0110.2-R

SEXUAL HARASSMENT OF EMPLOYEES REGULATION

NEW NOTE: Due to recent changes in state law aimed at sexual harassment in the workplace, we have split our sample regulation 0110-R into two policies and regulations, one addressing sexual harassment of students (0110.1-R) and one addressing sexual harassment of employees (0110.2-R).

This regulation focuses on sexual harassment of employees as well as certain "non-employees" covered by state law (contractors, subcontractors, vendors, consultants or other persons providing services pursuant to a contract, or their employees). In the interest of simplicity, we have not shown all of the deleted text from the original policy pertaining to students. However, we have noted where substantive changes were made.

The main change to the state Human Rights Law (Executive Law §296) was to the legal standard of what constitutes harassment in the workplace. Now, such conduct need not rise to the level of "severe or pervasive" in order to be considered prohibited harassment. What this will look like in practice may not be known until it is tried in court. The law also specifically includes "inferior terms, conditions or privileges of employment" as a form of harassment.

Other changes in the law addressed providing this policy and required training in an employee's primary language, for those languages where the NYS Department of Labor (DOL) has provided a translation of their materials. Currently, those languages are: Spanish, Chinese, Korean, Russian, Italian, Polish, Bengali and Haitian-Creole. Additionally, any non-disclosure agreement must be provided to the complainant in their primary language, regardless of whether that language is one of those identified above.

Due to a changing understanding and usage of the word "shall," to avoid confusion we have also changed all instances of "shall" to either "will" or "must" or other appropriate text to indicate that a particular action is required. We have also changed use of "he/she" "him/her" and "his/her" to the singular "they" "them" and "their" throughout.

Among other things, this regulation is intended to provide detailed guidelines to assist the district in determining whether alleged misconduct constitutes sexual harassment (i.e., harassment based on sex, sexual orientation, and/or gender identity or expression) and outlines potential sanctions and penalties for violating district policy/regulation.

This regulation is intended to create and preserve a working environment free from unlawful sexual harassment on the basis of perceived or self-identified sex, sexual orientation, and/or gender identity and expression, in furtherance of the district's commitment to provide a healthy and productive environment for all employees (including all staff, applicants for employment, both paid and unpaid interns. exempt and non-exempt status, part-time, seasonal, and temporary workers, regardless of immigration status) and "non-employees" (i.e., contractors, subcontractors, vendors, consultant and other persons providing services pursuant to a contract, or their employees) that promotes respect, dignity and equality.

Sexual Harassment Defined

NEW NOTE: We have deleted "actual or" in the definition of sexual harassment in the paragraph below (now it is "perceived or self-identified") to better align with the definition in the DOL model policy (the phrase "actual or perceived" aligns with the definition in DASA for students).

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of perceived or self-identified sex, sexual orientation, gender identity, gender expression, and transgender status.

NEW NOTE: We have added the following paragraph to reflect the provisions of state Human Rights Law (Executive Law §296(1)(h)), which was amended to specifically state that for employees, harassment includes inferior terms, conditions, or privileges of employment.

The law also specifically says that harassment is prohibited regardless of whether it is severe or pervasive. The "severe and pervasive" standard set by previous court cases (Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986)) applied to whether or not a hostile work environment existed. Instead, while not specifically setting a new standard, the law states that it is an "affirmative defense" for employers (i.e., a lawsuit would be automatically dismissed) if the harassment "does not rise above the level of what a reasonable victim of discrimination with the same protected characteristics would consider petty slights or trivial inconveniences."

Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions or privileges of employment. Such harassment need not be severe or pervasive to be unlawful, and can be any harassing conduct that consists of more than petty slights or trivial inconveniences.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's perceived or self-identified sex, sexual orientation, gender identity or expression, and transgender status, when:

1. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of an employee's or "non-employee's" employment; or
2. submission to or rejection of that conduct or communication by an individual is used as the basis for decisions affecting an employee's or "non-employee's" employment; or
3. the conduct or communication has the purpose or effect of substantially or unreasonably interfering with an employee's or "non-employee's" work performance, or creating an intimidating, hostile or offensive working environment, even if the complaining individual is not the intended target of the sexual harassment.

NEW NOTE: We have removed the phrase "actual or perceived" in the paragraph below because it relates to stereotypes (it is not appropriate to use the phrase "perceived or self-identified" in this context either), but added sexual orientation to the types of stereotypes.

Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, or verbal, nonverbal or physical aggression, intimidation or hostility that is based on sex, gender and sexual orientation stereotypes.

Unacceptable Conduct

REVISED NOTE: It is important for the district's regulation to include examples of sexual harassment, to put people on notice of the behavioral expectations, as well as help staff recognize when sexual harassment is occurring. While some of the conduct described below may seem more relevant to the student sexual harassment regulation, we are retaining the examples rather than removing them.

Conduct that the district considers unacceptable and which may constitute sexual harassment includes, but is not limited to, the following:

1. rape, attempted rape, sexual assault, attempted sexual assault, forcible sexual abuse, hazing, and other sexual and gender-based activity of a criminal nature as defined under the State Penal Law;
2. unwelcome sexual advances or invitations or requests for sexual activity, including but not limited to those in exchange for promotions, preferences, favors, selection for job assignments, etc., or when accompanied by implied or overt threats concerning the target's work evaluations, other benefits or detriments;
3. unwelcome or offensive public sexual display of affection, including kissing, hugging, making out, groping, fondling, petting, inappropriate touching of one's self or others (e.g., pinching, patting, grabbing, poking), sexually suggestive dancing, and massages;
4. any unwelcome communication that is sexually suggestive, sexually degrading or derogatory or implies sexual motives or intentions, such as sexual remarks or innuendoes about an individual's clothing, appearance or activities; sexual jokes; sexual gestures; public conversations about sexual activities or exploits; sexual rumors and "ratings lists;" howling, catcalls, and whistles; sexually graphic computer files, messages or games, etc.;
5. unwelcome and offensive name calling or profanity that is sexually suggestive or explicit, sexually degrading or derogatory, implies sexual intentions, or that is based on sexual stereotypes or sexual orientation, gender identity or expression;
6. unwelcome physical contact or closeness that is sexually suggestive, sexually degrading or derogatory, or sexually intimidating such as the unwelcome touching of another's body parts, cornering or blocking an individual, standing too close, spanking, pinching, following, stalking, frontal body hugs, etc.;
7. unwelcome and sexually offensive physical pranks or touching of an individual's clothing, such as hazing and initiation, “streaking” (running naked in public), “mooning” (exposing one’s buttocks), “snuggies” or “wedgies” (pulling underwear up at the waist so it goes in between the buttocks), bra-snapping, skirt “flip-ups,” “pantsing” or “spiking” (pulling down someone's pants or swimming suit); pinching; placing hands inside an individual's pants, shirt, blouse, or dress, etc.;

8. unwelcome leers, stares, gestures, or slang that are sexually suggestive; sexually degrading or derogatory or imply sexual motives or intentions;
9. clothing with sexually obscene or sexually explicit slogans or messages;
10. unwelcome and offensive skits, assemblies, and productions that are sexually suggestive, sexually degrading or derogatory, or that imply sexual motives or intentions, or that are based on sexual stereotypes;
11. unwelcome written or pictorial display or distribution (including via electronic devices) of pornographic or other sexually explicit materials such as signs, graffiti, calendars, objects, magazines, videos, films, Internet material, etc.;
12. other hostile actions taken against an individual because of that person's perceived or self-identified sex, sexual orientation, gender identity or transgender status, such as interfering with, destroying or damaging a person's work area or equipment; sabotaging that person's work activities; bullying, yelling, or name calling; or otherwise interfering with that person's ability to work or participate in school functions and activities; and
13. any unwelcome behavior based on sexual stereotypes and attitudes that is offensive, degrading, derogatory, intimidating, or demeaning, including, but not limited to:

    a. disparaging remarks, slurs, jokes about or aggression toward an individual because the person displays mannerisms or a style of dress inconsistent with stereotypical characteristics of the person's sex;
    b. ostracizing or refusing to participate in group activities with an individual (including, but not limited to, projects or trips) because of the individual's perceived or self-identified sex, sexual orientation, gender identity or expression or transgender status;
    c. taunting or teasing an individual because they are participating in an activity not typically associated with the individual's sex, sexual orientation or gender.

For purposes of this regulation, action or conduct will be considered "unwelcome" if the employee or "non-employee" did not request or invite it and regarded the conduct as undesirable or offensive.

