



DEPARTMENT OF THE NAVY

UNITED STATES NAVAL ACADEMY
COMMANDANT OF MIDSHIPMEN
ANNAPOLIS MARYLAND 21402-5100

COMDTMIDNINST 5354.1A

29 JUN 2004

COMDTMIDNINST 5354.1A

Subj: EQUAL OPPORTUNITY (EO) PROGRAM FOR THE BRIGADE OF
MIDSHIPMEN

Ref: (a) OPNAVINST 5354.1E, Navy Equal Opportunity Policy
(b) USNAINST 5354.1, USNA Command Managed Equal
Opportunity (CMEO) Program
(c) USNAINST 5354.5, Superintendent's Policy on
Prevention and Deterrence of Sexual Harassment,
Misconduct and Assault

Encl: (1) NAVPERS 5354/2 (Rev 3/00), Navy Equal
Opportunity (EO)/Sexual Harassment (SH)
Formal Complaint Form
(2) Definition of Terms
(3) Sexual Harassment Guidelines and Range of
Behaviors
(4) USNA Guidelines for Submitting, Handling, and
Reporting EO Complaints

1. Purpose. To implement the requirements of reference (a), the Navy Equal Opportunity Manual, by restating the guidance and policy for equal opportunity at the U. S. Naval Academy for the Brigade of Midshipmen. This instruction is in direct support of references (b) and (c) and as such is an integral part of the Naval Academy's efforts to issue policy and provide clear guidance to assigned members, to include midshipmen, on the identification, prevention, and elimination of sexual harassment, sexual misconduct, sexual assault and other obstacles to equal opportunity for all members.

2. Cancellation. COMDTMIDNINST 5354.1.

3. Scope. This instruction is applicable to the Brigade of Midshipmen and members of the Commandant's Staff. Policies and procedures governing civilian personnel who have EO complaints are governed under the EEO Discrimination Grievance Process. Those personnel should seek assistance from the Human Resource Department.

4. Discussion. It is the Naval Academy's policy to provide equal treatment and equal opportunity to all midshipmen and staff. The objective of this program is to promote positive

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command morale by providing an environment in which all personnel can perform to their maximum ability unimpeded by institutional or individual biases based on race, ethnicity, national origin, sex, or religious stereotypes. To this end, the Naval Academy must create, shape, and maintain a positive EO environment through policy, communication, training, education, enforcement, and assessment. The officer and midshipmen chains of command will employ appropriate resources to:

a. Create and maintain a positive equal opportunity climate within the Brigade of Midshipmen through comprehensive training, proactive command climate discussion groups, and the chain of command.

b. Identify and expediently resolve EO/sexual harassment problems and concerns through appropriate channels of the chain of command.

c. Provide the mechanism for monitoring the EO climate within the Brigade of Midshipmen through the use of the HERO Program as well as formal and informal command climate surveys.

d. Ensure merit, ability, performance, and potential are the factors which affect a midshipman's military aptitude ranking and subsequent billet assignments in the midshipman chain of command.

e. Support the established policies and programs to foster equal treatment for all and the proper development of all future Naval and Marine Corps officers.

f. Further midshipman knowledge and understanding of the Naval Academy's EO program.

5. Definitions. Terms used in this policy are described in enclosure (2). All midshipmen should become familiar with the terms and definitions to better support the efforts of the EO program.

6. Policy. It is USNA policy to prohibit unlawful discrimination and sexual harassment against persons or groups based on race, ethnicity, national origin, sex, or religion. Midshipmen will be evaluated only on individual merit, fitness, and capability. The Naval Academy's goal of achieving the highest state of morale and discipline while training midshipmen in accordance with its mission can only be

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successful in a command environment free from any form of discrimination.

a. Equal Opportunity, the prevention of sexual harassment, and all the elements thereof as defined in this instruction are gender-neutral concepts. Discrimination, sexual harassment, threats, and other behaviors covered by this instruction involving members of the same sex are prohibited. This includes conduct against midshipmen on the basis of sexual orientation or homosexual conduct.

b. Midshipmen are prohibited from participating in organizations that support supremacist causes. Attempting to create illegal discrimination, encouraging force or violence, or otherwise engaging in efforts to deprive others of their civil rights is prohibited. Participating in public demonstrations/rallying, fundraising, recruiting for, training members, and organizing/leading such organizations is prohibited. Violation of this instruction subjects involved midshipmen to disciplinary action under the UCMJ or the Administrative Conduct System.

c. No midshipman may:

(1) take reprisal action against a person who provides information on an incident of alleged unlawful discrimination or sexual harassment.

(2) knowingly make a false accusation of unlawful discrimination or sexual harassment.

(3) while in a supervisory billet or Brigade position, condone or ignore unlawful discrimination or sexual harassment of which individuals have knowledge or have reason to have knowledge.

