

LITTLE ROCK SCHOOL DISTRICT
HUMAN RESOURCES DEPARTMENT



**INVESTIGATING AND RESPONDING TO
ALLEGATIONS OF WORKPLACE
SEXUAL HARASSMENT**

Little Rock School District
Human Resources
Sexual Harassment Investigation Reference Guide

Sample Questions and Considerations for Conducting the Internal Harassment in the Workplace Investigation

State and federal law prohibit harassment on the basis of an individual’s actual or perceived race, religion, national origin, sex (including pregnancy), sexual orientation, age, citizenship status, disability, or other protected status, as identified EEOC. For the purpose of this procedure, sexual harassment includes harassment on the basis of sexual orientation, which means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity.

The person charged with conducting the internal harassment investigation must ascertain (1) if the alleged conduct occurred; (2) if the conduct was unwelcome; (3) if the harassing conduct was based on any protected status of the complainant; and (4) whether the harassment created a hostile environment in that it had the purpose or effect of subsequently interfering with the individual’s work performance or creating an intimidating, hostile, or offensive work environment. The questions that follow are designed to help the investigator uncover this evidence. The questions below serve as a general sample; they are not all-inclusive and the exact questions must be designed for the specific allegations in each case.

Did the alleged conduct occur?

Investigators should consider a number of factors in evaluating whether the complained of conduct occurred, such as:

1. The level of detail provided by the complainant/witness;
2. The consistency within and between the witness’ statement(s)
3. The consistency between the witness’ statements and those of other witnesses;
4. Corroborating witnesses and other evidence;
5. Body language/eye contact of the witness (Note: the manner of a complainant’s body language/eye contact during an interview may be attributable to the complainant’s discomfort, rather than a lack of truthfulness);
6. The existence of a pattern of similar past behavior/harassment complaints involving the alleged harasser;
7. Does the witness have reason to be untruthful, such as a personal stake in the outcome?

Is the conduct complained of unwelcome?

“Unwelcome conduct” is that verbal or physical conduct which the employee did not solicit or incite and that which the employee regarded as undesirable or offensive. The Equal Opportunity Employment Commission (EEOC) evaluates the issue of welcomeness on a case-by-case basis, considering the totality of the circumstances. The wise investigator will do the same.

Below are sample questions that can be used to formulate actual questions for this part of the investigation.

1. Who is the alleged harasser? What is his/her name? Is he/she a co-worker or a supervisor?
2. Is the conduct complained of physical, verbal, and/or committed using an electronic device, such as through e-mail, text message, or a social networking website? Obtain relevant details for each incident (the Five W's: Who, What, Where, When and Why).
3. If physical, describe with specificity the nature of the physical conduct. Describe all locations on complainant's body that were touched and indicate when, how often, how the complainant was approached, who witnessed the physical conduct, and where was the complainant when the conduct took place. Did the physical conduct involve an injury to or destruction of the complainant's possession(s) and, if so, what was the property, what was the nature of the injury, when did it happen, and where is the property now?
4. If the unwelcome conduct was verbal, what was stated, when, how often, where were the parties when the statements were made, and who witnessed the statements being made?
5. If the conduct was committed using an electronic device, e.g., through e-mail, text message, or social networking website, what was stated, where, when, how often, who saw it?
6. Did the complainant or any witnesses retain any evidence of the offensive conduct such as a picture, email message, text message, or video or audio recording?
7. Was a complaint or protest made to anyone employed by the District or to anyone else? If so, to whom did the complainant complain, when was the complaint made, what was stated therein, and were there any witnesses to this or these complaints?
8. What was the complainant's response to the conduct? Did the complainant tell the alleged harasser to stop? Did the complainant complain to others about the alleged harasser's behavior? Did the complainant ask coworkers, supervisors or managers to make the harassment stop? If so, obtain all relevant details (the Five W's).
9. Did the complainant engage in any conduct with the alleged harasser that could have encouraged his/her behavior? If so, what was the conduct, when and where did it occur, how often and who witnessed it?
10. Did the complainant make the alleged harasser aware at the point when the conduct became unwelcome? If so, when, how was this done, what was communicated to the alleged harasser, and were there any witnesses?
11. Did the complainant complain about the harassment to the alleged harasser, his/her supervisors, other managers or others? If so, when were the complaints made, what was said, who was present, and what was the response to each complaint?
12. If no prior complaints about the alleged harassment were made, why not?
13. What other actions, if any, did the complainant take to indicate to the alleged harasser that his/her conduct was unwelcome?

14. If they lack knowledge about the harassment, did co-workers, supervisors or managers notice any changes in charging party's behavior at work or in the alleged harasser's treatment of the charging party?
15. Has the alleged harasser been accused of harassment by other employees? If so, when, and were the allegations investigated? If so, what was the result of the investigation, and what was management's response, i.e., what remedy was imposed?

