

Training for Administrative and Review Boards

Presented by CSNDR and ODR



**NDAB and Title IX
Compliance Team**

Office for Community Support, Non-Discrimination,
Rights and Responsibilities



HARVARD UNIVERSITY

Office for Dispute Resolution



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Agenda

01

Federal and State Requirements and Harvard's Structure

Title IX, VAWA, MA Law, CSNDR, and ODR

02

Harvard's Policies and Procedures

Review of Harvard's Policies and Procedures

03

The Complaint Process
Review of each phase of the formal complaint process

04

Questions



What is Title IX?

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”



Regulatory Requirements



Title IX Training Requirements

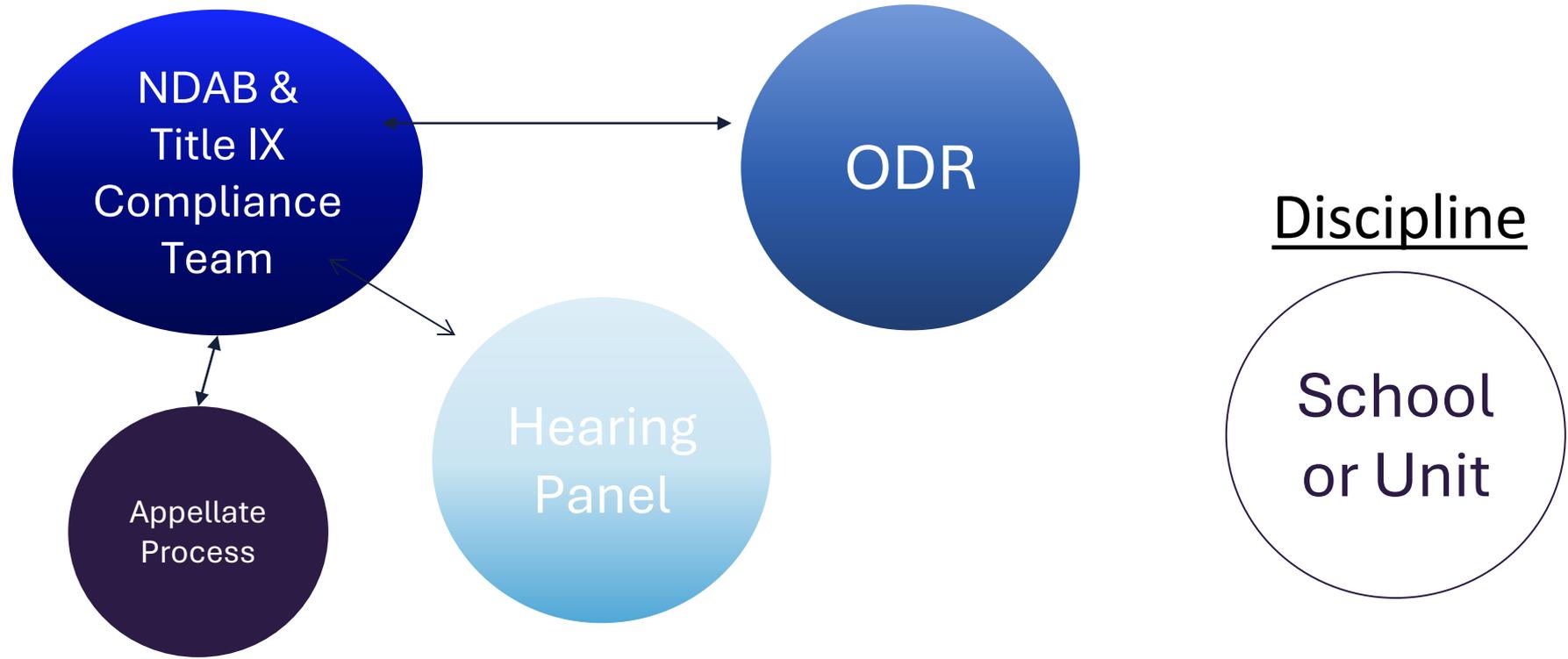
- Definition of Sexual Harassment
- Scope of Harvard's Programs or Activities
- How to Conduct an Investigation and Grievance Process including Hearing, Appeals, and Informal Resolution
- How to Serve Impartially
- Technology Used During the Hearing
- Issues of Relevance



Harvard's Structure



Harvard's Structure



Flowcharts for the Formal Complaint Process

The following flowcharts each provide an overview of the formal complaint processes. Their color-coding reflect the different roles of CSNDR's Compliance Team, ODR, and the School at each phase:

- [Flowchart for the Interim Title IX Sexual Harassment Policy](#)
- [Flowchart for the Interim Other Sexual Misconduct Policy](#)



What is the Office for Community Support Non-Discrimination, Rights and Responsibilities Role?



OFFICE FOR
Community Support,
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Rights and Responsibilities



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OFFICE FOR
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Sexual harassment, sexual assault, stalking abusive relationships, and discrimination

Bullying, discrimination, and harassment on the basis of protected characteristics, including sexual harassment and other sexual misconduct.



