

INTERIM¹ SEXUAL HARASSMENT POLICY AND PROCEDURES

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INTRODUCTION

Harvard Law School is committed to maintaining a safe and healthy educational and work environment in which no member of the Law School community is, on the basis of sex, sexual orientation, or gender identity, excluded from participation in, denied the benefits of, or subjected to discrimination in any Law School program or activity. Consistent with that commitment, the Law School will continue to take steps to prevent sexual harassment and to remedy its discriminatory effects, as appropriate.

The policies and procedures provided below are designed to ensure a safe and non-discriminatory educational and work environment and to meet legal requirements, including: Title IX of the Education Amendments of 1972; the Violence Against Women Reauthorization Act; Title VII of the Civil Rights Act of 1964; and Massachusetts laws that prohibit discrimination on the basis of sex, sexual orientation, and gender identity. Violations of this Policy may result in the imposition of sanctions up to, and including, termination, dismissal, or expulsion, as determined by appropriate decision-makers under relevant procedures.

Retaliation against an individual for raising an allegation of sexual or gender-based harassment, for cooperating in an investigation of such a complaint, or for opposing discriminatory practices is prohibited and may result in discipline. Submitting a complaint that is not in good faith, or providing false or misleading information in any investigation of complaints, is also prohibited and may result in discipline.

The policies and procedures provided below uphold traditions of academic freedom and uncensored debate on matters of public concern. They effect no compromise of freedom of thought, inquiry, or debate. Rather, they seek to ensure an environment in which education, work, research, and discussion are not corrupted by sexual and gender-based harassment. Nothing in them shall be construed to abridge academic freedom and inquiry, principles of free speech, or the University's and the Law School's educational mission.

¹ These policies and procedures, effective as of Academic Year 2014-15, have been promulgated on an interim basis to harmonize Harvard Law School's sexual harassment policy and procedures with Harvard University's recently adopted policy and procedures. They are subject to change prior to finalization.

I. PROHIBITED HARASSMENT

A. Sexual and Gender-Based Harassment

As defined in the Harvard University Sexual and Gender-Based Harassment Policy (“University Policy”),² sexual and gender-based harassment are prohibited.

Persons to whom policy applies: The University Policy applies to all Harvard students, faculty, and staff, or third parties, whenever the misconduct occurs: (1) on Harvard property, or (2) off Harvard property if (a) the conduct was in connection with a University or University-recognized program or activity, or (b) the conduct may have the effect of creating a hostile environment for a member of the University community. These procedures supersede all other Law School-specific policies and guidelines relating to sexual harassment, including Administrative Board Procedures as they apply to relating to sexual harassment.

Harassment Defined: The University Policy, fully incorporated herein, defines prohibited harassment as follows:

Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic, or physical conduct of a sexual nature, when: (1) submission to or rejection of such conduct is made either explicitly or implicitly a condition of an individual’s employment or academic standing or is used as the basis for employment decisions or for academic evaluation, grades, or advancement (quid pro quo); or (2) such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person’s ability to participate in or benefit from the University’s education or work programs or activities (hostile environment).

Quid pro quo sexual harassment can occur whether a person resists and suffers the threatened harm, or the person submits and avoids the threatened harm. Both situations could constitute discrimination on the basis of sex.

A hostile environment can be created by persistent or pervasive conduct or by a single severe episode. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment. Sexual violence, including rape, sexual assault, and domestic and dating violence, is a form of sexual harassment. In addition, the following conduct may violate this Policy:

- Observing, photographing, videotaping, or making other visual or auditory records of sexual activity or nudity, where there is a reasonable expectation of privacy, without the knowledge and consent of all parties
- Sharing visual or auditory records of sexual activity or nudity without the knowledge and consent of all recorded parties and recipient(s)
- Sexual advances, whether or not they involve physical touching

² <http://diversity.harvard.edu/pages/title-ix-sexual-harassment>

- Commenting about or inappropriately touching an individual's body
- Requests for sexual favors in exchange for actual or promised job benefits, such as favorable reviews, salary increases, promotions, increased benefits, or continued employment
- Lewd or sexually suggestive comments, jokes, innuendoes, or gestures
- Stalking

Other verbal, nonverbal, graphic, or physical conduct may create a hostile environment if the conduct is sufficiently persistent, pervasive, or severe so as to deny a person equal access to the University's programs or activities. Whether the conduct creates a hostile environment may depend on a variety of factors, including: the degree to which the conduct affected one or more person's education or employment; the type, frequency, and duration of the conduct; the relationship between the parties; the number of people involved; and the context in which the conduct occurred.

Unwelcome Conduct

Conduct is unwelcome if a person (1) did not request or invite it and (2) regarded the unrequested or uninvited conduct as undesirable or offensive. That a person welcomes some sexual contact does not necessarily mean that person welcomes other sexual contact. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion.

Whether conduct is unwelcome is determined based on the totality of the circumstances, including various objective and subjective factors. The following types of information may be helpful in making that determination: statements by any witnesses to the alleged incident; information about the relative credibility of the parties and witnesses; the detail and consistency of each person's account; the absence of corroborating information where it should logically exist; information that the Respondent has been found to have harassed others; information that the Complainant has been found to have made false allegations against others; information about the Complainant's 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.

