

# HARVARD UNIVERSITY

## Interim Other Sexual Misconduct 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. This Interim Other Sexual Misconduct Policy is designed to address sexual misconduct that falls outside the jurisdiction of the Interim Title IX Sexual Harassment Policy, as set forth below.

It is the policy of the University to respond promptly and equitably to allegations of other sexual misconduct. Violations of this Interim Other Sexual Misconduct 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. Pursuant to this Interim Other Sexual Misconduct Policy, a School or unit also may impose a variety of remedies, ranging 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. Submitting a complaint that is not in good faith or providing materially false or misleading information in any such proceeding is also prohibited, provided that a determination regarding responsibility or lack of responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

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

### Definitions

#### **Other Sexual Misconduct**

Other sexual misconduct is unwelcome conduct on the basis of sex, including sexual orientation and gender identity. Other sexual misconduct 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), which may occur whether a person resists and suffers the threatened harm or the person submits and avoids the threatened harm; or (2) unwelcome conduct determined by a reasonable person to be so severe, persistent, or pervasive that it

effectively denies a person access to the University's education or work programs or activities (hostile environment).

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

### **Assessing the Conduct**

~~Conduct is unwelcome if a person did not~~ 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, ~~assent, approval or permission~~ given voluntarily and may be communicated verbally or by actions.

- 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.
- ~~That a~~ A person may consent to welcomes some kinds of sexual activity and decline to consent to contact does not necessarily mean that person welcomes other sexual contact.
- ~~Similarly, that a~~ A person may consent to willingly participates in sexual activity conduct on one occasion and may choose does not to do so necessarily mean that the same conduct is welcome on a later subsequent occasion.

In addition, when a person is incapacitated, ~~that person is~~ meaning so impaired as to be incapable of giving consent. ~~Engaging in conduct of a sexual activity with a person whom nature is deemed unwelcome, provided that~~ the Respondent knew or reasonably should have known ~~to be of the person's 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 Respondent's responsibility for other sexual misconduct 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. Note that in cases of quid pro quo harassment as defined above, agreement to engage in sexual activity is not given voluntarily and therefore is not consent.

### **Jurisdiction**

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:

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 happened in the context of other faculty work-related activities such as attending a conference, conducting research in the field, providing expertise to policy makers, or presenting a talk at another venue; or
  - a)c) \_\_\_\_\_ the conduct may have the effect of creating a hostile environment for a member of the University community.

### **Monitoring and Confidentiality**

The monitoring and confidentiality provisions of the Interim Title IX Sexual Harassment Policy also apply to other allegations of misconduct under this Interim Other Sexual Misconduct Policy.

### **Violations of Other Rules**

The University encourages the reporting of all concerns regarding other sexual misconduct. Sometimes individuals are hesitant to report instances of other sexual misconduct 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 other sexual misconduct, other policy violations will be considered, if necessary, separately from allegations under this Policy.

### **Resources**

*University Resources:*

[Office for Gender Equity: Sexual Harassment/Assault Resources & Education \(SHARE\)](#)

[HUHS Behavioral Health Services](#)

[Harvard University Health Services](#)

[Harvard Chaplains](#)

[Harvard University Police Department](#)

[Employee Assistance Program](#)

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

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

[University Title IX Coordinator](#)

[University Procedures](#)

*Outside Agencies:*

[U.S. Department of Education, Office for Civil Rights \(OCR\)](#)  
[U.S. Equal Employment Opportunity Commission \(EEOC\)](#)  
[Massachusetts Commission Against Discrimination \(MCAD\)](#)

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