

HARASSMENT/SEXUAL HARASSMENT - EMPLOYEES AND NON-EMPLOYEES

This policy applies to all employees, paid or unpaid, applicants for employment, interns, contractors, persons conducting business, regardless of immigration status with South Colonie. All must abide by and uphold this policy.

The Board of Education is committed to maintaining a workplace free from all forms of harassment, including sexual harassment. Sexual harassment is a form of workplace discrimination. All employees are required to work in a manner that prevents sexual harassment in the workplace. Sexual harassment is against the law and all employees have a legal right to a workplace free from sexual harassment and employees are urged to report sexual harassment by filing a complaint internally with South Colonie. Employees can also file a complaint with a government agency or in court under federal, state or local antidiscrimination laws.

1. All forms of harassment, including sexual harassment, will not be tolerated. Any employee or individual covered by this policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action (e.g., counseling, suspension, termination).
2. Retaliation Prohibition: No person covered by this Policy shall be subject to adverse action because the employee reports an incident of harassment/sexual harassment, provides information, or otherwise assists in any investigation of a harassment/sexual harassment complaint. South Colonie will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected harassment/sexual harassment. Any employee of South Colonie who retaliates against anyone involved in a harassment/sexual harassment investigation will be subjected to disciplinary action, up to and including termination. All employees and non-employees, paid and non-paid, working in the workplace who believe they have been subject to such retaliation should inform their immediate supervisor or a school administrator. All employees and non-employees, paid or unpaid, who believe they have been a target of such retaliation may also seek relief in other available forums, as explained in the Harassment of Employees Regulation.

A copy of this policy and its accompanying regulation are to be distributed to all supervisory and non-supervisory personnel and posted in appropriate places.

Reference: Civil Rights Act of 1964, Title VII, 42 U.S.C. § 2000-e2 (a)
Equal Employment Opportunity Commission Policy Guidance (N-915.035)
on Current Issues of Sexual Harassment, effective 10/15/88
Meritor Savings Bank, FSB v. Vinson, 447 U.S. 57 (1986)

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HARASSMENT/SEXUAL HARASSMENT - EMPLOYEES AND NON-EMPLOYEES**What Is “Sexual Harassment”?**

Harassment/sexual harassment is a form of sex discrimination and is unlawful under federal, state, and local laws. Harassment/Sexual Harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

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 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 harassing/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. Harassment/Sexual Harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job performance.

Harassment/sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called “quid pro quo” harassment.

Any person who feels harassed/sexually harassed should report so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

Examples of Harassment/Sexual Harassment

The following describes some of the types of acts that may be unlawful harassment and that are strictly prohibited:

- 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;
 - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
 - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
 - 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 occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people'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:
 - Displaying 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, name-calling.

Who can be a Target of Harassment/Sexual Harassment?

Harassment/sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees and non-employees, paid and non-paid, including applicants for employment, interns, persons conducting business, independent contractors, and those employed by companies contracting to provide services.

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.

Where can Harassment/Sexual Harassment Occur?

Unlawful harassment/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/sexual harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

Retaliation

Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a harassment/sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours).

Such retaliation is unlawful under federal, state, and local law. The New York State Human Rights Law protects any individual who has engaged in “protected activity”.

Protected activity occurs when a person has:

- made a complaint of harassment/sexual harassment, either internally or with any anti-discrimination agency;
- testified or assisted in a proceeding involving harassment/sexual harassment under the Human Rights Law or other anti-discrimination law;
- opposed harassment/sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- reported that another employee has been harassed/sexually harassed; or
- encouraged a fellow employee to report harassment/sexual harassment.

Even if the alleged harassment/sexual harassment does not turn out to rise to the level of violation of law, the individual is protected from retaliation if the person has a good faith belief that the practices were unlawful.

This provision is not intended to protect persons making intentionally false charges of harassment/sexual harassment.

Reporting Harassment/Sexual Harassment

Preventing harassment/sexual harassment if everyone’s responsibility. South Colonie cannot prevent or remedy harassment/sexual harassment unless it knows about it. Any employee or non-employee, paid or unpaid, who has been subjected to behavior that may constitute harassment/sexual harassment is encouraged to report such behavior to an immediate supervisor or school administrator. Anyone who witnesses or becomes aware of potential instances of harassment/sexual harassment should report such behavior to an immediate supervisor or school administrator.

Reports of harassment/sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Regulation, and all employees are encouraged to use this complaint form.

Employees who are reporting harassment/sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee’s behalf.

Employees or non-employees, paid or unpaid, who believe they have been a target of harassment/sexual harassment may also seek assistance in other available forums, as explained below.

