

HLS Sexual Harassment Procedures for Complaints Against HLS 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 sexual harassment, including harassment based on gender identity and sexual orientation, and its harm to equal educational opportunity, prevent its recurrence, and, where appropriate, remedy its effects.

Harvard University has adopted the Harvard University Interim Title IX Sexual Harassment Policy¹ (as such policy may be amended from time to time, the “**Policy**”), which prohibits sexual harassment and sexual misconduct. 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.”

- 1 **Scope of Application and Related Procedures.** The following procedures apply to potential violations of the Policy by HLS faculty, as well as Related Policies (see 8.3 below). “**Related Policies**” means policies of Harvard University or HLS with goals related to the goals of the Policy, and other policies of Harvard University or HLS where the potential violations of the Policy involve facts that implicate such other policies.
 - “**Faculty member**” and “**faculty**” for this purpose include full-time Harvard Law School professors, visiting professors, and adjunct lecturers whose primary appointment is not as a Harvard staff member.
 - “**Professors**” for this purpose includes assistant professors, professors, clinical professors, assistant clinical professors, and professors of practice.
 - “**Faculty member**” also includes anyone else whose primary affiliation with Harvard University is an academic appointment if that affiliation consists primarily of teaching HLS 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 Faculty Administrator (as defined

¹ The following procedures also apply to potential violations of Harvard University’s Interim Other Sexual Misconduct Policy as a Related Policy, *infra* Section 1.

in 4.5 below) of any complaint will notify the parties that they may consult with advisors (including an attorney), and will provide 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 Oversight Committee. In addition, HLS will provide an attorney, free of charge, to parties for limited purposes at hearings if the parties do not have another advisor for those purposes. Ordinarily, an Investigator (as defined in 8 below) of a formal complaint will speak directly with all involved, and each may have an advisor or attorney present, and if requested, the advisor or attorney may participate in the conversation.

- 3 Supportive Measures. As described in 11 below, HLS through its Title IX Program Officer² will provide prompt and reasonable supportive measures to support and protect the safety of all parties, the HLS educational and work environment, and the HLS community; deter retaliation; and preserve the integrity of the investigation and resolution process.

4 Reports of Violations of the Policy.

- 4.1 Anonymous Reports. Persons may wish to report violations of the Policy anonymously, and may do so to a Relevant Official or the Title IX Program Officer (all as defined in 4.4 below). If a person reporting a potential violation self-identifies but asks to remain anonymous, the Relevant Official or the Title IX Program Officer 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 person anonymity in certain circumstances, as noted in 4.3 below.
- 4.2 Informal Reports. Individuals may wish to file a formal complaint about a Policy violation (see 6 below), or to report informally (i.e., without initiating a formal complaint), and should do so to a Relevant Official or the Title IX Program Officer (all as defined in 4.4 below). Each of these officials shall inform anyone making an informal report that he or she may initiate a formal complaint at any time (subject to 6.4), regardless of what steps are being or have been taken in response to an informal report.
- 4.3 Possible Limits to Anonymity and Confidentiality. Reporting persons should be aware that although a Relevant Official or Title IX Program Officer will often be able to maintain confidentiality of reporting persons, a Relevant Official or Title IX Program Officer 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 (a) honoring such a request may limit the ability of HLS to respond fully to any reported event, including discipline against a reported person, (b) the Policy prohibits retaliation, and (c) HLS will take steps intended to prevent retaliation and to respond to it strongly if it occurs.

² Throughout these procedures, the “**Title IX Program Officer**” shall mean the HLS Title IX Program Officer, as specified on the HLS Title IX web page, or, if there is no such person or if such person has ceased to have that role, any person HLS shall designate as Acting Title IX Program Officer.

