

YOUTH SERVICES POLICY

Title: Sexual Harassment	Type: A. Administrative Sub Type: 2. Personnel Number: A.2.8
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References: Title VII of the 1964 Civil Rights Act, Equal Employment Opportunities Commission Guidelines; Prison Rape Elimination Act of 2003; Senate Concurrent Resolution No. 107 of the 2012 Regular Session of the Legislature, and Louisiana State Civil Service General Circular Number 2012-022 "Preventing Sexual Harassment"; U.S. DOJ PREA Standard 115.311 (a); ACA Standards 2-CO-1C-11 (Administration of Correctional Agencies), 4-JCF-6D-06 (Juvenile Correctional Facilities); YS Policy A.1.4 "Investigative Services", A.1.14 "Unusual Occurrence Reports", A.2.1 "Employee Manual", A.2.24 "Staff Development and Training Plan", A.2.38 "Ethics for Public Employees: Nepotism, Prohibited Relations, Gifts, Ethics Opinions", A.2.46 "Employee Grievance Procedure", A.2.47 "Equal Employment Opportunity", and C.2.11 "Prison Rape Elimination Act (PREA)"	
STATUS: Approved	
Approved By: <i>James Bueche, Ph.D., Deputy Secretary</i>	Date of Approval: 04/25/2018

I. AUTHORITY:

Deputy Secretary of Youth Services (YS) as contained in La. R.S. 36:405. Deviation from this policy must be approved by the Deputy Secretary.

II. PURPOSE:

To establish a formal policy regarding sexual harassment. It is the Deputy Secretary's intent to maintain a workplace free of sexual harassment from any source, and inappropriate work relationships, to discourage such conduct, to quickly address violations of this policy, responding with investigation and disciplinary action when appropriate, and to provide in-service education and training to Youth Services (YS), Office of Juvenile Justice (OJJ) employees in accordance with Senate Concurrent Resolution (SCR) No. 107 of 2012, and State Civil Service (SCS) General Circular Number 2012-022.

III. APPLICABILITY:

All applicants, candidates, employees and units of YS.

Each Unit Head is responsible for ensuring that all necessary procedures are in place to comply with the provisions of this policy.

IV. DEFINITIONS:

Louisiana Employees Online (LEO) - Statewide management system which includes the Comprehensive Public Training Program (CPTP) providing online courses accessible to all state employees and which can be accessed at: <http://www.civilservice.louisiana.gov/Divisions/Training/Default.aspx>.

Prison Rape Elimination Act (PREA) - An Act signed into law by President George W. Bush in September 2003. This legislation requires the Bureau of Justice Statistics (BJS) to initiate new national data collections on the incidence and prevalence of sexual violence within correctional facilities. PREA defines four categories of sexual abuse for purposes of data collection: abusive sexual contacts, nonconsensual sexual acts, staff sexual harassment and staff sexual misconduct.

Sexual Harassment - Sexual harassment constitutes discrimination and is illegal under federal, state, and local laws. For the purpose of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when, for example:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different gender. For illustrative purposes only, these behaviors may include, but are not limited to: unwelcomed sexual flirtations, advances, propositions, or demands; unwelcomed sexual jokes, teasing, pranks, inquiries and innuendo; unwelcomed repeated requests for dates or social engagement; verbal abuse of a sexual nature; commentary about an individual's body, derogatory or stereotypical remarks/comments concerning sexual prowess or sexual deficiencies; lustful looks, staring, leering and catcalls; unwelcomed physical contact including touching, hugging, massaging, rubbing, fondling, groping, tickling and pinching; invading another's space by leaning over, purposefully cornering, or blocking passage; threatening, intimidating, insulting or obscene comments or gestures; repeatedly referring to an individual as "honey", "babe", "sugar", etc.; display or circulation in the workplace of sexually suggestive objects, pictures, or notes including, but not limited to, memoranda, letters, or e-mail; and other physical, verbal or visual conduct of a sexual nature. (Refer to the above definition of PREA for additional information about sexual harassment and sexual conduct.)

