

# Appendix A: Guidelines for Investigating Harassment and Discrimination Complaints

## **1.00.00 - INTRODUCTION**

There are no uniform rules for investigating alleged harassment or of discrimination. It is imperative to speak with the complainant and the alleged harasser, and it may be necessary to interview others and to review documentary material. In all cases, harassment complaints and discrimination must be addressed.

Where a matter entails alleged ongoing ill treatment, the need for prompt action is indicated. In all cases, discretion and respect for the affected individuals' privacy and reputation are a must.

This document details the guidelines for investigating a harassment or discrimination complaint between two members. In that situation, the Vice Presidents of Membership and Education are responsible for investigation.

In the case that a member or employee who feels they have a cause for grievance against an employee, or any employee who feels they have cause for a grievance against a member, the President and the Executive Director are responsible for the investigation. Their titles can be substituted throughout this document in the case of an employee grievance.

## **1.00.01 - INVESTIGATIONS**

Under the SHC Anti-Discrimination and Anti-Harassment Policy, the Vice President of Membership and the Vice President of Education take responsibility for processing complaints of harassment and discrimination.

A member who believes that they have been discriminated against or harassed by another member may complain either to the Vice President of Education or the Vice President of Membership in writing. Whichever of the Vice Presidents receives the written complaint shall take the role of investigating officer. The investigating officer shall inform the Executive Director and the non-investigating Vice President of the existence of the complaint and will thereafter report to both on the status of the investigation.

If the Vice President receiving the complaint doubts their ability to conduct the investigation, they will defer the role of investigating officer to the other Vice President. In the case that neither Vice President can conduct the investigation, the Executive Director will take the role of investigating officer.

Administrative actions should be undertaken deliberately, but promptly:

1. **a.** Review applicable policies and procedures, especially the Anti-Discrimination and Anti-Harassment Policies, and create a confidential investigation file.

1. **b.** Note the apparent significant factual issues; prepare a list of likely witnesses and sources of pertinent information (e.g., a list of records or documents that may shed light on the underlying situation).
1. **c.** Contact the Women's Resource Center, which provides counseling services to victims, as well as professional expertise in the investigation process (as applicable).
1. **d.** Interview the parties and witnesses, and examine documentary evidence.
1. **e.** Analyze all information and prepare a report that summarizes the evidence, states the investigating officer's factual findings and the rationale for their findings, and states any proposed disciplinary or other actions to be taken.

### **1.00.02 - ANONYMOUS OR THIRD PARTY COMPLAINTS**

If you receive an anonymous complaint, encourage the complainant to give their name. If you receive a complaint from a person who is not the alleged victim of the alleged harassment, encourage the complainant to get the alleged victim to come forward. It is difficult to investigate a complaint, draw conclusions about it, or otherwise be helpful if you do not know who the complainant is or if the alleged victim will not confirm the charge. Depending on the evidence provided and the severity of the alleged harassment, however, you may have to investigate an anonymous or third party complaint.

### **1.00.03 - FACT GATHERING PROCESS**

1. **a.** Interview the complainant:
  1. **i.** Listen attentively. Encourage the complainant to say just what happened, then ask questions to clarify or elicit additional information. Be supportive, but do not make judgmental statements.
  2. **ii.** Ask what happened. Due to feelings of embarrassment or shame, a complainant may be reticent or imprecise in expression. You should seek specific information; use who, what, where, when, and how type questions.
  3. **iii.** Ask how the victim was affected by what happened and what redress they want. If the alleged harassment is severe, such may indicate the need for immediate action.
  4. **iv.** Ask for the names of persons with knowledge of matters related to the complaint, and of persons with whom complainant has spoken about the matter.
  5. **v.** Ask for copies of any documents, which may pertain to the reported event(s).
  6. **vi.** Tell the complainant that you will investigate the matter. Explain to the complainant that you will respect their privacy. Do not promise absolute confidentiality. You may be legally required to disclose information which the complainant would prefer that you not disclose.
  7. **vii.** Take notes. Promptly prepare a memo summarizing the interview and have the complainant verify its accuracy. If the complainant gives you a written statement, your interview notes will supplement the statement. Ask that the complainant review your notes and specify, in writing, needed corrections as well as any omitted information.

8. **viii.** Be careful about what you write down, especially your personal observations. Your notes and memos could become legal documents.
1. **b.** Identify the actual issues and prepare an investigative plan:
  1. **i.** Determine the identity of other witnesses and the order in which you propose to interview them.
  2. **ii.** Determine what documents, if any, should be obtained.
  3. **iii.** Set a schedule that provides for a prompt, but thorough, investigation.
1. **c.** Interview the accused:
  1. **i.** Advise that an allegation of sexual harassment or discrimination has come to your attention.
  2. **ii.** Tell the accused that you are responsible for investigating the matter.
  3. **iii.** State the allegations without making judgmental comments.
  4. **iv.** It will almost always be necessary to identify the complainant to the accused at this time. If the complainant has requested confidentiality and you believe that you can honor that request and be sure to conduct a fair and thorough investigation.
  5. **v.** Ask the accused for their views regarding the complaint. Ask who, what, where, and how questions to elicit specific details relevant to the events alleged by the complainant. Let the accused tell the facts in their own words.
  6. **vi.** Obtain names of witnesses and specification of documents that the accused thinks may be helpful to your understanding.
  7. **vii.** Advise the alleged harasser that the MSU Student Housing Cooperative, Inc. prohibits retaliation of any kind. Tell the respondent to avoid contact with the complainant, and that in all events they may not communicate with the complainant about the subject of the complaint while the matter is under review. Take notes. Promptly prepare a memo summarizing the interview. Have the accused verify its accuracy, in the same manner as with the complainant.
1. **d.** Interview other witnesses:
  1. **i.** Advise the witness that you are conducting a confidential investigation into an allegation of sexual harassment or discrimination and that you understand that they may have some information. If the witness can identify the complaining party and accused, you will be able to avoid having to identify the parties, if not, it will be necessary to identify the parties.
  2. **ii.** Find out what the witness knows. Elicit details and seek relevant documents.
  3. **iii.** Take notes. Promptly prepare a memo summarizing the interview and have the witness verify its accuracy. Distinguish between what the person knows as a matter of firsthand knowledge and what they understand from other sources.
1. **e.** Review past records:
  1. **i.** Has the complainant made similar complaints before? Have similar complaints been made against the accused by anyone else?
1. **f.** Maintain the confidentiality of the investigation:
  1. **i.** Do not discuss the complaint or the investigation with anyone who does not need to know about it for you to carry out the investigation. Advise the complainant, the accused and the witnesses that keeping the matter confidential will minimize the possibility of problems.
  2. **ii.** If the investigation lasts longer than you have told the complainant and accused to expect, periodically advise them of its status and when you expect it to be finished. Do not tell them what the investigation is revealing or your thoughts about it, however. Remind them of the importance of confidentiality.

