

Toward a Community in Which All Can Thrive

Report of the Harvard University Discrimination and Bullying Policy
Steering Committee

September 2021

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Toward a Community in Which All Can Thrive

Introduction

In the summer of 2020, the Provost convened a Steering Committee for University Discrimination and Bullying Policies and charged it with providing guidance and coordinating the progress of:

- 1) the Title IX and Other Sexual Misconduct Policy Working Group, focusing on harassment and misconduct related to sex- and gender-based discrimination,
- 2) the Non-Discrimination Policy Working Group, focusing on discrimination on the basis of legally protected categories other than sex- and gender-based discrimination), and
- 3) the Anti-Bullying Policy Working Group, focused on abusive behavior that does not fall under the other two policies.

Specifically, the Steering Committee was asked to make recommendations to the President, Provost, and Deans on:

- (1) University policies addressing harassment, discrimination, and bullying, as defined in the charges for each Working Group, and
- (2) procedures for investigating and addressing violations of these policies.

Its members include the chairs of each of the three Working Groups noted above as well as faculty and administrators from around the University. In his message to the Harvard community announcing this Steering Committee and Working Groups, Provost Garber noted that “[o]ne of the priorities of this University is to provide an environment where each of us can feel safe to participate fully in the life of the University, whether we are studying, teaching, conducting research, or working in other ways.” We approached our charge with this statement in mind.

This work had origins, as well, in the graduate student union contract, reached in 2020. At the time that the graduate student union contract was settled, the University agreed to establish working groups to recommend “University-wide policies and procedures to deal with other forms of discrimination besides sexual and gender-based harassment, including but not limited to race and ethnicity discrimination, and abusive and intimidating behavior.”

The Steering Committee is chaired by Howard Koh, Harvey V. Fineberg Professor of the Practice of Public Health Leadership at the Harvard T.H. Chan School of Public Health. Its members include 13 faculty and administrators from around the University representing the fields of law, history, public health, science, and academic administration. The Steering Committee, which first convened in January 2021, held a total of five meetings over five months. While part of the work involved reviewing progress and final recommendations of the individual Working Groups, the Steering Committee also sought to identify problems and solutions that cut across all three areas of sexual misconduct, discrimination, and bullying at Harvard. This process was informed not only by the Working Groups—and their solicitation of input through community listening sessions across the University¹—but also by insights and experience from the Steering Committee. Ultimately, each Working Group created its own report. The Steering

¹ The Working Groups held eight open listening sessions for students, faculty, staff, and postdoctoral fellows during an approximately two-week period in mid-April 2021. Attendance varied—certain student and faculty sessions were sparsely attended with numbers in the single digits, while the sessions for staff saw such large numbers of attendees that the meetings had to be divided into breakout sessions. Each Working Group also conducted additional, targeted outreach beyond these listening sessions. See Working Group reports for further details about each group’s outreach efforts.

Committee referred to them as part of the deliberations to write our own report, but we would like to emphasize that the policies and procedures accompanying this report were prepared by the Working Groups. While the Steering Committee offered input on those policies, we did not have the opportunity to propose or adopt specific changes to the policies as drafted by the Working Groups. Rather, we confined ourselves to identifying questions and concerns raised by the policies, the most important of which are discussed below. For this reason, the policies should not be understood to have received the endorsement, in all their particulars, of the Steering Committee. On many matters, members of the Steering Committee did not reach unanimity. To that end, we have placed priority on setting policies that are fair, uniform, and transparent.

The first section of our report discusses some of the overarching themes and cross-cutting considerations relevant to all three policies, including the University's mission and values, the need for leadership, communication, and education and training to achieve a true community where everyone can thrive. This section also addresses the ways in which hierarchy and power intersect with discrimination and harassment. The second section discusses the specific policies and procedures proposed by each Working Group. In considering the policies and procedures collectively, we note some places where they could benefit from greater consistency, and others where there is good reason for them to vary. Some major questions about the policies and procedures included:

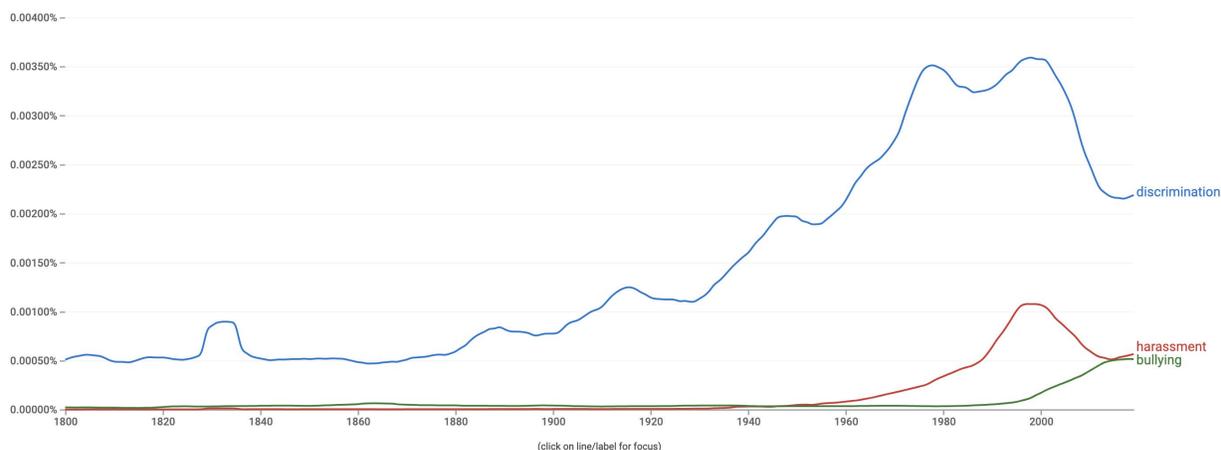
- What should the jurisdiction be for each policy?
- What functions should be carried out by a central, University-wide office versus what could be more effectively handled at the School or Unit level?
- What data does the University already collect and analyze, and what more could be done in this area?
- What should be the role of informal or alternative resolution of disputes?
- Which individual or group should be responsible for determining responsibility following a formal investigation; how do the policies relate to one another?
- On what grounds should each policy allow for appeals?
- What standard of evidence should be used when determining whether a policy violation has occurred?
- How can the University address behavior that does not rise to the level of a policy violation but is nonetheless problematic?

We see the proposed policies as necessary and important steps toward building a community in which everyone can thrive. However, community depends not only on following rules designed to prevent abuse, but on the cultivation and expression of a deep and sincere generosity and open heartedness among community members.

A Note about History

Harvard is a centuries-old institution. The terms discrimination, harassment, and bullying, in their current meaning, usage, and frequency, are modern. "Discrimination" became a key term during the Civil Rights Era (the 1964 Civil Rights Act aimed to end "discrimination or segregation on the ground of race, color, religion or national origin"); "harassment" is chiefly associated with feminist interventions in the 1980s; and "bullying," within the context of educational policy, gained currency at the time of the Obama administration's 2010 Department of Education "Dear Colleague" letter, stating that some

bullying violates the Civil Rights Act, followed by then-First Lady Michelle Obama’s anti-bullying campaign, aimed principally at K-12 children.²



Discrimination, harassment, and bullying in English-language works, 1800-2020

Although the terms did not exist for much of Harvard’s history, discrimination by race, sex, disability, religion, and wealth—and, for a long time, *exclusion*—characterized the college’s history from the start. While changes of the kinds recommended by the Working Groups may encounter some obstacles and resistance, we have heard a great deal of support for these changes from our campus community.

