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How to and Why Investigate an External Sexual Harassment Complaint

A Policy Research Project
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by
Ryan Mychal Getty

Lancaster I.S.D. Police Department
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ABSTRACT

In these litigious times policing has become more of a profession than a trade. It benefits law enforcement officers greatly to familiarize themselves, not only with their own policy and procedures, but current case law. The review and understanding of case law forms the basis for the policies of the department. Recently, one such policy that has become very important is: "Investigation of Sexual Harassment Complaints." Often times this means interdepartmental definitions, complaint procedure and investigations of sexual harassment complaints made by employees against other employees of the department. This research paper will address mainly external complaints of sexual harassment made by citizens, teachers and students against one another and investigated by the department.

Sexual harassment policies of interdepartmental nature are well defined. External complaints and the subsequent investigations are usually handled differently by each officer and tragically sometimes, improperly.

I have researched actual affidavits, other department's procedures, our policies, laws, news articles, books and journals as to how internal (interdepartmental) complaints are made, investigated and concluded. Based on this research I propose a policy to determine whether the complaint is valid, another crime, how and whether to record, report and investigate it and just as important, standardize the procedure.

Once the policy is enacted it will lessen the department's civil liability and enhance the credibility and thoroughness of the investigation.

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Introduction

In the past no one has standardized how to investigate an external sexual harassment complaint – one generated by the staff or student(s) – against a member of the staff or student(s.) This project should outline the hows and whys to report and / or refer a complaint of sexual harassment.

The current problem is the lack of a guideline for officers and investigators to guide them when confronted with an external "sexual harassment" complaint. They stepped through the complaint process with hope they satisfied the victim -- whether or not it's a correct procedure – and not either referring the victim to the correct counsel and / or not charging the offender if criminal charges were warranted.

The project will be presented to the chief, the superintendent, legal office, and ultimately the school board for consideration. Once approved the proposal will be set to policy and a procedure written. It shall be standardized in every sworn officers' procedures manual.

After the project is set to policy and "legalized" by the superintendent and board it'll be distributed to all officers and staff. If they are ever confronted with a sexual harassment complaint, they will have a template policy and procedure to follow. This will ultimately please (satisfy) the complainant, allow for uniform investigation so less pertinent information will be missed, documentation for reduced liability and proof of thoroughness and competency.

Legal and Historical Context

The only initial way to correctly decide whether a complaint should be investigated from a sexual harassment standpoint, a criminal act or both, is by knowing what sexual harassment is, what it is not and how the law is intended to be applied.

The Civil Rights Act of 1964, (42 USC 2000e-2), and in an educational setting 20 USC 1681 et. seq., (Appendix 1) make it illegal to discriminate on the basis of race, color, religion, age, national origin, or sex. The Act (law) prohibits employees, from among other things, discrimination on the basis of sex with respect to compensation, terms, conditions, or privileges of employment. In addition, another form of sex discrimination is sexual harassment. (Rubin 2) In the late 70's courts determined that proven allegations of sexual harassment could establish a cause of action for sex discrimination under 42 USC 2000e-2. In 1977, a court held that when employment opportunities hinged on the employee's willingness to perform sexual favors, the employee's rights under 42 USC 2000e-2 were violated. By 1980, the Equal Employment Opportunity Commission (EEOC) developed guidelines that established sexual harassment as a form of discrimination prohibited by 42 USC 2000e-2. These EEOC guidelines apply on a case-by-case basis to sexual advances made inside or outside of the working environment during social or business occasions and to other forms of sex harassment. EEOC policy guidelines define sexual harassment as "unwelcome sexual conduct that is a term or condition of

employment."

Sexual harassment claims have developed under two distinct theories: "Quid pro quo" and "hostile environment." Quid pro quo sexual harassment evolved first and describes those situations where an employee must choose between submission to sexual demands or losing job benefits, promotions or employment. (Levy 147) In other words, the employee suffers an adverse employment consequence because of a superior's discriminatory behavior. To sustain a quid pro quo course of action, an employee must show:

- The employee belongs to a protected class. Women and men are protected under 42 USC 2000e-2 against employment discrimination on the basis of gender;
- The employee was subjected to unwelcome sexual harassment: advances, request for favors, and other verbal or physical conduct of a sexual nature, which were unsolicited and undesirable or offensive to the employee;
- The harassment complained of was based on sex. If it were not the employee's sex, the employee would not have been the object of harassment; and
- The employee's reaction to the harassment affected tangible aspects of the employee's compensation, terms, conditions or privileges of employment.

