



MIT Discrimination and Discriminatory Harassment:

Part 1: Prohibited Conduct Policies
Part 2: Adjudication and Appeals

August 2023

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**INSTITUTE DISCRIMINATION &
HARASSMENT RESPONSE OFFICE**



Two Parts

Part 1:

Discrimination and Discriminatory Harassment Prohibited
Conduct Policies

Part 2:

Adjudication and Appeals Procedures



Part 1: What Prohibited Conduct Does IDHR Handle?

Nondiscrimination Policy

Protected Class Harassment

Sexual Misconduct

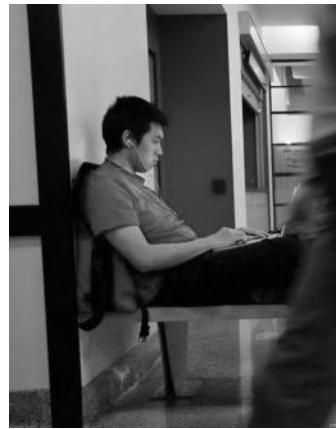
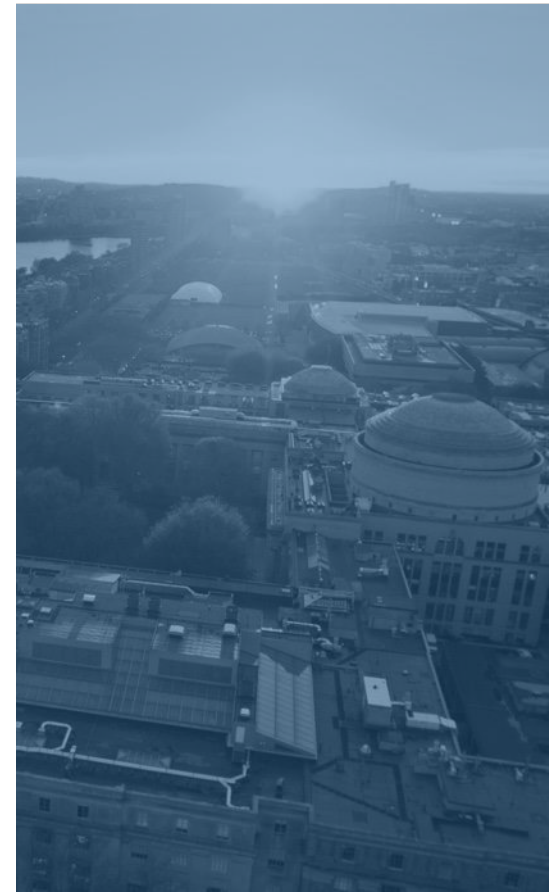
Intimate Partner Violence

Stalking

Title IX Sexual Harassment

Violence (on the basis of Protected Class)

Retaliation (on the basis of Protected Class)



Where is Prohibited Conduct Published?

Students: The Mind and Hand Book

- Section II(11): Harassment (based on protected class)
- Section II(17): Intimate Partner Violence
- Section II(19): Nondiscrimination Policy
- Section II(22): Retaliation (based on protected class)
- Section II(23): Sexual Misconduct
 - Nonconsensual Sexual Contact
 - Nonconsensual Sexual Penetration
 - Sexual Harassment
 - Sexual Exploitation
- Section II(24): Stalking
- Section II(28): Title IX Sexual Harassment

All MIT Community Members (including Staff/Faculty/Postdocs): MIT Policies & Procedures

- Section 9.3: Nondiscrimination
- Section 9.4: Racist Conduct
- Section 9.5: Harassment (based on protected class)
 - Section 9.5.1.1: Sexual Harassment
 - Section 9.5.1.2: Sexual Misconduct--Sexual Assault
 - Section 9.5.1.2: Sexual Misconduct--Sexual Exploitation
 - Section 9.5.1.2: Sexual Misconduct--Intimate Partner Violence
 - Section 9.5.1.3: Gender-Based Harassment
 - Section 9.5.1.4: Title IX Sexual Harassment
 - Section 9.5.2: Stalking
- Section 9.6: Violence Against Community Members (based on protected class)
- Section 9.7: Retaliation (based on protected class)