A Note about Existing Structures

Sexual Misconduct

Title IX of the Education Amendments of 1972 is the federal civil rights law prohibiting gender discrimination in educational institutions that receive federal education funds. In 2011, the Department of Education’s Office for Civil Rights (OCR) issued a letter making it clear that colleges and universities were responsible under Title IX for the prevention of and response to sexual assault on campus. Harvard established a University-wide Title IX policy in 2014, replacing the individual policies that had previously been administered by each School, and created a central office to administer the policy, investigate complaints, and provide educational programs at that time. The OCR issued Title IX regulations in May 2020; the Title IX Working Group report describes these changes and how the University has responded to them. To date, there is a network of more than 50 Title IX Resource Coordinators across the Schools and Central Administration. Hence, a substantial University infrastructure exists for addressing campus-wide issues of sex and gender discrimination. In contrast, the infrastructure dedicated to addressing discrimination against other protected classes and bullying has been much less robust to date.

In the Working Groups’ open meetings with the Harvard community, many cited aspects of the Title IX program as important resources and examples of what is needed to address other forms of discrimination and bullying. Those speaking in the meetings called for more attention to leadership,

² Jill Lepore, “A Brief History of Harvard College Rules about Discrimination, Harassment, and Bullying,” February 15, 2021.

education, outreach, training, a neutral process for resolving complaints, and support for people who have experienced problems.

Discrimination

The University has long had a number of different policies prohibiting illegal forms of discrimination, but it does not currently have one central, University-wide non-discrimination policy and procedures that apply to everyone. Schools and Units each maintain their own policies, and procedures for adjudicating complaints vary depending on the parties' home School or Unit and their status at the University (i.e., student, faculty, staff, postdoc). Federal and state law also prohibit discrimination against individuals based on their membership in various protected categories; the legal underpinnings of the proposed non-discrimination policy are described in the report of the Non-Discrimination Working Group.

In September 2020, Sherri Ann Charleston became Harvard's first Chief Diversity and Inclusion Officer, and, under her leadership, the Office for Diversity, Inclusion, and Belonging (ODIB) has taken on many educational and outreach roles in this area. ODIB works across the University to serve as a convener and catalyst and to build capacity and community. Its efforts include (but are not limited to) facilitating collaboration and strategic partnerships across the University; identifying metrics to advance and measure equity, diversity, inclusion and belonging; supporting inclusion and belonging learning and development; serving as a central access point for inclusion and belonging resources; and fostering inclusive dialogue, conversations, and community spaces.

Bullying

There is no one central office at the University with responsibility for issues related to bullying, though it has been addressed by policy at some of the schools and handled by individuals in Dean of Students, Dean of Faculty Affairs, Human Resources, and Ombuds Offices.

Overarching Themes: Values, Hierarchy, and Power

The reports of the three Working Groups bring together several common themes. Many of these have appeared, as well, in other related reports of recently convened committees charged with considering campus culture.

University values

As an academic community, Harvard strives to foster a vibrant learning community pursuing rigorous teaching, research, and scholarship. These functions are supported by the values of free expression, free inquiry, intellectual honesty, respect for the dignity of others, and openness to constructive change.³ Over the last few years, and especially as part of a nationwide reckoning within higher education regarding injustice and inequality, Harvard has articulated five core community values: respect the rights, differences, and dignity of others; demonstrate honesty and integrity in all dealings; pursue excellence conscientiously in one's work; be accountable for actions and conduct in the community; and cultivate bonds and bridges that enable all to grow with and learn from one another.

In its 2018 report, Harvard's Presidential Task Force on Inclusion and Belonging described how embracing these values allows us to advance a shared commitment to education, scholarship, and excellence.⁴ In this spirit, many schools and units have articulated the importance of these values to

³ [University-Wide Statement on Rights and Responsibilities](#)

⁴ Harvard University Task Force on Inclusion and Belonging, [Pursuing Excellence on a Foundation of Inclusion](#), 2018. Appendix D. Revised Values Statement, A.29

their own missions. The Harvard Business School Community Values website, for example, features the following quote from a faculty member: “Our whole pedagogy is dependent on the notion that this is a collective endeavor and that we can't really accomplish our mission without relying on each other.”⁵ The Harvard Divinity School likewise acknowledges this link in its articulation of its values, noting that “excellence is achieved through effort, creativity, and the exploration of new ideas and individual achievement is rarely accomplished without the support of our community and the collaboration of our peers.”⁶ These statements underscore the fact that behavior that violates our community values also undermines our pursuit of academic excellence.

The report from the Presidential Task Force on Inclusion and Belonging calls out the union of academic freedom and a culture of mutual respect and concern as one of four recommended goals for inclusive excellence at Harvard:

While broader public conversations often cast academic freedom and inclusion as antagonistic goals, or, at best, two distinct values that must be accommodated to each other, we propose a richer understanding. The values of academic freedom and inclusion and belonging provide each other with synergistic and mutual reinforcement. Academic freedom is necessary to help us fully realize the value of inclusion and belonging. It anchors the principle that heterodox views should be protected in their expression and that we should bring the best principles of academic debate — not *ad hominem* argument, not personal invective, not threats, not unwitting insult — to the work of evaluating those views. Similarly, inclusion makes the value of academic freedom real by ensuring that all voices gain from its protections.⁷

The report of the Anti-Bullying Policy Working Group also engages directly with these ideas. It notes that while anti-bullying policies allow people to fully participate in and benefit from the intellectual life of the University, overly broad policies could have the unintended result of intimidating or silencing community members for their opinions, research, or teaching. Particularly at risk are those who express unorthodox or unpopular views, who employ controversial teaching methods, or who have marginalized identities. The Working Group report notes that such outcomes would be in direct conflict with the core mission of the University and could further contribute to an ongoing decline in viewpoint diversity.

Hierarchy and power

As noted by the EEOC Select Task Force on the Study of Harassment in the Workplace, the risk of harassment is greater in organizations with significant power disparities between workers. The report notes that individuals with higher status may feel emboldened to exploit those with lower status, who, in turn, may not report harassment as they “may be less likely to understand internal complaint channels, and may also be particularly concerned about the ramifications of reporting harassment (*e.g.*, retaliation or job loss).”⁸ The Harvard community listening sessions conducted by the Working Groups also revealed deep concerns among some members that reporting would not be worth the risk of these potential ramifications, including retaliation, loss of position, and loss of employment. Many of those who attended the sessions expressed doubts that tenured faculty members would be held accountable for policy violations. Though listening session attendance represented only a small segment of the total

⁵ <https://www.hbs.edu/about/campus-and-culture/Pages/community-values.aspx>

⁶ <https://hds.harvard.edu/about/community-values>

⁷ *Pursuing Excellence on a Foundation of Inclusion*, p23

⁸ Chai R. Feldblum and Victoria A. Lipnic, *Report of the Co-Chairs of the Select Task Force on the Study of Harassment in the Workplace* (U.S. Equal Employment Opportunity Commission, 2016).

Harvard population and could be assumed to have attracted those with strong feelings, the Working Groups recognized the serious nature of the concerns expressed.

