



HARVARD UNIVERSITY

Title IX Office &
Office for Dispute Resolution

Frequently Asked Questions **Concerning Harvard University Sexual and Gender-Based Harassment Policy** **and Procedures for Handling Complaints Involving Students**

1. *Why does the Policy talk sometimes about “sexual harassment” and sometimes about “sexual assault”?*

Federal and state laws prohibit discrimination on the basis of sex. Sexual harassment is a form of sex discrimination, and sexual assault is considered to be a form of sexual harassment.

2. *What is a “hostile environment” in the context of a sexual harassment claim?*

A hostile environment interferes with or limits a person’s ability to participate in or benefit from the University’s education or work programs or activities. The University will consider the effects of off-campus conduct when evaluating whether there is a hostile environment in connection with a person’s educational or work experience at Harvard.

3. *Does the University employ a subjective or objective analysis in determining whether there has been a “hostile environment” in the context of a sexual harassment claim?*

Both. In order to find a hostile environment sufficient to make out a violation of University Policy, the University must find, from both an objective and a subjective perspective, that the conduct was unwelcome and that the unwelcome conduct was sufficiently severe, persistent, or pervasive that it created a hostile environment. The University must determine both that a reasonable person considering all the circumstances would find the conduct unwelcome and the environment hostile and that the complainant viewed them as such.

44R Brattle Street, Cambridge, MA 02138

Title IX Telephone: (617) 496-0200 | ODR Telephone: (617) 495-3786

Title IX Website: www.titleix.harvard.edu | ODR Website: www.odr.harvard.edu

4. *How does the University determine whether conduct is unwelcome?*

The University must find from both an objective and subjective perspective that the conduct was unwelcome. The University will look at the totality of the circumstances surrounding an alleged incident or incidents. No one fact or factor is determinative in all cases.

5. *Does a person have to indicate that sexual conduct is unwelcome?*

Not necessarily. Whether conduct is deemed unwelcome depends on the context in which it occurred and must be determined based on the totality of the circumstances. Acquiescence in the conduct or the absence of an objection does not always mean that the conduct was welcome. On the other hand, if a party responds positively to sexual conduct, without indicating by statement or conduct that he or she objects, then the evidence will often not support a conclusion that the sexual conduct was unwelcome.

6. *Is intoxication the same as incapacitation?*

No. There are many levels of intoxication. People can be intoxicated and still be able to make and express their decisions. Incapacitation is when someone is “so impaired . . . as to be incapable of requesting or inviting the conduct.”

7. *Can a person request or invite sexual activity even after use of drugs or alcohol?*

Yes. Sexual activity following consumption of drugs or alcohol is not automatically deemed to be unwelcome. However, use of drugs or alcohol can in some cases undermine a person’s ability to request or invite the sexual activity. Under the University’s Policy, the relevant standard is whether a person “is so impaired . . . as to be incapable of requesting or inviting the conduct.”

8. *How does someone know if a person is incapacitated and therefore is so impaired as to be incapable of requesting or inviting sexual conduct?*

Every person is different in his or her reaction to drugs or alcohol and signs of incapacity vary widely. Although not an exhaustive list, signs of incapacity may include stumbling or difficulty maintaining balance, vomiting, inability to focus eyes, disorientation, unresponsiveness, inability to communicate coherently, and unconsciousness.

9. *The University Policy prohibits retaliation not only against an individual raising an allegation but also against anyone cooperating in the investigation. What does that mean?*

The University Policy prohibits retaliation against persons who are cooperating with the investigatory process in any way, including the complainant, the respondent, and any witnesses or other persons who have provided or may provide information to the Office for Dispute Resolution (“ODR”). Retaliation can take many forms, including the dissemination of information in a manner intended to pressure or shame participants and witnesses in connection with the ODR process (such as, through social media) or to discourage participants or witnesses from assisting with that process.

10. *Who is responsible for notifying the School or Unit Title IX Coordinator about possible sexual or gender-based harassment?*

The University Policy provides that University officers other than those who are prohibited from making such notifications because of a legal confidentiality obligation (*see* Question 13 below) must promptly notify the School or Unit Title IX Coordinator about possible sexual or gender-based harassment. This means that if those University officers learn about a possible incident, they need to contact the Title IX Coordinator, who will determine what steps, if any, to take next.

Individuals who are responsible for making such notifications include deans; administrative and professional staff at all Schools and Units; those responsible for residential life (e.g., Faculty Deans, Resident Deans and Tutors, Resident Advisors); coaches and assistant coaches; other personnel who work directly with students such as those who are involved with student clubs and organizations, career services, academic support, etc.; and faculty and others who teach students, such as graduate student teaching fellows.