The employer is strictly liable for conduct of a supervisory employee which causes an employee tangible job detriment.

The second category of sexual harassment claims is more complex and involves what has become known as a hostile or offensive working environment. Courts have ruled that employees have the right to work in an environment which is

not sexually hostile or offensive. A work environment based on sexual harassment is discriminatory and is prohibited by 42 USC 2000e-2. To this length a custodian can be an unknowing participant in a sexual harassment claim for not removing sexually harassing graffiti in a bathroom or on desks. (Cohan, 6) Hostile work environment cases often begin with a resignation followed by a claim of constructive discharge. (Boone 2)

These forms of sexual harassment are of course internal, and are usually handled by supervisors and/or the EEOC. As an officer handling a complaint, you must decide which certain steps to take and correctly and efficiently handle the complaint. (Appendix 2)

How the investigation is conducted is based on the nature of the complaint. (Bennett, 22) There are several sexual harassment acts which are also criminal in nature as well as 42 USC 2000e-2 violations. (Appendix 3) The best example is one of unwanted or unsolicited physical contact which is sexual in nature. This act can fulfill the elements of Assault, which are: 1. Physical contact 2. Offensive in nature. (Texas District and County Attorneys Association, 42-43)

Review of Practice and Literature

Most research has been done as to the extent of sexual harassment occurrences, enacted policies and their impact on the number of complaints. Since most law enforcement practitioners know the criminal violation aspect, they must be educated in their particular departments sexual harassment policies, generic concepts of sexual harassment, and how's and why's the policy formed.

Lancaster Independent School District's policy on sexual harassment is clearly outlined in its *School Board Policy Manual.* It clearly states what to do if you believe you or your child is a victim, how, to whom, and when to file a complaint and it gives a brief explanation of how the internal investigation should and will be handled. (Lancaster ISD 1-6)

Lancaster ISD counselors pass out Channing L. Bete Co. booklets called "Sexual Harassment is No Joke: A Guide For Teens" to students of real life situations such as sexual comments, unwelcome "brushes" against a female, and how a student can handle a complaint. (1-15)

Counselors usually call in a police officer to inform them of the accusations and investigate if there are criminal violations. Most if not all policies enacted have a "no tolerance" clause regardless of practice.

The Lubbock ISD Police Department policy requires "to provide a working environment free from sexual harassment and intimidation consistent with the

provisions of Title VII of the Civil Rights Act of 1964" but does not explain what that "working environment" is in its policy. It goes on to explain what sexual harassment is, what personnel are expected to do and not do, and complaints concerning department employees are to be taken directly to the Chief of Police. (Lubbock ISD)

The City of Los Angeles Police Department, a large department, give a very in depth explanation of its sexual harassment policy. It is complete with its mission statement, reference to laws and regulations, responsibilities and roles of employees, supervisors and command personnel and explains the investigation at each level of complaint. (LAPD 99-100)

What are some of the complaints given to supervisors or counselors? A questionnaire given to students in graduate training showed jokes with sexual themes as the highest experienced behavior and sustained and/or french kiss as the lowest. (Paludi and Barickman, 212) To note, of the 15 categories, nine could be criminal violations also.

A 1985 American Psychological Association (APA) report presents the results of a mail survey of graduate student members of APA's Division of Clinical Psychology and Division of Counseling Psychology. Of 246 women responding most (21%) said they didn't enroll in a course to avoid sexual harassment while only 3% said they dropped a course because of actual sexual harassment. (Bailey and Richards, 1985)

As far as faculty members are concerned, a 1988 study surveying women

faculty members of APA's Division 27 on Community Psychology asked specific questions about harassing activity. Of 229 women responding 75% experienced jokes with sexual themes in graduate school, while only 12% experienced unwanted breast or genital stimulation by, or unwanted intercourse with, a mentor. (Bond 1988)

