



HARVARD UNIVERSITY  
Office for Dispute Resolution

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# Message from William (“Bill”) McCants, Director of the Office for Dispute Resolution (ODR)



ODR’s seventh fiscal year of operation, FY21, drew to a close on June 30, 2021, with a total of 245 complaints received since September 2014. ODR, staffed by three impartial and experienced investigators<sup>16</sup> and a senior associate, supported by two fellows, continued to note the broad use of our services across the University community. Cumulatively over the seven-year period, complaints were filed by and against undergraduates, graduate/professional school students, faculty, staff, and third parties, at a rate of approximately 10% or more for each category.<sup>17</sup> Complaints over the seven-year period have involved School programs or activities overseen by all ten Harvard faculties, as well as ten units. Using gender self-identification by parties, ODR also noted that over the seven-year period, about 63% of complaints were filed

by females against males, 13% by males against females, 12% by males against males, and 5% by females against females. In approximately 14% of complaints filed over the seven-year period, at least one party self-identified as BGLTQ.

In four complaints in FY21, seven complaints in FY20, four complaints in FY19, and seven complaints in FY18, at the request of Schools or units, ODR investigated related allegations that fell outside the scope of the applicable policies, and under other University or local policies.<sup>18</sup>

The ODR team continued to field requests from the Harvard community for information or advice about the steps involved in pursuing an informal resolution or filing a formal complaint under the applicable policies. In response to feedback from stakeholders such as parties and witnesses involved in investigations and other interested individuals at the various Schools and units, ODR continued to work on improving the format and readability of its final reports of investigation (FRIs) in FY21. FRIs issued to date for cases originating in FY21 averaged 27 pages in length,<sup>19</sup> for example, compared to an average of almost 47 pages in FY15, ODR’s first year of operation. In addition, ODR continued its ongoing communications and consultation with important allied service providers at Harvard, such as the University Title IX Office, Harvard University Health Services (HUHS), the Harvard University Police Department (HUPD), and the Office of the General Counsel.

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16 ODR also contracts for impartial and experienced external investigative services when occasionally needed based on overall caseload volume.

17 There were two exceptions: (1) Complaints filed by faculty members constituted 8.2% of the complaints filed over the seven-year period. By contrast, complaints filed against faculty members constituted 19.6% of the complaints during the same period. (2) Complaints filed against third parties constituted 3.7% of the complaints filed over the seven-year period. By contrast, complaints filed by, or on behalf of, third parties constituted 16.3% of the complaints during the same period.

18 ODR in FY21 handled three complaints, in FY20 one complaint, and in FY18 two complaints, entirely under University or local policies other than the applicable policies; these six complaints are not included in the data and charts contained in this Report. ODR only accepts such complaints from Schools and units when the size of ODR’s caseload of complaints filed under the applicable policies allows. The “applicable policies” include, but are not limited to, the Sexual and Gender-Based Harassment Policy, and for conduct occurring on or after August 14, 2020, the Interim Other Sexual Misconduct Policy and the Interim Title IX Sexual Harassment Policy (ODR received no complaint filings under the latter policy in FY21).