11. *If I speak with someone about possible sexual or gender-based harassment, do I have to pursue informal resolution or a complaint?*

No. Speaking with someone, even the Title IX Coordinator or someone who is responsible for notifying the School or Unit Title IX Coordinator, does not mean that you will need to participate in an informal resolution or file a complaint. The University encourages all persons who believe they may have been the subject of sexual or gender-based harassment to speak with an appropriate University officer about the incident because, even if no

informal process is commenced or formal complaint is filed, that information will help the University identify any concerns about harassment and work to address them. Speaking to a University officer will allow any student affected to be supported by the School, and also will allow School and University officials to consider whether there are broader issues for the community that need to be addressed.

12. *Can my name be kept confidential if I speak with someone who is responsible for notifying the School or Unit Title IX Coordinator about possible sexual or gender-based harassment?*

The University respects the privacy concerns of those who may be the subject of or witness to incidents of harassment, but the University also has an obligation to keep the community safe and to address incidents of alleged harassment that it knows about or reasonably should know about.

University employees who have an obligation to report will need to provide the School or Unit Title IX Coordinator relevant information about the allegation, including the identities of the individuals involved (if they know) and the nature of the conduct. This does not mean that an informal resolution must be pursued or a formal complaint must be filed. Moreover, even when someone has an obligation to report to a School or Unit Title IX Coordinator, University officers will protect and respect privacy and will share information on a need-to-know basis. Similarly, the School or Unit Title IX Coordinator, the Title IX Office, and ODR respect the sensitivity of this information and share it with others only on a need-to-know basis.

13. *Who is a confidential resource that will not have to make such a notification to the School or Unit Title IX Coordinator?*

There are certain resources who are privileged under the law and who, therefore, are generally prohibited from disclosing information they receive, even in a legal proceeding, without the permission of the person(s) who shared the information with them. Mental health clinicians, OSAPR staff providing services as rape crisis counselors, lawyers providing legal advice to clients, and clergy acting in his/her professional capacity hold such a privilege. They do not have to make such a notification, and, absent special circumstances, they are prohibited from disclosing even in a legal proceeding.

In addition to those privileged resources, there are other resources whom the University has decided are not obligated to make a notification to a Title IX

Coordinator, although they do not hold a legal privilege. The University and Longwood Ombuds and, in cases not involving sexual assault, OSAPR are available to discuss an incident without forwarding any information to a Title IX Coordinator. The same is true of the Bureau of Study Counsel, College peer-counseling groups, and the College's Office of BGLTQ Student Life. Should the incident result in an external investigation, such as a criminal prosecution, civil lawsuit, or other government investigation, these groups may be required to reveal information they were told (unlike the privileged resources discussed above).

Persons who are uncertain about whether they want to seek an informal resolution, file a complaint or disclose information about an incident and want to discuss that issue in confidence may find it useful to ask about confidentiality and privilege at the start of the conversation.

14. *Does Harvard prohibit all offensive speech regarding sex and gender?*

No. For harassing speech to create a hostile environment, it must be so severe, pervasive, or persistent that it will deny or limit a student's ability to participate in or benefit from the University's educational or employment programs or opportunities. While Harvard is committed to non-discrimination and condemns derogatory speech, it is also committed to academic freedom and freedom of expression and encourages members of the University community to engage in open and spirited debate, to contribute to intellectual exchanges, and to participate fully in the life of the University. The University expects its students, faculty, and other community members to recognize the importance to others of expressing their views in an uninhibited manner. The University also recognizes the interest in free speech in private settings, such as private conversations and residential spaces, and the Policy would apply in such settings only if the harassing effect of the speech were so severe, persistent, or pervasive as to create a hostile environment.

15. *Does the University Policy apply to comments made in the classroom or other statements made in coursework, such as in papers or exams?*

The Policy specifically states it shall not be construed to apply "to abridge academic freedom and inquiry, principles of free speech, or the University's educational mission." The University encourages freedom of inquiry and construes the Policy to give ample room for the exchange of ideas in the educational setting, even if those ideas might be controversial or even

offensive to some. Speech that is germane to coursework is not prohibited by the Policy. In the classroom or coursework setting, speech that does not have a legitimate educational purpose could fall within the Policy.