Sexual harassment may occur on school grounds, school buses and at all school-sponsored activities, programs and events, including those that take place at locations outside the district, or outside the work setting if the harassment impacts the individual's employment in a way that violates their legal rights, including when employees or "non-employees" travel on district business, or when the harassment is done by electronic means (including on social media).

Determining if Prohibited Conduct is Sexual Harassment

NEW NOTE: This material puts individuals on notice of the standards that will be used to evaluate allegations of sexual harassment.

NEW NOTE (cont.):

We have removed language related to the "severe and pervasive" standard. The "severe and pervasive" standard was set by a previous Supreme Court case (Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986)), used to determine whether or not a hostile work environment existed. The state Executive Law §296(1) was amended to specifically state that for employees, harassment on the basis of sex, sexual orientation, gender identity or expression is prohibited regardless of whether it is severe or pervasive.

Complaints of sexual harassment will be thoroughly investigated to determine whether the totality of the behavior and circumstances meet any of the elements of the above definition of sexual harassment and should therefore be treated as sexual harassment. Not all unacceptable conduct with sexual connotations or based on sex may constitute sexual harassment. Such conduct must rise above what a reasonable victim of discrimination with the same protected characteristics would consider petty slights or trivial inconveniences to be considered sexual harassment. If the behavior doesn't rise to the level of sexual harassment, but is found to be objectionable behavior, the individual will be educated and counseled in order to prevent the behavior from continuing.

In evaluating the totality of the circumstances and making a determination of whether conduct constitutes sexual harassment, the individual investigating the complaint should consider:

1. the degree to which the conduct altered the conditions of the employee's or "non-employee's" working environment;
2. the type, frequency and duration of the conduct;
3. the identity of and relationship between the alleged harasser and the subject of the harassment (e.g., sexually based conduct by an authority figure is more likely to create a hostile environment than similar conduct by a peer);
4. the number of individuals involved;
5. the age and sex of the alleged harasser and the target of the harassment;
6. the location of the incidents and context in which they occurred;
7. other incidents at the school; and
8. incidents of gender-based, but non-sexual harassment.

Reporting Complaints

Employees and "non-employees" who believe they have been the target of sexual harassment in the workplace is encouraged to report complaints as soon as possible after the incident in order to enable the district to promptly and effectively investigate and resolve the complaint. Any person who witnesses or is aware of sexual harassment of an employee or "non-employee" is also encouraged to report the incident or behavior to the district. Targets are encouraged to submit the complaint in writing; however, complaints may be filed verbally.

NEW NOTE: We have listed the Principal or Title IX Coordinator as the main individuals to receive harassment complaints. If other individuals are designated to receive complaints in your district, please revise this section. However, to be more consistent with the DOL model policy, we have expanded the sentence below to make clear the expectation that any supervisor or manager will receive complaints.

Complaints should be filed with the Principal or the Title IX coordinator; however, employees and "non-employees" can report complaints to any supervisor or manager.

OLD NOTE: The first sentence of the paragraph below is suggested as a way to assist "non-employees" in making complaints, and also addresses employees making complaints on behalf of other employees and "non-employees." This is not required by law. However, the last sentence below makes clear the responsibilities for supervisory and managerial personnel, as required by Labor Law section 201-g and the DOL model policy.

School employees receiving complaints of sexual harassment from employees and "non-employees" must either direct the complainant to the Building Principal or Title IX coordinator, or may report the incident themselves. Supervisory and managerial personnel are required to report complaints of sexual harassment received by employees and "non-employees" to the Principal or Title IX coordinator, and will be subject to discipline for failing to report suspected or reported sexual harassment, knowingly allowing sexual harassment to continue, or engaging in any retaliation.

In order to assist investigators, targets should document the harassment as soon as it occurs and with as much detail as possible including: the nature of the harassment; dates, times, places it has occurred; name of harasser(s); witnesses to the harassment; and the target's response to the harassment.

Confidentiality

It is district policy to respect the privacy of all parties and witnesses to complaints of sexual harassment. To the extent possible, the district will not release the details of a complaint or the identity of the complainant or the individual(s) against whom the complaint is filed to any third parties who do not need to know such information. However, because an individual's need for confidentiality must be balanced with the district's legal obligation to provide due process to the accused, to conduct a thorough investigation, or to take necessary action to resolve the complaint, the district retains the right to disclose the identity of parties and witnesses to complaints in appropriate circumstances to individuals with a need to know. The staff member responsible for investigating complaints will discuss confidentiality standards and concerns with all complainants.