These particular – but similar -- studies note the low percentage of perceived sexual harassment occurrences by students, opposed to the possible awareness (or more oft reported) of the staff. That is where supervisors, counselors and officers need to properly learn the definition and offense of sexual harassment and properly teach and report, suspected sexual harassment instances. There are resources for this very subject. One such resource is *Flirting or Hurting: A Teacher's Guide to Student-to-Student Sexual Harassment in Schools*, by Stein and Lisa Sjostorm, is a new teachers guide to student-to-student sexual harassment in schools grades 6 - 12. It gives examples and references to a new teacher enabling them to decipher what, when, and how to report suspected sexual harassment. Therefore there are guides out there to refer when there is a question of, "is it or is it not sexual harassment?" All to often though "guidance" usually comes only in the form of policy and is not practical or discernable or worst of all, litigation, from a defendant's perspective.

Discussion of Relevant Issues

Since it is as politically, as well as morally and ethically correct to formulate a sexual harassment policy, all businesses and government agencies should have a working sexual harassment policy. Policies are only as good as their actual application, practice and monitoring. This "burden" or responsibility falls on each individual in their acts or omissions in each and every potential interaction with the opposite or same sex. (EEOC) Cost for not following policy can be extremely expensive.

In St. Louis a federal jury awarded $176,000 ($11,000 back pay and $165,000 compensatory damages) to a former dispatcher on her claims of sexual harassment and retaliation against the St. Louis Police Department. (Kopfensteiner)

However, a federal court granted summary judgement to the city of Milwaukee and a police Captain, and dismissed two police officers' claims of sexual harassment despite the fact that the city conceded, for the purposes of the motion, that a hostile environment existed. (Rouse)

Why these divergent outcomes? A well written sexual harassment policy, if properly and consistently implemented and adhered, can make the difference. Milwaukee did, St. Louis did not respond promptly to sexual harassment claims and follow its policies. Departments must examine themselves with a fresh view to eliminate what one court referred to as "the ambiance of a

nineteenth century military barracks." (Andrews)

A department should enact a clearly definable sexual harassment policy, both internal and external policy, implemented, and discourage internal sexual harassment and teach how to investigate external sexual harassment complaints. Policies and the grievance procedure must not only facilitate employees reporting incidents but encourage them to do so. (Meritor) Heckertoh and Barker both agree proactive policies do deter sexual harassment both internally and externally. (Heckeroth 56-58) Cost is minimal. A couple hundred dollars for copying cost and man hours for classroom time could prevent literally hundreds of thousands of dollars in lost litigation or thousands in legal fees. Also, the cost of investigation, preparation for trial, and the trial itself can be very expensive and unpredictable. (Martin 37) Intangible benefits are a healthy sexual harassment free work place and no botched external investigations. Opposition to sexual harassment proactive policies should be minimal. Most opposition should be in the form of convincing supervisors of their obligations. (Underwood 43) Once the board and Chief of Police "buy" into and support the idea of a proactive internal and external sexual harassment policy and monitor the implementation phase. The school board supporting a proactive stance on sexual harassment policy, procedures, investigations, and monitoring is the key. In the case of even non-

employees of the district, the school could be liable. The school (board) may be held responsible for the actions of non-employees who sexually harasses employees or students in the workplace (school) in situations in which your supervisory personnel knew or should have known of the behavior, unless you can prove you took immediate and appropriate action. (Wishneitsky, 43) Therefore, it is of the utmost importance that proactive internal and external sexual harassment policies are formulated, implemented, followed, supervised, monitored and updated periodically. Statistical data can be taken to verify or invalidate the current policy and procedure. If it appears there are faults in any part of the process, committees may be set up to identify and address which part or parts of a particular policy or procedure are deficient. These committees should constitute all included members of the district, from custodians, students, faculty, principals, police officers, to school board members and citizens. This way one can get a highly diverse, and hopefully, decisive view on that particular districts methods for preventing, reporting, investigating, and overall handling of internal and external sexual complaints. This also allows for community standards, input and involvement as well as conformity to the law. As a byproduct, the community, school employees and officers are educated as to the intricacies of internal and external sexual harassment policies (and investigations.)