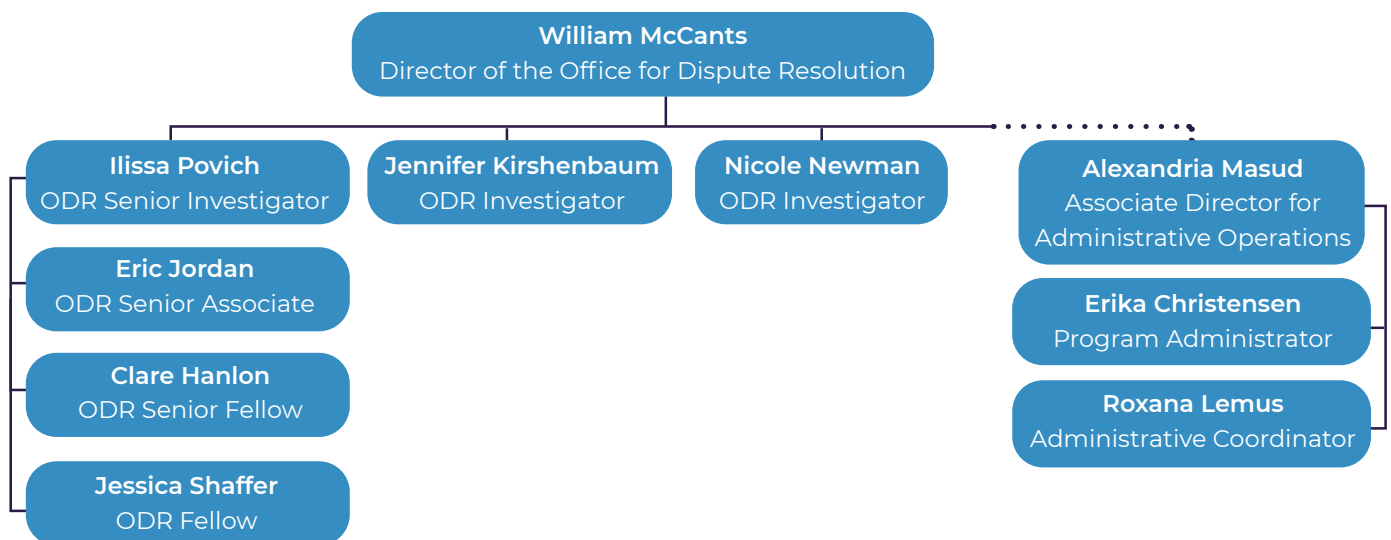
19 In calculating this average, ODR considers the same factors, as applicable, considered in calculating the length of investigations as described below. Complaint investigations vary greatly in, e.g., scope, evidence volume, and complexity, and this is predictably reflected in the length of the resulting FRI, to ensure that each party’s account is properly described and analyzed in its totality.

ODR's investigative efforts continued to be supported by working jointly with trained investigative designees, for those Schools and units that use that model, or by regularly communicating with liaisons who provide valuable information from their Schools and units to ODR, while also relying on ODR to keep the liaisons current on investigative status and progress. In all cases, communication between ODR and the local Title IX Resource Coordinators, as well as when appropriate the University Title IX Office, also helped ensure proper attention to the support needs of the parties involved in our investigations.

As part of our mission, ODR staff was involved in delivering over 25 audience-tailored trainings and presentations, which included attendees from across Harvard. ODR staff members also continued to hone and advance their skills base, receiving as applicable more than 50 hours of professional development in subjects such as advanced investigation training, confidentiality, fair process, the neurobiology of trauma, and the revised Title IX regulations that went into effect on August 14, 2020.

ODR staff remain at all times keenly aware that we have been entrusted with investigating for all members of the Harvard community, in a prompt and fair manner, one of the most sensitive areas of human interaction, while protecting the privacy of those who interact with our office. We continue to be grateful for the efforts of our many partners to assist us in this important task.

## About the Office for Dispute Resolution





## **Bill McCants, Director of the Office for Dispute Resolution**

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Bill supervises the ODR staff, ensures timely and high-quality complaint resolution processes, and develops and delivers extensive University-wide training. He came to the Office in August 2014 with over 12 years of experience in civil rights investigations on the federal and state levels, in various protected class statuses, including sex, race, color, national origin, disability, and age. A graduate of Harvard Law School (HLS) and a licensed attorney, Bill has master's degrees in psychology (FAS/DCE) and criminal justice (Northeastern University). He holds a bachelor's degree from UCLA in History with a minor in Economics. A secondary schoolteacher for eight years, Bill taught U.S. and European History and Psychology, the latter two subjects at the advanced placement (AP) level. He also served as a co-Head of House in MIT undergraduate and graduate housing for 16 years. Bill is an avid ocean sailor and environmentalist, having previously served for several years as a municipal Conservation Commissioner.



## **Ilissa Povich, J.D., ODR Senior Investigator**

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Ilissa has conducted investigations and facilitated trainings with ODR since its inception in the fall of 2014. A graduate of HLS and a licensed attorney, Ilissa previously worked at a major Boston law firm and as General Counsel of a Boston area company. She holds a bachelor's degree from Duke University in Public Policy Studies and Economics. Ilissa has taught legal writing to new lawyers and summer associates. She is also an active volunteer in her local community, serving in leadership roles in numerous education-related non-profits, and previously served as the Chair of her town's School Committee.



