

HARVARD UNIVERSITY

Interim Procedures for Handling Formal Complaints Against Harvard Staff Members Pursuant to the Interim Title IX Sexual Harassment Policy

Please see the end of this document for additional resources and links to other documents that may help explain these procedures.

The Office for Dispute Resolution (“ODR”) has been charged with implementing the following procedures for staff members pursuant to the Interim Title IX Sexual Harassment Policy (“Policy”), with respect to investigations. The ODR operates under the Office of the Provost, working in partnership with the University Title IX Coordinator, School or unit Title IX Resource Coordinator, and other School or unit leadership. The Office for Gender Equity has been charged with implementing the following procedures for staff members pursuant to the Policy, with respect to hearings.

Harvard students, faculty, staff, other Harvard appointees, or third parties who believe they are directly affected by the conduct of a Harvard staff member that could constitute sexual harassment (collectively “Complainants”) may: request information or advice, including whether certain conduct may violate the Policy; explore the availability of supportive measures, with or without the filing of a formal complaint; file a formal complaint; or seek informal resolution after a formal complaint is filed. These four options are described below. Complainants are encouraged to bring their concerns to the relevant School or unit Title IX Resource Coordinator, the University Title IX Coordinator, or staff in ODR, but may, if they choose, contact another School or University officer, who must refer the matter as appropriate.

School and unit Title IX Resource Coordinators are available to support individuals who make disclosures under this Policy, including with the provision of supportive measures as appropriate. As set forth below, supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the party against whom allegations are brought (the “Respondent”; collectively, the “parties”) before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University’s education and work programs or activities without unreasonably burdening the other party. Consistent with School or unit policy, supportive measures may include counseling, extensions of deadlines or other adjustments, modifications of work schedules, campus escort services, restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Any supportive measures provided to the Complainant or the Respondent will be maintained as confidential, to the extent that maintaining such confidentiality would not impair the ability to provide the supportive measures.

I. Requests for Information or Advice

Anyone seeking support, information or advice can expect to learn about resources available at the University and elsewhere that provide counseling and support. They also will be advised about the

steps involved in filing a formal complaint or seeking informal resolution after a complaint is filed. Each Title IX Resource Coordinator has information about any companion policies or procedures that may apply at the local School or unit. There is also a sexual harassment policy and complaint process in the [HUCTW Personnel Manual](#), covering complaints brought by members of the HUCTW. In addition, the School or unit Title IX Resource Coordinator or the University Title IX Coordinator may discuss with Complainants whether any supportive measures are appropriate at this stage.

II. Procedures for Formal Complaints

A. Initiating a Formal Complaint

Complainants may file a formal complaint alleging a violation of the Policy. A concern of sexual harassment against a staff member may be raised with the School or unit Title IX Resource Coordinator or the University Title IX Coordinator, but a formal complaint must be filed with the University Title IX Coordinator in person, by mail, by electronic mail, or by any additional method identified by the University Title IX Coordinator, by using the contact information listed at oge.harvard.edu/file-complaint, regardless of the identity of the Respondent. The University Title IX Coordinator will inform the School or unit Title IX Resource Coordinator(s) for the Complainant and the Respondent that a complaint has been received, and, if indicated, the School or unit Title IX Resource Coordinator will put in place any appropriate supportive measures.

A formal complaint must be a document or electronic submission that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint. The formal complaint instead may be signed by the University Title IX Coordinator, but in that case, the University Title IX Coordinator is not a complainant or otherwise a party to the complaint.

A formal complaint must allege sexual harassment against an alleged harasser and request that the University investigate the allegation(s). At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education or work program or activity of the University. The formal complaint should state the name of the alleged harasser (if known) and describe with reasonable specificity the incident(s) of alleged harassment, including the date and place of such incident(s). The complaint must be in the Complainant's own words, and may not be authored by others, including family members, advisors, or attorneys. Attached to the complaint should be a list of any sources of information (for example, witnesses, correspondence, records, and the like) that the Complainant believes may be relevant to the investigation. A complaint should not be delayed if such sources of information are unknown or unavailable.