SHARE Team

Office for Community Support, Non-Discrimination,
 Rights and Responsibilities

(Confidential)



Prevention Team

Office for Community Support, Non-Discrimination,
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NDAB and Title IX Compliance Team

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What is ODR's Role?



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ODR's Services



Request Information

If you have questions about the services we offer, you may contact ODR to schedule an informational meeting.

[MAKE A REQUEST](#)



Investigative Process

Learn more about the investigative process including how to file a formal complaint with the University Title IX Coordinator.

[INVESTIGATIVE PROCESS](#)



Seek Informal Resolution

Some incidents of sexual harassment and other sexual misconduct may be resolved through an informal resolution process without a full investigation.

[ABOUT INFORMAL RESOLUTION](#)



ODR's Investigators

ODR uses both internal and external investigators

<https://odr.harvard.edu/our-investigators>



What is your role in this process?



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Harvard's Policies Addressing Sexual Harassment and Other Sexual Misconduct



Harvard's Policies

THE POLICIES

INTERIM TIX

Interim Title IX Sexual Harassment Policy

This Policy is designed to address conduct that falls within Title IX of the Education Amendments of 1972 and other federal and state laws and regulations. This Policy addresses misconduct occurring on or after August 14, 2020.

[READ THIS POLICY \(PDF\)](#)

INTERIM OSM

Interim Other Sexual Misconduct Policy

This Policy is designed to address sexual misconduct that falls outside the jurisdiction of the Interim Sexual Harassment Policy. This Policy addresses misconduct occurring on or after August 14, 2020.

[READ THIS POLICY \(PDF\)](#)

S&GBH

Sexual and Gender-Based Harassment Policy

This Policy addresses sexual harassment and other sexual misconduct occurring before August 14, 2020.

[READ THIS POLICY \(PDF\)](#)

[EN ESPAÑOL \(PDF\)](#)



Harvard's Policies: Interim Title IX Sexual Harassment Policy (ITIXSHP)

Sexual Harassment?

- Unwelcome Conduct
- On Basis of Sex
- Quid Pro Quo, or
- So Severe, Pervasive, and Objectively Offensive, it Effectively Denies Equal Access, or
- Sexual Assault, Dating Violence, Domestic Violence, and Stalking

Jurisdiction

- Against a Person in the United States
- Harvard Property, or
- Off Harvard Property
 - University Program or Activity
 - Substantial Control Over Person Accused and Context
 - Building Owned or Controlled by Recognized Student Organization

Complainant at time of filing must be participating or attempting to participate in University Program or Activity



Harvard's Policies: Interim Other Sexual Misconduct Policy (IOSMP)

Other Sexual Misconduct?

- Unwelcome Conduct
- On Basis of Sex, including Sexual Orientation and Gender Identity
- Quid Pro Quo, or
- So Severe, Persistent, or Pervasive, it Effectively Denies Equal Access (Hostile Environment)

Jurisdiction

- Harvard Property; or
- Off Harvard Property, if:
 - University Program or Activity
 - Hostile Environment for Member of Harvard Community



Harvard's Policies: IOSMP continued

- Retaliation
 - Retaliation against an individual for making a report or complaint of sexual harassment, or for participating or refusing to participate in any proceeding regarding such a complaint, or for opposing discriminatory practices is prohibited.
- Not in Good Faith, False or Misleading
 - Submitting a complaint that is not in good faith or providing materially false or misleading information in any such proceeding is also prohibited, provided that a determination regarding responsibility or lack of responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.



Harvard's Policies: Consent

“Consent is agreement, assent, approval, or permission given voluntarily and may be communicated verbally or by actions. 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.”



Harvard's Policies: Incapacitation

When a person is incapacitated, meaning so impaired as to be incapable of giving consent, conduct of a sexual nature is deemed unwelcome,

- provided that the Respondent knew or reasonably should have known of the person's incapacity.
- The person may be 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 harassment under this Policy.



The Investigative Process



The Investigative Process – Impartiality: Avoiding Prejudgment, Conflicts of Interest, and Bias

- The Procedures:
 - “Any individual designated as a University Title IX Coordinator or a School or unit Title IX Resource Coordinator, investigator, School designee, hearing panelist, appellate panelist, or any person designated to facilitate an informal resolution process will not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent in a case to which they are assigned.”
- Accurate resolution of each allegation requires objective evaluation of all relevant evidence without bias and without prejudgment of the facts.
- Parties and witnesses are not automatically or prematurely believed or disbelieved.
- Whether bias exists is a fact-specific inquiry. Bias is not determined by generalizations, for example, about prior professional work.



The Investigative Process – Confidentiality

- The Procedures
- The need for caution and vigilance in ODR investigations
- Reasonable steps to protect privacy



The Investigative Process – Confidentiality

Cont.

- Share information with others only on a “need to know” basis.
- Information about the complaint, including the names of the people involved, is shared with witnesses only to the extent necessary to gather information.
- Inform parties and witnesses, as appropriate, the kind of information likely to be disclosed for investigative purposes, to whom, and why.
- Explain to participants party access to case materials.
- Conduct interviews in a space that ensures privacy.