## **Nicole Newman, J.D., ODR Investigator**

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Nicole has conducted ODR investigations and facilitated trainings as an Investigator since 2017. Nicole is a licensed attorney who came to the Office with over six years of experience in civil rights investigations at federal and state enforcement agencies, where cases involved all protected class statuses in education, employment, housing, and places of public accommodation. In addition, she previously worked as a civil litigator at a major Boston law firm. Nicole holds a B.A. from Duke University in Political Science and Spanish Studies, and a J.D. from Boston College Law School.



## **Jennifer Kirshenbaum, J.D., ODR Investigator**

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Jen has conducted ODR investigations and facilitated trainings as an Investigator since February of 2020. She is a licensed attorney who earned a J.D. from Boston University School of Law and a B.A. from the University of Pennsylvania in European History. Prior to joining the Office, Jen worked as an Assistant District Attorney with the Essex County District Attorney's Office for fourteen years and has extensive experience in litigation and in conducting criminal investigations. In addition, she previously worked as a civil litigator at a Boston law firm.



## **Eric Jordan, J.D., ODR Senior Associate**

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Eric is a licensed attorney with a J.D. from Harvard Law School in 2014 and a B.A. in Architecture from Princeton University in 2009. Prior to joining ODR, Eric worked as both a litigation and a transactional associate for a major New York law firm, representing clients ranging from multinational corporations to refugees. Eric is also an alumnus of Harvard's Administrative Fellowship Program.



## **Jessica L. Shaffer, J.D., ODR Fellow**

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Jessica is an ODR Fellow and a licensed attorney. She earned a J.D. from the University of Michigan Law School and a B.A. from the University of Notre Dame. Before joining ODR, Jessica served as an Assistant District Attorney for Suffolk County and an Assistant Attorney General for the Commonwealth of Massachusetts. She has experience in criminal prosecution, civil litigation, appellate advocacy, environmental law, and civil rights.





## **Clare Hanlon, J.D., ODR Senior Fellow**

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Clare is an ODR Senior Fellow and a licensed attorney. Prior to joining ODR, Clare served as a law clerk to the Honorable Peter K. Killough for the Seventh Judicial Circuit of Maryland and worked as an Associate in the Organized Crime Unit of the Maryland Office of the Attorney General. She earned a B.A. in English from Tulane University and a J.D. from Boston College Law School, where she served as Articles Editor for the Boston College Law Review. During law school, Clare interned with the United States Attorney's Office for the District of Columbia and with the Middlesex District Attorney's Office. She also participated in the Boston College Innocence Program Clinic.



## **Alexandria Masud, Associate Director for Administrative Operations**

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Alex joined the staff in 2014 and now oversees the operations of the Office for Dispute Resolution, evaluates ongoing projects for adherence to long-term strategic and multi-year financial plans, and assesses and mitigates areas of risk. She received her B.A. in Philosophy of Law from Albion College. Prior to joining Harvard, she worked for three years in institutional equity trading and ten years as a client service analyst in institutional asset management with a focus on endowments and foundations.



## **Erika Christensen, Program Administrator**

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Erika provides support to the Office for Dispute Resolution by developing informational content in digital formats. She also assists with casework as needed. Erika has a B.A. in the Studies of Women, Gender, & Sexuality from Harvard College. Prior to joining our Office, she worked to support at-risk communities by developing suicide mitigation strategies. She also worked as a national campaign recruiter during the 2016 presidential primaries.



## **Roxana Lemus,<sup>20</sup> Administrative Coordinator**

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Roxana provides administrative support to the Office for Dispute Resolution and Title IX Office and contributes to the improvement of departmental processes and procedures. Prior to joining Harvard, she worked for four years as a paralegal and Spanish/English interpreter for a law firm specializing in immigration law. She has her certifications in community, medical, and legal interpreting from the BU Center for Professional Education and is completing her Associate's Degree in liberal arts at Bunker Hill Community College. Roxana is also a community organizer and volunteer doula.