In addition, when a person is so impaired or incapacitated as to be incapable of requesting or inviting the conduct, conduct of a sexual nature is deemed unwelcome, provided that the Respondent knew or reasonably should have known of the person's impairment or incapacity. The person may be impaired or incapacitated as a result of drugs or alcohol or for some other reason, such as sleep or unconsciousness. A Respondent's impairment at the time of the incident as a result of drugs or alcohol does not, however, diminish the Respondent's responsibility for sexual or gender-based harassment under this Policy.

Gender-Based Harassment

Gender-based harassment is verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on sex, sex-stereotyping, sexual orientation or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the University's education or work programs or activities. For example, persistent disparagement of a person based on a perceived lack of stereotypical masculinity or femininity or exclusion from an activity based on sexual orientation or gender identity also may violate this Policy.

Commentary

(i) Although the University Harassment Policy applies to third parties, the University and the Law School may have only a limited ability to address alleged violations committed by third parties who lack an institutional connection to the University and its Schools and Units.

B. Harassment in Connection with Faculty-Student Relations

No Law School faculty member shall have romantic or sexual relations with a student who is enrolled in a course taught by that faculty member, or who is otherwise subject to the faculty member's academic supervision. A student is considered enrolled in a faculty member's course until such time as a final grade for the course has been submitted to the Registrar; other forms of academic supervision conclude upon the submission of a final grade to the Registrar (where applicable) or upon the student's completion of all supervised work.

Commentary

(i) The University Harassment Policy does not include provisions specifically addressing faculty-student interactions. Nonetheless, romantic or sexual relations between Law School faculty and their students create the appearance of favoritism and are fraught with potential for actual favoritism and for quid pro quo sexual harassment. To some extent, the potential for favoritism and actual or apparent abuse of power may exist whenever a faculty member solicits or enters a relationship with a student, even if the student is not currently enrolled in a course taught by, or under the supervision of, the faculty member. But no bright line marks the point at which the potential for abuse of power disappears, since students may rely on the recommendations of former teachers throughout their professional careers. In addition, both faculty and students must be presumed to be responsible adults entitled to make personal decisions concerning intimate relationships. A prohibition limited to the period in which a student is subject to being officially graded or otherwise academically supervised by a faculty member reflects an appropriate middle course.

(ii) Conduct amounting to sexual or gender-based harassment can occur in the context of faculty-student romantic or sexual relations outside a supervisory relationship. Thus, compliance with the Law School's policy on faculty-student relations does not preclude a finding that a faculty member has violated the University Policy.

(iii) For purposes of this provision, "faculty member" includes visiting professors, instructors, and anyone with responsibility for evaluating student performances for Law School grades or academic credit.

(iv) The Law School Dean may grant an exception to this policy in extraordinary cases.

II. PROCEDURES FOR IMPLEMENTING HARASSMENT POLICIES AND FOR DISCIPLINE

Effective as of July 2014, Harvard University has adopted Procedures for Handling Complaints Involving Students Pursuant to the Sexual Harassment Policy (“University Procedures”): <http://diversity.harvard.edu/pages/title-ix-sexual-harassment>. The University Procedures govern allegations of sexual and gender-based harassment committed by Harvard students, including law students. These procedures differ in important respects from the Implementation and Enforcement Procedures previously adopted by the Law Faculty in April 1995.

Section A describes the resources available to persons who believe they have been subjected to sexual or gender-based harassment. Section B sets out informal resolution and formal complaint procedures pertaining to allegations of harassment committed by law students. Section C sets out informal resolution and formal complaint procedures pertaining to allegations of harassment committed by faculty, staff, other Law School appointees, or employers who make use of HLS recruitment services.

The Law School Title IX Coordinator’s email address is mbowen@law.harvard.edu. Those of the Deputy Title IX Coordinators for HLS are claypoole@law.harvard.edu and cosgrove@law.harvard.edu.

Training: The procedures below identify various Law School bodies and offices with responsibility for investigating or issuing discipline in connection with claims of sexual and gender-based harassment. Members of these bodies and occupants of these offices shall receive training appropriate to their respective responsibilities.

Interim Measures: Interim measures may be considered and implemented at any time at which Law School officials with responsibility for addressing matters pertaining to sexual or gender-based harassment have reason to conclude that implementation would be appropriate to ensure a safe and healthy educational and work environment. These measures may include: restrictions on contact, course-schedule or work-schedule alteration, changes in housing, leaves of absence, or increased monitoring of certain areas of campus. Ordinarily, such measures will be considered and implemented by the Dean of Students, the Law School’s Title IX Coordinator, or a Deputy Coordinator in consultation with, as appropriate, the Law School Dean and the Harvard University Office of the General Counsel. An involuntary leave of absence will not be imposed on a law student as an interim measure except in conformity with applicable Law School guidelines.³

³ <http://www.law.harvard.edu/academics/handbook/rules-relating-to-law-school-studies/2013-14/2013-14-leaves-and-withdrawals.html>

A. Information and Advice

Any Law School student or staff or faculty member who has a concern, inquiry, or complaint regarding prohibited sexual harassment may seek information and advice concerning applicable harassment policies, formal and informal grievance procedures, and counseling and other available services.