The Investigative Process – Personal Advisors

- Personal Advisors – Complainants and Respondents may bring a personal advisor of their choice to any meeting or proceeding that is part of the investigation, including initial review, or in cases under the Interim Title IX Sexual Harassment Policy, the hearing
- [ODR Personal Advisors Frequently Asked Questions](#)



The Investigative Process – The Initial Review

- Local Title IX Resource Coordinator notified of formal complaint for purposes of supportive measures
- Case assigned to ODR Investigator
- ODR seeks to gather a more complete understanding of the allegations, typically by email
- ODR determines to open or dismiss the allegations, in whole or in part



Dismissal Following Initial Review



The Investigation



The Investigative Process – The Investigation

- Respondent provided opportunity to submit a written response to allegations
- Individual interviews with each of the parties
- Individual interviews with witnesses
- Collection of relevant information from other sources, including site visits
- Parties provided equal opportunity to review and respond to relevant information collected during the course of the investigation
- Parties in ITIXSHP cases provided equal opportunity to review, inspect, and respond to any directly related evidence obtained in the investigation



The Investigative Process – ODR’s Interviews

- Ask questions that are relevant and within the scope of the investigation
- Ordinarily:
 - Ask open-ended, general questions calling for narrative answers before focusing on narrower, specific questions
 - Avoid leading questions; ask questions in a manner that discloses the minimum amount of information
 - Avoid compound questions
 - Elicit facts rather than conclusions
 - Do not ask questions that assume information that hasn’t been established yet
- Consider cultural sensitivity and inclusive terminology
- Use trauma-informed practices as part of an impartial, unbiased investigative process that does not rely on sex stereotypes, while taking care not to permit general information about the neurobiology of trauma to lead to applying generalizations to allegations in specific cases



The Investigative Process – Relevance

- When identifying potential witnesses, the parties should understand that the purpose of interviews is to gather and assess relevant information about the incident(s) at issue in the formal complaint.
 - Prior misconduct by either party, or a witness, that is otherwise relevant, but that was not supported by a finding resulting from a formal, impartial investigative process, will be given minimal (i.e., the least possible) weight by the Investigative Team (in its recommended findings of fact) and the Hearing Panel
 - Information regarding the character of either party, or a witness, that is otherwise relevant, will be given minimal weight by the Investigative Team (in its recommended findings of fact) and the Hearing Panel
 - Information from lie detector tests or similar taken by either party, or any witness, that is otherwise relevant, will be given minimal weight by the Investigative Team (in its recommended findings of fact) and the Hearing Panel



The Investigative Process – Relevance Cont.

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



The Investigative Process – Relevance

- Evidence that is ***not relevant***:
 - Information protected under a legally recognized privilege, unless the individual holding such privilege has waived the privilege.



The Final Report of Investigation – IOSMP

“At the conclusion of the investigation, the Investigative Team will make findings of fact, applying a preponderance of the evidence standard, and determine based on those findings of fact whether there was a violation of the Policy.”



The Final Report of Investigation – IOSMP

- Introduction
- The Policies
- The Proceedings
- Findings of Fact
- Addenda
- Exhibits



The Process Following the Issuance of the Investigative Report – IOSMP



The Investigative Report: Provided to the Hearing Panel – ITIXSHP

- Introduction
- The Policies
- The Proceedings
- Summary of Evidence and Recommended Findings of Fact
- Addenda
- Exhibits



The Hearing



The Pre-Hearing Meeting

- Generally, one week prior to the Hearing
- Includes Hearing Chair, Party and their Personal Advisor, and the University Title IX Coordinator
- Opportunity to ask questions about process, technology, and/or any case-related materials
- Review of technology used during the Hearing (i.e., Zoom)



The Hearing

- Secure Zoom Link
- Attendees
- Voluntariness of Process
- Expectations/Rules Governing the Hearing
- Evidence and Relevance
- Questioning/Cross Examination
- Closing



The Written Determination – ITIXSHP

- Introduction/Allegations
- The Policies and Evidentiary Standard
- Procedural Steps
- Findings of Fact Supporting the Determination Regarding Responsibility
- Conclusions Regarding the Application of the Policies to the Facts and Statement of and Rationale for the Result as to Each Allegation
- Determination Regarding Responsibility
- Procedures and Permissible Bases for the Complainant and Respondent to Appeal



The Process Following the Issuance of the Investigative Report - ITIXSHP



The Appeal



Bases for Appeal - ITIXSHP & IOSMP

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



Discipline



Discipline – IOSMP/ITIXSHP

- Students: “The administration of discipline in cases involving students is subject to the authority of the faculty[.]”
- Generally, for staff and faculty: “The administration of sanctioning in cases involving staff members is subject to the authority of the relevant School or unit[.]”



Additional Resources to Review

- [Harvard's Policies and Procedures Prohibiting Sexual Harassment and Other Sexual Misconduct](#)
- [ODR Training 2025-2026](#)
- Visit [ODR's Website](#)
- Visit [CSNDR's Website](#)



Questions



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