



2020 Annual Members Meeting September 17, 2020
Ethics/Conduct Policies, Investigations & Resolutions Workshop

Discussion RESOURCE

Pre-Read & Plenary Instruction

Segment 1: Assessing Misconduct – Early Action

- ♦ Learning Outcomes and Corresponding “What to Listen For” (p. 2)
- ♦ Setting the Table: Foundations of Research, Policy, and Practice (pp. 3-7)

Segment 2: Deciding Resolution Pathways—Outcomes/Consequences

- ♦ Learning Outcomes and Corresponding “What to Listen For” (p. 9)
- ♦ Setting the Table: Foundations of Research, Policy, and Practice (pp. 10-11)

Use this Discussion Resource with the Assessment Resource and Pyramid Tool

Assessment Resource: *A Companion Document to this Workshop Discussion Resource*

- (1) Provides key principles, aims and criteria for assessing harm, choosing resolution processes, and considering a continuum of possible remedies
- (2) May be used to evaluate the hypothetical scenarios in the workshop and later to resolve real-life conduct concerns

The Assessment Resource in its entirety is available [here](#)

Pyramid Resolution Criteria & Options Tool (Pyramid Tool): *A Visual Key*

- (1) Landscape diagram of misconduct criteria that inform and connect severity of harm to resolution process options and to a continuum of potential remedies;
- (2) Direct links to the Part(s) of the Assessment Resource that correspond to a 3-step resolution rubric: assessing harm, process, and choosing remedies

The Pyramid Tool is available [here](#)

Segment 1/ Plenary: Assessing Misconduct—Early Action

(30 minutes: 20 minutes total for scenarios, 10 minutes for instruction)

Society Scenario Presentations: Discussion will focus on the evaluation of hypothetical scenarios, grounded in real-life experiences: “Death by 1000 Cuts” (APS) and “Dishonorable Honoree” (AGU).

SEGMENT 1 LEARNING OUTCOMES

Specific Learning Groups

Participants in **specific learning groups** will have the foundations needed to be better able to assess and prepare to resolve a conduct concern with:

- The top aim of inclusive community building to dismantle longstanding barriers to inclusion of all talent in STEM;
- A mindset grounded in research that organizations perceived as tolerant of sexual (including gender) and sexual/racial harassment will have more harassment;
- Sensitivity to the personal/professional costs of raising concerns (and making the costs worthwhile); providing options for raising conduct concerns; avoiding retraumatizing identified targets; avoiding identity- status and power-based bias—**and** ethically treating everyone involved;
- Knowledge of criteria for determining the severity of conduct concerns, considering the top inclusive community-building aim and other key factors; and
- Awareness of early action that may be needed, even while assessing a conduct concern and before beginning a resolution process.

General Learning Groups

Participants in **general learning groups** will increase their awareness of issues/others’ experiences/ideas related to mindset, considerations for assessing the severity of conduct concerns, and preparing to resolve them.

Review the Assessment Resource, Parts A and B [here](#)

SEGMENT 1— WHAT TO LISTEN FOR

- ✓ What was the alleged misconduct?
- ✓ Did the Society have documented conduct expectations or written policies? Did the expectations/policies address the situation?
- ✓ How were the conduct concerns raised? What was the nature of the associated harm?
- ✓ What “early action” was needed (taken)? What position(s)/group made an initial assessment?
- ✓ What criteria applied to assessing the conduct concerns and were the criteria in a policy?

Setting the Table: Breakout Foundations for Assessment Discussion

RESEARCH FOUNDATIONS – ASSESSING MISCONDUCT

- ❖ **Create an effective mindset and approach for receiving, assessing, and ultimately resolving conduct concerns based on research and context.**

Resource: Consortium’s 1-page [Research Summary in Roadmap Document](#) Stage 1.

Triggers of Harassment—Importance of Perceptions.