- 4.4 **Officials for Reports and Complaints.** Reports or complaints about a member of the HLS faculty may be made to any of the following officials:
- A Deputy Dean or Vice Dean (“**Relevant Officials**”), who are identified on the HLS Department Directory web page under “Deans,” or
 - The HLS Title IX Program Officer, identified on the HLS Title IX web page.
- 4.5 **Faculty Administrators.** Any Relevant Official or the Title IX Program Officer who receives an informal report or formal complaint shall consult with the Dean,³ who will appoint an administrator (the “**Faculty Administrator**”) from one of the Deputy Deans or Vice Deans, who may be the same Relevant Official who received the report or complaint. Any Faculty Administrator will be impartial and unbiased, disclose any real or reasonably perceived conflicts of interest, and have training in investigating and evaluating conduct under the Policy, including its confidentiality requirements. The Faculty Administrator shall be generally responsible for overseeing HLS’s response to a report or complaint, as specified in these procedures. The Faculty Administrator shall consult with the Title IX Program Officer, the other Relevant Officials, and other appropriate administrative officials regarding any formal complaint and any other material question of first impression for application of the Policy to faculty. The Faculty Administrator may delegate ministerial matters (such as drafting and provision of notices required under these procedures) to the Title IX Program Officer.
- 4.6 **Informal Process.** The parties will not be required participate in an informal resolution process, and as required by 34 C.F.R. 106.45, the Faculty Administrator may not, as that regulation states, “offer an informal resolution process unless a formal complaint is filed.” Subject to the foregoing, however, at any time prior to reaching a determination regarding responsibility HLS may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, if the Faculty Administrator concludes that it is possible to resolve a matter, in a prompt, fair and adequate manner through an informal process involving and with the consent of the parties (including the reporting person and person whose conduct may have violated the Policy). Before any informal process will be used, HLS must obtain the parties’ voluntary, written consent to the informal resolution process. If an informal process is to be used, HLS will provide the parties a written notice disclosing the allegations, the requirements of the informal resolution process, the rights of the parties under these procedures, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared under the informal process. Before using any informal process, the Faculty Administrator will notify those involved about the advantages and disadvantages of the process, and establish and notify those involved about reasonable timeframes for the process. Any party may terminate or decline any informal process at any time prior to agreeing to a resolution, without penalty, and resume the process with respect to the formal complaint. Waiver of the right to an investigation and adjudication of formal complaints of sexual harassment under these procedures shall not be a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right. 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. The Faculty Administrator will report to the HLS Title IX Oversight Committee about the use,

³ Throughout, the “Dean” refers to the HLS Dean.

timeliness and outcomes of the informal process, without disclosing parties' names.

- 4.7 **Timeliness**. An informal report shall be filed within one year of any alleged violation of the Policy. For clarity, the informal resolution process in 4.6 is independent of and distinct from an informal report.
- 4.8 **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 participation in any process under the Policy could affect any criminal case in which the person is or may become involved.

5 Process Confidentiality; Retaliation.

- 5.1 **Confidentiality Obligations**. 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. The parties remain free to share their own experiences, other than information that they have learned solely through the investigatory process. The parties may discuss the allegations under investigation except in a manner that constitutes retaliation under the Policy, though to avoid the possibility of compromising the investigation, it is generally advisable to limit the number of people in whom they confide. The HLS Title IX Oversight Committee shall from time to time provide guidance on the confidentiality obligations of parties and witnesses, including through the chair of that committee if necessary to provide the guidance on a timely basis.
- 5.2 **Reminder Regarding Confidentiality**. Upon the initiation of an investigation, the Faculty Administrator shall remind the parties, in writing, of their obligations regarding confidentiality, and that sharing information received in participating in these procedures might compromise the investigation or be construed as retaliatory.

6 Formal Complaints.

- 6.1 **Who May File Formal Complaints**. Anyone may file a formal complaint about an alleged violation of the Policy by members of the HLS faculty. In situations where a person who may have been affected by a Policy violation is unwilling to initiate a formal complaint, the Title IX Program Officer may file a complaint to fulfill the purposes of the Policy and the goals stated in the preamble to these procedures.
- 6.2 **Where to File Formal Complaints**. Formal complaints shall be filed with any Relevant Official or the Title IX Program Officer (see section 4.4 above), except that complaints about a violation by the HLS Dean shall be filed with the Harvard University Office of the Provost and processed under these procedures.
- 6.3 **Contents of 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.