If a complainant requests that their name not be revealed to the individual(s) against whom a complaint is filed, the staff member responsible for conducting the investigation will inform the complainant that:

1. the request may limit the district's ability to respond to their complaint;
2. district policy and federal law prohibit retaliation against complainants and witnesses;
3. the district will attempt to prevent any retaliation; and
4. the district will take strong responsive action if retaliation occurs.

If the complainant still requests confidentiality after being given the notice above, the investigator will take all reasonable steps to investigate and respond to the complaint consistent with the request as long as doing so does not preclude the district from responding effectively to the harassment and preventing the harassment of others.

Investigation and Resolution Procedure

OLD NOTE: The law does not address investigation and resolution of sexual harassment complaints of "non-employees" as distinct from employees. The model policy from the DOL treats employees and non-employees the same with regard to investigations.

A. Initial (Building-level) Procedure

OLD NOTE: The DOL model policy includes language regarding prompt and thorough investigations, which should be completed as soon as possible.

The Principal or the Title IX coordinator will conduct a preliminary review when they receive a verbal or written complaint of sexual harassment, or if they observe sexual harassment. Except in the case of severe or criminal conduct, the Principal or the Title IX coordinator should make all reasonable efforts to resolve complaints informally at the school level. The goal of informal investigation and resolution procedures is to end the harassment and obtain a prompt and equitable resolution to a complaint. All persons involved in an investigation (complainants, witnesses and alleged harassers) will be accorded due process to protect their rights to a fair and impartial investigation. This investigation shall be prompt and thorough, and shall be completed as soon as possible.

OLD NOTE: The district's regulation should include a time frame within which the investigation will commence. The DOL model policy indicates that investigations must commence "immediately" but this is not defined. Below we suggest this be two working days, but recommend consulting with your attorney who may advise beginning investigations on a different timeframe.

Immediately, but no later than two working days following receipt of a complaint, the Principal or Title IX coordinator shall begin an investigation of the complaint according to the following steps:

1. Interview the target and document the conversation. Instruct the target to have no contact or communication regarding the complaint with the alleged harasser. Ask the target specifically what action they want taken in order to resolve the complaint. Refer the target, as appropriate, to school social workers, school psychologists, crisis team managers, other school staff, or appropriate outside agencies for counseling services.
2. Review any written documentation of the harassment prepared by the target. If the target has not prepared written documentation, ask the target to do so, providing alternative formats for individuals with disabilities who may need accommodation. If the complainant refuses to complete a complaint form or written documentation, the Principal or Title IX coordinator shall complete a complaint form (see exhibit 0110.2-E) based on the verbal report.
3. Request, review, obtain and preserve relevant evidence of harassment (e.g., documents, emails, phone records, etc.), if any exist.
4. Interview the alleged harasser regarding the complaint and inform the alleged harasser that if the objectionable conduct has occurred, it must cease immediately. Document the conversation. Provide the alleged harasser an opportunity to respond to the charges in writing.
5. Instruct the alleged harasser to have no contact or communication regarding the complaint with the target and to not retaliate against the target. Warn the alleged harasser that if they make such contact with or retaliate against the target, they will be subject to immediate disciplinary action.
6. Interview any witnesses to the complaint. Where appropriate, obtain a written statement from each witness. Caution each witness to keep the complaint and their statement confidential. Employees may be required to cooperate as needed in investigations of suspected sexual harassment.
7. Review all documentation and information relevant to the complaint.
8. Where appropriate, suggest mediation as a potential means of resolving the complaint. In addition to mediation, use appropriate informal methods to resolve the complaint, including but not limited to:
    a. discussion with the accused, informing them of the district's policies and indicating that the behavior must stop;
    b. suggesting counseling and/or sensitivity training;
    c. conducting training for the department or school in which the behavior occurred, calling attention to the consequences of engaging in such behavior;
    d. requesting a letter of apology to the complainant;
    e. writing letters of caution or reprimand; and/or
    f. separating the parties.
9. Involvement and Notification
    a. If the alleged harasser is a student, their parents/guardians will be notified within one school day of allegations that are serious or involve repeated conduct.