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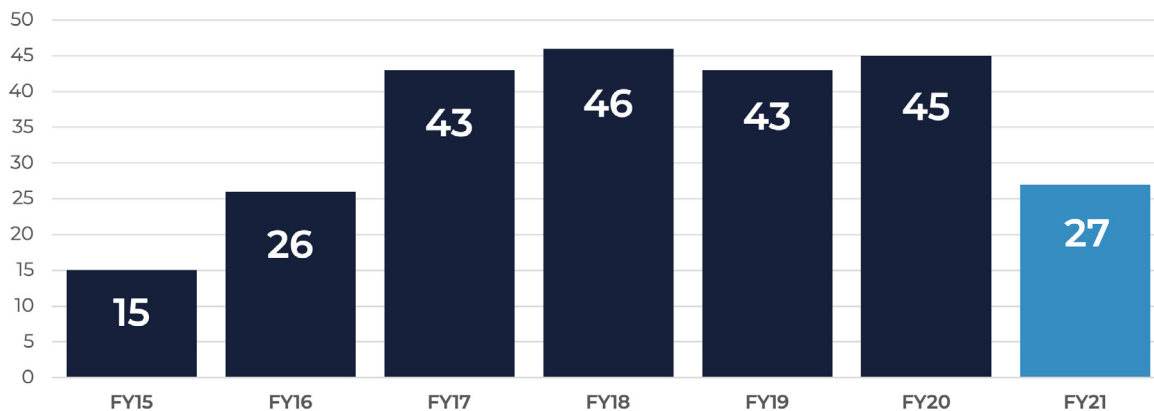
<sup>20</sup> Roxana Lemus is no longer in this position as of June 24, 2021.

# ODR – Dispute Resolution Data & Analysis

As in prior years, each case ODR investigated in FY21 was unique, and many were highly complex. A summary of ODR complaint information in FY21, with comparisons to complaint information in the six previous years of ODR operations, is provided below:

- ODR received 27 new complaints in FY21, compared to 45 in FY20, 43 in FY19, 46 in FY18, 43 in FY17, 26 in FY16, and 15 in FY15.
- Approximately 51% of the complaints over the seven-year period were resolved before progressing to the investigative stage (i.e., through withdrawal, referral, or by administrative closure or dismissal after initial review).

*Figure 1. Year-Over-Year Trends in Number of Formal Complaints Filed with ODR*



Timing: In FY21, ODR staff, along with the rest of the Harvard community, experienced various ongoing effects of the global pandemic. ODR was able to keep the average length of investigations in FY21 to approximately 4 months (ranging from 3.7 to 4.9 months),<sup>21</sup> as compared to 3.7 months in FY20 (ranging from 2.7 to 4.5 months),<sup>22</sup> and down from over 5 months in FY15, its first year of operation. ODR ensures that its investigators are as thorough as possible, and we continue to work to make the process move more quickly while maintaining the same quality, fairness, and sensitivity, regardless of, e.g., the size and complexity of a matter or the roles of the principals in the Harvard community.

<sup>21</sup> It is important to note in comparing ODR case processing data from FY20 to FY21 that while in the latter year complaint receipts declined by 40% (from 45 to 27), cases proceeding to investigation after initial review declined by only about 17% (18 to 15), while allegations proceeding to investigation after initial review actually increased slightly (from 62 to 63).

<sup>22</sup> In estimating the average length of investigation for the purposes of this annual report, ODR generally did not include, e.g., staff cases requiring interpretation and translation services, cases with special circumstances requiring very few interviews, cases involving delays due to documented medical or related circumstances, cases that are cross-complaints or part of a group of related complaints, cases with twice or more as many allegations as the ODR average of three, and cases with twice or more the average case evidence volume measure for FY18-FY20. The case evidence volume measure was obtained, for cases not otherwise atypical (e.g., cross-complaints), by adding the number of pages of documentation submitted by parties and witnesses to the number of pages of interview records for parties and witnesses. Case evidence volume measures for the three-year period ranged from a low of under 100 pages to a high of over 1,400 pages. In calculating the average for all cases, the very highest and very lowest case figures were dropped from the data, to avoid skewing the average in a misleading manner. The resulting average case evidence volume measure for all cases was just over 500 pages.