Conclusion and Recommendations

An internal and external sexual harassment policy must be enacted, implemented, and monitored. In order to properly investigate externally generated sexual harassment complaints officers must be trained in sexual harassment policy and procedures (both internal and external). They can therefore determine how the investigation may progress. Whether, from an investigatory stand point, based on facts and circumstances, the complaint is an internal, external or both issue is a key deciding factor.

I looked at previous court cases, mistakes made good and poorly defined policies, moral and ethical issues and found improperly written policies and/or poorly followed or investigated sexual harassment complaints could cost the department financially and quite possibly its reputation. If the department enacts a proactive internal sexual harassment policy followed by external sexual harassment investigation guidelines, the line officers and supervisors will feel confident in their decision making and the "windfall" will be a knowledgeable officer in regards to the internal prevention of sexual harassment complaints and properly conducted external sexual harassment investigations.

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APPENDIX 1

CIVIL RIGHTS ACT OF 1964
42 USC 2000e-2
Unlawful Employment Practices

&

42 USC 1681
Prohibition of Discrimination on Basis
of Sex in an Educational Setting

§ 2000e-2. Unlawful employment practices

- (a) Employer practices

  It shall be an unlawful employment practice for an employer -
  - (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
  - (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.
- (b) Employment agency practices

  It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.
- (c) Labor organization practices

  It shall be an unlawful employment practice for a labor organization -
  - (1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;
  - (2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or
  - (3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.
- (d) Training programs

  It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.
- (e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment

practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

- (f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 (50 U.S.C. 781 et seq.).

- (g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if -

  - (1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and
  - (2) such individual has not fulfilled or has ceased to fulfill that requirement.

- (h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of title 29.

- (i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

- (j) Preferential treatment not to be granted on account of existing number or percentage imbalance

  Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.
- (k) Burden of proof in disparate impact cases
  (1)(A) An unlawful employment practice based on disparate impact is established under this subchapter only if -
    - (i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or
    - (ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.
  - (B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph
    - (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

  (ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity. (C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice". (2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.
  (3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act (21 U.S.C. 801 et seq.) or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.
- (l) Prohibition of discriminatory use of test scores

It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

- (m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

- (n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders

(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

- (B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws -
  - (i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had - (I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and (II) a reasonable opportunity to present objections to such judgment or order; or
  - (ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to -

- (A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;
- (B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;
- (C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or
- (D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28.

§ 1681. Sex

- (a) Prohibition against discrimination; exceptions

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) Classes of educational institutions subject to prohibition

in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) Educational institutions commencing planned change in admissions

in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the later;

(3) Educational institutions of religious organizations with contrary religious tenets

this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) Educational institutions training individuals for military services or merchant marine

this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) Public educational institutions with traditional and continuing admissions policy

in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) Social fraternities or sororities; voluntary youth service organizations

this section shall not apply to membership practices -

- (A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or
- (B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) Boy or Girl conferences

this section shall not apply to -

- (A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or
- (B) any program or activity of any secondary school or educational institution specifically for -
  - (i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or
  - (ii) the selection of students to attend any such conference;

(8) Father-son or mother-daughter activities at educational institutions

this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) Institution of higher education scholarship awards in "beauty" pageants