Staff Development Director - A Central Office employee charged with overseeing the Agency's Staff Development and Training Program, and who serves as the clearinghouse for training opportunities for agency personnel.

Staff Development Training Specialist - A full time secure care trainer position at the unit level, who has completed a specialized 40-hour training-for-trainers curriculum through the agency or other qualified source, [i.e., American Correctional Association, National Institute of Corrections, Federal Bureau of Investigation Instructor Development Course (FBI-IDC) etc.], responsible for the development, documentation, and delivery of the agency's approved training.

Training Records Entry Completed (TREC) - The database used to track training hours of all agency employees.

Unit Training Officer - A regional office employee who by job description or assignment oversees the development, documentation and delivery of agency approved training.

Unit Head - For the purposes of this policy: Deputy Secretary, Facility Directors and Regional Managers.

Unusual Occurrence Report (UOR) - A form/document that must be completed by staff to report incidents or observations of events that may have an impact on any aspect of the agency. UOR forms shall be made available to all employees, working in all areas at all times. Employees must complete and submit a UOR prior to the end of their tour of duty on the day the incident was observed or comes to the employee's attention in any way. (Refer to YS Policy No. A.1.14)

YS Central Office (CO) - Offices of the Deputy Secretary, Assistant Secretary, Undersecretary, Deputy Undersecretary, Chief of Operations, Deputy Assistant Secretary, General Counsel, Regional Directors, and their support staff.

YS Employee - For the purposes of this policy, a YS Employee includes employees, contract providers, visitors, volunteers or interns.

V. POLICY:

It is the Deputy Secretary's policy to provide a workplace free from sexual harassment. YS prohibits and shall not tolerate any such behavior. Conduct prohibited by this policy is unacceptable in the workplace and in any work-related setting outside the workplace, such as during business trips, business meetings, and business-related social events.

Senate Concurrent Resolution (SCR) No. 107 of the 2012 Regular Session of the Legislature directs public agencies to provide sexual harassment education and training for its public servants. In response to SCR No. 107, SCS has announced the release of a new online course entitled "Preventing Sexual Harassment". The course was created to provide an option for state agencies to use for education and training purposes in order to meet the requirements set forth in SCR No. 107 (see attached).

In addition to the training provided on the contents of this policy, YS trainers and designated attorneys shall develop a training course which will encompass the information contained in the "Preventing Sexual Harassment" course provided by SCS and available through the LEO system. Therefore, YS shall utilize the online course or the YS/OJJ developed course for the required training outlined in this policy. Records of compliance shall be tracked and maintained through LEO and/or TREC.

EXCEPTION: Secure care facility staff shall receive the required training by the designated YS attorney utilizing the YS developed training course.

VI. SCS COURSE INFORMATION:

The learning objectives of the one-hour course include understanding the definition of sexual harassment, identifying and preventing potentially harassing behaviors, and best practices for dealing with sexual harassment. Also included are supervisory best practices for handling the complaints.

VII. SCR 107 DESIGNEES

The Staff Development Director, Staff Development Training Specialist, and the Unit Training Officers are the designated staff who shall ensure that all YS employees are trained in the contents of this policy.

Attorneys designated by the General Counsel shall be the staff members who shall provide information and instruction on sexual harassment.

On or after the beginning of fiscal year 2014/2015, the designees providing the information and instruction pursuant to SCR 107, are required to receive a minimum of two (2) hours of education and training on sexual harassment, and two (2) hours annually thereafter. The current name and contact information of each designee shall be posted and maintained in a convenient and conspicuous location making the information easily accessible to all YS employees (refer to YS Policy No. A.2.24).

VIII. WHAT AN EMPLOYEE SHOULD DO IF HE THINKS HE IS BEING HARASSED:

Individuals who believe they are being subjected to sexually harassing conduct are encouraged to promptly advise the harassing individual that the behavior is unwelcome and request that it be discontinued. Doing so may be sufficient to prevent recurrence.