For information and advice, members of the Law School community may contact the Law School's Title IX Coordinator or Deputy Title IX Coordinators, or the Harvard University Office for Sexual and Gender-Based Dispute Resolution ("ODR"). *Contact information for these and other officials is provided below.* They may also contact any other Law School or University officer, who shall refer the matter as appropriate.

The Law School Title IX Coordinator and Deputy Coordinators can provide information regarding the availability of institutional counseling and support, and procedures pertaining to informal and formal proceedings to resolve harassment allegations. Upon request or if appropriate, the Title IX Coordinator or Deputy Coordinator can also provide advice concerning the ways in which statements or filings through which informal and formal proceedings are commenced might be stated or drafted.

A person seeking information and advice may request anonymity. However, if, after taking into account the person's desire for anonymity, the Law School's and the University's need to provide a non-discriminatory environment and an alleged harasser's right to have notice of allegations, the Law School's Title IX Coordinator, a Deputy Coordinator or ODR officials may determine that there is a need to further investigate the matter that in turn might require that the person's identity be disclosed. Prior to any such disclosure, the person shall be notified of the need for disclosure.

Subject to restrictions on the manner of participation of advisers in the disciplinary process set by appropriate University and Law School officials, a complainant, as well as anyone alleged to have engaged in harassment, may be assisted by an adviser of his or her choosing at any stage of the informal or formal complaint process, except that no person who is involved in, or related to anyone involved in, the relevant matter may serve in such a capacity. The Law School Title IX Coordinator and Deputy Coordinators can, upon request, assist in identifying Law School students, faculty, or staff who might be willing to serve as an adviser. The Law School will not ordinarily furnish counsel or pay advisers' fees. Nonetheless, in proceedings on formal complaints involving students, the Law School will attempt to assist a student who needs and desires but cannot afford counsel. The Title IX Coordinator or a Deputy Coordinator may apprise the alleged harasser of counseling or other relevant services available through the Law School.

B. Procedures Concerning Alleged Harassment by A Law Student

University Procedures: Requests for Informal Resolution and Formal Complaints: In addition to or apart from seeking information and advice, any Harvard student, faculty, staff, or third party who believes he or she has been directly affected by conduct of a Harvard student that constitutes prohibited sexual or gender-based harassment (an “Initiating Party”) may seek informal resolution, or may file a formal complaint.

The procedures for informal resolution and formal complaint with respect to alleged harassment by a Harvard student are detailed in the Harvard University’s Procedures for Handling Complaints Involving Students Pursuant to the Sexual Harassment Policy (“University Procedures”), available here: <http://diversity.harvard.edu/pages/title-ix-sexual-harassment>. In outline, those procedures, fully incorporated herein, operate as follows.

Informal Resolution: An Initiating Party may request an *informal resolution* of allegations of sexual or gender-based harassment against a student. Such a request should be directed either to the Law School’s Title IX Coordinator, a Deputy Title IX Coordinator, or to the University’s Title IX Officer. The official to whom the request is directed must determine whether informal resolution is appropriate in light of the severity of the alleged harassment and the potential risk of a hostile environment for others in the community. Depending on the official contacted, the matter will be investigated either by the Law School’s Title IX Coordinator or his or her designee, one of the HLS Deputy Title IX Coordinators or his or her designee, or an investigator appointed by the Title IX Officer. Such a matter will be deemed satisfactorily resolved only when both parties expressly agree to an outcome, and that outcome is approved by the Law School’s Title IX Coordinator. At any point prior to a final agreement resolving the allegations, the Initiating Party may withdraw the request for informal resolution and initiate a formal complaint. Ordinarily, the informal resolution process will be concluded within three weeks of the date of the request. If the process is expected to take longer, the Law School Title IX Coordinator shall inform the parties. Mediation is prohibited in sexual assault and sexual violence cases, and students who report sexual harassment will not be required to resolve the problem directly with the alleged harasser.

Formal Complaint: An Initiating Party may alternatively file a *formal complaint* of harassment against a student. The complaint should be filed directly with ODR, which will in turn notify the Law School’s Title IX Coordinator. The complaint will be investigated by an Investigative Team that consists of an Investigator assigned by the University’s Title IX Officer and a person designated by the Law School. The Investigative Team must initially determine whether the allegations warrant investigation or administrative closure. Where an investigation is deemed warranted and completed, it will result in the issuance of a Final Report. The Report will contain findings of fact and a conclusion as to whether the student has committed sexual or gender-based harassment.