- 6.4 Timeliness of Formal Complaints. A formal complaint shall be filed within four years 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, may be equitably tolled at the Faculty Administrator's discretion for good cause shown, and may be extended for a reasonable period up to two additional years at the Faculty Administrator's discretion if the conduct described in the complaint is especially serious, taking into account the availability of relevant evidence to establish a violation and/or a defense.
- 6.5 Notice of Formal Complaints. A copy of the complaint will be provided to the respondent, along with any information necessary to comply with any applicable law, including 34 C.F.R. 106.45(b)(2), and (if applicable) the information in 7.1.
- 7 Initial Assessments. The Faculty Administrator will promptly assign formal complaints to an Investigator (as defined in 8), who will promptly and preliminarily review the complaint as specified in 7.1, transmit the complaint and other information as specified in 6.5, and conduct an initial assessment.
- 7.1 Preliminary Review. The Investigator will preliminarily review the information stated in the complaint and make a preliminary determination whether, if true, the conduct described would constitute a violation of the Policy. If not, the Investigator may communicate simultaneously to both complainant and respondent the following: (a) the relevant provisions of and a copy of or link to these procedures, (b) the fact that the conduct described in the complaint would not constitute a violation of the Policy, and the reasons for that preliminary determination, (c) the fact that the Investigator will conduct an Initial Assessment (as defined in 7.3) and afford the complainant an opportunity to provide information relevant to the Initial Assessment, and will afford the respondent an opportunity to provide information relevant to the Initial Assessment before determining to conduct a formal investigation. For clarity: the preliminary review is preliminary only, occurs promptly upon filing of a complaint, precedes an Initial Assessment, and will not bind the Investigator in making an Initial Assessment.
- 7.2 Conducting Initial Assessments. The Investigator will not pursue administrative closure after an Initial Assessment (see 7.3) without affording the complainant an opportunity to provide him or her with any relevant information, nor will the Investigator proceed with a formal investigation after an Initial Assessment without giving the respondent an opportunity to provide him or her with any relevant information. In addition, in conducting an Initial Assessment, the Investigator may contact the complainant in order to gain a more complete understanding of the allegations, as well as any related conduct that may implicate the Policy or any Related Policies, and the Investigator may also contact the respondent in an attempt to gain a more complete understanding of the alleged misconduct. In conducting an Initial Assessment, the Investigator shall consult with the Faculty Administrator, the Title IX Program Officer and other appropriate administrative officials. When the Title IX Program Officer files a Complaint, the Investigator may seek to meet with any person identified as potentially affected by a potential Policy violation, both to gather information and to discuss that person's interest in participating in an

investigation.