- Perception of tolerance of harassment → Strong predictor of harassment
 - ✓ Complaints aren’t taken seriously, nothing is done
 - ✓ Powerful actors “can’t be touched”
 - ✓ Complaining is at high cost to relationships/opportunities
- Vast majority of reports → Likely true
 - ✓ Due to the personal/professional costs, trauma of reporting
- Some individuals are falsely accused → Equitable treatment for everyone is needed

Research-Based Strategy.

- Top resolution aim → Inclusive community-building (which is an excellence driver)
- Law alone is not enough → But must satisfy law
- Key levers of effective policy + action → Perception + reality re: intolerance
 - ✓ Costs of raising concerns are worthwhile.
 - ✓ Words and action on inclusive conduct expectations are specific, well-socialized (**known & owned**).
 - ✓ Everyone is treated ethically.

SPECIFIC “KNOWN & OWNED” POLICY—PLUS ACTION

- ❖ **Adopt “known & owned” policies that explicitly address inclusive community aims, *with* conduct expectations** (requires community engagement).
- ❖ **Be *specific* on “aims-aligned”:** Do’s & don’ts—Safe reporting options—Ethical resolution process options.
- ❖ **Act to back policy words.**
- ❖ **Consider, harmonize all relevant conduct policies (HR, ethics, meetings, etc.) to create effective policy.**

Resources: [Model Ethics/Conduct-Harassment Policy](#) (Model Conduct Policy) ; [Model Dos & Don’ts in Roadmap Document/Stage 1](#); [Model Glossary of Terms](#) (defining sexual harassment)

Intractable structures of sexism/racism and related harassment undermine STEMM.

- Barriers to including all talent → Undermine excellence, limit contributions
- Barriers are unethical, lack integrity → Undermine credibility, reputation, public trust
- Some conduct also is illegal + breaches funding contracts → Regulatory, civil and criminal liability
 - ✓ Loss of funding, fines
 - ✓ Externally forced operations change
 - ✓ Loss of jobs/demotion
 - ✓ Criminal sanctions

“Pronouncing intolerance of harassment” reinforces aims—but won’t change conduct/climate/culture:

- With decades-long laws pronouncing intolerance → High harassment rates persist
- General pronouncements in law and society policy alone → Perception of “empty words”

Specific words & actions to advance inclusive STEMM communities:

- Policies with specific conduct expectations are needed → Known + owned by society/field community
 - ✓ Examples (do’s & don’ts, not just general labels of behavior)
 - ✓ Define sexual/gender harassment → Not commonly known
- Inclusive-community as top aims → Excellence + ethics
- Provide options to raise & resolve concerns safely and ethically → Practice what the policy preaches

KEY ACTION: WELCOME REPORTING, ASSURE ETHICAL RESOLUTION & REPROT OUT

- ❖ **Provide specificity & options for raising conduct concerns in policy & practice, driven by inclusive-community top aims & ethical treatment for everyone**
- ❖ **Report-out on types and incidence of, and response to, sexual and intersecting bases of harassment to promote an accurate perception of intolerance of harassment.**

Resources: [Options in the Consortium’s Easy Reference Participant Guide](#) at 4-5; [Investigations Policy](#) at 16, 19-20; Consortium’s [Reporting Out Template](#) in the Roadmap Document/Stage 3.

Policy + process for safe reporting options encourage raising concerns.

- Formal, informal, anonymous reporting options → Lower costs + encourage reporting
 - ✓ Providing advisor(s) enhances transparency for informed choices, supports reporting
- Respond to all reports → How/type + extent may differ based on policy + facts
 - ✓ Policy limits (e.g., covered activities, people)
 - ✓ Information limits (reporting method chosen, specificity, who’s available)
 - ✓ Community building actions usually available in any event (for uncoerced engagement)
 - ✓ Referral to others with authority to act may be available (keep referral purely factual, no embellishment/opinions, no involvement in actions others take in response)

Confidentiality policy + practice encourages reporting, advances ethical resolution.