Relation of University Procedures to Law School Discipline: The Law School remains responsible for student discipline through its Administrative Board (“Board”). Nonetheless, any disciplinary proceedings against a student based on a formal complaint of sexual or gender-based harassment must be conducted in a manner consistent with the University Procedures. Accordingly, the following disciplinary procedures will apply to allegations of

sexual or gender-based harassment brought against a law student. Because, as provided below, the Board is bound by the findings and conclusions contained in a Final Report issued by ODR, whenever a formal complaint of harassment is filed against a law student, the Law School's Title IX Coordinator or a Deputy Title IX Coordinator shall explain to the Complainant and the alleged harasser the significance of the ODR-led investigation for any subsequent Law School disciplinary proceedings. The University Procedures incorporate a preponderance of the evidence standard.

Referral of Matters Before the Administrative Board: If, in any disciplinary proceeding against a law student before the Board that is not based on an allegation of sexual or gender-based harassment, the Board Chairperson concludes that the alleged disciplinary infraction(s) might constitute such harassment, the Chairperson shall ordinarily suspend the Board proceedings and refer the matter to the Law School's Title IX Coordinator and the University Title IX Officer for investigation and resolution according to the University Procedures. The Board Secretary shall promptly notify all concerned parties of the suspension and referral. If, however, a disciplinary proceeding against a student before the Board includes both violations of the University Policy and a serious violation of another Law School policy, the proceedings regarding the violation of the other policy may continue at the discretion of the Board Chairperson, in consultation with the Title IX Officer. The Board Chairperson and the Title IX Officer may combine the investigations at their discretion.

If a referral results in a request for an informal resolution, the matter will be resolved in accordance with the relevant provisions in the University Procedures, including the procedure for approval of agreements described below. If a referral results in a formal complaint and a Final Report issued by ODR, the Board shall take cognizance of the Report under the procedures described below.

Disciplinary Proceedings Following the Resolution of a Formal Complaint of Harassment: Non-Reviewability of Final Reports: Whenever a formal complaint of sexual or gender-based harassment against a law student results in the issuance by ODR of a Final Report, any formal disciplinary proceeding before the Board against that student based on conduct addressed by the Report—regardless of whether the proceeding was commenced prior or subsequent to the filing of the formal complaint—must accept as final and non-reviewable the Report's findings of fact and its conclusions as to whether a violation of the University Harassment Policy has occurred.

Disciplinary Proceedings Following the Resolution of a Formal Complaint of Harassment That Results in a Finding of No Policy Violation: Whenever ODR issues a Final Report concluding that a law student has *not* committed sexual or gender-based harassment, the Law School's Title IX Coordinator shall forward the Report to the Board Secretary.⁴ Although the Report's conclusion obviates the possibility of discipline for sexual or gender-based harassment, if, on the basis of the factual findings contained in the Report, the Board concludes that it is reasonably likely that a disciplinary infraction other than sexual or

⁴ If either party invokes the right to appeal a decision contained in a Final Report granted by the University Procedures, the Law School's Title IX Coordinator shall not deliver the Final Report until the appeal has been resolved.

gender-based harassment by the student alleged to have committed harassment, or by any other law student, can be established by clear and convincing evidence, the Board may initiate formal proceedings by a written charge which explains the nature of the alleged infraction.⁵ Any such proceedings shall be conducted in accordance with otherwise applicable Board Procedures.

Disciplinary Proceedings Following the Resolution of a Formal Complaint of Harassment That Results in a Finding of A Policy Violation: Whenever ODR issues a Final Report concluding that a law student has committed sexual or gender-based harassment, the Law School's Title IX Coordinator shall forward the Report to the Board Secretary.⁶ If formal disciplinary proceedings have not already been initiated (as would be the case if the matter had been referred by the Board to ODR under the referral procedures discussed above), the Board shall initiate such proceedings by a written charge unless there is no basis for concluding that the violation, as found in the Final Report, might warrant Reprimand, Suspension, Dismissal or Expulsion.

(1) The Board Secretary shall promptly provide copies of the charge to the law student found to have committed sexual or gender-based harassment ("Respondent") and to the party who initiated the formal complaint ("Initiating Party"). The Board Secretary shall also make available to the parties any public announcements or reports of the Board or faculty relating to past disciplinary cases.

(2) Within seven calendar days of receiving the charge, the Initiating Party and the Respondent may each submit a written filing to the Board Secretary, not to exceed ten pages in length, double-spaced, written in the party's own words. Neither party is required to do so. Upon submission, the Board Secretary will furnish a copy of the filing to the other party. Thereupon, each party shall have three calendar days in which to submit to the Board Secretary a written response to the other party's initial submission, which response may not exceed three pages in length, double-spaced.

(a) Because the Board may not review the Final Report's factual findings, any filing submitted to the Board may not challenge the validity of those findings. The Board's function is limited to determining, on the basis of the Final Report's findings and conclusions, whether to discipline the Respondent, and whether that discipline should take the form of Reprimand, Suspension, Dismissal, or Expulsion. Subject to the foregoing constraint, the parties may submit anything they think is relevant to appropriate discipline. For example, the victim might wish to describe the impact of the relevant events on his or her work and life, and the respondent might wish to describe any mitigating factors of which the Board should take account in determining discipline. In deciding the appropriate sanction, the Board may consider facts contained in the Final Report relevant to: the intent with which the Respondent

⁵ The reference to "any other law student" allows for the possibility that a Final Report might contain findings indicating a possible disciplinary violation, not involving sexual or gender-based harassment, committed by a law student other than the student(s) against whom the formal complaint of harassment was filed.