- 7.3 **Outcome and Standard for Initial Assessments.** Based on the information the Investigator gathers, he or she will make an Initial Assessment (“**Initial Assessment**”) in which the Investigator will determine whether (a) to issue a notice letter and proceed with formal investigation (see 8) or (b) to close the complaint administratively. The Initial Assessment shall be in writing, shall, if the complaint is being administratively closed, state the reasons for such closure, and shall be shared with the parties simultaneously. A decision to pursue administrative closure rather than a formal investigation is required when the Investigator determines that the information, if true, would not constitute a violation of the Policy or that there is no reasonable likelihood that any charges could be sustained by a preponderance of the evidence.
 - 7.4 **Notice of Administrative Closures.** If the Initial Assessment results in a decision to pursue administrative closure (and if that assessment is appealed as described in 7.5 and sustained on appeal), the Investigator will convey this determination to the parties, the Faculty Administrator, the Title IX Program Officer, and the Dean. If the Initial Assessment can be and is completed in a timely manner, then, consistent with law and these procedures, written notice of that assessment may accompany notice of the complaint to the respondent (and shall be simultaneously provided to the complainant).
 - 7.5 **Notice of Investigation.** If the Investigator proceeds with a formal investigation (and if that assessment is sustained on any appeal as described in 7.5), he or she will so state in a notice letter (“**Notice Letter**”) to the parties, the Faculty Administrator, and the Title IX Program Officer. The Notice Letter will state with particularity the alleged misconduct and the relevant provisions of the Policy or any Related Policies. The Notice Letter will include such other information as necessary to comply with any applicable law, including 34 C.F.R. 106.45(b)(2). The investigation (discussed in 8 below) will be limited in scope to the misconduct alleged in the Notice Letter, unless during the investigation the Investigator finds facts showing additional violations of the Policy or any Related Policies, in which case the Investigator will supplement the Notice Letter (in writing) accordingly.
 - 7.6 **Appeals of Initial Assessments.** Either party may appeal the Investigator’s Initial Assessment to the Faculty Administrator. The Faculty Administrator shall notify in writing all other parties of an appeal. Subject to the provisions of 9.1, such appeals shall be limited to the complaint, the record compiled by the Investigator and, at the discretion of the Faculty Administrator, an opportunity to be heard by the complainant and the respondent. The Faculty Administrator shall notify the parties simultaneously of the outcome of any appeal in writing. The Faculty Administrator’s decision on an appeal shall be final.
- 8 **Investigations.** Investigations will be carried out by an investigator (an “**Investigator**”) designated and supervised by the Faculty Administrator.
 - 8.1 **Investigators.** Investigators will be impartial and unbiased, disclose any real or reasonably perceived conflicts of interest, and have training in investigating and evaluating conduct under the Policy, including applicable confidentiality requirements. The Investigator will be the Harvard University Office of Dispute Resolution (“**ODR**”), except where the Faculty Administrator determines there is a conflict of interest, a reasonable perception of such a

conflict, or other good cause for choosing an alternative investigator.

- 8.2 Notice and Records. The Faculty Administrator will oversee notice requirements and maintenance of records following a formal complaint, with the assistance of the Title IX Program Officer and the Investigator. The Investigator will conduct and keep a record of the investigation. The record shall be redacted if and to the extent required by and consistent with law.
- 8.3 Scope of Investigations and Other Policies. The Investigator will consult with the Title IX Program Officer, the Faculty Administrator, and other appropriate administrative officials regarding the scope of the investigation. Where a complaint states or an investigation discovers facts showing potential violations of Harvard University or HLS policies other than the Policy, the Faculty Administrator, in consultation with the Title IX Program Officer and other appropriate administrative officials, will determine whether to further investigate such violation as part of the Title IX complaint or separately, and whether to refer the matter to some other appropriate entity within or outside Harvard University. If the Title IX investigation includes potential violations of such other policies, the Investigator will supplement the Notice Letter accordingly, so notify the party whose conduct represents the potential violation, and provide that party with copies of the relevant policies. After consulting with the Investigator, the Title IX Program Officer and other appropriate administrative officials, the Faculty Administrator may decide to provide a copy of the supplemented Notice Letter and related policies to other parties, or may opt not do so, where it is not required by law and where a fair resolution of the Title IX complaint does not require such notice.
- 8.4 Conduct of Investigations. In each case, the Investigator will set reasonable rules and deadlines, consistent with these procedures, for participating in interviews and making written submissions; investigating the facts (to the extent designated by the Notice Letter); and requesting additional information. The Investigator will notify each party of those rules and deadlines and each party must adhere to them. Investigations generally will include individual interviews of the complainant, respondent, and any relevant witnesses. Each party will have an opportunity to meet separately with the Investigator, submit information and arguments in writing, and request that the Investigator gather additional information. If the Investigator gathers additional information, such information will become part of the record, and the Investigator will share it in due course with each party, who again will have an opportunity to respond. The Investigator will keep each party and the Faculty Administrator reasonably informed of the status of the investigation.
- 8.5 Cooperation and New Information During Investigations. During an investigation, each party must provide to the Investigator all reasonably available relevant information in their possession, and notify the Investigator of all relevant information about which they have knowledge, subject to 8.12 through 8.16. After the conclusion of an investigation, the Investigator will consider new information or requests for new witnesses only upon a showing that the information or witness (a) is material, (b) newly discovered, and (c) the party offering the new information or witness could not, with due diligence, have produced same during the investigation.
- 8.6 Findings of Investigations. If the Investigator concludes that there is a plausible basis for finding a violation of the Policy or a Related Policy, using the standard in 8.16 the Investigator

