

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF DEVELOPMENTAL SERVICES**

PROHIBITION OF SEXUAL HARASSMENT IN THE WORKPLACE POLICY

It is the law of the Commonwealth and the policy of the Department of Developmental Services [DDS], to promote and maintain a work environment that is free from sexual harassment. As an employer, we take responsibility for implementing policy ensuring protection to our employees against sexual harassment in the workplace.

DDS will not tolerate or condone sexual harassment by or toward its employees. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated. Employees are strongly encouraged to timely report behavior that they believe to be sexual harassment to the Diversity/Sexual Harassment Prevention Officer (s) below:

Genie Nortelus, Deputy Director of Diversity

617-624-7506 or TTY: 617-624-7590

Genie.Nortelus@state.ma.us

or

Lorraine Woodson, Director of Diversity

617-624-7530 or TTY: 617-624-7590

Lorraine.Woodson@state.ma.us

Because DDS takes allegations of sexual harassment seriously, we will respond promptly to complaints of sexual harassment and where it is determined that such inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth our goals of promoting a workplace that is free of sexual harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, up to and including termination, regardless of whether that conduct satisfies the definition of sexual harassment.

DEFINITION OF SEXUAL HARASSMENT

Sexual Harassment is unlawful. Under Massachusetts General Laws Chapter 151B Section 4, Paragraphs I and 16A, sexual harassment is a form of sex discrimination. In Massachusetts, "sexual harassment" means sexual advances, requests for sexual favors, verbal or physical and /or other behavior or conduct of a sexual nature when:

- a) Submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or,
- b) Such behavior has the purpose or effect of unreasonably interfering with work performance; or,
- c) Such behavior has the purpose or effect of creating an intimidating, hostile, humiliating or sexually offensive work environment.

Sexual harassment is not limited to prohibited behavior by a male employee toward a female or by a supervisory employee toward a non-supervisory employee. Sexual harassment encompasses but is not limited to the following considerations:

- a) A man as well as a woman may be the victim of sexual harassment, and a woman as well as a man may be the harasser. Offensive conduct directed at a member of the same gender may also qualify as sexual harassment, regardless of the gender preference of the participants.
- b) Sexual harassment does not refer to an occasional compliment or welcome social relationships. It refers to deliberate or repeated behavior consisting of verbal comments, gestures or physical contact of a sexual nature that is not welcome, that is severe, pervasive, personally offensive, and lowers morale and that, therefore, interferes with work productivity.
- c) While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct which if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness: This unwelcome sexual behavior is defined from the perspective of the victim, not the harasser. Some examples of such behavior may include but are not limited to the following:
 - Direct sexual advances or sexual assault;
 - Sexual inquiries, jokes and epithets;
 - Derogatory comments about a person's sex or sexual orientation, other forms of verbal abuse of a sexual nature, such as whistling or catcalling;
 - Offensive or unnecessary touching, such as patting, pinching or constantly brushing against a person;
 - Physical interference with a person's movements;
 - The display of sexually suggestive posters, photographs or objects on the job;
 - The requirement that a person wear sexually revealing clothing;
 - Language that disparage or demean individuals in a sexual manner, because they may create an intimidating, hostile, or offensive working environment;
 - Discussion of one's sexual activities.
- d) The harasser does not have to be the victim's supervisor. The harasser may be a supervisor who does not supervise the victim, a non-supervisory employee (co-worker), or, in some circumstances, even a non-employee such as a recipient of public services or a vendor.
- e) The victim does not have to be the target of the unwelcome sexual conduct. The victim may be someone who is a witness to and personally offended by such conduct when it is directed toward another person.
- f) Sexual harassment does not depend on the target's having experienced economic injury as a result of the harasser's conduct; it can include the creation of a hostile environment within which the victim must work.

Under these definitions, direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.

All employees should take special note that, as stated above, retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is unlawful and will not be tolerated by this organization.

EMPLOYEES ARE RESPONSIBLE FOR THE FOLLOWING:

- a) Ensuring that they do not sexually harass any other employee, applicant for employment, recipient of public services, or any other individual in the workplace;
- b) Cooperating in an investigation of alleged sexual harassment by providing any information they possess concerning the matter being investigated;
- c) Actively participating in the Commonwealth's efforts to prevent and eliminate sexual harassment and to maintain a working environment free from such discrimination;
- d) Refraining from retaliating against any individual who has complained about sexual harassment or who has cooperated with an investigation of sexual harassment; and,
- e) Reporting such allegations to the Diversity/Sexual Harassment Prevention Officer.