While hierarchies built into the university structure are a necessary part of an organization, problems arise when power is abused and power asymmetries enable or tolerate discrimination or harassment. A 2018 report from the National Academies of Sciences, Engineering, and Medicine (NASEM) on sexual harassment of women in academia found that organizations with hierarchical power structures—where those at the lower levels were strongly dependent on those at higher levels—were more likely to foster and sustain harassment. Moreover, when power is highly concentrated in a single person, others are “more likely to feel as if revealing the harassing behavior will have a negative impact on their lives and careers.”⁹ A 2021 report from an external committee tasked with reviewing sexual harassment at Harvard notes that the impact of this abuse on the individual and the community “squanders talent and defeats those who otherwise might contribute to the shared enterprises of education and research” and, moreover, that it “corrodes the community by undermining confidence in shared values.”¹⁰

We recommend clear communication from leaders to their communities about the importance of these issues. Such commitment and communication should start with the Dean of each Harvard School and continue year-round on a regular basis. Regular communications should clarify how these issues are being addressed at each School with the goal of building thriving communities. Without committed and explicit leadership from the top of every Harvard organization, these issues will only persist. Leadership on these issues should be part of the job expectation of all Deans and senior leaders. Modeling of this behavior by individuals in leadership roles would be a key reinforcing step in reducing the negative impacts of power differentials.

Cross-Cutting Considerations: Looking Beyond the Policies and Procedures

All three Working Groups discussed issues in their reports that go beyond the language contained in the policies and procedures they have drafted. Below we highlight some of the cross-cutting themes that we see as particularly important. To clarify the distinctions between the three policy areas and the recommendations of the Steering Committee and the three Working Groups, these issues are also presented in a grid [LINK] at the end of our report.

Communication, education, training, and prevention

As with any new policy, the University will need to undertake major communications efforts to ensure that all members of the community are aware of their rights and responsibilities under the policies, the behaviors prohibited by the policies, where they can go for advice, support, or to file a complaint, and what they can expect from either a formal or an informal resolution process. The policies and accompanying resources should be explicitly articulated each year by the dean of each School and should be easy to find online. Information about the policies and resources will need to be incorporated into orientation and training materials for all members of our community and will need to be communicated on an ongoing basis.

The University should also focus on prevention. Members of the Harvard Community who attended open meetings as well as all of the Working Groups cited the need for more attention to prevention.

⁹ National Academies of Sciences, Engineering, and Medicine 2018. *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/24994>.

¹⁰ [Report of the External Review Committee to Review Sexual Harassment at Harvard University](#), January 2021

For example, the Non-Discrimination Policy Working Group report notes that “[i]n examining Harvard’s policies and statements about harassment and discrimination, we found little in the way of proactive efforts to design our educational and workplace settings to mitigate the occurrence of discrimination.” Similarly, the Anti-Bullying Policy Working Group describes an overwhelming interest among listening session participants in bullying *prevention*; the Working Group’s report suggests “exploring various models of prevention through the strengthening of community norms of mutual respect, particularly across various roles at the University. Systematic preventive supports could include trainings in management, management reviews, increased access to/advertisement of the Ombuds offices, and exit interviews, for instance.”

In addition to educating the community about the policies themselves, training and education can create environments that decrease incidents of discrimination and harassment. The Graduate School of Arts and Sciences (GSAS) Advising Project, the Title IX Office, and the Center for Workforce Development already provide training to community members on topics including effective management, difficult conversations, workplace civility, and bystander intervention. The University should draw upon the existing knowledge within these offices, expand such trainings to broader audiences, and strengthen a sense of community commitment to these issues.

Recommendations:

- Proactively communicate not just what behaviors are prohibited, but what actions can be taken by individuals at all levels of the institution to promote our community values and the standards to which we all should aspire. Deans and other leaders in particular should communicate a visible and unmistakable commitment to combating all forms of discrimination and harassment at Harvard and should model exemplary personal and professional behavior towards others.
- Plan for how policies, procedures, and resources will be communicated across the University on an ongoing basis.
- Explore trainings and other efforts that focus on prevention, seeking best practices across the University and the country.
- Ensure that communication about how we expect members of our community to treat one another is an explicit part of new student and new employee orientations. Students and employees should be informed of policies related to discrimination, bullying, and sexual harassment. However, many members of the Steering Committee felt strongly that orientations should be a moment to celebrate what brings us together as a community—including kindness, decency, and a spirit of curiosity—and how our community can be strengthened when we uphold these qualities in our behavior toward one another.
- A no wrong door policy can support any individual who comes forward. When approached by a member of the community with a concern related to one or more of these policies, all efforts should be made to proactively connect the community member with the appropriate office or resource.

Data collection

At the moment, we have limited insight into the size of the problems in the areas of discrimination and bullying, whether they are getting better or worse, whether people know where to find help if they need

it, and how problems that do arise are resolved.¹¹ What we do know is what we have heard directly from members of the community: that some individuals within our community are failing to uphold our values, and that some members of our community do not trust that all members of our community will be held accountable for misconduct.

Regardless of how reports and complaints are resolved, it is important that the University maintain centralized records of them, including of any reports and complaints that are received and/or resolved at the school level. Data on formal complaints brought under each policy, especially the Non-Discrimination Policy and the Anti-Bullying Policy, will be particularly important for understanding how those policies are being used and if they are addressing the behaviors that they are intended to address. We should also seek to understand—within the bounds of proper protection for the privacy of all involved—if there are concerns that are not well-addressed by these new policies.

Establishing systems for tracking informal and anonymous reports—whether they are resolved via a formal or informal process involving both parties, by providing the complainant with supportive measures, or by allowing someone to make the University aware of what they have experienced—allows the University to assess the scope of the problem, monitor for changes over time, and measure the impact of new interventions. Importantly, this level of tracking also allows the University to identify if complaints, whether formal or informal, are being made repeatedly against the same individuals and to address these individuals with interventions. Regularly and publicly communicating back to the community about how complaints are being handled—while being sure to protect the privacy of the parties involved—can also help instill trust in these processes.

In addition to maintaining records related to reports of discrimination and harassment, survey data can be helpful in understanding the experiences of our community members as they relate to these issues. An integrated approach to data collection could provide an early signal if there are pockets of the University with problematic climates, allowing for targeted interventions. The 2020 [report from the Harvard University Task Force on Managing Student Mental Health](#) emphasizes the importance of a unified approach to data collection, noting that while various schools and units had been collecting data on student mental health issues for some time, these efforts were not consistent across different student populations and would benefit from a more University-wide approach.

Recommendations:

- Establish University-wide systems for tracking data on complaints under the anti-bullying and non-discrimination policies, including formal, informal, and anonymous complaints and how they are resolved.
- Conduct regular climate surveys across all schools, units, and constituencies. Explore existing surveys to determine if additional questions could be added, coordinate the survey process to avoid survey fatigue, redundancy, and timing issues that can reduce response rates, and provide for reporting of survey results.
- Explore ways in which data about bullying, discrimination, and sexual harassment can be made available to the community while also protecting the privacy of the parties involved.

¹¹ We have significant data related to sexual misconduct issues because of the infrastructure that was built to support our policies and procedures and surveys that are conducted on a regular basis. However, we have very little data related to discrimination and bullying.