will prepare a written report stating the plausible basis for finding a violation (the “**Investigator’s Report**”), and provide it to the parties and the Faculty Administrator. The HLS Title IX Program Officer or Investigator will provide the Investigator’s Report to each party and each party’s advisor, if any, and make available the evidence subject to inspection and review in an electronic format or hard copy, and the parties will have at least 10 days to submit a written response, which the Investigator will consider prior to completion of the Investigator’s Report.

- 8.7 **Review Panels.** All decisions regarding findings and conclusions about a formal complaint will be made by a panel (“**Panel**”) consisting of three members designated by the Dean or the Dean’s designate: (1) one Deputy Dean or Vice Dean, who may not be the Faculty Administrator and will chair the Panel, (2) one member of the HLS faculty pool selected as described in 8.8; and (3) one with relevant expertise and experience, independent of the community (i.e., not current students, faculty, administrators, or staff of Harvard University), from a list of no fewer than twelve qualified panelists chosen under the supervision of the HLS Title IX Oversight Committee, and maintained and kept up to date by the Title IX Program Officer (the “**independent pool**”). Their decision will be based on the Investigator’s Report and other information received before and at a hearing, as permitted by law and as set out below.
- 8.8 **Review Panel Qualifications and Selection.** Panel members will be impartial and unbiased; disclose any real or reasonably perceived conflicts of interest; and be trained in investigating and evaluating conduct under the Policy and Related Policies, including training in applicable confidentiality requirements. The Faculty Administrator will choose the faculty member of the Panel, at random, from a pre-designated pool (the “**faculty pool**”) of at least ten tenured faculty members who will have agreed to serve in the eligible pool for a two-year period. The faculty pool will be selected from time to time by the Dean or the Dean’s designate, after consultation with the Title IX Oversight Committee. Faculty members may serve consecutive two-year periods on the faculty pool if requested by the Dean or Dean’s designate.
- 8.9 **Panels and Hearings Generally.** A Panel may consult appropriate Harvard University or HLS officials with respect to the Policy and any Related Policy. A Panel may, and if requested by any party, a Panel shall, schedule and hold a hearing, in which the parties shall be invited to participate, as provided below, and will not otherwise conduct its own investigation. The Panel shall reach findings and conclusions on facts, policy interpretation and application, and whether a violation occurred. The Panel may remand if further investigation or consideration is warranted. The Panel shall provide a written decision to the parties, including a written explanation of its findings and conclusions. The Panel shall forward its decision and explanation to the Dean, the Faculty Administrator, and each party, along with the Investigator’s Report. If the Panel finds a violation, the Dean shall determine the appropriate sanction under 9 below. Hearings shall take place no earlier than ten days after the Investigator’s Report is provided to the parties and their advisors.
- 8.10 **Conduct of Hearings.** At any hearing, the parties will have equal opportunity to participate, with up to two advisors (including up to one attorney). At the hearing, the Investigator will appear before the Panel to answer questions about the matter, including about the Investigator’s Report, and the parties will have an equal opportunity to respond. The Panel shall determine the conduct of the hearing, subject to these procedures and the Policy, and shall be provided with reasonable support and administrative assistance by HLS. Formal rules of evidence will not

apply, and the Panel may set reasonable time limits and other regulations for a hearing. Should situations arise which are not addressed by these procedures, or in which the application of these procedures, in the judgment of the panel, is inappropriate, the Panel may formulate and follow an appropriate ad hoc procedure, subject to law and University policy. At any hearing, the parties will also have an equal opportunity to present witnesses and relevant evidence and ask or have questions asked of other parties (see 8.11 and 8.12 below), and to ask questions of the Investigator. Hearings shall not be open to the public. Hearings may be conducted remotely, provided all participants are equally able to participate on a real-time basis. The only participants in a hearing shall be the parties, their advisors and attorneys, witnesses, the Panel and any staff they may need for the conduct of the hearing, the Investigator, Faculty Administrator, the HLS Title IX Program Officer and, with prior notice to the chair of the Panel, any member of the HLS Title IX Oversight Committee. A transcript of any hearing shall be kept and made available to the parties. At any hearing, the parties may present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, and shall not be restricted from discussing the allegations under investigation or from gathering and presenting relevant evidence. The chair of the Panel may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties, subject to 8.12 below. If neither party (in person or through advisor) attends a hearing or if neither party seeks (in person or through an advisor) to ask questions at a hearing, the Panel may immediately end the hearing and proceed to deliberate on the matter.