Whether or not a complaint is filed with the University Title IX Coordinator, any person may file a complaint of discrimination with Massachusetts Commission Against Discrimination, the U.S. Equal Employment Opportunity Commission, the U.S. Department of Education Office for Civil Rights, or any other state or federal agency having jurisdiction.

B. Timeframe for Filing a Formal Complaint

The University encourages formal complaints to be filed as soon as reasonably possible following an alleged Policy violation because the University's ability to gather adequate information may be limited where a significant length of time has elapsed between an incident and the filing of a complaint. Further, the University's ability to complete its processes may be limited with respect to Respondents who are no longer employed by the University. Either circumstance might provide discretionary grounds for the dismissal of a formal complaint, as described in Section II.I.ii below.

C. Initial Review

Once a formal complaint is received by the University Title IX Coordinator and sent to the ODR, the parties will be notified in writing of the allegations and will be provided a copy of the Policy and these Procedures. The Director of ODR will assign the case to an Investigator for an initial review, which will include efforts to gather a more complete understanding of the allegations, as well as any related conduct that may implicate the Policy, and consideration of grounds for dismissal of the complaint, as described in Section II.I.ii below. The School or unit with which the Respondent is affiliated may designate an additional individual to work jointly with the Investigator (collectively, the "Investigative Team"). The University Title IX Coordinator, School or unit Title IX Resource Coordinator, investigators, School or unit designees, hearing panelists, appellate panelists, and any person who facilitates an informal resolution process, will have appropriate training.

Any individual designated as the University Title IX Coordinator or a School or unit Title IX Resource Coordinator, investigator, School or unit designee, hearing panelist, appellate panelist, or any person designated to facilitate an informal resolution process will not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent in a case to which they are assigned.

At the initial review stage, based on the information gathered, including consultation with the School or unit as appropriate, the Investigative Team will determine if the formal complaint shall proceed to investigation or if a dismissal is warranted. The Investigative Team will convey this determination in writing to: the Complainant and the Respondent; the Director of ODR, the University Title IX Coordinator; and the School or unit Title IX Resource Coordinator. The School or unit Title IX Resource Coordinator will implement any appropriate supportive measures to be put in place by the School or unit pending the completion of the case (or revise as necessary any measures already in place).

At the initial review stage or subsequently, the Investigative Team may generally consolidate investigations of allegations under the Interim Other Sexual Misconduct Policy that are factually related to allegations under the Interim Title IX Sexual Harassment Policy and investigate them using these procedures.

Ordinarily, the initial review will be concluded within one week of the date the formal complaint was received.

D. Personal Advisors

Both the Complainant and the Respondent may bring a personal advisor of their choice to any meeting or other proceeding that is part of the investigation, including initial review, or hearing. The University will not limit the choice or presence of a personal advisor for either party. During interviews, personal advisors may not speak for their advisees, although they may ask to suspend the interviews briefly if they feel their advisees would benefit from a short break. The party's personal advisors will also conduct cross-examination at the live hearing, as described in Section II.F below.

When a formal complaint involves allegations that, if true, also might constitute criminal conduct, Respondents are advised to seek legal counsel before making any written or oral statements. The investigation and hearing process are not legal proceedings, but Respondents might wish to obtain legal advice about how this process could affect any criminal case in which they are or may become involved.

E. Investigation

Following the decision to begin an investigation, the Respondent will have one week in which to submit a written statement in response to the allegations. This statement must be in the Respondent's own words; Respondents may not submit statements authored by others, including family members, advisors, or attorneys. Attached to the statement should be a list of all sources of information (for example, witnesses, correspondence, records, and the like) that the Respondent believes may be relevant to the investigation.

The Investigative Team will request individual interviews with the Complainant and the Respondent, and, as appropriate, with other witnesses, which may include those identified by the parties as well as relevant officers of the School or University or others. When identifying potential witnesses, the parties should understand that the purpose of interviews is to gather and assess relevant information about the incident(s) at issue in the complaint.

If, in the course of an investigation, the Investigative Team decides to investigate allegations not included in the written notice to the parties described herein, the Investigative Team will provide notice of the additional allegations to the parties whose identities are known.

These Procedures presume that the Respondent is not responsible for an alleged Policy violation until a final determination regarding responsibility is made.