b. If the alleged harasser is a student receiving special education services under an IEP or section 504/Americans with Disabilities Act accommodations, the committee on special education will be consulted to determine the degree to which the student's disability caused the discrimination or policy violation. In addition, due process procedures required for persons with disabilities under state and federal law will be followed.
c. The Principal or Title IX Coordinator (i.e., the investigator) will submit a copy of all investigation and interview documentation to the Superintendent.
d. The investigator will report back to both the target and the accused, notifying them in writing, and also in person as appropriate regarding the outcome of the investigation and the action taken to resolve the complaint. The investigator will instruct the target to report immediately if the objectionable behavior occurs again or if the alleged harasser retaliates against them.
e. The investigator will notify the target that if they desire further investigation and action, they may request a district level investigation by contacting the Superintendent of Schools. The investigator will also notify the target of their right to contact the U.S. Department of Education's Office for Civil Rights, the U.S. Equal Employment Opportunity Commission, the New York State Division of Human Rights, and/or a private attorney.

10. Create a written documentation of the investigation, kept in a secure and confidential location, containing:
    a. A list of all documentation and other evidence reviewed, along with a detailed summary;
    b. A list of names of those interviewed along with a detailed summary of their statements;
    c. A timeline of events;
    d. A summary of prior relevant incidents, reported or unreported; and
    e. The final resolution of the complaint, together with any corrective action(s).

If the initial investigation results in a determination that sexual harassment did occur, the investigator will promptly notify the Superintendent, who will then take prompt disciplinary action in accordance with district policy, the applicable collective bargaining agreement or state law.

OLD NOTE: The law addresses when "non-employees" are the target of sexual harassment, but not where they are the alleged harasser. We suggest discussing with the district's counsel including language in contracts that addresses actions the vendors/contractors will take to protect the school environment in allegations of harassment, including serious, extreme or criminal misconduct. Such actions could include barring the alleged harasser from the school setting or having contact with school personnel, pending the outcome of the investigation.

If a complaint received by the Principal or the Title IX Coordinator contains evidence or allegations of serious or extreme harassment, such as employee to student harassment, criminal touching, quid pro quo (e.g., offering an employment reward or punishment as an inducement for sexual favors), or acts which shock the conscience of a reasonable person, the complaint will be referred promptly to the Superintendent. In addition, where the Principal or the Title IX coordinator has a reasonable suspicion that the alleged harassment involves criminal activity, they must immediately notify the Superintendent, who will then contact appropriate law enforcement authorities. Where criminal activity is alleged or suspected by a district employee, the accused employee will be suspended pending the outcome of the investigation, consistent with all contractual or statutory requirements.

Any party who is not satisfied with the outcome of the initial investigation by the Principal or the Title IX coordinator may request a district-level investigation by submitting a written complaint to the Superintendent within 30 days.

B. District-level Procedure

The Superintendent will promptly investigate and resolve all sexual harassment complaints that are referred by a Principal or Title IX coordinator, as well as those appealed to the Superintendent following an initial investigation by a Principal or Title IX coordinator. In the event the complaint of sexual harassment involves the Superintendent, the complaint will be filed with or referred to the Board President, who will refer the complaint to a trained investigator not employed by the district for investigation.

The district level investigation should begin as soon as possible but not later than three working days following receipt of the complaint by the Superintendent or Board President.

In conducting the formal district level investigation, the district will use investigators who have received formal training in sexual harassment investigation or that have previous experience investigating sexual harassment complaints.

If a district investigation results in a determination that sexual harassment did occur, prompt corrective action will be taken to end the harassment. Where appropriate, district investigators may suggest mediation as a means of exploring options of corrective action and informally resolving the complaint.

No later than 30 days following receipt of the complaint, the Superintendent (or in cases involving the Superintendent, the Board-appointed investigator) will notify the target and alleged harasser, in writing, of the outcome of the investigation. If additional time is needed to complete the investigation or take appropriate action, the Superintendent or Board-appointed investigator will provide all parties with a written status report within 30 days following receipt of the complaint.

The target and the alleged harasser have the right to be represented by a person of their choice, at their own expense, during sexual harassment investigations and hearings.