“Gray area” behavior

During their community listening sessions, the Working Groups encountered concerns about behaviors that would not constitute potential violations of policies, but which were nonetheless troubling and not in keeping with the University’s values. The grid at the end of this report includes examples of the types of behavior that would constitute a policy violation under the Working Groups’ recommended policies, as well as examples of the types of behavior that might be considered “gray area” or “gray zone” behavior.

The term “gray zone” is most often used in reference to sexual misconduct, but the Working Groups found similar issues surrounding discrimination and bullying. In the discrimination space, gray area behavior could include a member of the University community using insensitive, stereotyping, or even racist speech on a single occasion. In the bullying space, such behavior includes rude, aggressive, dismissive, or abrupt behavior that weakens morale even though it does not rise to the pervasiveness, persistence, or severity that bullying does. Although these behaviors may not violate the terms of existing or proposed policies, they contribute to an unhealthy environment in which more serious acts of discrimination and harassment are more likely to occur. Addressing these behaviors is an important part of building a community in which we all can thrive and will require that we think beyond policy violations and formal complaint procedures.

Recommendations:

- Identify behaviors that may not violate any given anti-discrimination or anti-bullying policy but nonetheless are inappropriate and contribute to an atmosphere in which power-based abuse and harassment may be more likely to occur and educate the community about these behaviors. (linked to “Communication and education”)
- Create systems for tracking and resolving these types of behaviors (linked to “Data collection”) and reporting back to each School community about progress

Supportive measures and informal or alternative dispute resolution

Formal complaint processes can be a challenging experience for all involved. Currently, when potential violations occur, some individuals report difficulty in determining where to turn, whom to consult and what process to follow. Supports are necessary to ensure that anyone who wants to pursue a formal complaint can navigate the process. Support should also be available for individuals who do not want to enter into a formal complaint process.¹²

At the moment, the availability of supportive measures varies considerably across the three Working Group areas as well as across the Schools. Harvard’s Title IX Resource Coordinators offer supportive measures to help those who may have experienced sexual harassment or other sexual misconduct participate in campus life at Harvard and continue with their studies or work. Some incidents of sexual harassment and other sexual misconduct can be resolved through an informal resolution process that does not necessitate a full investigation. The Office for Gender Equity is in the process of hiring additional staff to serve as Share Counselors, providing support to individuals who have experienced sexual harassment as well as parties in the investigation process. The University Ombudsman Office also offers support and advice to community members who have concerns about intimidating, inappropriate, or disrespectful behavior. The Ombudsman offers “an independent, neutral, and confidential place for

¹² Note that under new regulations governing the implementation of Title IX at Universities, individuals raising concerns of sexual harassment, sexual misconduct, intimate partner violence, or stalking may need to file a formal complaint in order to request Informal Resolution.

[community members] to discuss their academic and workplace issues and concerns.” Typical concerns that visitors bring to the Ombudsman include career management, work relationships, research concerns, sexual harassment, and discrimination.

Some universities offer alternative processes for resolving complaints outside the scope of sexual misconduct policies. As a first step, many institutions encourage community members to speak with each other directly about concerns. Princeton’s University-wide Regulations, for example, note that “most conflicts and differences of opinion between members of the University community can be resolved by individuals directly confronting issues and jointly exploring alternatives” and list a number of individuals who can be called upon to assist in informal conflict resolution.¹³ MIT goes a step further in offering an Informal/Alternative Dispute Resolution Process (I/ADR) for the resolution of allegations related to discrimination and discriminatory harassment. I/ADR is described as a voluntary process that “may propose solutions, facilitate communication of proposals between the parties, facilitate direct discussions between the parties, or use other techniques such as mediation with a neutral party.”¹⁴ Some universities, including Brown and Stanford, allow for certain potential student code of conduct violations to be referred for resolution via a restorative justice process. Informal processes can be helpful in addressing behavior before it escalates into something requiring a formal complaint and discipline.

Recommendations:

- Explore different mechanisms for informal resolution of disputes (where appropriate), including mediation and restorative justice.
- Each School should have clearly identified, sufficient, and easily accessible resources for each of these areas to help students, faculty, and staff understand options and resources and to provide supportive measures where appropriate. These individuals should be sufficiently and appropriately trained to assist people and to refer people to other resources as appropriate, establishing a no wrong door approach.

Comments on the Proposed Policies and Procedures

The Steering Committee reviewed the recommended policies and procedures from the Working Groups and discussed the recommendations with the Working Group chairs. We appreciated the careful thought put into their recommendations, and now pass them along, as written, to be considered by University leadership. As School and University leaders consider these proposed policies and procedures, we would call attention to several issues that our group discussed.

Dedicated Office Issues: Centralized vs. School-based Processes

The Steering Committee considered recommendations from the Working Groups about what structures should be in place for handling complaints under the policies. Title IX already has an established infrastructure consisting of a central office and local resources, but non-discrimination and anti-bullying do not. Regardless of what structures are put in place to support these new policies, the Steering Committee feels strongly that the University and all Schools should establish a no wrong door approach

¹³ [Princeton University Rights, Rules, Responsibilities 2020, University-Wide Regulations section 1.7 Resolution of Complaints against Members of the University Community](#)

¹⁴ [MIT Institute Discrimination & Harassment Response Office – Informal/Alternative Dispute Resolution Process.](#) The I/ADR website notes that I/ADR may not be used to resolve allegations that an employee sexually harassed (as defined by Title IX) a student.

to reduce the burden on individuals trying to navigate the system. It should be as clear as possible for all members of the University to understand where to go and whom to consult if issues arise.

The Non-Discrimination and Anti-Bullying Policy Working Groups both suggest that Schools assign designated reporting offices with trained staff who can help people understand the policies and navigate the complaint process, and who can help arrange for supportive measures where appropriate. However, the two working groups recommend different structures for handling complaints. Given that an anti-bullying policy will be a new concept for many parts of the University, the Anti-Bullying Working Group was attuned to the potential for a centralized process to become overwhelmed by informal requests for information and support that might be more easily and effectively provided at the local level. The Anti-Bullying Working Group therefore recommended that each School or Unit adopt the procedures outlined in their report (with modifications if needed). The Non-Discrimination Working Group agreed that local resources and support would be important, but felt that when formal complaints arise, they should go through a uniform set of procedures overseen by a neutral, central office at the University level. Given the legal underpinnings of the Non-Discrimination Policy, a centralized process—similar to the University’s handling of complaints under its Title IX and Other Sexual Misconduct policies—may be especially appropriate for processing formal complaints.

Recommendations:

- Each School and Unit should have trained local professionals and resources that permit students, faculty, and staff readily to learn more about the policies and their options. Many schools already have specialized resources in place, and members of their communities already know whom to approach. In the case of Harvard Medical School, local involvement may be particularly important given the need for close coordination with the affiliated hospitals.
- Where resources already exist, they should be left in place and can continue to be the first point of contact in most instances.
- The Steering Committee generally agreed that formal complaints should be handled by a pool of professional investigators managed at the central (University) level.

The Steering Committee did not come to a consensus about whether complaints should first be screened at the local (School or Unit) level before they proceed to investigation. Some members of the Steering Committee felt that it would be important to screen complaints locally before they reach the level of a formal complaint; “close calls” can turn on local facts such as the type of school (e.g., undergraduate or graduate), as well as norms of interaction in the classroom at that school. Others disagreed with the notion that the same behavior could amount to discrimination in one School but not in another, and expressed concern that such an approach could increase legal risk. Individuals with local knowledge can provide input to investigators at the central level without being allowed to screen and dismiss complaints.

