

Institute Discrimination & Harassment Response Office
Guide to the Investigation of Formal Complaints of
Discrimination and Discriminatory Harassment
(“*IDHR Investigation Guide*”)

The *IDHR Investigation Guide* sets out the Formal Complaint investigation process for Formal Complaints against the following categories of individuals at MIT:

- Students, including students on leave;
- Staff Members and Postdoctoral Scholars (collectively “Staff Members”);
- Faculty Members, Senior Research Scientists, Senior Research Engineers, Senior Research Associates (collectively “Faculty Members”);
- Former Students, where such complaints are permitted by the Committee on Discipline (“COD”) Rules, Section XVI; and
- Other Members of the MIT Community,¹ as provided for in the MIT Policies & Procedures (“P&P”), Section 9.0.

Alleging the Following Acts of Prohibited Conduct:

- For Staff Members and Faculty Members:
 - P&P, Section 9.2: Nondiscrimination
 - P&P, Section 9.3: Racist Conduct
 - P&P, Section 9.4: Harassment (based on protected class)
 - Section 9.4.1.1: Sexual Harassment
 - Section 9.4.1.2: Sexual Misconduct--Sexual Assault
 - Section 9.4.1.2: Sexual Misconduct--Sexual Exploitation
 - Section 9.4.1.2: Sexual Misconduct--Intimate Partner Violence
 - Section 9.4.1.3: Gender-Based Harassment
 - Section 9.4.1.4: Title IX Sexual Harassment
 - P&P, Section 9.4.2: Stalking
 - P&P, Section 9.6: Violence Against Community Members (based on protected class)
 - P&P, Section 9.7: Retaliation (based on protected class)
- For Students, MIT Mind and Hand Book:
 - Mind and Hand Book, Section II(11): Harassment (based on protected class)
 - Mind and Hand Book, Section II(17): Intimate Partner Violence
 - Mind and Hand Book, Section II(19): Nondiscrimination Policy
 - Mind and Hand Book, Section II(22): Non-Retaliation (based on protected class)
 - Mind and Hand Book, Section II(23): Sexual Misconduct
 - Mind and Hand Book, Section II(24): Stalking
 - Mind and Hand Book, Section II(28): Title IX Sexual Harassment

Throughout the *IDHR Investigation Guide*, the above listed policies are collectively referred to as “Discrimination and Discriminatory Harassment.”

Issued: August 14, 2020.

¹ MIT reserves the right to modify the process outlined herein as appropriate when addressing complaints against other members of the MIT community who are not students or employed in some capacity by the Institute. In any formal investigation, the process applicable to Staff Members will generally be followed.

IDHR Investigation Guide

Table of Contents

- 1. Preamble..... 3
- 2. Designation of Complainant and Respondent 3
- 3. Jurisdiction..... 4
- 4. Initial Report of Discrimination and Discriminatory Harassment..... 4
- 5. Formal Complaint of Discrimination and Discriminatory Harassment 5
 - 5.1. Formal Complaint Submitted by Complainant..... 5
 - 5.2. Administrative Complaint by IDHR: Generally 6
 - 5.3. Administrative Complaint by IDHR: Complainant Does Not Wish to Proceed 6
 - 5.4. No Time Limit to File Formal Complaints..... 7
- 6. Formal Complaint: Initial Assessment..... 7
- 7. Formal Complaint: Dismissal..... 8
 - 7.1. Dismissal of Formal Complaint: Generally..... 8
 - 7.2. Dismissal of Formal Complaint: Title IX Sexual Harassment 8
- 8. Formal Complaint: Notice of Investigation and Allegations..... 9
- 9. Formal Complaint: Assignment of Neutral Investigator(s) 10
- 10. Formal Complaint: Investigation Process 10
 - 10.1. Overview 10
 - 10.2. Evidentiary Considerations in the Investigation Process 11
 - 10.3. Participation by the Parties..... 11
 - 10.4. Investigative Interview Process..... 11
 - 10.5. Expert Consultation 12
 - 10.6. Evidentiary Materials 12
- 11. Formal Complaint: Investigation Record and Report 12
 - 11.1. Overview 12
 - 11.2. Student: All Non-Title IX Sexual Harassment Matters..... 12
 - 11.3. Faculty Members: All Non-Title IX Sexual Harassment Matters 14
 - 11.4. Staff Member: All Non-Title IX Sexual Harassment Matters 14
 - 11.5. All Title IX Sexual Harassment Matters..... 14
- 12. Formal Complaint: Findings and Sanctions..... 15
 - 12.1. Student: All Non-Title IX Sexual Harassment Matters..... 15
 - 12.2. Faculty Members: All Non-Title IX Sexual Harassment Matters 15
 - 12.3. Staff Members: All Non-Title IX Sexual Harassment Matters..... 16
 - 12.4. All Title IX Sexual Harassment Matters..... 16
- 13. Formal Complaint: Appeals..... 16
- 14. Formal Complaint: General Provisions..... 16
 - 14.1. Advisors and Support Persons..... 16
 - 14.2. Coordination with Law Enforcement..... 17
 - 14.3. Access to Documents Related to the Investigation 17
 - 14.4. Resolution Timeline..... 17
 - 14.5. Registration, Transcript, and Graduation Holds..... 18
 - 14.6. Preponderance of the Evidence..... 18
 - 14.7. Consolidation of Formal Complaints 18
 - 14.8. IDHR and Title IX Coordinator Contact Information..... 18
 - 14.9. Nondiscrimination Policy 18



IDHR Investigation Guide

1. Preamble

The Massachusetts Institute of Technology is committed to the principle of equal opportunity in education and employment. The Institute does not discriminate against individuals on the basis of race, color, sex, sexual orientation, gender identity, religion, disability, age, genetic information, veteran status, or national or ethnic origin in the administration of its educational policies, admissions policies, employment policies, scholarship and loan programs, and other Institute administered programs and activities, but may favor US citizens or residents in admissions and financial aid. In addition, MIT has policies prohibiting various forms of sexual misconduct, intimate partner violence, and stalking.

