

SEAC PROCESS FOR REPORTING, INVESTIGATING, AND ADJUDICATING

SEXUAL HARASSMENT AND SEXUAL ASSAULT COMPLAINTS

PROPOSAL SUBMITTED TO SEAC EXECUTIVE BOARD

NOVEMBER 2018 BY THE SEAC TASK FORCE ON SEXUAL HARASSMENT AND SEXUAL ASSAULT

Contact: Robbie Ethridge, Chair, SEAC Task Force, rethridg@olemiss.edu, 662-816-6369

Note: The following proposal is a draft proposal for comment. It adheres to grievance procedures regarding scientific misconduct and ethics violations in place by the American Geophysical Union, the American Astronomical Society, and the Register of Professional Archaeologists. The language of this proposal will need to be adjusted and vetted by legal counsel before implementation. We ask the members of SEAC to consider the proposal and to offer comments and suggestions for revisions at the 2018 meetings and afterwards until the second week of January 2018. To that end, the Task Force will participate in a Plenary Session at the Augusta meetings on Friday, November 16, 2018, 3-5 pm, Ogelthorpe DE, to gather feedback from the membership at large. In addition, if you would like to submit comments and suggestions via email please contact Robbie Ethridge (rethridg@olemiss.edu) or the Immediate Past President, Jay Johnson (sajay@olemiss.edu).

After gathering input from the membership, the Executive Board will determine whether or not a grievance procedure is warranted for SEAC. If the Executive Board determines that a grievance procedure is needed, the Task Force will then revise the proposal, taking into consideration comments and discussion from the membership as well as from legal counsel, and submit a final proposal for approval by the Executive Board.

SECTION 1: DEFINITIONS

1.1 Legal Definitions

1.2 SEAC Definition of Sexual Harassment

1.3 SEAC Definition of Sexual Assault

SECTION 2: INVOLVED PARTIES

2.1 The Sexual Harassment and Assault Response Coordinator (SHARC)

2.2. The Ethics Committee and the Executive Board

2.3 The Complainant and the Respondent

SECTION 3: GREIVANCE PROCEDURE

3.1 Formal and Informal Allegations

3.2 Procedure for the Preliminary Investigation

3.3 Procedure for the Formal Investigation

3.4 Review by the SEAC Executive Board

3.5 Sanctions

3.6 Appeals

3.7 Conflict of Interest

3.8 Statute of Limitations

3.9 Retaliation is Prohibited

SECTION 1: DEFINITIONS

1.1 Legal Definitions

According to the United States Equal Opportunity Commission, sexual harassment includes comments directed at someone because of their sex as well as unwelcomed sexual advances or demands for sexual favors.¹ The Department of Justice defines rape as forced penetration of any body

¹ U.S. Equal Employment Opportunity Commission, "Facts About Sexual Harassment," see <http://www.eeoc.gov/eeoc/publications/fs-sex.cfm>.

part of another person without that person's consent.² This definition of rape acknowledges that the sex and gender of the perpetrator and victim is irrelevant, a victim is not required to physically resist, and a person may be unable to provide consent (e.g., due to intoxication, psychological coercion, physical incapacitation, or other physical and mental incapacities). Sexual assault includes actual or attempted physical attacks (e.g., rape) and any sexual contact (including fondling or groping) or behavior without explicit consent of the recipient.³

1.2 SEAC Definition of Sexual Harassment

SEAC considers sexual harassment to be scientific misconduct (see SEAC Task Force 2018 Report). Sexual harassment is defined as deliberate and unsolicited verbal comments, gestures, or physical contact that is unwelcomed. This includes suggestion that any person's promotion, employment, compensation or treatment is in any way contingent upon or related to their participation in or rejection of conduct of a sexual nature. Sexual harassment also includes unwanted advances, flirtations, sexually degrading words used to describe an individual, display of sexually suggestive objects or pictures, suggestive comments including sexual jokes, or verbal or physical conduct of a sexual nature. Hostility toward or intimidation of members of the opposite sex may also be sexual harassment. Sexual harassment is a violation of Title VII of the Civil Rights Act of 1964.

SEAC urges its members to use discretion, care, and awareness that their words and actions communicate respect for others. This is especially important for those in positions of authority since those of lower rank may be reluctant or intimidated to express their objections.