OJJ recognizes that confronting an offender can be discomfoting, especially in those situations in which the offender is within the employee's supervisory chain of command. Therefore, OJJ does not require employees to do so. Failure to have this dialogue does not in any way prevent or hamper the employee from making a verbal or written complaint to a supervisor. If the request to discontinue the harassing conduct does not end the harassment, the employee should report the matter to the supervisor or may file a complaint in accordance with the YS/OJJ complaint procedure, set forth in Section X below.

IX. RETALIATION IS PROHIBITED:

YS/OJJ prohibits retaliation against any individual who reports sexual harassment and/or participates in an investigation of such reports. Retaliation against an individual for reporting harassment or for participating in an investigation of a claim of harassment is a serious violation of this policy and, like harassment itself, shall be subject to disciplinary action (refer to YS Policy No. A.2.1).

X. REPORTING AN INCIDENT OF SEXUAL HARASSMENT OR RETALIATION:

- A. YS/OJJ does require the reporting of all incidents of sexual harassment, sexual discrimination or retaliation regardless of the harassing individual's identity or position.

Persons who have witnessed sexual harassment conduct that is contrary to this policy or who have concerns about matters involving possible sexual harassment must make the situation known so that management can address the matter.

Employee-witnesses are encouraged to file a statement or Unusual Occurrence Report (UOR) and/or a written complaint or UOR with the Unit Head/designee and send a copy to the Public Safety Services Human Resources Office and to OJJ Legal Services.

The information may also be submitted by email to the Unit Head/designee with copies sent as stated above.

However, a verbal report of sexual harassment is as valid as a written complaint. If an employee makes a verbal complaint to a supervisor, it is the supervisor's responsibility to immediately prepare a UOR or statement, and forward that document to the Unit Head. If a supervisor hears a second-or third-hand report of sexual harassment, the supervisor shall respond in the same manner as if the complaint was directly reported to him.

Another outlet for reporting sexual harassment is by utilizing the toll free hotline created for staff to bring their concerns to management while maintaining strict confidentiality. The number for the OJJ hotline is 1-800-626-1430.

- B. Early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of sexual harassment. Therefore, while no fixed reporting period has been established, YS/OJJ encourages employees-witnesses to report complaints or concerns promptly so that rapid and constructive action can be taken.

XI. INVESTIGATION OF SEXUAL HARASSMENT OR RETALIATION:

- A. Anyone who receives (hears about, is told about) a complaint shall immediately write a UOR/statement and promptly report all complaints received pursuant to this policy to the Unit Head and the Director of Investigative Services (IS).

- B. Any reported allegations of harassment or retaliation shall be investigated immediately and thoroughly by a designated team, led by an IS investigator, CO Human Resources designee, and OJJ Legal Department representative to determine the pertinent facts of the complaint. This team approach permits the investigators to evaluate the information gathered from different perspectives, enhance objectivity, and ensure thoroughness.
- C. Pending the investigation, the Unit Head may temporarily reassign the alleged harasser so that there is no further contact between the complainant and the alleged harasser. Additionally, in certain cases the Unit Head may place the alleged harasser on enforced annual leave or invoke the suspension pending investigation provisions consistent with YS Policy A.2.17.
- D. The investigation may include individual interviews with the parties involved and with individuals who may have observed the alleged conduct or may have other relevant knowledge.
- E. Depending on the nature and severity of the complaint, an informal conference, which may include the person filing the complaint and the alleged harasser, may be conducted in concurrence with the investigative team in an effort to resolve the complaint. Employees participating in the conference may choose to be accompanied by a co-worker or other representative. If the conference resolves the complaint, the investigation may be discontinued.
- F. Confidentiality shall be maintained throughout the investigatory process. Information regarding a sexual harassment incident and investigation is confidential and may only be shared and discussed among personnel necessary to the investigation.
- G. Records of sexual harassment investigations shall be retained for a minimum of five (5) years.

XII. Complaint Resolution

Upon completion of the investigation, the complainant and accused will be notified of the outcome. Regardless of the outcome, the complainant has the option of pursuing a claim under state or federal law.