Process Considerations: Determination of a policy violation following an investigation

An investigation into a policy violation is followed by a determination of whether the respondent violated a policy. Across the four sets of procedures encompassed by three policy areas, two sets of procedures—Non-Discrimination and Other Sexual Misconduct—give the investigator responsibility for

determining whether a policy violation occurred¹⁵, while the other two—Anti-Bullying and Title IX Sexual Harassment—include an additional step where the investigator’s final report is followed by a hearing panel to make the final determination of whether the respondent committed a policy violation.¹⁶

While the Non-Discrimination Working Group did not recommend a hearing panel, its report notes that the Working Group did not come to a consensus on this point and that some members were in favor of such a model. The Working Group agreed that there should be a uniform policy and procedures and that investigations should be conducted by professional investigators, but the report notes that “several members of the Working Group raised concern with the investigator making the initial findings of fact.” The report offers a possible alternative by which a hearing panel or other entity would review the investigation report and determine whether a policy violation occurred.

When the Title IX policy was changed in 2020 to comply with newly issued federal regulations, a hearing panel was added and, as part of the hearing panel process, parties may cross examine one another through their personal representatives. This provision of the revised federal regulations was highly controversial, with many arguing that it would increase the stress of the investigatory process and thereby dissuade potential complainants. Others argue that it is a necessary component of a fair and unbiased process. A group of HLS faculty have commented that a process where a neutral hearing officer asks the questions would obviate subjecting complainants to questioning by the respondent’s personal advisor.

Recommendations:

- The Steering Committee agreed that this was an area where we should strive for uniformity across the three policy areas.
- Procedures should first involve a professional investigator drawn from a centrally managed pool to establish the facts. Then, a hearing panel would make the determination of wrongdoing. The Title IX policy must continue to allow cross examination by personal representatives unless federal regulations change. However, in other instances parties could submit questions to a hearing officer who could determine relevance of the question before sharing it, and then ask the questions. Currently, the Title IX policy stipulates a three-member hearing panel comprising one external, unaffiliated member with legal training and two internal, trained, Harvard affiliated members. Some Steering Committee members were of the opinion that panels ought ordinarily to include at least one member from the School or Unit involved.

Policy interplay and overlap

Each of the three policy areas under consideration addresses abusive behavior, differing by the nature and/or impact of the behavior in question. The Steering Committee discussed the complexities that a person might encounter if they experienced multiple “categories” of abusive behavior from the same individual. If each policy has a separate office responsible for handling complaints, would a community member have to figure out on their own which policy or policies would apply in order to know where to go for help? Would they need to speak with multiple offices if they thought they were being subjected to multiple types of abusive behavior? And if they brought a complaint under multiple policies, would

¹⁵ Note that the proposed Non-Discrimination procedures states that an investigator makes a recommended finding that the leader of the relevant School or Unit can either adopt or can send back to the investigator for further fact-finding.

¹⁶ Sanctions are a separate issue and not within the scope of this Steering Committee.

they have to participate in multiple investigative processes even if the complaints involved the same witnesses and documentation? Some of these requirements could be unnecessarily burdensome.

The Anti-Bullying Policy Working Group also urged the University to consider the possibility that someone could launch multiple or repeated complaints in hopes of identifying the venue in which their complaint is most likely to find traction (sometimes referred to as “forum shopping”). The Working Group report notes the importance of “streamlining processes and procedures through which people can bring bullying complaints” in preventing this from occurring. We see this as an important concern across all University policies.

Recommendations:

- As noted in the previous section, there should be a no wrong door policy for individuals who are identified as resources under any of the three policies. When approached by a member of the community with a concern related to one or more of these policies, all efforts should be made to proactively connect the community member with the appropriate office or resource.
- The three policies should be clear about what behaviors they cover. Where the same behavior violates more than one policy, there should be a mechanism for one investigation.
- Procedures should be fashioned such that, when misconduct is alleged that may fall under more than one of the policies, the allegations will be resolved simultaneously, in a single proceeding, rather than in separate parallel proceedings or a sequence of proceedings.
- Although there will be a variety of people and offices to which community members can go for information and support, each policy should have a single, clear avenue for bringing formal complaints.

Grounds for appeal

The procedures recommended by the Working Groups all note the possibility of appeal, with slightly varying grounds.

Recommendation:

All three policies should list the same grounds for appeal, drawn from those listed in the Title IX

Procedures:

1. A procedural irregularity that affected the outcome of the decision;
2. The appellant has new evidence, not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect 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 could have reached the same determination regarding responsibility.

Some members of the Steering Committee expressed concern that numbers 3 and 4 listed above could be overly broad or open-ended, such that hearing panels would have excessive discretion to overturn decisions, and recommended that those who are drafting the final policies take a close look to ensure that they are sufficiently precise.

Jurisdiction

All the policies under consideration apply to misconduct that is committed by students, faculty, and staff. However, there was uncertainty about jurisdiction with respect to:

- People associated with the Harvard community: The Title IX and Other Sexual Misconduct policies also include misconduct committed by Harvard appointees or third parties, and the Anti-Bullying and Non-Discrimination policies both say that they apply to “any member of the Harvard community” and include researchers (both Anti-Bullying and Non-Discrimination) and postdoctoral fellows (Non-Discrimination).
- Location of alleged misconduct: The Title IX, Other Sexual Misconduct, and Anti-Bullying policies all note that they can apply on Harvard property as well as off Harvard property, though they differ in the conditions under which they would apply to misconduct that occurred off Harvard property. The Title IX Working Group’s report also discusses a suggestion that would expand the circumstances under which the Other Sexual Misconduct Policy would apply to misconduct that occurs off Harvard property.
- Conduct unrelated to professional activities: One Steering Committee member noted the need for limits on the reach of these policies, suggesting that they be written in such a way that makes clear that they do not apply to conduct by Harvard community members that has nothing to do with their professional activities. This individual expressed concern that the non-discrimination policy as currently drafted asserts jurisdiction too broadly and could be interpreted as covering conduct by Harvard community members that is unconnected to their professional activities.

Recommendation:

- While the Steering Committee did not have time to discuss this issue in detail, we recommend that, to the greatest extent possible, the jurisdiction for these policies be brought into alignment during final drafting, with attention to each of the issues noted above.

Standard of evidence

Currently, two of the proposed policy areas—sexual misconduct and non-discrimination—use a Preponderance of the Evidence standard: more likely to be true than not. One, involving bullying, uses a higher standard of Clear and Convincing Evidence, defined as substantially more likely to be true than untrue. Both are less stringent than the Beyond a Reasonable Doubt standard of evidence used in criminal cases.

The Anti-Bullying Working Group discussed this issue in detail before recommending the higher Clear and Convincing standard. Several factors influenced their decision. First, sanctions for violating the Anti-Bullying Policy could involve termination for bad behavior that, in contrast to the other two policies, is not defined as such by law. The Working Group was also concerned about the ways in which their policy relates to issues of free speech, and some members of the group were particularly concerned about the possibility that this policy could be weaponized against people for causing unspecified “harm” to others. The group also noted that it was introducing a new policy without much of a track record either at Harvard or elsewhere.

Recommendation:

- The Steering Committee agreed that it would be acceptable for the procedures to differ in this respect, noting that the variation among the policies was not likely to impact people's behavior or the logistics involved in filing a complaint and going through an investigation.