Pursuant to M.G.L., c 151B, any employee who files a sexual harassment claim or cooperates in an investigation is assured that (s)he may do so confidentially without fear of retaliation or reprisal.

DISCIPLINARY ACTION

If it is determined that inappropriate conduct has been committed by one of our employees, we will take action as is appropriate under the circumstances. Such action may range from counseling to termination from employment, and may include other forms disciplinary action as we deem appropriate under the circumstances.

RESPONSIBILITIES OF THE AGENCY

As the employer, the Agency is responsible for:

- a) Ensuring that all employees know that they have the right to complain about sexual harassment to the Diversity/Sexual Harassment Prevention Officer(s);
- b) Conducting a thorough investigation of each complaint in the most expeditious and confidential manner possible;
- c) Taking immediate and appropriate corrective actions, including disciplinary actions with respect to employees who engage in sexual harassment;
- d) Posting and making available to employee information regarding sexual harassment policy and procedures and conducting training on this matter for new employees.

The Commonwealth and the Agency may not be held responsible if each can show that prompt and appropriate corrective action was taken in response to a complaint.

RESPONSIBILITIES DIVERSITY SEXUAL HARASSMENT PREVENTION OFFICER INCLUDES:

- a) Investigating reports of alleged sexual harassment in a confidential and expeditious manner including conducting intake interviews within three working day from the date the complainant contacts the Diversity/Sexual Harassment Prevention Officer(s);
- b) Within three weeks of intake Interviews, meet with the Agency Head and/or designee, to discuss either the proposed resolution of the matter or the status of the complaint in the event that more than 21 days is needed for closure of the matter;
- c) Preparing reports of investigation for review by the Commissioner, General Counsel, Director of Human Resources and/or Director of HR with findings as to whether there was a violation of Agency Policy and recommendations;
- d) Ensuring that complainants are informed about their other avenues of recourse;
- e) Providing oversight training and technical assistance to all Area Directors, and Program Directors.

- f) Maintaining confidential, accurate and current records of reports of sexual harassment investigations and their disposition; and,
- g) Distributing to all employees:
 - i. an explanation of the Commonwealth's policy and complaint procedure, as soon as possible after hire and annually thereafter;
 - ii. the name and contact information for the agency's Diversity/Sexual Harassment Prevention Officer(s); and,
 - iii. notice about of any changes to the above, as soon as administratively possible.

PROCEDURES FOR MAINTAINING RECORDS OF COMPLAINTS

The Diversity/Sexual Harassment Prevention Officer(s) will keep a complete record of all formal written complaints, their supporting documentation and their resolution in confidential files separate from official personnel files.

If the determination is that a violation of the Agency Policy or sexual harassment occurred, the Officer's summary report will be placed in the personnel file of the harasser. If it is determined that a false accusation likely occurred, a separate investigation into the conduct of the person who made the false accusation will be triggered. If it is determined that a violation of the Agency Policy did not occur, the summary will be maintained only in the Sexual Harassment Prevention Officer's confidential files. If the determination is that there is "insufficient evidence," records will be maintained by the Human Resources Division, separate from either party's personnel file.

PROTECTION OF ALL PARTIES

Pursuant to Chapter 151B, Section 3B, paragraph 4, any employee who files a sexual harassment claim or cooperates in an investigation shall not be subjected to retaliation or reprisal. An employee who thinks that he/she may have been retaliated against may amend his/her complaint or file a separate complaint, which shall be investigated pursuant to this policy.

- a) All complaints of sexual harassment shall be addressed.
- b) The alleged harasser shall be notified when a formal complaint is filed. Formal Complaints are different than general complaints as they usually involve a more serious nature of allegations of misconduct or policy violation by Agency employees.
- c) The sexual harassment investigation shall be conducted in a manner to protect the confidentiality of the complainant, the alleged harasser and all witnesses. All parties involved in the proceedings shall be directed to maintain strict confidentiality, from the initial meeting to the final Agency decision.
- d) False accusations of sexual harassment (i.e., the alleging of incidents or behavior that are proven, through investigation, not to have occurred at all) may result in severe disciplinary action up to and including termination.
- e) A finding that either sexual harassment did not occur or that there was insufficient evidence does not necessarily establish that an accusation was false.
- f) Employees who violate the confidentiality of information may be subject to disciplinary action up to and including termination from the Department.