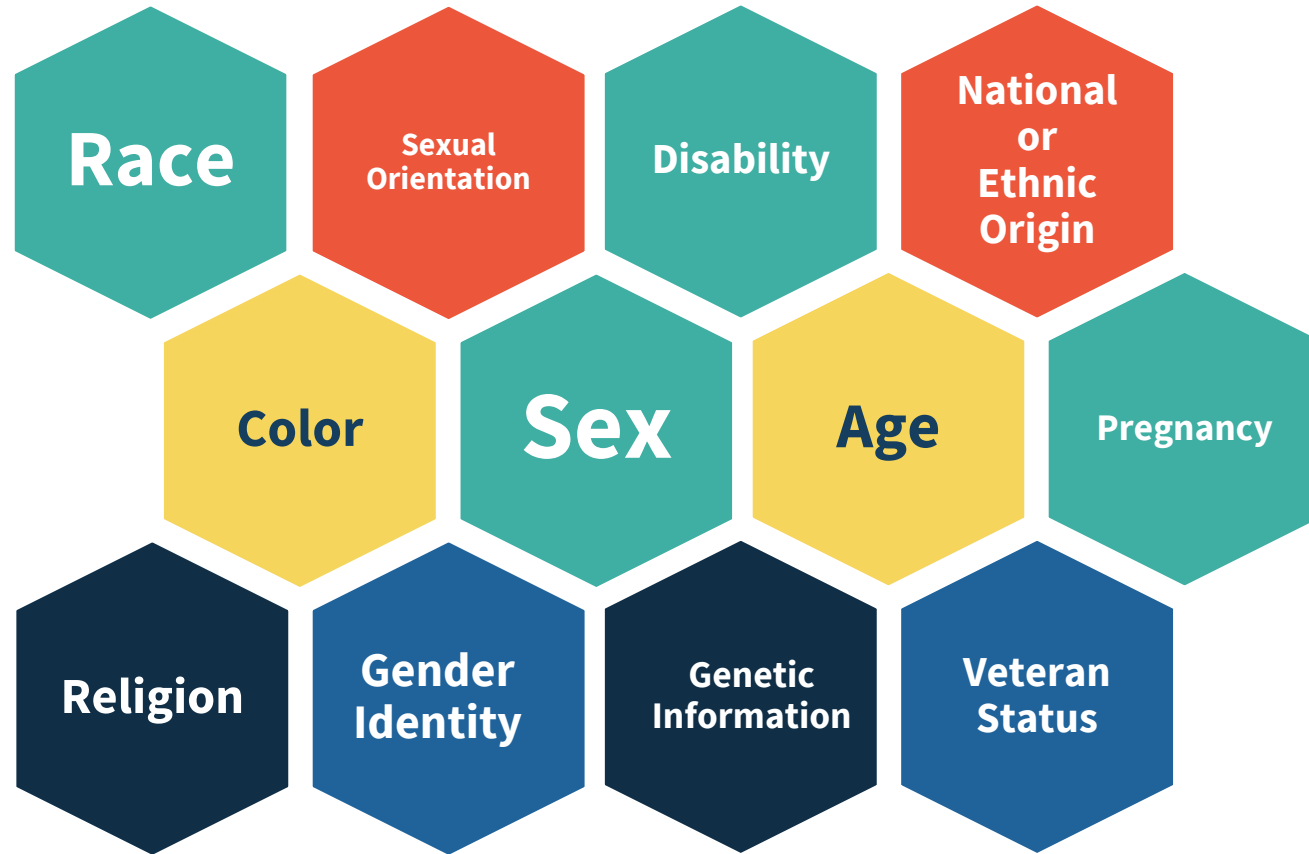
Nondiscrimination Policy

The Massachusetts Institute of Technology is committed to the principle of equal opportunity in education and employment.

The Institute prohibits discrimination against individuals on the basis of [a protected class] in the administration of its educational policies, admissions policies, employment policies, scholarship and loan programs, and other Institute administered programs and activities; the Institute may, however, favor US citizens or residents in admissions and financial aid.



Nondiscrimination Policy - Cont.