1.3 SEAC Definition of Sexual Assault

SEAC considers sexual assault to be scientific misconduct (see SEAC Task Force 2018 Report).

² See, "Attorney General Eric Holder Announces Revisions to the Uniform Crime Report's Definition of Rape," January 6, 2012, available at <http://www.justice.gov/opa/pr/attorney-general-eric-holder-announces-revisions-uniform-crime-report-s-definition-rape>.

³ See "Sexual Assault," Department of Justice, updated April 2, 2015. <http://www.justice.gov/ovw/sexual-assault>.

SEAC defines sexual assault as any actual or attempted physical attacks (such as rape) and any sexual contact or behavior without explicit consent of the recipient. This includes fondling, groping, grabbing, kissing, and so on.

SECTION 2: INVOLVED PARTIES

2.1 The Sexual Harassment and Assault Response Coordinator (SHARC)

The SEAC President will appoint a SHARC for a three-year term. The SHARC will chair the Ethics Committee and be responsible for coordinating responses, investigations, recommendations, and reports related to allegations of sexual harassment and assault, whether informal or formal. The SHARC will also be responsible for writing a yearly report on the activities of the SHARC and the Ethics Committee. The SHARC will also keep records of any allegations filed with the Ethics Committee. At the close of an investigation, the SHARC will submit digital files of all proceedings to the SEAC secretary for permanent archiving. The SHARC will take on all other responsibilities detailed below as the Chair of the Ethics Committee.

Upon appointment but before taking office, the SHARC will undergo sexual harassment and sexual assault training through a legitimate Title IX training agency at SEAC expense at the earliest convenience. *[Note: If this proposal is approved by the Executive Board, the Task Force will investigate such agencies and the costs and make recommendations to SEAC.]*

The SHARC will serve as the liaison between the Ethics Committee and Field Advocates or SEACSafe Officers (see SEAC Task Force 2018 Report); however the SHARC will not act in the capacity of an advocate and will remain objective and impartial.

The SHARC will also be responsible for reviewing the current state of SEAC policy, practices, and grievance procedures in regards to sexual harassment and assault, and, as appropriate, recommend updates and revisions. The SHARC will also make recommendations, if appropriate, for any additional

resources, guidance, or training that may be helpful or needed in mitigating and assessing allegations of sexual harassment and assault. The SHARC will also be responsible for appointing a committee to devise, implement, and analyze any follow-up surveys on sexual harassment and assault deemed advisable by the Executive Board.

2.2 The Ethics Committee and the SEAC Executive Board

The SEAC Task Force recommends that SEAC institute an ethics or grievance committee (herein referred to as the Ethics Committee). The Ethics Committee reports to the Executive Board and is responsible for investigating allegations of sexual harassment and sexual assault, adjudicating the allegation, and recommending appropriate remedial action. The SHARC will chair the Ethics Committee, and work with the SEAC President to appoint four additional members from the SEAC membership. In order to establish rotating terms, the members of the inaugural committee will serve 1, 2, and 3 year terms. After year 1, newly appointed members will serve 3 consecutive years. Depending on the case, the Ethics Committee reserves the right to enlist additional members if necessary. The Chair is responsible for finding temporary substitutes for any committee members that recuse themselves for whatever reason from processing an allegation. The Chair will name one of the committee members as the Vice Chair to assist and serve as Chair in the event that the Chair has a conflict of interest or if the Chair cannot serve for other reasons.

After an allegation has been thoroughly processed (see below), the Ethics Committee will submit a report which will include their recommendation for any remedial actions to the SEAC Executive Board. The Executive Board will review the findings of the Ethics Committee and will determine whether or not to accept the Ethics Committee's recommendations for consequences or, alternately, ask the Ethics Committee for further processing. The Executive Board has the final authority to accept or reject the Ethics Committee's recommendations and to determine what actions will be taken if an allegation of sexual harassment or sexual assault is found to be substantiated.

2.3 The Complainant and the Respondent

The Complainant is the individual(s) who registers the allegation with the SEAC Ethics Committee. The complainant need not be a SEAC member. The Respondent is the individual(s) against whom the allegation is made. The Respondent must be a SEAC member at the time of the alleged harassment or assault.

