

Investigation
Guidelines

for

Sexual Harassment
and other types of
complaints

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ESSENTIAL ELEMENTS OF A GOOD INVESTIGATOR

OBJECTIVITY

You must treat all parties to a complaint with the same level of cordiality, intensity, compassion and insistence. If it can be shown that you were not objective, it will jeopardize the entire investigation and process. If you react compassionately when the complaining party cries, you must react compassionately when the responding party exhibits fear. Remember these are allegations, no conclusion has been reached yet. Do not take sides. You represent the interest of the process—not either party involved in the allegation.

EXPEDIENCY

The federal guidelines on harassment cases speak to the school taking “*prompt and effective action calculated to end the harassment, prevent its recurrence and as appropriate, remedy its effects.*” [emphasis added]. In order to limit the harm to all parties and possible liability of the responsible school entity, dealing as immediately as possible once an allegation has been made is critical. Expediency, however, does not mean doing shoddy work!

THOROUGH

Each event in the allegation must be dealt with to the point of where the evidence clearly resolves any conflict and/or there is no way a resolution is possible. An example of the last statement is if the complainant and the respondent have different and conflicting statements of events, there are no witnesses, and there is no history about either person to determine who may be the more credible party. In such a circumstance it is appropriate to state in your report that due to the above-cited circumstances, it is impossible to resolve this particular issue in the complaint. To do otherwise, would violate the first essential element of a good investigation and investigator objectivity.

CONFIDENTIALITY

You need to caution, advise and warn all parties that they need to maintain confidentiality about what has been asked of them in the course of an investigation. The only one you really are able to guarantee that from, however, is yourself. For you and therefore the process to remain credible, you must be the model of discretion. Share information on a very strict “need to know” basis, which should be determined in your policy. (Note: See OCR’s: *Revised Sexual Harassment Guidance, January 2001*, page 16 regarding issues of confidentiality.)

ESSENTIAL ELEMENTS OF A GOOD INVESTIGATOR (cont.)

RESPECT

You need to respect all parties to an investigation. At times this will be a challenge, especially when the evidence in a case is supportive of the allegation and the allegation is of the more offensive kind. Keep your feelings and opinions to yourself. Remember your job is to determine the validity of the allegation. A basic rule of thumb is to treat the individual parties the way you would like to be treated if you had to respond to a charge or be a witness in someone else's case.

PROFESSIONALISM

Your credibility is enormously enhanced, and thus your ability to have people respond to your necessary questions, when you conduct yourself with "professionalism". It could be said that by effecting points 1-5 above, the overall experience would equal the concept of professionalism. Choose your words well, hold yourself in high regard, know that you have a very difficult task to perform, believe you are capable of doing it and ask for assistance when you are stuck (the best and most experienced investigator still can get stuck and have to ask for assistance). Your ability to succeed will be based on what others think of you, e.g., will I get a fair shake?, can you be trusted?, have you already made up your mind?, will you take me seriously? Remember, the more credible you are, the easier it will be for you to do this very difficult job.

[SEXUAL] HARASSMENT INVESTIGATION CHECKLIST

What to do when you receive a complaint of [sexual] harassment:

1. ***Obtain basic information.***

- Name of complainant.
- The complainant's position
- Determine if the complaint is under your jurisdiction or should others be notified (i.e., police, etc.)
- Keep a log/diary of your activities

2. ***Interview the complainant.***

- Who harassed the complainant? A name is needed during the initial report and the role of the alleged harasser to the complainant is important. For instance, is the alleged harasser a teacher, student, school employee, other?
- How did the harassment take place? Try to get explicit description of the incident. This may be difficult because the victim is embarrassed.
- Where did the incident take place?
- When did the incident take place? Get the exact date and time if possible.
- If the incident occurred more than once, how often?
- What was the complainant's response?
- How does the complainant feel about the incident now?
- Were there witnesses to the incident? If so, who?
- Did the complainant tell anyone about the experience afterwards? If yes,
 - Who?
 - When?
 - Where?
 - What was said?
 - What was the other person's response?
- Might there be other victims?
- What would the complainant like to have done?
 - For himself or herself?
 - For others?
 - With respect to the alleged harasser?
- Explain the process—what will happen next.
- Explain confidentiality and retaliation.

SEXUAL HARASSMENT INVESTIGATION CHECKLIST (cont.)

