

# Sexual Harassment Policy

The Open Stories Foundation

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## Executive Summary

This document provides the framework for acting on and investigating reports of sexual harassment on the part of employees, volunteers, board members, and contractors for The Open Stories Foundation. This document will explain, in detail, the following five points:

1. The need for a sexual harassment policy
2. A comprehensive definition of sexual harassment
3. Avenues for reporting sexual harassment
4. Investigation procedures
5. Corrective action procedures

In addition to these sections, an appendix of resources for combatting and responding to sexual harassment is also included.

This policy is requisite for protecting both the organization as well as potential victims of harassment. This policy empowers both the organization and potential victims of harassment with the tools to report and react appropriately to sexual harassment. Additionally, showing a good faith effort to follow a comprehensive protocol for investigating, documenting, and responding to claims of sexual harassment can protect the organization from possible legal liability.

The standard of best practices for preventing and responding to workplace sexual harassment has been set by the Equal Employment Opportunity Commission. While OSF does not formally employ enough people to be legally beholden to the EEOC's federal requirements for dealing with workplace harassment<sup>1</sup>, this document is based on its standards for training, documenting, investigation, and executive corrective action in situations of sexual harassment.

Sexual harassment is a serious, pervasive barrier to victims' opportunities for career advancement. It can have severe and traumatic effects on the wellbeing of those who experience it. Organizations have both a moral and legal obligation to take claims of sexual harassment seriously

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<sup>1</sup>Organizations which employ fewer than 15 people are not legally required to abide by EEOC standards of responding to workplace harassment.

through documenting them, investigating them, and taking appropriate corrective action. By adopting this policy, the Open Stories Foundation has agreed to follow its protocol for appropriate response to incidents of sexual harassment.

*This policy has been prepared by Shelley Denison, an independent nonprofit governance consultant in Columbus, Ohio.*

## Need for a Sexual Harassment Policy

A 2016 Equal Employment Opportunity Commission<sup>2</sup> study found that between 25% and 85% of women have experienced workplace sexual harassment. Of the victim responses to sexual harassment studied, such as confiding in friends or enduring the behavior, the study found that the least common avenue pursued is internal reporting structures: only about one third of workplace harassment victims spoke with a superior about their harassment and only 6% of victims filed a formal complaint. The study found that the most common reasons for non-report include fear of disbelief, fear of social or professional retaliation, fear of blame, and fear of organizational inaction. These fears are not unfounded: one 2003 study<sup>3</sup> found that 75% of women who reported workplace sexual harassment faced retaliatory pushback. These statistics show a harrowing need for organizations to be proactive in protecting employees and associates from workplace sexual harassment and providing appropriate measures for responding to sexual harassment claims.

An additional purpose of a sexual harassment policy is to protect the organization from legal and financial liability. Under employment law, employers can be held liable for the behavior of their employees. Having a formal reporting and investigation process allows the organization to show that it has performed due diligence in responding to sexual harassment. Additionally, the EEOC report found that organizations suffer lost productivity and increased turnover as a result of workplace sexual harassment. It should be made explicit, however, that **the primary purpose of a sexual harassment policy is to protect individuals from sexual harassment and empower victims and the organization with tools to respond to sexual harassment; avoiding organizational liability is a secondary purpose.**

Given these two points, the need for a sexual harassment policy is clear. Sexual and gender-based harassment occurs in organizations of all types and sizes, including in the nonprofit

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<sup>2</sup> U.S. Equal Employment Opportunity Commission. (2016). Select Task Force on the Study of Harassment in the Workplace.

<sup>3</sup> Cortina, L. & Magley, V. (2003). Raising Voice, Risking Retaliation: Events Following Interpersonal Mistreatment in the Workplace. *Journal of Occupational Health Psychology*, 8(4).

sector. Both the EEOC and top human resource professional associations strongly encourage all organizations to adopt comprehensive policies regarding workplace harassment. The following sections will outline procedures for reporting and responding to allegations of sexual harassment for The Open Stories Foundation.

## Definition of Sexual Harassment

According to the Equal Employment Opportunity Commission report, one of the key reasons for the disparity in reported instances of sexual harassment is that sexual harassment lacks a single, standard definition. Having a clear definition of sexual harassment provides a standard on which reporting and investigation can stand. The most basic definition of workplace sexual harassment comes from the EEOC, which bases its standards for harassment on the Title VII (a section on workplace discrimination) of the 1964 Civil Rights Act. The EEOC defines sexual harassment as follows:

**“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile or offensive work environment.”**

Legally, there are two types of workplace sexual harassment as determined by the Supreme Court case *Meritor Savings Bank v. Vinson*.<sup>4</sup> The first is quid pro quo harassment, which includes instances of superiors requiring sexual favors from subordinates in exchange for employment-related actions such as receiving a raise or keeping a job. The second type of sexual harassment is creating a hostile work environment. This includes the pervasive presence of sexual material, threats, or jokes thereby fostering a hostile or intimidating work environment.

