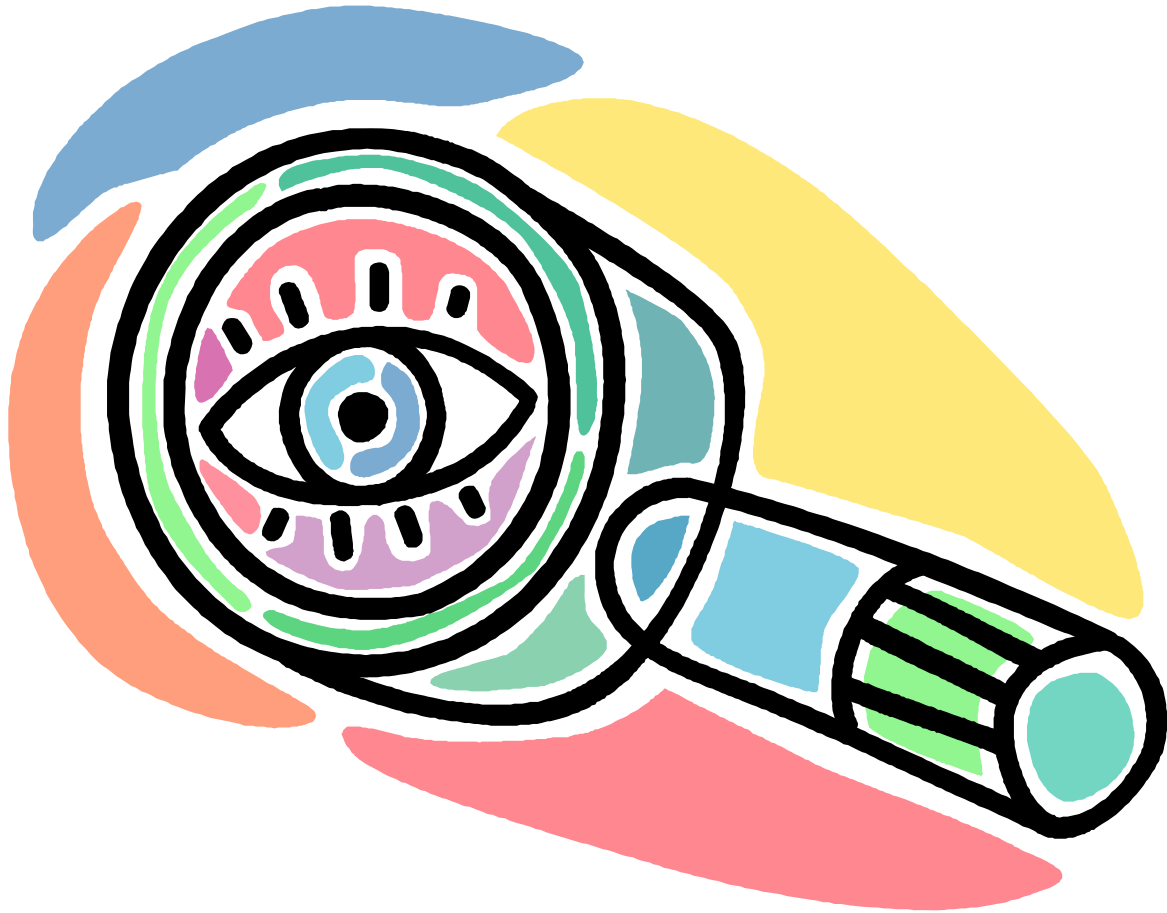


INVESTIGATIONS



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**General
Complainant Intake Procedures
Guidelines
Investigative Procedures
Investigative Working Papers
Review Process-Working Papers
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INVESTIGATIONS

GENERAL

The Office of Audit Services (OAS) conducts administrative investigations into alleged fraudulent or dishonest acts or other alleged wrongdoing of University faculty, staff, and students. The OAS also, if requested by the University Police, will assist with their investigations into alleged white-collar criminal activity by University employees and students.

OBJECTIVES

OAS investigations are generally conducted to determine if there has been employee misconduct, violations of University policy, or violations of State law, rules, or regulations. As such, each investigation conducted at Florida State University should:

- Examine enough factual information to reach a conclusion that will either support or dismiss the allegation;
- Examine thoroughly and expeditiously, facts and circumstances surrounding the basis for the investigation;
- Evaluate the underlying operational internal controls related to the allegation;
- Determine the extent of loss to the University or the extent of the violation, if any; and

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- Document the case facts and investigative procedures for presentation to management and the appropriate legal authorities.

COMPLAINT INTAKE PROCEDURES

Sources and Formats of Complaints

A complaint can be received from a myriad of sources, both internal and external. These sources may include faculty, staff, students, University Police, or concerned citizens. The complaints may be received in varied formats, including, but not limited to telephone calls, letters, e-mails, hot line reports, or casual meetings. At times, the source of the complaint may be anonymous.

Any staff member of OAS who receives a complaint against a University employee or student either verbally or in writing, from any source, shall document the complaint by completing the Complaint Intake Form (See Appendix C-1). The purpose of the Complaint Intake Form is to capture sufficient information to aid in deciding on a course of action and on the urgency of the complaint. The Complaint Intake Form also guides the staff member through a decision-making process to determine if the situation falls under any special investigation criteria, such as: Whistle-blower (Sections 112.3187-31895, Florida Statutes), collective bargaining units, potentially criminal, etc.

The following criteria have been identified where a situation may be considered **“urgent:”**

1. Potentially criminal and the activity may still be occurring;

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2. Safety/security of personnel or facilities is in question; or,
3. Newsworthy.

❖ **Criminal**

If the investigator believes the situation is potentially criminal, contact the Deputy Chief Audit Officer (Deputy CAO) or the Chief Audit Officer (CAO) immediately. If it is decided to consult with the police, the staff member will make a record of the dates, times, and persons contacted, and then attach the record to the Complaint Intake Form, and forward the form to the assigned Director of Investigations (Director). If a decision is made that the allegations are criminal, then the case will be turned over to the University Police who will lead the investigation; however, the OAS may be called upon to assist them. The assigned Director will contact the University Police to determine the role of the Office of Audit Services in the investigation. If criminal activity is not suspected, then the OAS will investigate as appropriate.

❖ **Safety/Security**

If the situation is not criminal, but is believed to be an emergency, the staff person should contact a Director, Deputy CAO, or CAO immediately. If after consulting with the Director, Deputy CAO, or CAO it is still believed to be an emergency, the assigned Director will contact the appropriate University department that handles this type of emergency, such as Physical Plant, Environmental Health and Safety, Employee Assistance Program, etc. The Director will also contact the President or appropriate Vice President if necessary. A record of the date, time, and persons contacted outside the office should be made,

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and attached to the Complaint Intake Form.

❖ **Newsworthy**

If the situation is not criminal or a safety/security risk, but is still deemed newsworthy, the staff person should immediately contact a Director, Deputy CAO, or CAO. The assigned Director will contact the appropriate University administrators, which may include the President, General Counsel, News and Public Affairs, or appropriate Vice President. A record of the date, time, and person contacted outside the office should be made, and attached to the Complaint Intake Form.

In white-collar criminal investigations, if requested, the OAS staff will support the University Police in their investigation. As such, the University Police have indicated their desire to be responsible for notifying the appropriate University administrators for investigations they perform.

❖ **Non-Urgent Complaints**

If the complaint does not fall into one of the categories defined as “urgent,” forward the complaint intake form to the Deputy CAO by the end of the following business day.

