

**Item:** WLS Sexual Harassment Policy & Privacy Policy Revision

**Background:** New York State Labor Law now requires all employers to adopt a sexual harassment prevention policy that includes a complaint form to report alleged incidents as well as to provide staff training on the subject.

WLS Information Technology Director Rob Caluori and Executive Director Terry Kirchner had identified some issues with our existing Policy #11 re Privacy, mostly of a technical nature, and recommended revisions.

**Status:** The Governance Committee met on October 25<sup>th</sup> and reviewed the above.

After discussion, the Committee recommends the addition of the attached Sexual Harassment Policy. WLS has already implemented training for staff to be in compliance with the law.

The Committee also recommends the attached version of the WLS Policy #11- Privacy. Additional text is shown as underscored and deletions are shown as ~~strikeout~~.

Per regular procedure, these documents are being presented a month in advance as Information Items with official approval to be sought at the following month's Board Meeting.

Any questions can be directed to Cathy Draper, Chair of the Governance Committee.

October 30, 2018

**Subject:** Sexual Harassment<sup>1</sup>

**Application:** Employees, trustees, customers, consultants, contractors, vendors and visitors

### **Introduction**

Westchester Library System (WLS) is committed to maintaining a workplace free from 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. This policy is one component of WLS's commitment to a discrimination-free work environment. 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 WLS. Employees can also file a complaint with a government agency or in court under federal, state or local antidiscrimination laws.

### **Policy:**

1. WLS's policy applies to all employees, trustees, applicants for employment, interns, whether paid or unpaid, contractors, subcontractors, consultants, vendors, persons conducting business, and visitors, regardless of immigration status, with WLS. In the remainder of this document, the term "employees" refers to this collective group.
2. Sexual harassment will not be tolerated. Any employee who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action (e.g., counseling, suspension, termination).
3. Retaliation Prohibition: No employee shall be subject to adverse action because such employee reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. WLS will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected sexual harassment. Any employee who retaliates against anyone involved in a sexual harassment investigation will be subject to disciplinary action, up to and including termination. All employees working in the workplace who believe they have been subject to such retaliation should inform their immediate supervisor or the Executive Director. All employees who believe they have been a target of such retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.
4. Sexual harassment is offensive, is a violation of WLS policies, is unlawful, and may subject WLS to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability. Employees of every level who engage in sexual

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<sup>1</sup> Adoption of this policy does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.

harassment, including managers and supervisors who engage in sexual harassment or who allow such behavior to continue, will be penalized for such misconduct.

5. WLS will conduct a prompt and thorough investigation that ensures due process for all parties, whenever management receives a complaint about sexual harassment, or otherwise knows of possible sexual harassment occurring. WLS will keep the investigation confidential to the extent possible. Effective corrective action will be taken whenever sexual harassment is found to have occurred. All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment.
6. All employees are encouraged to report any harassment or behaviors that violate this policy. WLS will provide all employees a complaint form for employees to report harassment and file complaints.
7. Managers and supervisors are **required** to report any complaint that they receive, or any harassment that they observe or become aware of, to the Executive Director.
8. This policy applies to all employees and all must follow and uphold this policy. This policy must be provided to all employees and should be posted prominently in all work locations to the extent practicable and be provided to employees upon hiring.

### **What Is “Sexual Harassment”?**

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 sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

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 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 made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient’s job performance.

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 employee who feels 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 sexual harassment**

The following describes some of the types of acts that may be unlawful sexual 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, which 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 or 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 sexual harassment?**

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees and non-employees, including independent contractors, and those

employed by companies contracting to provide services in the workplace. A harasser 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 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 premises, on personal devices or during non-work hours.

### **Retaliation**

Unlawful retaliation can be any action that could discourage an employee from coming forward to make or support a 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 (where applicable) 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 sexual harassment, either internally or with any anti-discrimination agency;
- testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- opposed 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 sexually harassed; or
- encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

### **Reporting Sexual Harassment**

**Preventing sexual harassment is everyone’s responsibility.** WLS cannot prevent or remedy sexual harassment unless it knows about it. Any employee who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager or the Executive Director. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager or the Executive Director.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this policy, and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf.

Employees who believe they have been a target of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

### **Supervisory Responsibilities**

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

In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.

Supervisors and managers will also be subject to discipline for engaging in any retaliation.

### **Complaint and Investigation of Sexual Harassment**

*All* complaints or information about 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 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, as outlined below, to protect their rights to a fair and impartial investigation.

Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. WLS 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 a complaint, the Executive Director 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 the complaint is verbal, the Executive Director will encourage the individual to complete the "Complaint Form" in writing. If he or she refuses, the Executive Director will 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 And External Remedies**

Sexual harassment is not only prohibited by WLS but is also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at WLS, employees may also choose to pursue legal remedies with the governmental entities listed below. While a private attorney is not required to file a complaint with a governmental agency, an employee may seek the legal advice of an attorney.

#### **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 with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the HRL 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 one year** of the harassment. If an individual did not file at DHR, they can 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 to WLS does not extend an individual's time to file with DHR or in court. The one year or three years is counted from the date of the most recent incident of harassment.

An attorney is not required to file a complaint with DHR, and there is no cost to file with DHR.

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

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. Individuals wishing to make a complaint may call (718) 741-8400 or visit: [www.dhr.ny.gov](http://www.dhr.ny.gov).

An employee may contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can 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](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov).

If an individual filed 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. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit <http://www.nyc.gov/html/cchr/html/home/home.shtml>.

**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. An individual who has been the target of such activity should contact the local police department.

Approved: *DATE*

DRAFT

**WESTCHESTER LIBRARY SYSTEM  
SEXUAL HARASSMENT COMPLAINT FORM<sup>1</sup>**

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 the Executive Director. You will not be retaliated against for filing a complaint.