Initial Review for Informal Resolutions

Formal complaints under all the proposed policies are subject to Initial Review before proceeding to full investigation. Complaint (or case) dismissal can obviate subjecting parties and witnesses to an unnecessary investigation. One member of the Steering Committee proposed that informal resolutions also include an Initial Review step.

Anti-Bullying Policy: Definition of Bullying

A member of the Steering Committee raised a concern with the Anti-Bullying Policy's recommended definition of bullying, noting that the words "individual or individuals" could be interpreted to include statements not directed at any particular individual or individuals but instead disparaging a group. The Working Group chair clarified that the word "individuals" was included to indicate that in a situation in which one person is bullying multiple individuals, the subjects of the bullying behavior could bring their complaints together. We suggest updating the language in the policy during final drafting so that this is clear.

Title IX and Other Sexual Misconduct: Definition of Consent

The Steering Committee does not unanimously endorse the definition of consent that is recommended by the Title IX and Other Sexual Misconduct Working Group. One member of the Steering Committee favored the alternative definition of consent mentioned in the Working Group report, while another noted their strong disagreement with the alternative language. Specific concerns were raised about the use of the words "mutual agreement" in the proposed consent definition, with one Steering Committee member noting that ordinarily someone would say "I consent to [X]" rather than "We agree to [X]." This individual wondered whether in adjudicating if there was "agreement," the decision-maker(s) would be drawn into the thorny question of whether there was a "meeting of the minds" between the parties to the complaint. Other Steering Committee members agreed with this concern.

Closing Thoughts

A university is an intellectual community in which we are called to listen to others in a spirit of inquiry, curiosity, generosity, and tolerance. We cherish not only agreement and shared experiences, but respectful disagreement and differences of opinion and diversity of background. Policies and procedures are necessary, but punitive measures will not by themselves encourage a practice of decency and kindness. To mold the culture and environment that allows for all members of our community to thrive will require concerted efforts at education, prevention, and culture change. Only when these efforts are paired with strong leadership, deep and sustained community engagement across the University, and an ardent desire for Harvard to be a better place, can we compel the change that is needed.

Appendix A: Overview of Landscape and Working Group Recommendations

Cross-Cutting Considerations			
	Title IX and Other Sexual Misconduct	Non-Discrimination	Anti-Bullying
Communication, education, and prevention			
Existing	Office for Gender Equity runs educational programs related to Title IX	Office for Diversity, Inclusion, and Belonging convenes stakeholders, hosts, events, and discussions, and shares educational resources, including guides and toolkits, related to diversity, inclusion, and belonging.	Disparate efforts across the University.
Short-term	Consider the particular risks and challenges involved with the full return of students following a smaller undergraduate presence on campus during the 2020-2021 academic year.		
Long-term vision: common	<ul style="list-style-type: none"> (1) Proactively communicate not just what behaviors are prohibited, but what actions can be taken by individuals at all levels of the institution to promote our community values and the standards to which we all should aspire. Proactive and preventative education, including examples of what types of behaviors would constitute violations, where individuals can seek support, and what they can expect from each step of the process; consider how trainings can encourage community members to play a more active bystander role; (2) Plan for how policies, procedures, and resources will be communicated across the University on an ongoing basis, including convening stakeholders, hosting events and discussions, and sharing educational resources, including guides and toolkits, related to bullying, diversity, inclusion, and belonging, protected status definitions, etc. (3) Explore trainings and other efforts that focus on prevention, seeking best practices across the University and the country. (4) Ensure that communication about bullying, discrimination, and sexual harassment is an explicit part of new student and new employee orientations. (5) Institute and support a no wrong door policy 		
Long-term vision: different	Education by Office for Gender Equity	Education by Office for Diversity, Inclusion, and Belonging	Office responsible for education to be determined
Data collection and system for tracking			

Existing	Office for Gender Equity responsible for tracking and data collection.	Office for Diversity, Inclusion, and Belonging responsible for some data collection, including surveys, related to University climate.	Disparate efforts across the University.
Short-term	n/a	n/a	n/a
Long-term vision: common	<p>(1) Establish University-wide systems for tracking data on complaints under the anti-bullying and non-discrimination policies, including formal, informal, and anonymous complaints and how they are resolved.</p> <p>(2) Conduct regular climate surveys across all schools, units, and constituencies. Explore existing surveys to determine if additional questions could be added, coordinate the survey process to avoid survey fatigue, redundancy, and timing issues that can reduce response rates, and provide for reporting of survey results.</p> <p>(3) Explore ways in which data about bullying, discrimination, and sexual harassment can be made available to the community while also protecting the privacy of the parties involved.</p>		
Long-term vision: different	Office for Gender Equity will continue to manage data collection and tracking related to sexual harassment	To be determined	To be determined
Gray area behavior			
Existing	Gray area behavior not specifically discussed by the working group.	Gray area behavior was discussed in the working group report: “As an example, such behavior might include one member of the university community using insensitive, stereotyping, or even racist speech on a single occasion”	Gray area behavior was discussed in the working group report: “rude, aggressive, dismissive, or abrupt behavior that weakens morale even though it does not rise to the pervasiveness, persistence, or severity that bullying does.”
Short-term	n/a	n/a	n/a
Long-term vision: common	<p>(1) Identify behaviors that may not violate any given anti-discrimination or anti-bullying policy but nonetheless are inappropriate and contribute to an atmosphere in which power-based abuse and harassment may be more likely to occur and educate the community about these behaviors. (linked to “Communication and education”)</p> <p>(2) Create systems for tracking and addressing these types of behaviors (linked to “Data collection”) and reporting back to each School community about progress</p>		
Long-term vision: different	To be determined	To be determined	To be determined
Options for informal resolution and supportive measures			
Existing	Office for Gender Equity offers options for informal resolution as well as supportive measures for complainants.	University Ombuds Office can assist in the informal resolution of certain types of concerns. University Disability Resources	University Ombuds Office can assist in the informal resolution of certain types of concerns. Other options may be available depending on the School

		can assist students, faculty, and staff who wish to explore accommodations. Other options may be available depending on the School or Unit. For example, the Harvard University Human Resources Discrimination Policy includes an option for informal problem solving.	or Unit (e.g., through faculty or student affairs offices or through local human resources units).
Short-term	n/a	n/a	n/a
Long-term vision: common	<p>(1) Each School should have clearly identified resources for each of these areas to help students, faculty, and staff understand options and resources and to provide supportive measures where appropriate. These individuals should be sufficiently and appropriately trained to refer people to other resources as appropriate, establishing a no wrong door approach.</p> <p>(2) The University should explore different mechanisms for informal resolution of disputes (where appropriate), including mediation and restorative justice.</p>		
Long-term vision: different	Office for Gender Equity will continue to oversee supportive measures and informal resolution related to complaints of sexual harassment.	To be determined	To be determined