Evaluation of the Complaint

After the Complaint Intake Form is completed, the Director shall review the Form for completeness. The Director will either sign the Complaint Intake Form or

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will return it to the staff member who received the complaint if more information is needed. If an investigation is deemed necessary, the Form should be given to the Deputy CAO for review and determination of investigation assignment.

The Deputy CAO will consult with the Directors; evaluate the staff's workload, office staffing level, and urgency of the situation to determine the most appropriate timing of the investigation. The supervising Director will hold a meeting with the assigned investigator to discuss the complaint, and to develop a preliminary investigation strategy. All investigations should be completed within a reasonable time period, based upon the nature of the investigation and the investigator's workload and office staffing level. The CAO should be consulted to determine office priorities.

In some cases an investigation will be warranted, but it will be more appropriate for another University department to perform the investigation (e.g. matters involving personnel issues). In those cases, the Director will indicate on the complaint intake form that the allegations were forwarded to another department for its investigation. Before the allegations are forwarded, the Director will telephone the appropriate person within the department to discuss. The Director, Deputy CAO, or CAO will then transmit, by memorandum or e-mail, the allegations to the appropriate administrator. If transmitted by email, password protecting the written allegations will likely be necessary. The transmittal will include the information about the allegations provided to the office, the reason the case is being transferred, and a requested completion date for the departmental investigation. If the department's investigation is not completed timely, the Director, Deputy CAO, or CAO will contact the department administrator to review the status of their investigation. Once the final result/report is received from the department, the Director will review the actions taken by the department to ensure their investigation was thorough and complete and will evaluate the appropriateness of any corrective actions taken.

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If the Director, after consulting with the Deputy CAO, deems an investigation is not warranted, the Director will indicate on the Complaint Intake Form the reason(s) why an investigation will not be performed and, if applicable, any other actions to be taken. If the complainant is known, the Director will make appropriate contact and inform the complainant that the OAS is not conducting an investigation. In the case where an investigation is performed, the Director will notify, as appropriate, the complainant of the results of the investigation once the investigation is finalized.

For allegations that involve information technology issues, the assigned Director will work with the Information Technology Auditor (IT Auditor) in the OAS to determine the most appropriate office to perform the investigation. For those technology investigations not performed by the OAS, the IT Auditor will be responsible for sending the allegations to the appropriate University department, monitoring the progress of the department's investigation, and evaluating the appropriateness of the department's responses or actions taken.

Project Tracking

The Director or Deputy CAO shall assign and enter the project number and all relevant project information into Audit Leverage (AL). Throughout the investigation, the investigator will be responsible for updating, within AL, the status of the investigation as it progresses. Upon completion of the investigation, the Director or Deputy CAO will notify the CAO of such and the CAO shall close out the project in AL, at which point no further time can be charged to the audit.

An Audit Leverage User Guide is maintained on the network shared drive and can be found on the IAD web site.

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GUIDELINES

Independence and Objectivity

Every member of the OAS staff assigned to work on an investigation shall be independent both in fact and appearance. For each investigation, there shall be documentation in the working papers attesting to this independence by completing a Statement of Independence & Objectivity Form (see Appendix B-1). If impairments, either personal or external, arise at any time during the investigation, the investigator or reviewer shall immediately notify the Director, the Deputy CAO or the CAO for appropriate resolution.

Coordination of Effort

Conducting an investigation in an effective and efficient manner requires that the investigator make full use of all available resources at his/her disposal. These resources may be internal to the institution (e.g., University Police, General Counsel, or Human Resources) or may include investigative personnel of other agencies. The investigator should strive to develop a working relationship with and obtain an understanding of the roles and responsibilities of each department or agency with which he/she will be coordinating; however, the investigator must operate within the framework of established University policy. It is important that coordination take place between the investigator and appropriate University personnel, especially when contacting the appropriate law enforcement agency, if the investigator believes the allegations may lead to a criminal prosecution. In any event, the investigator should consult with the Director and Deputy CAO before contacting any outside party.

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Determination of Individual Rights

No single step in the preliminary review may be more important than determining and preserving the rights of individuals affected by an investigation. Such rights, in turn, will likely affect decisions regarding when various parties are notified; how interviews are conducted; and who will receive copies of the report. Primary references available for the investigator's research are the Whistle-blower's Act (Sections 112.3187-31895, Florida Statutes) and collective bargaining agreements.

Identification of Authoritative Guidelines

Laws and regulations form the basis for defining and establishing the severity of violations. As in audits, appropriate University personnel should be consulted in identifying specific guidelines that may have been violated. Guidance should be sought from legal counsel on the interpretation of legal issues prior to evidence gathering. Such an interpretation should assist the investigator in focusing on those specific actions that trained legal counsel has identified to be a violation of law or regulation.

INVESTIGATIVE PROCEDURES

At the start of the investigation, the investigator should perform a diligent analysis of the reported facts to understand the allegation(s) and determine what documents will be needed and which individuals are to be interviewed. The analysis of the case facts should, at a minimum, incorporate the following considerations:

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- The nature of the allegations - what are the allegations of wrongdoing;
- What laws, rules, regulations are allegedly being violated;
- Scope of the investigation (e.g. time period to be covered and departments/locations to be involved);
- Timing of investigative procedures; and
- Nature and extent of evidence to be accumulated.

As part of developing the analysis, the investigator should conduct a preliminary review. The preliminary review may include, but not be limited to, the following steps:

- Review of prior investigative and other files on the affected entity/department or its employees;
- Review of fraud literature about steps to investigate the allegations, and ways to look for evidence;
- Discussion with co-workers, University Police or knowledgeable individuals outside of FSU about the allegations and possible investigative procedures;
- Identification of authoritative rules, regulations or procedures which may have been violated; and
- Determination of the complainant's, subject's, and witness' rights.

The investigator should consider what University or departmental records need to be reviewed. The list may include rules, policies/procedures, memoranda,

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reports, communications, prior complaints, personnel files, or prior audit/investigative working papers. As with the list of witnesses, the expected documents to be reviewed might change during the course of the investigation.

The investigator will next identify possible subjects to interview. In addition to the accuser and the accused, the investigator should consider co-workers of all employees allegedly involved who work where the alleged misconduct occurred. Those identified should be in a position to have firsthand knowledge of important facts. Typically, witnesses are interviewed after a review of all relevant documentation and on the basis of their perceived knowledge of the misconduct. The accused will usually be interviewed last, after all information has been gathered from documentation and other witnesses. Any list of witnesses at this stage of the investigation is tentative, as it is expected that during the investigation other witnesses will be identified. Prior to initiating the investigation, the investigator will discuss with the Director the intended direction of the investigation, which includes identifying each witness to be interviewed and documents to review.

Interviews

Interviews should be designed to elicit specific information. A good interview is thorough, pertinent, objective, and timely. Only one person at a time should be interviewed. In preparing to interview a witness, the investigator should consider the following:

- Determining the willingness of the witness to participate in the investigation;
- Taping interviews;

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- Utilizing pre-interview worksheets that identify possible questions to be asked;
- Using voluntary statements made by the witness. See page 54 for guidance about self-incriminating evidence;
- Using telephone interviews;
- Advising the employee of his/her rights (e.g. must answer your questions - see Garrity below);
- Including a neutral observer (e.g. OAS staff) in interview; and
- Including union or personal representation (The Supreme Court held in *National Labor Relations Board vs. Weingarten, Inc.* [US 43 L.Ed.2d 171, 95 S.Ct.0959 (1995)] that an employer could not decline an employee's request that a union representative be present at an investigation interview which the employee reasonably believes may result in disciplinary action). The investigator does not have to inform the employee of the right to have union or personal representation.