Supervisory Responsibilities

All supervisors who receive a complaint or information about suspected harassment/sexual harassment, observe what may be harassing/sexually harassing behavior or for any reason suspect that harassment/sexual harassment is occurring, are required to report such suspected harassment/sexual harassment to the Director of Human Resources.

In addition to being subject to discipline if they engaged in harassing/sexually harassing conduct themselves, supervisors will be subject to discipline for failing to report suspected harassment/sexual harassment or otherwise knowingly allowing harassment/sexual harassment to continue. Supervisors will also be subject to discipline for engaging in any retaliation.

Complaint and Investigation of Harassment/Sexual Harassment

All complaints of information about harassment/sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner, and will be confidential to the extent possible.

An investigation of any complaint, information or knowledge of suspected harassment/sexual harassment will be prompt and thorough, commenced immediately and completed as soon as possible. The investigation will be kept confidential to the extent possible. All persons involved, including complainants, witnesses and alleged harassers will be accorded due process, to protect their rights to a fair and impartial investigation.

Any employee may be required to cooperate as needed in an investigation of suspected harassment/sexual harassment. South Colonie will not tolerate retaliation against employees who file complaints, support another's complaint or participate in an investigation regarding a violation of this policy.

While the process may vary from case to case, investigations should be done in accordance with the following steps:

- Upon receipt of complaint, the immediate supervisor will conduct an immediate review of the allegations, and take any interim actions (e.g., instructing the respondent to refrain from communications with the complainant), as appropriate. If complaint is verbal, encourage the individual to complete the "Complaint Form" in writing. If he or she refuses, prepare a Complaint Form based on the verbal reporting.
- If documents, emails or phone records are relevant to the investigation, take steps to obtain and preserve them.
- Request and review all relevant documents, including all electronic communications.
- Interview all parties involved, including any relevant witnesses.
- Create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
 - A list of all documents reviewed, along with a detailed summary of relevant documents;
 - A list of 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 basis for the decision and final resolution of the complaint, together with any corrective action(s).
- Keep the written documentation and associated documents in a secure and confidential location.
- Promptly notify the individual who reported and the individual(s) about whom the complaint was made of the final determination and implement any corrective actions identified in the written document.
- Inform the individual who reported of the right to file a complaint or charge externally as outlined in the next section.

Legal Protections

Harassment/Sexual Harassment is not prohibited by South Colonie but is also prohibited by state, federal, and local law.

Aside from the internal process at South Colonie, employees may also choose to pursue legal remedies with a government entity.

New York State Human Rights Law

The Human Rights Law applies to all employers in New York State with regarding to sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights, or in New York State Supreme Court.

Complaints with the Division of Human Rights may be filed any time **within 1 year** of the harassment/sexual harassment. If an individual did not file at Division of Human Rights, they can sue directly in state court under the Human Rights Law, **within 3 years** of the alleged sexual harassment. An individual may not file with the Division of Human Rights if they have already filed a Human Rights Law complaint in state court.

Complaining internally to South Colonie does not extend your time to file with Division of Human Rights or in court. The 1 year or 3 years is counted from date of the most recent incident of harassment/sexual harassment.

Civil Rights Act of 1964

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws. An individual can file a complaint with the EEOC anytime within **300** days from the harassment. 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.

Contact the Local Police Department

If the harassment/sexual harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

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**HARASSMENT/SEXUAL HARASSMENT
FORMAL COMPLAINT FORM**

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form to report alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to your immediate supervisor. You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, your employer should complete this form, provide you with a copy and follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

COMPLAINANT INFORMATION

Name: _____

Job Title: _____

Home Address: _____

Home Phone: _____

Work Address: _____

Work Phone: _____

Email: _____

Select Preferred Communication Method: Email Phone In Person

SUPERVISORY INFORMATION

Immediate Supervisor's Name: _____

Title: _____

Work Phone: _____

Work Address: _____

COMPLAINT INFORMATION

1. Your complaint of Sexual Harassment is made about:

Name:

Title:

Work Address:

Work Phone:

Relationship to you: Supervisor Subordinate Co-worker Other

2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) sexual harassment occurred:

Is the sexual harassment continuing? YES NO

4. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

The last questions are optional, but may help the investigation.

5. Have you previously complained or provided information (verbal or written) about related incidents? If yes, when and to whom did you complain or provide information?

6. Have you filed a claim regarding this complaint with any federal, state or local agency?

Signature: _____ Date: _____

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**HARASSMENT/SEXUAL HARASSMENT
COMPLAINT APPEAL FORM**

Name and Position of Complainant: _____

Date of Appeal: _____

Date of Original Complaint: _____

Have there been any prior appeals? Yes No

If yes, state when and to whom: _____

Description decision being appealed: _____

Why is the decision being appealed? _____

Issued: _____

