

## **SEXUAL HARASSMENT**

ASMSA is committed to its mission of providing an academic and employment environment that fosters excellence. Sexual harassment violates the trust and respect essential to the preservation of such an environment, and threatens the education, employment, and well-being of its community members. ASMSA employees and students have the right to work and study in an environment free of any form of sexual harassment. This right is protected by Title VII of the 1964 Civil Rights Act for employees and Title IX of the Educational Amendments of 1972 for students. Sexual harassment is destructive to students, faculty, staff and the ASMSA community, and it will not be tolerated. ASMSA opposes all forms of sexual harassment, whether subtle or direct, and is committed to the thorough, timely and confidential investigation, in a fair and impartial manner, of all complaints.

The Equity Coordinator, currently the Director of Human Resources and Campus Culture, is responsible for investigating sexual harassment complaints involving employees. The Title IX Coordinator, currently the Dean of Students, is responsible for investigating sexual harassment complaints involving students and visitors. Incidents of sexual harassment involving visitors should be reported directly to the Title IX Coordinator. During non-business hours, sexual harassment complaints may be reported to the ASMSA Security office which will then refer the complaint to the appropriate Coordinator. If a visitor to ASMSA or an ASMSA-sponsored event experiences an incident of sexual harassment, the appropriate Coordinator should be contacted.

This policy may not be used to infringe upon academic freedom. Students, faculty, staff and guests must be aware of the need for freedom of inquiry and openness of discussion in its educational and research programs and must strive to create and maintain an atmosphere of intellectual seriousness and mutual tolerance in which these essential features of academic life can thrive. No campus can or should guarantee that every idea expressed in its classrooms or laboratories will be inoffensive to all; pursued seriously, education and scholarship necessarily entail raising questions about perceived opinions and conventional interpretations. If, however, ASMSA determines that credible accusations of inappropriate sexual remarks or actions have been made, ASMSA shall investigate such accusations promptly, thoroughly and fairly.

Sexual harassment is particularly serious when it threatens relationships between teacher and student, or supervisor and subordinate, because of the potential to exploit the power inherent in these relationships and to undermine the ability of ASMSA to carry out its mission. ASMSA strongly encourages all community members to report incidents of sexual harassment. To the extent possible, reporting and investigating procedures are supportive of and sensitive to the alleged victim, while safeguarding the rights of the alleged offender.

ASMSA will take appropriate actions within the scope of its legal authority to prevent, correct, and discipline behavior that violates this policy.

## **1. Definition**

Sexual harassment is defined as unwanted, unsolicited, inappropriate, or irrelevant sexual or gender-based activities, gestures, physical contact, or statements which, when viewed from the perspective of a reasonable person similarly situated, meets the following criteria:

- Such conduct is either explicitly or implicitly made a term or condition of an individual's employment with ASMSA;
- Submission to or rejection of such conduct by an individual is used as a basis for an employment; or
- Such conduct has the purpose or effect of interfering with an individual's work or campus activities; or
- Such conduct creates an intimidating, hostile, offensive, or demeaning environment.

## **2. Prohibited Acts**

For the purpose of this policy, sexual harassment may take many forms - subtle or indirect, or blatant and overt. It may consist of repeated actions or may even arise from a single incident if sufficiently extreme.

Sexual harassment may occur within a variety of relationships. It may occur between individuals of the opposite sex - male against female, or female against male – or between individuals of the same sex. Incidents may occur between supervisor and subordinate, faculty member and student, or between fellow employees and fellow students; they may also take place between employees and campus visitors, and between employees and those who do business with ASMSA. Especially injurious, however, is harassment in relationships characterized by an imbalance of power and authority.

Typically, such relationships are found between:

- Employer and employee (usually supervisor and subordinate);
- Faculty and student;
- Administrator and student;
- Employee and student;
- Senior and junior faculty;
- Administrator and faculty.

