

HLS Sexual Harassment Procedures for Complaints Against Faculty

HLS is committed to equal opportunity, respect, fairness and nondiscrimination, as understood in light of principles of academic freedom and free speech, and to taking appropriate steps to end any harassment, prevent its recurrence, and, where appropriate, remedy its effects.

Harvard University has adopted the [Harvard University Sexual and Gender-Based Harassment Policy](#) (the “**Policy**”), which applies to sexual or gender-based harassment that is committed by students, faculty, staff, Harvard appointees, or third parties, whenever the misconduct occurs on Harvard property; or off Harvard property, if the conduct was in connection with a University or University-recognized program or activity; or the conduct may have the effect of creating a hostile environment for a member of the University community. As noted in the Policy, “Nothing in [the] Policy shall be construed to abridge academic freedom and inquiry, principles of free speech, or the University’s educational mission.”

These procedures govern potential violations of the Policy by HLS faculty, and also set out additional related policies applicable to HLS faculty related to these goals.

1. Scope of Application and Related Procedures. The following procedures apply to complaints alleging Policy violations by or against HLS faculty. “Faculty member” and “faculty” for this purpose include full-time Harvard Law School professors (including assistant professors, professors, clinical professors, assistant clinical professors, and professors of practice), visiting professors, adjunct lecturers, and anyone else whose primary affiliation is an academic appointment and whose affiliation with Harvard University consists primarily of teaching HLS students. For clarity, a Harvard student or Harvard staff member who teaches at HLS would not be covered by this Policy, but instead would be covered by procedures for students and staff, respectively. For complaints or reports alleging violations by HLS staff, see [Sexual/Gender-Based Harassment Complaint Procedures Against Staff](#). For complaints or reports alleging violations by HLS students, see [HLS Sexual Harassment Resources and Procedures for Students](#).

2. Advisors and Counsel. All parties affected by a complaint may consult with advisors of their choice, including an attorney, at any point in the process. The Relevant Official (as defined below) will notify parties that they may consult with advisors (including an attorney), and the names of potential advisors (including attorneys). HLS will provide financial assistance to parties unable to afford an attorney who would like to do so, subject to reasonable fee structures and limits determined from time to time by the HLS Title IX Committee. Ordinarily, the person investigating a complaint under these procedures (see below) will speak directly with

all involved, and each may have an advisor or attorney present, and if requested by a HLS participant, the advisor or attorney may participate in the conversation.

3.1 Anonymous Reports. Persons may wish to report violations of the Policy anonymously, and may do so to the Relevant Official (see below). If a person reporting a potential violation self-identifies but asks to remain anonymous, the Relevant Official will decide how to proceed, taking into account the person's wishes, the University's commitment to providing a safe and non-discriminatory environment, and the right of any person accused of a violation of the Policy to have notice of allegations if any action may be taken that would affect the accused. It may not be possible to guarantee the reporting party anonymity in certain circumstances, as noted in 3.3 below.

3.2 Informal Reports. Individuals may wish to file a formal complaint about a Policy violation (see below), or to report informally (i.e., without initiating a formal complaint), and should do so to the Relevant Official (as defined below). The Relevant Official shall inform anyone making an informal report that he or she may initiate a formal complaint at any time, regardless of what steps are being or have been taken in response to an informal report.

3.3 Possible Limits to Anonymity and Confidentiality. Reporting persons should be aware that although the Relevant Official will often be able to maintain confidentiality of reporting persons, the Relevant Official may sometimes be required to take actions to protect the safety of HLS community members that may result in the identity of the reporting person being disclosed (to the police, for example). When reporting persons seek to remain anonymous or have their identities kept confidential, they will be informed that honoring such a request may limit the ability of HLS to respond fully to any reported event, including discipline against a reported person, that the Policy prohibits retaliation, and that HLS will take steps intended to prevent retaliation and to respond to it strongly if it occurs.

3.4 Relevant Officials for Informal Reports. Reports about a member of the HLS faculty may be made to the following officials (**Relevant Officials**): HLS Dean or one of the School's Title IX Coordinators.

3.5 Informal Process. The Relevant Official shall determine if the matter is appropriate for informal resolution. If the Relevant Official (in consultation with the Title IX Unit) concludes that it is possible to resolve the case in a prompt, fair and adequate manner through an informal process involving and with the consent of both the person reporting and the person whose conduct may have violated the Policy, the Relevant Official (in consultation with the Title IX Unit) may seek to do so. After a formal complaint is made, this informal process may be used only if the complainant

affirmatively seeks such a process, and any party may terminate any informal process at any time, without penalty. No person reporting that he or she has been sexually assaulted will be asked to mediate or reach a resolution of the report directly with a person alleged to have committed the assault. Before using any informal process, the Relevant Official will notify those involved about the advantages and disadvantages of the process, and establish and notify those involved about reasonable timeframes for the process.

3.6 Timeliness. An informal report should be filed within one year of any alleged violation of the Policy.

3.7 Legal Advice. When reported conduct by any person might constitute criminal conduct, the person whose conduct is reported should, and the reporting person may wish to, seek legal counsel before making any written or oral statements, and seek advice about how his or her participation in any process under this policy could affect any criminal case in which he or she is or may become involved.

4. Process Confidentiality. To encourage parties and witnesses to participate in these procedures (including anonymous reports, informal reports, and formal complaints), all involved should keep confidential any information they receive in the course of their participation, other than to consult with advisors and attorneys, and incidental to seeking support and advice from family, clergy, health professionals, and others playing a similar role, all of whom should also be advised by anyone seeking their support to keep such information confidential. To balance the interest of protecting confidential information and encouraging participation in these procedures by parties and witnesses, on the one hand, against the interest of participants in being able to disclose confidential information to family, clergy, health professionals, and others, on the other hand, the HLS Title IX Committee shall develop instructions on the confidentiality obligations of parties and witnesses. Disclosure of confidential information received in participating in these procedures has the potential to compromise the integrity of these procedures and may be viewed as retaliation that violates the Policy. Upon the initiation of an investigation, the Relevant Official shall remind the parties, in writing, of their obligations regarding confidentiality. 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.