While the EEOC definition covers the basic principles of sexual harassment as defined by federal law and judicial precedent, many organizations and human resources firms provide additional definitions and classifications of sexual harassment based on their specific needs and contexts. For The Open Stories Foundation, not only will investigations of sexual harassment against employees be required, but also investigations into allegations of harassment against anyone by an OSF employee,

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<sup>4</sup>Meritor Savings Bank, FSB v. Vinson. U.S. Supreme Court, 1986.  
<<https://www.oyez.org/cases/1985/84-1979>>.

board member, volunteer, or contractor during the execution of their OSF duties. The following are illustrative, but non-exhaustive, examples of claims for which an investigation is required under this policy:

- An interview guest is harassed by a podcast host contracted by OSF either during the interview or at any time during podcast-related contact.
- A workshop attendee is harassed by an event volunteer during the course of the workshop.
- An OSF employee, volunteer, or contractor is harassed by another OSF employee, volunteer, board member, or contractor at any time.
- An OSF employee suggests that a subordinate provide sexual favors in exchange for any work-related benefits, such as a promotion or a raise, or threatens termination of employment if sexual favors are not provided.

As illustrated by these scenarios, two criteria must be met in order to warrant an investigation: first, the alleged perpetrator must be an official employee, contractor, board member, or volunteer of the Open Stories Foundation. Second, if the person making the incident claim is not formally affiliated with OSF, the incident must have taken place while the individual against which the claim is made is acting in their capacity as an employee, contractor, board member, or volunteer for OSF. If the individual reporting an incident is also employed or otherwise formally affiliated with OSF, the incident need not occur while the alleged perpetrator is acting in their professional capacity in order to warrant an investigation.

Appendix A of this policy is a summary of unacceptable behavior. All employees, board members, contractors, and volunteers should become familiar with this summary. Proactively providing this summary to those formally affiliated with OSF can help prevent sexual harassment by clarifying potential “gray areas” of unacceptable behavior.

## Avenues for Reporting Sexual Harassment

The first step in conducting an investigation into a sexual harassment claim is to gather as much information as possible from the complainant in an initial report. The key priority in this process is to empower the reporter with options for reporting. The primary goal of this stage is to ensure that a victim of sexual harassment faces as few barriers as possible to effectively reporting harassment. There are two ways to take a report: personalized and anonymous. A personalized report has the reporter's name attached to it while an anonymous report does not. This section will explain how to make each type of report as well as steps to protect the reporter from retaliation and to ensure confidentiality.

### Incident Response Team

A pool of Open Stories Foundation affiliates, known as the Incident Response Team, are tasked with taking sexual harassment reports. When an incident report is made, at least two individuals from this team will be selected to review and investigate the report. They have been trained to respond appropriately to claims of sexual harassment and to follow effective reporting protocols. Harassment claims should be made to these individuals. Any OSF staff members in a supervisory position who receive a harassment complaint from someone they supervise should, with permission of the claimant, forward the complaint to a member of the Incident Response Team. If someone from the Incident Response Team pool is party or witness to a report, they may not serve as an investigator for that report.

### Anonymous Reporting

An individual may choose to make an anonymous report. There are many reasons why they may choose this option, including fear of possible retaliation or damage to personal reputation. The downside of this method, however, is that it is impossible to follow up with the person who makes the

complaint. Therefore, as much information as possible should be gathered when taking an anonymous report.

An online form designated specifically for reporting sexual harassment is available at <https://goo.gl/forms/aoHSvQsg3X9PylWz2>. This form asks for pertinent information related to the details and nature of the incident. This form will ask for the date and time of the incident as well as a detailed account of the incident. The reporter can supply as much or as little information as they choose. This form will explain in clear language that more rather than less information will result in a more effective investigation process, but that it is entirely up to the reporter the amount of information they wish to share.

## Personalized Reporting

If a reporter chooses to do so, they may have their name attached to their report. In this case, they will contact a member of the Incident Response Team either in person, by phone, or over email ([irtteamof.com@gmail.com](mailto:irtteamof.com@gmail.com)) to initiate reporting procedures. The IRT member will gather the following information:

1. The reporter's name and contact information.
2. The name of the alleged perpetrator.
3. The date and time of the incident.
4. As much information about the incident as the reporter feels comfortable sharing.