Given the wide range of behaviors prohibited by this policy, the resolution decided upon by executive management will be determined by a number of factors. These factors include the nature, circumstances, frequency, and severity of the behavior, and whether the behavior recurs after having been previously addressed.

After resolution, the CO Human Resources designee will follow-up with the complainant to determine whether there has been a recurrence of the behavior complained of or whether the complainant has suffered any adverse consequence for having filed a complaint. Such follow-up will be at periodic intervals and will seek to identify repercussions such as disciplinary action, poor performance evaluation, ostracism, avoidance, non-inclusion, etc.

XIII. Prohibited Relationships with Subordinates

Regardless of whether or not conduct between two employees rises to the level of sexual harassment, the following conduct shall be prohibited by this policy:

No YS employee acting in a supervisory capacity shall engage in conduct that compromises their integrity by creating a conflict of interest with subordinate staff in the chain of command. Relationships between those acting in a supervisory capacity and subordinates in their chain of command, whether direct or indirect, that go beyond the normal and common type of work friendship and include sexual activity may give the appearance of impropriety and favoritism and are therefore prohibited. Supervisors shall avoid any such relationship, as it creates a conflict of interest and is therefore a violation of this policy, regardless of any consent by the parties involved. This includes sexual activity that may occur on or off the worksite or that which takes place during or after the work schedule.

XIV. SANCTIONS:

- A. If any employee is found, after investigation, to have engaged in sexual harassment or other inappropriate behavior of a sexual nature, the Unit Head shall take appropriate measures that are reasonably calculated to end the sexual harassment. This may include disciplinary action or appropriate non-disciplinary action including counseling, additional training, reassignment, Performance Evaluation review actions.
- B. Disciplinary penalties available include, but are not limited to:
 - 1. Reduction in pay;
 - 2. Demotion in rank;
 - 3. Suspension without pay; and
 - 4. Dismissal.

XV. APPEAL RIGHTS:

If an employee making a complaint does not agree with the resolution, the employee may file a grievance as outlined in the Youth Services Employee Manual and YS Policy A.2.46.

XVI. STAFF DEVELOPMENT:

New secure care employees shall receive the required training within 90 days of hire during pre-service/orientation by Legal Services.

New Central Office and Regional Office employees shall receive the required training within 90 days of hire during pre-service/orientation utilizing the YS developed Power Point and/or video, or by completing the State Civil Service course provided through LEO and completing a review of the YS Policy.

All employees shall receive annual in-service training utilizing the YS developed Power Point and/or video, or by completing the State Civil Service course provided through LEO and completing a review of the YS Policy.

All records of compliance shall be tracked through LEO and/or TREC.

Signage promoting a harassment-free workplace and instructions on how to file complaints must be posted in all work areas of YS.

XVII. FILING CHARGES WITH THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

- A. An aggrieved employee may file charges of sexual harassment with the EEOC even if they have not utilized the complaint procedure (Section X). However, the employee choose to wait until the conclusion of OJJ's investigation before filing a charge.
- B. The deadline for filing an EEOC charge is 180 days after the last date of alleged harassment. In the state of Louisiana, in some cases this deadline is extended to 300 days. This deadline is *not* extended because of an employer's internal investigation of the complaint.
- C. Employees wishing to file a complaint may obtain further information at: www.eeoc.gov or by calling the New Orleans EEOC office at 1-800-669-4000.

Previous Regulation/Policy Number: A.2.8

Previous Effective Date: 04/13/2016

Attachments/References: Senate Concurrent Resolution No. 107.pdf

Regular Session, 2012

SENATE CONCURRENT RESOLUTION NO. 107

BY SENATOR ERDEY

PUBLIC EMPLOYEES. Directs public agencies to provide sexual harassment education and training for its public servants.

A CONCURRENT RESOLUTION

To authorize and direct public agencies to provide in-service education and training on sexual harassment for its public servants.

