

Hearing Panelist Training

Presented by OGE and ODR



HARVARD UNIVERSITY
Office for Dispute Resolution

Agenda

01

Federal and State Requirements

Title IX, VAWA, MA Law, and Harvard's Structure

02

Harvard's Policies and Procedures

Review of Harvard's Policies and Procedures

03

The Hearing

What to Expect, Your role as a Panelist, and Relevance

04

Technology

Technology Used During the Hearing

What is Title IX?

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

Regulatory Requirements



Title IX Training Requirements

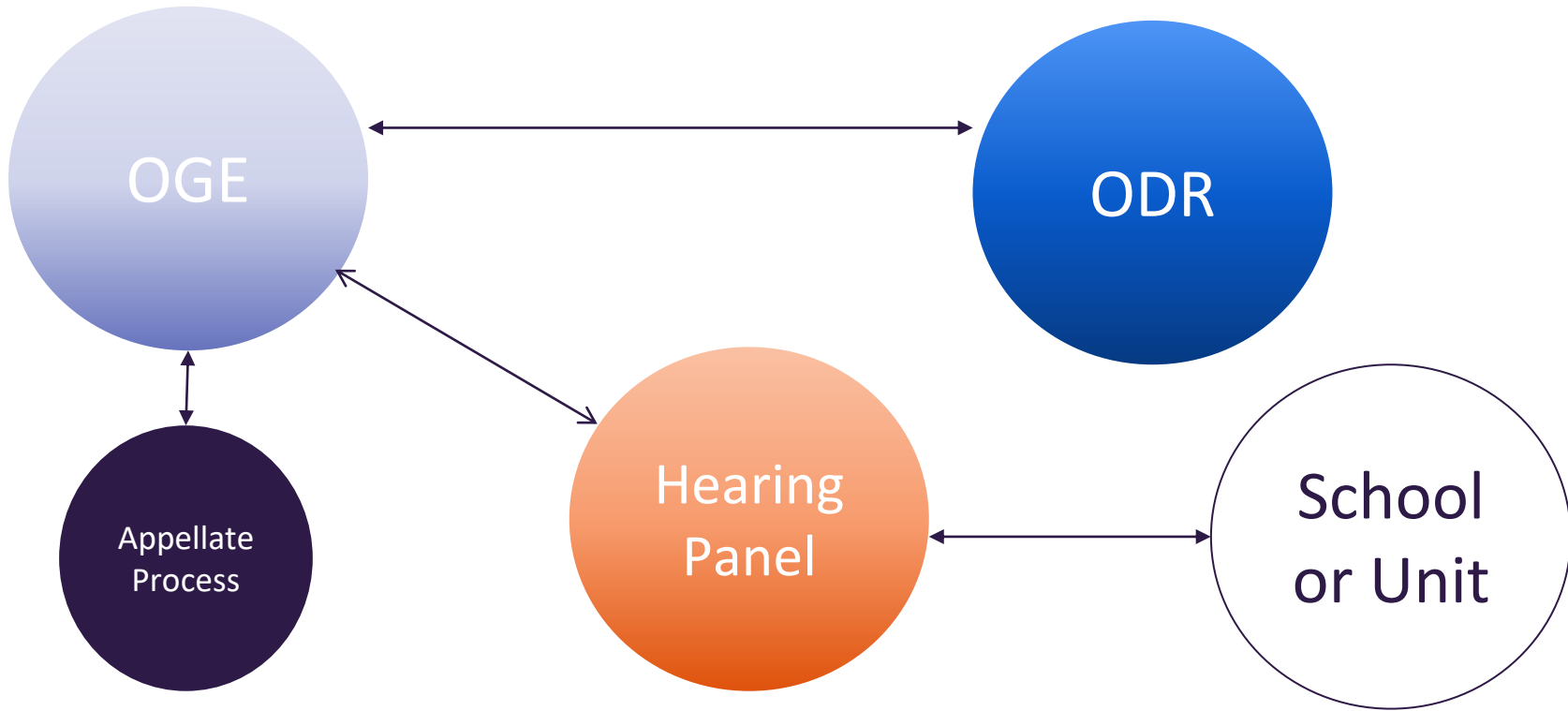
- Definition of Sexual Harassment
- Scope of Harvard's Programs or Activities
- How to Conduct an Investigation and Grievance Process including Hearing, Appeals, and Informal Resolution Processes, as Applicable
- How to Serve Impartially
- Technology Used During the Hearing
- Issues of Relevance

Beyond Title IX

- The Violence Against Women Reauthorization Act of 2013 (VAWA)
- The Massachusetts 2021 Campus Sexual Assault Law

Harvard's Structure

Harvard's Structure



What is OGE's Role?