The members of the Harassment Response Team have been trained to gather this information with compassion and thoroughness. They have also been trained on confidentiality protocol. After taking the report, the IRT member will provide victim advocacy resources, explain next steps, and will work with the reporter to decide on an appropriate follow-up method. The IRT member will also explain that the reporter can request that the investigation be halted or stopped at any time for any reason.

## Confidentiality and Protection from Retaliation

As mentioned above, the EEOC report lists fear of retaliation as one of the main reasons why victims of harassment do not report. Acts of retaliation on the part of an employee in a harassment case can put the organization in a position of legal liability and also deter other victims of harassment from reporting their own incidents. For these reasons, maintaining reasonable confidentiality and protecting individuals from retaliation is a high priority.

Legally, retaliation is defined as any action that would deter a reasonable employee in a similar harassment situation from reporting a complaint. It is important to note that retaliation need not have hostile intentions. For example, changing the work duties of an employee who has reported that they have been harassed - even if this change in duties is intended to keep them from having to interact with the person who they claimed harassed them - can be considered retaliatory as the change in duties may be deleterious to the employee. The key criteria for determining if an action is retaliatory is to ask if that action would be taken if the individual had not made a harassment report.<sup>5</sup>

To protect confidentiality, the only individuals who should be privy to the details of the investigation are the claimant, the alleged perpetrator, the Incident Response Team, and any relevant witnesses. Other OSF staff, contractors, directors, or volunteers who are not party to the report should not be told any details of the incident until the investigation is complete.

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<sup>5</sup>Equal Opportunity Employment Commission. Questions and Answers: Enforcement Guidance on Retaliation and Related Issues. <<https://www.eeoc.gov/laws/guidance/retaliation-qa.cfm>>.

## Investigation Procedures

Conducting a fair, thorough investigation requires both sensitivity and objectivity. While standard protocol can provide a consistent framework for investigating harassment claims, each situation is unique and requires thoughtful discretion. This section will detail the steps for conducting an investigation while also pointing out where situational consideration would be needed. These steps are as follows: be prepared to document everything; undertake appropriate interim measures; begin an investigation immediately; conduct party and witness interviews; determine credibility of statements; and reach a determination.

### 1. Be prepared to document everything

The importance of thorough documentation in a sexual harassment investigation can not be overstated. Important documentation includes emails with investigation parties, a signed witness report, signed witness statements, and times and dates of investigation-related events (interviews, phone calls, emails, etc.) Adequate documentation is not only necessary to support decisions made based on the investigation, but they can protect the organization in the case of legal intervention. All documentation should be stored in a secure location which can only be accessed by the Incident Response Team.

### 2. Undertake appropriate interim measures

Depending on the severity of the situation, the Incident Response Team may suggest interim action to ensure that the claimant and the accused perpetrator have minimal contact with one another. However, care must be taken to prevent unintended retaliatory action against the claimant. Any changes made to the claimant's work duties or schedule may constitute retaliation.

### 3. Begin an investigation immediately

Any undue delay in beginning an investigation may have a number of negative consequences. First, the claimant may be less willing to trust the investigation process if there is hesitation to begin. Second, witnesses may forget important details or may be more difficult to follow up with as time passes. If a delay is required, document the reason for the delay and store it with the rest of the investigation documentation.

### 4. Conduct party and witness interviews

If there were any witnesses to the incident, contact them to schedule an in-person interview. If an in-person interview is not possible, schedule a phone interview. Ask them open-ended questions about the specific incident as well as their observations of the accused's behavior in general. Because of the EEOC's definition of sexual harassment, patterns of overall behavior can be considered when determining if sexual harassment occurred. Guided questioning may bias the witnesses' answers, so it is important to refrain from asking "loaded" questions or from elaborating on their answers for them. Finally, ask the witnesses if there is anyone else who should be interviewed and contact those individuals.

It is up to the discretion of the Incident Response Team as to when and how to contact the alleged harasser. Situational context as well as the priorities of protecting the claimant and conducting a fair investigation will guide this decision. Again, document all contact and all interview content with the accused. Have the accused perpetrator sign their statement of the incident.

Interview questions for the claimant, the accused, and third party witnesses as offered by the Equal Opportunity Employment Commission can be found in Appendix B.