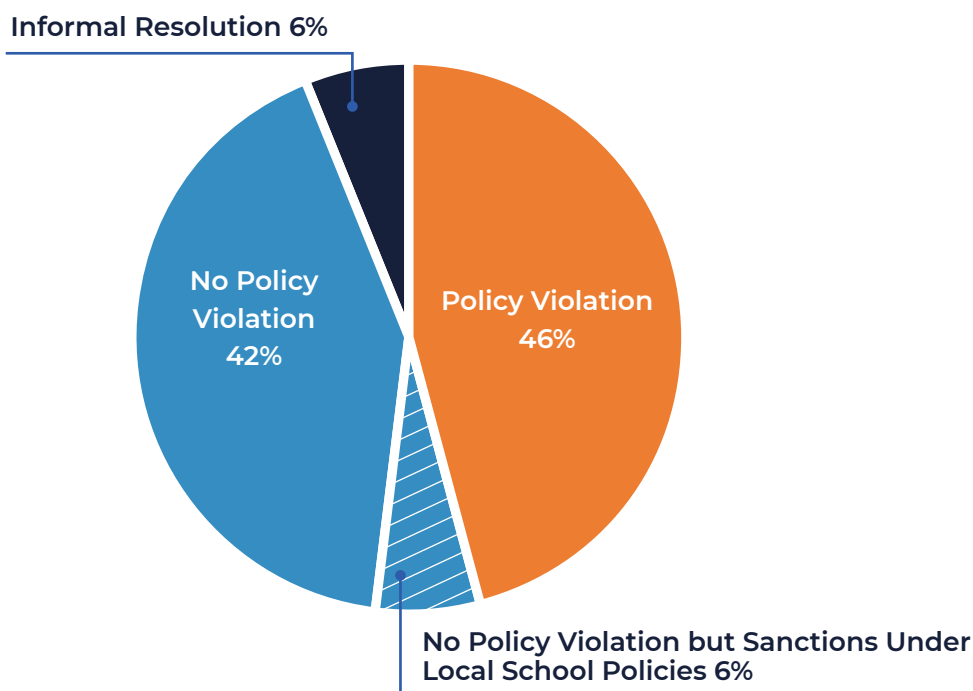
Many factors affect the length of the investigation in a particular case, for example:

- The type and total number of allegations per complaint;
- The nature and volume of the documentation submitted as evidence;
- The number and length of interviews requested by the parties;
- The number of witnesses interviewed and the length of those interviews;
- Whether a complaint is a cross-complaint, or in some way factually interrelated with another complaint or a group of related complaints in a manner reasonably likely to extend the investigative timeframe;
- Scheduling challenges, such as: special academic obligations (e.g., exams, final projects, inflexible grant deadlines); University holidays; and parties' and/or witnesses' travel abroad;
- Extensions in time granted to parties to designate their respective personal advisors, who may include attorneys;
- Additional allegations added over the course of an investigation; and
- New information provided by one or both parties at the review-of-evidence stage or later, requiring substantive new witness and/or party/witness follow-up interviews, and/or processing of substantial additional documentation.

Every year, ODR handles some complaints containing allegations that include a constellation of conduct such as sexual assault, stalking (including through electronic means), and a pattern of comments targeting an individual based on sex-stereotyping, sexual orientation, and/or gender identity. The applicable policies take into account that an individual may have experienced multiple types of prohibited behavior, during one or more incidents. This standard allows us to be responsive to the broader array of conduct that may be negatively affecting someone's life at Harvard. Accordingly, a single complaint against one respondent may contain multiple allegations.

Of the total number of complaints from FY15-21 that went through a completed investigation (N = 104), approximately 6% were informally resolved, 46% were found to involve violations of the applicable policies, 42% were found not to involve violations of the applicable policies, and 6% resulted in factual findings that subsequently supported sanctioning under local School rules. (Figure 2).