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

**For additional resources, visit: [ny.gov/programs/combating-sexual-harassment-workplace](http://ny.gov/programs/combating-sexual-harassment-workplace)**

**COMPLAINANT INFORMATION**

Name:

Work Address:

Work Phone:

Job Title:

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

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<sup>1</sup> Adoption of this policy does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.

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 question is 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?

If you have retained legal counsel and would like us to work with them, please provide their contact information.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

### **Instructions for Employers**

If you receive a complaint about alleged sexual harassment, follow your sexual harassment prevention policy.

An investigation involves:

- Speaking with the employee
- Speaking with the alleged harasser
- Interviewing witnesses
- Collecting and reviewing any related documents

While the process may vary from case to case, all allegations should be investigated promptly and resolved as quickly as possible. The investigation should be kept confidential to the extent possible.

Document the findings of the investigation and basis for your decision along with any corrective actions taken and notify the employee and the individual(s) against whom the complaint was made. This may be done via email.

**Subject:** Privacy

**Application:** Employees, customers, consultants, contractors, vendors and visitors

The Westchester Library System (WLS) and its member libraries are committed to protecting the privacy of our staff, donors, customers and other external contacts. The WLS privacy policy defines our commitment not to collect any personal information about our users when you visit our websites or register for a program or a library card unless you choose to provide such information. Any information you choose to provide will only be used to more effectively provide and better target library services throughout the County.

This confidentiality extends to information sought or received, materials consulted, borrowed, acquired; and includes database search records, circulation records, interlibrary loan records, and other personally identifiable uses of library materials, facilities or services.

WLS places account information on the secure portion of its computer system. For this reason, patrons are asked to input their barcode number and PIN each time they want to access their account information on the website.

### **Cookies**

Users accessing the WLS or member library websites will need to enable cookies<sup>1</sup> in order to access a number of resources available through WLS. WLS's servers use cookies solely to verify that a person is an authorized user ~~in order to allow access to~~ of licensed library resources or to facilitate web site functionality. ~~and to customize Web pages to that user's specification. Cookies sent by WLS servers will disappear soon after the user's computer browser is closed.~~ WLS server will not employ cookies for advertising or marketing.

### **Emails and Web Forms**

Identifying information that you provide by e-mails or web forms will be used only for such purposes as are described at the point of collection (for example on a web form), such as to send information or provide library services to you, update your membership record or to better target library services to meet constituent demands.

WLS or a member library may contact a patron to clarify a comment or question, to learn about your level of customer satisfaction with library services or to deliver information

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<sup>1</sup> A cookie is very small text file placed on your hard drive by a Web Page server. It is essentially your identification card, and cannot be executed as code or deliver viruses. It is uniquely associated with the computer on which it is placed.

**regarding a library card account.** To do so requires contact information provided by the patron. WLS will not use patron/customer emails for commercial purposes nor will it provide such information to external organizations.

### **Information Collected and Stored Automatically**

WLS does not collect information which identifies you personally. However, when a patron visits a WLS website to browse through the web site, read pages, or download information, certain information will be automatically gathered and stored about the visit to these pages:

1. The Internet domain (for example, "xcompany.com" if a private Internet access account, or "aschool.edu" if connected from a university) and IP address (an IP address is a number that is automatically assigned to a computer whenever it is connected to the Internet) from which access to the WLS web site is gained;
2. The type of browser and operating system used to access the WLS website;
3. The date and time of access to the website;
4. The pages visited and for how long; and
5. The address of the website from which the initial visit to **the WLS or member library site** [www.westchesterlibraries.org](http://www.westchesterlibraries.org) was launched, if any.

WLS uses this information to help make its site more useful to visitors and to learn about the number of visitors to the site and the types of technology used. The data that is collected is not connected to a patron's personal information or identity.

### **Links to Other Sites**

WLS's **W**websites contains links to other sites. WLS and our member libraries are not responsible for the privacy practices of other sites, which may be different from the privacy practices described in this policy. It is the patron's responsibility to become familiar with privacy practices of websites external to WLS, including linked sites.

### **Customer Circulation Records**

WLS member libraries ~~do not use a paper process~~ **a computerized system** to collect and track customer circulation records. ~~It is done electronically.~~ Each Library maintains information provided by our customers from the registration form they complete when they register for a library card. When an item is checked out, that item is then tied to that customer's record in the WLS system. ~~At the moment that library material is returned to the library, the link between the customer and the material is broken—the WLS system does not retain information on what materials were taken out by whom, the moment the~~

item is returned assuming there are no existing fines or lost/overdue items on record. **WLS and member libraries make every effort to break the link between a customer and their circulation activity as soon as possible. Records are maintained as needed to report anonymized statistics, collect debts and complete the successful return of borrowed items. Patrons also have the option to extend retention of records to enable additional library account management features such as reading lists.**

### **Privacy & Confidentiality of Library Records**

Library records that are deemed confidential are covered by New York State Law signed on June 13, 1988 (I CPLR 4509). These records are related to the circulation of library materials that contain names or other personally identifying details regarding the users of public, free association, school, college and university libraries and library systems, of this state, including but not limited to records related to the circulation of library materials, computer database searches, interlibrary loan transactions, reference queries, requests, or the use of audio-visual materials, films or records. These records shall be confidential and shall not be disclosed except that such records may be disclosed upon the request or consent of the user or pursuant to subpoena, court order or where otherwise required by statute.

### **Revisions**

WLS and our member libraries reserve the right to change or modify this privacy statement at any time. If WLS revises this privacy statement, changes will be posted on the WLS homepage.

*Last approved: May 26, 2015*