

HARVARD LAW SCHOOL INTERSCHOOL SEXUAL HARASSMENT PROCEDURES

HLS is committed to maintaining a safe and healthy educational and work environment in which no member of the HLS 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 HLS program or activity. Consistent with that commitment, HLS will continue to take steps to prevent sexual harassment and to remedy its discriminatory effects, as appropriate.

In July 2014, Harvard University adopted a Harvard University Sexual and Gender-Based Harassment Policy (**University Policy**) and Procedures for Handling Complaints Involving Students Pursuant to the Sexual Harassment Policy (**University Procedures**): <http://titleix.harvard.edu>. The University Policy governs allegations of sexual and gender-based harassment committed by Harvard students, including law students.

An earlier version of the interschool procedures set out below were initially adopted on an interim basis in 2014 to harmonize the sexual harassment policy and procedures of Harvard Law School (**HLS**) with the University Policy. Reports of sexual harassment, including sexual assault and sexual violence, will be processed under the HLS Sexual Harassment Resources and Procedures for Students (**HLS Title IX Student Procedures**) when both the complainant and the respondent are HLS students. If either the complainant or the respondent is a non-HLS student, the University Procedures will be used, and, when the respondent is an HLS student, will be supplemented by these interschool procedures.

Together with the HLS Title IX Student Procedures and the University Policy, these interschool procedures supersede all other HLS-specific policies and procedures relating to sexual harassment by students. These interschool procedures are subject to change.

1. Resources, Information and Advice

HLS is committed to equal opportunity, respect, fairness and nondiscrimination, and to taking appropriate steps to end any harassment, prevent its recurrence, and, where appropriate, remedy its effects. To that end, HLS has a **Title IX Coordinator** and two **Deputy Title IX Coordinators**, whose purpose is to oversee implementation of the University Policy, the University Procedures and HLS Title IX Student Procedures. Each Title IX Coordinator is an experienced administrator trained in identifying and responding to sexual harassment and its harm to equal educational opportunity, as understood in light of principles of academic freedom and free speech, and other aspects of Title IX and the Policy.

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Confidential resources also exist for those covered by the University Policy, which are available both before and after a person communicates with any Title IX coordinator about potential violations of the Policy:

- Harvard University Office of Sexual Assault Prevention and Response
- Harvard Chaplains
- RESPONSE Peer Counseling
- UHS Counseling and Mental Health Services

These resources can provide confidential advice and counseling. Information disclosed by an individual to these counselors will not be disclosed to a Title IX coordinator or any other person without an individual's express permission, unless there is an imminent threat of serious harm to the individual or others, or a legal obligation requires disclosure (e.g., if there is suspected abuse of a minor). These counselors can provide more information about the extent of confidentiality.

Under applicable law, many members of HLS community—including faculty and senior administrators—may be required to report incidents to Title IX coordinators, and so may not be able to keep the matter completely confidential. The Title IX coordinators themselves may be required to investigate and seek to address violations of University Policy, and so may not be able to keep the matter completely confidential. If a student's information may not be kept confidential, the student will be notified of the information that will be disclosed, to whom, and why. The above confidential resources may be useful to consult as a first step.

2. Interim Measures

On receipt of a report or complaint concerning a possible violation of the University Policy, a Title IX Coordinator will identify reasonable and appropriate interim measures to support and protect the safety of all parties, the educational environment, and the HLS community; to deter retaliation; and to preserve the integrity of the investigation and resolution process. Interim measures may be provided regardless of whether a formal complaint is filed. To the extent feasible given the nature of the relief, any person significantly affected by an interim measure may seek a prompt review of interim measures for abuse of discretion from all other HLS Title IX Coordinators, who shall either approve or revise the measures.

Interim measures may include: (1) Access to counseling services, and assistance in arranging an initial appointment; (2) Access to tutoring or other academic support, including rescheduling of or extra time for exams and assignments; (3) Changes in class schedules, including the ability to transfer course sections or withdraw from a course without penalty; (4) Change in work

schedules or job assignments; (5) Changes in campus housing; (6) Provision of medical services; (7) “No contact” orders (administrative remedy designed to curtail or bar contact or communications between or among individuals); (8) Provision of escort services; (9) Any other measures consistent with law and HLS’s educational mission that can be used to achieve the goals of the University Policy. A respondent will not be eligible to be considered for a degree until after a formal complaint has been resolved under these procedures.

Interim measures should be designed in a fair manner to meet the goals stated above and so as to minimize the impact on all affected, including any complainant and respondent in a formal case under these procedures. Requests for interim measures should be directed to one of the Title IX coordinators, who will collaborate with the HLS Dean of Students in monitoring or supervising the monitoring of the implementation of such measures and coordinating any response by HLS with other offices at Harvard and with law enforcement, if needed. All members of the HLS community are encouraged to report to the Title IX Coordinator any failure to abide by restrictions imposed by interim measures. Violations of such restrictions may be a separate violation of policy.

3. Procedures for Addressing Conduct by a Law Student

In addition to seeking information and advice and requesting interim measures, any member of the Harvard community who believes he or she has been affected by conduct of a law student that violates University Policy may seek informal resolution, or may file a formal complaint.