External Remedies

NEW NOTE: The paragraphs below reflect the remedies available to employee targets of sexual harassment in New York State. Note that under the amended Executive Law §297(5), as of August 12, 2020, complainants will have three years to bring a complaint to the NYS Division of Human Rights (previously the limit was one year).

Employee targets have the right to register sexual harassment complaints with the U.S. Department of Education's Office for Civil Rights (OCR), the federal Equal Employment Opportunity Commission (EEOC) and the New York State Division of Human Rights (DHR). The OCR can be contacted at (800) 421-3481, 400 Maryland Avenue SW, Washington, DC 20202-1100, or at https://www2.ed.gov/about/offices/list/ocr./docs/howto.html. The EEOC can be contacted at (800) 669-4000, https://www.eeoc.gov/employees/howtofile.cfm, info@eeoc.gov, or at 33 Whitehall Street, 5th Floor, New York, NY 10004 or 300 Pearl Street, Suite 450, Buffalo, NY 14202. The DHR can be contacted at (888) 392-3644, www.dhr.ny.gov/complaint, or at 1 Fordham Plaza, Fourth Floor, Bronx, NY 10458.

NEW NOTE: The text below refers to the right of targets to contact law enforcement, as included in the DOL model policy.

While not necessary to include in this regulation, note that mandatory arbitration clauses for sexual harassment are prohibited by the State Civil Practice Law and Rules §7515. Mandatory arbitration clauses are provisions in a contract or collective bargaining agreement which require conflicts to be addressed by an arbitrator before bringing the matter to court. While mandatory arbitration clauses are not common in employee agreements, please make sure that no contract entered into after July 11, 2018 (including those with contractors, vendors, and consultants) contains a mandatory arbitration clause.

Nothing in these regulations limits the right of the complainant to file a lawsuit in either state or federal court, or to contact law enforcement officials if the sexual harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, or other acts which may constitute a crime.

Nondisclosure agreements

NEW NOTE: Nondisclosure agreements must be provided in writing in English and the primary language of the complainant. The paragraph below addresses nondisclosure agreements, which are only permitted at the complainant's discretion under State General Obligations Law (§5-336) and Civil Practice Law and Rules (§5003-b). Complainants have 21 days to consider such agreements, and 7 days to revoke the agreements.

The district may include nondisclosure agreements (to not disclose the underlying facts and circumstances of a sexual harassment complaint) in any sexual harassment settlement agreement or resolution only if it is the complainant's preference. Any such nondisclosure agreement will be provided in writing to all parties in plain English and, if applicable, in the primary language of the complainant. Complainants have twenty-one days to consider any such nondisclosure provision before it is signed by all parties, and have seven days to revoke the agreement after signing. Nondisclosure agreements only become effective after this seven-day period has passed.

Retaliation Prohibited

NEW NOTE: We have retained references to both the educational environment and the workplace in this section, to protect students from retaliation when making or assisting in employee sexual harassment complaints.

Any act of retaliation against any person who opposes sexually harassing behavior, or who has filed a complaint in good faith, is prohibited and illegal, and therefore subject to disciplinary action. Likewise, retaliation against any person who has, in good faith, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of a sexual harassment complaint is prohibited. For purposes of this policy, retaliation includes but is not limited to: verbal or physical threats, intimidation, ridicule, bribes, destruction of property, spreading rumors, stalking, harassing phone calls, discipline, discrimination, demotion, denial of privileges, any action that would keep a person from coming forward to make or support a sexual harassment claim, and any other form of harassment. Such actions need not be job- or education-related, or occur in the workplace or educational environment, to constitute unlawful retaliation. Any person who retaliates is subject to immediate disciplinary action, up to and including suspension or termination.

Discipline/Penalties

NEW NOTE: We have modified the paragraphs below to include remedial actions and focus on improving behavior in the work environment.

Any individual who violates the sexual harassment policy by engaging in prohibited sexual harassment will be subject to appropriate disciplinary and/or remedial action. Measures available to school authorities include, but are not limited to the following:

Students: Discipline may range from a reprimand up to and including suspension from school, to be imposed consistent with the student conduct and discipline policy and applicable law.
Employees: Discipline may range from a warning up to and including termination, to be imposed consistent with all applicable contractual and statutory rights.
Volunteers: Penalties may range from a warning up to and including loss of volunteer assignment.