8.11 [Intentionally omitted]

8.12 Questions at Hearings Under Department of Education Regulations. As required by 34 C.F.R. 106.45, the following provisions shall apply, and to the extent they are different from those contained in 8.9-8.11, the following provisions shall be used in lieu of those contained in 8.9-8.11: At the hearing, the chair of the Panel must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at a hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. If a party does not have an advisor present at the hearing, HLS will provide without fee or charge to that party, an advisor chosen by HLS, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. At the request of either party, a hearing will occur with parties located in separate rooms with technology enabling the Panel and the parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the chair of the Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. HLS will not draw any adverse inferences from a party's or witness's decision to limit his or her participation, including by declining to answer cross-examination or other questions or to participate in a hearing. Hearings may be conducted with all parties physically present in the same geographic location or, at the chair of the Panel's discretion, any or all parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other. A transcript of the hearing shall be kept and made available to the parties.

- 8.13 Timeframes for Investigations. HLS will seek to complete any investigation and resulting disciplinary process (including a decision on any sanctions) as soon as reasonably possible, and no later than 45 business days after receipt of a report or complaint. 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 supportive measures throughout, including during suspensions. The Faculty Administrator and the Investigator will work with the parties to balance the value of promptness with the value of in-person or visual online meetings in an investigation.
- 8.14 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 supportive measures, reach findings and issue sanctions, as appropriate.
- 8.15 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 at issue,⁴ 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 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 Faculty Administrator and the Investigator shall determine the relevance of such matters to the investigation and decide whether its relevance is outweighed by the dangers of unfair prejudice, confusion, or undue delay. At a hearing, questions and evidence about the complainant's sexual predisposition or prior sexual behavior will not be relevant, and may not be asked, 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.

⁴ Policy at 2.

8.16 Standard and Burden of Proof. Formal disciplinary sanctions shall be imposed only upon proof of a policy violation by a preponderance of the evidence. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on HLS and not on the parties.

9 Appeals, Sanctions and Remedies.

9.1 Appeals Required by Department of Education Regulation. Following the decision by the Panel or dismissal of the complaint, either party may appeal, on the following grounds: (a) procedural irregularity that affected the outcome of the matter; (b) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or (c) the Faculty Administrator, the Title IX Program Officer, the Investigator, or any Panel member 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. In addition, either party may appeal on the ground that, on the record as a whole, no reasonable Panel could have reached the same determination regarding responsibility. Appeals shall be submitted to the Faculty Administrator, who shall choose two members from the faculty pool, at random, and one member from the outside pool, at random, none of whom served on the Panel and who are otherwise free from any conflict of interest. Those persons shall decide the appeal, and their decision on appeal shall be final. For clarity: the Faculty Administrator shall not participate in the appeal decision. HLS will notify all parties in writing if an appeal is filed by any party, and the identity of the persons deciding the appeal. The persons considering any appeal will comply with the standards set forth in paragraph (b)(1)(iii) of 34 C.F.R. 106.45; give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the Panel decision being appealed; issue a written decision describing the result of the appeal and the rationale for the result; and provide the written decision simultaneously to both parties.

9.2 [Intentionally Omitted]

9.3 Sanctions and Remedies. Upon a finding of responsibility (after the exhaustion of any appeal), the Dean shall determine sanctions or remedies appropriate to the seriousness of the offense and in accordance with applicable University policy. In deciding the appropriate sanction or remedy, the 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 or policy violations (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. The Dean's decision with respect to sanctions or remedies shall be final.