What is a Protected Class?

Harassment

Harassment is defined as unwelcome conduct of a verbal, nonverbal or physical nature that is sufficiently severe or pervasive to create a work or academic environment that a reasonable person would consider intimidating, hostile or abusive and that adversely affects an individual's educational, work, or living environment.

- While MIT's harassment policy is not limited to harassment based on a protected class, the Institute is particularly committed to eliminating harassment based on those categories.
- Conduct that does not rise to the level of harassment may still violate Section 9.2.* Even conduct that does not violate an MIT policy may be inappropriate and any inappropriate conduct should be addressed by the supervisor or department head.



Harassment - Cont.

In determining whether unwelcome conduct is harassing, the Institute will examine the totality of the circumstances surrounding the conduct, including its frequency, nature and severity, the relationship between the parties and the context in which the conduct occurred.

- **Examples of possibly harassing conduct:** Public and personal tirades; deliberate and repeated humiliation; deliberate interference with the life or work of another person; the use of certain racial epithets; deliberate desecration of religious articles or places; repeated insults about loss of personal and professional competence based on age.
- **Examples of conduct that is likely not harassment:** Administrative actions like performance reviews (including negative performance reviews) and making work assignments; other work-related decisions like moving work areas or changing work colleagues; and isolated incidents (unless, as noted above, they are very severe, such as the use of certain racial epithets).

Examples of Harassment



Harassment – Cont.: Section 9.2

“Conduct that does not rise to the level of harassment may still violate Section 9.2”, which provides:

- The Institute promotes the principle that every person brings unique qualities and talents to the community and that every individual should be treated in a respectful manner. All members of the MIT community are expected to conduct themselves with professionalism, personal integrity, and respect for the rights, differences and dignity of others. These standards of personal conduct apply to all communications, whether oral, written, or in gestures. Community members are also expected to treat the property of both the Institute and other community members with appropriate care and respect.

Personal
Conduct and
Responsibilities
Towards
Students and
Employees



Racist Conduct Policy

As is stated in the Nondiscrimination Policy and Harassment Policy, harassment or discrimination against individuals on the basis of race, whether intentional or not, is unacceptable at MIT.

Racism and racist conduct may undermine a person's wellbeing and interfere with their work and academic progress or performance; such violations may also taint the work or educational climate for others, and may undermine the Institute's ability to achieve its mission.



MIT Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature, when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic standing; or
- Submission to or rejection of such conduct by an individual is used as the basis for significant employment decisions (such as advancement, performance evaluation, or work schedule) or academic decisions (such as grading or letters of recommendation) affecting that individual; or
- The conduct is sufficiently severe or pervasive that a reasonable person would consider it intimidating, hostile or abusive and it adversely affects an individual's educational, work, or living environment.



Sexual Harassment - Cont.

A partial list of examples of conduct that might be deemed to constitute sexual harassment if sufficiently severe or pervasive include:

- **Examples of verbal sexual harassment** may include unwelcome conduct such as sexual flirtation, advances or propositions or requests for sexual activity or dates; asking about someone else's sexual activities, fantasies, preferences, or history; discussing one's own sexual activities, fantasies, preferences, or history; verbal abuse of a sexual nature; suggestive comments; sexually explicit jokes; turning discussions at work or in the academic environment to sexual topics; and making offensive sounds such as "wolf whistles.
- **Examples of nonverbal sexual harassment** may include unwelcome conduct such as displaying sexual objects, pictures or other images; invading a person's personal body space, such as standing closer than appropriate or necessary or hovering; displaying or wearing objects or items of clothing which express sexually offensive content; making sexual gestures with hands or body movements; looking at a person in a sexually suggestive or intimidating manner; or delivering unwanted letters, gifts, or other items of a sexual nature.

Examples of Sexual Harassment



Gender-Based Harassment

Gender-based harassment is unwelcome verbal or nonverbal conduct based on gender, sex, sex-stereotyping, sexual orientation, gender identity, or pregnancy that meets the definitions above of harassment. Gender-based harassment may also involve conduct of a sexual nature.