- Confidentiality policy during review → Advances safe reporting + ethical treatment interests
 - ✓ Identified target
 - ✓ Accused
 - ✓ Witnesses, allies
 - ✓ Anyone reporting the conduct concern
- Clarity in policy on confidentiality limits → Ethical necessity to specify
 - ✓ Safety
 - ✓ Resolution (limited disclosure for needs of governance, fact-finding, investigation)
 - ✓ Possibility of informing accused's home institution of interim and final action
 - ✓ Law + government disclosure requirements (e.g., NIH, NSF policy)
 - ✓ Contract terms (e.g., insurance + funding disclosure requirements)
 - ✓ Possibility of disclosure of outcome if target consents and accused is found responsible
- Implement confidentiality policy + process → With supporting accountability norms
 - ✓ Give reminders of confidentiality requirement, as an investigation norm (to accused, identified target, others who "need to know")
 - ✓ When implementing a known + owned policy/practice, demonstrate that disclosure is a serious breach

Avoid, but prepare for communications that may be necessary.

- Speak of policy re: type of allegation → Do not speak of specific people, events
 - ✓ Do identify specifics of strong policy, history of strong action
 - ✓ Don't name names during review
 - ✓ Don't pre-judge review outcome
- Assemble team → Communications experts, leadership, advisors
 - ✓ Prepare for fast response in a social media world

ASSESSING HARM: IT'S A MATTER OF JUDGMENT

- ❖ **Combination of criteria + amplification + attenuation + judgment, applied to facts of a situation = Level of Harm**
- ❖ **Include in a known + owned policy: "Society exercises judgment to assess conduct concerns/severity of harm under specified conduct standards and corresponding flexible but specified criteria."**
- ❖ **Judgment is guided by inclusive community aims, mission.**
- ❖ **Because facts of each situation and each society's policy will differ, so too will determinations of harm. There's no formula without judgment—Each society alone should decide level of harm for policy and legal reasons.**

Resources: Assessment Resource, Part A & B [here](#); Pyramid Tool [here](#); Consortium's 1-page [Research Summary in Roadmap Document](#) Stage 1.

There's no formula—no perfection.

- Need specific policy to assess level of harm → With conduct standards, criteria, process, practice
- Policy + judgment drivers → Society-specific mission, inclusive community aims + facts
 - ✓ Harm is measured by a combination of criteria applied to situation-specific facts
 - ✓ Some facts amplify, others attenuate
 - ✓ Gender-based put-downs/sexism (severe or accumulated) can cause equivalent psychological harm to that caused by sexual coercion and unwanted sexual attention
- Role of law → A “design parameter” for sustainability of policy + practice + decision (if challenged)

EARLY ACTION NEEDS

❖ **Early action is necessary to advance inclusive community, ethics, other key aims, when a conduct concern is received**

Resources: [Anti-Bias Training, Consortium’s Compendium of Resources/Training](#); [Consortium’s Investigations Policy](#) (short-term early actions) pp. 17-21; Assessment Resource, Parts A & B [here](#); Model Notices Regarding Temporary Measures When Allegations Implicate Safety or Significant Disruption [here](#).

Avoid implicit/explicit bias + prejudgment of individuals and situations.

- Avoid implicit + explicit bias re: → Identity-status + power
- Practice → Intentional awareness + challenge of stereotypes, assumptions
 - ✓ At the start + periodically—call for explicit self- and team- reflection
 - ✓ Empower everyone to call out potential for bias throughout

Restore safety & equilibrium—Relieve immediate impacts—Preserve an ethical process.

- Identify safety issues → Physical, emotional, individual, community, etc.
 - ✓ Empathize with the needs of identified target, accused, key witnesses, others affected
 - ✓ Refer those affected to supportive resources (society’s or outside)
- Policy includes temporary preventative measures, as needed → Avoid disruption + further harm
 - ✓ E.g., Require an accused to leave an activity
 - ✓ E.g., Apply no-contact requirements
 - ✓ E.g., Impose a temporary leave or suspension
- Temporary action policy advances inclusive community aim → Barrier removal most heavily weighed
 - ✓ Mission-driven interests in an inclusive community for excellence + removal of related longstanding barriers, are the rationales for weighing barrier removal more heavily than individual interests when balancing community + individual interests is necessary
- Short-term/temporary measures policy also preserves ethical process → Fundamental fairness
 - ✓ Clearly communicate inclusive community and preventative non-disruption/safety reasons for short-term action in the context of longstanding barriers that erode excellence + be explicit that there is no prejudgment of anyone or determination, either way
 - ✓ Give those uniquely affected a chance to present their perspectives/facts
 - ✓ Provide that chance before or soon after temporary action
 - ✓ Temporary action is adjusted if needed

Identify, take any action required by law, without losing sight of top inclusive community aims.