10 Records. The Title IX Program Officer, under the supervision of the Faculty Administrator, shall archive any notices, communications, assessments, records, and reports specifically required under these Procedures or by law. All such archives shall be maintained at least as long as any legally required period.

11 Supportive Measures.

11.1 Determination of Supportive Measures. On receipt of a report or complaint concerning a

possible Policy violation, the Title IX Program Officer, in consultation with other appropriate administrators, will identify reasonable and appropriate supportive measures to meet the goals stated in section 3 above. The HLS Title IX Program Officer shall promptly contact the reporting person or complainant to discuss the availability of supportive measures, consider the wishes of the reporting person or complainant with respect to supportive measures, inform the reporting person or complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the reporting person or complainant the process for filing a formal complaint.

- 11.2 Supportive Measures Do Not Require a Formal Complaint or Reflect Judgment regarding Policy Violation. Supportive measures may be provided regardless of whether a formal complaint is filed, and are not intended to reflect a determination of the merits of any formal complaint.
- 11.3 Supportive Measures Affecting Teaching Assignments. The Title IX Program Officer handling the matter shall consult with the Faculty Administrator and the Dean for Academic and Faculty Affairs before implementing any supportive measures affecting a faculty member's teaching assignments. The Title IX Program Officer shall give the parties an opportunity to be heard regarding supportive measures as soon as reasonably practicable.
- 11.4 Confidentiality of Supportive Measures. The fact of, reason for, and nature of supportive measures shall be kept confidential in accordance with 5.1 by HLS and all parties as required by law and to the extent feasible given the nature of the relief.
- 11.5 Types of Supportive Measures. Supportive measures may include: (1) Assistance in obtaining access to counseling services, professional coaching services, medical services, and assistance in arranging an initial appointment for those services; (2) Change in work schedules or job assignments, including use of flex time; (3) "No contact" orders (administrative remedies designed to curtail or bar contact or communications between or among individuals); (4) Provision of services to safeguard or assist with movement or transportation; (5) Changes in teaching, course or classroom schedules, including if necessary temporary administrative leave; (6) Any other measures consistent with law, Harvard University or HLS policy and HLS's educational mission to achieve the goals of the Policy and to protect HLS's educational and work environment.
- 11.6 Design of Supportive Measures. Supportive measures should be designed in a fair manner to meet the goals stated in 3 while minimizing to the extent feasible the adverse impact on all affected, including the complainant and respondent in the case of a formal complaint. Factors to be considered in the design of supportive measures include whether violence is alleged, whether the classroom environment is involved, and whether a direct supervisory or similar relationship is at issue. Given the need to tailor supportive measures to circumstances, the use of a supportive measure in one matter does not guarantee that a similar measure will be imposed in other matters. HLS reserves the right to modify its approach to supportive measures in light of its experience over time.
- 11.7 Review of Supportive Measures. To the extent feasible given the nature of the relief, any person significantly affected by a supportive measure, including a faculty member whose ordinary teaching assignments are affected by a supportive measure, may seek a prompt review of

supportive measures for abuse of discretion from Faculty Administrator, who shall either approve or revise the measures. In addition, the Title IX Program Officer shall from time to time review how well current supportive measures are working in pending cases and how well supportive measures have worked in past cases. Any such review shall consider the costs and benefits supportive measures are creating or have created, on HLS and on members of its community, and whether better alternatives could be developed.

- 11.8 Monitoring of Supportive Measures. The Title IX Program Officer will collaborate with the Faculty Administrator in monitoring or supervising the monitoring of supportive measures and coordinating any response by HLS with other offices at Harvard and with law enforcement if needed.
- 11.9 Supportive Measure Violations. All members of the HLS community are encouraged to report to the Title IX Program Officer any failure to abide by supportive measures. Violations of supportive measures may be treated as violations of the Policy. Allegations of violations of supportive measures which were issued by the Title IX Program Officer or which relate to Title IX or the Policy will be handled under these procedures.

As Approved 8/14/2020, Revised 9/10/20