SECTION 3: GRIEVANCE PROCEDURE

3.1 Formal and Informal Allegations

Allegations of sexual harassment and assault may be submitted in any form (i.e., verbally, in writing, electronically) to any member of the SEAC Ethics Committee (members and their contact information will be posted on the SEAC website) at any time. *[Note: There are on-line confidential reporting mechanisms, such as Ethics Point, that can be used to file formal complaints. If SEAC is interested, the Task Force can further investigate such services.]* However, SEAC cannot adjudicate anonymous allegations, and all formal complaints, therefore, must be filed by a Complainant that is willing to identify herself or himself to the Ethics Committee, the Executive Board, and the Respondent. Allegations for both SEAC-related activities and non-SEAC-related activities (such as a field school) can be filed.

The SEAC Ethics Committee and Executive Board will observe strict confidentiality when an allegation of sexual harassment or sexual assault is reported, up until the investigation process has been completed and a ruling by the Executive Board has been made, at which point confidentiality may or may not be preserved, depending on the case and the findings. SEAC recognizes that an allegation of sexual harassment and assault is not, in and of itself, proof of misconduct and that an allegation bears the potential to damage the career of an accused party. Those making allegations of harassment or assault in bad faith will be subject to disciplinary action such as verbal warnings and expulsion from

SEAC events. The Ethics Committee will treat all allegations and all parties involved with fairness, objectivity, and confidentiality.

When an allegation of sexual harassment or assault involves activity that is against the U.S. code of law, or the code of law in other respective regions, the SEAC Ethics Committee will work with all appropriate authorities and home institutions as needed and required to resolve the allegation. Such authorities include but are not limited to (1) research, business, governmental, and academic institutions; (2) U.S. civil and criminal courts, or (3) police and other enforcement bodies.

The SEAC Ethics Committee is committed to listening to and to addressing complaints and to guiding Complainants through options confidentially before she or he decides how to proceed, including details for informal solutions and formal complaints. Informal solutions, if so desired by the Complainant, include such things as asking the Respondent to issue an apology and assurances that the action will not happen again, a member of the Ethics Committee mediating a dialog between the Complainant and Respondent, speaking with the Respondent without the Complainant present and without revealing the Complainant's identity if requested, asking the Respondent to avoid the Complainant, asking the Respondent to leave the annual conference meeting, and so on.

After speaking with a member of the Ethics Committee to initially lodge a complaint, if the Complainant wants to proceed with a formal allegation, the Complainant must submit a formal allegation in writing that includes:

1. The name and affiliation of the person(s) submitting the allegation and the name and identifying information of the person(s) alleged to have committed the misconduct.
2. A description of the allegation that, if possible, includes dates, places, and circumstances of the alleged misconduct. However, the Ethics Committee understands that in many cases the Complainant may remember details about some aspects of the offense but not all. We advise anyone who is experiencing unacceptable behavior, if possible, to keep detailed records of such incidents, to

speak with confidants or others about the incident, or otherwise document the incident as best as one can.

3. Any documents or other relevant items with annotation showing specifically how the item relates to the allegation.

4. If possible, a list of any witnesses or bystanders who are willing to testify.

5. A statement explaining any conflict(s) of interest the Complainant has with the accused. A conflict of interest does not preclude the filing of an allegation.

After filing a complaint with SEAC, a Complainant may request that SEAC provide protections from harassment, discrimination, or bullying at SEAC activities. Such actions may include barring the Respondent from the Complainant's talk, barring the Respondent from a SEAC activity, or providing the Complainant with an escort during SEAC activities.

3.2 Procedure for the Preliminary Investigation

Upon receipt of an allegation, the Chair of the Ethics Committee will notify the SEAC President within 10 business days that an allegation has been filed. The Chair will also acknowledge receipt of the allegation to the Complainant within 10 business days. The Ethics Committee will review the material and conclude either item (a) or item (b) below within 15 business days of receipt of the allegation:

(a) does not constitute sexual harassment or sexual assault as defined by SEAC (see SEAC Background and Resource Guide for Addressing Sexual Harassment and Violence on the SEAC website) and no further action is warranted, or

(b) appears to constitute sexual harassment or sexual assault as defined by SEAC and requires further investigation.