The decision reached by the Supreme Court in *Garrity vs. New Jersey* establishes the right of employers to compel employees to answer questions in administrative (non-criminal) investigations as to possible violations of set rules, regulations, and policy (*Garrity vs. New Jersey, 385 US 493, 17 L Ed 2d 562, 87S.Ct 616*). These questions should be specifically, narrowly, and directly related to the duties of the employee. Therefore, under Garrity, the interviewee can be compelled to answer the work-related questions in internal investigations. Refusal to answer questions during a "Garrity" invoked interview can constitute insubordination and, therefore, could result in disciplinary action against the interviewee including possible termination. Under Garrity, the responses and evidence obtained cannot be used against the interviewee in criminal investigations

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or proceedings, except for perjury. The information provided about someone else can be used in a criminal investigation involving the other individual.

While Garrity compels interviewees to answer, *Miranda vs. Arizona* (384 US 436 in 1966) deals with Fourth Amendment rights against self-incrimination in a criminal investigation. Therefore, in administrative investigations performed by the OAS, *Miranda* would not be applicable.

The Sixth Amendment of the US Constitution reserves the right to legal counsel during a criminal investigation. Since investigations conducted by the OAS are not criminal but administrative, there is no Sixth Amendment right during the investigation. It is the policy of the OAS to allow an interviewee to have an attorney present during the interview. When outside counsel is present, a University attorney shall also be present during the questioning. Both attorneys are only to observe the interview and neither is to participate in asking questions; however, the attorney may be allowed to speak on behalf of his/her client.

The order of the interviews should be planned so as to maximize the information obtained. The circumstances of the investigation will affect the order of the interviews. Consideration should be given to interviewing these individuals in the order as presented: complainant, neutral third party witnesses, corroborating witnesses, and subject(s) of the complaint. Furthermore, the interview should be scheduled when and where the interviewer can have control over the situation. If the OAS utilizes a neutral observer, the interviewer should explain the role of this individual to the interviewee (e.g. neutral observer is being used for note-taking or a witness to conversation). Records of interviews should be included in the working papers. These records become a part of the public record upon completion of the investigation. Both verbal and non-verbal behaviors of the interviewee should be observed and considered by the investigator. Also, since non-verbal behavior can sometimes be misunderstood, the interviewer shall be cautious when interpreting

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non-verbal behaviors of the interviewee.

If the person being interviewed begins talking about information that appears to be criminal misconduct (self-incriminating), it may be advisable to stop the interview, advise the subject that he/she will be contacted later, and notify University Police and General Counsel promptly. It will be necessary to determine at this point whether the case will be turned over to the University Police for further investigation. If the interviewee is insistent upon continuing the conversation, remind them that the issues being investigated are administrative in nature and try to return to the questions prepared prior to the meeting. If the interviewee remains insistent on talking about the possible criminal activity, continue to take notes, but be careful that any questions asked do not violate or compromise any potential criminal proceedings. The interviewee may want to write a confession, which is permissible. The confession should contain all facts of the case, especially those only known by the perpetrator. Also, the confession should include statements that the confession was freely given, not coerced, and that no promises were made to the interviewee by the interviewer for the confession. The interviewee and all witnesses should sign the confession.

Evidence

❖ Description

Evidence in an investigation may consist of many types of documents or items such as cash, paper documents, computer hardware or software, pictures, keys, et cetera. All evidence should be convincing, relevant, and useful to provide a sound basis for documenting the investigative steps performed, the actions of the accused, and the investigator's conclusion.

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In some cases, the absence of documentation can in itself be incriminating evidence.

❖ Access to Public Records

The investigator has access to all university records needed to complete the investigation, in accordance with the OAS Charter approved by the FSU Board of Trustees. In accordance with Section 1012.91, Florida Statutes, any records maintained or information obtained pursuant to any investigation of employee misconduct shall be confidential until the investigation ceases to be active.

Also, for each investigation, the investigator should identify and become familiar with all applicable confidentiality provisions. Due diligence shall be exercised in complying with all exemptions from public record laws. An abbreviated list of information covered under provisions of confidentiality follows:

- Name or identity of whistle-blower complainants;
- Personnel records maintained for the purposes of any ongoing investigation of employee misconduct;
- Active criminal investigative information;
- Student educational records or personally identifiable information other than directory information - name, address, telephone listing, date and place of birth, major field of study, dates of attendance, and degrees and awards awarded; and

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- Social Security numbers.

During an investigation or after its completion, an outside party may request copies of the investigative file. Each request for a release of information should be reviewed and approved by the Director and CAO. Also, each request should be reviewed and approved by other appropriate individual(s), such as the General Counsel, as stipulated through University policy or practice. The Director and Deputy CAO shall ensure an adequate review and redaction/deletion of confidential information and other information exempt from public release prior to any review by outside parties. The Director will then forward the reviewed information to the General Counsel's Office for their review and release to the requesting party. The Director will be responsible for recording the public record request into the OAS Public Records Request Form stored on the shared drive of the OAS.

❖ **Chain of Custody**

No matter how relevant a piece of evidence is to an investigation, if doubt exists in the chain of custody for that item it could be repressed from the court case. It is important that the investigator carefully documents each item that is potential evidence and includes the chain of custody. Normally the OAS does not retain original documents, as it usually works with duplicated records. The record's custodian retains the original. When working with duplicated records, each page of the record will be stamped, on the back of the page, with the True Copy Stamp. In order to use the stamp, the investigator must either personally copy the document, observe the custodian copy the document, or the investigator must visually compare the copy to the original document. All pieces of evidence should be properly

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maintained and secured throughout the investigation. During the investigation, the investigator shall be particularly careful to secure (lock up in an office cabinet) the cases' working papers or evidence, as necessary.

❖ **Types of Documents**

Each of the following documents may be kept during an investigation:

- Interview Memorandum - Suggested for each interview with subject, witness, supervisor, etc. The memorandum should include the date, time, location, and the name of each person present at the interview. A list of questions with the corresponding responses by the interviewee may be included. Overall, the memorandum should adequately document the content of the interview. If a confession is made during the interview, document separately and request subject's review and signature.
- Chain of Custody Log - Suggested for each item that may be potential evidence in court. Include receipt information and access of any other party, and whether document is original or copy of original.
- Proof of Lack of Record - In some cases records may be missing. After a diligent search has been made, the investigator should request that the employee or supervisor sign a statement certifying that the records are not in his or her custody.
- Other - Any pertinent information regarding the evidence should be noted. For example, if cash is recovered, a statement documenting how much, what form, where located, how discovered, and a witness's signature could be included.

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Workplace Searches

When considering a workplace search, the nature of the investigation and the possible use of the search evidence should first be determined. Before conducting a workplace search, the investigator must consult with the Director, University's General Counsel, and the University Police as to the nature of the investigation, the appropriateness of the search, the need for a search, and the likely use of the evidence.

The OAS may search an employee's workplace without a warrant if the search is for work-related reasons and the evidence will be used in administrative action. In general, such searches should be reasonable in scope, so that the locations and items searched are reasonable in relation to the type of evidence being sought.