## **3. Examples**

The perception of conduct which constitutes sexual harassment may vary from individual to individual; what is offensive to one person may be less so to another. The following are examples of potential sexual harassment scenarios but do not cover all possible situations:

- Physical assault;
- Suggestions that submission to or rejection of sexual advances will influence decisions regarding an individual's employment or educational status;

- Repetitive remarks or actions of a sexual nature (including, but not limited to, statements, questions, jokes, and anecdotes) which constitute a pattern where actions unreasonably cause discomfort or humiliate an individual;
- Unwelcome visual contact or body language that communicates a sexual message;
- Whistling, cat calls, leering, or other improper gestures;
- Persistent, unwelcome flirtations, and outright advances or propositions of a sexual nature;
- Unwelcome remarks or actions about an individual's appearance;
- Unwelcome repetitive touching, such as patting, pinching, hugging, or brushing against an individual's body;
- Unwarranted displays of sexually suggestive objects or pictures;
- Unwelcome exposure to sexually explicit music, letters, or written notes; and
- Unwelcome descriptions of sexual activity or speculation about previous sexual experiences.

#### **4. Disciplinary Action**

Disciplinary action for violations of the policy may include, but is not limited to, the following: oral or written reprimand, reassignment, probation, suspension, expulsion, counseling, demotion, termination, or any combination thereof. Sanctions for sexual harassment depend upon the circumstances in each case. In addition to disciplinary action, those who engage in sexual harassment may be subject to legal consequences, including civil and criminal penalties and monetary damages. All individuals accused of sexual harassment shall be given the opportunity to respond to the complaints prior to any final decision.

#### **5. Confidentiality**

ASMSA understands that some individuals may be reluctant to tell anyone about harassment or to have their names disclosed. Every reasonable effort will be made to maintain confidentiality of all parties, all conversations and all documents concerning a sexual harassment complaint. However, ASMSA's obligation to stop sexual harassment means that it cannot fail to take appropriate action and, as such, confidentiality cannot always be guaranteed. The appropriate administrative officials will be kept informed on a "need to know" basis. All persons involved should maintain confidentiality to the greatest extent possible, except to the extent needed for processing complaints under this policy.

#### **6. Retaliation**

Reprisals or retaliatory action against an individual who, in good faith, reports or provides information in an investigation about behavior that may violate this policy will not be tolerated. Such action should be regarded as a separate and distinct cause for disciplinary action.

#### **7. Malicious Allegations/Complaints/False Information**

ASMSA is committed to protecting the due process rights it provides to the accused as well as the accuser. Allegations of sexual harassment that are malicious, intentionally false, or without foundation are very serious with potential for great harm to all persons involved and are

prohibited by this policy. Such actions constitute grounds for disciplinary action that may include, but is not limited to, written warning, demotion, transfer, suspension, expulsion or dismissal. Further, repeated filing of frivolous complaints is considered a malicious action and may be grounds for disciplinary action.

The failure to substantiate a sexual harassment complaint does not automatically constitute a malicious or frivolous complaint. In the event that allegations are not substantiated, every reasonable effort will be made, and all reasonable steps taken to restore the reputation of the accused if it was damaged by the proceedings.

## **8. Record Keeping**

Each complaint should be documented and kept in a confidential file separate from the personnel or student files normally maintained by the offices of Human Resources or Student Affairs. Sexual harassment files will be maintained by the appropriate Coordinator.

Documentation should include the name of the complainant and accused, nature of the complaint, date(s), witnesses, name(s) of the person(s) who received the complaint, name(s) of the person(s) who prepared the written documentation, date of the written documentation and any other information relevant to the case. If some of this information is not available, the reason(s) for unavailability, if known, should be documented.

## **PROCEDURE**

Complaints of sexual harassment, submitted in writing or accepted orally, are taken seriously, and will be dealt with promptly. Allegations of sexual harassment shall be judged on the facts of the case and the context in which the alleged incident(s) occurred. The complainant has the responsibility of proving the alleged sexual harassment. The specific action taken in any case depends on the nature and gravity of the conduct reported and may include intervention, mediation, investigation, and the initiation of disciplinary action as described above. Where a violation of the policy is found to have occurred, ASMSA will act to stop the harassment, prevent its recurrence, and discipline those responsible.

## **REPORTING**

Employees with complaints of sexual harassment are encouraged to notify their immediate supervisor. However, if the accused harasser is the employee's immediate supervisor, the complaint should be submitted to the next person in the line of responsibility. Alternatively, the employee may notify the Equity Coordinator.

Students should report incidents of sexual harassment to the Title IX Coordinator.