The Institute Discrimination & Harassment Response Office (“IDHR”)² has been tasked with investigating Formal Complaints alleging Discrimination and Discriminatory Harassment in violation of MIT policies. This *IDHR Investigation Guide* is intended to provide MIT community members with greater detail about the IDHR process for investigating Formal Complaints of Discrimination and Discriminatory Harassment. The *IDHR Investigation Guide* will be periodically revised to reflect the Institute’s commitment to gathering ongoing community feedback in general and, in particular, in response to MIT’s efforts to comply with federal regulations relative to Title IX Sexual Harassment, effective August 14, 2020.

This document should be read as a supplement to, and as consistent with, the MIT Policies and Procedures (“P&P”), Section 9.8,³ for faculty and staff matters; and the Mind and Hand Book⁴ and the Committee on Discipline (“COD”) Rules⁵ for student matters.⁶ Although this guide is intended to accurately state MIT policy and the COD Rules, both are subject to change without notice. In the event of any discrepancy, the provisions of the P&P or the COD Rules will prevail over the *IDHR Investigation Guide*.

2. Designation of Complainant and Respondent

A person who is the subject of a report or initiates a Formal Complaint of Discrimination or Discriminatory Harassment will be designated as the “Complainant” for the purposes of the *IDHR Investigation Guide*. A person against whom such a report or Formal Complaint has been made will be designated as the “Respondent.”

Both the Complainant and the Respondent may be referred to as “party” or “parties” throughout this guide.

² Throughout this guide, various Institute officials and offices, such as IDHR, are assigned responsibility for performing specific functions. Named officials or offices are authorized to delegate responsibility to other appropriate Institute officials and non-Institute consultants, except where such delegation contravenes Institute policy. Additionally, named officials or offices, and their designees may consult with appropriate Institute officials, officers, and subject-matter experts.

³ P&P, Section 9.8, is available online at: <https://policies.mit.edu/policies-procedures/90-relations-and-responsibilities-within-mit-community/98-complaint-resolution>.

⁴ The Mind and Hand Book is available online at: <https://handbook.mit.edu/>.

⁵ The COD Rules are available online at: <https://cod.mit.edu/rules>.

⁶ If there is a question as to the Respondent’s status (for example, a Respondent is both an MIT student and staff member), IDHR will determine which of the procedures applies based on the facts and circumstances (such as which role predominates in the context of the prohibited conduct). Further, where the Respondent is both a student and an employee, the Respondent may be subject to any of the sanctions applicable to students or employees.

IDHR Investigation Guide

3. Jurisdiction

IDHR will investigate Formal Complaints of Discrimination and Discriminatory Harassment that fall under the jurisdiction of the COD Rules for student respondents and P&P, Section 9.8, for all other respondents.

4. Initial Report of Discrimination and Discriminatory Harassment

When IDHR⁷ receives an initial report of Discrimination or Discriminatory Harassment, IDHR initiates a prompt preliminary review to determine the appropriate next steps and options. When IDHR receives an anonymous report, the Institute may be limited in its ability to respond.

IDHR will, where possible, initiate at least one of three responses:

1. Offering Supportive Measures;⁸
2. An Informal/Alternative Dispute Resolution;⁹ or
3. A Formal Complaint process, including an investigation and resolution.

IDHR will consult with the Complainant, where possible, to determine whether the Complainant prefers a supportive measures response, an Informal/Alternative Dispute Resolution, or the Formal Complaint process.

- If a supportive measures response is preferred, IDHR will work with the Complainant to identify their wishes and then seek to facilitate implementation. If no Formal Complaint is initiated, the Complainant can elect to initiate one later, if desired; however, the passage of time may make it more difficult for IDHR to investigate a Formal Complaint.
- If an Informal/Alternative Dispute Resolution option is preferred, IDHR assesses whether the reported conduct is suitable for this resolution process, and which mechanism may serve the situation best or is available, and will consult with the Respondent to determine if they are also willing to engage in an Informal/Alternative Dispute Resolution.
- If a Formal Complaint process is preferred, or IDHR initiates an Administrative Complaint, see Section 5.2 of this guide, the Formal Complaint process described herein will be used.

IDHR will conduct a preliminary review of the reported information and respond to any immediate health or safety concerns raised by the report. In this preliminary review of the initial report, IDHR will generally:

1. Assess the Complainant's safety and well-being and offer support and assistance resources;
2. In cases involving recent physical or sexual assault, inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;
3. In cases involving allegations of possible criminal conduct, inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a court ordered protective order;

⁷ In employment matters, reports of Discrimination and Discriminatory Harassment may be addressed by a human resources professional in a department, lab, or center or in MIT's central Human Resources office, who will respond to the matter consistent with applicable human resources processes. Formal Complaints must be referred to IDHR, but other resolution options in employment matters may be handled by a human resources professional.