## 5. Determine credibility of statements

Once all parties have given statements and all evidence has been gathered, the Incident Response Team must determine the credibility of the claim. The EEOC offers the following factors to consider when determining the credibility of each statement. These factors should be considered together, and no one of them should immediately dismiss or prove the claim.

1. **Inherent plausibility.** Do the statements make sense, and are the events as reported by the parties reasonably possible?
2. **Demeanor.** Did the person seem truthful or deceptive?
3. **Motive to falsify.** Is there any reason for the person to have been untruthful?
4. **Corroboration.** Do the witness statements or any physical evidence support or contradict the claim?
5. **Past record.** Has the accused exhibited a pattern of this behavior?

These factors should be considered for each interviewee's statement of events and each should be weighed appropriately and at the thoughtful discretion of the Incident Response Team.

## 6. Reach a determination

Once interviews have been completed and all evidence has been reviewed, the Incident Response Team will confer to determine the outcome of the investigation. This determination should be thoroughly documented and signed by the Incident Response Team. Because each claim is unique, it is impossible to provide a methodical system for determining the outcome of every harassment scenario. However, while this step necessitates a subjective consideration of evidence, supporting evidence should be clearly explained and it must show a logical path to the determination. Once a determination is reached, parties should be notified of the final decision.

## Corrective Action Procedures

Once the investigation process is complete and the Incident Response Team has determined a conclusion, they will recommend corrective action proceedings. There are two types of corrective action that can be taken: punitive action against the harasser and restorative action for the claimant. Corrective actions must be thoughtfully meted as the organization has a legal and ethical responsibility to deter harassment in the future and to show a good faith effort in actively and appropriately responding to harassment. As with all steps in the reporting and investigation process, any corrective actions taken should be thoroughly documented.

### Punitive Action

If the Incident Response Team determines that there is sufficient evidence to prove that the claims against the harasser are founded, they will suggest specific punitive actions. The type of punitive action should be proportional to the offense. What constitutes an appropriate action is up to the discretion of the Incident Response Team, but they must be able to document why the punitive action is appropriate. Some examples of punitive action are as follows:

- Oral or written reprimand;
- Reassignment of work duties;
- Demotion;
- Reduction of wages;
- Suspension;
- Discharge;
- Training to ensure the harasser understands why their behavior was inappropriate;
- Continued monitoring of the harasser's behavior

It is important that the action is proportional to the type of harassment to both protect the organization from liability and to deter future harassment. If the punitive action is too harsh, the individual against which the action is taken has the potential for legal action. If it is too lenient, it may

not successfully deter future harassment and may open the organization to legal intervention by the victim.

## Restorative Action

In addition to punitive action against the harasser, the organization also had the responsibility to provide restorative action for the victim of harassment. The first priority for restorative action is that any corrective action should not adversely affect the victim. Any adverse effects for the victim could constitute retaliatory action. Restorative action should be discussed with the victim in order to ensure that whatever action is taken is beneficial for them. Some examples of restorative action include the following:

- An apology from the harasser and from the organization;
- Removal of any negative evaluations of the employee that arose due to the harassment;
- Monitoring for any possible retaliatory action against the victim;
- Correcting any harm caused by the harassment, including compensation for losses.

## Appendix A: Statement of Unacceptable Behavior

All employees, board members, contractors, and volunteers should become familiar with what is considered sexual harassment. This statement provides an overview of what constitutes sexual harassment. Any individual formally affiliated with The Open Stories Foundation who is found through an investigation to have committed sexual harassment is subject to corrective action, including termination of their organizational affiliation. Actionable offenses include both harassment among employees, board members, contractors, and volunteers as well as harassment from any individual formally affiliated with OSF against any other person while undertaking their OSF-related duties.

Sexual harassment is defined by the Equal Opportunity Employment Commission as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

1. Submission to or rejection of this conduct explicitly or implicitly affects an individual's employment;
2. It unreasonably interferes with an individual's work performance;
3. Or it creates an intimidating, hostile, or offensive work environment.

Some examples of sexual harassment include repeated and unwelcome requests for dates or sexual encounters; telling sexually-oriented jokes or stories or making sexually explicit comments; repeated and unwanted physical contact such as hugging, stroking, patting, or inhibiting a person's ability for free movement; transmitting pornography or other sexually explicit material over email or text message; or displaying sexually suggestive material. This list is non-exhaustive. As a general rule, if you are unsure if a behavior is considered sexual harassment, you should refrain from that behavior.

In addition to committing sexual harassment, any acts of retaliation against an individual who makes a sexual harassment claim is forbidden. Retaliatory acts include any acts which affect the claimant's work environment in such a way that would deter another person from reporting a similar incident of sexual harassment.