Sexual Misconduct: Nonconsensual Sexual Contact & Penetration

Sexual misconduct is a broad term that includes sexual assault (rape, sexual fondling, incest or statutory rape) as well sexual exploitation and sexual harassment.

Nonconsensual Sexual Penetration

- Nonconsensual sexual penetration is the sexual penetration or attempted sexual penetration of any bodily opening with any object or body part without **effective consent**.
- Nonconsensual sexual penetration includes the Clery Act definition of **rape**: the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim; the Clery Act definition of **incest**: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; and the Clery Act definition of **statutory rape**: sexual intercourse with a person who is under the statutory age of consent.

Nonconsensual Sexual Contact

- Nonconsensual sexual contact is any physical contact with another person of a sexual nature without effective consent, including touching someone's intimate parts (such as genitalia, groin, breast, or buttocks, either over or under clothing); touching a person with one's own intimate parts; or forcing a person to touch another's intimate parts.
- Nonconsensual sexual contact includes the Clery Act definition of **fondling**: the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.



Sexual Misconduct - Cont.

Effective Consent is:

- informed;
- freely and voluntarily given;
- mutually understandable words or actions which indicate willing participation in mutually agreed upon sexual activity.

Further:

- By definition, effective consent cannot be obtained by:
 - unreasonable pressure, which can generally be understood as conduct that pressures another person to “give in” to sexual activity rather than to choose freely to participate; factors that may be considered include (1) the frequency, nature, duration, and intensity of the requests for sexual activity; (2) whether and how previous requests were denied; and (3) whether the person initiating the sexual activity held a position of power over the other person;
 - emotional intimidation, which can include (1) overtly degrading, humiliating, and shaming someone for not participating in sexual activity; (2) blackmail; and (3) threats to reputation;
 - physical intimidation and threats, which can be communicated by words or conduct, and physical force.



Effective
Consent

Sexual Misconduct - Cont.

Effective consent cannot be obtained from someone who is incapable of giving consent for any reason, including when:

- the person has a mental, intellectual, or physical disability that causes the person to be temporarily or permanently unable to give consent;
- the person is under the legal age to give consent;
- or the person is asleep, unconscious, physically helpless, or otherwise incapacitated, including by alcohol or other drugs.

Incapacitation is the physical and/or mental inability to make informed, rational judgments and decisions. Someone is incapacitated if they are asleep or unconscious. Someone can also be incapacitated by alcohol or other substances.

Incapable
of Effective
Consent



Sexual Misconduct: Sexual Exploitation

Sexual exploitation means taking sexual advantage of another person and includes:

1. Providing alcohol or other drugs to someone without that person's knowledge, or unreasonably pressuring the person to consume alcohol or drugs, with the purpose of causing incapacitation in order for one to take sexual advantage of the person.
2. Recording, photographing, transmitting, or allowing another to view images of private sexual activity and/or the intimate parts of another person without effective consent.
3. Allowing third parties to observe private sexual acts without effective consent.
4. Voyeurism, including by electronic means.
5. Indecent exposure.
6. Knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection, including HIV, without their knowledge.

Intimate Partner Violence

Intimate Partner Violence is defined as actual or threatened physical violence, intimidation, or other forms of physical or sexual abuse directed toward a partner in an intimate relationship that would cause a reasonable person to fear harm to self or others.

Intimate Relationship means marriage, domestic partnership, engagement, casual or serious romantic involvement, and dating, whether current or former. Intimate Partner Violence can occur between persons of any gender identity, any sexual orientation, and it can occur in any type of intimate relationship including monogamous, non-committed, and relationships involving more than two partners. Intimate Partner Violence can be a single act or a pattern of behavior.

Intimate Partner Violence also includes, without limitation, dating violence and domestic violence as defined by the Clery Act.

Stalking

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person:

- to fear for their safety or the safety of others, or
- to suffer substantial emotional distress.

Course of Conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Reasonable Person means a reasonable person under similar circumstances and with similar identities to the victim.

Substantial Emotional Distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.



Stalking - Cont.