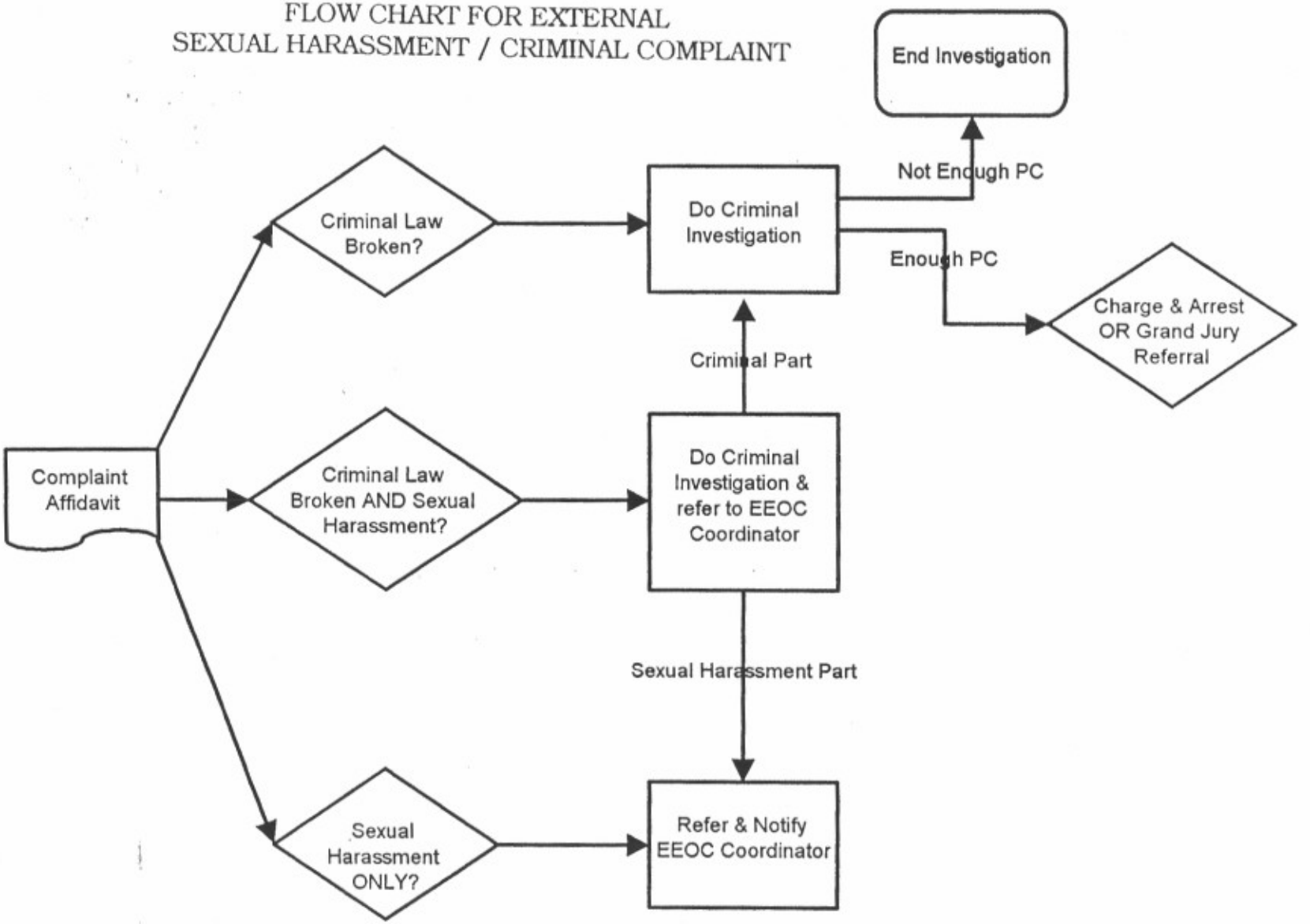
this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

- (b) Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: Provided, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.
- (c) "Educational institution" defined

For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

APPENDIX 2

FLOW CHART FOR EXTERNAL
SEXUAL HARASSMENT / CRIMINAL COMPLAINT



APPENDIX 3

Comparative and Contrasting Elements in
Sexual Harassment and Criminal Cases

Criminal	Sexual Harassment	Compare & Contrast
Texas Penal Code & Elements	Acts	
22.01 Assault Physical Contact	Physical Contact	Contact must be sexual in nature to be sexually harassing
22.011 Sexual Assault Sex Act	Sex Act	Could be both if promise or threat at job
20.02 False Imprisonment Holding a Person Against Will	Holding a Person Against Will	Both, if at job and to gain sexual favor
21.06 Homosexual Conduct Self explanatory	Self explanatory	Both, if unwanted and job connected
21.07 Public Lewdness Public Sexual Contact	Sexual Contact	Both, if unwanted and job connected

Note: The underlying theme is the unwanted or unsolicited act and sexual, or offensive and sexual in nature

THE BILL BLACKWOOD
LAW ENFORCEMENT MANAGEMENT INSTITUTE OF TEXAS

How to and Why Investigate an External Sexual Harassment Complaint

A Policy Research Project
Submitted in Partial Fulfillment
of the Requirements for the Professional Designation
Graduate, Management Institute

by
Ryan Mychal Getty

Lancaster I.S.D. Police Department
Lancaster, Texas
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BLW
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