If during the administrative search, the OAS discovers documents that may indicate criminal activity, the documents would likely be admissible as evidence. Similarly, if the OAS comes across an illegal substance "in plain view", the courts would likely admit the evidence in a criminal case. In that instance, the University Police should immediately be called.

If for any reason an area cannot be searched when necessary, consideration should be given to securing the area and limiting access until a future time when the search can be performed. Administrative searches should be well-planned, including locations to search and procedures for compiling an inventory of evidence obtained.

Once a determination has been made that criminal conduct is suspected, the investigation should be considered a criminal investigation and referred to the

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University Police. At that point, further investigative work, including work place searches, should be at the direction of and cooperation with the University Police.

INVESTIGATIVE WORKING PAPERS

The investigation shall be documented within AL. A program template resides in AL and should be the beginning point for developing the investigative work program. The project case file should consist of, at a minimum, the original allegation on the Complaint Intake Form, all documenting evidence including written correspondence, typed notes from conversations, telephone, interviews or other sources, and a copy of the final hyperlinked/referenced report. All working papers will be appropriately hyperlinked/cross-referenced.

To the extent practicable, all working papers should be maintained within AL; however, in the event that it is not practicable to do so, an appropriate notation should be made in the Comments box under the “Main” tab of the Project Set Up screen in AL indicating working papers are maintained outside of AL. The working papers should contain sufficient documentation of the work performed, and support all findings and conclusions contained in the report. As needed, copies of pertinent laws, rules, or procedures should be scanned and placed in the working papers.

Where investigative procedures include examination of evidence (for example, bank records, documents, etc.), the examination section of the working papers should include a working paper summarizing at a minimum, the purpose of the examination, the source of the documents examined, the methodology followed (with appropriate description of the tick marks used), a summary of results, and a conclusion based on the results of the examination.

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At a minimum, the working papers will include:

- Investigation Activity Log (See Appendix C-2) The investigator will complete the log for each contact (telephone, fax, e-mail, etc.) that is pertinent to the investigation. This log serves to document the progress and steps taken during the investigation. At a minimum, the investigator will record contacts with the complainant, accused, police department, witnesses, the accused and University administrators;
- Complaint Intake Form including supporting documentation (interviews, records, etc.) provided at the time of the initial complaint;
- Working papers that adequately document the investigative procedures performed; and
- Final hyperlinked/referenced report/memorandum/ close out note to the file;

As appropriate, working papers that are considered confidential under law should be so marked. Within AL in the Comments box under the “Main” tab of the Project Set Up screen a note shall be made that the working papers contain confidential/sensitive information that is not a public record. Furthermore, the Investigative Program template shall contain a step in the Audit Finalization Section requiring identification and securing of all confidential working papers.

An abbreviated list of information covered under provisions of confidentiality follows:

- Name or identity of whistle-blower complainant(s);
- Personnel records maintained for the purposes of any ongoing investigation of employee misconduct;

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- Active criminal investigative information;
- Student educational records or personally identifiable information other than directory information - name, address, telephone listing, date and place of birth, major field of study, dates of attendance, and degrees and awards awarded); and
- Social Security numbers.

Overall, working papers should provide evidence that the investigation was adequately planned and that all significant factors affecting its satisfactory conduct were considered. Once the investigator has completed the investigation and the final report, both will be reviewed by the Director.

REVIEW PROCESS – WORKING PAPERS

The review process will be documented within AL through appropriate “sign offs” and review notes. All review notes shall be satisfied prior to the issuance of the final report.

The Director or designee shall perform a detailed review of the working papers to ensure the investigation was conducted with due professional care and all findings are properly documented. The review is also intended to ensure the working papers are complete, properly hyperlinked/cross-referenced, and accurate.

Once the Director is satisfied with the working papers and draft report, the Deputy CAO will review, as deemed necessary. After the Deputy CAO completes the review, the draft report will be reviewed by the CAO. As the CAO completes his/her review, the Deputy CAO and Director will be kept informed of any changes/issues. See the Investigative Report section (below) for the report review

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process.

The Director is responsible for completing the Investigation Close-Out form prior to the CAO closing the project in AL. (See Appendix C-3)

Investigative working papers shall be retained in accordance with appropriate laws, rules, and regulations. The retention period should be determined by (1) the legal requirements for record retention (2) the potential for litigation and (3) the value of the working papers to future activities. Reports of investigations may be retained for an indefinite period. Investigative files shall not be deleted/disposed of without the express approval of the Director and CAO. Due to confidentiality provisions and other exemptions from public record laws, reports of investigations and other investigative information should be maintained in a secure location in the OAS.

INVESTIGATIVE REPORT

Reporting Process and Case Closure

The investigator and the Director will determine the appropriate means of reporting for all investigations. This could include verbal, memorandum, letter, or a formal written report. The appropriate reporting format will comply with the reporting requirements of Whistle-blower investigations, as necessary. The final written report, in whatever format, should thoroughly address all relevant aspects of the investigation, and shall be accurate, objective, timely, understandable, and logically organized. The report should restate or summarize the original complaint, including the allegations, and relevant information gathered pertaining to the original complaint. If applicable, supporting documents may be attached to the report if their inclusion would give the reader a better understanding of the facts gathered. The

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report should include a conclusion, if practicable. The conclusion should be based on the evidence gathered and reviewed, with respect to the allegation. The report may or may not contain recommendations for management or agreed-upon corrective action plans. Special attention should also be given to certain specific requirements of the federal law and Florida Statutes for the confidentiality of the report.

At a minimum, a formal written report should include:

- Transmittal memorandum (executive summary);
- Table of contents (if report warrants);
- Complaint;
- Investigative results section which should include background information;
- Conclusion with any recommendation or agreed-upon corrective action plan (if necessary) for each allegation; and
- Methodology.

The Director shall review the working papers and the report. Once the Director and investigator are satisfied with the work performed and the report, the report will be reviewed by the Deputy CAO. After the report is reviewed by the Deputy CAO, it will be reviewed by the CAO. As the CAO completes his/her review, the Deputy CAO and Director will be kept informed of any changes/issues. After final review by the CAO, the Administrative Assistant will proof and format. The Director shall ensure that a hyperlinked/cross referenced copy of the final report is

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included in the working papers.

If a formal written report is not the appropriate means to disseminate the results of the investigation, then a memorandum can be used. It is generally expected that when the allegations cannot be substantiated, a memorandum should be used to transmit the results of the investigation instead of a formal report. The memorandum should include, at a minimum a:

- General statement about the allegation(s);
- Statement that the allegations could not be substantiated; and
- General summary of work performed.

The review of the memorandum will be accomplished in the same manner as a formal report. As such, the CAO will have final approval of the memorandum.

When neither a formal written report nor memorandum is necessary, then a closeout note to the file will be written. The closeout note will be properly hyperlinked/cross-referenced to supporting working papers. Only the Director and Deputy CAO need to review and approve the closeout note to the file.

No case should be closed without the approval of the Director and Deputy CAO. The Director or Deputy CAO shall notify the CAO to close the case in AL. The case should be closed only after a thorough, impartial inquiry or investigation has taken place and a report of the findings, if necessary, has been appropriately approved and distributed. Once the case is closed in AL, no additional time can be charged to the investigation.

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Report Distribution

The Director or CAO will determine the appropriate distribution of the final report/memorandum. The CAO or designee will ensure that the distribution of the report is made in accordance with appropriate laws, rules, and regulations. In the unlikely event that a report is released containing a material error(s), the error will be corrected, the released report will be recalled, and the revised report redistributed.