⁶ If either party invokes the right to appeal a decision contained in a Final Report granted by the University Procedures, the Law School's Title IX Coordinator shall not deliver the Final Report until the appeal has been resolved.

acted, the nature and degree of harm caused by the Respondent's actions, other acts of harassment (if any) committed by the Respondent, the need for deterrence and such other factors as reason and justice may require.

(b) A written filing with the Board may allege a fact or circumstance not addressed in the Final Report *only if*: (1) the fact or circumstance is potentially relevant to the issue of discipline; (2) the fact or circumstance was presented to the ODR's Investigative Team prior to the issuance of the Final Report; and (3) the fact or circumstance, if established, would not contradict, either directly or indirectly, any finding in the Final Report.⁷

The party submitting the filing bears the burden of establishing that each of these conditions has been satisfied, and any doubts will be resolved by the Board in favor of declining to credit the alleged fact or circumstance. In the event that the Board requires additional information pertaining to an alleged fact or circumstance that satisfies the conditions set forth herein, it may take appropriate steps to solicit that information. The Board may not base its disciplinary decision on a fact or circumstance that is not contained in the Final Report unless it finds that the fact or circumstance is established by a preponderance of the evidence and does not conflict with any finding of the Final Report.

(3) Disciplinary cases are normally heard by the full Board. Either the Initiating Party or the Respondent may ask any member of the Board to recuse him- or herself for cause. At the request of the student who has requested recusal, a member who recuses him- or herself shall be replaced by an alternate member.

(4) Board decisions on discipline are determined by a majority vote of sitting members. In case of a tie vote, the vote of the majority of faculty members and administrative officers shall determine the outcome.

(5) If the Board votes to impose discipline, it shall issue a written decision ("Decision") that includes, where appropriate, a statement of the reasons for the sanction imposed.

(6) In all cases in which the Board determines that the appropriate disciplinary measure is Dismissal or Expulsion, a faculty Committee shall review the Decision. The Committee will consist of six law school faculty designated by the Dean of the Law School. In addition, the Board Chairperson shall serve as an *ex officio*, non-voting member. No student shall be expelled or dismissed except by a vote of at least two-thirds of the voting members of the Committee.

In reviewing the Board's disciplinary decision, the Committee must accept the findings and conclusions contained in the Final Report. The Committee shall not modify any additional finding of fact made by the Board unless it concludes that the finding was clearly erroneous, and shall not modify the Board's disciplinary decision unless it

⁷ Nothing in these procedures precludes a party from asking the Title IX Officer to re-open a concluded investigation based on the discovery of new evidence that could not reasonably have been discovered prior to the conclusion of ODR proceedings with respect to a formal complaint.

concludes that the decision constitutes an abuse of discretion. If the Committee determines, under these standards, that modification of the Board's decision is appropriate, it shall remand the matter to the Board with instructions either to increase or decrease the severity of discipline.

(7) In all cases in which the sanction voted by the Board is other than Dismissal or Expulsion, the Decision of the Board shall normally be final. However, the Board Chairperson, in his or her discretion, may present the Board's Decision to the faculty Committee for consideration. Before considering the merits of the Board's Decision, the faculty Committee shall first decide by majority vote whether the Decision raises such important and novel issues of policy or is made under such other extraordinary circumstances that the Committee must consider the matter. If the Committee votes to consider the Decision, it shall review it on the same terms as a Decision to dismiss or expel a student.

Equal Rights of Appeal

Any rights of appeal under these procedures shall be provided to both parties and both parties will be provided an equal opportunity to participate in the appeal process.

Simultaneous Rights to Proceed.

Complainants have a right to proceed simultaneously with a criminal investigation and a Title IX investigation, and the Law School may defer its investigation for a limited time for fact gathering but then will promptly resume its investigation.

Timeframes.

The University Procedures set out reasonably prompt timeframes for proceedings thereunder, including a description of factors that may extend the timeframes, such as the complexity of the investigation, and/or the severity and extent of the alleged conduct. All steps under these procedures shall take place with reasonable promptness, taking into account the complexity of any case and the severity and extent of alleged conduct.

Investigations.

To the extent called for by these procedures, any investigation conducted by the Law School under this Policy will be conducted in an adequate, reliable, and impartial manner, including providing the parties an equal opportunity to present witnesses and relevant evidence.

Student Updates.

The Law School will inform the students who are parties to a proceeding at regular intervals of the status of any proceeding hereunder.

No Public Hearings.

No public hearings will be held in cases involving sexual assault or sexual violence hereunder.