16. *How does Harvard determine whether offensive speech creates a hostile environment?*

The University assesses the effect of the speech on the environment from the perspective of an objective, reasonable person, bearing in mind that the University encourages free and uninhibited speech and inquiry. The appropriateness of the speech may vary depending on the circumstances. For example, where academically relevant, a professor or a student may discuss sexually provocative or offensive material in class. By contrast, discussion of such material might not be appropriate where it has no relevance to the particular setting or is inappropriately directed at a particular individual.

17. *Does Harvard's commitment to free speech extend to all of its activities?*

Yes. Free speech interests are particularly heightened in the classroom, and in other education programs and activities, including public meetings and talks, cultural and artistic events, and newspapers and publications that are integral to the University's educational mission.

18. *We understand that Harvard Law School has adopted Sexual Harassment Resources and Procedures for Students. Do those procedures apply if either the complainant or the respondent is not an HLS student?*

No. The HLS Sexual Harassment Resources and Procedures for Students will apply only when both the complainant and the respondent are HLS students. Otherwise, the University Procedures will apply.

19. *May I have a lawyer serve as my personal advisor?*

Yes. Although neither the complainant nor the respondent is required to select an attorney to serve in the role of personal advisor, each is permitted to do so.

20. *What is the effect of the factual findings or other decisions made by ODR?*

ODR's factual findings and conclusions may be reversed or altered only through the appellate process set forth in the University Procedures.

Otherwise, under the University Procedures, Schools and Units must accept as final ODR's findings of fact and its conclusion as to whether a violation of University Policy has occurred.

21. *What happens when there are simultaneous criminal and ODR proceedings?*

Individuals who believe that they have been subject to sexual violence have the right to proceed with both criminal and ODR complaints simultaneously. In such cases, the University will consider whether continuing its own investigation will interfere with an active criminal investigation. The University may defer its investigation to avoid compromising the criminal process, but once it is clear that any such concerns have passed or can be mitigated, the University will promptly resume its investigation. In all cases, the University will complete its initial review and ensure appropriate interim measures are provided so that the individuals affected can continue to participate in and benefit from the University's programs and activities.

22. *Can interim measures be put in place at any time? Can they be modified later?*

Yes. When appropriate, the University can put interim measures in place even if a formal complaint has not been filed. Interim measures are subject to review and revision at any time prior to the conclusion of an investigation. Following an investigation, additional measures may be put in place, and interim measures may become permanent.

23. *Will complainants and respondents be required by the University to resolve problems directly with each other?*

No. The parties may not be compelled to resolve the problem directly with each other. Furthermore, ODR will not use mediation in cases of sexual assault and sexual violence, or when otherwise determined to be inappropriate.

24. *Will both parties be involved in each stage of the ODR process once an investigation has been opened?*

Yes. Under the University Policy and University Procedures, both parties are afforded an equal opportunity to participate in the investigation and appeal. Both parties are likewise afforded an equal opportunity to participate in the disciplinary processes of the individual Schools or Units.

25. *Will both parties have access to the materials that ODR uses in reaching its conclusions?*

Yes. During the course of the investigation, both the complainant and the respondent will have the opportunity to respond to all information used by the Investigative Team in reaching its conclusions. They will also have the opportunity to provide the Investigative Team with any additional information that they have. This information, like other information received from the complainant and respondent during the investigatory process, will be shared with the other. In addition, each party will have the opportunity to review and comment on the draft investigative report, and the Investigative Team will evaluate the comments before issuing a final report.

26. *What notice will be provided to respondents and complainants following an ODR investigation and/or disciplinary proceeding concerning sexual violence?*

Under the law, notice will vary depending on the nature of the allegations. Following an investigation of sexual violence, both the complainant and the respondent will be informed of the outcome and all the sanctions. For cases of sexual harassment that do not involve sexual violence, complainants will be informed of the outcome and all the sanctions that pertain to the complainant, and respondents will be informed of the outcome and all the sanctions.

27. *The University Procedures call for appeals of the Investigative Team's decision to be heard by either the Title IX Officer or their designee. Who will handle appeals?*

The Title IX Officer has designated the responsibility for addressing an appeal to a properly trained standing committee of faculty and senior administrators. Impartial and unbiased panels shall be drawn in each case from the standing committee.

28. *How does the University keep records of ODR investigations?*

ODR will maintain records of ODR investigations sufficient to show, where applicable, the individuals involved, investigative steps taken, information reviewed, decisions made, and the reasoning for the decisions. After three years, the University may archive or otherwise dispose of these records in a manner that will ensure appropriate confidentiality.

