

Policy Information

Series 5000 - Personnel

Protection of Employees, Contractors and others from Discrimination, Sexual Harassment and Retaliation

Policy # 5180, 1.8

POLICY

2004 5180

Personnel

SUBJECT: Protection of Employees, Contractors and others from Discrimination, Sexual Harassment and Retaliation

This policy shall be provided to all employees in writing and it shall be posted at Partnership sites and on the Partnership website.

PROHIBITIONS

Discrimination and Harassment Prohibited: The Genesee Valley Educational Partnership (the “Partnership”) prohibits discrimination including sexual harassment against employees, contractors, volunteers, guests and visitors[1] on all illegal bases including sex, gender identity or expression, race, color, sexual orientation, national origin, age, religion, and disability. This prohibition applies to all persons, in all Partnership program and on all Partnership premises. Such discrimination and sexual harassment are illegal under federal and state law, and are forms of misconduct.

Retaliation Prohibited: Retaliation is any adverse action taken against a person due to that person having made a discrimination or harassment complaint, having assisted in a discrimination or harassment investigation or having testified or otherwise assisted in any proceeding under this policy or under the law. Adverse action against an employee may be work related, such as termination of employment, demotion, transfer, or discipline; or it may be unrelated to work, such as threats or insults. Retaliation is illegal under federal law and state law. It is a form of misconduct. It is prohibited by the Partnership.

COMPLAINTS

Internal Victim and Witness Complaints: Victims of and witnesses to discrimination, harassment or retaliation, whether employees or non-employees, are urged to report to the District Superintendent, the Assistant Superintendent or the Chief Human Resources Officer.[2] A complaint form is provided below. However, if a complainant or witness prefers to report in any other manner - such as verbally, using a different form or by reporting to some other Partnership administrator - that preference will be respected and the complaint will be acted upon irrespective of the manner in which it is made.

Internal Supervisory Reporting: Supervisory personnel are required to report any discrimination, harassment or retaliation complaint they receive - or any discrimination, harassment or retaliation they observe or otherwise become aware of - to the District Superintendent, the Assistant Superintendent or the Chief Human Resources Officer. Supervisory personnel who fail to report or who deliberately permit discrimination, harassment or retaliation will be subject to discipline or remediation.

External Complaints: External forums in which discrimination, harassment and retaliation complaints may

also or instead be made are identified below. (See “Legal Protections and External Remedies.”)

INVESTIGATIONS

All complaints and legitimate suspicions of discrimination, harassment or retaliation will be investigated in a timely manner. To every extent consistent with the law, all employees are required to cooperate with internal investigations. The Partnership cannot guarantee unconditional confidentiality but will endeavor to maintain confidentiality to every extent practicable. All persons involved, including complainants, witnesses and the accused will be accorded due process, as outlined below, to protect their right to a fair and impartial investigation.

While the investigatory process may vary from case to case and will be commensurate with the severity of the complaint, investigations will normally be conducted in accordance with the following steps:

- Upon receipt of a complaint, the District Superintendent, the Assistant Superintendent, the Chief Human Resources Officer or a designee will conduct an investigation. If the initial complaint is verbal, the complainant will be encouraged to also complete the attached complaint form. If the complainant chooses not to, the investigator will prepare the complaint form based on the verbal report.
- If documents, emails, electronic communications or phone records are known to be relevant to the investigation, steps will be taken to obtain and preserve them.
- The complainant, the accused and witnesses will be interviewed. They will be instructed to maintain confidentiality to the extent permitted by law.
- An investigation report will be written. It will include:
 - A list of all documents reviewed, along with a copy or description;
 - A list of the names of those interviewed, along with a detailed summary of their statements;
 - A timeline of events;
 - A summary of prior relevant incidents, reported or unreported; and
 - The action taken at the conclusion of the investigation. This section of the report will often be written separately and included as an addendum to the initial report.

OUTCOMES: DISCIPLINE AND REMEDIATION

Any employee who engages in discrimination, harassment or retaliation will be subject to disciplinary and/or remedial action. Discipline may include termination of employment. Remedial action may include additional sexual harassment prevention training, warnings and counseling. Employees who sexually harass may also be found liable for the payment of monetary damages.