Commentary

(i) Under the University Procedures, any disciplinary proceeding brought against a law student for violations of the University's Harassment Policy must accept as final and non-reviewable the findings of fact and conclusions as to the presence of a violation contained in the ODR's Final Report. It is expected that, in the vast majority of cases, the Final Report will reflect the Investigative Team's consideration of all the facts and circumstances potentially relevant to determining whether (and, if so, how) the Respondent violated the University's Harassment Policy. In such cases, there will be no need or opportunity, except as set out in (B)(2)(b), for facts or circumstances pertaining to the alleged violation to be brought before the Board. Instead, the sole function of the Board will be to consider the appropriate discipline based on the findings and conclusions set forth in the Final Report. Hence the procedures governing the Board's handling of discipline for law students deemed in a Final Report to have violated the University Harassment Policy depart substantially from the procedures used by the Board in other disciplinary proceedings, in which the Board is primarily responsible for investigation.

(ii) These procedures nonetheless provide a narrow mechanism by which either party can bring a new fact or circumstance before the Board. The procedure is designed, however, to insure that in no case shall any of the findings or conclusions of the Final Report be reconsidered or disregarded. The Board will not consider proffered facts or circumstances that are inconsistent with the facts found in the Final Report. Moreover, the party seeking to bring a fact or circumstance to the Board's attention must demonstrate that the fact or circumstance in question was raised with the Investigative Team, yet was not in addressed, explicitly or implicitly, in the Final Report. If an alleged fact or circumstance is found to be unproven, that finding suffices as having "addressed" the fact or circumstance, and hence cannot be revisited by the Board.

C. Procedures Concerning Alleged Harassment by Faculty, Staff, Other Appointees, and Employers in Connection with Recruitment

The following procedures apply to allegations against Law School faculty of sexual and gender-based harassment, and of harassment in connection with faculty-student sexual relations.⁸ They also govern allegations of sexual or gender-based harassment by Law School staff who are not covered under the Harvard Union of Clerical and Technical Workers (“HUCTW”) agreement,⁹ by other Law School Appointees, and by employers in connection with Law School recruitment activities.

Any complainant, and anyone alleged to have engaged in prohibited harassment may be accompanied, aided, or represented by a friend, an adviser, or by counsel at any stage of the informal or formal complaint process, except that no person who is involved in, or related to anyone involved in, the matter may serve in such capacity.¹⁰ Upon request, the Law School’s Title IX Coordinator, or a Deputy Title IX Coordinator, will endeavor to provide names of Law School students, staff, or faculty who might be willing to serve as advisers.

1. Informal Resolution

Any member of the Law School community who believes that he or she has been subjected to sexual or gender-based harassment by a faculty member, staff, other Law School appointee, or an employer in connection with Law School recruitment activities may request the assistance of the Law School in attempting to reach an informal resolution of the grievance. The official who receives the request, or to whom the request is referred, in conjunction with the Law School’s Title IX Coordinator or a Deputy Title IX Coordinator, will assess the severity of the alleged harassment and the potential risk of a hostile environment for others in the community to determine whether informal resolution is appropriate.

Officials to be contacted: A member of the Law School community who may wish to have assistance in informally resolving an allegation of sexual or gender-based harassment against a faculty or staff member, another Law School appointee, or an employer who uses Law School recruitment services, may contact one of the following persons:

Associate Dean and Dean for Faculty and Academic Affairs: complaint about a faculty member or other Law School appointee;

Assistant Dean and Chief Human Resources Officer: complaint about a staff member;

⁸ For ease of reference, use of the phrase “sexual and gender-based harassment” in the remainder of Section C shall be understood to include, where applicable, violations by faculty of the prohibition on harassment in connection with faculty-student romantic or sexual relations. *See* Section I.B, above.

⁹ All staff members who believe they have been harassed may also invoke the procedures of the University Harassment Policy included in the Personnel Manual. Support staff members covered by the HUCTW agreement may also refer to the procedures provided in that agreement.

¹⁰ For cases in which federal law does not mandate that a party be given full discretion to choose an advisor, other laws, including state laws protecting confidential information, may further limit a party’s choice of adviser.

Assistant Dean for Career Services and Assistant Dean for Public Service: complaint about an employer in connection with Law School recruitment activities (in the case of summer employment, it is suggested that the student also enlist the help of the employer's representative for administering the summer program);

Dean for Administration: complaint against any of the above-named officials or the Law School Dean;

Law School Dean: complaint against the Dean for Administration, or a complaint that would ordinarily be handled by one of the above-named officials except that the relevant office is vacant.

In addition, as an alternative to contacting the officers identified above,

Any member of the Law School community with a complaint about a faculty member, staff member, other Law School appointee, or employer in connection with Law School recruitment activities may contact the **Law School's Title IX Coordinator** or a **Deputy Title IX Coordinator**.

Information: The official contacted should ascertain that the person invoking the informal resolution procedures has been apprised of available support mechanisms, of mechanisms of dispute resolution not involving informal resolution or formal complaint, of the procedures for filing requests for informal resolution and formal complaints, and of the nature of the process that such requests and complaints initiate.

Nature of informal process: A request for informal resolution, which may be made either orally or in writing, operates as a request to the official contacted either to assist in its resolution or to designate another appropriate Law School official to provide such assistance. Such a request must identify the alleged harasser(s), if the identity is known, and describe the incident(s) of alleged harassment with reasonable specificity. The Complainant must also indicate any steps that he or she has already taken to arrive at an informal resolution.