⁸ See <https://idhr.mit.edu/supportive-measures-overview> for more information.

⁹ See <https://idhr.mit.edu/alternative-dispute-resolution> for more information.

IDHR Investigation Guide

4. Assess the information provided regarding the Discrimination and Discriminatory Harassment, including whether it contains the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and/or any other third party with knowledge of the reported incident;
5. Inform the Complainant about Institute and community resources, the right to seek appropriate and available supportive measures, and how to request those resources and measures;
6. Inform the Complainant of the Informal/Alternative Dispute Resolution option and the Formal Complaint process option; determine the Complainant's expressed preference at this time; and discuss with the Complainant any concerns or barriers to participating in the Institute Formal Complaint process;
7. Explain the Institute's prohibition against retaliation and that the Institute will take prompt action in response to any act of retaliation;
8. Ascertain the ages of the Complainant and the Respondent, if known, and, if either of the parties is a minor (under 18), determine whether to contact the appropriate child protective service agency;
9. Assess the information provided to determine if it triggers any Clery Act obligations and, if so, submit a Clery Report Form to MIT Police; and
10. Assess the matter for possible emergency removal of the respondent, administrative leave, or other appropriate interim actions in conjunction with appropriate Institute officials. See, COD Rules, Section III, for further information regarding student respondents.

If IDHR receives a report of misconduct that is not Discrimination or Discriminatory Harassment, IDHR will refer the report to the appropriate Institute office, which may include MIT Human Resources, the Office of Student Conduct & Community Standards, the Office of the Vice President for Research, or the department, lab or center.

5. Formal Complaint of Discrimination and Discriminatory Harassment

The Formal Complaint process described in this guide is initiated by the submission of a Formal Complaint¹⁰ to IDHR. Generally, the Formal Complaint is submitted by the individual Complainant, but the Formal Complaint process can also be initiated by an Administrative Complaint submitted by IDHR. Both are referred to as a "Formal Complaint" in this guide.

5.1. Formal Complaint Submitted by Complainant

A Complainant who is a member of the MIT community may submit a Formal Complaint [online](https://idhr.mit.edu) at idhr.mit.edu. In addition, any Complainant may submit a Formal Complaint to IDHR by submitting a signed, written document identified as a Formal Complaint requesting that MIT investigate the allegations contained therein. Submissions to IDHR may be made in-person, by mail, or by email to idhr@mit.edu.

The Formal Complaint should:

- State the name of the Respondent (if known);
- Describe with reasonable specificity the conduct the Complainant believes violated MIT policy, including, if applicable, the date, time, and location of the conduct (if known);
- Be in the Complainant's own words, although the Complainant may have assistance in preparing the Formal Complaint and may attach relevant documentation; and

¹⁰ The Formal Complaint is also referred to as a Section 9.8 Complaint in P&P, Section 9.8.

IDHR Investigation Guide

- Contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the Formal Complaint.

A Complainant is encouraged to meet with IDHR before filing a Formal Complaint in order to review the applicable policies and procedures, learn more about their rights and options, and learn more about available supportive measures.

5.2. Administrative Complaint by IDHR: Generally

An Administrative Complaint is a Formal Complaint filed by IDHR where (1) a concern is raised about an MIT Staff Member or Faculty Member by a non-MIT community member who cannot submit a complaint under P&P, Section 9.8,¹¹ or (2) the individual who was allegedly subjected to the reported conduct does not want to file a Formal Complaint; and where, in the judgment of the IDHR, the concern warrants investigation.

When IDHR initiates an Administrative Complaint, IDHR does not become the Complainant. The Complainant is the individual who was allegedly subjected to the reported conduct that could constitute Discrimination and Discriminatory Harassment. The Complainant may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant irrespective of their level of participation.

5.3. Administrative Complaint by IDHR: Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a Formal Complaint process, they may make such a request to IDHR, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

In determining whether to file an Administrative Complaint, IDHR will weigh a Complainant's request not to proceed with a Formal Complaint with MIT's commitment to provide a reasonably safe and non-discriminatory environment and will consider a range of factors, including:

- Whether there is a compelling risk to the health and/or safety of the Complainant and/or the community that may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons and/or violence, or other factors.
- Whether other appropriate steps can be taken, without a Formal Complaint process, designed to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the Complainant and/or the community. Those steps may include offering appropriate supportive measures and accommodations to the Complainant, providing targeted training or prevention programs, and/or providing or imposing other non-disciplinary remedies tailored to the circumstances as determined by IDHR.
- The effect that non-participation by the Complainant may have on the availability of evidence and MIT's ability to pursue a Formal Complaint process fairly and effectively.
- Whether MIT is compelled to act on an allegation of employee misconduct irrespective of a Complainant's wishes.

¹¹ Please note this provision is only applicable to Formal Complaints against staff and faculty under Section 9.8 because the COD Rules permit a non-MIT Community member to make a Formal Complaint against an MIT student.

IDHR Investigation Guide

Note that MIT's ability to remedy and respond may be limited if the Complainant does not want MIT to proceed with a Formal Complaint process. The goal is to provide the Complainant with as much control over the process as possible, while balancing MIT's obligation to protect its community.