OTHER CONSIDERATIONS

Subsequent Review, Audit, Consulting Services

During the investigation, consideration should be given to determining what procedures, conditions, or lack of controls contributed to the findings or irregularities. Furthermore, as a result of the investigation, it may be determined that additional reviews, audits, or consulting services, should be performed to determine the extent of the problem and to prevent the irregularities from occurring in the future. The Director, Deputy CAO or CAO will be notified of the suggested review, audits or consulting projects for consideration in the current or future OAS work plan.

Follow-Up

The Director, Deputy CAO, and CAO will consult to determine if any recommendations made in the investigative report will be a part of the OAS bi-annual follow-up program (refer to Follow-up Program section of the Operations Manual).

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Restitution

In the event the OAS receives a restitution payment, it shall promptly deposit the moneys with Student Financial Services indicating what the payment is for and then notify the University Police Department and Environmental Health and Safety that such payment was received.

COPYRIGHT COMPLAINTS

The OAS serves as the central repository for all complaints alleging unauthorized distribution of computer software, music and motion pictures. These complaints come primarily from organizations representing the music recording and motion picture industries. As the primary repository for these complaints, the OAS works closely with the Office of Technology Integration (OTI) and the Division of Student Affairs to see that the complaints are investigated and resolved.

Copyright complaints are received primarily through email notifications from representatives of the music and motion picture industries. Upon receipt of the complaint, it will be forwarded to abuse@fsu.edu for appropriate investigation with a request for notification of the result of the investigation. Each complaint will be entered into and tracked through the OAS Project Tracking System rather than AL.

SEXUAL HARASSMENT



- Overview
- General Facts About Sexual Harassment
- The Role of the Investigator
- The Investigative Process
- Specific Steps to Follow When Investigating any S. H. Complaint
- Determining Violation of the University's Sexual Harassment Policy
- Investigative Working Papers
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SEXUAL HARASSMENT INVESTIGATIONS

Authority

Florida State University's (FSU) Sexual Harassment Policy designates the Office of Audit Services (OAS), to receive and investigate sexual harassment complaints involving faculty, staff, and students in some cases when the alleged harasser was acting in their capacity as an employee of the University. The purpose of the policy is to:

- Heighten awareness of actions or behaviors that constitute sexual harassment;
- Provide specific reporting guidance to individuals who believe they are subject to conditions or behaviors which may constitute sexual harassment; and
- Ensure that all allegations of sexual harassment are reported, investigated and acted upon in a timely and objective manner.

For complaints where the alleged harasser is not a student or University employee, the OAS will refer the matter to the Office of the General Counsel for appropriate action.

Objectives

The objectives of a sexual harassment investigation at FSU are to:

- Determine if there was a violation of FSU's sexual harassment policy;

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- Help ensure that the University workplace and academic environment remain harassment free.

OVERVIEW

A sexual harassment investigation is usually a difficult process for everyone involved. Everyone has an investment in the outcome of the investigation. People's livelihoods, careers, reputations, and sometimes emotional well being can be affected. Therefore, a sexual harassment investigation must be objective, fair, thorough, and protect the rights of everyone involved.

This manual provides general direction and guidance in conducting a sexual harassment investigation. In some cases, someone may bring a complaint to the attention of University management and management is able to resolve the complaint between the two individuals. In all cases, however, University policy requires the OAS to be notified of the alleged occurrence. In many of these types of cases, when the OAS is notified of the alleged occurrence and management's actions, and the complainant is satisfied with the action taken, the OAS would not conduct an investigation. For many cases coming to the attention of the OAS, once the investigator performs a preliminary review, it may be more appropriate to handle the case with an informal resolution, rather than a formal investigation. When an informal resolution is the most appropriate means to resolve the allegations of sexual harassment, the investigator will follow the procedures identified in this manual (Page 76). Although no formal report is written, the complainant and management agree on the informal resolution. However, for some cases, a formal investigation, which includes a thorough analysis of records and in-depth interviews, may be the only means to satisfactorily resolve the allegations of sexual harassment.

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The OAS maintains a sexual harassment telephone hotline which shall be checked at least once a day by OAS staff designated by the Deputy Chief Audit Officer (Deputy CAO).

GENERAL FACTS ABOUT SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964, Title IX of the Educational Amendment Act of 1972, as well as state law and University policy. It is generally defined as any unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work or academic performance, or creates an intimidating, hostile or offensive work environment. For a more detailed definition and specific examples of sexual harassment, see FSU's Sexual Harassment Policy, effective July 1, 1998 and Amended December 31, 2002, and January 6, 2004.

THE ROLE OF THE INVESTIGATOR

The ultimate purpose of a sexual harassment investigation is to determine if FSU's Sexual Harassment Policy was violated. This is done by gathering evidence, a lot of time most of which is verbal testimony. The investigator is an objective fact-finder and it is essential that he/she gather all relevant facts so that a fair understanding of what happened can be determined.

It is imperative that the investigator always conducts the investigation in a professional manner, free of personal prejudices, and without stereotyping and generalizations. The investigator must avoid any pre-judgment of the case. The

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investigator must have knowledge of the issues being investigated, such as laws, personnel policies and procedures, bargaining agreements, professional standards, and other areas that provide for the context of the investigation. Finally, implicit in the investigator's role is gathering, evaluating and organizing evidence toward the goal that the evidence speaks for itself. In sum, the investigator is to serve as an objective fact-finder and to conduct an investigation that is impartial and comprehensive. It is crucial that the investigator keep in mind that the investigative report will provide the basis of a determination as to the merits of a complaint, and for the determination of possible personnel action.

Independence and Objectivity

Every member of the OAS staff assigned to work on a sexual harassment investigation shall be independent both in fact and appearance. For each investigation, there shall be documentation in the working papers attesting to this independence by completing a Statement of Independence & Objectivity Form (see Appendix B-1). If impairments, either personal or external, arise at any time during the investigation, the investigator or reviewer shall immediately notify the Director of Investigations (Director), the Deputy CAO or the Chief Audit Officer (CAO) for appropriate resolution.

THE INVESTIGATIVE PROCESS

A few universal guidelines should be adhered to in investigating any sexual harassment complaint. They are:

- To take every complaint seriously. How complaints are handled sends a message to the staff, students, faculty, and administration about how FSU perceives sexual harassment and the value it places on its

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employees. It sets a tone, either positive or negative, that impacts future occurrences and complaints of harassment;

- Do not prejudge. The investigator must avoid making a credibility determination based on the positions or the reputations of the people involved, and should not assume that the complaining party has been harassed or is simply overly sensitive;
- Perform the investigation promptly. Generally, within 48 hours of the time the complaint is first made to the OAS, contact should be made with the complainant. A prompt investigation is more likely to result in truthful and complete witness statements. Truthful information may be easier to obtain before either party has a chance to solicit support from co-workers and friends. In case of legal action, legal liability to FSU can be minimized if the OAS reacts to the complaint in a timely manner. A prompt start of the investigation is another way for the University to demonstrate its commitment to a harassment free work place and the value it places on the welfare of its employees and students.