Stalking can take many forms. Examples include, but are not limited to, two or more instances of the following conduct (that also meet the definition of stalking):

- following a person;
- appearing at a person's home, class or work; continuing to contact a person after receiving requests not to;
- leaving written messages, objects, or unwanted gifts;
- vandalizing a person's property;
- photographing a person;
- and other threatening, intimidating, or intrusive conduct.

Stalking may also involve the use of electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices (often referred to as cyber-stalking).



Stalking
– Whether or Not Sexual –
is Prohibited

Violence Against Community Members

In addition to prohibiting sexual violence, MIT prohibits threats, threatening conduct, and acts of violence against MIT faculty, staff, students, other community members, and any other individual conducting business with or on behalf of the Institute, or willful damage to their property or MIT's property.



Title IX Sexual Harassment

Although MIT broadly prohibits sexual harassment and other forms of sexual misconduct, federal Title IX regulations require MIT to follow specific processes when the Institute has actual knowledge of a report of certain categories of sexual misconduct, referred to as “Title IX Sexual Harassment.”

MIT Prohibited Conduct: Discrimination & Discriminatory Harassment which includes sexual misconduct.

Federal Title IX Sexual Harassment



Title IX Sexual Harassment - Cont.

Title IX Sexual Harassment means: Conduct on the basis of sex that satisfies one or more of the following:

- An employee of MIT conditioning the provision of an aid, benefit, or service of MIT on an individual's participation in unwelcome sexual conduct;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to MIT's education program or activity; or
- "Sexual assault," "dating violence," "domestic violence," or "stalking," as defined by federal law and set out on the Institute Discrimination and Harassment Response (IDHR) website.

Definition
Set By
Federal
Regulation



Title IX Sexual Harassment - Cont.

MIT follows specific processes set forth in federal regulation when it receives a formal complaint of Title IX Sexual Harassment and where all of the following jurisdictional requirements also apply:

- At the time of filing a formal complaint, the Complainant was/is participating in or attempting to participate in the education program or activity at MIT;
- The alleged conduct occurred in an education program or activity controlled by MIT; and
- The alleged conduct occurred against a person in the United States.

Title IX Jurisdiction



Title IX Sexual Harassment - Cont.

An ***Education Program or Activity*** means locations, events, or circumstances over which MIT exercises substantial control over both the Respondent and the context in which the reported sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by MIT.

Program or
Activity



Non-Retaliation Policy

- MIT prohibits any member of the community from retaliating against any person who, in good faith:
 - raises concerns about a possible violation of MIT policy or other wrongdoing; or
 - participates in any Institute complaint resolution process.
- This non-retaliation policy applies to those who report an incident, file a complaint, or otherwise raise a concern about a policy violation or other wrongdoing; these individuals are sometimes called whistleblowers. The non-retaliation policy also protects those who review or investigate a complaint or concern, serve as a witness or provide background about the complaint or concern, or who make decisions or recommendations about sanctions in any of the Institute's complaint resolution procedures.
- Note that interim measures taken by MIT to address a complaint, such as separating the parties, are generally not retaliation.
- Retaliation may occur even where there is no finding of a policy or other violation.



Retaliation - Cont.

Retaliation is any adverse action, harassment, threats, or other conduct that would discourage a reasonable person from making a report or participating in a complaint review process. Examples of possible retaliation include, but are not limited to:

- Adverse employment action (e.g., termination, demotion, reduction in pay, adverse change in schedule or work location, unwarranted negative reference, or exclusion from work-related opportunities, conferences, or other activities)
- Adverse action related to an Institute educational program (e.g., unwarranted negative reference, adverse change to grades, class schedule, or research opportunities or funding)
- Stalking, harassment, intimidation, threats (including threats of retaliation), or engaging in physical violence
- Adverse social actions such as exclusion or removal from a group or committee, or publishing personally identifiable information about an individual, including on websites or social media sites
- Adverse action related to research or scholarship (e.g., removing from research grant, reducing access to research funds, removing authorship from paper, rejecting a paper during refereeing, recommending to peers or students to not cite their work)
- Encouraging or asking a third party to engage in retaliatory conduct

What Conduct Constitutes Retaliation?



Retaliation - Cont.