7. Organization. Per references (a) and (b), a Command Managed Equal Opportunity (CMEO) Program will be established to support the principles of the EO program. The Commandant of Midshipmen will appoint a CMEO Coordinator (O-5 or above) to oversee and monitor the program. A CMEO Manager (O-3 or above) will be appointed to administer the program within the Brigade of Midshipmen. An Equal Opportunity Advisor (EOA) will be appointed (E-7 or above) to assist the CMEO Coordinator and CMEO Manager in managing the program and to provide technical advice

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to the staff to ensure compliance with both the spirit and intent of reference (a). The CMEO Coordinator, CMEO Manager and the EOA are required to complete formal EO training sponsored by the Defense Equal Opportunity Management Institute (DEOMI) and as required by CNET. The CMEO Coordinator will report to the Commandant of Midshipmen.

a. The CMEO/HERO midshipman chain of command will be utilized as the primary means of bringing equal opportunity issues involving midshipmen within the Brigade to the attention of the command. Midshipmen in CMEO/HERO billets will be trained to recognize potential problems and the procedures to follow in the event an allegation is made. They will also be thoroughly familiar with this instruction and the requirements governing their actions in reporting equal opportunity incidents.

8. Action

a. Navy Rights and Responsibilities (NR&R) Workshops

(1) NR&R workshops for newly reported midshipmen will be conducted for the incoming class during Plebe Summer Training. The Officer-in-Charge of the Fourth Class Regiment is responsible for scheduling these workshops with qualified NR&R instructors and ensuring the training is conducted in accordance with CNET requirements.

b. Annual Brigade Climate Assessment

(1) An assessment of the Brigade's climate will be conducted annually by the CMEO Manager. The assessment will focus on the treatment and achievements of individuals, overall effectiveness of the Brigade EO Program and follow-up actions on previously identified EO issues. The following data will be made available to the CMEO Manager in order to perform the assessment:

- (a) Brigade Conduct Data
- (b) Military Aptitude Data
- (c) Academic Data
- (d) Physical Education Data
- (e) Other data as required

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(2) The Brigade Climate Survey will be administered annually to assess the equal opportunity and organizational climate of the Brigade of Midshipmen.

(3) The Brigade Assessment Team (BAT) will be utilized by the CMEO Manager to conduct the annual assessment of the Brigade's climate. The BAT will be chaired by the CMEO Coordinator and will be comprised at a minimum of the CMEO Manager, the EOA, one Company Officer or Gunnery Sergeant from each battalion, and the Battalion Staff CMEO/HERO from each battalion. Additional HERO representatives may be added as required. BAT team members should be trained prior to the start of the assessment.

(4) The BAT will conduct company level assessments of climate and EO issues upon request from the Company Commander or Company Officer, or at the direction of the Commandant of Midshipmen.

(5) The accumulated data from the Brigade Climate Assessment shall be reviewed and compiled in a formal report to the Commandant of Midshipmen by the CMEO Coordinator and CMEO Manager. Once approved by the Commandant, findings shall be briefed to the Brigade of Midshipmen and the Superintendent. A copy will be provided to the Director of Institutional Research.

c. Prevention of Sexual Harassment

(1) All Navy personnel have a responsibility to maintain an environment free of sexual harassment. This is a leadership issue and we must take an active role in combating this inappropriate behavior at the Naval Academy.

(2) Sexual harassment is defined as a form of sex discrimination which involves unwelcomed sexual advances, requests for sexual favors, or other verbal or physical contact of a sexual nature, when:

(a) Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;

(b) Submission to or rejecting of such conduct by a person is used as a basis for career or employment decisions affecting this person.

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(c) Such conduct has the purpose or effect of interfering with an individual's performance or creating an intimidating, hostile, or offensive work environment.

(d) Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a midshipman, military member, or civilian employee is engaging in sexual harassment. Similarly, any midshipman, military member, or civilian employee who makes deliberate or repeated unwelcomed verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

(3) Sexual harassment is not a trivial or amusing issue. It affects the morale and productivity of midshipmen and negatively impacts the mission of the Naval Academy. When reported, violations of sexual harassment will be handled expeditiously through the Administrative Conduct System or under the UCMJ in more severe cases.

(4) Annual training will be conducted on the prevention of sexual harassment. Training will be scheduled and coordinated by the CMEO representatives and the Character Development Division.

e. Equal Opportunity (EO) and Sexual Harassment (SH) Grievance Procedures.

(1) Policy. A major element of any EO program is the process for resolving an individual discrimination or sexual harassment complaint. All midshipmen have the right to present a legitimate grievance without fear of intimidation, reprisal, or harassment. The chain of command is committed to resolving any issues of EO/SH at the lowest appropriate level and ensuring all midshipmen are treated with dignity and respect. Our goal is to ensure an expedient resolution of EO/SH complaints and reiterate that discrimination, regardless of its form, will not be tolerated.