The Proposed Policies and Procedures				
	Title IX and Other Sexual Misconduct Working Group	Non-Discrimination Working Group	Anti-Bullying Working Group	Steering Committee
Examples of behavior that violates policy	Examples in Interim Title IX Policy: <ul style="list-style-type: none"> • persistent disparagement of a person based on a perceived lack of stereotypical masculinity or femininity or exclusion from an activity based on sexual orientation or gender identity. (gender-based harassment) • Observing, photographing, videotaping, or making other 	Examples noted in the draft policy (note that the policy outlines a number of factors that must be taken into account in considering whether a policy violation has occurred): <ul style="list-style-type: none"> • Failing or refusing to hire or admit an individual because of their protected characteristic • Imposing more severe discipline on a student or 	Examples noted in the draft policy (note that in order to constitute a policy violation the conduct in question must be sufficiently pervasive, persistent, and/or severe that a reasonable person would find that it creates an educational, work, or living environment in which a person is effectively excluded from participation in or denied the benefits of a University's	n/a

	<p>visual or auditory records of sexual activity or nudity, where there is a reasonable expectation of privacy, without the knowledge and consent of all parties</p> <ul style="list-style-type: none"> • Sharing visual or auditory records of sexual activity or nudity without the knowledge and consent of all recorded parties and recipient(s) • Sexual advances, whether or not they involve physical touching • Commenting about or inappropriately touching an individual's body • Requests for sexual favors in exchange for actual or promised job benefits, such as favorable reviews, salary increases, promotions, increased benefits, or continued employment • Lewd or sexually suggestive comments, jokes, innuendoes, or gestures • Stalking 	<p>employee because of their protected characteristic;</p> <ul style="list-style-type: none"> • Giving a negative performance evaluation or grade/academic assessment because of an individual's protected characteristic; • Terminating, suspending, dismissing, or expelling an individual based on their protected characteristic. 	<p>educational or work programs or activities. Unless especially severe or egregious, a single act typically would not constitute bullying.):</p> <ul style="list-style-type: none"> • Performance feedback delivered by yelling, screaming, making threats and/or insults. • Deliberate and repeated humiliation. This could include actions such as deliberate and repeated shaming of peers on online platforms (e.g., Slack) in response to ideas, beliefs, or opinions shared by peers in the classroom. • Malicious comments about a person's appearance, lifestyle, family, or culture. • A physical, verbal, and/or written act toward another person, which causes them reasonably to fear for their safety and/or the safety of others. • Invading personal space after being asked to move or step away. • Interfering or threatening to interfere with a person's visa status. • Spreading false or misleading information or malicious rumors. 	
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			<ul style="list-style-type: none"> • Sharing confidential information about another person without a legitimate pedagogical or employment-related purpose. • Interfering with a person's personal property or work equipment. • Damaging or destroying a person's work. 	
Protected Categories	In place: 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, sexual orientation, or gender identity .	Recommended by WG: draft policy notes that discrimination on the basis of the following protected categories, or any other legally protected basis, is unlawful and intolerable to the University: age (40+), race, color, national origin, sex (including gender identity and gender expression, as well as pregnancy), genetic information, ancestry, religion, creed, veteran status, disability, military service, sexual orientation	Recommended WG policy does not limit protection to specific categories	Steering Committee accepts Working Group recommendations
Dedicated office: Centralized vs. School-Based Processes	In place: Title IX Office, Office for Sexual Assault Prevention & Response (OSAPR), and Office for Dispute Resolution. Starting this summer (2021), the Office for Gender Equity will unite into one organization resources that were previously located within OSAPR and the Title IX Office.	Recommended by WG: central office to receive and manage formal complaints University-wide, investigations should be handled by a centrally managed pool of trained investigators.	Recommended by WG: each School/Unit should have a dedicated reporting office, investigations should be handled by a centrally managed pool of trained investigators.	Recommended by the Steering Committee: each School and Unit should have trained local professionals and resources where students, faculty, and staff can go to learn more about the policies and their options. Where resources already exist, they should be left in place and can continue to be the first point of contact in most instances. Formal

				complaints under any of the policies should be handled by a pool of professional investigators managed at the central (University) level.
Process Considerations: Determination of policy violation following investigation	<p>In place: Per the 2020 DOE regulations, the Title IX Sexual Harassment policy uses a hearing to determine whether a policy violation occurred.</p> <p>The Other Sexual Misconduct policy uses a single investigator model.</p>	Recommended by WG: Single investigator recommended, with dissenting opinion noted.	Recommended by WG: Hearing panel recommended	Recommended by the Steering Committee: under all procedures, a hearing panel should make the final determination of whether there was a policy violation. Outside of Title IX proceedings, if cross-examination is involved at this stage, questions should be submitted to a hearing officer who would determine the relevance of the questions and then, if relevant, pose the questions to the relevant party.
Grounds for appeal	<p>In place:</p> <ol style="list-style-type: none"> 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 	Recommended by WG:	Recommended by WG:	Recommended by the Steering Committee: all three policies should use the same grounds for appeal that are outlined in the Title IX procedures.
		<ol style="list-style-type: none"> 1. Procedural error which may change the outcome of the decision 2. Appellant has substantive and relevant new information that was not available at the time of investigation and that may change the outcome of the decision 	<ol style="list-style-type: none"> 1. Material procedural issue 2. New materially significant information 3. Material finding against the weight of the evidence 	

	<p>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</p> <p>4. On the record as a whole, no reasonable Hearing Panel could have reached the same determination regarding responsibility.</p>			
Jurisdiction	<p>Interim Title IX Sexual Harassment Policy (in place): 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:</p> <ol style="list-style-type: none"> 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 	<p>Recommended by WG: The Policy and its accompanying procedures apply to alleged acts of discrimination that are committed by any member of the Harvard community, including faculty, researchers, postdoctoral fellows, staff, and students, but does not apply to alleged misconduct that may fall within the scope of other University policies. Alleged misconduct that is dealt with under other University policies (e.g. those regarding sexual and gender-based harassment and other sexual misconduct, bullying, or research misconduct) will not be covered by this policy unless a determination is made by those responsible for those other policies that the behavior fits more appropriately in this policy. Sexual and gender-based</p>	<p>Recommended by WG: The Policy and its accompanying procedures apply to alleged bullying that is committed by any member of the Harvard community, including faculty, researchers, staff, and students, whenever the alleged misconduct falls outside the scope of other University policies, including those regarding sexual and gender-based harassment and other sexual misconduct, discrimination, or research misconduct, and occurs:</p> <ol style="list-style-type: none"> 1. On Harvard property or 2. Off Harvard property if <ol style="list-style-type: none"> a. The conduct was in connection with a University program, a University-recognized program or activity, or another work-related activity such as attending 	<p>Recommended by the Steering Committee: to the extent possible, jurisdiction should be aligned across the three policies.</p>