The Title IX Sexual Harassment regulations provide that retaliation also includes:

- Intimidation, threats, coercion, or discrimination, including charges against an individual for policy violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or report or formal complaint of Title IX Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX.

Title IX Retaliation





Part 2: Adjudication and Appeals





Initial intake and assessment

Supportive Measures

- No Contact Orders which prohibit contact between the parties;
- Other Contact limitations between the parties;
- Academic support;
- Housing modifications; and
- Workplace modifications



Resolution Options

Adaptable Resolution

(called "Informal Resolution" in Section 9.8)

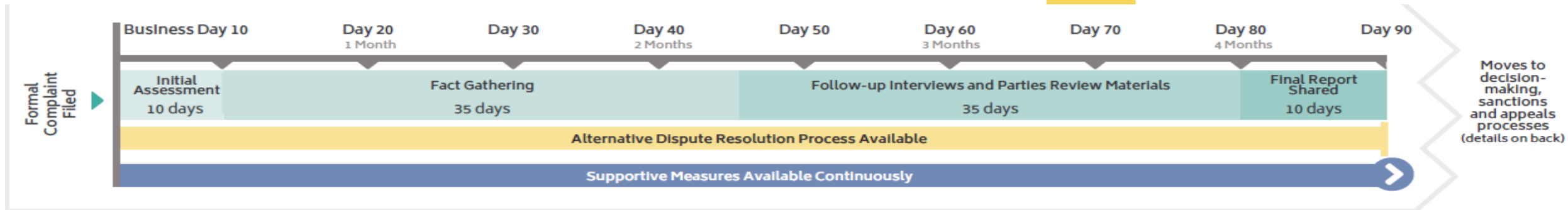
- IDHR staff facilitating communication of proposals between the parties
- Direct discussions between the parties
- Mediation with a neutral party
- AR is voluntary and can result in a resolution of the allegations by agreement of the parties and the Institute.

Investigative Resolution

- Only process to a determination on a policy violation
- Only mechanism for sanctions including expulsion or termination
- Independent from the criminal process



Formal Complaint Investigation Process



Initial Assessment: The Complainant is contacted for a more complete understanding of the allegations, and to review the allegations to determine if the alleged behavior (as described) would violate MIT policy.

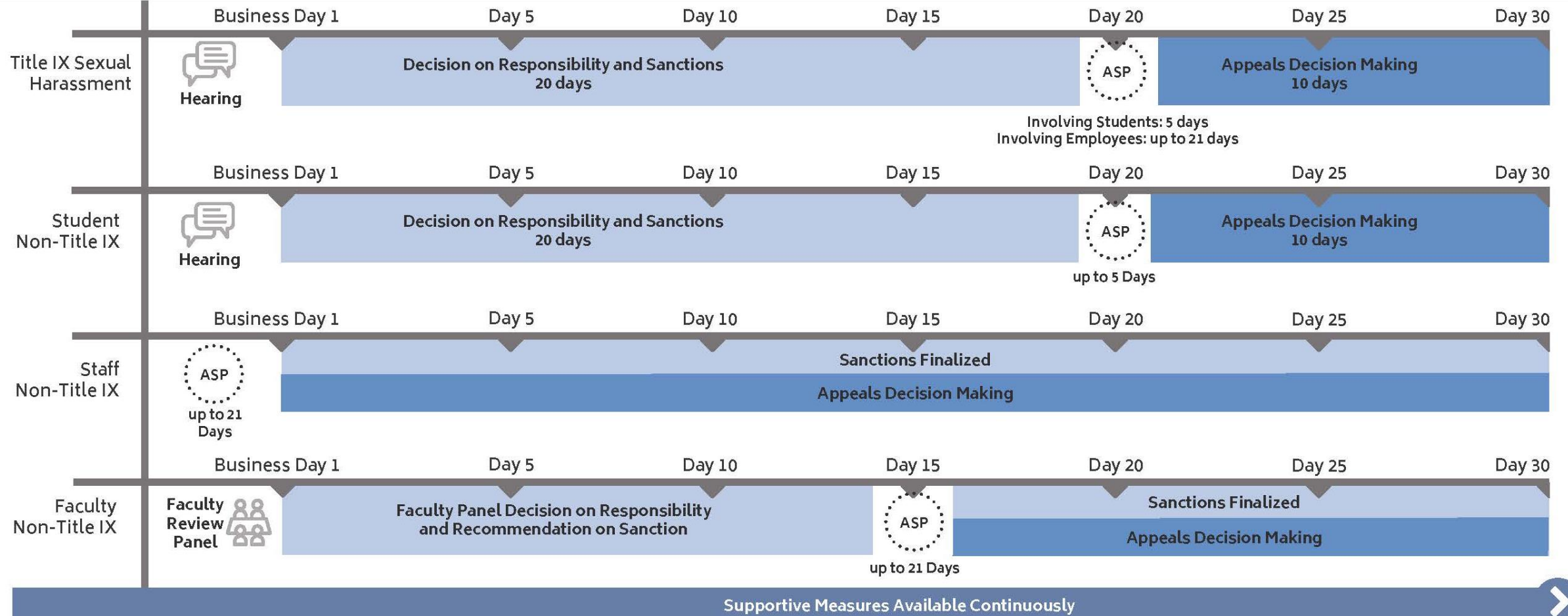
Fact Gathering: Parties request witnesses, provide documents, and make written submissions. Parties and witnesses are interviewed. Parties receive regular updates on the status of the investigation. Time can vary based on the number and availability of witnesses and the complexity of the case.