Did the work environment become hostile?

To ascertain whether unwelcome conduct creates an unlawful "hostile environment", the major inquiry is whether the conduct had the effect of unreasonably interfering with an individual's performance or creates an intimidating, hostile, or offensive working environment. In the sexual harassment context, trivial or annoying conduct such as sexual flirtation or innuendo or vulgar language would probably not establish a hostile environment. The challenged conduct must substantially affect the work environment of a reasonable person for a violation to be found.

Consider the following additional questions for this part of the inquiry:

1. What effect, if any, did the alleged harassment have upon the complainant's ability to perform the complainant's job?
2. What effect, if any, did the alleged harassment have upon the complainant's mental or physical health or wellbeing? Was medical treatment or therapy sought?
3. Even if the alleged harassment had little or no effect on the complainant's work performance or well-being, is there evidence, e.g., verbal or written comments, that the alleged harasser intended his or her conduct to have that effect?
4. Additional question for sexual harassment complaints: What was the sexual character of the work environment before the complainant entered the environment? Were sexual comments and actions common? If so, what types, when did they occur? Who was involved? Supervisors? Co-workers?
5. Did the character of the workplace change after complainant joined the workplace? If so, how? What was complainant's behavior? How did the alleged harasser and other co-workers or supervisors respond to complainant's behavior?
6. Was the complaint of verbal or physical behavior directed at persons other than complainant? If so, who were they? What conduct was directed towards them, when, how frequently, who was present, where did it occur and who witnessed it? How did these persons react to the physical or verbal conduct?
7. Did the alleged harasser single out the charging party? If so how, when, where, and why?
8. Did others join in perpetrating the harassment? If so, who? What was done, when, where, who witnessed the conduct, and were others harassed too?

9. If the complained of conduct was verbal, what were the remarks? Were they hostile and derogatory? What was the frequency and context of the comments? Were the parties inside or outside of the workplace when the comments were made?
10. Was the alleged harassment observed by supervisors, managers, or other co-workers? If so, by whom, when, where, and what was observed?
11. Was the alleged harassment observed by former employees or others outside the workplace? If so, by whom, when, where, and what was seen?

Was the harassment committed by a supervisor?

The employer will be held responsible for acts of harassment committed by the employee's supervisor, meaning someone who was authorized by the employer to have authority over the complainant's terms and conditions of employment. To investigate harassment committed by the complainant's supervisor, include questions such as the following:

1. What conduct is the supervisor accused of? When, where, how often did it occur, and who observed?
2. Was the supervisor authorized to grant or deny tangible job benefits to the complainant? If so, what was the scope of that authority and what documents evidence it? If not, were the supervisor's recommendations concerning the complainant's terms and conditions of employment typically or routinely followed?

Was the harassment *quid pro quo* (do this for that)?

An employer will be held responsible for acts of *quid pro quo* sexual harassment, meaning that tangible job benefits were either (1) conditioned on submitting to sexual favors, or (2) denied because of the complainant's rejection of a sexual advance or request for sexual favors. *Quid pro quo*-type harassment can also occur in other contexts, such as religious discrimination, for example, if a person is required to abandon or alter his or her religious practice as a condition of employment.

1. How was the complainant's employment affected by the alleged harassment? Was he/she denied a salary increase, a promotion, a job transfer, etc.? If so, when?
2. Was the complainant treated differently from similarly situated employees in regard to the denied salary increase, promotion, job transfer, etc.? If so, who was treated differently by this same supervisor?
3. What other management employees were involved in decisions to grant or deny the tangible job benefit(s) to the complainant? Did they have knowledge of the sexual conduct?

LRSD
BOARD POLICIES

3.24—LICENSED PERSONNEL SEXUAL HARASSMENT

The Little Rock School District is committed to providing an academic and work environment that treats all students and employees with respect and dignity. Student achievement and amicable working relationships are best attained in an atmosphere of equal educational and employment opportunity that is free of discrimination. Sexual harassment is a form of discrimination that undermines the integrity of the educational and work environment and will not be tolerated.

The District believes the best policy to create an educational and work environment free from sexual harassment is prevention; therefore, the District shall provide informational materials and training to students, parents/legal guardians/other responsible adults, and employees on sexual harassment. The informational materials and training on sexual harassment shall be age appropriate and, when necessary, provided in a language other than English or in an accessible format. The informational materials and training shall include, but are not limited to: the nature of sexual harassment; the District's written grievance procedures for complaints of sexual harassment; that the district does not tolerate sexual harassment; that students and employees can report inappropriate behavior of a sexual nature without fear of adverse consequences; the redress that is available to the victim of sexual harassment; and the potential discipline for perpetrating sexual harassment.