Prior to the conclusion of the investigation, the Investigative Team will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence upon which the Investigative Team does not intend to rely in making findings of fact, and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party has the opportunity to respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the Investigative Team will send to each party and the party's advisor (i.e., personal advisor), if any, the evidence subject to inspection and review in an electronic format

or a hard copy, and the parties will have up to 10 business days to submit a written response, which the Investigative Team will consider prior to completion of the investigative report.

At least 10 business days prior to a hearing described in Section II.F below:

* the Investigative Team will provide the Complainant and the Respondent, and their advisors, if any, with the investigative report, in an electronic format or hard copy, which will include recommended findings of fact on a preponderance of the evidence, and will give both parties five business days to submit a written response; and

* the appropriate School or unit Title IX Resource Coordinator and the University Title IX Coordinator will be provided with the investigative report for informational purposes.

F. Hearing

The University Title IX Coordinator will assign a trained panel of decision-makers for the hearing, selecting two persons from a list of administrators and faculty, and one person from a list of external attorneys, which may include, e.g., arbitrators and retired judges (the “Hearing Panel”).

The Hearing Panel shall determine the conduct of the live hearing, including without limitation rules of decorum and reasonable time limitations for the hearing. Formal rules of evidence will not apply.

At the live hearing, the Hearing Panel will permit each party’s personal advisor, to ask the other party and any witnesses relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party’s personal advisor and never by a party personally.

If a party does not have an advisor present at the live hearing, the Hearing Panel must provide to that party an advisor of the relevant School’s, unit’s, or the Office for Gender Equity’s choice, to conduct cross-examination on behalf of that party.

In general, documents that have not been submitted during the investigation and included in the investigative report may not be presented to the Hearing Panel prior to or at the hearing, although the Hearing Panel may make an exception if the documents contain new information that was not reasonably available at the time of the investigation and that the Hearing Panel deems to be highly relevant to an accurate and fair determination of the outcome.

Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.

The Hearing Panel cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.

Live hearings may, but need not, be conducted with all parties physically present in the same geographic location. At the request of either party, in circumstances in which both parties are to appear at the hearing in person, the Hearing Panel must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Hearing Panel and parties to simultaneously see and hear the party or the witness answering questions.

At the Hearing Panel's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. The Hearing Panel must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

The Hearing Panel must make all evidence gathered by the Investigative Team as described in Section II.E above available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

The Hearing Panel will issue a determination regarding responsibility, applying a preponderance of the evidence standard and making a decision by majority vote. The determination regarding responsibility will include a description of the procedural steps taken; findings of fact supporting the determination regarding responsibility; conclusions regarding the application of the Policy to the facts, as well as application of the Interim Other Sexual Misconduct Policy to the facts, as appropriate, such as for allegations consolidated as described in Section II.C above; a statement of, and rationale for, the result as to each allegation, any disciplinary sanctions the School or unit may impose on the Respondent if applicable, and whether remedies designed to restore or preserve equal access to the University's education or work program or activity will be provided to the Complainant; and the procedures and permissible bases for the parties to appeal. The School or unit Title IX Resource Coordinator is responsible for effective implementation of any remedies.

The initial review, investigation, hearing, and determination regarding responsibility, including the outcome of any remedies process, will be completed and the final determination regarding responsibility provided to the Complainant, the Respondent, the University Title IX Coordinator, the School or unit Title IX Resource Coordinator, and the appropriate officer in the School or unit, ordinarily within 90 business days of receipt of the formal complaint. The Investigative Team or the Hearing Panel, as applicable, may impose reasonable timeframes to enable the timely completion of a proceeding. Timeframes for all phases of a proceeding apply to all parties equally. There may be circumstances requiring longer timeframes. Timeframes may be extended, for example, in the interest of the integrity and completeness of the initial review, investigation, hearing, and any remedies process, to accommodate witness availability, or to comply with requests by or not to prejudice investigations or processes of external law enforcement, or for other legitimate reasons, including the complexity of the investigation and the severity or extent of alleged misconduct. The Investigative Team or the Hearing Panel, as applicable, will notify the parties of any extensions of timeframes.