## Appendix B: Additional Resources

### **Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors**

*<https://www.eeoc.gov/policy/docs/harassment.html>*

This document provides specific details on the potential for organizational liability in situations of workplace sexual harassment. The information found in this document is necessary to understand should legal intervention be brought into a harassment claim.

### **BetterBrave**

*<https://www.betterbrave.com>*

This website provides comprehensive resources for victims of workplace sexual harassment. All individuals who claim to have experienced sexual harassment, even if they do not want to make an official report, should be directed to this resource.

### **The Balance: Workplace Discrimination**

*<https://www.thebalance.com/discrimination-4072987>*

The Balance is a respected website on human resources issues. Its section on workplace discrimination offers a number of valuable articles and resources related to preventing and responding to sexual harassment.

## Appendix C: Investigation Questions

*The following are questions taken directly from the EEOC's Enforcement Guide.<sup>6</sup> Use these to frame interviews with the claimant, the accused, and any third party witnesses.*

### Questions to Ask the Complainant:

- Who, what, when, where, and how: *Who* committed the alleged harassment? *What* exactly occurred or was said? *When* did it occur and is it still ongoing? *Where* did it occur? *How often* did it occur? *How* did it affect you?
- How did you react? What response did you make when the incident(s) occurred or afterwards?
- How did the harassment affect you? Has your job been affected in any way?
- Are there any persons who have relevant information? Was anyone present when the alleged harassment occurred? Did you tell anyone about it? Did anyone see you immediately after episodes of alleged harassment?
- Did the person who harassed you harass anyone else? Do you know whether anyone complained about harassment by that person?
- Are there any notes, physical evidence, or other documentation regarding the incident(s)?
- How would you like to see the situation resolved?
- Do you know of any other relevant information?

### Questions to Ask the Alleged Harasser:

- What is your response to the allegations?
- If the harasser claims that the allegations are false, ask why the complainant might lie.
- Are there any persons who have relevant information?
- Are there any notes, physical evidence, or other documentation regarding the incident(s)?
- Do you know of any other relevant information?

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<sup>6</sup>Equal Opportunity Employment Commission. Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors. <<https://www.eeoc.gov/policy/docs/harassment.html>>.

### Questions to Ask Third Parties:

- What did you see or hear? When did this occur? Describe the alleged harasser's behavior toward the complainant and toward others in the workplace.
- What did the complainant tell you? When did s/he tell you this?
- Do you know of any other relevant information?
- Are there other persons who have relevant information?

## Appendix D: Online Forums and Workshops

In addition to monitoring the behavior of its formal affiliates, The Open Stories Foundation also operates a number of in-person workshops and online forums. There is precedent of other organizations requiring their forum and workshop participants to abide by standards of behavior. It is recommended that OSF adopt similar standards.

A key difference between sanctioning an employee who behaves inappropriately and a forum or workshop participant who behaves inappropriately is that the latter has significantly less opportunity for legal recourse. Because of this, the process for enforcing standards of behavior need not be as formal as is explained in this document. Rather, a clear statement of expected participant behavior and the discretion of forum moderators and workshop organizers is all that is needed.

The following are sample statements for online and workshop participant behavior expectations. It is recommended that potential online forum members and event attendees be required to agree to these policies before they are permitted to participate in these spaces.

### *Online forums (Facebook group)*

Members of this group are expected to treat each other with respect and dignity. Any type of sexual harassment will not be tolerated. Sexual harassment includes making sexually-explicit posts or comments, sending unwelcome sexually-explicit messages to other members of this group, sending repeated and unwelcome romantic messages to another member of the group, or any kind of retaliatory behavior against a group member who has reported being a victim of harassment by another member. If you have been the victim of any of these behaviors, please contact a group moderator. Any violation these policies will result in corrective action according to the discretion of the group moderators, which may include banning from the group.

### *Workshops and other events*

In order to protect the safety and wellbeing of all conference attendees, all attendees must agree to follow standards of acceptable behavior regarding sexual harassment. Any kind of sexual harassment will not be tolerated. Sexual harassment includes making repeated and unwelcome sexual or romantic

advances toward another person, stalking or following, inappropriate physical contact, unwelcome photographing or recording, unwelcome sexual attention, or any kind of retaliatory behavior against a workshop attendee who has reported being a victim of harassment by another attendee. If you have been the victim of any of these behaviors, please report them to a workshop organizer. Any violation of these policies will result in corrective action according to the discretion of the organizers, which may include removal from the event.