



## MIT Special Hearing Procedures for Title IX Sexual Harassment Complaints Against Faculty and Staff

**Effective:** August 14, 2020

In compliance with federal law, MIT has certain special procedures for resolving complaints of Title IX Sexual Harassment against MIT faculty and staff.<sup>1</sup> These procedures supplement Section 9.8 of MIT’s Policies and Procedures (P&P) by providing special hearing procedures for Title IX Sexual Harassment cases. All other provisions of Section 9.8 remain applicable to Title IX Sexual Harassment cases. In applying these special hearing procedures, MIT will treat complainants and respondents equitably. Both parties will have an equal opportunity to present witnesses and other inculpatory and exculpatory evidence. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on MIT and not on the parties. As these procedures are intended to comply with federal Title IX regulations, if there is any inconsistency between these procedures and the Title IX regulations, the regulations will control. MIT reserves the right to adjust these procedures as it deems appropriate and as permitted by law.

The definition of Title IX Sexual Harassment can be found at P&P, Section 9.4.1.4.<sup>2</sup> Information about the filing and initial assessment of Title IX Sexual Harassment complaint and the investigation process for Title IX Sexual Harassment complaints can be found at P&P, Section 9.8,<sup>3</sup> and the IDHR Investigation Guide.<sup>4</sup>

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<sup>1</sup> In its discretion and depending on the circumstances, MIT may also apply these procedures to cases of Title IX Sexual Harassment involving respondents who are not MIT students, staff, or faculty.

<sup>2</sup> Available online at: <https://policies.mit.edu/policies-procedures/90-relations-and-responsibilities-within-mit-community/94-harassment>.

<sup>3</sup> Available online at: <https://policies.mit.edu/policies-procedures/90-relations-and-responsibilities-within-mit-community/98-complaint-resolution>.

<sup>4</sup> Available online at: <http://idhr.mit.edu/formal-complaint-processes/investigation-guide>.

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### **1. Hearing Procedures**

A hearing is the appropriate case resolution method for Formal Complaints filed under P&P, Section 9.8 and alleging a violation of P&P, Section 9.4.1.4: Title IX Sexual Harassment.

The following procedures apply to Title IX Sexual Harassment hearings involving staff or faculty respondents. The Title IX Sexual Harassment hearing will take place after the IDHR investigator(s) issue an Investigation Record and Report. If a Complaint of Title IX Sexual Harassment also includes allegations of conduct that would violate other policies in addition to P&P, Section 9.4.1.4: Title IX Sexual Harassment, MIT will consider on a case-by-case basis whether to apply these hearing procedures to the non-Title IX Sexual Harassment allegations as well, or to apply the procedures that would normally apply to those allegations.

### **2. Hearing Panel**

Hearings under this policy will be conducted by a Title IX Sexual Harassment hearing panel. The hearing panel will be comprised of three members. The make-up of the panel is as follows:

- A. In cases involving a respondent who is a faculty member, senior research scientist, senior research engineer, or senior research associate, a Faculty Panel will be convened. The Faculty Panel will be staffed by a Chair and two faculty members chosen by the Associate Provost.
- B. In cases involving a respondent who is a staff member or post-doctoral scholar (associate or fellow), a Staff Panel will be convened. The Staff Panel will be staffed by a Chair and two staff members selected by the Vice President for Human Resources.
- C. The Chair of both the Faculty Panel and the Staff Panel will be an outside professional engaged by MIT, who will be responsible for overseeing the hearing and will participate as a decision-maker in all issues before the relevant Panel.

### **3. Advisors**

The complainant and the respondent each may have an advisor of their choice at the hearing. Attorneys are permitted to serve as advisors to complainants and respondents. Advisors may not serve as witnesses. Parties are responsible for arranging for the participation of their advisors.

The primary role of the advisors at the hearing is to conduct direct, oral, real-time cross-examination of parties and witnesses. During other portions of a hearing, the parties' advisors may provide support and advice to the parties, but the advisors may not participate actively in the hearing.

In the event a complainant or respondent does not have their own advisor, MIT will provide, without fee or charge to that party, an advisor of MIT's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party at the hearing.

The complainant and respondent must identify their advisor to the Chair of the hearing panel at least three business days prior to the start of the hearing and confirm that the advisor will be attending the hearing at the scheduled date and time.

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### **4. Documents and Witnesses**

In general, documents that were not submitted to the investigator(s) during the investigation by IDHR and included in the IDHR Investigation Record and Report may not be presented at the hearing. The Chair may grant an exception to permit relevant documents to be submitted that were not part of the investigation upon a showing of good cause. Alternatively, the Chair can postpone the hearing to permit time for the investigator(s) to consider the new information and incorporate it into the Investigation Record and Report. If such new documents are permitted, MIT will provide access to the newly submitted documents to the panelists, the complainant, the respondent, and their respective advisors.