Upon receipt of a request, the official contacted, or the official to whom the matter has been referred by the official contacted, shall determine if the matter is appropriate for informal resolution. If the official is someone other than the Law School's Title IX Coordinator, he or she shall make this determination and take the following steps in consultation with the Coordinator.

Upon determining that the matter is appropriate for informal resolution, the official will consult further with the Complainant, inform the person who is the subject of the allegations, and gather additional relevant information as necessary from the parties and others. The alleged harasser shall be given the opportunity to respond orally or in writing to the complaint. The official may supervise an exchange of views in writing between the parties in order to facilitate a mutually acceptable resolution. The exchange may be conducted in person if both parties so agree. When the allegations, if true, might constitute criminal conduct, the party against whom they are brought is hereby advised to seek legal counsel before making any written or oral statements.

Those facing allegations may wish to obtain legal advice about how this process could affect any criminal case in which they are or may become involved.

The official contacted by the Complainant or to whom the matter is referred, or the Law School's Title IX Coordinator or a Law School Deputy Title IX Coordinator, should inform the alleged harasser of his or her options, rights, and obligations under University and Law School policies and procedures. The official or the Title IX Coordinator may apprise the alleged harasser of counseling or other relevant services available through the Law School. If appropriate, the official or the Title IX Coordinator should also give notice of the Law School policy providing that no person shall be subject to harassment, intimidation or retaliation of any kind for having brought a good faith complaint of sexual harassment, whether formal or informal. He or she may also apprise the alleged harasser of counseling or other relevant services available through the Law School and the University.

Confidentiality: In conducting an informal investigation and in acting as an intermediary between the informal Complainant and the alleged harasser, the official contacted or to whom the matter is referred and the Title IX Coordinator or Deputy Title IX Coordinator should maintain as much confidentiality as is reasonably practicable under the circumstances. Parties should understand that disclosure of information learned in the investigatory process may have the potential of compromising the investigation and may be viewed as retaliatory. Where appropriate, the official contacted or the person to whom a matter is referred may attempt to secure the agreement of the parties to mutually acceptable terms of confidentiality.

Resolution or conclusion: A request for informal resolution will be deemed satisfactorily resolved when both parties expressly state their agreement to an outcome that is mutually acceptable to them, to the official handling the matter, and to the Law School's Title IX Coordinator. The incident(s) providing the basis for a request that is satisfactorily resolved may not subsequently be the subject of a formal complaint by the same Complainant against the same alleged harasser, except in cases involving a breach of the informal settlement agreement by the alleged harasser or continuing harassment.

A proceeding in connection with a request for informal resolution may also be concluded when:

the Complainant notifies the official contacted or to whom the matter is referred that he or she wishes to withdraw the informal complaint;

the official contacted or to whom the matter is referred determines, in consultation with the Law School's Title IX Coordinator, that the Complainant's allegations of harassment appear so lacking in merit that further efforts at informal resolution are unwarranted; or

the official contacted or to whom the matter is referred determines, in consultation with the Law School's Title IX Coordinator, that further efforts at informal resolution would be futile and are therefore unwarranted.

A conclusion that a complaint lacks merit or that further efforts at informal resolution would prove futile shall have no preclusive effect or evidentiary weight in any subsequent proceeding initiated by a formal complaint.

Timetable: Ordinarily, informal resolution proceedings should be concluded within three weeks of their commencement. If resolution is expected to take longer, the official contacted or the Law School's Title IX Coordinator shall notify the parties. At any time during such proceedings prior to resolution, the Complainant may terminate them by filing a formal complaint.

Record-keeping: For any proceedings related to a request for an informal resolution, the Law School's Title IX Coordinator shall maintain a record that identifies the individuals involved, investigative steps taken, documentation received, individuals interviewed, decisions reached, and reason(s) for the decisions reached.

2. Formal Complaints

Anyone who believes that he or she has been the victim of sexual or gender-based harassment committed by a faculty member, staff member, other Law School appointee, or an employer in connection with Law School recruitment activities, is entitled to file a formal complaint.

Timeliness: A formal complaint should be filed as soon as reasonably possible following an alleged violation of the University Harassment Policy. Further delay in filing a complaint may compromise the Law School's ability to investigate or otherwise respond to the complaint.

Decision-makers: Complaints shall be filed with the following decision-makers, depending on the status of the alleged harasser:

Law School Dean: complaint against a faculty member, other Law School appointee, or the Dean for Administration, as well as a complaint that would ordinarily be filed with one of the officials designated below except that the relevant office is vacant;

Dean for Administration: complaint against a staff member;

Assistant Dean for Career Services and Assistant Dean for Public Service: complaint against an employer in connection with Law School recruitment activities;

Law School's Title IX Coordinator or a Deputy Title IX Coordinator: complaint against any person whose status brings them within these procedures.

Procedural rules: Allegations of sexual or gender-based harassment shall be considered according to the rules and procedures of the above decision-makers, except that the substantive enforcement jurisdiction of those decision-makers shall be extended, if necessary, to encompass all alleged violations of Law School rules of conduct and the additional specific procedures described below shall also apply and in cases of conflict shall prevail.