Any student who engages in discrimination, harassment or retaliation will be subject to disciplinary and/or remedial action, consistent with the Partnership’s Code of Conduct.

The specific outcome of the investigation will depend on many factors - including the investigation findings, whether the investigation was conclusive or inconclusive, prior misconduct, prior attempts at remediation, applicable law and any applicable collective bargaining agreements.

Notifications of Outcome: If consistent with applicable legal requirements and considerations of confidentiality, the complainant and the accused will be notified of the final determination and of any corrective action to be taken.

FURTHER INFORMATION

What is Sexual Harassment?

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender 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 which are of a sexual nature, or which 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 which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient's job performance.

Quid pro quo sexual harassment occurs when a person in authority attempts to trade job benefits for sexual favors. The job benefits may include hiring, promotion, continued employment or any other terms, conditions or privilege of employment.

Examples of Sexual Harassment

Examples of sexual harassment may include:

- Unwanted 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.
- Unwanted sexual advances or propositions, such as:
 - Requests for sexual favors accompanied by implied or overt threats concerning the target's performance evaluation, promotion or other job benefits or detriments; or
 - 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, which 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 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, or name-calling.
- Rape, sexual battery, molestation or attempts to commit these assaults.

Who can be a target of sexual harassment?

Sexual harassment can occur between any individuals, regardless of their sex or gender. 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. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace.

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

Legal Protections and External Remedies

In addition to or instead of using the attached Complaint Form, employees may pursue legal remedies with the following governmental entities. A private attorney is not required.

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. It protects employees, paid or unpaid interns, and non-employees, regardless of immigration status. A complaint alleging a 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 three years** of the harassment. If an individual did not file with DHR, they may sue directly in 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 does not extend your time to file with DHR or in court. The one year or three year deadline is counted from the date of the most recent incident of harassment.

DHR will investigate your 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 authority to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees if any, and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: www.dhr.ny.gov. DHR also maintains an office in Rochester, New York, at 259 Monroe Avenue, Suite 308, Rochester, New York 14607. You may call (585)238-8250.

Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that may be downloaded, filled out, notarized and mailed to DHR. The

website also contains contact information for DHR's regional offices across New York State.

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 from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will 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. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

If an individual files an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

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 a 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. Contact the local police department.

[1] The protection of students from discrimination, sexual harassment and retaliation is addressed in Board Policy 6180.

[2] See www.gybooces.org for names and contact information.

References:

Title VI of the Civil Rights Act of 1964
Title VII of the Civil Rights Act of 1964
Title IX of the Education Amendments of 1972
Section 504 of the Rehabilitation Act of 1973
Individuals with Disabilities Education Act (1990)
Americans with Disabilities Act of 1990
Article 89 of the New York Education Law
New York Education Law Sections 2801 and 3201
Part 200 of the Regulations of the Commissioner of Education
Section 100.2(k) of the Regulations of the Commissioner of Education.
The Age Discrimination in Employment Act of 1967

Board Approved

7/22/03

7/21/04

BOARD POLICY 5180 DISCRIMINATION OR HARASSMENT COMPLAINT FORM

YOUR INFORMATION:

I am (check one):

Name: _____

_____ An Employee

Personal Phone: _____

_____ A Contractor

Work Phone: _____

_____ Other _____

Email: _____

SPECIFIC COMPLAINT:

The name of the person(s) about whom you are complaining:

Name: _____

Title: _____

This person is a _____ An employee, _____ A student, or _____ other, please specify: _____

Describe the conduct or incident(s) that are the basis of this complaint. Use additional paper if necessary.

Date(s) the conduct occurred if known: _____

Is the conduct presently continuing? _____ Yes _____ No

List the name and contact information of any witnesses or individuals that may have information related to your complaint. Use additional paper if necessary.

Have you previously complained or provided information (verbal or written) about this complaint? If yes, when and to whom?

Print Name: _____

Signature: _____

Date: _____

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