In accordance with the University policy, the investigation shall be completed and report issued within 120 days from receipt of the complaint; however, because of the stress on the parties involved that is inherent to sexual harassment allegations/investigations, every effort should be made to complete the investigation in less than 120 days. In the event the investigator determines the investigation cannot be completed within 120 days, he/she shall discuss with the Deputy CAO and CAO well in advance of the 120 day deadline to determine what actions may be taken to ensure timely completion. If ultimately determined the investigation cannot be completed within 120 days, appropriate levels of management shall promptly be informed of the reasons for the delay;

- Upon receipt of the complaint, promptly notify the supervisor of the respondent, as well as other appropriate levels of management, for all parties involved. Depending upon the circumstances, we generally recommend to management the complainant and respondent be physically separated in the work place and be instructed to have no

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contact with one another during the investigation;

- Ensure the investigation is thorough and fair. The rights and interests of all parties concerned shall be considered;
- Do not promise confidentiality, but do assure the complainant the OAS will keep the investigation as private as possible. Assure all parties that the investigation will be conducted within the limits of the law, while minimizing damage to people's reputations. However, complete confidentiality will not be possible since OAS operations are governed by the requirements of the government in the sunshine laws (Chapter 119, Florida Statutes). Only those FSU employees with a business need to know should be informed of the investigation;
- Interested parties (e.g. complainant/respondent, supervisors, and senior management) in the investigation, will be periodically contacted in order to keep them informed of the investigation's progress; and
- Thoroughly document every step of the investigation. The procedures for conducting investigations will vary, depending upon the nature of the allegations, the ability to identify the victim and/or the alleged harasser, and the scope of the alleged wrongdoing. In general, however, the following steps are involved in any effective sexual harassment investigation.

SPECIFIC STEPS TO FOLLOW WHEN INVESTIGATING ANY SEXUAL HARASSMENT COMPLAINT

Project Tracking

The Deputy CAO shall assign and enter the investigation number and all relevant project information into Audit Leverage (AL). Throughout the investigation, the investigator will be responsible for updating, within AL, the status of the

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investigation as it progresses. Upon completion of the investigation, the investigator or Deputy CAO will notify the CAO of such and the CAO shall close out the investigation in AL, at which point no further time can be charged to the project.

An Audit Leverage User Guide is maintained on the network shared drive and can be found on the IAD web site.

Interviewing the Victim or Complainant

The first step is to thoroughly interview the victim or complainant. If the victim or complainant did not complete the Sexual Harassment Complaint Form (Appendix D -1), then the investigator will ensure that the Sexual Harassment Complaint Form is completed. It is expected that the victim/complainant will cooperate with the investigation; however, with or without the victim/complainant's cooperation, once the OAS becomes aware of alleged inappropriate behavior of a sexual nature, it is required to perform some type of an inquiry into the alleged behavior. This helps to protect the University's interests, as well as the interests of other current and future employees. The investigator shall consult with the Deputy CAO to determine the best course of action when the complainant does not wish to have the charges investigated. During the initial interview, the investigator should explain the investigative process. If the interview is to be taped, the investigator will first get verbal recorded permission for taping from each participant in the interview. On tape, the investigator will identify, for the record, the time, date, location of the interview, and each participant's name. The investigator should make sure to cover:

- The investigator's role during the investigation;
- What will happen during the investigation;

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- FSU's policy against retaliation for filing the complaint or participating in the investigation;
- The seriousness of the matter and that the investigation will be conducted in a thorough, fair, objective, and comprehensive manner; and
- A statement that the investigator will prepare a report, unless the complaint is informally resolved, that will be submitted to the respondent's Vice President, or the appropriate level of management, that it will contain a conclusion about any sexual harassment policy violation, but that neither the investigator nor the Chief Audit Officer (CAO) make decisions or recommendations regarding personnel actions that may or may not be taken.

The investigator should elicit the following information from the victim/complainant:

- A detailed and specific description of the behavior about which the person is complaining; the identity of the alleged harasser; and the date(s), time(s), frequency, location(s), and circumstances under which the alleged conduct took place – whether in or out of the actual workplace. Let the complainant state what happened;
- If the supervisor or instructor/professor is the alleged harasser, focus on the effects of the harassing behavior on the victim. Find out whether the individual believes that grades, salary increases, promotions, evaluations and assignments have been handled fairly;
- If the alleged harasser is a co-worker, determine whether a supervisor had knowledge about the alleged harassing activity, including how it might have come to the supervisor's attention, and what the supervisor did, if anything, to stop the unwelcome behavior;
- Whether the conduct was welcomed. Carefully explore the parties' prior relationship, if any;

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- The names of any witnesses to the alleged conduct. Make a list of all witnesses identified and the behaviors, which may have been seen with approximate time frames. When there are no corroborating witnesses, the examination of other corroborating evidence becomes all the more important;
- The effect of the conduct on the complaining party;
- The names of others who the individual believes may have been subjected to the same or similar treatment;
- The names of others to whom the individual has spoken about the harassment, either within or outside the University, and particularly, whether the individual made the complaint known to a supervisory/management level employee, their professor or advisor, or other individuals in positions of authority;
- Whether the individual has voiced any objections to the alleged harasser, and if so, what the effects of these objections have been. If the individual has not voiced an objection, has she/he otherwise indicated to the harasser that such conduct is not welcome; and
- Whether the individual may wish to have the complaint informally resolved, without a full-scale investigation by the OAS. In many cases, the victim only wants the behavior to stop, and the harasser warned about the behavior. If an informal resolution is desired, the investigator should solicit such from the victim. The investigator should discuss the proposed resolution with the Deputy CAO and then discuss with appropriate levels of management in the areas where the victim and respondent work. If the proposed informal resolution is satisfactory to both the victim and management, then the investigator will commit the resolution to writing to be signed by the victim. The informal resolution may require a written apology from the respondent, physically separating the victim from the respondent in the work place, requiring no contact between the victim and respondent while at work, requiring the respondent to participate in training on the University's Sexual Harassment Policy, or other actions as deemed appropriate by both the victim and management. The informal resolution will also release the University from taking any further action on the particular

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case at hand. Until management verbally agrees to a proposed informal resolution, the investigator shall not provide any assurances to the victim with regard to such. The case is considered closed once an informal resolution is signed. (See Appendix D-2 for an example of an informal resolution agreement). In an informal resolution, no determinations are made as to whether the policy was violated.

A list of suggested questions to ask the victim/complainant is provided in Appendix D-3. These questions are not intended to be all-inclusive and should only be used as a guide, since all questions may not be pertinent to the case.

If the complainant brings his/her attorney to the interview, the interview shall not be conducted unless a University attorney is also present.

Interviewing a Witness

Witnesses identified by the complainant/victim, the respondent, and others who are in a position to have witnessed the alleged harassment or who have been identified as possible victims of similar harassment from the alleged respondent, should be interviewed. The following information, if applicable, should be elicited from the witness:

- Verification of the facts, as represented by others, which the witness should have knowledge;
- Information about their own experiences with the respondent;
- Any perceived motives for the complaint;
- Observations of the interaction between the complainant and the respondent; and

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- If the complainant, respondent or another witness has ever discussed the harassment with them.

When there are no corroborating witnesses it does not mean that the harassment did not occur. In fact, much of the time sexual harassment tends to happen in situations where the two parties are alone. That does not make the harassment charge less real. When there are no witnesses, the examination of other corroborating evidence becomes all the more important.

Reviewing Other Evidence

Once the investigator has learned the nature of the complainant's allegations, a review of pertinent organizational records, documents, reports and other materials can be initiated. Some of the items to consider include:

- Looking at personnel files and academic records. The investigator should give particular attention to employee performance appraisals and any records of discipline or counseling letters; and
- Reviewing AL and other OAS records for prior sexual harassment investigations pertaining to the complainant or respondent.