**Figure 2. Outcomes of Complaints Proceeding to Investigation,<sup>23</sup> FY15-FY21 (N = 104)**



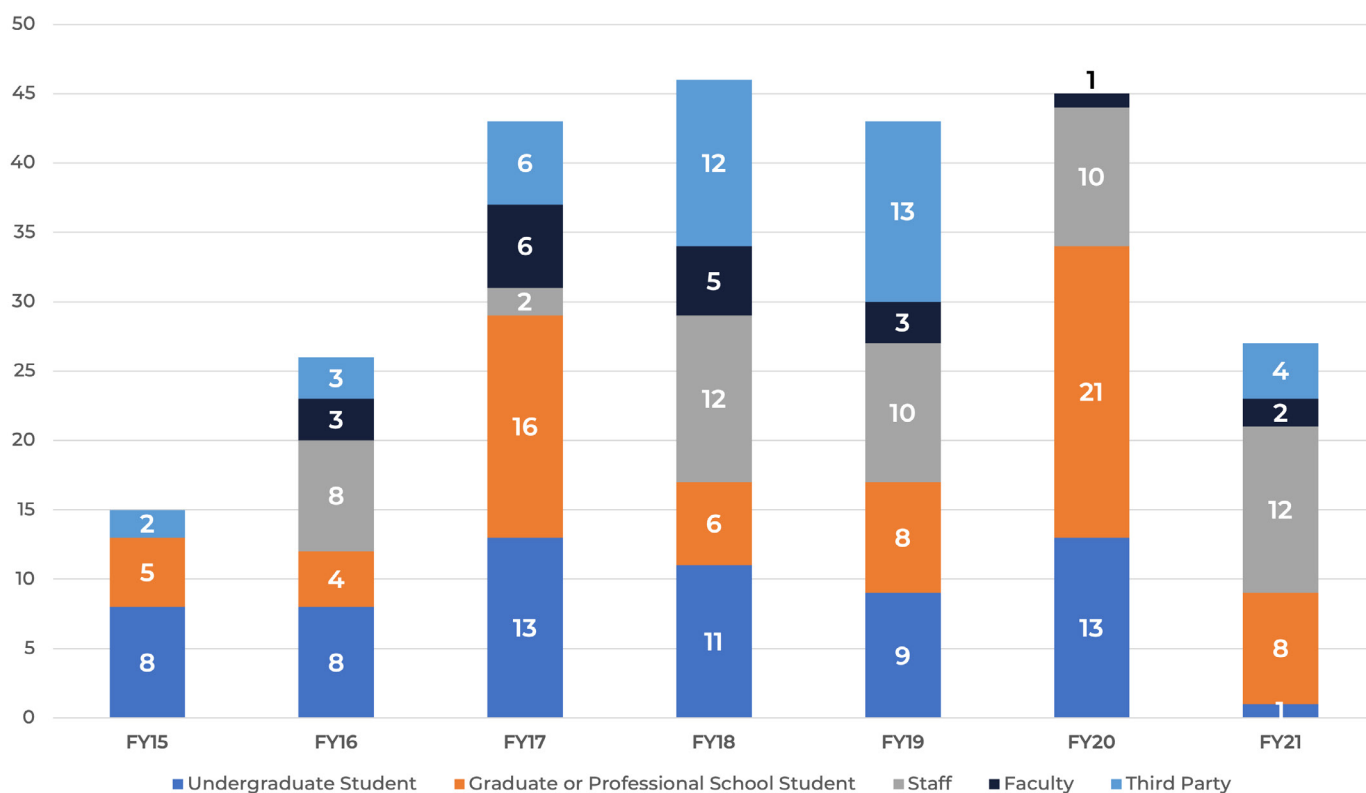
<sup>23</sup> Many complaints contain more than one allegation. Policy violation determinations must be made separately for each allegation. If one or more allegations in a complaint result(s) in the finding of a policy violation, this is counted as a single "policy violation."



## Case Demographics FY15-FY21:

- In the first six fiscal years, the largest proportion of complaints was filed by or on behalf of students (including both undergraduate students and graduate or professional school students). In FY21, the largest proportion of complaints was filed by or on behalf of staff. (Figure 3)
- In five of the seven fiscal years, the largest proportion of complaints was filed against students (including both undergraduate and graduate or professional school students). The number of complaints filed against faculty increased significantly between FY19 and FY20 (by 7), and declined only slightly in FY21 (by 1). (Figure 4)

**Figure 3. University Status<sup>24</sup> of Complainants,<sup>25</sup> FY15-FY21 (N = 245)**



<sup>24</sup> A party is categorized based on their University status at the time of the alleged conduct. Thus, for example, a former student who is alleging harassment that occurred while they were a student is counted as a student and not, for the purposes of this data, as a "third party."

<sup>25</sup> As noted above on this page, a complaint may be filed by or on behalf of students, faculty, staff, or third parties.

Figure 4. University Status of Respondents, FY15-FY21 (N = 245)