The Ethics Committee will report their conclusions to the SEAC President. If the Ethics Committee agrees that the allegation does not constitute sexual harassment or sexual assault as defined

by SEAC, then the Chair of the Ethics Committee will notify the Complainant immediately and the allegation will be dismissed.

If the Ethics Committee believes that the allegation may constitute sexual harassment or sexual assault, then the Chair will provide notification to the Respondent and Complainant and the Ethics Committee will begin its investigations. The Chair will explain, in writing, the details of the complaint to the alleged offender. If the Respondent admits to the alleged misconduct at any time during the procedure, the investigation will be halted and the Ethics Committee will prepare recommendations to the Executive Board for actions and or sanctions to be taken.

3.3 Procedure for the Formal Investigation

The Ethics Committee has 90 days to complete its investigation, but may ask for an extension of time from the SEAC President if needed. If the internet and conference calls are to be used as part of the investigation, adequate security and confidentiality of the proceedings must be taken. Additional members may be added to a specific investigation to provide subject matter expertise pursuant to the allegation. *[Note: SEAC could also retain external consultants or legal counsel to investigate an allegation. If SEAC is interested, the Task Force can further investigate such services and make recommendations.]*

1. The Chair of the Ethics Committee will consult with the Committee to determine the schedule of the investigation and make assignments regarding specific actions to be undertaken by the committee members. All procedures will be conducted under strict confidentiality.

2. The Chair of the Ethics Committee will formally notify the Complainant and Respondent in writing that an allegation has been received and will be investigated and will provide an approximate timetable and description of the investigation.

3. The Respondent will have 15 business days to submit any exculpatory evidence. Likewise the Complainant has 15 business days to submit any additional evidence other than what was submitted in

the formal allegation process. The Complainant and Respondent may also provide written statements from themselves or others as part of the proceedings. In both cases, the Respondent or the Complainant may ask the Ethics Committee for a time extension if needed.

4. The Ethics Committee will be responsible for the collection of any additional information and evidence (including speaking with witnesses, especially if the facts are in dispute or if the Ethics Committee deems it otherwise necessary).

5. After collecting the evidence, the Ethics Committee will conduct separate interviews with both the Complainant and the Respondent (this can be done either through teleconferencing or a meeting held at a mutually agreed upon location). SEAC will cover any necessary travel expenses for all concerned. The Chair will schedule the meetings/conference calls and advise the Respondent and Complainant at least 15 business days in advance. All information that has been collected by the committee will be forwarded to both the Complainant and the Respondent no later than 10 business days before the meeting/conference call, so that all parties may evaluate it.

6. During the meeting/conference call the Ethics Committee will summarize the allegation and associated evidence of sexual harassment or sexual assault, and the Complainant and Respondent will be given the opportunity to respond.

7. The Committee, in Executive Session, will then consider all the evidence presented; make a finding as to whether sexual harassment or sexual assault has occurred; and recommend a response by SEAC. The Ethics Committee recommendations require a majority vote.

8. The finding and recommendation of the Ethics Committee will be forwarded to the Executive Board in a report prepared by the Ethics Committee and submitted by the Chair. The report should be a clear, complete, and final determination of all charges. At a minimum, the report will include the following: (1) summary of the alleged misconduct, (2) summary of the fact-finding activities of the

committee, (3) discussion and conclusion of the fact finding, (4) recommendations for actions and or sanctions to be taken, and (5) appendices as needed containing supporting documents and written statements.

9. A Respondent may retain the services of an attorney at their own cost. SEAC may also retain services of an attorney if it deems this necessary. If an attorney is needed, as determined by the Ethics Committee, the Executive Board should ensure adequate resources are available to secure the necessary legal services.