When IDHR determines that a Complainant's request not to proceed with a Formal Complaint process cannot be honored, IDHR will initiate an Administrative Complaint. In such cases, IDHR will notify the Complainant that the Institute intends to proceed with a Formal Complaint process, but that the Complainant is not required to participate in the investigation or in any other actions undertaken by the Institute.

When IDHR determines that a Complainant's request not to proceed with a Formal Complaint process can be honored, MIT will offer supportive measures, Informal/Alternative Dispute Resolution, and other available remedies to the Complainant and the community, but will not otherwise pursue a Formal Complaint process.

If the Complainant elects to take no action, they can change that decision and pursue a Formal Complaint process at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have allegations taken seriously, and to have the incidents investigated and fairly resolved through these procedures.

5.4. No Time Limit to File Formal Complaints

The Complainant is encouraged to file a Formal Complaint as soon as possible after the offending conduct occurred. Although MIT does not impose a specific time limit for submitting a Formal Complaint, the Institute can respond more effectively to a Complaint that is filed while the underlying facts are recent. At its discretion, IDHR may decide not to undertake an investigation due to the passage of time and the Institute's ability to respond may be limited where the Respondent is no longer a member of the MIT community.¹²

6. Formal Complaint: Initial Assessment

When a Formal Complaint is filed, IDHR does an Initial Assessment to determine whether the behavior would violate a Discrimination and Discriminatory Harassment policy, assuming for the purposes of this analysis that the factual allegations in the Formal Complaint are true. As part of the Initial Assessment, IDHR will generally contact the Complainant in an attempt to gather a more complete understanding of the allegations, as well as any related conduct that may implicate an MIT policy.

If IDHR determines that:

- The Formal Complaint does not state a violation of a Discrimination and Discriminatory Harassment policy, IDHR will dismiss the Formal Complaint, see Section 7 of this guide. Where appropriate, the matter may be referred to another Institute office, including, for example, the Human Resources office, the Office of Student Conduct & Community Standards, the Office of the Vice President for Research, or a department, lab or center.
- The Formal Complaint does state a violation of a Discrimination and Discriminatory Harassment policy, IDHR will initiate the Formal Complaint investigation process or, where appropriate and available, the Informal/Alternative Dispute Resolution process.

¹² For matters involving former students, please see the COD Rules, Section XVI: "Special Procedures for Handling Allegations Against Former Students and Former Student Organizations."

IDHR Investigation Guide

IDHR will inform the Complainant in writing of its initial assessment decision. IDHR's initial assessment decision is final and cannot be appealed, except as provided for below in Section 7.2 of this guide.

The Initial Assessment will ordinarily be concluded within ten (10) business days of the date the Formal Complaint was received.

7. Formal Complaint: Dismissal

7.1. Dismissal of Formal Complaint: Generally

IDHR will dismiss a Formal Complaint where, after an Initial Assessment, IDHR determines that the alleged behavior, assuming for the purposes of this analysis that the factual allegations by the Complainant are true, would not violate a Discrimination and Discriminatory Harassment policy or that IDHR does not have jurisdiction under applicable provisions of the COD Rules or P&P, Section 9.8.

IDHR's dismissal decision is final and cannot be appealed, except as provided for below in Title IX Sexual Harassment matters.

7.2. Dismissal of Formal Complaint: Title IX Sexual Harassment

The following applies only to a Formal Complaint, or any allegations therein, of [Title IX Sexual Harassment](#).¹³

7.2.1. Dismissal (Mandatory and Discretionary): Title IX Sexual Harassment

MIT must dismiss a Formal Complaint, or any allegations therein, of Title IX Sexual Harassment if, at any time during the investigation or hearing, it is determined that:

- (1) The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment, even if proved;
- (2) The conduct did not occur in an educational program or activity of MIT. 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;
- (3) The conduct did not occur against a person in the United States; or
- (4) At the time of filing a Formal Complaint, or any allegations therein, of Title IX Sexual Harassment, the Complainant is not participating in or attempting to participate in the education program or activity of MIT.

MIT may dismiss a Formal Complaint, or any allegations therein, of Title IX Sexual Harassment if, at any time during the investigation or hearing:

- (1) A Complainant notifies IDHR in writing that the Complainant would like to withdraw the Formal Complaint (however, a Complainant who decides to withdraw a complaint may later request to reinstate it or refile it);
- (2) The Respondent is no longer enrolled in or employed by MIT; or

¹³ <https://idhr.mit.edu/title-ix/sexual-harassment>

IDHR Investigation Guide

- (3) Specific circumstances prevent MIT from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon any dismissal, MIT will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

7.2.2. Appeal of Dismissal: Title IX Sexual Harassment

The dismissal of a Formal Complaint of Title IX Sexual Harassment is appealable by any party. The party must submit the request for appeal (“Request for Appeal”) in writing to IDHR within five (5) business days of delivery of the written notice of the dismissal. The Request for Appeal will be provided to the non-appealing party and that party may submit a written response within five (5) business days of delivery of the Request for Appeal.

The decision on an appeal of a dismissal will be made by the Chair of the COD, if the Respondent is a student or the Formal Complaint is otherwise under the jurisdiction of the COD, and by the Vice President for Human Resources for all other matters.

Appeals of a dismissal are limited to the following grounds:

- (1) Procedural irregularity that affected the outcome of the matter;
- (2) New evidence that was not reasonably available at the time the determination regarding dismissal was made, that could affect the outcome of the matter; and
- (3) IDHR had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the determination regarding dismissal.