- Laws and/or funding contracts → May require notices and/or preventative measures
 - ✓ E.g., NSF, NIH notices of leave for sexual harassment concern, preventative requirements
 - ✓ E.g., ORI research misconduct process requirements (even if harassment is intertwined)

Identify, take any action required by insurers.

- Insurance contract → Requires timely notice of claim/may require notice of potential claim

Segment 2/Plenary: Deciding Resolution Pathways—Outcomes/Consequences

(70 minutes: 40 minutes total for scenarios, 30 minutes for instruction)

Society Scenario Presentations: Exploring how the conduct concerns discussed in Segment 1 were resolved.

SEGMENT 2 LEARNING OUTCOMES

Specific Learning Groups

Participants in **specific learning** groups will gain foundations to be better able to:

- Identify resolution process options that are included in effective resolution policies;
- Understand the key elements/steps of, and differences between, formal and informal resolution processes;
- Select the option that is most effective in different factual situations, based on:
 - ✓ policy-driven criteria with top inclusive community-building aims,
 - ✓ the existence or absence of adequate conduct and resolution policies; and
- Identify key types of remedies and select those that are best aligned with policy-driven criteria and existence/absence of policy.

General Learning Groups

Participants in **general learning** groups will increase their awareness of issues/others' experiences/ideas related to conduct concern resolutions.

Review the Pyramid Tool [here](#) and Assessment Resource [here](#)

NOTE: If members are interested, this workshop may be continued via the final Hot Topics Webinar on October 15, 2020. That could provide a further opportunity to address *special challenges* that arise in resolution processes and how to handle them.

SEGMENT 2: WHAT TO LISTEN FOR

- ✓ What was the investigation/review process (formal or informal)? Why was it chosen?
- ✓ Is the process included in a “known + owned” policy with reporting, resolution and process options and criteria for resolution?
- ✓ What was the resolution/remedy chosen, using what criteria?
- ✓ What challenges arose and how were they addressed?
- ✓ What worked well? What would you have done differently?
- ✓ Was there an effect—positive or negative—on individuals, on overall conduct/climate/culture and excellence/integrity/credibility of the society or field?

Setting the Table: Breakout Foundations for Process & Remedies Discussion

PREVALENCE OF INFORMAL PROCESS – POLICY OFFERING FORMAL & INFORMAL OPTIONS

- ❖ While there are informal and formal resolution options, *most gender harassment can be resolved using an informal approach.*
- ❖ Include the process options in a policy. In all consequential respects, consistently follow the process in practice.
- ❖ Without conduct expectations and resolution processes in policy and practice, you can't meaningfully address sexual and other harassment.
- ❖ With both, you can respond with meaningful action to address harassment, while minimizing issues of fundamental fairness and claims of breach of contract.

Resources: Pyramid Tool [here](#) ; Assessment Resource, [here](#); [Model Conduct Policy](#) and [Model Investigation, Resolution and Consequences Policy](#) in the Roadmap Document/Stage 2.

FLEXIBILITY & KEY ELEMENTS OF *INFORMAL* RESOLUTION

- ❖ Informal resolution has no fixed stages, is flexible in approach, and focuses on community building
- ❖ Fact-finder may conduct the entire process if authorized; or separate persons are fact-finder and decision-maker
- ❖ Fact-finding and resolution may occur simultaneously, in real-time, in simple situations

Resources: Assessment Resource, Parts B, C, D, E on processes and definition of Community-Building Objectives [here](#); [Investigations Policy](#), pp 13-14.