Sexual Harassment/Assault Resources & Education (SHARE) (confidential & privileged)

Spaces for safety and healing, coalition building, and restorative practices

Call for related support anytime

- ✓ Support for those who have experienced harm:
 - ✓ Trauma-informed counseling
 - ✓ Groups
 - ✓ Advocacy and accompaniment with Title IX, legal processes, police, hospital, etc.
 - ✓ Community resources and referrals
- ✓ Restorative practices
- ✓ Proactive partnership
- ✓ Accountability-focused counseling
- ✓ Group support and consultation
- ✓ Culture change initiatives

- ✓ Main office line: (617)-496-5636
- ✓ 24/7 Confidential hotline: (617)-495-9100



Prevention Education, Engagement & Outreach

Promote a climate of gender equity and inclusivity in your School or unit

- ✓ Consultation and assessment
- ✓ Culture change initiatives
- ✓ eLearning courses
- ✓ Advisory committees
- ✓ Workshops and presentations
 - ✓ Gender Diversity and Inclusion
 - ✓ Cultivating a Climate of Gender Equity
 - ✓ Bystander Intervention
 - ✓ Consent Education
 - ✓ Know Your Role, Responsibilities, and Resources



Title IX Resources (private resources, not confidential)

Connect with University and local Title IX resources

Anonymously disclose a concern

- ✓ Seek supportive measures through network of TIX Resource Coordinators
- ✓ Disclose/notify the University of a concern of sexual harassment or other sexual misconduct
- ✓ Connect with University and community resources
- ✓ Learn about the University policies and procedures
- ✓ File a formal complaint

- ✓ Share your concerns anonymously with a member of the Title IX team via the [Resource for Online Anonymous Disclosure \(ROAD\)](#)

What is ODR's Role ?



HARVARD UNIVERSITY
Office for Dispute Resolution

ODR's Services



Request Information

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

[MAKE A REQUEST](#)



Investigative Process

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

[INVESTIGATIVE PROCESS](#)



Seek Informal Resolution

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

[ABOUT INFORMAL RESOLUTION](#)

ODR's Internal Investigators:

- Eric Jordan, J.D.
- Korey Moscatelli, J.D.
- Jennifer Worley, J.D.

ODR's Current External Investigators:

- Meaghan Borys, J.D.
- Brigid Harrington, J.D.
- Elizabeth Sanghavi, J.D., M. Ed.
- Alexandra (Sasha) D. Thaler, J.D.
- Chelsie A. Vokes, J.D.

ODR's Investigators

Harvard's Policies

Harvard's Policies


THE POLICIES



Interim Title IX Sexual Harassment Policy

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

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



Interim Other Sexual Misconduct Policy

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

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



Sexual and Gender-Based Harassment Policy

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

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

[EN ESPAÑOL \(PDF\)](#)

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

Sexual Harassment?

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

Jurisdiction

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

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

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

Other Sexual Misconduct?

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

Jurisdiction

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

Harvard's Policies: IOSMP continued

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

Harvard's Policies: Consent in ITIXSHP and IOSMP

“Consent is agreement, assent, approval, or permission given voluntarily and may be communicated verbally or by actions. That a person welcomes some sexual contact does not necessarily mean that person welcomes other sexual contact. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion.”

Harvard's Policies: Incapacitation in ITIXSHP and IOSMP

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

- provided that the Respondent knew or reasonably should have known of the person's incapacity.
- The person may be incapacitated as a result of drugs or alcohol or for some other reason, such as sleep or unconsciousness.
- A Respondent's impairment at the time of the incident as a result of drugs or alcohol does not, however, diminish the Respondent's responsibility for sexual harassment under this Policy.

The Investigation

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

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

The Investigative Process – Confidentiality

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

The Investigative Process – Confidentiality

The “Confidentiality” language in the procedures for each policy is substantially similar. Example from the student procedures for the ITIXSHP:

“The ODR, the Hearing Panel, the Appellate Panel, personal advisors, and others at the University involved in or aware of the formal complaint will take reasonable steps to protect the privacy of all involved. Once a complaint is filed, the Complainant, the Respondent, and any witnesses will be notified of the potential for compromising the integrity of the investigation by disclosing information about the case and the expectation that they therefore keep such information – including any documents they may receive or review – confidential. They also will be notified that sharing such information might compromise the investigation or may be construed as retaliatory. Retaliation of any kind is a separate violation of University policy and may lead to an additional complaint and consequences.