- g) Employees covered by collective bargaining agreements who are subject to disciplinary action are entitled to representation by their respective unions.
- h) Upon completion of investigations, hearing may be held in accordance with collective bargaining agreements.

STATE AND FEDERAL REMEDIES

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

BOSTON OFFICE One Ashburton Place Sixth Floor, Room 601 Phone: 617-994-6000 TTY: 994-6196	WORCESTER OFFICE 455 Main Street, Rm101 Worcester Ma 01608 508-799-8010 508-799-8490 FAX	SPRINGFIELD OFFICE 436 Dwight Street Second Floor, Room 220 Springfield, MA 01103 413-739-2145	NEW BEDFORD OFFICE 800 Purchase St, Rm. 501 New Bedford, MA 02740 508-990-2390 508-990-4260 FAX
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Time Limitations: Must file complaint within 300 days of the alleged discrimination; MCAD recommends that complaints be filed in person at their Boston or Springfield Offices.

HUMAN RESOURCES DIVISION, STATE OFFICE OF DIVERSITY AND EQUAL OPPORTUNITY

Director
 One Ashburton Place, Room 213
 Boston, Massachusetts 02108-1516
 Telephone 617-727-7441 or TTY Number: 617-727-6015

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

One Congress Street, 10th Floor
 Boston, Massachusetts 02114
 617-565-3200 or 800-669-4000 or TTY: 1-800-669-6820
 Time Limitations: Must file written complaint within 300 days of date of violation.

COLLECTIVE BARGAINING AGREEMENT GRIEVANCE PROCESS

Collective bargaining agreements have specific time frames within which a grievance must be filed (generally 21 calendar days for Step I grievance, 10 calendar days for other steps); some agreements may also limit whether or not the grievance or complaint process may be used. Consult the applicable agreement for the employee's (complainant's) job title to determine what the grievance process and time frame is for sexual harassment complaints. The 7/1/94 Alliance Agreement specifically provides for a grievance concerning sexual harassment to be filed at Step II of the grievance procedure, within 21 days of the occurrence (Article 6).

EMPLOYEE ACKNOWLEDGEMENT

By signing below, I acknowledge that I have read, understand, and agree to abide by the provisions set forth in the Department of Developmental Services sexual Harassment Prevention Policy.

Print Name

Signature

Date

PROCEDURES FOR REPORTING AND INVESTIGATING SEXUAL HARASSMENT COMPLAINTS

The following procedures are consistent with those issued by the State Office of Diversity and Equal opportunity. The following sexual harassment complaint procedure has been developed specifically to ensure an orderly, fair and confidential investigation process which protects the civil rights of all parties involved:

1. An employee who feels that he/she has been sexually harassed should report the complaint to the agency's Diversity/Sexual Harassment Prevention Officer. If the employee does not feel comfortable reporting the complaint to the officer, a complaint may initially be filed with any agency manager, who will request the employee to prepare a complaint form and then provide the complaint to the agency Diversity/Sexual Harassment Prevention Officer for further investigation and resolution. If the employee does not feel comfortable discussing the complaint with any agency managers, the complaint may be filed instead with:
 - a. State Office of Diversity and Equal Opportunity;
 - b. Massachusetts Commission Against Discrimination;
 - c. U. S. Equal Employment Opportunity Commission; and,
 - d. Applicable Collective Bargaining Agreement Grievance Procedure.
2. The Diversity/Sexual Harassment Prevention Officer should also be prepared to advise employees on their rights to access any of the above complaint procedures. Such advice will include informing employees of any applicable statutes of limitation for filing complaints with any of the above outside agencies. The Diversity/Sexual Harassment Prevention Officer should also be aware that some collective bargaining contracts restrict their employees to a certain complaint or grievance procedure, or may not allow a grievance to be filed if a complaint has already been filed under this policy.
3. The employee reporting harassment will have a private meeting with the Sexual Harassment Prevention Officer, within three working days, at which time the Officer will document the complaint. The individual complaining should also prepare his/her own written account of the occurrence, which should include: a description of the incident(s), the name of the alleged harasser, times, locations, specific action, and any witness to the incident(s).
4. Explain to all individuals involved with a complaint, either directly or indirectly, they are to maintain strict confidentiality at all times concerning all aspects of the complaint.
5. If the alleged harasser confirms the charges, the officer shall follow disciplinary recommendation procedures. If the alleged harasser denies the charges in part or in whole, or otherwise contradicts the allegations or if the officer thinks it is otherwise necessary, the officer shall continue the investigation. If the officer determines that additional witness need to be contacted (s)he may do so. Both parties have the right to request that witness be contacted. The parties may not prevent the officer from contacting witness, if the officer deems such contact necessary. All witness shall be interviewed individually and privately and apprised of confidentially of the proceedings. Neither the alleged harasser nor the alleged target shall be present during the interviewing of witnesses. Statements of all witnesses shall be documented.
6. The Diversity/Sexual Harassment Prevention Officer retains the option at his/her discretion to have the parties meet in his/her/presence to discuss the matter, if both parties are amenable to such a