In general, a complainant, respondent, or relevant witness who had the opportunity to participate during the investigation but elected not to participate will not be permitted to participate in the hearing or submit documents other than a written response to the investigation report prior to the hearing. The Chair may permit a complainant, respondent, or relevant witness who did not participate in the investigation to participate in the hearing upon a showing of good cause. The possibility or pendency of a law enforcement investigation or criminal court proceedings will generally not be considered good cause for an exception. Exceptions of this nature are expected to be rare. Such request must be made at least three business days before the hearing. Alternatively, the Chair can postpone the hearing to permit time for the investigator(s) to consider the new information and incorporate it into the investigation report.

### **5. Hearing Schedule and Option for Virtual Hearing**

The hearing will be scheduled as soon as reasonably possible, but no sooner than ten days after the parties receive the final Investigation Record and Report. MIT will notify the complainant and respondent of the hearing date, time, location, and participants in writing with sufficient time for the parties to prepare to participate.

At the request of either party, the hearing will be conducted using videoconference or other distance method or technology so that the parties are not in the same room simultaneously at any time during the hearing but can otherwise see and hear the other hearing participants and fully participate in the hearing.

### **6. Role of the Hearing Panel Chair**

The Chair's role at the hearing is as follows:

- A. The Chair convenes and facilitates the hearing.
- B. The Chair may postpone or suspend a hearing.
- C. The Chair may call a brief recess at any time during the hearing.
- D. The Chair determines whether certain witnesses should appear and decides whether any particular question, statement, or information will be allowed during a hearing. Formal rules of evidence that apply to civil or criminal judicial processes are not applicable. Before a complainant, respondent, or witness answers a cross-examination or other question, the Chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- E. The Chair may call a particular witness.

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- F. The Chair shall warn any participant deemed to be disruptive, harassing, or intimidating to any other participant and if appropriate, excuse any individual's presence at a hearing, or take any other action deemed necessary by the Chair to ensure an orderly hearing.

### **7. Order of Proceedings; Relevance, Witnesses, and Cross-Examination**

The hearing usually proceeds as follows, although the Chair may vary the procedure at their discretion and as permitted by law.

- A. The Chair reads introductions and a description of the hearing procedures to the parties.
- B. The Chair reads the alleged policy violation(s), states that there is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the hearing, and asks the respondent either to accept or deny responsibility.
- C. The complainant may make an opening statement followed by the opportunity of the hearing panel to ask questions of the complainant. The respondent's advisor will then have the opportunity to conduct cross-examination of the complainant.
- D. The respondent may make an opening statement followed by the opportunity of the hearing panel to ask questions of the respondent. The complainant's advisor will then have the opportunity to conduct cross-examination of the respondent.
- E. Witnesses who provided statements or other evidence during the investigation may provide statements followed by the opportunity of the hearing panel to ask questions of the witnesses. The complainant's advisor and the respondent's advisor will then have the opportunity to conduct cross-examination of the witnesses.
- F. During cross-examination, the Chair must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. The cross-examination must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the Chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- G. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- H. The Chair and the hearing panel may not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- I. The complainant may make a brief closing statement, followed by the same opportunity for the respondent.

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- J. The Chair makes a closing statement, including when a decision is expected to be made.

Character witnesses are not permitted. In addition, unless the Chair decides otherwise in unusual circumstance, or the investigator(s) collected evidence from an expert witness during the investigation, expert witnesses are not allowed.

### **8. Decision on Responsibility**

Once the Chair concludes the hearing, the hearing panel meets to reach a decision whether the respondent is responsible for violating MIT's Title IX Sexual Harassment policy, using a preponderance of the evidence standard and based on a majority of panel members.

In reaching a decision, the hearing panel shall conduct an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

If a party or witness does not submit to cross-examination at the live hearing, the hearing panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility. The hearing panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

In reaching its determination, the hearing panel may not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### **9. Decision on Sanctioning**

If the hearing panel decides that the respondent is responsible for violating Section 9.4.1.4: Title IX Sexual Harassment, sanctions will be determined as follows:

- A. If the respondent is a faculty member, senior research scientist, senior research engineer, or senior research associate, the Faculty Panel recommends to the appropriate Dean (or other Academic Council member for some senior research scientists, engineers, and associates) what action should be taken in light of the finding. Examples of discipline include, but are not limited to, a reprimand (oral or written), a suspension, a salary reduction, a demotion, a removal of privileges, or termination of employment or appointment.<sup>5</sup> See also Section 3.4.2 Faculty Misconduct or Performance Below Standards regarding discipline for tenured faculty.

The Dean reviews the recommendation from the Faculty Panel and determines what discipline will be imposed or other action taken. If the Dean disagrees with the Faculty Panel's recommendation, the Dean must meet with the Faculty Panel to discuss. If the Dean continues to disagree with the Faculty Panel's recommendation after that discussion, the Dean must inform the Provost in writing of the reason(s) for their disagreement on discipline. In such cases, the Provost will make the final decision on discipline and will inform the Dean and the Faculty Panel of the decision.