#### **10.00.04 - EVALUATING THE SITUATION**

1. **a.** Review and analyze the evidence:
  1. **i.** Consider the existence or lack of corroborating evidence, as well as any other indicators that may be persuasive to you in determining the factual truth. In situations involving alleged improper behavior in personal interactions it commonly occurs that there are no disinterested witnesses. In such a case, consider whether the complainant told anyone else of the harassment and/or whether anyone observed a change in behavior of either or both of the parties. Sometimes there is a written record, such as a diary or correspondence.
  2. **ii.** Assessing the credibility of the parties and witnesses calls for observing attitudes and behavior. A person's emotional affect can be telling. The timing of the complaint in relation to the occurrence of the behavior may allow for an inference about truthfulness. The reports of other persons in the living unit about the complainant's and the accused behavior may be highly informative.
1. **b.** Determine whether sexual harassment has occurred:
  1. **i.** Was the subject conduct sexual in nature? Was it unwanted or unwelcome?
  2. **ii.** Was it offensive from the perspective of a reasonable person? (A complainant need not expressly reject an advance in order for the advance to be regarded as unwelcome.)
  3. **iii.** Review the definitions and examples under the policy. Decide whether it is more likely than not that sexual harassment occurred or that it is not possible to decide the matter. The latter conclusion is appropriate when the evidence that sexual harassment occurred and did not occur is of equal weight and credibility.
1. **c.** Determine what action should be taken to resolve the complaint and ensure that any harassment will end and not reoccur. Both remedial action and disciplinary action may be necessary. Decisions regarding disciplinary recommendations should be made in consultation with the non-investigating Vice President.
  1. **i.** Depending upon the nature and seriousness of the allegations, and the results of the investigation, consider written reprimands, required counseling, take into consideration the complainant's desires, or other options.

#### **1.00.05 - PREPARATION OF A REPORT DISPOSING OF FACTUAL ISSUES AND STATING ACTIONS**

Prepare a written report, including a chronological rendition of the factual findings, the action to be taken, and the rationale for any actions, or proposed actions names and identifying details of the situation are to be excluded. The report should contain the following elements:

1. **a.** A description of the complaint and the circumstances of your learning about it, to include when you first learned of it;
1. **b.** A summary of the interviews of all parties and witnesses and any documents reviewed;
1. **c.** A conclusion as to whether sexual harassment or discrimination occurred and a

statement of the supporting rationale; and, a statement of corrective actions or proposed actions to be taken, including disciplinary action.

#### **1.00.06 - MEETINGS WITH THE COMPLAINANT AND ACCUSED**

Meet separately with the complainant and accused to discuss the report.

1. **a.** Notifying the complainant: The complainant should be told of the investigative findings, whether the allegations have been substantiated, what action, if any, is being taken, and, if appropriate, that the complainant should promptly report any further incidents of harassment or possible retaliation.
1. **b.** Notifying the accused: The complainant should be told of the investigative findings, whether the allegations have been substantiated, what action, if any, is being taken.

Where the investigation reveals no harassment, such should be directly stated. Where it is determined that sexual harassment did occur, the harasser should be provided a copy of the report and an opportunity to ask any questions that they may have. Where the allegations are serious, but it is impossible to determine whether sexual harassment occurred, the alleged harasser should be informed and state that the evidence is inconclusive, but that serious allegations have been made, and include a reminder of the Guidelines for Investigating Sexual Harassment and Discrimination Complaints (Appendix A).

#### **1.00.07 - RECORDS**

- a.** Confidentiality of administrative file. The investigating officer's investigative papers should be kept in a confidential folder.
- b.** Disciplinary records. If complaint is substantiated, and disciplinary action taken, the record of the action should be kept in the harassers' member file.

#### **1.00.08 - SPECIAL SITUATIONSS**

These situations may arise and should be discussed with the non-investigating Vice President before proceeding with the investigation:

- a.** If you believe the complainant has knowingly filed a false complaint or that the complainant, the alleged harasser, or a witness has knowingly misled you, provided false information or otherwise impeded your investigation;
- b.** The alleged harasser attempts to retaliate against the complainant or any witness;
- c.** The confidentiality of the investigation is breached;

- d.** The complainant says that they only want to let you know about the harassment, but does not want you to do anything about it (a request that you will probably not be able to honor);
- e.** There have been other sexual harassment complaints against the accused.

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