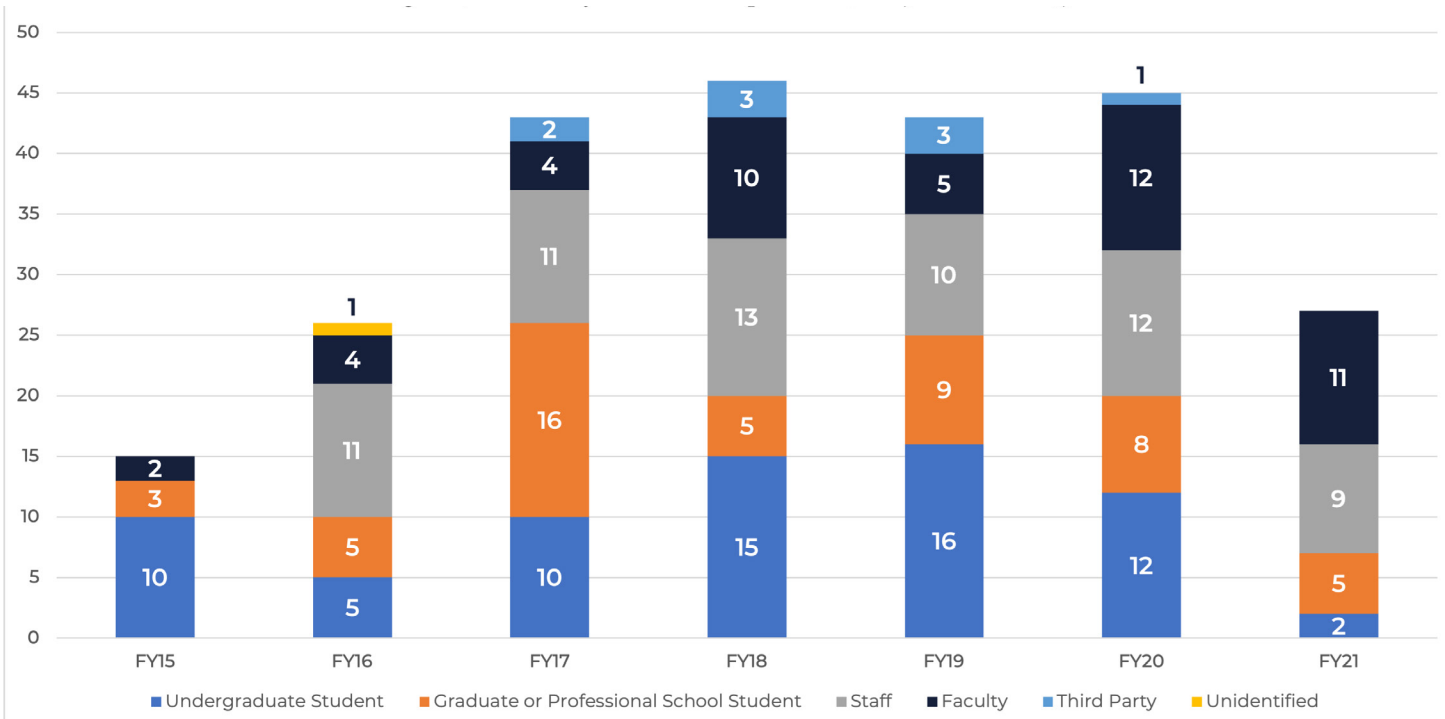


Figure 5. Complaint Allegations by Category, FY15-FY21 (N = 348)