3.4 Review by the SEAC Executive Board

The Executive Board will review findings and recommendations submitted in the Ethics Committee report within 15 business days of receipt of the report. The Executive Board, by majority vote, will either accept or reject the Ethics Committee's recommendations of actions to be taken. However, the Executive Board may not reject the conclusions (findings) of the Ethics Committee. The Board can request additional investigations or processing which the Ethics Committee will have up to 90 days to conduct. The Board will notify immediately the Chair and the Respondent and the Complainant of its decision. The Executive Board will summarize its action in a report for the record and a copy forwarded to the Ethics Committee for their files. The Respondent has the right to accept or reject the recommended sanctions and will inform the Chair of the Ethics Committee in writing within 30 days of receipt of the notification as to his/her decision. If the Respondent accepts the sanctions, the Chair will complete the disciplinary action. If the Respondent does not respond within the 30 days, the Chair will send another notification and request an immediate response. If the Respondent does not accept the findings and the sanctions, the Respondent has the right to appeal (see below).

The Executive Board has the final authority to accept or reject the recommendations of the Ethics Committee and to determine what actions or sanctions should be taken if an allegation is substantiated.

3.5 Sanctions

If a finding of sexual harassment or sexual assault has been made, the Ethics Committee will recommend to the Executive Board appropriate actions or sanctions as well as the period over which the sanction will be in effect, and/or recommendations for education or training. Sanctions, in increasing severity, may include but are not limited to the following:

- a. Written reprimand or warning.
- b. Removal from SEAC volunteer position.
- c. Withdrawal/retraction of presentations, publication, or posters.
- d. Suspension from publishing in *Southeastern Archaeology* for a specific period, including permanently.
- e. Removal from SEACs Compliance List (see SEAC Task Force 2018 Report).
- f. Suspension from making presentations at SEAC-sponsored meeting(s) for a specific period, including permanently.
- g. Suspension of membership.
- h. Permanent expulsion from SEAC.
- i. Denial or revocation of honors and awards.
- j. Notification to respondent's home institution.

When a SEAC member is sanctioned by another organization for sexual harassment or sexual assault, the Executive Board may consider separate sanctions for SEAC. All members are required to self-report if they are currently under investigation or have been convicted of sexual harassment or assault when they are nominated for a SEAC committee or office or selected to receive SEAC award.

Nominations for awards and recognition will include a statement that to best of knowledge of the nominator, the nominee is not currently under investigation and has not been convicted of sexual harassment or sexual assault. A member may request in writing from the SEAC Executive Board an

exemption from this reporting requirement if there are mitigating circumstances that the Executive Board should consider.

3.6 Appeals

Once the Executive Board has decided on actions to be taken against the Respondent, the Respondent has 60 business days to file an appeal of the sanction and/or the finding. An appeal must be based on new evidence or reconsideration of evidence and include a narrative justification for the appeal. The Executive Board will review the appeal and sustain or revise its decision on the sanction or refer the appeal to the Ethics Committee for reconsideration of the finding. The Executive Board will evaluate the appeal within 30 days of receipt, at which time the President will inform both the Respondent, the Complainant, and the Ethics Committee of their decision and what, if any, course of action will be taken.

If the Executive Board requests the Ethics Committee to reconsider their findings after an appeal, the Ethics Committee has up to 90 days to reconsider the finding and any new evidence from the Respondent. If necessary, the Ethics Committee may ask the Board for an extension of time for gathering additional information. The Ethics Committee then follows the guidelines established above in the grievance procedure.

3.7 Conflict of Interest

Real or apparent conflicts of interest must be avoided in all actions by the Ethics Committee, the Ethics Committee Chair, the subject matter experts retained by the Committee, and the Executive Board during an investigation. To this end, members of the relevant committee must recuse themselves from participation in the investigation if they are from the same institution (for institutions with multiple campuses this applies only to the same physical campus), have worked closely with, have a personal relationship with, or are related to either the Complainant or Respondent.

3.8 Statute of Limitations

The shorter the period between incident and report helps greatly in the ability to investigate and bring proper remedy to a case. SEAC encourages anyone subjected to sexual harassment and sexual assault to file a complaint within one to two years of the incident taking place so that a timely investigation may be carried out. However, SEAC, at its discretion, may investigate older incidents on a case-by-case basis; and, there is no absolute SEAC statute of limitation for considering breaches of SEAC policy on sexual harassment and sexual assault.

3.9 Retaliation is Prohibited

SEAC will not tolerate any form of retaliation against persons who file a complaint or assist in the investigation. Retaliation is a serious violation of SEAC policy and will be subject to disciplinary action and grievance procedures outlined above.