"Non-employees" (i.e., contractors, subcontractors, vendors, consultant and other persons providing services pursuant to a contract, or their employees): Penalties may range from a warning up to and including loss of district business.
Other individuals: Penalties may range from a warning up to and including denial of future access to school property.

False Complaints

False or malicious complaints of sexual harassment may result in corrective or disciplinary action taken against the complainant.

Training

NEW NOTE: The paragraph below has been modified to reflect that the district's policy and regulation must be provided in English and an employee's primary language, for those languages for which the DOL has provided translated materials.

All employees will be informed of this policy and regulation in employee handbooks, on the district website and other appropriate materials. A poster summarizing the policy will also be posted in a prominent location at each school. The district will provide all existing employees with either a paper or electronic copy of the district's sexual harassment policy and regulation, and will provide the same to new employees before the employee starts their job. These materials will be provided in English and in an employee's primary language, for those languages for which the NYS Department of Labor has provided a translated template policy.

NEW NOTE: We have retained and modified the following paragraph to reflect the role that students play in preventing sexual harassment of employees.

All students will be informed of the basic provisions of this policy and regulation (e.g., that sexual harassment of employees and "non-employees" is prohibited, as well as what is appropriate and inappropriate behavior) in student handbooks, on the district website and student registration materials. In addition, age-appropriate curricular materials will be made available so that it can be incorporated in instruction K-12 to ensure that all students are educated on appropriate and inappropriate behavior.

NEW NOTE: The paragraph below has been modified to reflect that training must be provided in English and an employee's primary language, for those languages for which the DOL has provided translated materials. Note that if the district employs minors/students, they must receive training as well. However, employees under 14 can be provided with simplified training.

All new employees will receive training on this policy and regulation at new employee orientation or as soon as possible after starting their job, unless they can demonstrate that they have received equivalent training within the past year from a previous employer. All other employees will be provided training at least once a year regarding this policy and the district's commitment to a harassment-free working environment. Principals, Title IX coordinators, and other administrative employees who have specific responsibilities for investigating and resolving complaints of sexual harassment will receive yearly training on this policy, regulation and related legal developments. Training will be provided in English and in an employee's primary language, for those languages for which the NYS Department of Labor has provided translated model training.

OLD NOTE: Labor Law 201-g requires annual sexual harassment training for employees. The DOL is charged with developing a model training program in consultation with the NYS Division of Human Rights. All employers (including school districts and BOCES) must either use this training program or one that at least meets the minimum standards of the model. The paragraph below outlines the main requirements, and has been modified to include elements from the model training and guidance from the DOL. The DOL model training and standards can be found at https://www.ny.gov/combating-sexual-harassment-workplace/employers.

Annual employee training programs will be interactive and include: (i) an explanation of sexual harassment consistent with guidance issued by the NYS Department of Labor and the NYS Division of Human Rights; (ii) examples of conduct that is unlawful sexual harassment; (iii) information on federal and state laws about sexual harassment and remedies available to victims of sexual harassment; (iv) information concerning employees' right to make complaints and all available forums for investigating complaints; and (v) address the conduct and responsibilities of supervisors.

OLD NOTE: The law does not address how "non-employees" are to be notified of the district's sexual harassment policy. We suggest discussing with the district's counsel including language in contracts that addresses the actions that vendors/contractors will take to inform their employees of the district's sexual harassment policy and regulation, as well as the district's role. The DOL FAQ advises that employers are not required to train "non-employees" and do not need to provide a copy of their sexual harassment policy.

Principals in each school and program directors are responsible for informing students and staff on a yearly basis of the terms of this policy, including the procedures established for investigation and resolution of complaints, general issues surrounding sexual harassment, the rights and responsibilities of students and employees, and the impact of sexual harassment on the target.

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OLD NOTE: The Board should be aware that the Public Employment Relations Board (PERB) has held that to the extent that a school district's sexual harassment regulations relate to investigatory and disciplinary procedures involving employees, the regulation is a mandatory subject of bargaining. (Patchogue-Medford UFSD, 30 PERB ¶ 3041 (1997)). Before adopting this regulation, the Board should consult with its labor counsel to determine whether the provisions contained in the regulation dealing with investigations of employee conduct and employee discipline represent a change in existing district practice or are in conflict with existing collective bargaining agreements.

Adoption date: