

New River Community Action, Inc.

CRITICAL REVIEW TEAM PROCEDURES

October 28, 1999

I. PURPOSE

The purpose of the New River Community Action, Inc. (NRCA) Critical Review Team (CRT) is to investigate complaints relating to employee competence, performance levels, attitude, theft, misconduct, sexual and other harassment, drug/alcohol use, sources of safety concerns, and harm to property. Investigations can identify employee misconduct, violations of corporate policy, and/or violations of the law. Done correctly they can help keep an internal problem from becoming an external one, mitigate the potential for more and productivity problems, and prevent substantial legal problems and financial losses. Investigations will be conducted fairly, promptly and thoroughly and in good faith, and reach reasonable conclusions.

Managers will assure that supervisory staff is trained to address and report complaints relating to employee competence, performance levels, attitude, theft, misconduct, sexual and other harassment, drug/alcohol use, sources of safety concerns, and harm to property.

In some circumstances, an attorney may be used to conduct investigations. If legal counsel is involved in interviewing, counsel must disclose that he or she is conducting the interview as an attorney representing the agency and is not acting as an attorney for the interviewee.

II. GOALS

The goals of the investigation are to:

1. Improve the factual basis of decision-making. What management needs in order to make decisions is a thorough understanding of the facts.
2. Develop a thorough record on which to base a legal opinion. Any documents or tapes that are generated through the investigation may become evidence in a lawsuit or a government inquiry.
3. Reveal employee conduct that depletes corporate assets or violates corporate policies.
4. Identify employees who have violated corporate policy or the law.
5. Identify or halt criminal activity.
6. Preclude or minimize the likelihood of a government investigation.
7. Curtail adverse publicity.

8. Avoid the costs of litigation and its disruptive effect on operations.
9. Limit corporate liability.
10. Minimize officer or director liability for breach of fiduciary obligations.

III. COMPOSITON

The NRCA Board of Directors approved the creation of the CRT. The CRT may be utilized as required by senior managers. Members of the team are selected by the NRCA senior management staff and serve indefinitely. The CRT is made up of at least 12 employees from all levels of staff, representing all jurisdictions in the New River Valley, and AA/EEO classifications whenever possible. If the complaint is for sexual harassment, there must be a member of the complainant's sex on the team; if the complainant is a minority, there must be someone of that minority on the team. The investigating team members should be someone from outside the involved department and county or city.

Senior management will consider the following criteria when selecting members of the CRT:

1. Ability to understand the agency purpose of the investigation and the potential issues it may rise.
2. Knowledge of agency policies, procedures, practices and rules.
3. Interviewing skills, including the ability to identify follow-up questions when new facts or issues arise during an interview.
4. "Communication fit" with the personalities and backgrounds of the potential witnesses (e.g., an ability to develop rapport, to press for admissions and to understand interviewees).
5. Ability to be objective and have a reputation of trustworthiness.

CRT members receive training relating to conducting internal investigations from a qualified source before becoming a member of the CRT and receive annual update training thereafter. This document and the workshop manual from the Council on Education in Management titled ***How to Conduct an Internal Investigation*** will give guidance to the CRT. Where the two conflicts, this document will apply.

When the need to conduct an internal investigation arises, generally a team of at least 3 staff from the CRT will be called upon. This may vary according to the situation requiring investigation. There must always be at least 2 members present for interviews.

The Executive Director will select members to serve during each investigation who do not work closely with the complainant or the accused. The members selected will choose a team leader to serve during the investigation.

The CRT has the full support of the Board of Directors, senior management and full cooperation of agency employees. The CRT is

empowered to decide which individuals to interview, what documents or evidence to review, what issues to pursue, and when and where to conduct the investigation.

IV. PRIVACY

An in-house investigator must respect the privacy rights of the employee, yet still reveal enough factual information to either support or dismiss the claim. Investigators must conduct an expeditious, yet thorough examination of the facts and circumstances surrounding the basis for the investigation, without violating the rights to privacy of any party involved.

Investigators will share remarks only with management or others that have a need to know. If a lawsuit or grievance is filed, disclosure could be compelled.

Special, secure files should be maintained for the investigator's records and be kept separate from personnel files. Documents (other than working drafts, which should be destroyed) should not be destroyed once an investigation has commenced. The CRT should recognize that sanctions might be imposed for the destruction of documents, particularly once legal process has commenced or a letter from opposing counsel has been received.

A. The Need for Objectivity

The investigation should be conducted from an objective, third party approach. Assumptions should be discarded. All relevant facts must be investigated. If the employee presents an alibi or exculpatory information, it must be verified. The alleged perpetrator and witnesses on either side must be interviewed.

B. Rights of the Accused

The accused has rights to due process, fair treatment and a presumption of innocence.

V. HOW A COMPLAINT IS FILED

The complaint must be put in writing, either by the complainant or by the team on behalf of the complainant, and signed and dated as being correct (for example: the complainant may be illiterate, anonymous, or refuse to put the complaint in writing). The Personnel Policies complaint procedure should be followed.

NRCA management/supervisors should not wait for a formal complain, if they suspect or have informal knowledge that misconduct is occurring, management/supervisors should initiate an investigation.

VI. THE INVESTIGATION

The CRT must keep contemporaneous notes throughout the investigation. Information the CRT can choose to review may include other documented reports of related activity, personnel files of the employee who is the focus of the investigation (in the presence of the Executive Director), other complaints and outcomes, other potential motivations for the complaint, and current and former supervisors.

The most important part of the investigation is the witness interview. The location for conducting interviews must allow for privacy and security. Interview each person individually. Allow time between each interview so that those involved will not be in contact with each other. There may be situations when it is advantageous to conduct interviews without prior notification. At times the situation may warrant interviews to occur simultaneously, additionally, there may be several people to interview. In order to allow for this to occur, the team leader should request additional team members to be added by the Executive Director.

Appropriate disclosures of what the investigation is about should be made at the commencement of interview. Obtain a signed acknowledgement from the interviewee stating that disclosures were made, or signed acknowledgements from two witnesses indicating the disclosures were made. Be honest about the purpose of the interview. Identifying a general topic such as “to inquire about alleged complaints of unfair treatment of women” may be all that is needed.

The sequence of the interviews may vary dependent upon the nature of the allegations, however the complainant must always be interviewed first.

A. The complainant interview

The CRT should:

1. State the agency’s commitment to neutrality and impartiality in the investigation.
2. Do not promise confidentiality but state that information will be distributed only on a need-to-know basis.
3. Ask open-ended questions.
4. Be creative. Consider walking the premises where the alleged act occurred.
5. Promise nothing, but clarify what the complainant expects from the investigative process.
6. Repeat the story to confirm understanding.
7. Document the facts. Do not document CRT opinions.

***1. Questions to Ask the Complainant:
Your questions may include, but are not limited to the
questions below.***

- Ask if the complainant has experienced any retaliation for filing the complaint.

- Ask who, what, when where, and how. *Who* committed the alleged offense? *What* exactly occurred or was said? *When* did it occur and is it still ongoing? *Where* did it occur? *How often* did it occur? *How* did it affect you?
- How did you react? What response did you make when the incident(s) occurred or afterwards?
- How did the alleged offense affect you? Has your job been affected in any way?
- Are there any other persons who have relevant information? Was anyone present when the alleged offense occurred? Did you tell anyone about it? Did anyone see you immediately after the episodes of alleged offense?
- Did the person who committed the alleged offense do this to anyone else? Do you know whether anyone complained about a similar offense by that person?
- Are there any notes, physical evidence, or other documentation regarding the incident(s)?
- How would you like to see the situation resolved?
- Do you know of any other relevant information?
- Ask for additional witness names.

B. Interviewing the Employee who is the Focus of the Investigation:

The CRT should:

1. Advise that retaliation against the complainant or others is prohibited.
2. State that this is an internal investigation and what is the purpose of the investigation.
3. Tell the employee that he/she is suspected of misconduct.
4. Tell the employee that the interview is designed to give him/her an opportunity to relate his/her version of the event and to advise management of any other information that should be considered during the investigation.
5. If the accused refuses to participate, management should tell him/her that NRCA will be forced to base its decision on the other information gathered during the investigation, the inferences drawn from the evidence, and the accused's unwillingness to cooperate in the interview.
6. Review NRCA policies (if applicable).
7. Advise that no judgments have been made about the validity of the complaint.
8. If the employee expresses anger, let time pass before encouraging a response to questions. Anger is a natural response.
9. Give full opportunity for a response to each accusation.
10. If the CRT suspects that the witness is lying, use fact-based questions to get back on track.

1. Questions to Ask the Person Who Is the Focus of the Investigation: Your questions may include, but are not limited to the questions below.

- What is your response to the allegations?
- If the alleged offender claims that the allegations are false, ask why the complainant might lie.
- Are there any persons who have relevant information?
- Are there any notes, physical evidence, or other documentation regarding the alleged incident(s)?
- Do you know of any other relevant information?
- Ask for additional witness' names.

C. Witness Interviews

The CRT should:

1. Advise that retaliation against the complainant or others is prohibited. Advise that there will be no retaliation for cooperation in the investigation.
2. Advise witnesses that it is an internal investigation and what is the purpose of the investigation.
3. Review NRCA policies (if applicable).
4. Advise that no judgements have been made about the validity of the complaint.
5. Do not promise confidentiality.
6. You may choose to keep the complainant's name confidential. Be prepared for the witness attempting to identify the complainant. Be prepared with a response.
7. Ask open-ended questions.
8. If the CRT suspects that the witness is lying, use fact-based questions to get back on track.
9. Tell the witness to not discuss the interview with others.

1. Questions to Ask Third Parties of the Investigation: Your questions may include, but are not limited to the questions below.

- What did you see or hear? When did this occur? Describe the alleged offender's behavior toward the complainant and toward others in the workplace.
- What did the complainant tell you? When did s/he tell you this?
- Do you know of any other relevant information?
- Are there other persons who have relevant information?

VII. INVESTIGATING ILLEGAL OR VIOLENT ACTIVITY

Due diligence must be exercised in preventing and detecting criminal conduct by employees and agents. Investigation may involve suspicion or allegation of illegal or dangerous activity. Before initiating any investigation of alleged illegal or violent activity, consider the following:

1. Should this be referred immediately to law enforcement? To mental health authorities?
2. Should employees, clients, customers, volunteers, vendors, or the public be advised immediately of a danger presented by the alleged wrongdoer?
3. Does the allegation require asking an employee to immediately leave the premises or other treatment in order to stop the alleged misconduct?
4. Will the ongoing presence of the alleged wrongdoer bother or intimidate the other employees? Is there a risk of injury to person or property? Could valuable records and computer storage be destroyed if the alleged wrongdoer remains on site? Is there risk of a negative public image or media attention if the person is not removed from the agency?
5. Management should not hastily suspend the employee. The suspension should not have a discriminatory effect on protected classes, based upon historical treatment.
6. Management/supervisors should secure sensitive and essential information before it can be stolen, sabotaged, or altered.
7. **Management/supervisors must consult with NRCA's employment law attorney for risk assessment before initiating an investigation into an illegal or violent activity.**

VIII. CLOSING THE INVESTIGATION

A. Analyze

The CRT should analyze the results of the investigation. In reviewing the notes the CRT should ask themselves, were the witnesses credible? Do you know what happened based on what you've learned?

- Inherent plausibility:** Is the testimony believable on its face? Does it make sense?
- Demeanor:** Did the person seem to be telling the truth or lying?
- Motive to falsify:** Did the person have a reason to lie?
- Corroboration:** Is there **witness testimony** (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her at around the time that they allegedly occurred) or **physical evidence** (such as written documentation) that corroborates the party's testimony?
- Past record:** Did the alleged harasser have a history of similar behavior in the past?

None of the above factors are determinative as to credibility. For example, the fact that there are no eyewitnesses to the alleged event by no means necessarily defeats the complainant's credibility, since such incidents may occur behind closed doors. Furthermore, the fact that the accused engaged in similar behavior in the past does not necessarily mean that s/he did so again.

B. Determine the Outcome

1. If the CRT had reasonable evidence that the alleged action did occur:

The CRT should assess the severity and inform the immediate supervisor, applicable senior management, and Executive Director of the results of the investigation. The Executive Director should ensure that the discipline chosen is consistent with past company policies, and follow the NRCA personnel policy. The Executive Director should document disciplinary actions taken.

2. If the CRT had reasonable evidence that the alleged action did not occur:

The appropriate supervisor, senior management or the Affirmative Action/Equal Employment Opportunity Officer should tell the employee who was the focus of the investigation that the results do not substantiate the complaint/suspicion. They should reiterate the NRCA policy (if applicable). The CRT should remind the employee that retaliation against the complainant or witnesses is prohibited.

3. If the investigative results are unclear:

If the results are not clear, the CRT should consider investigating further. The CRT may consider a second level of investigation (e.g. law enforcement or private investigators) if appropriate. Management should undertake preventive measures, such as training.

IX. INVESTIGATIVE REPORTS

When drawing conclusions and reporting on the results of the investigation, the CRT should be cautious on these points:

1. Write a preliminary report, including a list of all documents, a summary of all witnesses' testimonies, and evaluations of their credibility. Be sure to verify anything that can be verified, by checking the records and obtaining corroborating statements.
2. The report's summary should have a conclusion regarding the facts, and the evidence that substantiates the conclusion. The appropriate supervisor, senior management and Executive Director will make a decision regarding the truth of the allegation and the proper disciplinary action if warranted and document according to the NRCA Personnel Policy.

3. A copy of the results of the investigation should be placed in the full investigative report files. The full investigative records should be filed *separately* in a confidential secured file; this record is not considered to be a personnel record. The files should be kept as long as either party is employed by NRCA. The records should be maintained according to NRCA's policy for record retention.
4. The target of the investigation must be provided a copy of the conclusion as to whether the actions occurred or did not occur, and be given a chance to respond. Further investigatory interviews may be conducted as required.

X. POST INVESTIGATION MEASURES

Management must take steps to ensure that misconduct does not happen again. If a mistake in an investigation is discovered after the completion of the investigation, the appropriate senior management staff should consider reopening the investigation. The purpose of an investigation is to determine the truth. The full investigative files should be kept current with wrap-up information on the investigation and subsequent activity.

If there was a suspension and the alleged harasser returns to work, the immediate supervisor or senior management should advise the complainant in advance.

Management should consider redistributing the agency's policy and consider more employee training. Supervisors should continue to monitor the workplace.

XI. APPEALS

An appeal of the investigation's conclusion may be made by following the process outlined in the NRCA Personnel Policy.