully with lawful investigations, to provide due process to the accused, and/or to take necessary action to conciliate, investigate or resolve the complaint. Information shall be disclosed only to the extent necessary to effectively investigate the complaint, pursue corrective action and/or as mandated by law or court order.

A written record of the investigation and any action taken shall be established and maintained. Additionally, parents of students subjected to possible discrimination, including harassment, and/or students filing a discrimination and/or harassment complaint, as well as parents of accused students, shall be notified by the appropriate administrator of such occurrence and/or allegations as warranted and in accordance with legal guidelines.

If the complainant attempts to withdraw a complaint, the Director of HR and/or the School Attorney or designee shall ensure that the withdrawal is not caused by retaliation and then document the complainant's reasons and ask the complainant to sign the documentation.

Subject to all applicable laws and collective bargaining agreements, the following guidelines shall be utilized in the investigation and resolution of discrimination complaints:

Limitations

Nothing in this regulation shall be construed as creating a cause of action. Neither the proscriptions of, nor actions taken pursuant to this Regulation shall on that basis prevent the Board and/or its designee from fully arguing for or against the existence of any fact and the scope or meaning of any law in any forum.

Adoption date: May 15, 2017