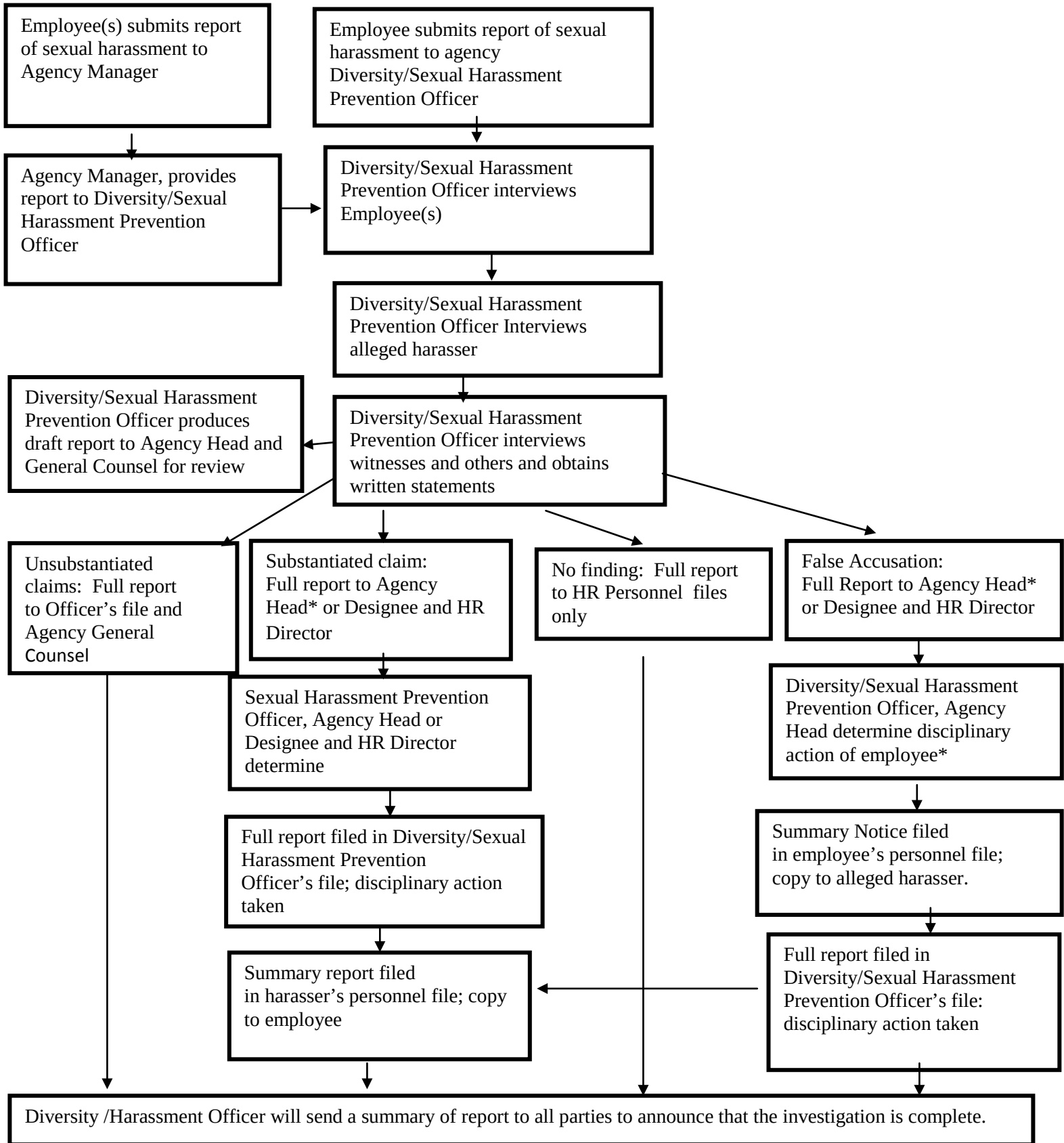
meeting and the officer determines that it will aid in the expeditious resolution of the complaint. Neither party may compel such a face-to-face meeting nor shall any party be required to attend such a meeting.