	<p>organization that is officially recognized by the University.</p> <p>Interim Other Sexual Misconduct Policy (already in place): This Interim Other Sexual Misconduct Policy applies to other sexual misconduct that is committed by students, faculty, staff, Harvard appointees, or third parties, whenever the misconduct falls outside of the Interim Title IX Sexual Harassment Policy and occurs:</p> <ol style="list-style-type: none"> 1. On Harvard property; or 2. Off Harvard property, if: a) the conduct was in connection with a University or University-recognized program or activity; or b) the conduct may have the effect of creating a hostile environment for a member of the University community. <p>Interim Other Sexual Misconduct Policy (Working Group member recommend considering the following addition to “a”): to include other faculty work-related activities, for example: attending a conference, conducting research in the field, providing expertise to policy makers or presenting a talk at another institution.</p>	<p>harassment are covered by the University’s Interim Title IX Sexual Harassment Policy, Interim Other Sexual Misconduct Policy, and Sexual and Gender-Based Harassment Policy. Bullying and abuse of power will be covered by the University’s anti-bullying policy.</p>	<p>a conference, conducting research in the field, providing expertise to policymakers, presenting a talk at another institution, etc., and</p> <p>b. The conduct may have the effect of creating a hostile or abusive environment for a member of the University community.</p>	
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Standard of evidence	Preponderance of the evidence	Preponderance of the evidence	Clear and convincing	Steering Committee accepts Working Group recommendations
Initial Review for Informal Resolutions	In place: Initial review for formal complaints. Title IX Procedures and Other Sexual Misconduct Procedures both contain detail about requests for informal resolution.	Recommended by WG: Initial review for formal complaints, not specified for informal resolutions	Recommended by WG: Initial review for formal complaints, not specified for informal resolutions.	One member of the Steering Committee proposed that informal resolutions also include an Initial Review step.
Definitions	<p>In place: See Title IX Policies and Procedures page for definitions under the Interim Title IX Sexual Harassment Policy, the Interim Other Sexual Harassment Policy, and the Sexual and Gender-Based Harassment Policy (applies to sexual harassment and other sexual misconduct occurring before August 14, 2020)</p> <p>Consent Definition Recommended by WG: “This Policy requires consent to engage in sexual activity with another person. Specifically, it is the responsibility of anyone participating in sexual activity to obtain the consent of the other participant(s). It is important not to make assumptions about consent if confusion arises during a sexual interaction. Consent is active, mutual agreement given voluntarily and may be communicated verbally or by actions.</p>	<p>Recommended by WG: Discrimination is adverse treatment of an individual based on one or more of the protected characteristics listed in this policy. In a university setting, complaints of discrimination may arise in the employment context and the education context. [See report for further details]</p>	<p>Recommended by WG: Bullying, used as a shorthand for hostile and abusive behavior or power-based harassment, is defined here as harmful interpersonal aggression by words or actions that humiliate, degrade, demean, intimidate, and/or threaten an individual or individuals. For a violation of the Policy to occur, such aggression must be sufficiently pervasive, persistent, and/or severe that a reasonable person would find that it creates an educational, work, or living environment in which a person is effectively excluded from participation in or denied the benefits of the University’s educational or work programs or activities. Unless especially severe or egregious, a single act typically would not constitute bullying. [See report for further details]</p>	<p>Steering Committee accepts Working Group recommendations, but notes the following:</p> <ol style="list-style-type: none"> 1. One Steering Committee member favors the alternative consent definition outlined in the Title IX Working Group report. 2. One Steering Committee member expressed concern about the phrase “mutual agreement” in the Title IX Working Group’s proposed consent definition. 3. One Steering Committee member expressed concern about the phrase “individual or individuals” in the Anti-Bullying Working Group report.

	<ul style="list-style-type: none"> • Consent is not voluntary if it is obtained by coercion. Coercion is verbal and/or physical conduct that would reasonably place a person in fear of immediate harm, and that is employed to compel someone to engage in sexual activity. Coercion is more than an effort to persuade, entice, or attract another person to engage in sexual activity. • Consent can be withdrawn at any time. • A person may consent to some kinds of sexual activity and decline to consent to others. • A person may consent to participate in sexual activity on one occasion and may choose not to do so on a later occasion. <p>In addition, when a person is incapacitated, that person is so impaired as to be incapable of giving consent. Engaging in sexual activity with a person whom the Respondent knew or reasonably should have known to be incapacitated constitutes sexual harassment under this Policy. 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</p>			
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	<p>Respondent’s responsibility for sexual harassment under this Policy. Whether consent is voluntary depends on the totality of the circumstances, as described in the “Evidence” section of the procedures for this Policy.”</p> <p>Alternative Consent Definition Proposed by One WG Member: A person acts without consent when, in the context of all the circumstances, he or she should reasonably be aware of a substantial risk that the other person is not voluntarily and willingly engaging in the conduct at the time of the conduct</p>			
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Other Findings			
	Title IX and Other Sexual Misconduct	Discrimination	Bullying
Legal mandates	YES, Title IX of the Education Amendments of 1972	<p>YES</p> <p>Faculty and Staff: Federal and State Employment Law</p> <p>Students: federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education.</p>	<p>None that specifically apply to institutions of higher education, but the following may be of interest:</p> <p>Massachusetts K-12 Anti-Bullying Law: “An Act Relative to Bullying in Schools”</p> <p>Proposed Massachusetts workplace anti-bullying legislation: An Act Addressing Workplace Bullying, Mobbing, and Harassment, Without Regard to Protected Class Status While Promoting Healthy Workplaces</p>

<p>Examples from other institutions</p>	<p>The Working Group considered the consent definitions and hearing panel models currently being used by Ivy+ institutions.</p>	<p>Brown University Discrimination and Harassment Policy</p> <p>MIT Non-Discrimination Policy MIT Institute Discrimination & Harassment Response Office</p> <p>Princeton University Policy on Discrimination and/or Harassment Princeton University on Bias, Discrimination, and Harassment</p> <p>University of Michigan Campus Climate Support</p> <p>Lesley University Bias Education and Response Team</p>	<p>UC Berkeley Policy on Workplace Bullying</p> <p>University of Wisconsin Hostile and Intimidating Behavior Policy</p> <p>Princeton Discrimination/Harassment Policy</p> <p>MIT Harassment Policy</p> <p>Oregon State Bullying Policy</p> <p>Washington University in St. Louis Abusive Conduct Policy</p> <p>UCSF Violence and Bullying</p> <p>Stanford University School of Medicine Statement on the Respectful Workplace</p>
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Appendix B: University Discrimination and Harassment Policy Steering Committee

Howard Koh, Chair

Harvey V. Fineberg Professor of the Practice of Public Health Leadership, Harvard T.H. Chan School of Public Health

Allen Aloise

Dean for Administration and Finance, Graduate School of Arts and Sciences

Tim Bowman

Executive Dean for Administration and Finance, Harvard John A. Paulson School of Engineering and Applied Sciences

Sherri Charleston (Chair, Non-Discrimination Policy Working Group)

Chief Diversity and Inclusion Officer

Erica Chenoweth (Chair, Anti-Bullying Policy Working Group)

Berthold Beitz Professor in Human Rights and International Affairs, Harvard Kennedy School; Susan S. and Kenneth L. Wallach Professor, Radcliffe Institute for Advanced Study

John Goldberg

Deputy Dean; Carter Professor of General Jurisprudence, Harvard Law School

Jan Hammond

Senior Associate Dean for Culture and Community; Jesse Philips Professor of Manufacturing, Harvard Business School

Jill Lepore

David Woods Kemper '41 Professor of American History, Faculty of Arts and Sciences

Peggy Newell

Deputy Provost

Katherine O'Dair

Dean of Students, Harvard College

Donald Pfister (Chair, Title IX and Other Sexual Misconduct Policy Working Group)

Asa Gray Professor of Systematic Botany; Curator of the Farlow Library and Herbarium, Faculty of Arts and Sciences

Rosalind Segal

Dean for Graduate Education; Professor of Neurobiology, Harvard Medical School

Meredith Weenick

Vice President for Campus Services

Elizabeth Seaman, Legal Counsel

University Attorney

Jennifer Kirby, Legal Counsel
University Attorney

Lisa Thomas, Staff
Associate Director for Special Projects, Office of the Provost