

# HARVARD UNIVERSITY

## Interim Title IX Sexual Harassment Policy

### Policy Statement

The University's Interim Title IX Sexual Harassment 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. The Interim Other Sexual Misconduct Policy is designed to address sexual misconduct that falls outside the jurisdiction of the Interim Title IX Sexual Harassment Policy.

Harvard University is committed to maintaining a safe and healthy educational and work environment in which no member of the University community is, on the basis of sex, including sexual orientation or gender identity, excluded from participation in, denied the benefits of, or subjected to discrimination in any University program or activity. Sexual harassment, including sexual violence, is a form of sex discrimination in that it denies an individual equal access to the University's programs or activities.

This Policy is designed to ensure a safe and non-discriminatory educational and work environment and to meet legal requirements, including: Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in the University's programs or activities; relevant sections of the Violence Against Women Reauthorization Act (VAWA); Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex in employment; and Massachusetts laws that prohibit discrimination on the basis of sex, sexual orientation, and gender identity. It does not preclude application or enforcement of other University or School policies.

It is the policy of the University to provide educational, preventative, and training programs regarding sexual harassment; to encourage reporting of incidents; to respond promptly and equitably to sexual harassment in a manner that is not deliberately indifferent; to prevent incidents of sexual harassment from denying or limiting an individual's ability to participate in or benefit from the University's programs or activities; to offer to the parties supportive measures as appropriate, as reasonably available, and without fee or charge; and to provide prompt and equitable methods of resolution. Violations of this Policy may result in the imposition of sanctions ranging from an admonition or warning up to, and including, termination, dismissal, expulsion, or referral to a process that may result in revocation of tenure as determined by the appropriate officials at the School or unit. The remedies designed to restore or preserve equal access to the University's education or work program or activities may range from course-related adjustments and no contact orders to restrictions on access to campus, campus locations, or campus activities.

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 by the Interim Other Sexual Misconduct Policy.

Submitting a complaint that is not in good faith or providing false or misleading information in any investigation of complaints is also prohibited by the Interim Other Sexual Misconduct Policy.

Nothing in this Policy shall be construed to abridge academic freedom and inquiry, principles of free speech, or the University's educational mission.

## **Definitions**

### **Sexual Harassment**

Sexual harassment is unwelcome conduct on the basis of sex, including sexual orientation and gender identity. Sexual harassment includes unwelcome sexual advances; requests for sexual favors; and other verbal, nonverbal, graphic, or physical conduct of a sexual nature or based on sexual orientation or gender identity, that satisfies one or more of the following: (1) an employee of the University either explicitly or implicitly conditioning the provision of an aid, benefit, or services of the University, such as an individual's employment or academic standing (for example, academic evaluation, grades, or advancement) on an individual's participation in unwelcome sexual conduct (quid pro quo); quid pro quo sexual harassment can occur whether a person resists and suffers the threatened harm, or the person submits and avoids the threatened harm. Both situations could constitute discrimination on the basis of sex; or (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education or work programs or activities; or (3) sexual assault, dating violence, domestic violence, and stalking. (See Appendix A for definitions).

Whether the conduct constitutes sexual harassment may depend on a variety of factors, including: the degree to which the conduct affected one or more person's education or employment; the type, frequency, and duration of the conduct; the relationship between the parties; the number of people involved; and the context in which the conduct occurred.

### **Assessing the Conduct**

Conduct is unwelcome if a person did not consent to it. 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.

In addition, 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.

## **Jurisdiction**

This Policy applies to sexual harassment that is committed by students, faculty, staff, Harvard appointees, or third parties against a person in the United States, whenever the misconduct occurs:

1. On Harvard property; or
2. Off Harvard property, if the conduct was in connection with a University or University-recognized program or activity which includes locations, events, or circumstances over which the University exercised substantial control over both the person accused of the conduct and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

## **Monitoring and Confidentiality**

A variety of resources are available at the University and in the area to assist those who have experienced sexual harassment, including sexual violence.

Individuals considering making a disclosure to University resources should make sure they have informed expectations concerning privacy and confidentiality. The University is committed to providing all possible assistance in understanding these issues and helping individuals to make an informed decision.

It is important to understand that, while the University will treat information it has received with appropriate sensitivity, University personnel may nonetheless need to share certain information with those at the University responsible for stopping or preventing sexual harassment. For example, University officers, other than those who are prohibited from reporting because of a legal confidentiality obligation or prohibition against reporting, must promptly notify the School or unit Title IX Resource Coordinator about possible sexual harassment, regardless of whether a complaint is filed. Such reporting is necessary for various reasons, including to ensure that persons possibly subjected to such conduct receive appropriate services and information; that the University can track incidents and identify patterns; and that, where appropriate, the University can take steps to protect the Harvard community. This reporting by University officers will not necessarily result in a complaint; rather, the School or unit Title IX Resource Coordinator, in consultation with the University Title IX Coordinator, will assess the information and determine what action, if any, will be taken. Information will be disclosed in this manner only to those at the University who, in the judgment of the University Title IX Coordinator or School or unit Title IX Resource Coordinator, have a need to know.

Should individuals desire to discuss an incident or other information only with persons who are subject to a legal confidentiality obligation or prohibition against reporting, they should ask University officers for information about such resources, which are available both at the University and elsewhere. University officers are available to discuss these other resources and to assist individuals in making an informed decision.

### **Violations of other Rules**

The University encourages the reporting of all concerns regarding sexual harassment. Sometimes individuals are hesitant to report instances of sexual harassment because they fear they may be charged with other policy violations, such as underage alcohol consumption. Because the University has a paramount interest in protecting the well-being of its community and remedying sexual harassment, other policy violations will be considered, if necessary, separately from allegations under this Policy.

## **Resources**

### *University Resources:*

[Office of Sexual Assault Prevention & Response](#)

[HUHS Behavioral Health Services](#)

[Harvard University Health Services](#)

[Harvard Chaplains](#)

[Harvard University Police Department](#)

[Employee Assistance Program](#)

*School or unit Title IX Resource Coordinators, other relevant policies, and complaint procedures:*

[Find your local Title IX Resource Coordinator](#)

[University Sexual Harassment Policies & Procedures](#)

[University Title IX Coordinator](#)

### *Outside Agencies:*

[U.S. Department of Education, Office for Civil Rights \(OCR\)](#)

[U.S. Equal Employment Opportunity Commission \(EEOC\)](#)

[Massachusetts Commission Against Discrimination \(MCAD\)](#)

## Appendix A

### **Current Definitions in Federal Law of Sexual Assault,<sup>1</sup> Dating Violence, Domestic Violence, and Stalking**

- **Sex Offenses**: any sexual act including Rape, Sodomy, Sexual Assault With An Object, or Fondling directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also unlawful sexual intercourse.
  - **Rape**: (except Statutory Rape) the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - **Sodomy**: oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - **Sexual Assault With An Object**: to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - **Fondling**: the touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - **Incest**: Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - **Statutory Rape**: Nonforcible sexual intercourse with a person who is under the statutory age of consent.
- **Dating violence**: violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the length and type of relationship, as well as the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual abuse, physical abuse of a sexual nature, or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence, below.

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<sup>1</sup> Hereunder referred to as “Sex Offenses” in accordance with the [Uniform Crime Reporting Program’s National Incident-Based Reporting System](#).

- Domestic violence: felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the relevant jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the relevant jurisdiction.
- Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress. For the purposes of this definition, "course of conduct" means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

*February 2, 2021*