3. **Interview the alleged harasser.**

- Explain your role.
- Do it in private.
- You do not have to reveal the name of the complainant.
- Be specific in stating the allegations in the complaint.
- Ask if each event as alleged happened or not. Remember you are not there to judge or take sides you are there to determine what, if any differences exist between what was reported.
- Discuss issues of confidentiality and retaliation.
- Explain what will happen next.

4. **Analyze the information.**

- Determine whom, if anyone else needs to be interviewed. Note: when it becomes a situation of s/he said vs. s/he said between the complainant and the alleged harasser, you must attempt to find others to resolve this block.
- Interview the witnesses.
- Note if other incidents of sexual harassment by the alleged harasser have occurred.
- Have any consequences occurred because of the event and/or for lodging a complaint?
 - What?
 - When?
 - How?
 - To whom?
 - By whom?

5. **Write up your investigative report.**

INTERVIEWING WITNESSES

Witnesses tend to be very nervous and worried about "getting into trouble" or being blamed for something, afraid (if they are a student) that their friends or parents might find out, and generally exhibit the "don't get involved" syndrome. You need their testimony so you need to put as many of their fears to rest as possible. A way to do that is to be very up front and explain what is going on and their roll in the process. Remember you cannot force anyone to speak with you and if someone refuses, you simply need to note that in the report and let it be.

Let them know:

- 1) Who you are and what role you play.
- 2) Someone has offered their name as a person who may have heard/seen events mentioned in the complaint. You do not have to say who has offered their name as a witness and in most instances it is better not to. The actual event however, may make it so obvious that by withholding the information makes you look foolish. In that instance, revealing the name assists you in your work.
- 3) They are not in trouble.
- 4) No one knows you are talking to them. Just because names have been offered does not mean you have to interview everyone.
- 5) They can tell anyone who asks "no, no one has talked to me about this."
- 6) They should not talk about the complaint.
- 7) the prohibition against retaliation.

Ask questions in non-leading way. For example:

Question: "Did you see Tom and Sally in the hallway?"

Answer: "Yes."

Question: "When you saw Tom and Sally in the hallway, what did you see?"

Rather than,

Question: "You saw Tom put hands on Sally in the hallway didn't you?"

Witnesses are usually interviewed because there is conflict of fact that must be resolved and their testimony could be the deciding factor in a complaint. Therefore you must get very specific language. This is true for all interviews. Do not accept general statements such as "You know..." or "s/he said something nasty" or "s/he's that kind of kid." You need to know exactly as possible what was said or witnessed. This may be very difficult since the issues of sex are awkward to begin with and if it is a student you are interviewing, you will be asking them to use language they normally do not use in front of adults. You need to be gentle and persistent on this point. You also need to record as precisely as possible what is told to you. Do not clean up the grammar or the slang that is used.

INTERVIEWING WITNESSES (cont.)

This is particularly true if you put quotes around a statement in your report.

Witnesses can make or break a case. By incorporating the elements of a good investigator into your style and approach, you will have done your part in obtaining this essential information.

GUIDELINES FOR AN INVESTIGATIVE REPORT

The report is going to be the written summary of your investigation. It will be based on all of the notes, interviews, data, and other materials you have collected. This documentation is the foundation upon which the report rests. If you are ever questioned about any statement in your report, your credibility will be maintained, if you are able to pull from your file the paper work that supports what you wrote.

Caution: Do not put casual "editorial" comments on any document. For example: "9/12/01 – Interviewed John Doe today, (what a jerk!)". Keeping a diary or log (See page 9 for an example of a diary/log format) of your activities will be useful as it will:

- a) remind you to do something
- b) document your "immediate" response to the charge (or lack of it).
- c) refresh your memory should the complaint grow into a "federal case".

The actual report should not include the names of the witnesses. However, you should have accurate and thorough documentation (notes) of all interviews, including the name(s) of the person(s) being interviewed,

- ? what their role is in the complaint (complainant, witness, etc.),
- ? when you conducted the interview, what was asked, what was said in response to your questions, and
- ? what salient observations you believe are important to mention. (See page 5 for guidelines on how to take statements from a witness).

OBJECTIVITY

Objective reporting of information gathered is essential—leave out your opinion. Example "I could tell s/he was lying just by the way s/he did not look at me when I asked the question". You could say "This witness appeared very uncomfortable, was unable to look at me when I asked a question, was wringing her/his hands and needed each question repeated before s/he would answer. None of the testimony offered by her/him has been substantiated by any of the witnesses nor could s/he offer any other people who saw what s/he has reported seeing".