Individuals who need to report an incident of sexual harassment after regular business hours should report the incident to the ASMSA Security Department if the employee's supervisor is unavailable or other administrative offices are closed. The ASMSA Security Department will notify the appropriate Coordinator at the beginning of the next business day.

Individuals who witness possible sexual harassment should report their concerns to the appropriate Coordinator.

When an ASMSA employee receives a report of sexual harassment, he or she must immediately notify the appropriate Equity Coordinator prior to taking any action to investigate or resolve the matter informally and must act only on direction from such office. ASMSA recommends that all reports of suspected sexual harassment be made within one hundred eighty days of the alleged incident to assist in the investigation process.

### **INFORMAL COMPLAINT PROCESS**

If an employee believes that sexual harassment has been or is occurring, he or she is encouraged, but not required, to communicate clearly, preferably in writing, to the alleged harasser and state the conduct is not acceptable. The employee is also encouraged to maintain carefully written records of the harassment and to continue to maintain current records throughout the process.

The employee should consider meeting with the Equity Coordinator to discuss the sexual harassment allegation. If the employee cannot decide whether to initiate a formal complaint or is reluctant to discuss the matter with the alleged harasser, he or she may seek the advice of the Equity Coordinator who, with the individual's permission, may seek to resolve the issue informally through discussions with the individual, the accused, and the accused's supervisor.

A signed, written complaint shall not be required to initiate the Informal Complaint Process. However, if the individual does not wish to prepare a signed, written complaint, written documentation shall be prepared by the Equity Coordinator. Such written documentation shall include the nature of the complaint, the date(s) on which the alleged incident(s) occurred, and any witness(es) to the incident(s). The complaining individual shall be asked to read the written documentation prepared by the appropriate representative to acknowledge its accuracy; a written acknowledgment will be preferred and may be made in a separate document. Written documentation shall be prepared before any informal discussions are held with the accused and the accused's supervisor. The accused shall be given an opportunity to read the written documentation that may, if deemed necessary, be edited by the Equity Coordinator to protect the anonymity of the complaining individual.

If the parties are unable to reach a mutually satisfactory agreement after meeting, the option of filing a formal complaint is available. If a mutually satisfactory agreement is reached, it should be documented in writing and signed by the complainant, the accused, and any third party participating in the process.

For employees, the Informal Complaint Process may also include referral of either or both parties to confidential counseling through the Employee Assistance Program.

The complainant or the Equity Coordinator may elect to transfer the complaint to the Formal Complaint Process at any time as deemed necessary to resolve the complaint in an appropriate and timely manner.

## **FORMAL COMPLAINT PROCESS**

When the Informal Complaint Process fails to resolve the complaint, or in instances where the Equity Coordinator determines the nature of the allegations requires formal investigation, the Formal Complaint Process will be used. The Equity Coordinator may assist employees in preparing the complaint, in writing, as necessary.

To file a formal complaint, the Complainant must submit an Employee Grievance/Complaint form (located on the Human Resources webpage) along with a signed, written statement alleging the harassment to the Equity Coordinator. Documentation should include the name of the Complainant, the name of the Respondent, the nature of the complaint, date(s), witness(es), the name(s) of the person(s) who received the complaint, and any other information relevant to the complaint. If some of this information is not available, the reason(s) for unavailability, if known, should be documented.

The Equity Coordinator will gather relevant evidence by interviewing the Complainant, the victim (if different from the complainant), the Respondent, and any witnesses or other individuals deemed appropriate to conduct a thorough investigation.

The Equity Coordinator will present a copy of the complaint and a copy of the sexual harassment policy to the Respondent. The Respondent will be given an opportunity to respond to the complaint orally and in writing and may provide evidence and witnesses. The Equity Coordinator will also explain that there is to be no contact with or retaliation against the complainant.

Following completion of the investigation, the Equity Coordinator will present his or her written findings to the appropriate supervisor and work to determine a course of action. It is the responsibility of the supervisor to act consistent with the written findings and actions determined. Once a final determination is made, both the complainant and the accused will be notified of the action to be taken by the Equity Coordinator.

Employees may appeal any employment decision made subsequent to a finding of sexual harassment through the campus grievance procedure provided in the employee handbook.

Complainants may not appeal administrative decisions regarding sexual harassment complaints through the grievance process.