The parties remain free to share their own experiences, other than information that they have learned solely through the investigatory process. The parties are not restricted in their ability to discuss the allegations under investigation, except in a manner that constitutes retaliation, though to avoid the possibility of compromising the investigation, it is generally advisable to limit the number of people in whom they confide.”

The Investigative Process – Confidentiality

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

The Investigative Process – Initiating A Formal Complaint

To file a formal complaint, individuals may submit a complaint in writing to the University Title IX Coordinator at oge@harvard.edu or via the on-line complaint form. Formal complaints:

- must be a document or electronic submission
- must contain a physical or digital signature, or otherwise indicates that the individual is the person filing the formal complaint
- must allege sexual harassment or other sexual misconduct against an individual and request that the University investigate the allegation(s)

The Investigative Process – Initiating A Formal Complaint

- should state the name (if known) of the individual who you are alleging engaged in sexual harassment or other sexual misconduct and describe with reasonable specificity the incident(s) of alleged sexual harassment or other sexual misconduct, including the date and place of such incident(s)
- must be in your own words, and may not be authored by others, including family members, advisors, or attorneys
- should have an attached list of any sources of information (for example, witnesses, correspondence, records, and the like) that you believe may be relevant to the investigation

The Investigative Process – The Initial Review

- Local Title IX Resource Coordinator notified of formal complaint for purposes of supportive measures
- Case assigned to ODR Investigator
- Parties notified in writing of the allegations and provided a copy of the procedures
- Complainant invited to participate in initial review interview

The Investigative Process – Personal Advisors

- Personal Advisors – Complainants and Respondents may bring a personal advisor of their choice to any meeting or proceeding that is part of the investigation, including initial review, or hearing

The Investigative Process – The Initial Review

- Parties notified in writing of determination of whether formal complaint shall proceed to investigation or if a dismissal is warranted

The Investigative Process – The Investigation

- Respondent has one week to submit written response to allegations
- Individual interviews with each parties
- Individual interviews with witnesses
- Collection of relevant information from other sources, including site visits
- Parties provided equal opportunity to review and inspect any directly related evidence obtained as part of the investigation

The Investigative Process – ODR’s Interviews

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

The Investigative Process – Relevance

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

The Investigative Process – Relevance

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

The Investigative Process – Relevance

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

The Investigative Process – The Investigation

- Parties given 10 business days to respond (in writing) to all directly related evidence prior to the conclusion of the investigation
- Parties (and their advisors) provided Investigative Report with recommended findings of fact
 - Parties provided 5 business days to submit a written response
- Investigative Report provided to School/unit Title IX Resource Coordinator and University Title IX Coordinator for informational purposes

The Investigative Process – The Investigative Report

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

The Hearing

The Hearing – The Pre-Hearing Meeting

- Generally, takes place one week prior to the Hearing
- Includes Hearing Chair, Hearing Panelists, the University Title IX Coordinator, and staff member from OGE (for purposes of answering questions re: technology)
- Opportunity to ask questions about process, technology, and/or any case-related materials
- Review of technology used during the Hearing (i.e., Zoom)

The Hearing – What to Expect

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

Evidence & Relevance



The Hearing Process – Relevance

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

The Hearing Process – Relevance

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

The Hearing Process – Relevance

- Evidence that is ***not relevant***:
 - The Hearing Panel cannot draw an inference regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.



The Hearing– Evidence & Relevance

“The Department does not believe that determinations about whether certain questions or evidence are relevant or directly related to the allegations at issue requires legal training and that such factual determinations reasonably can be made by layperson recipient officials impartially applying logic and common sense. The Department believes that recipients are capable of, and committed to, controlling a hearing environment to keep the proceeding focused on relevant evidence and ensuring that participants are treated respectfully[.]”

Cross Examination



The Hearing – The Written Determination

- After the Hearing and deliberations, the Hearing Chair will draft a written determination
- The parties are then afforded the opportunity to appeal to a panel of drawn from a pool of trained faculty and administrators
- After the appeal period, in matters where the Hearing Panel finds a policy violation, the matter will be passed on to the relevant entity at the University to determine discipline
- The Hearing Chair will integrate discipline into the letter before sending to OGE to share with the parties

Additional Resources to Review as Hearing Panelist

- [Basics Training for Investigative Teams and Hearing Panels](#)
- [Applied Investigative Training for Investigative Teams and Hearing Panels](#)
 - [Rules Governing the Hearing](#)
 - [Harvard's Policies and Procedures Prohibiting Sexual Harassment and Other Sexual Misconduct](#)
 - [Zoom Instructions \(Panelists\)](#)

Questions