Follow-up interviews and parties review materials: Follow-up interviews of parties and witnesses. Parties are provided with information gathered during the investigation and a summary of relevant information. Parties have the opportunity to provide comments and additional information before the investigation is closed.

Investigator's Final Report is shared: Parties receive the Final Investigation Report and Record. The final report for non Title IX complaints against staff members includes finding on responsibility.



Formal Complaint Adjudication Process



“Preponderance of the Evidence”

- Preponderance of the evidence standard = whether it is more likely than not that the respondent has violated a Conduct Policy.
- If a factfinder decides that, based on the evidence, one account of an event is more likely to be true or accurate than any other account of the event, then the fact finder will base its decision on that account.
- A “preponderance” is not highly probable (a/k/a “clear and convincing”). A preponderance is also not “proof beyond a reasonable doubt.”
- A respondent is presumed to be not responsible for the alleged policy violation until the final determination regarding responsibility is made at the conclusion of the process.



The Title IX Hearing Panel

- (For student respondents) composed of:
 - Outside Professional Chair
 - COD Chair
 - two additional members of the COD sexual misconduct subcommittee



Title IX Hearing Procedures

- Chair introduces procedures
- Complainant, Respondent, and Witnesses: Opening statements, panel Q&A, and cross-examination
- Questions allowed during cross-examination
- Closing statements
- Deliberations: Preponderance of the Evidence based on a majority



Title IX Matters - Advisors

- Advisor of Choice
- Title IX Hearing Role:
 - Conduct cross-examination of parties and witnesses (if any)
 - Otherwise, may not actively participate
- If needed, MIT will provide advisor to conduct cross-examination at a hearing



Sanctioning

- T9 Hearing panel makes a determination of sanctions
- Examples of discipline include
 - Warning
 - Probation
 - Suspension
 - Expulsion
 - Degree revocation
 - Educational outcomes
 - Campus bans, no contact orders, administrative directives



Appeals

- Either party may appeal the decision based on following grounds:
 - New evidence
 - Procedural irregularity
 - Material finding substantially against weight of the evidence
 - Conflict of interest or bias
- Chancellor hears appeals



Confidentiality

- Panel Members should treat all cases as confidential and they should not be discussed outside of the hearing panel process.
- Confidential information includes
 - the existence and substance of the complaint
 - the names of complainants, respondents, witnesses
 - what is said in the hearing panel processes and by whom
 - the findings made, and sanctions imposed.
- Complainants, respondents, advisors, and witnesses are encouraged to use discretion in their sharing of information about the process, but complainants and respondents are not restricted from discussing the allegations or gathering and presenting relevant evidence.



Thank you!

For additional
information:
<http://idhr.mit.edu>

“Just In Time”
Training before a
panel/hearing