If none of the grounds in the Request for Appeal meet the grounds above, that request will be denied, and the parties will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds above, then the appeal will be allowed, and the parties will be notified in writing of the reversal of the dismissal decision and the rationale. The investigation of the Formal Complaint will then proceed consistent with this guide.

The decision on an appeal of a dismissal is final and not subject to further appeal.

8. Formal Complaint: Notice of Investigation and Allegations

IDHR will provide the parties with written notice of the investigation and allegations (the “Notice Letter”) upon commencement of the Formal Complaint process.

The Notice Letter will include:

- (1) Notice of the applicable MIT policies and procedures, including a summary of the process that will be followed and links to or copies of the applicable policies and procedures and this guide;
- (2) The specific policy violations under investigation;
- (3) A meaningful summary of the nature of the allegations, which generally includes (if known) the identities of the parties involved in the incident, the conduct allegedly constituting a Discrimination and Discriminatory Harassment policy violation, and the date, time and location of the alleged incident(s); and
- (4) The name of the assigned Investigator.

IDHR Investigation Guide

If, in the course of an investigation, additional allegations are brought forward that were not included in the initial Notice Letter, IDHR will issue a supplemental Notice Letter to provide notice of the investigation of additional allegations.

Upon receipt of the Notice Letter, the Respondent will generally be given ten (10) business days to submit a written statement in response to the allegations and to schedule an initial interview.

9. Formal Complaint: Assignment of Neutral Investigator(s)

IDHR will assign the trained, neutral Investigator or Investigators to conduct the investigation. The Investigator will not have or demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The parties may, at any time during the process, raise a concern regarding actual bias or conflict of interest, and IDHR will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied.

10. Formal Complaint: Investigation Process

10.1. Overview

The investigation is designed to be timely, thorough, and impartial and to provide for a fair and reliable gathering of the facts. All individuals involved in the investigation, including the Complainant, the Respondent, and any witnesses, will be treated with sensitivity and respect.

The investigation will generally include individual interviews of the Complainant, the Respondent, and relevant witnesses, as well as, gathering relevant evidence. Upon completion of the investigation, the Investigator will prepare a Final Investigation Record and Report. The Investigation Record is generally a compilation of statements by the parties and witnesses as well as other evidence gathered by the Investigator. The Investigation Report will summarize the relevant information gathered and the Investigator may make a finding or recommendation as to responsibility, as described below and provided for in the COD Rules and P&P, Section 9.8.

The Complainant and the Respondent will have an equal opportunity to participate in the investigation, including an equal opportunity to be heard, submit evidence, and suggest witnesses who may have relevant information. Specifically, during the investigation, each party will have the opportunity to:

- provide written statements, participate in interviews, and respond to questions from the Investigator;
- to submit information and corroborating evidence;
- to identify witnesses who may have relevant information;
- to submit questions that they believe should be directed by the Investigator to each other or to any witness; and
- to respond to the facts and statements gathered during the investigation.

The Investigator will notify and seek to meet separately with the Complainant, the Respondent, and witnesses, and will gather other relevant and available evidence and information, including, without limitation, electronic or other records of communications between the parties or witnesses, photographs, and medical records (subject to the consent of the applicable party).

IDHR Investigation Guide

10.2. Evidentiary Considerations in the Investigation Process

The purpose of the investigation is for a trained and unbiased Investigator to assemble and present all of the relevant information. The Investigator has the discretion to determine the relevance of any witness or any proffered evidence.

In general, the Investigator does not consider relevant: (1) incidents not directly related to the possible violation, unless they evidence a pattern of behavior; (2) statements of personal opinion about the character of the parties; (3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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; or (4) information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

The Investigator will objectively evaluate relevant information, including both inculpatory and exculpatory evidence, and will not make determinations based on a person's status as the Complainant, the Respondent, or a witness.

10.3. Participation by the Parties

During the investigation, the parties will have an equal opportunity to participate as described in this guide. The Complainant, the Respondent, and all witnesses are expected to participate in good faith in the Institute's investigation, and they may be expected by the Institute to attend meetings related to the process. Participation in the process (providing information to the Investigator, responding to questions from the Investigator, responding to information provided by a party or a witness, etc.) is not required, but the Formal Complaint process will proceed even if a party or witness declines to participate.¹⁴

10.4. Investigative Interview Process

The Investigator will gather information from the Complainant, the Respondent, and other individuals who have relevant information.

The parties will have the opportunity to request in writing witnesses they would like the Investigator to interview and questions and topics they would like the Investigator to ask witnesses and the other party. The Investigator has the discretion to determine the relevance of any proffered witnesses, and, accordingly, the Investigator will determine which witnesses to interview.

With the interviewee's consent, the Investigator will audio record and transcribe investigative interviews. At the beginning of the interview, the Investigator will inform the interviewee that they may elect to have the interview audio recorded and transcribed or, in the alternative, to have the Investigator create a written summary of the interview. The interviewee will have an opportunity to review the transcription or written summary of the interview before it is considered final.

The audio recording of interviews will not be distributed. Upon written request to the Investigator, the interviewee may request to listen to the audio recording of their own interview and parties may request to

¹⁴ Generally, information that has not been submitted during the investigation may not be presented to the Committee on Discipline, a staff hearing panel, or a faculty hearing panel.