G. Evidence

In gathering and weighing evidence, the Investigative Team and the Hearing Panel will note that whether conduct is unwelcome is subjective, that is, based on whether the person subject to the

conduct viewed it as unwelcome. However, in making determinations as to whether consent was communicated by the person subject to the conduct, and as to the elements of severity, pervasiveness, objective offensiveness, and denial of equal access, consideration should be given not only to the subjective perspective of the person subject to the conduct, but also to the objective view of a reasonable person, based on the totality of the circumstances. The following types of information may be helpful in making that determination, while avoiding prejudice of the facts at issue: an objective evaluation of all relevant evidence – including both inculpatory (tending to support that the alleged conduct occurred) and exculpatory (not tending to support that the alleged conduct occurred) evidence; statements by any witnesses to the alleged incident; information about the relative credibility of the parties and witnesses, so long as credibility determinations are not based on a person’s status as a complainant, respondent, or witness; the detail, consistency, and plausibility of each person’s account; the absence of corroborating information where it should logically exist; information that the Respondent has been found to have committed sexual misconduct or harassment; information that the Complainant has been found to have made false allegations against others; information about the parties’ reaction or behavior after the alleged incident; and information about any actions the parties took immediately following the incident, including reporting the matter to others.

H. Confidentiality

The ODR, the Hearing Panel, the Appellate Panel, personal advisors, and others at the University involved in or aware of the complaint will take reasonable steps to protect the privacy of all involved. Once a complaint is filed, the Complainant or Reporter, the Respondent, and any witnesses will be notified of the potential for compromising the integrity of the investigation by disclosing information about the case and the expectation that they therefore keep such information – including any documents they may receive or review – confidential. They also will be notified that sharing such information might compromise the investigation or may be construed as retaliatory. Retaliation of any kind is a separate violation of the Policy and may lead to an additional complaint and consequences.

The parties remain free to share their own experiences, though to avoid the possibility of compromising the investigation, it is generally advisable to limit the number of people in whom they confide.

I. Special Circumstances

i. Request for Anonymity

Complainants who want to file a formal complaint cannot remain anonymous or prevent their identity from being disclosed to the Respondent (via the written notice of allegations).

ii. Dismissal

Mandatory Dismissal of a formal complaint: If the conduct alleged in the formal complaint would, even if true, not constitute sexual harassment as defined in the Policy, did not occur in the University’s education or work program or activity as defined in the Policy, or did not occur

against a person in the United States, then the Investigative Team must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under the Policy. Such a dismissal does not preclude action under other University or School policies.

Discretionary Dismissal of a formal complaint: The Investigative Team or Hearing Panel may, after having consulted with the appropriate School or unit Title IX Resource Coordinator, dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing, respectively:

- (1) the Complainant notifies the University Title IX Coordinator or School or unit Title IX Resource Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
- (2) the Respondent is no longer employed by the University; or
- (3) specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

The above grounds are the only grounds for the mandatory or discretionary dismissal of a formal complaint. The Director of ODR or the Hearing Panel, as applicable, will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties, as well as the University Title IX Coordinator and the School or unit Title IX Resource Coordinator.

Within one week of the decision to dismiss a case, the Complainant or Respondent may appeal the dismissal under the process and on the bases set forth in Section III below.

In cases where the Director of ODR or the Hearing Panel, as applicable, after having consulted with the relevant School or unit, concludes that the alleged conduct, while not a violation of the Policy, might implicate other School or University conduct policies, the Director of ODR or the Hearing Panel may refer the formal complaint to the appropriate School or University official.

iii. Request for Informal Resolution

Once a formal complaint has been opened for investigation and before the determination regarding responsibility has been provided to the parties, a party may request informal resolution as an alternative to formal resolution of the complaint, but that disposition requires agreement of the Complainant and the Respondent and the approval of the Director of ODR in consultation with the University Title IX Coordinator and the relevant School or unit. Informal resolution may not be used to resolve allegations that an employee sexually harassed a student.