29. *How would the University respond to a report of sexual harassment, including sexual assault, when the respondent is not affiliated with the University?*

Even though the University's ability to take direct action against a person who is not affiliated may be limited, the University will take steps to provide appropriate supports for the complainant and, where appropriate, the broader community. This may include offering available support services to the complainant, notifying the complainant of the right to file a complaint with the respondent's school (if the respondent is a student) or local law enforcement, and taking any other appropriate steps to protect the campus.

30. *Where is ODR located and what are its hours?*

ODR is located on the 2nd floor of 44R Brattle Street. It is open from 9am to 5pm, Monday through Friday. You can also reach ODR by calling (617) 495-3786 or emailing odr@harvard.edu. Their website address is odr.harvard.edu

31. *Where is the Office of Sexual Assault Prevention & Response (OSAPR) and what are its hours?*

OSAPR is located in the Smith Campus Center, Suite 624. It is open from 9 am to 5 pm, Monday through Friday. OSAPR also has a 24-hour hotline, (617) 495-9100. Their website is osapr.harvard.edu

32. *What are the differences among the Title IX Office, ODR, and OSAPR?*

The Title IX Office is charged with maintaining a safe and healthy educational and work environment in which no member of the University community is, on the basis of sex, sexual orientation, or gender identity, excluded from participation in, denied the benefits of, or subjected to discrimination, including sexual assault and other forms of sexual harassment. It supports a network of more than 50 Title IX Coordinators across the various Schools and Units.

ODR is a neutral body that, together with the Schools or Units, impartially investigates and resolves complaints alleging that the Policy has been violated.

OSAPR is organized under the University Health Services and is a confidential support and advocacy resource for members of the community who have experienced sexual harassment, including sexual assault.

The Title IX Office, ODR, the local Title IX Coordinators, and OSAPR are available to provide information on a wide range of resources available to the community and on the University Policy and Procedures.

33. *Where can I find out who the Title IX Coordinator is for my School or Unit?*

The Title IX Coordinators are identified here, titleix.harvard.edu/coordinators, or on School or Unit websites.

34. *What are interim measures, and how can students access them?*

[Title IX Coordinators](http://titleix.harvard.edu/coordinators) are available to discuss and help arrange appropriate interim measures. Information regarding each School's designated Title IX Coordinator can be found at: <http://titleix.harvard.edu/coordinators>.

Interim measures are individualized supports to help students who may have experienced incidents of sexual or gender-based harassment participate in campus life at Harvard and continue with their studies.

Interim measures may be considered or implemented at any time, and may include, as appropriate:

- Extensions of time or other course-related adjustments.
- Alterations to course schedules or work schedules.
- Working with HUPD to arrange for a campus escort.
- Restrictions on contact between parties.
- Changes in housing.
- Leaves of absence.
- Increased monitoring of certain areas of the campus.

35. *Is the standard for “unwelcome” conduct different if the conduct occurs when the parties are in a relationship or have previously engaged in sexual activity?*

No. The [standard](#) is the same. Conduct is unwelcome if a person (1) did not request or invite it, and (2) regarded the unrequested or uninvited conduct as undesirable or offensive.

Whether conduct is deemed unwelcome depends on the context in which it occurred and must be based on the totality of the circumstances (*see* [Questions 3, 4, and 5](#) above). This does not mean, however, that a dating, marital, and/or sexual relationship is a blanket invitation to engage in sexual activity at any time. A person may welcome sexual acts on one occasion, but not on a later occasion, and a person may welcome particular sexual acts but not others.

36. *What types of concerns have been disclosed to school Title IX Coordinators and/or brought as formal complaints to ODR?*

Over the past few years, Title IX Coordinators have been told about hundreds of incidents. The types of concerns being disclosed range from multiple incidents over a period of time (e.g., sexual assault followed by stalking) to a single incident of sexual assault or other form of harassment. Some incidents involve people who are or have been in relationships, some involve people who do not know each other, and some involve people who are acquaintances.

Each case ODR investigates is unique. A summary of ODR complaint processing in 2015-2016 with comparisons to 2014-2015, is provided in the [Title IX Office Annual Report](#).

37. *How does ODR handle a report of an incident that predates the University Policy and Procedures, which became effective in September 2014?*

ODR applies the School or Unit policy that was in effect when the incident occurred but uses the procedures that are currently in effect.