IDHR Investigation Guide

listen to the audio recording of all interviews. Audio recordings will be reviewed during business hours at a secure and private Institute location, with access facilitated by IDHR.

No unauthorized audio or video recording of any kind is permitted during investigation meetings.

In the event an audio recording of an interview fails or is inaudible in whole or in part, the Investigator will either reconstruct the interview with input from the interviewee or re-conduct the interview, as the Investigator deems necessary. The failure will not constitute grounds for appeal.

10.5. Expert Consultation

If the Investigator determines that expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation, upon the Investigator's own initiative or at the request of a party, the Investigator may gather medical, forensic, technological, or other expert testimony and materials (such as writings and recordings) that the Investigator deems relevant and reliable.

The Investigator has the discretion to determine the relevance and reliability of any expert testimony and materials, and, accordingly, the Investigator will determine what, if any, expert testimony and materials to seek to obtain.

The parties may request that the Investigator seek to obtain expert testimony and materials.

10.6. Evidentiary Materials

The Investigator will gather relevant available evidentiary materials, including physical evidence, documents, communications between the parties, and electronic records and media as appropriate.

The parties will have the opportunity to submit evidentiary materials to the Investigator and request in writing the evidentiary materials they would like the Investigator to seek to obtain.

The Investigator has the discretion to determine the relevance of any requested evidentiary materials, and, accordingly the Investigator will determine what evidentiary materials to seek to obtain.

11. Formal Complaint: Investigation Record and Report

11.1. Overview

All parties have a full and fair opportunity to review and respond to the Investigation Record and Report. The Institute has tailored the Investigation Record and Report to best correspond to the Institute's different constituencies as described below and in the COD Rules and P&P, Section 9.8.

11.2. Student: All Non-Title IX Sexual Harassment Matters

11.2.1. Review of Draft Investigation Record and Draft Summary of Relevant Information

In advance of the completion of the investigation, the Investigator will inform the parties that the investigation is coming to a close and that all witness requests and relevant information the party intends to submit should have been provided to the Investigator. In general, information not submitted to the Investigator during the investigation may not be presented at the hearing.

IDHR Investigation Guide

Upon completion of the investigation, the Investigator will prepare and provide to the parties a Draft Investigation Record and Draft Summary of the Relevant Information. Both parties have an opportunity to review and comment upon the Draft Investigation Record and Draft Summary of the Relevant Information before the Investigator issues the Final Investigation Record and Report.

The parties will have a reasonable time, typically not to exceed ten (10) business days, to review the Draft Investigation Record and Draft Summary of Relevant Information and make a written submission, which may include:

- comments about content;
- requests for additional meetings with the investigator; and
- requests for the Investigator to conduct further investigation or questioning.

The parties' written comments and requests will become part of the Final Investigation Record and Report.

The Investigator has discretion to determine whether to conduct any additional requested meetings, interviews, or questioning. The Investigator will supplement the Investigative Record as appropriate and provide the supplemented Draft Investigation Record to the parties.

Unless there are significant additional investigative steps, the parties will not have another opportunity to comment on the Draft Investigation Record before the Investigator prepares the Final Investigation Record and Report.

11.2.2. Final Investigation Record and Report

The Investigator will issue a Final Investigation Record and Report within a reasonable time, typically not to exceed ten (10) business days, after receipt and consideration of the parties' review of the Draft Investigation Record and Draft Summary of Relevant Information.

The Final Investigation Record and Report is provided to the parties and the Office of Student Conduct and Community Standards ("OSCCS"), which facilitates the COD process, for further proceedings under the COD Rules.

The Investigation Report will include the summary of the relevant information and a recommendation as to whether there is sufficient evidence, by a preponderance of the evidence, to support a finding of responsibility for a violation of MIT policy. The Investigator's recommendation is not binding on the COD. The parties will typically have three (3) business days to review the Final Investigation Record and Report and notify the OSCCS whether they accept or reject the recommendation.

For the purpose of ensuring meaningful participation in the process, the Investigator will include in the Investigation Record and Report relevant information gathered during the investigation. The Institute reserves the right—at the Investigator's discretion and to the extent allowed by law—to, where appropriate, redact, remove, summarize, or anonymize information gathered during the investigation to further the legitimate workplace or education interests, including, for example, preserving the privacy of educational or employment records, mental health or medical treatment and/or diagnosis, irrelevant information about sexual history, or sensitive personal identifying information, and promoting an accessible educational or work environment.

IDHR Investigation Guide

11.3. Faculty Members: All Non-Title IX Sexual Harassment Matters

The Investigation Record and Report will be prepared consistent with P&P, Sections 9.8.4.2 and 9.8.4.3.

For the purpose of ensuring meaningful participation in the process, the Investigator will include in the Investigation Record and Report relevant information gathered during the investigation. The Institute reserves the right—at the Investigator’s discretion and to the extent allowed by law—to, where appropriate, redact, remove, summarize, or anonymize information gathered during the investigation to further the legitimate workplace or education interests, including, for example, preserving the privacy of educational or employment records, mental health or medical treatment and/or diagnosis, irrelevant information about sexual history, or sensitive personal identifying information, and promoting an accessible educational or work environment.

11.4. Staff Member: All Non-Title IX Sexual Harassment Matters

The Investigation Record and Report will be prepared consistent with P&P, Sections 9.8.4.2 and 9.8.4.4.