If the person affected by conduct of an HLS student is **an HLS student**, they should follow the HLS Title IX Student Procedures, available here:

<http://hls.harvard.edu/content/uploads/2015/07/HLSTitleIXProcedures150629.pdf>

If the person affected by conduct of an HLS student is **not an HLS student**, they should follow the University Procedures, administered by the Office for Sexual and Gender-Based Dispute Resolution (**ODR**) available here:

http://titleix.harvard.edu/files/title-ix/files/harvard_student_sexual_harassmnt_procedures.pdf

4. Relation of University Procedures to HLS Discipline

HLS remains responsible for HLS student discipline subsequent to any investigation under the University Procedures. The faculty members of the HLS Administrative Board (**Board Faculty**) will handle discipline of an HLS student following such an investigation. Whenever a formal complaint of harassment is filed against an HLS student, the HLS Title IX Coordinator or a Deputy Title IX Coordinator shall explain to the complainant and the respondent the significance of the ODR-led investigation for any subsequent HLS disciplinary proceedings. The Board Faculty and the HLS Title IX Unit shall coordinate their efforts, and the Chair of the HLS Administrative Board (**Board**) shall ordinarily suspend Board proceedings for any matter covered by the University Policy or factually related to such a matter, refer the matter to the Title IX Coordinator, and so notify the parties.

5. Non-Reviewability of Final Reports by ODR

Whenever a formal complaint of sexual or gender-based harassment against an HLS student by a non-HLS student results in the issuance by ODR of a Final Report, and any subsequent appeals related to that report have been fully processed under the University Procedures,¹ any proceeding before the Board or the Board Faculty against that HLS student based on conduct addressed by the Report must accept as final and non-reviewable the Report's findings of fact and its conclusions (as may be modified in any appeal) as to whether a violation of the University Policy has occurred.

6. Disciplinary Proceedings Following the Finding of No Policy Violation by ODR

If ODR issues a Final Report concluding that a law student has *not* committed sexual or gender-based harassment, the HLS Title IX Coordinator shall forward the Report to the Board Secretary. 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 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 and that a sanction will be warranted, the Board may initiate formal proceedings by a written charge which explains the nature of the alleged infraction.² Any such proceedings shall be conducted in accordance with otherwise applicable Board Procedures.

7. Disciplinary Proceedings Following the Finding of A Policy Violation by ODR

If ODR issues a Final Report concluding that a law student has committed sexual or gender-based harassment, the HLS Title IX Coordinator shall forward the Report to the Board Secretary, and the Board Faculty shall issue a charge that references the finding of violation in the Final Report.

(1) The Board Secretary shall promptly provide copies of the charge to the law student respondent and to the complainant. The Board Secretary shall also make available to the parties any public announcements or reports of the Board, Board Faculty, or faculty relating to past disciplinary cases.

(2) Within seven calendar days of receiving the charge, the complainant 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

¹ If either party invokes the right to appeal a decision contained in a Final Report granted by the University Procedures, the HLS Title IX Coordinator shall not deliver the Final Report until the appeal has been resolved.

² 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.

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 Faculty may not review the Final Report's factual findings, any filing submitted to the Board Faculty may not challenge the validity of those findings. The Board Faculty'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, Dismission, or Expulsion. Subject to the foregoing constraint, the parties may submit anything they think is relevant to appropriate discipline. For example, the complainant 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 Faculty should take account in determining discipline. In deciding the appropriate sanction, the Board Faculty may consider facts contained in the Final Report relevant to: 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.

(b) A written filing with the Board Faculty 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.

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 Faculty in favor of declining to credit the alleged fact or circumstance. In the event that the Board Faculty 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 Faculty may not base their 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 under these procedures will normally heard by the Board Faculty. Either the complainant or the respondent may ask any member of the Board Faculty to recuse him- or herself for cause. A member of the Board Faculty who recuses him- or herself shall be replaced by an alternate member of the faculty.

(4) Board Faculty decisions on discipline will be determined by a majority vote of sitting faculty members.

(5) If the Board Faculty vote 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 faculty members of the Board determine that the appropriate disciplinary measure is Dismission or Expulsion, a faculty committee shall review the Decision. The committee will consist of six HLS faculty designated by the Dean of HLS. In addition, the Board Chair 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 Faculty'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 Faculty unless it concludes that the finding was clearly erroneous, and shall not modify the Board Faculty's disciplinary decision unless it concludes that the decision constitutes an abuse of discretion. If the committee determines, under these standards, that modification of the Board Faculty's decision is appropriate, it shall remand the matter to the Board Faculty with instructions either to increase or decrease the severity of discipline.

(7) In all cases in which the sanction voted by the Board Faculty is other than Dismission or Expulsion, the Decision of the Board Faculty shall normally be final. However, the Board Chair, in his or her discretion, may request that the HLS Dean form a faculty committee as in (6) above, and the Board Chair present the Board Faculty's Decision to the faculty committee for consideration. Before considering the merits of the Board Faculty'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.

8. Equal Rights of Appeal

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

9. Simultaneous Rights to Proceed

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

10. Timeframes

All steps under these HLS interschool procedures shall take place with reasonable promptness, taking into account the complexity of any case and the severity and extent of alleged conduct.

11. Investigations

To the extent called for by these HLS interschool procedures, any investigation conducted by HLS will be conducted in an adequate, reliable, and impartial manner.

12. Student Updates

HLS will at regular intervals inform students who are parties to a proceeding under these interschool procedures of the status of the proceeding.

13. No Public Hearings.

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