(2) Procedures. The complainant has the following avenues available for addressing grievances:

(a) Informal Resolution System. The complainant is encouraged to first try to resolve the EO/SH conflict at the lowest appropriate level. Informal resolution allows the complainant to address the unacceptable behavior with the

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offender and request that the behavior stops. This should be done as soon as possible following the conflict. Complaints should be resolved informally whenever possible; however, there is no requirement to attempt informal resolution prior to filing a formal complaint. If a midshipman needs advice on the informal resolution procedures or policy, he/she may go to their immediate chain of command, their company CMEO/HERO (Human Education Resource Officer), or Chaplain. Training on "Resolving Conflict" is available through the CMEO chain of command. Actions for informal resolution include:

- (1) Address the concerns verbally or in writing with the person(s) demonstrating the behavior;
- (2) Request assistance from another midshipman, Company Officer, Senior Enlisted Leader, or other command member or request mediation to resolve the dispute;
- (3) Request EO training be conducted in the company.

The CMEO Manager must be notified of any equal opportunity or sexual harassment complaint made by a midshipman, even if the complaint is being successfully handled informally via IRS within the member's chain of command. In cases where the complainant is a military or civilian member of the staff, the CMEO Coordinator must be notified of all complaints.

(b) Formal Complaint Process. If the unacceptable behavior continues, and the informal resolution system, if attempted, did not correct the conflict, then the complainant should submit a formal complaint using enclosure (1), the EO/SH Formal Complaint Form. Submit the formal complaint via the Battalion CMEO Representative or through the CMEO Manager. This form is in 4 parts as described below:

(1) Part I - Complaint. Must be submitted in writing, under oath, within 60 days of the incident. Complaints submitted after 60 days may be accepted at the discretion of the Commandant of Midshipmen.

(2) Part II - Complaint Support/Counseling. An advocate will be assigned by the Commandant of Midshipmen to ensure each complainant, accused, and witness is informed about complaint processing and is advised of available support and counseling services. The advocate will be an E7 or above. If any of the three do not desire an advocate, they must so state in writing.

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(3) Part III - Complaint Processing. An investigation commences within three calendar days of submission of a complaint. The investigator will be appointed by the Deputy Commandant. The Commandant's Legal Advisor should be consulted frequently during the investigation. Once completed, the investigation will be forwarded to the Commandant via the Commandant's Legal Advisor and the Deputy Commandant.

(4) Part IV - Notification, Review, and Follow-up. The complainant will be notified the same day the investigation commences and will acknowledge such notification in writing. The complainant and accused should be advised of the outcome of the investigation within 14 days of completion. The complainant has the right to request a review of the complaint/investigation by the next higher authority, i.e., the Superintendent. The complainant has seven calendar days from the date he or she is notified to request such review. Within 30-45 days after final action, the complainant should be debriefed to obtain complainant's views as to the effectiveness of the corrective action; present company climate; and reprisals which include, but are not limited to, increased or abnormal watchstanding requirements, unwarranted reduced performance rankings, increased unwarranted conduct or honor actions, and silencing. Reprisals will not be tolerated, and will be dealt with through the Administrative Conduct System when reported and substantiated or under the UCMJ if appropriate. If a case cannot be resolved within the 14 calendar days, the investigator shall advise the Deputy Commandant who will take appropriate action.

(c) Alternate Avenues. Although the preferred method of reporting equal opportunity and sexual harassment complaints is at the lowest level and via the chain of command, the Navy provides the following hotlines for confidential counseling:

- (1) Navy Sexual Harassment Advice and Counseling
line: 1-800-253-0931, DSN 224-2735
- (2) Navy Hotline: 1-800-522-3451 or DSN 288-6743

(d) Records. The CMEO Coordinator will retain copies of all informal and formal EO/SH complaints for tracking and reporting statistics during EO climate review. Accordingly, the CMEO Coordinator will be notified of any formal or informal

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complaints that are made to other entities within the command, such as to the Conduct Officer, the Commandant's Legal Advisor, the CMEO Manager, and the Brigade SAVI Coordinator.

8. Nothing in this instruction will limit the chain of command's prerogative to investigate possible instances of sexual harassment and take all reasonable and necessary actions to hold the perpetrators of such activities fully accountable under the United States Naval Academy Administrative Conduct System and/or the UCMJ.



CHARLES J. LEIDIG

Distribution:
C-1 (electronically)

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NAVY EQUAL OPPORTUNITY (EO)/SEXUAL HARASSMENT (SH) FORMAL COMPLAINT FORM			
AUTHORITY:		10 USC, 500 (g)	
PRINCIPLE PURPOSE:		Formal filing of allegations of discrimination based on race, color, religion, sex or national origin, incidents of sexual harassment, or reprisal against military personnel. For EEO complaints against civilian employees, see COMDMIDNINST 5213.2	
ROUTINE USES:		Information provided on this form may be used: (a) as a data source for computer information, statistics, reports, and analysis; (b) to respond to requests from appropriate outside individuals or agencies (e.g., Members of Congress); the White House regarding the status of a complaint; (c) to indicate the complaint or appeal; (d) any other properly established routine use.	
DISCLOSURE:		Disclosure is voluntary; however, failure to fully complete all portions of this form may result in rejection of the complaint on the basis of inadequate data to assess complaint.	
PROTECT PRIVACY		Protect individual privacy (both complainant's and alleged offender's) through all stages of the process (SECNAVINST 5213.5, Section)	
1a. COMPLAINANT'S NAME		1b. RANK/RATE	1c. SSN
1d. UNIT	1e. RACE/ETHNIC GROUP	1f. GENDER	1g. DATE
<p>2a. Options:</p> <p>(1) <u>Informal Resolution System (IRS)</u>: (Ref: IRS Skills Handbook, NAVPERS 15620.)</p> <p>(2) <u>DoN Equal Opportunity/Sexual Harassment Adviseline</u>: (Monday - Friday 0730-1630) Central Time. Call toll free (800) 253-0931, DSN 882-2507, COMM (901) 874-2507. (Call collect from overseas.) E-Mail: eeoh.advice.lines@persnet.navy.mil</p> <p>(3) <u>Authorized command or local resource</u>: The following are available (insert local name, organization, and phone number) Command Managed Equal Opportunity (CMEO): _____ Command Master Chief: _____ Command-sponsored councils and committees: _____ Equal Employment Opportunity (EEO): _____ Family Service Center (FSC): _____ Equal Opportunity Advisor (EOAE): _____ Medical Treatment Facilities (MTF): _____ Chaplain: _____ Legal: _____</p> <p>(4) <u>NAVREGS 1131 Request mail with the CO/DC</u>: Your right to communicate with the CO in a proper manner, time, and place shall not be denied or restricted. Such requests shall be acted upon promptly and forwarded without delay. Local procedures are:</p> <p>(5) <u>Communications with Inspectors General</u>: Any person whose chain of command does not take effective action on complaints or who does not feel comfortable filing complaints locally or in person can lodge complaints (anonymously if desired) via one or more of the available hotlines: Naval Inspector General: Toll Free 1-800-522-3451; DSN 288-6743; COMM (202) 413-6743. Marine Corps Inspector General: DSN 224-1349; commercial (703) 614-1349. Atlantic Fleet Inspector General: Toll Free 1-800-533-2397 Pacific Fleet Inspector General: COMM (808) 474-4275. Naval Forces Europe Inspector General: 001-44-171-514-4188. Naval Reserve Inspector General: DSN 678-1324; COMM (304) 678-1324. Local TYCOM, ISIC, or local commanders' hotlines: _____ (Insert Phone Number)</p> <p>(6) <u>NAVREGS 1135</u>: A service member may always communicate individually with members of Congress.</p> <p>(7) <u>Article 138 NAVREGS 1150 complaint</u>: A service member who believes him/herself wronged by his/her CO or other superior officer may file a complaint as provided in JAGMAN Chapter III. Assistance in filing such complaints may be available from the local Naval Legal Services Office (NLSO).</p>			
<p>2b. CONTACT THE FOLLOWING COMMAND REPRESENTATIVE FOR ASSISTANCE IN FILING THIS COMPLAINT.</p> <p>(insert name, phone): _____</p>			
<p>2c. COMPLAINANT WAS ADVISED OF COUNSELING / SUPPORT SERVICES AND PROVIDED A COPY OF THIS FORM.</p>			
2d. NAME OF COMMAND REPRESENTATIVE		2e. RANK/RATE	2f. DATE
2g. UNIT/COMMAND		2h. SIGNATURE	
2i. COMPLAINANT'S ACKNOWLEDGMENT			
		(Signature)	(Date)

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PART II COMPLAINT		
FILING DEADLINE I UNDERSTAND THAT I HAVE 60 CALENDAR DAYS FROM THE DATE OF THE ALLEGED INCIDENT TO FILE A FORMAL EO/SH COMPLAINT. This EO filing deadline does not affect alternative remedies that might apply. (Investigation of EO/SH complaints received after 60 calendar days is at the discretion of the cognizant commanding officer/activity head).		
3a. NATURE OF COMPLAINT. (State, in as much detail as possible, the basis for your complaint. Describe the behavior/conduct under objection, date(s) of occurrence, names of involved parties, witnesses, others to or from whom previous reports may have been made or received, other evidence available, and any additional information which may be helpful in resolving your complaint. Attach additional sheets as needed.)		
3b. REQUESTED REMEDY. (What specifically do you think the final outcome should be?)		
3c. ACKNOWLEDGMENT OF RECEIPT OF COMPLAINT. (by POC identified in paragraph 2b above) I acknowledge receipt of this formal E()/SH complaint. I UNDERSTAND THAT I HAVE ONE CALENDAR DAY (24 HOURS) TO REFER THE COMPLAINT TO THE APPROPRIATE AUTHORITY AND TO INFORM THAT AUTHORITY OF ANY INTERIM ACTION THAT IS TAKEN.		
12. NAME OF COMMAND REPRESENTATIVE	13. SIGNATURE	14. DATE
15. UNIT/COMMAND	16. SIGNATURE	
17. COMPLAINANT'S ACKNOWLEDGMENT		
(Signature)		(Date)

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PART III - COMPLAINT PROCESSING/COMMAND ACTIONS

INTERIM FEEDBACK/ASSISTANCE TO COMPLAINANT. TAKE PARTICULAR CARE TO AVOID RE-VICTIMIZING COMPLAINANTS (AND WITNESSES). Keep the complainant and advocate apprised of the status of the investigation (including any deadline extensions). Provide Supplemental counseling/support assistance/referral as warranted. Ensure that all involved know that reprisal against the complainant will not be tolerated. (Recommend keeping a record of such feedback/assistance. Attach record to the complaint form.)

RESOLUTION TIME STANDARDS/REPORTING. RESOLUTION OF CASE SHOULD BE COMPLETED NO LATER THAN 20 DAYS FROM INVESTIGATION COMMENCEMENT. Resolution includes: completion of investigation; determination of validity of complaint; adjudication at NJP or courts-martial, initiation of other appropriate action, notification to accused, and notification of complainant and submission of a close-out SITREP. IF TIME STANDARDS CANNOT BE MET, CONTINUATION SITREPS EVERY 14 DAYS THROUGH CASE RESOLUTION IS MANDATORY. Explain the reason(s) for delay. SEND ALL MESSAGES UNCLASSIFIED.

DOCUMENT COMMAND ACTION. Command records should permit reviewers to clearly ascertain/assess decisions reached. Make appropriate entries in individual personnel records, if applicable. Make any statistical reports required by the chain of command. Retain this form on board at least three years. Provide copy of completed form to complainant as authorized under Freedom of Information Act (FOIA) and governing directives.

4a. DATE TIME GROUP (DTG) OF SITREP MESSAGES (attach copy of SITREPS to this form)
 (1) Initial DTG _____ (2) Continuation(s) DTG(S) _____ (3) Close-out DTG _____

4b. ASSIGNMENT OF PERSONAL ADVOCATES (Separate advocates must be offered to each party and initiated in writing).

(1) Complainant: Name and phone number _____	(2) Accused: Name and phone number _____	(3) Other: Name and phone number _____
<input type="checkbox"/> Accept Initial in box.	<input type="checkbox"/> Decline Initial in box.	<input type="checkbox"/> Accept Initial in box.
<input type="checkbox"/> Decline Initial in box.	<input type="checkbox"/> Decline Initial in box.	<input type="checkbox"/> Decline Initial in box.

5a. NAME OF INVESTIGATING OFFICER _____ 5b. DATE CONVENED _____

5c. COMPLAINANT'S ACKNOWLEDGMENT _____
 (Signature) _____ (Date) _____

6a. ACKNOWLEDGMENT OF RECEIPT BY COMMANDING OFFICER/ACTIVITY HEAD: I acknowledge receipt of this complaint by _____ (name/rank) of _____ (date).
 I UNDERSTAND I MUST INITIATE AN APPROPRIATE INVESTIGATION OR ENSURE THAT ONE IS BEING CONDUCTED (E.G., BY NCIS) WITHIN THREE CALENDAR DAYS (72 HOURS), NOTIFY COMPLAINANT SAME DAY OF INVESTIGATION COMMENCEMENT, I FURTHER UNDERSTAND THAT I MUST SUBMIT A SITREP AS PER OPNAVINST 5354.1E WITHIN THREE CALENDAR DAYS (72 HOURS), AND PROVIDE COMMAND ADVOCATES FOR ALL INVOLVED PARTIES.

6b. NAME OF COGNIZANT COACTIVITY HEAD _____ 6c. RANK/GRADE _____ 6d. DATE _____

6e. UNIT/COMMAND _____ 6f. SIGNATURE _____

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DEFINITIONS

1. Advocate. Representatives assigned by the Commandant to ensure that complainant, accused, and witness in an equal opportunity (EO) case are informed of the EO complaint process and advised of available support and counseling services.
2. Assessment Tools. Tools used by the Commandant to assess EO and the organizational climate of his staff and the Brigade of Midshipmen. One example of such a tool is the online Brigade Climate Assessment Survey.
3. Climate Assessment. Determining the health and functioning effectiveness of an organization by examining such factors as morale, teamwork, and communication. This is accomplished through all or some of the following:
 - a. Group and/or individual interviews
 - b. Observations
 - c. Surveys or questionnaires
 - d. Review of records and reports
 - e. Focus groups
 - f. Other tools deemed appropriate by the Commandant
4. Command Managed Equal Opportunity (CMEO) Coordinator. A command member (O-5 or above) appointed in writing by the Commandant who functions as the primary point of contact for EO issues within the Brigade. Coordinates Brigade EO/SH complaint reporting and tracking with the USNA CMEO.
5. Complaint. An allegation of unlawful discrimination or sexual harassment (SH) based on race, ethnicity, national origin, gender, or religion.
6. Complainant. Anyone who submits allegations of unlawful discrimination or SH.
7. Defense Equal Opportunity Management Institute (DEOMI). Responsible for developing and conducting education and training in the administration of military EO, EEO, and human relations. The DEOMI website may be accessed via <https://www.patrick.af.mil/DEOMI/DEOMI.HTM>.

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8. Discrimination. An act, policy, or procedure which arbitrarily denies equal treatment to an individual or a group of individuals because of race, color, religion, gender, age, or national origin.

9. Equal Opportunity (EO). The right of all persons to participate in, and benefit from, programs and activities for which they are qualified. These programs and activities shall be free from social, personal, or institutional barriers that prevent people from rising to the highest level of responsibility possible. Persons shall be evaluated on individual merit, fitness and capability regardless of race, ethnicity, national origin, gender, or religion.

10. Equal Opportunity Advisor. A member (E-7 or above) designated in writing by the Commandant who functions as a technical advisor to the CMEO Coordinator, Brigade CMEO Manager, and the Commandant.

11. Extremist Group. An organization that espouses supremacist causes; attempts to create illegal discrimination based on race, creed, color, ethnicity, national origin, gender, religion; advocates the use of force or violence; or otherwise engages in efforts to deprive individuals of their civil rights.

12. Formal Complaint. An allegation of unlawful discrimination or SH that is submitted in writing via NAVPERS 5354/2, Navy EO complaint, UCMJ Article 138, U.S. Navy Regulations article 1150, communication to Navy Inspector General or elected officials, NAVPERS 1626/7, Report of Disposition of offenses, and any other communication the Commandant deems appropriate. Note: SITREPS are required upon receipt of a formal complaint.

13. Grievance Procedures. The process whereby individual complaints of discrimination are considered and acted upon by the chain of command.

14. Hostile Work Environment. An environment which prevents midshipmen and staff from functioning to their full capacity, free of unlawful discrimination and SH. A hostile work environment unreasonably interferes with an individual's work performance. It need not result in concrete psychological harm to the victim but need only be perceived by a reasonable person, and is perceived by the victim as hostile or offensive.

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15. Informal Resolution System. A system for resolving EO complaints at the lowest appropriate level in the chain of command.

16. Informal Complaint. An allegation of unlawful discrimination or SH made either in writing to the offending party or verbally per the IRS process. Informal complaints do not require a command directed investigation.

17. Reasonable Person Standard. An objective test used to determine if behavior meets the legal test for unlawful discrimination and SH. The test requires a hypothetical exposure of a reasonable person (third party) to the same set of facts and circumstances. If the behavior is deemed offensive, then the test is met. The reasonable person standard considers the complainant's perspective and does not rely upon stereotyped notions of acceptable behavior within that particular work environment.

18. Reprisal. Taking or threatening to take any act of retaliation against a midshipman or other person for making an allegation of unlawful conduct, behavior, or speech. Reprisals can be overt or subtle and can include, but are not limited to:

- a. reduction in aptitude rankings or fitness reports without justification.
- b. increased duty assignments, watch standing, or workload.
- c. failure to recommend an individual for advancement, an award, recognition, or special programs.
- d. unjustified disciplinary action against the individual.

19. Sexual Harassment (SH)

a. Definition: A form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when

(1) submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;

(2) submission to or rejection of such conduct by a person is used as a basis for career or employment decision's affecting that person; or

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(3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

b. This definition emphasizes that workplace conduct, to be actionable as a "abusive work environment" form of harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive.

c. The term "workplace" or "work environment" is an expansive term for military members and may include conduct on or off duty, 24 hours a day. The work environment is the workplace or any other place that is work-connected (such as Bancroft Hall, academic buildings, athletic fields, etc), as well as the conditions or atmosphere under which people are required to work. Other examples of work environment include, but are not limited to, an office, an entire office building, a DoD base or installation, DoD ships, aircraft or vehicles, anywhere when engaged in official Department of the Navy (DON) business, as well as command sponsored social, recreational, and sporting events, regardless of location.

d. Any person in a supervisory or command position who uses or condones any form of sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in SH.

e. Any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in SH.

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SEXUAL HARASSMENT (SH) GUIDELINES AND RANGE OF BEHAVIORS

1. Introduction. This enclosure explains and illustrates behaviors that may constitute SH and is intended to assist midshipmen, military members, and civilian employees in distinguishing between acceptable and unacceptable behavior in the work environment. The policy established by this instruction is not intended to prevent the types of behavior which are appropriate in normal work settings and which contribute to camaraderie.

2. Description. SH may consist of a wide range of behaviors that are unwelcome, sexual in nature, and connected in some way with a person's job or work environment. For military members, to include midshipmen, this may include conduct on or off duty, 24 hours a day. It can, at times, be difficult to determine whether or not a behavior constitutes SH. When in doubt, consult with the CMEC Coordinator or the Brigade CMEC Manager.

a. Unwelcome behavior is behavior that a person does not ask for and for which that person considers undesirable or offensive. Not everyone has the same perception of the term "undesirable or offensive." Since the person being subjected to the behavior, "the recipient," is the one being affected, it is the recipient's perception that counts. A common sense approach uses the "reasonable person standard" defined in enclosure (2), which considers the situation from the perception of the recipient. Behavior that a "reasonable person" would find unwelcome may be grieved.

b. Behavior that is sexual in nature includes, but is not limited to, telling sexually explicit jokes, displaying sexually suggestive pictures, and talking about sex. Some people would consider other behaviors, such as touching, to be sexual in some cases but not in others. Using common sense will normally be enough to determine whether or not a certain behavior is sexual in nature.

c. SH is a gender neutral concept. The focus is on the detriment to good order, discipline and military readiness that results when our Navy's core values are not adhered to, not the sex of the members involved; therefore, sexually harassing behaviors involving members of the same sex as well as those directed at service members on the basis of alleged homosexuality are prohibited and all requirements of this instruction apply.

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d. For SH to occur, unwelcome sexual behavior must occur in or impact the work environment.

(1) When recipients are offered or denied something that is work connected in return for submitting to or rejecting unwelcome sexual behavior, they have been subjected to a type of SH known as "quid pro quo," or "this for that." Examples include getting or losing a job, a promotion or demotion, a good or bad performance evaluation, etc. Normally, this is from a senior to a junior, because the senior person has something to offer.

(2) When the unwelcome sexual behavior of one or more persons in a workplace interferes with another person's work performance, SH has occurred. If the behavior produces a work atmosphere that is offensive, intimidating or abusive to another person, whether or not work performance is affected, a type of SH called "hostile environment" has occurred. Witnesses of SH, as well as the recipient of the offending behavior, may experience a hostile work environment. Following are a few examples of behavior that could create a hostile environment:

- (a) Using sexually explicit or sexually offensive language;
- (b) Displaying sexually oriented posters, calendars, or personal computer wallpaper;
- (c) Touching someone or self in a suggestive manner;
- (d) Giving someone unwelcome letters, cards, emails/IMs, or gifts of a personal nature, particularly when these items have sexual overtones; and/or
- (e) Unwanted or uninvited pressure for dates.

3. Range of Behaviors. Some behaviors may be unwelcome and work-connected, but not sexual (for example, performance counseling), and obviously do not constitute SH. To better explain the range of behaviors which may constitute SH, the traffic light illustration was developed in which behaviors are divided into three zones, corresponding to the colors on a traffic light. Green on the traffic light means "go" and behavior in the green zone is acceptable. Green zone behavior is not SH. Yellow on the traffic light means "caution," and

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behavior in the yellow zone may be SH. Red on the traffic light means "stop." Red zone behaviors are SH. Just as with a traffic light, if you are in the yellow zone long enough, the light will turn red. If yellow zone behaviors occur repeatedly, especially after the person has been told it is unwelcome, it becomes red zone behavior---SH. The following examples illustrate these types of behaviors:

a. **Green zone.** These behaviors are not in SH:

(1) Touching which could not reasonably be perceived in a sexual way (such as shaking hands or a friendly pat on the shoulder)

(2) Counseling on military appearance

(3) Social interaction; showing concern or encouragement

(4) A polite compliment or friendly conversation

b. **Yellow zone.** Many people would find these behaviors unacceptable and they could be SH:

(1) Violating personal space

(2) Whistling, questions about personal life

(3) Lewd or sexually suggestive comments

(4) Suggestive posters, calendars, or screensavers

(5) Off-color jokes

(6) Leering or staring

(7) Repeated requests for dates

(8) Foul language

(9) Unwanted letters, emails, IMs, or poems

(10) Sexually suggestive touching or gesturing

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c. **Red zone.** These behaviors are **always** considered SH:

- (1) Sexual favors in return for employment rewards
- (2) Threats if sexual favors are not provided
- (3) Sexually explicit pictures (including posters, calendars, computer screens) or remarks
- (4) Using status to request dates
- (5) Obscene letters or comments

Note: Keep in mind that the above examples are used as guidance only, that individuals believe they are being sexually harassed based on their perceptions, that each incident is judged on the totality of facts in that particular case, and that individuals' judgment may vary on the same facts; therefore, caution in this area is advised. Anytime sexually oriented behavior is introduced into the work environment or among co-workers, the individuals involved are on notice that the behavior may constitute criminal conduct (e.g. sexual assault).