For the purpose of ensuring meaningful participation in the process, the Investigator will include in the Investigation Record and Report relevant information gathered during the investigation. The Institute reserves the right—at the Investigator’s discretion and to the extent allowed by law—to, where appropriate, redact, remove, summarize, or anonymize information gathered during the investigation to further the legitimate workplace or education interests, including, for example, preserving the privacy of educational or employment records, mental health or medical treatment and/or diagnosis, irrelevant information about sexual history, or sensitive personal identifying information, and promoting an accessible educational or work environment.

11.5. All Title IX Sexual Harassment Matters

11.5.1. Review of Draft Investigation Record and Draft Summary of Relevant Information

In advance of the completion of the investigation, the Investigator will inform the parties that the investigation is coming to a close and that all witness requests and relevant information the party intends to submit should have been provided to the Investigator. In general, information not submitted to the Investigator during the investigation may not be presented at the hearing.

Upon completion of the investigation, the Investigator will prepare and provide to the parties a Draft Investigation Record and Draft Summary of the Relevant Information. Both parties have an opportunity to review and comment upon the Draft Investigation Record and Draft Summary of the Relevant Information before the Investigator issues the Final Investigation Record and Report.

The parties will have a reasonable time, and in any event not less than ten (10) business days, to review the Draft Investigation Record and Draft Summary of Relevant Information and make a written submission, which may include:

- comments about content;
- requests for additional meetings with the investigator; and
- requests for the Investigator to conduct further investigation or questioning.

The parties’ written comments and requests will become part of the Final Investigation Record and Report.

IDHR Investigation Guide

The Investigator has discretion to determine whether to conduct any additional requested meetings, interviews, or questioning. The Investigator will supplement the Investigation Record as appropriate and provide the supplemented Draft Investigation Record to the parties.

Unless there are significant additional investigative steps, the parties will not have another opportunity to comment on the Draft Investigation Record and Draft Summary of Relevant Information before the Investigator prepares the Final Investigation Record and Report.

11.5.2. Final Investigation Record and Report

The Investigator will issue a Final Investigation Record and Report within a reasonable time, typically not to exceed ten (10) business days, after receipt and consideration of the parties' review of the Draft Investigation Record and Draft Summary of Relevant Information.

The Investigation Report will include the summary of the relevant information gathered during the investigation. At their discretion, the Investigator may identify contested and uncontested facts, highlight inconsistencies, and address relevancy of evidence.

The Investigator will not offer a recommended finding on responsibility, other than to make a determination as to whether the Formal Complaint should be dismissed or proceed to a hearing. In making this determination, the Investigator will apply the standard for dismissal set forth above in Section 7.2.1 of this guide. The decision to dismiss is appealable by either party applying the process for appeal set forth in Section 7.2.2 of this guide. Any Formal Complaint, or allegation therein, of Title IX Sexual Harassment not dismissed, will be referred for hearing consistent with the applicable hearing procedures.¹⁵

The Investigation Record will include any information that is directly related to the allegations raised in the Formal Complaint, including information upon which MIT does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.

The parties will have a reasonable time, and in any event not less than ten (10) business days, to review and provide a written response to the Final Investigation Record and Report prior to a hearing.

12. Formal Complaint: Findings and Sanctions

12.1. Student: All Non-Title IX Sexual Harassment Matters

All findings of responsibility will be made and sanctions will be determined consistent with the processes set forth in the COD Rules.

12.2. Faculty Members: All Non-Title IX Sexual Harassment Matters

All findings of responsibility will be made and discipline will be determined consistent with the processes set forth in P&P, Sections 9.8.4.2 and 9.8.4.3.

¹⁵ The applicable procedures are available online at: <http://idhr.mit.edu/formal-complaint-processes/hearing-process>.

IDHR Investigation Guide

12.3. Staff Members: All Non-Title IX Sexual Harassment Matters

All findings of responsibility will be made and discipline will be determined consistent with the processes set forth in P&P, Sections 9.8.4.2 and 9.8.4.4.

12.4. All Title IX Sexual Harassment Matters

All findings of responsibility will be made and discipline will be determined after a hearing consistent with the applicable hearing procedures set forth in the COD Rules for student matters and P&P, Section 9.8, for staff and faculty matters.¹⁶

13. Formal Complaint: Appeals

Both parties have equal rights to appeal. The processes and grounds for appeal are set forth in the COD Rules for student matters and P&P, Section 9.8, for staff and faculty matters.

14. Formal Complaint: General Provisions

14.1. Advisors and Support Persons

At all stages under this guide, both the Complainant and the Respondent has the right to select and consult with an advisor of their own choosing.

Both the Complainant and the Respondent also have the right to a support person of their choice to provide emotional support to the party.

In matters against staff and faculty members, P&P, Section 9.8, governs who may serve as an advisor or support person. In matters against students, the COD Rules governs who may serve as an advisor or support person. In any matter alleging sexual assault, intimate partner violence, stalking, or Title IX Sexual Harassment, the parties may select an advisor of their choice, including an attorney.

Advisors and support persons may accompany the party throughout the Formal Complaint investigation process, but may not speak on the party's behalf or otherwise interfere with meetings or proceedings. Throughout the Formal Complaint investigation process, advisors and support persons may also help the party prepare written submissions.

Parties are expected to inform IDHR of the identity of their advisors and support persons. Parties may share information and documents with their advisors and support persons. Parties may request that the Investigator include their advisors and support persons on all correspondence.