Fact-finder's informal process:

- Determine, informally take notes on, basics → Who, what, how, when, where, why (required)
- Engage identified target + accused → Gain facts + multiple perspectives (required)— + if helpful, key witness(s) (optional)
 - ✓ Be flexible on how to engage—but fact-finder asks own + parties' relevant questions
 - ✓ Engage in person, by phone, by email (take notes on in person and phone discussions)
 - ✓ Be sensitive to an identified target's desire (or not) to engage directly with the accused
- If authorized, decide sufficiency of informal resolution → Community Building Objectives advanced + no need for additional remedies (other consequences/punishment) + identified target + accused agree, without coercion
- Prompt process → ~90-120 days (reasonable period, meetings require expedited action)
 - ✓ Sooner is usually best—may be during initial review if simple situation.
 - ✓ Provide flexibility for the identified target and accused to consider preference for informal or formal resolution, without pressure, or enabling them to engage longer if needed.
- Notice of outcome → To identified target, accused, decision-maker

- Perform (or refer for conduct of) informal community-building process → Advance Community-Building Objectives.
 - ✓ May be simple discussion led by fact-finder in real-time during the informal review

COMMON ELEMENTS OF FUNDAMENTALLY FAIR *FORMAL* RESOLUTION PROCESSES

- ❖ **Method may vary—Specify process in policy**
- ❖ **Results in a formal finding of responsibility (or not)**

Resources: Assessment Resource, Parts B, C, D, F [here](#); Pyramid Tool [here](#); [Investigations Policy](#), pp.14-16, 22-25.

- The fact-finder → Different person than the decision-maker (individual, pair, or committee).
- Decision-maker may initiate formal process at any time → If determines informal resolution criteria aren't met
 - ✓ Even if that becomes apparent after an informal process begins
- Begins with formal notice of allegations and process → To the accused and identified target
- Fact-finder → Conducts formal investigation + assembles a factual record
- Fact-finder assesses → Sufficiency of witnesses, evidence to investigate, facts to support findings under the policy's "standard of proof"
 - ✓ If insufficient, formal process ends—informal community building process is still available.
- Fact-finder engages identified target and accused, any key witnesses → Gain facts/perspectives.
 - ✓ Be flexible on how to engage—but fact-finder asks own + relevant questions offered by parties.
 - ✓ Engage in person, by phone, by email (take notes on in person and phone discussions)
 - ✓ Be sensitive to an identified target's desire (or not) to engage directly with the accused
- Decision-maker applies policy's standard of proof to facts → Misconduct is more likely than not to have occurred or is established by clear and convincing evidence
 - ✓ Responsibility may be hard to "prove" without witnesses, corroboration, in a "one said, other said" situation
- Decision-maker makes preliminary written decision → Provides parties opportunity to review and respond with relevant additional facts, corrections, in writing (optional, but advisable for truth-finding)
- Decision-maker makes final written decision, including consequences or punishment → Notifies parties + includes appeal rights—may also notify anyone else who reported the conduct concern
 - ✓ Consequence or punishment is commensurate with the harm
 - ✓ In addition to or instead of other remedies, conduct a community-building process to advance Community Building Objectives—whether or not a breach of policy is found—if the identified target, accused and/or others affected agree without coercion

- Prompt process → ~90-120 days prior to appeal (reasonable period)
 - ✓ Sooner is usually best
 - ✓ Flexibility to extend is needed for complexity, an exceedingly voluminous record, unavailability of people most directly involved, resource capacity
 - ✓ Formal process on meeting misconduct typically can't be completed during the meeting (may require temporary measures for safety + nondisruption, with formal process to follow)

- Appeal avenue for both parties (or at least the accused) → Limited to reasons driven by fundamental fairness
 - ✓ Consequential conflicts or process failures
 - ✓ New consequential evidence, not previously available
 - ✓ Findings or consequences unsupported by the evidence or grossly disproportionate to the misconduct found considering the society's handling of other similar situations