- B. If the respondent is a staff member or post-doctoral scholar, the Dean (or other Academic Council member) will determine the appropriate action to take against the respondent. This may include,

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<sup>5</sup> See Section 9.8.4.3.

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but is not limited to, a reprimand (oral or written), suspension, a salary reduction, a demotion, a removal of privileges, or termination of employment or appointment.

### **10. Written Notice of Decisions on Responsibility and Sanctions**

Once a decision on both responsibility and sanctions has been made, the Chair will issue a written determination regarding responsibility and, where applicable, sanctions. The written determination will include the following:

- A. Identification of the allegations potentially constituting Title IX Sexual Harassment;
- B. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- C. Findings of fact supporting the determination;
- D. Conclusions regarding the application of MIT's Title IX Sexual Harassment policy, to the facts;
- E. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions MIT imposes on the respondent, and whether remedies designed to restore or preserve equal access to MIT's education program or activity will be provided by MIT to the complainant; and

If applicable, the written determination can also include findings, sanctions, or rationale for any violations of policies other than the Title IX Sexual Harassment policy. In reaching a determination on violations of policies other than the Title IX Sexual Harassment policy, the hearing panel is not prohibited from relying on statements of a party or witness who did not submit to cross-examination.

- F. The procedures and permissible bases for the complainant and respondent to appeal.

The Chair must provide the written determination to the parties simultaneously. This written determination will also be shared with the respondent's supervisor and/or higher level manager. The determination regarding responsibility (including any sanction) becomes final either on the date that MIT provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

### **11. Appeals**

Either the complainant or the respondent may appeal the decision, regardless of the finding of responsibility or the severity of the sanction. Appeals may only be made on one or more of the following grounds:

- i. There is new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.
- ii. There was procedural irregularity that affected the outcome of the matter.
- iii. A material finding that formed a basis for the Panel's decision was substantially against the weight of the evidence that was before the Panel when it made the decision; or

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- iv. Title IX Coordinator, the investigator(s), or the decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Appeals are decided as follows:

- The Provost decides appeals in cases in which the respondent is a faculty member, senior research scientist/engineer/associate, principal research scientist/engineer/associate, research scientist/engineer/associate, or Academic Instructional staff. However, if the Provost made the decision on discipline due to disagreement between the Faculty Panel and the Dean, the President will decide the appeal.
- The Vice President for Research or the Provost decides appeals in cases in which the respondent is a postdoctoral scholar.
- The Executive Vice President and Treasurer, decides appeals in cases in which the respondent is another category of employee.

In deciding an appeal, the decision maker may consult with the hearing Chair, the hearing panel, the Title IX Coordinator and/or the investigator.

Both the complainant and the respondent will be informed simultaneously in writing of the decision on the appeal. The decision on an appeal is final. Generally, the decision on an appeal is made within 30 days.

### **12. Additional Rules and Procedures**

**Transcripts and Recordkeeping:** MIT will create an audio or audiovisual recording, or transcript, of any Title IX Sexual Harassment hearing and make it available to the parties for inspection and review. No recording devices may otherwise be used during a hearing by anyone present. A documentary record of the proceedings will be kept in the files of IDHR. This record will consist of: (1) the investigation report, (2) all evidence submitted at the hearing, (3) the written determination; and (4) the recording or transcript of the hearing. This record will be maintained for at least seven years.

**Confidentiality:** The hearing panel's consideration and determination of a complaint is confidential and should not be discussed outside of the hearing panel process by members. Confidential information includes, but is not limited to, the existence and substance of the complaint, the names of complainants, respondents, witnesses, what is said in 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 hearing panel process, but complainants and respondents are not restricted from discussing the allegations or gathering and presenting relevant evidence.

**Parallel Criminal Matters:** A hearing panel for a complaint of sexual misconduct, sexual harassment, intimate partner violence, stalking, or Title IX Sexual Harassment usually will not be stayed just because there is a pending external criminal investigation or other outside proceeding. The Chair may exercise discretion on a case-by-case basis to delay or defer the panel's resolution for a period of time while any law enforcement activity, criminal charges, or other external matters are proceeding, although the panel need not defer or delay resolution until those matters have been fully resolved.

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**Pay Status for Time Spent in Complaint Resolution Process:** Where complaint resolution occurs during an employee's normal working hours, a reasonable amount of paid release time may be granted.

**False Complaints and Statements:** A false complaint determined by the Institute to have been made in bad faith and any dishonesty in the context of an investigation, hearing or other review are serious offenses. Such offenses may be investigated and may lead to disciplinary action, up to and including termination of employment or other affiliation with MIT. False accusations, false testimony, or dishonesty by a student in the course of the complaint process will be referred to the Office of Student Conduct and Community Standards.

Archived