WHEREAS, there is an ongoing need to provide education and training to officials and employees of public agencies on sexual harassment in the workplace; and

WHEREAS, it is incumbent upon the state and its agencies, local governmental subdivisions, political subdivisions, and other public agencies to provide education and training to inform and protect its officials and employees from such harassment; and

WHEREAS, public agencies are responsible for taking action to prevent sexual harassment by any public agency official or employee.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby authorize and direct each public agency to provide in-service education and training on sexual harassment to its public employees and officials as follows:

A. Except as otherwise specifically provided in this Resolution, or unless the context clearly indicates otherwise, the terms in this Resolution shall have the meaning provided in R.S. 42:1102 of the Code of Governmental Ethics.

B. Commencing January 1, 2013, each agency shall provide, or cause to be provided, to each public servant of that agency a minimum of one hour of education

1 and training on sexual harassment during each year of his public employment or term
2 of office, as the case may be.

3 C. The education and training required pursuant to this Section may be
4 provided and received either in person or via the Internet.

5 D.(1) Each agency head of a state agency shall designate at least one person
6 who shall provide all public servants of that agency information and instruction on
7 sexual harassment. On and after July 1, 2013, no agency head shall designate a
8 person to provide information and instruction on sexual harassment pursuant to this
9 Resolution unless the person has received a minimum of two hours of education and
10 training on sexual harassment. In addition, on and after July 1, 2014, each designee
11 shall have at least two hours of education and training on sexual harassment
12 annually.

13 (2) Each agency head of a state agency shall ensure that each public servant
14 in the agency is notified of the current name and contact information of each
15 designee and that the current name and contact information of each designee is
16 posted and maintained in a convenient and conspicuous manner which makes the
17 information easily accessible to each public servant in the agency.

18 E. Each state agency shall keep records of compliance with the requirements
19 of this Resolution by each public servant of the agency.

20 BE IT FURTHER RESOLVED that a copy of this Resolution shall be transmitted
21 to the office of state register in the division of administration and published in the State
22 Register.

23 BE IT FURTHER RESOLVED that a copy of this Resolution shall be included on
24 the website of Louisiana government and on the website of each department, division, office,
25 section, board, commission, and other agency of state government which maintains a web
26 site.

27 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the
28 governor, the commissioner of administration, and the chief justice of the supreme court.

29 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the
30 Louisiana Municipal Association, the Police Jury Association of Louisiana, the Louisiana

1 School Boards Association, the Louisiana District Attorney Association, the Louisiana
 2 Assessors' Association, the Louisiana Sheriffs' Association, and the Louisiana Clerks of
 3 Court Association, the Louisiana State Coroner's Association, the Justice of the Peace
 4 Association, and the Louisiana City Marshals and City Constables Association, and that each
 5 such association disseminate the Resolution to its membership.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jerry J. Guillot.

DIGEST

Erdey

SCR No. 107

Proposed resolution, relative to education and training on sexual harassment to public officials and employees, provides that except as otherwise specifically provided in proposed resolution, or unless the context clearly indicates otherwise, the terms in proposed resolution have the meaning provided in R.S. 42:1102 (Code of Governmental Ethics).

Proposed resolution requires commencing January 1, 2013, each public servant receive a minimum of one hour of education and training on sexual harassment during each year of his public employment or term of office, as the case may be.

Provides that the required education and training may be received either in person or via the Internet.

Requires that each agency head of a state agency designate at least one person who shall, with the assistance of the board, provide all public servants of that agency information and instruction on sexual harassment. Provides that on and after July 1, 2013, no agency head shall designate a person to provide the required information and instruction unless the person has received a minimum of two hours of education and training on sexual harassment. In addition, on and after July 1, 2014, each designee shall be required to have at least two hours of education and training on sexual harassment annually.

Requires that each agency head of a state agency ensure that each public servant in the agency is notified of the current name and contact information of each designee and that the current name and contact information of each designee is posted and maintained in a convenient and conspicuous manner which makes the information easily accessible to each public servant in the agency.

Requires that the agency head of each department in the executive branch select at least one person licensed to practice law in this state to be a designee.

Requires that each state agency keep records of the compliance with proposed resolution for each public servant of the agency.