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USNA GUIDELINES FOR SUBMITTING, HANDLING, AND REPORTING EQUAL
OPPORTUNITY (EO) COMPLAINTS

1. General guidelines.

a. The chain of command is the primary and preferred channel for identifying and correcting discriminatory practices. This includes the processing and resolving of complaints of unlawful discrimination and sexual harassment (SH).

b. Individuals who believe they have experienced (or observed) a sexually harassing or discriminating situation are encouraged to use the informal resolution system (IRS) (NAVPERS 15620) to reach a satisfactory resolution. Complaints should be resolved informally whenever possible; however, there is no requirement to attempt informal resolution prior to filing a formal complaint. Actions for informal resolution include:

(1) Address the concerns verbally or in writing with the person (s) demonstrating the behavior;

(2) Request assistance from another individual (command member) or request mediation to resolve the dispute;

(3) Request EO training be presented in the workplace.

c. Witnesses to unlawful discrimination or SH shall be held accountable for reporting offenses. This is a key element in helping to maintain good order and discipline and discouraging unlawful conduct.

d. Persons who are subjected to or observe objectionable behavior shall promptly notify the chain of command if

(1) The situation is not resolved

(2) The objectionable behavior does not stop

(3) Addressing the objectionable behavior directly with the person concerned is not reasonable under the circumstances, or

(4) The behavior is clearly criminal in nature.

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Note: If the person demonstrating the objectionable behavior is a direct superior in the chain of command or the chain of command condones the conduct or ignores a report, individuals who have been subjected to or who observe objectionable behavior are encouraged to promptly communicate the incident through other available means.

e. All reported incidents of unlawful discrimination or SH shall be investigated in a fair, impartial, and prompt manner and resolved at the lowest appropriate level. The nature of the investigation will depend upon the particular facts and circumstances and may consist of an informal inquiry where that action is sufficient to resolve factual issues.

2. Complainant Responsibilities

a. A complaint should be made within 60 days of the offending incident, or in the case of a series of incidents, within 60 days of the most recent incident. The Commandant may accept complaints beyond this time frame if he believes circumstances warrant.

b. Individuals may file a complaint using NAVPERS 5354/2, the Navy Equal Opportunity (EO)/Sexual Harassment (SH) Formal Complaint Form, (enclosure 1). This form can be obtained from the CMEC Coordinator, the CMEC Manager, or the Conduct Officer. The complaint must include a signed statement submitted in writing.

c. File complaints in good faith. Knowingly making a false official statement is a violation of UCMJ Article 107.

3. Command Responsibility

a. Personnel receiving a formal complaint shall submit the complaint to the CMEC Coordinator within one calendar day of receipt.

b. Identify available counseling support or referral services for all personnel (including the accused) involved in incidents of discrimination and SH.

c. Within 72 hours of receipt of a formal complaint, advocates shall be assigned to each complainant, alleged offender, and any witness to ensure they are informed about

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complaint processing. If the complainant, alleged offender or witness does not desire the services of an advocate, they must state it in writing. Appointed command advocates should:

- (1) Not be a principal in the alleged complaint in any way;
- (2) Be equivalent or senior to the assigned member (except when impractical or when the member consents)
- (3) Not be appointed to assist more than one complainant, alleged offender, or witness.

d. The level of investigation on formal complaints is determined by the Commandant.

(1) The investigation must commence within 72 hours of complaint submission. The investigating officer should be senior to the complainant and alleged offender. The complainant will be notified that the investigation has begun and will acknowledge this notification on the original NAVPERS 5354/2 or by memorandum for record.

(2) A situation report (SITREP) describing the situation, using the format delineated by enclosure (5) of OPNAVINST 5354.1E must be sent to the General Courts-Martial Authority (GCMA) and information addressees command's Echelon 2 commander, ISIC, CNO WASHINGTON DC//NOOE//, and COMNAVPERSCOM MILLINGTON TN//PERS6/PERS61// within 72 hours of complaint receipt.

(3) A closeout SITREP (using the format listed above) must be sent describing action taken within 20 days of investigation commencement. If the investigation is not completed at the 20-day point, a SITREP must be sent every 14 days thereafter until the close-out SITREP describing the case outcome is released.

(4) Complainants must be notified that the complaint has been resolved and informed of their right to request review by the next higher authority. Complainant must be informed the request for a higher level review must be made within 7 days of notification.

(5) When requested by the complainant, a redacted copy of the investigating officer's final report should be provided to him/her (per the Privacy Act of 1974 and other applicable laws and regulations).

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(6) The CMEO Coordinator will conduct a follow up debrief 30-45 days after final action. The follow up will include a determination of complainant satisfaction with the effectiveness of the corrective action, timeliness, present command climate, and a review to ensure reprisal did not occur.

e. If the complaint results in a hostile work environment, one or both parties may be temporarily relocated, without prejudice, during the course of the investigation. However, consideration will be given to not moving the complainant. Transfer of the parties involved will not be considered to be a resolution of the complaint.

f. Regardless of the outcome of the investigation (substantiated or unsubstantiated), the CMEO Coordinator and/or Brigade CMEO Manager will monitor potential reprisals by checking on work space or company climate and ensuring performance appraisals document job performance accurately (i.e. downgrades shall be supported by written counseling and not related to the complaint).