Significant events in the files should be placed in a timeline, and viewed in light of the dates and times that the complainant has specified in terms of both the alleged harassing behavior, the date the complaint was filed, and the overall relationship between the complainant and the respondent. When supervisors or instructors/professors, in a position to control tangible job or academic benefits, are involved, University documents need to be examined for internal consistency and consistency with the complainant's allegations. Such information may be valuable in making credibility determinations and in helping determine the appropriate resolution of complaints. All of these records are additional information that the investigator

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can consider when evaluating the validity of the allegations. As with any investigation, the more information the investigator can evaluate the more informed decisions the investigator can make.

Interviewing the Alleged Harasser (Respondent)

The investigator needs to clearly present the allegations and the seriousness of such. In the conversation, avoid threatening language, characterizing the behavior as sexual harassment, or talking about the matters in terms of “charge” or “lawsuit”. Instead, elicit a response to the allegations and obtain clarification where needed. It is extremely important to let the respondent know that no conclusion has been made regarding the validity of the allegations. It is a common misunderstanding by respondents that the complaint is always taken as the truth. Therefore, it is important that the investigator assure the respondent that the investigator has not come to a conclusion, and that the respondent is being given the opportunity to offer his/her side of the story, and identify witnesses to substantiate his/her side of the story. The respondent should leave the initial interview with the feeling that the investigation will be conducted in a thorough, fair, objective, and comprehensive manner by the investigator. The following information should be communicated to the respondent:

- A general overview of the policy and process for investigating allegations of sexual harassment. Identify the role of the OAS and the investigator. Reassure the respondent that the role of the OAS is to have no vested interest in the outcome – other than the investigation being thorough, fair, and objective. Specifically address the seriousness of the allegations and the degree of confidentiality that can be afforded the investigation (total confidentiality cannot be guaranteed; only those persons with a business need to know will be informed; and public records law);

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- A clear understanding that no conclusion has been made about the allegations;
- What will happen during the investigation and approximately when it will happen;
- Retaliation by the respondent to the complainant or witnesses is prohibited, and recommend against each participant having further contact with any individuals involved in the case; and,
- That the investigator will prepare a report, unless the complaint is informally resolved, that will be submitted to the respondent's Vice President, or the appropriate level of management, that will contain a conclusion about any sexual harassment policy violation, but that neither the investigator nor the CAO make decisions or recommendations regarding personnel actions that may or may not be taken.

To start the interview, the investigator may want to prepare a brief summary of the allegations or the facts gathered thus far. Instead of going over each specific allegation, the investigator should start the interview with a general statement about the complaint and ask what the respondent knows about the allegations. Rather than list specific allegations, with dates, times, numbers, for the respondent to respond to, say something like "As you're probably already aware, Mr. or Ms. (name of the complainant) has complained about some behaviors of yours. Do you know what I'm talking about? Can you tell me what you know about it?" After getting the general response from the respondent, specific allegations should be discussed. It is important to get the respondent's side of the story, including any possible motivation he/she believes the complainant might have for alleging sexual harassment. (See Appendix D-4 for suggested questions to ask the respondent. These questions are not intended to be all-inclusive and should only be used as a guide, since all questions may not be pertinent to the case.)

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Importantly, the investigator should obtain a list of the respondent's witnesses that have direct knowledge of the allegations or relationship between the complainant and the respondent. If the respondent brings his/her attorney to the interview, the interview shall not be conducted unless a University attorney is also present.

When the Respondent is the Supervisor

It is important for the investigator to have the respondent describe the relationship with the complainant. The investigator should note whether the relationship described is entirely professional, entirely personal, or a mix of the two. As part of the inquiry, the investigator should find out how long the parties have known each other and on what basis. If the respondent indicates that the questioned behavior was welcomed at some time in the past, make sure clear notes are made as to what that time period was and what specific behaviors occurred.

Importantly, the investigator should determine if the parties had a dating or an intimate relationship in the past. If so, note the time frame and explore whether anything has happened to change that relationship.

Besides getting the respondent's side of the story and any perceived motives he/she may have as to why the complainant alleged sexual harassment, the investigator needs to consider what may be happening with the complainant in the workplace/academic environment. For example, has the person received a poor grade or performance evaluation, failed to obtain an expected promotion, or experienced personal problems? If the complainant has received any adverse action, examine the facts behind the decision, including warnings for poor performance, poor attendance or documentation of performance deficiencies. The complainant's performance may have been legitimately criticized and the

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complainant responded by filing a sexual harassment complaint against the respondent, or the complainant's performance may have declined because of sexual harassment. It is important to determine when the adverse action was taken, either before or after the alleged incidents. It may be that the complainant's job or academic performance has not declined, rather that the poor performance review was a result of rejecting the advances of the supervisor/instructor.

Depending on the nature of the allegations, the investigator may want to discuss with the respondent the culture and behavioral norms of the department, the level of sexual language and joking, and what part, if any, the respondent and complainant plays in those interactions.

When the Respondent is a Co-worker

When co-workers are accused of sexual harassment, a central point of inquiry has to be whether or not the supervisor had any knowledge of the matter and, if so, what actions were taken by the supervisor. The investigator needs to find out information about the following from the supervisor, complainant, witnesses, and respondent:

- Have inappropriate language, displays or jokes in the work area between the employees been observed;
- Any indications of discomfort or embarrassment by the complainant;
- Any indications of approval/disapproval of the alleged behavior of the respondent by the complainant;
- The nature of the parties' relationship;

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- How long they've worked together. Are they closely involved in each other's work or independent of each other's job functions;
- Whether they socialize alone or in a group. Does the socialization include eating lunch or taking breaks together;
- Was the supervisor told by anyone directly, or perhaps heard of possible misconduct involving the two parties;
- Does the complainant have a work-related or personal motive for bringing a claim of sexual harassment against this particular individual;
- Whether there have been any unusual incidents or other allegations raised by either party against the other; and
- What actions, if any, the supervisor took as a result of allegations or respondent's behavior.

Reviewing the Evidence

Once all the information has been gathered and necessary statements have been taken from potential witnesses, conclusions must be reached so the complaint can be resolved. Getting full agreement on the facts is often difficult, frequently the "facts" represented by the two parties are in opposition, and no first-hand witnesses exist. In situations like this, it is essential to search for corroborative evidence. Such evidence may lend support to or contradict the claim. To reach a conclusion about the allegation, review the evidence (for example, testimony, university records) to determine:

- Whether the conduct was "welcome". Witnesses may be able to provide information about the complainant's relationship with the alleged harasser or on whether the conduct appeared to be welcome. For example, did the complainant participate in inappropriate

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behavior?

- Whether there is an absence of corroborating evidence. Sometimes corroborating evidence is lacking when there should be some under the facts alleged by the complainant. In that case, the lack of evidence may be a determining factor in the resolution of the complaint. For example, the complainant may represent that the respondent sent inappropriate e-mails or letters. If the complainant cannot produce those letters, and does not have a legitimate reason for not producing them, the investigator should consider this lack of corroborating evidence.
- The credibility of each witness. In some cases it may be necessary to make a determination based only on the credibility of the parties' testimonies. In this case, it may be appropriate to consider the background of both individuals to determine if the complainant has made any prior complaints, or if there have been previous allegations made against the alleged harasser.

DETERMINING VIOLATION OF THE UNIVERSITY'S SEXUAL HARASSMENT POLICY

Once the investigation is complete, the investigator will analyze the data that has been gathered to determine if the behavior occurred, and whether the substantiated behavior violated the University's Sexual Harassment Policy.