“Sexual harassment” means conduct that is:

1. Of a sexual nature, including, but not limited to:
 - a. Sexual advances;
 - b. Requests for sexual favors;
 - c. Sexual violence; or
 - d. Other personally offensive verbal, visual, or physical conduct of a sexual nature;
2. Unwelcome; and
3. denies or limits a student's or employee's ability to participate in or benefit from any of the District's educational programs or activities or employment environment through any or all of the following methods:
 - a. Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual's education or employment;
 - b. Submission to, or rejection of, such conduct by an individual is used as the basis for academic or employment decisions affecting that individual; and/or
 - c. Such conduct has the purpose or effect of substantially interfering with an individual's academic or work performance or creates an intimidating, hostile, or offensive academic environment.

The terms “intimidating,” “hostile,” and “offensive” include conduct of a sexual nature that has the effect of humiliation or embarrassment and is sufficiently severe, persistent, or pervasive that it limits the student's or employees' ability to participate in, or benefit from, an educational program or activity or employment environment.

Within the educational or work environment, sexual harassment is prohibited between any of the following: students; employees and students; non-employees and students; employees; employees and non-employees.

Actionable sexual harassment is generally established when an individual is exposed to a pattern of objectionable behaviors or when a single, serious act is committed. What is, or is not, sexual harassment will depend upon all of the surrounding circumstances and may occur regardless of the sex(es) of the individuals involved. Depending upon such circumstances, examples of sexual harassment include, but are not limited to:

- Making sexual propositions or pressuring for sexual activities;
- Unwelcome touching;
- Writing graffiti of a sexual nature;
- Displaying or distributing sexually explicit drawings, pictures, or written materials;
- Performing sexual gestures or touching oneself sexually in front of others;
- Telling sexual or crude jokes;
- Spreading rumors related to a person's alleged sexual activities;
- Discussions of sexual experiences;
- Rating other students as to sexual activity or performance;
- Circulating or showing e-mails or Web sites of a sexual nature;
- Intimidation by words, actions, insults, or name calling; and
- Teasing related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct or is homosexual, regardless of whether or not the student self-identifies as homosexual or transgender.

Employees who believe they have been subjected to sexual harassment are encouraged to file a complaint by contacting their immediate supervisor, an administrator, or the Title IX coordinator who will provide assistance on the complaint process. Under no circumstances shall an employee be required to first report allegations of sexual harassment to a school contact person if that person is the individual who is accused of the harassment.

Complaints will be treated in a confidential manner to the extent possible. Limited disclosure may be provided to: individuals who are responsible for handling the District's investigation to the extent necessary to complete a thorough investigation; the extent necessary to submit a report to the child maltreatment hotline; the Professional Licensure Standards Board for complaints alleging sexual harassment by an employee towards a student; or the extent necessary to provide the individual accused in the complaint due process during the investigation and disciplinary processes. Individuals who file a complaint have the right to request that the individual accused of sexual harassment not be informed of the name of the accuser; however, individuals should be aware that making such a request may substantially limit the District's ability to investigate the complaint and may make it impossible for the District to discipline the accused.

Employees who file a complaint of sexual harassment shall not be subjected to retaliation or reprisal in any form, including threats, intimidation, coercion, or discrimination. The District shall take steps to prevent retaliation and shall take immediate action if any form of retaliation occurs regardless of whether the retaliatory acts are by District officials, students, or third parties.

Following the completion of an investigation of a complaint, the District will inform the employee who filed the complaint:

- The final determination of the investigation;
- Remedies the District will make available to the employee; and
- The sanctions, if any, imposed on the alleged harasser relevant to the employee.

Following the completion of an investigation of a complaint, the District will inform the alleged perpetrator, or the parents/legal guardian/other responsible adult of the alleged perpetrator if the alleged perpetrator is under the age of eighteen (18):

- The final determination of the investigation; and
 - The sanctions, if any, the District intends to impose on the alleged perpetrator.

It shall be a violation of this policy for any student or employee to be subjected to, or to subject another person to, sexual harassment. Following an investigation, any employee who is found by the evidence to more likely than not have engaged in sexual harassment will be subject to disciplinary action up to, and including, termination.

Employees who knowingly fabricate allegations of sexual harassment shall be subject to disciplinary action up to and including termination.

Individuals who withhold information, purposely provide inaccurate facts, or otherwise hinder an investigation of sexual harassment shall be subject to disciplinary action up to and including termination.

Legal References: Title IX of the Education Amendments of 1972, 20 USC 1681, et seq.
34 CFR part 106
A.C.A. § 6-15-1005 (b) (1)

Date Adopted: November 19, 2018

Last Revised:

8.20—CLASSIFIED PERSONNEL SEXUAL HARASSMENT

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