38. *If I file a formal complaint, who else, besides the Investigative Team, may be involved in the process?*

ODR takes care to protect the privacy of those involved and to share information only on a “need-to-know” basis. With this understanding, the following people may be involved at various stages of the process:

- Title IX Coordinators for the School(s) of the complainant and respondent (in part to ensure that appropriate interim measures can be put in place).
- Appropriate officers in the School or Unit, such as deans and members of disciplinary boards or disciplinary panels.
- A [Designee](#) or [Liaison](#) appointed by the School.
- Personal advisors, at the discretion of the parties, who may include attorneys.
- Witnesses.
- [Appellate panelists](#).

39. *Can I file a complaint anonymously and remain anonymous during an investigation?*

If the person raising the complaint wishes to remain anonymous during the investigation, it may significantly impact ODR’s ability to conduct an investigation. In some circumstances, a request for anonymity may mean an investigation cannot go forward. In other circumstances, the Investigative Team, the School Title IX Coordinator, or the Title IX Officer may determine that further investigation is necessary (for example, if there is a potential risk of a hostile environment for others in the community), in which case the person raising the complaint will be informed that his or her identity will be disclosed as necessary for the investigatory process (*see also [Question 12](#) above*).

40. *If I agree to be a witness in an ODR investigation, may I remain anonymous?*

The name of a witness proposed by a complainant or respondent, like other information received from each during the investigatory process, is shared

with the other party (*see also* [Question 25](#) above). Prospective witnesses are assured that the University Policy prohibits retaliation against anyone who participates in the process, including a witness, and your Title IX Coordinator can discuss with you measures that may be taken to facilitate your participation. Retaliation can be reported under the University Policy, and as desired and as appropriate, may be the subject of an ODR complaint.

41. *What information is shared with witnesses?*

ODR conducts witness interviews for the purpose of gathering and assessing information about the incident(s). Information about the complaint, including the names of the people involved, is shared with witnesses only to the extent necessary to gather information.

42. *What type of information does ODR consider during an investigation?*

In addition to any statements of the parties, the following is a non-exhaustive list of information that ODR may consider, if relevant and available, during an investigation:

- Witness statements.
- Photographs.
- Text messages, chat, social media, and similar materials.
- Recordings.
- Transcripts and other performance evaluations.
- Medical records.
- Police reports.
- Court records.

ODR also may visit the location(s) where the incident(s) occurred to better understand the information gathered during the course of the investigation.

43. *Can ODR's records be subpoenaed or obtained in lawsuits?*

Yes. If a lawsuit is brought, ODR's records may have to be given to courts, lawyers, expert witnesses or others involved with the legal proceedings.

ODR also may be required to release records to government agencies that are investigating the University's compliance with state and/or federal law.

44. *Why are the timeframes in the University Procedures sometimes extended?*

Timeframes may be extended to ensure the integrity and completeness of the investigation. Extra time may be needed to accommodate party or witness availability, to comply with requests by external law enforcement, or as a result of the complexity of the investigation and the severity or extent of reported misconduct. [ODR](#) keeps the parties informed of the progress of the investigation.

45. *Does filing a complaint with ODR mean I have also reported the incident to the Harvard University Police Department (HUPD)?*

No. Filing a complaint with ODR does not mean that you automatically have filed a complaint with HUPD. ODR is not part of HUPD. Your Title IX Coordinator can put you in touch with HUPD should you wish to file a police report.

While the University encourages reporting to both, the choice belongs to each individual, as does the decision about whether to file a formal complaint with ODR and/or file criminal charges.

46. *Where is HUPD located and how can I contact them?*

[HUPD](#) is located on the 6th floor of 1033 Massachusetts Avenue. For additional information regarding HUPD, please visit: <http://www.hupd.harvard.edu/>.

Contact information for HUPD is as follows:

URGENT Cambridge:	617-495-1212
URGENT Longwood:	617-432-1212
Business:	617-495-1215

Community members can report criminal or suspicious activity anonymously either by calling a twenty-four hour automated voice mail

system at 617-496-2700 or by reporting online at:
<http://www.hupd.harvard.edu/anonymous-reporting>.

47. *When might conduct that occurs in non-University housing or on non-University property be covered by the Procedures?*

If harassing conduct that takes place outside of Harvard's property is in connection with a Harvard program or activity or has the effect of creating a [hostile environment](#) for a member of the University community, then it is covered by the [University Policy](#). This includes conduct that occurs in non-University housing.

See additional provisions, which may be relevant for FAS at:
<http://www.fas.harvard.edu/sexual-gender-based-harassment-policyresources>.

Harvard University's Sexual and Gender-Based Harassment Policy and Procedures
titleix.harvard.edu/policy and titleix.harvard.edu/procedures

04.05.17