When determining if the behavior occurred, the investigator should look at each allegation independently. The investigator must determine whether the behavior did in fact occur, did not occur, or occurred but not as reported. Sometimes the investigator may be unable to determine conclusively what actually occurred. In all cases, the investigator needs to be able to support the decision based on the preponderance of the evidence.

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If the investigator has established that the behavior did occur, the investigator must compare the facts gathered for each alleged behavior with the University's sexual harassment definition. To compare the behavior to the definition, the investigator should, at least, consider the following:

- The conduct is sexual in nature or based on gender;
- The conduct was unwelcome; and
- The conduct unreasonably interfered with the individual's job or educational performance or created an intimidating, offensive, or hostile environment.

The final step in determining if sexual harassment occurred is to decide if the behavior rose to the level of a policy violation by looking at the circumstance in total and determine the extent of the harassment. The evidence need only meet the "preponderance of evidence" rule, as such the evidence does not have to meet the "beyond a reasonable doubt" standard. Listed below are several factors to help the investigator make an objective assessment:

- Severity of the conduct – The investigator should look at the behavior, from mild to severe;
- Number and frequency of the encounters – The investigator will consider whether the conduct was repeated or an isolated incident. The time span between each incident should also be considered;
- Relationship of the two individuals – Generally what may be permissible for a co-worker or another student is inappropriate for a supervisor or instructor and may be perceived as more threatening;
- Victim's provocation – The investigator should consider the victim's behavior. Remember, if the person receiving the behavior elicits the

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behavior, then it is probably not unwelcome; and

- Effect on the victim – The investigator must consider the effect of the behavior on the complainant, and whether it is reasonable to believe that the behavior negatively affected the complainant’s job or educational environment.

The investigator must consider each factor in their relationship to each other and should be given different weight depending upon the particular situation. The investigator should consult with the Deputy CAO before documenting a conclusion as to whether the policy was violated.

INVESTIGATIVE WORKING PAPERS

The sexual harassment investigation will be documented within AL. A program template resides in AL and should be the beginning point for developing the investigative work program. To the extent practicable, all working papers should be maintained within AL; however, in the event that it is not practicable to do so, a notation should be made in the Comments box under the “Main” tab of the Project Set Up screen in AL indicating working papers are maintained outside of AL.

The project case file should consist of, at a minimum, the original allegation on the Sexual Harassment Complaint Form, with all documenting evidence including written correspondence, and a copy of the final referenced report/memorandum/note to the file.

The working papers shall be hyperlinked/cross-referenced and contain sufficient documentation to document the work performed, and to support all findings and conclusions contained in the report.

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At a minimum the working papers will include:

- The referenced Investigation Activity Log (see Appendix D-5);
- The Sexual Harassment Complaint Form;
- Supporting documentation (interviews, records), which adequately documents the investigative procedures performed.
- Copy of the final hyperlinked/cross-referenced report/memorandum/note to the file;

As appropriate, working papers that are considered confidential or contain confidential information under Florida Statutes should be so marked. Also, within AL in the Comments box under the “Main” tab of the Project Set Up screen a note shall be made that the working papers contain confidential/sensitive information that is not a public record. Overall, working papers should provide evidence that the investigation was adequately planned and that all significant factors affecting its satisfactory conduct were considered.

REVIEW PROCESS – WORKING PAPERS

The review process will be documented within AL through appropriate “sign offs” and review notes. All review notes shall be satisfied prior to the issuance of the final report.

The Deputy CAO or designee shall perform a detailed review of the working papers to ensure the investigation was conducted with due professional care and all findings are properly documented. The review is also intended to ensure the working papers are complete, properly hyperlinked/cross-referenced, and accurate.

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Once the Deputy CAO is satisfied with the working papers and draft report, the draft report will be reviewed by the CAO. As the CAO completes his/her review, the Deputy CAO will be kept informed of any changes/issues. See the Investigative Report section (below) for the report review process.

Once the case is closed, the Deputy CAO is responsible for completing the SH Investigation Close-Out form (see Appendix D-6).

Investigative working papers shall be retained in accordance with appropriate laws, rules, and regulations. The retention period should be determined by (1) the legal requirements for record retention (2) the potential for litigation and (3) the value of the working papers to future activities. Reports of investigations may be retained for an indefinite period. Investigative files shall not be deleted/disposed of without the approval of the Deputy CAO and CAO. Due to confidentiality provisions and other exemptions from Chapter 119, Florida Statutes, reports of investigations and other investigative information should be maintained in a secure location in the OAS.

INVESTIGATIVE REPORT

Reporting Process and Case Closure

The investigator, along with the Deputy CAO, will determine the appropriate reporting format for all investigations. This could include verbal, memorandum, letter, or a formal written report. The final report, in whatever format, should thoroughly address all relevant aspects of the investigation, and shall be accurate, objective, timely, understandable, and logically organized. The report should restate or summarize the original complaint and relevant information gathered pertaining to

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the original complaint. If applicable, supporting documents may be attached to the report if their inclusion will give the reader a better understanding of the facts gathered. Special attention should also be given to certain specific requirements of the federal law and Florida Statutes for the confidentiality of the report. At a minimum, a written report will include:

- Transmittal memorandum (executive summary);
- Table of contents (if report warrants);
- Complaint information;
- Background;
- Observations, which include the investigative procedures performed;
- Results;
- Conclusion for each observation; and
- Overall conclusion as to whether the University's Sexual Harassment Policy was violated.

The CAO will have final approval of the report.

When the Deputy CAO determines that a formal written report is not necessary, then a closeout note to the file will be included in the working papers. The closeout memorandum will adequately explain the complaint, and the investigative procedures performed. The closeout note will be properly hyperlinked/cross-referenced to supporting working papers. In some cases, an

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informal resolution between the two parties is appropriate. For these cases, no formal written report is to be prepared, instead a closeout note to the file and a copy of the informal resolution are to be included in the working papers.

No case should be closed without the approval of the Deputy CAO. The case should be closed only after a thorough and impartial inquiry or investigation has taken place and a report, if necessary, of the findings has been appropriately approved and distributed. The Deputy CAO shall notify the CAO to close the case in AL, at which point no additional time can be charged to the project.

Report Distribution

The Deputy CAO and CAO will determine the appropriate distribution of the final report. The CAO or designee will ensure that the distribution of the report is made in accordance with appropriate laws, rules, and regulations. In the unlikely event that a report is released containing a material error(s), the error will be corrected, the released report will be recalled, and the revised report redistributed.

OTHER CONSIDERATIONS

Public Records Request

During the investigation and until the sexual harassment case is closed and management has taken final action; the case file and report are not public records (Section 1012.91(1) (b), Florida Statutes). Once the report is released to management, and management has taken appropriate action, the report and case file are then public record. In those cases when an interested party makes a public records request for case records, the investigator will record the request in the

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Public Records Request form on the OAS shared drive. The investigator will then notify the University's General Counsel Office to ensure the records request is appropriately handled. The investigator will redact the records, as appropriate, making sure that the complainant/victim's and all witnesses' names and identifying information in the file are removed (Section 1012.91(2) Florida Statutes). The redacted copy of the requested records will be provided to the General Counsel's Office for their review and distribution to the requesting party. The investigator will notify the Deputy CAO of the records request, and keep the Deputy CAO informed of the progress for complying with the request. The Deputy CAO shall promptly notify the CAO of the public records request.