7. The Diversity/Sexual Harassment Prevention Officer will meet privately with the employee in order to provide a copy of the Agency policy, to discuss the complaint procedure and to document the complaint. The employee will also complete a complaint form, if he/she has not already done so, and return it to the officer. Both accounts should include: a description of the incident(s), the name of the alleged harasser, times, locations, specific words/actions, and any witnesses to the occurrence(s). Both accounts will be considered part of the investigation. The officer will interview the employee (complainant) to ascertain the following:

- What happened? What was said or done by whom which gave rise to the complaint?
- When and where did the alleged offense take place? How long a period of time elapsed between the alleged offense and the complaint? Was it during working hours, on break, at lunch, on or off the work premises?
- Has the alleged offense occurred before? When and where?
- Has the complainant complained before about similar alleged occurrences?
- Are there any witnesses? If so, who are they?
- What did the complainant do or say before and after the alleged offense?
- Did the complainant's supervisor know, or should the supervisor have known, of the alleged offense or of previous occurrences?
- How did the alleged offense affect the complainant physically or psychologically?
- The officer will meet privately with the alleged harasser and inform him/her of the details of the complaint. The officer will interview the alleged harasser to ascertain the following:
 - What is the alleged harasser's response to the charge?
 - If the alleged harasser admits the conduct and the complainant agrees with the accuracy of his/her statements, the sexual harassment officer shall suspend the interview and report the findings to the agency head.
 - If the response is a denial, what is the alleged harasser's explanation of the charge, if any?
 - The officer should explore possible improper motives of the complainant, such as a desire to pre-empt impending disciplinary action by filing a harassment complaint.
 - Are there any witnesses that can substantiate the alleged harasser's response?
 - Did the complainant welcome or accept the conduct on the occasion which precipitated the complaint or on previous occasions?
 - The alleged harasser should also submit a written account to the officer.

- The Diversity/Sexual Harassment Prevention Officer will contact and interview witnesses as required during the course of the investigation. The officer may also determine the need for additional witnesses and will contact and interview them as well. Witnesses should be interviewed privately and individually, and neither the alleged harasser nor the complainant should be present. The officer will document the statements of all witnesses.
8. Upon completion of the investigation, the Diversity/Sexual Harassment Prevention Officer shall draft a report to the Agency Head and General Counsel outlining his/her findings and recommendations for a resolution. The Diversity/Sexual Harassment Prevention Officer recommends an appropriate course of action and whether any disciplinary action is merited. The Agency head will then decide what action to take. Appropriate disciplinary action to confirmed charges includes: oral warning or reprimand, sensitivity training, suspension demotion, termination, or some combination of the above. The investigation report and all documentations shall be kept in the Diversity/Sexual Harassment Prevention Officer's confidential files. ...
 9. In instances where the Diversity/Sexual Harassment Prevention Officer does not conclude that the Sexual Harassment Prevention Policy was violated, the Agency Head may still exercise his/her right to take disciplinary action if he/she determines that the conduct at issue was unacceptable.
 10. The Diversity/Sexual Harassment Prevention Officer will prepare and submit to the parties a written summary of the investigation and disciplinary action decided by the Agency Head. The summary shall be kept in the Diversity/Sexual Harassment Prevention Officer's confidential file, unless it is determined that, as a disciplinary matter, it should be made a part of the harasser's personnel file.
 11. When the investigation is completed, the agency will, to the extent appropriate, meet to inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.
 12. If it is determined that inappropriate conduct has occurred, the state agency will act promptly to eliminate the offending conduct, and where appropriate will impose disciplinary action.

PROCESS FOR RESOLVING SEXUAL HARASSMENT COMPLAINTS



* If agency head is harasser or false accuser, HRD determines disciplinary action.