If such a request is approved, the timeframes will be stayed, and the Director of ODR will ordinarily assign the informal resolution to an Investigator, other than the Investigator who has been assigned to the Investigative Team for the case; or with the approval of the Director of ODR and the University Title IX Coordinator, another University officer trained to facilitate an informal resolution process; who will take such steps as they deem appropriate to assist in reaching a resolution.

The Investigator, or other University officer facilitating the informal resolution process, will: (1) provide the parties with a written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the investigative or hearing process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and (2) obtain the parties' voluntary, written consent to the informal resolution process.

The parties will ordinarily have up to two weeks from receipt of the request to reach a written informal resolution, unless extended by written agreement of the Complainant and the Respondent with the approval of the Director of ODR in consultation with the University Title IX Coordinator and the relevant School or unit. If the parties cannot reach an informal resolution, then the investigation or hearing will resume, in accordance with the formal complaint procedures.

III. Appeal

Both the Respondent and the Complainant may appeal the dismissal of a formal complaint or any allegations therein, or the Hearing Panel's determination regarding responsibility, based on the following grounds:

1. A procedural irregularity that affected the outcome of the decision;
2. The appellant has new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, and that could affect the outcome of the decision;
3. The University Title IX Coordinator, School or unit Title IX Resource Coordinator, Investigative Team, or Hearing Panel had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or
4. On the record as a whole, no reasonable Hearing Panel could have reached the same determination regarding responsibility.

Disagreement with the reason(s) for a dismissal by either the Investigative Team or the Hearing Panel, or the Hearing Panel's findings or determination regarding responsibility, is not, by itself, a ground for appeal.

Appeals of a dismissal or the Hearing Panel's determination regarding responsibility must be received by the Office for Gender Equity within one week of the date of the notice of dismissal or the determination and must be in writing and no more than 2,500 words. The Office for Gender Equity will assign the appeal to a panel drawn from a pool of trained faculty and administrators. The appeal will be shared with the non-appealing party. The non-appealing party may submit a response to the appeal within one week of receiving the appeal, and the response must be no more than 2,500 words. The response will be shared with the appealing party. The appealing party may

submit a reply of no more than 1,000 words within 2 business days. The non-appealing party will have access to the other party's reply, but no further responses will be permitted. All appeals will be based solely on the written record. Ordinarily, appeals will be decided within three weeks and the parties and the School or unit Title IX Resource Coordinator promptly will be informed of the outcome in writing.

IV. Discipline

The administration of sanctioning in cases involving staff members is subject to the authority of the relevant School or unit; thus, as appropriate, following any appeal of the determination regarding responsibility but before finalizing the written determination, the Hearing Panel will provide the determination regarding responsibility to the appropriate officials at the School or unit, consistent with the "Performance Correction Process" in the University Staff Personnel Manual (for non-bargaining unit staff), the applicable collective bargaining agreement (for bargaining unit staff), or other locally established disciplinary policy, so that the School or unit may separately consider the imposition of discipline through its own processes and notify the Hearing Panel of its decision in this regard for inclusion in the final written determination. Schools or units may impose a range of sanctions on staff members found to have violated the Policy, ranging from an admonition or warning up to, and including, termination. The disciplinary process will be completed and the decision on discipline provided to the Hearing Panel for inclusion in the final written determination, ordinarily within 20 business days of the School's or unit's receipt of the determination regarding responsibility if no appeal is taken or 20 business days from the decision on appeal of the determination regarding responsibility.

V. Resources

University Resources:

[Office for Gender Equity: Sexual Harassment/Assault Resources & Education \(SHARE\)](#)

[HUHS Behavioral Health Services](#)

[Harvard University Health Services](#)

[Harvard Chaplains](#)

[Harvard University Police Department](#)

[Employee Assistance Program](#)

School or unit Title IX Resource Coordinator, University Title IX Coordinator, and University Interim Title IX Sexual Harassment Policy:

[Find your local Title IX Resource Coordinator](#)

[University Title IX Coordinator](#)

[University Sexual Harassment Policies & Procedures](#)

Outside Agencies:

[U.S. Department of Education, Office for Civil Rights \(OCR\)](#)

[U.S. Equal Employment Opportunity Commission \(EEOC\)](#)

[Massachusetts Commission Against Discrimination \(MCAD\)](#)

August 27, 2021