By accepting the role of advisor or support person, all advisors and support persons agree to comply with all applicable MIT policies and procedures, including rules regarding privacy, and the processes set out in this guide.

The Institute will not interfere with the parties' rights to have an advisor and support person of their choice and fully expects advisors and support persons to adhere voluntarily to MIT policies and procedures. In extreme cases, where either IDHR or a hearing chair determines that an advisor's or support person's conduct undermines the integrity of the process, the advisor or support person will be

¹⁶ The applicable procedures are available online at: <http://idhr.mit.edu/formal-complaint-processes/hearing-process>.

IDHR Investigation Guide

prohibited from continuing to serve as advisor or support person in that case. The affected party will be permitted to obtain a substitute advisor or support person.

If IDHR or a hearing chair determines that an advisor or support person has a conflict of interest, the advisor or support person will be prohibited from continuing in their role. The affected party will be permitted to obtain a substitute advisor or support person.

If a party seeks to have multiple support persons and/or advisors accompany them during proceedings set out in this guide, IDHR may request that the party limit the number of individuals accompanying them to two.

For matters subject to hearing, the role of the advisor at the hearing is further outlined in the applicable hearing procedures.¹⁷

14.2. Coordination with Law Enforcement

IDHR may contact any law enforcement agency that is conducting its own investigation to inform them that an Institute investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the Institute in its investigation. At the request of law enforcement, IDHR may delay the Institute investigation temporarily while an external law enforcement agency is gathering evidence. IDHR will generally resume the Institute investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.

14.3. Access to Documents Related to the Investigation

Where this guide indicates that IDHR will provide the parties with access to certain documents, unless it states otherwise, IDHR will generally provide the parties and their respective advisors (if so desired by the parties) a secured electronic copy. In general, a hard copy of the documents will not be provided, but, on request, a hard copy may be provided.

14.4. Resolution Timeline

The Institute will make a good faith effort to complete the resolution process within a ninety to one hundred twenty (90 – 120) business day time period, including appeal, which can be extended as necessary for appropriate reasons.

The Formal Complaint Investigation process is completed as expeditiously as possible under the circumstances, normally within sixty to ninety (60 – 90) business days of assignment of the Investigator. While IDHR strives to meet these timeframes, they may be extended if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request for a criminal investigation, to accommodate the availability of witnesses, to account for Institute breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. The Investigator will provide the parties with regular updates on the progress of the investigation and anticipated timeframes.

¹⁷ The applicable procedures are available online at: <http://idhr.mit.edu/formal-complaint-processes/hearing-process>.

IDHR Investigation Guide

14.5. Registration, Transcript, and Graduation Holds

Under the COD Rules, in Formal Complaints falling under the jurisdiction of the COD and resolved pursuant to this guide, to the extent permissible by law, “the COD and the Office of Student Conduct and Community Standards have the authority to place registration, transcript, and graduation holds in order to require students to attend meetings related to the COD process, enforce sanctions, respond to past due sanctions, and otherwise effect the COD’s purpose.”

Such holds will not be used to secure a party or witness’s participation in a Title IX Sexual Harassment hearing.

14.6. Preponderance of the Evidence

Formal Complaints are resolved applying the preponderance of the evidence standard (“more likely than not”). The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the Institute, not one party or the other.

The Respondent will be presumed “not responsible” unless and until there is a determination of responsibility.

14.7. Consolidation of Formal Complaints

Generally, at the discretion of IDHR, multiple Formal Complaints, or allegations therein, that are factually related will be joined in one investigation. In the event of a cross-complaint, a person may be both a Complainant and a Respondent in a consolidated investigation. For allegations of other conduct policy violations consolidated with an allegation of a Discrimination and Discriminatory Harassment policy violation for investigation, the Investigator will generally follow the Formal Complaint Investigation process set out in this guide, with appropriate modifications.

Formal Complaints joined in one investigation may be joined in one hearing or resolved in separate hearings.

14.8. IDHR and Title IX Coordinator Contact Information

The Director of IDHR & Institute Title IX Coordinator is Sarah Rankin. IDHR can be reached by email at idhr@mit.edu and by phone at 617-253-2472. IDHR is located at:

Institute Discrimination & Harassment Response Office
Massachusetts Institute of Technology
120 Massachusetts Avenue, W31-223, Cambridge, MA 02139

14.9. Nondiscrimination Policy

The Institute’s Nondiscrimination Policy, which applies to faculty, staff, students, and all other members of the MIT community is included in P&P, Section 9.2, the Mind and Hand Book, Section II(19), the MIT Bulletin (course catalog), and in other publications.

The Vice President for Human Resources is designated as the Institute’s Equal Opportunity Officer. Inquiries concerning the Institute’s policies, compliance with applicable laws, statutes, and regulations, and complaints may be directed to Ramona Allen, Vice President for Human Resources, Building NE49-5000, 617-324-5675. In addition, inquiries about Title IX (which prohibits discrimination on the basis of

IDHR Investigation Guide

sex) may be directed to the Institute's Title IX Coordinator, Sarah Rankin, Room W31-223, 617-324-7526, idhr@mit.edu. Inquiries about the laws and about compliance may also be directed to the United States Department of Education, Office for Civil Rights, Region I, 5 Post Office Square, 8th Floor, Boston, MA 02109-3921, 617-289-0111, OCR.Boston@ed.gov.