5. Formal Complaints. Anyone may file a formal complaint about an alleged

violation of the Policy by members of the HLS Faculty. Such complaints shall be filed with the HLS Dean. Complaints about a violation by the HLS Dean shall be filed with the Office of the Provost.

5.1 Procedures for Formal Complaints. A formal complaint shall state (if known to the complainant) the name(s) of all persons involved in or witnesses to the conduct, describe the conduct, identify to the extent reasonably possible the dates and places of the conduct, and be signed and dated by the complainant. The HLS Dean shall promptly provide a copy of the complaint to all respondents named in the complaint. Where appropriate, the HLS Dean may appoint an investigator, or a hearing officer or panel for purposes of resolving a complaint. Any investigator will be impartial and unbiased, will disclose any real or reasonably perceived conflicts of interest, and have training in investigating and evaluating conduct under the Policy, including applicable confidentiality requirements.

5.2 Initial Assessments. The HLS Dean will make an initial assessment following a formal complaint about a violation of the Policy. Based on that assessment, the HLS Dean may act as follows: (a) if the conduct, even if substantiated, would not violate the Policy or any other applicable policy, the HLS Dean may dismiss the complaint; (b) if the HLS Dean concludes that it is possible to resolve the case in a prompt, fair and adequate manner through an informal process involving and with the consent of both the complainant and respondent, the HLS Dean may seek to do so (subject to the limits in 3.4 above); or (c) if the conduct, if substantiated, would violate the Policy or another applicable policy, the HLS Dean may initiate a further investigation. Parties shall be promptly notified of the result of the initial assessment and outcome. In any case, the HLS Dean may also determine and implement appropriate interim measures. If the result of the initial assessment is a further investigation, the investigator will keep and preserve a record of all aspects of the investigation.

5.3 Notice and Opportunity to Respond. If the result of the initial assessment is an investigation, such investigations will generally include individual interviews of the complainant, respondent, and any relevant witnesses. The notice of the initial assessment and outcome, and the record prepared by any investigator, will be shared promptly and equally with complainant and respondent, redacted if and to the extent required by and consistent with law. Each party will have an opportunity to meet again with the HLS Dean and any investigator, respond in writing, and request gathering of additional information by the investigator. If additional information is gathered, it will become part of the record and shared with all parties, who again will have an opportunity to respond. The parties will be updated at regular intervals of the status of any investigation.

5.4 Timeframes and Timeliness. HLS will seek to complete any investigation and

resulting disciplinary process (including a decision on any sanctions) or close a case (if no investigation) within 45 business days after receipt of a report or complaint. Any investigator may impose reasonable timeframes on all parties to allow for the timely completion of a proceeding. A formal complaint should be filed within one year of the alleged incident or the latest of incidents constituting a violation of the Policy, except that this period shall be tolled during the pendency of a timely filed informal report.

5.5 Extensions. There may be circumstances requiring longer time frames. Timeframes may be extended, for example, in the interest of the integrity and completeness of an investigation, 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. HLS will notify all parties of any extensions of timeframes for good cause, and the reasons for extensions. Although cooperation with law enforcement may require temporary suspensions of HLS investigations, HLS will promptly resume an investigation as soon as law enforcement's evidence gathering is completed. HLS will not wait for the conclusion of criminal proceedings to begin its investigation, and will provide appropriate interim measures throughout, including during suspensions. The HLS Dean and any investigator will work with the parties to balance the value of promptness with the value of in-person meetings in an investigation.

5.6 Cooperation. HLS expects members of HLS community to cooperate with an investigation. It is understood that there may be circumstances in which complainants may wish to limit their participation, and a complainant may choose to do so, although HLS may be obligated to conduct an investigation. It is understood that respondents may be advised not to provide information in circumstances that could prejudice their rights in external law enforcement proceedings, and a respondent may choose to do so, although HLS may be obligated to conduct an investigation. HLS will not draw any adverse inferences from a respondent's silence in such circumstances, but may impose interim measures, reach findings and issue sanctions, as appropriate.

5.7 Sexual History. The parties' sexual history will not generally be a subject of any investigation or questions at any hearing. However, the history of relations among parties may be relevant. For example, if "unrequested or uninvited conduct" is an issue,¹ the sexual history between the parties may be relevant to determining whether the conduct was unrequested and uninvited during the incident in question, although it must be remembered that even in the context of a relationship, a request for one

¹ Policy at 2.

sexual act does not imply a request for another sexual act, and a request on one occasion does not constitute a request on a subsequent occasion. In addition, under very limited circumstances, sexual history may be relevant to explain injury, to provide proof of a pattern, or for another specific question raised by an allegation. The HLS Dean and any investigator shall determine the relevance such matters to any investigation and whether its relevance is outweighed by the dangers of unfair prejudice, confusion, or undue delay.

5.8 Standard of Proof. Formal disciplinary sanctions shall be imposed only upon proof by a preponderance of the evidence.

5.9 Sanctions. Upon the HLS Dean's finding a violation, sanctions appropriate to the seriousness of the offense and in accordance with applicable University policy shall be imposed. In deciding the appropriate sanction, the HLS Dean 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, the safety of the community, and such other factors as reason and justice may require.

6. Records. The Relevant Official shall archive any notices, communications, assessments, records, and reports specifically required under these Procedures. All such archives shall be maintained at least as long as any legally required period.