DETAIL

Supply sufficient amount of detail so the reader has a clear understanding of the issues and responses. Try to avoid the "then he said and then she said" style.

VERIFICATION

Be sure what you report can be verified or backed up if you are questioned. Do not worry if someone changes her/his story down the road. You are not responsible for other peoples truthfulness, only your own.

SUGGESTED FORMAT FOR THE REPORT

A suggested format for a final report is below with an example of hypothetical case using this format style on page 9. (Remember: This is only a *suggestion*—you may determine there is a clearer, more concise way to report out. If so, use your way. The point is to be as thorough and clear as possible).

Suggested format: in each of the following paragraphs, include the:

- ¶ 1) allegation, who made it against whom and when it occurred.
- ¶ 2) alleged harassers' response to the allegation.
- ¶ 3) areas of agreement between the parties and areas of dispute.
- ¶ 4) attempts that were made to resolve the disputed issues.
- ¶ 5) A summary of the above information based on data gathered in the investigation.
- ¶ 6) A recommend of whether or not there has been a violation of the sexual harassment policy.

SUGGESTED FORMAT FOR THE REPORT (cont.)

Sample Report

- ¶ 1) On August 17, 2001, Sally Smith, a student at Seth Junior High, alleged that on August 13, 2001, Tom Jones, a student at Seth Junior High, pushed her against the locker during 3rd period break, put his hands on her breasts and said "Come on Sally, I know you put out so what's with this 'leave me alone shit?' Sally reported this to Ms. Martin, the Science teacher who reported it to Mr. Silver, the Title IX Coordinator.
- ¶ 2) Tom Jones says that he did see Sally on August 13, 2001, during 3rd period but denies he ever put his hands on her or having said what is alleged.
- ¶ 3) Both parties agree that they saw each other at the time of the alleged incident. There is no agreement between the parties however, as to what happened at that time.
- ¶ 4) Sally gave the names of four students she thought might have seen or heard what happened. All four were interviewed.
- ¶ 5) Three students saw the incident, two of who also heard some conversation. One neither saw nor heard what is alleged. Of the three who saw the incident, two said it looked as if Sally was pushed and one said she definitely was pushed. Of the two who hear something, one said Tom was "sneering at Sally and she looked scared" and the other said she heard Tom say something about "putting out." All three saw Tom's hands on Sally's chest "like he was holding her there or something". A fifth person's name was offered by one of the four Sally gave. The witness states she heard and saw Tom do as alleged. She further offered that "Tom is like that. He thinks he is hot shit and can do whatever he wants to us girls. He makes me sick! He should be locked up and the key thrown away."
- ¶ 6) Of the five witnesses spoken to, four offered testimonies to substantiate the allegation. One was unable to because she saw and heard nothing.
- ¶ 7) Based on the evidence, I recommend that the Superintendent find there has been a violation of the school's sexual harassment policy and that immediate and appropriate action be taken. There also might be a violation of the sexual assault laws. Sally has been advised of her rights under the sexual assault statute and the incident has been reported to [appropriate authority].

Date: _____

Signed: _____

Sample Investigative Diary/Log Format
as written by the Title IX/Investigator

- Fri. 8/17/01 Received a complaint from Ms. Martin (Science Teacher). I called [Superintendent] to notify her of the complaint. I called for Sally Smith (complainant) but she has already left the building for the weekend.
- Mon. 8/20/01 Spoke with [Superintendent]. Proceeding with investigation. Need coverage for my 2nd and 4th period classes – OK. Met with Sally Smith. Drafted charge – Possible sexual assault. Reported this possibility to [appropriate authority]. Called for Tom Jones [alleged harasser], absent today.
- Tues. 8/21/01 Called for Tom Jones. Spoke with him. See notes. Spoke with Sally Smith and let her know investigation has started. Re-stated retaliation policy and told her to be sure to contact me if she feels it is occurring. Spoke with [witness]; see notes. Spoke with [witness]; see notes.
- Wed. 8/22/01 Spoke with [witness]; see notes. Spoke with [witness]; see notes. Saw Sally Smith and all is OK; see notes. [Superintendent] called – status update; see notes.
- Thurs. 8/23/01 Spoke with [witness]; see notes. Ready to write report.
- Fri. 8/24/01 Report with recommendation submitted to [Superintendent].

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The following person has been designated to handle inquiries regarding the nondiscrimination policies:

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