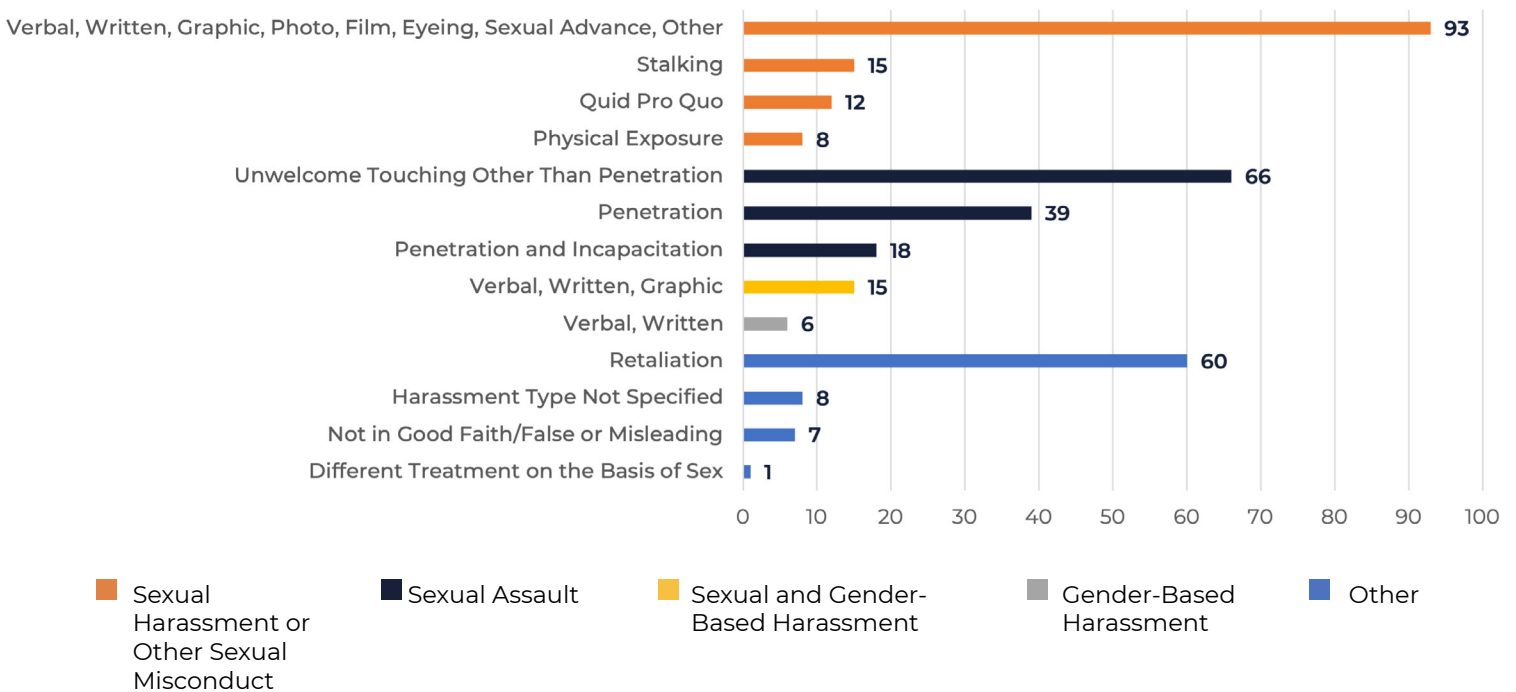


Figure 6. Complainant Status, Focusing on Allegations of Sexual Assault, FY15-FY21 (N = 123)

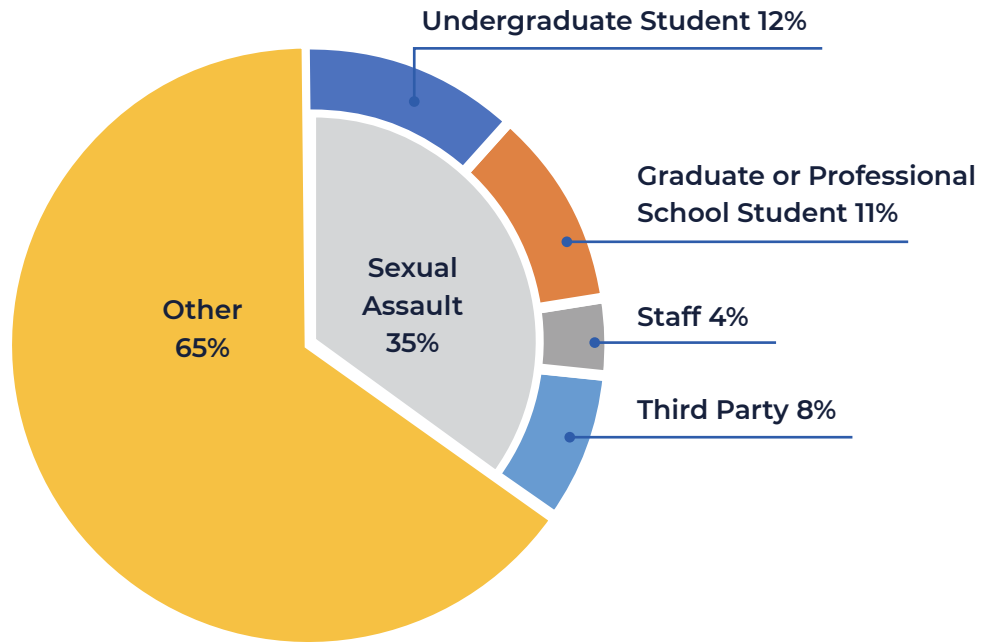


Figure 7. Respondent Status, Focusing on Allegations of Sexual Assault, FY15-FY21 (N = 123)