Formal complaint: A formal complaint of sexual or gender-based harassment shall state the name(s) of the alleged harasser(s) (if known) and shall with reasonable specificity describe the incidents of alleged harassment. The complaint must be written in the Complainant's own words, and should identify the dates and places of such incidents with reasonable specificity and should list any known witnesses and other known sources of information about the incident(s) in question. A formal complaint shall be signed and dated by the Complainant.

Special investigators or hearing officers: Where appropriate, the decision-maker shall be entitled to appoint a special, impartial investigator for purposes of fact-finding or a special, impartial hearing officer or panel for purposes of resolving a complaint.

Initial Review: The decision-maker or special investigator will contact the Complainant in an attempt to gather a more complete understanding of the allegations. Based on the information gathered, and in consultation with the Law School's Title IX Coordinator, the decision-maker or special investigator will determine whether the information, if true, would constitute sexual or gender-based harassment, such that an investigation is warranted, or whether the information warrants administrative closure. The decision-maker will convey this determination to the Complainant and to the Law School's Title IX Coordinator. Ordinarily, the initial review will be concluded within one week of the date the complaint was received.

Timetable: The decision-maker shall establish a timetable for each case in order to assure a prompt resolution of the formal complaint procedure. Ordinarily, resolution should be reached within 60 days of the filing of the complaint. If resolution is expected to take longer, the decision-maker shall notify the parties.

Response: Following the decision to begin an investigation, the decision-maker or investigator will notify the Respondent in writing of the allegations and will provide a copy of the Policy and of these procedures. The Respondent shall have seven business days in which to submit a written statement in response to the allegations. This statement must be in the Respondent's own words. Attached to the statement should be a list of all known sources of information that the Respondent believes may be relevant to the investigation. When a complaint involves allegations that, if true, also might constitute criminal conduct, Respondents may wish to seek legal counsel before making any written or oral statements. Although the investigation process is not a legal proceeding, Respondents may wish to obtain legal advice about how this process could affect any criminal case in which they are or may become involved.

Investigation: The decision-maker or investigator will request individual interviews with the Complainant and Respondent, and, as appropriate, other witnesses, which may include those identified by the parties as well as relevant officials. When identifying potential witnesses, the parties should understand that the purpose of interviews is to gather and assess information about the incident(s) at issue in the complaint, not to solicit general information about a party's character. After the collection of additional information is complete but prior to the conclusion of the investigation, the decision-maker or investigator may request individual follow-up interviews with the Complainant and the Respondent to give each the opportunity to respond to the additional information. Written statements from witnesses may

be admitted. If so, the parties are entitled to an opportunity to review and reply to witnesses' statements.

Advisers: Both the Complainant and the Respondent may bring his or her personal adviser to any interviews. Personal advisers may view a redacted version of the complaint or other documents provided to the parties, offer feedback on their advisee's written statements, and provide general advice. During interviews, personal advisers 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.

Notice: Each party shall have prompt notice of, and the opportunity to review and respond to, all documents or communications filed with the decision-maker by the other party. The decision-maker shall keep both parties informed on a timely basis of the status of the complaint and the timetable for resolving it.

Related proceedings: A complaint will not be investigated if a formal complaint based on the same circumstances has already been adjudicated. Whether or not a formal complaint is filed, any person may file a complaint of discrimination with the Massachusetts Commission Against Discrimination, the U.S. Equal Employment Opportunity Commission, the U.S. Department of Education Office of Civil Rights, or any other state or federal agency having jurisdiction. In the event that an allegation includes behavior or actions that are under review by law-enforcement authorities, the decision-maker, in conjunction with the Law School's Title IX Coordinator, in light of status updates from law-enforcement authorities, will assess the timing of proceedings in connection with the formal complaint so as not to compromise the criminal investigation.

Confidentiality: Unless and until a disciplinary sanction is imposed, the decision-maker (and investigator, if any) shall maintain as much confidentiality as is reasonably practicable under the circumstances. Nonetheless, in a case involving an allegation against a faculty member, upon the request of both parties, and insofar as permitted by law, the decision-maker may conduct all or part of any hearing in public if the public interest in justice or the appearance of justice so requires. For any proceedings arising from a formal complaint, the Law School's Title IX Coordinator shall maintain a record that identifies the individuals involved, investigative steps taken, documentation received, individuals interviewed, decisions reached, and reason(s) for the decisions reached.

Burden of proof: Formal disciplinary sanctions shall be imposed only upon proof by a preponderance of the evidence of the alleged violation(s).

Sanctions: Upon the decision-maker's finding a violation, sanctions appropriate to the seriousness of the offense shall be imposed. In deciding the appropriate sanction, the decision-maker may consider the intent with which the Respondent acted, the nature and degree of harm caused by the Respondent's actions, other acts of harassment (if any) committed by the Respondent, the need for deterrence, and such other factors as reason and justice may require.

DESIGNATED LAW SCHOOL AND UNIVERSITY CONTACTS

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