



*Report of the Yale University
Women Faculty Forum Council
on Sexual Misconduct at Yale*

October 15, 2009

EXECUTIVE SUMMARY

The primary goal of this report by the Yale University Women Faculty Forum Council is to help Yale University develop and appropriately implement effective policies and procedures to prevent and respond to sexual misconduct in accordance with best practices and applicable law. We aspire to do more than generate a series of rules, however; we also seek to strengthen a community that values the open and free exchange of ideas, respects all of its diverse members, and appreciates their unique contributions.

Sexual misconduct is an assault on our community values that diminishes each of us. The comprehensive University-wide policy on sexual misconduct we propose in this report (the *Proposed Yale Policy*) is predicated on four precepts: *clarity*, *transparency*, *centralization*, and *ongoing evaluation and improvement*.

We recommend that the University:

(1) Immediately appoint a centralized University-wide standing Committee on Sexual Misconduct to evaluate the *Proposed Yale Policy* and to make a recommendation regarding its prompt promulgation.

(2) Adopt the *Proposed Yale Policy* and thereby:

- ◆ Bar all forms of sexual misconduct by any member of community (including faculty, staff, and students)
- ◆ Create anonymous and third-party reporting mechanisms
- ◆ Mandate ongoing training
- ◆ Require continuous policy reassessment and improvement.

(3) Develop immediately a comprehensive, single-point-of-entry online information resource that contains all of Yale's existing sexual misconduct policies, procedural options, and resources. Also promptly add a tab to the Yale University home page, entitled "Safety at Yale," which would directly link to the sexual misconduct website and to all of the other relevant University resources.

(4) Under the aegis of the Committee on Sexual Misconduct, regularly gather, store, and review data on sexual misconduct at Yale and periodically disclose an appropriate subset of that data to the Yale community while honoring guarantees of privacy and confidentiality.

(5) Develop a rapid-response plan to ensure the prompt promulgation of information and updates on incidents of sexual misconduct and the University response thereto.

We urge the President and the Provost to consider our recommendations as part of the ongoing *Yale Tomorrow* vision of "strengthening Yale as a great place to study, teach, research, and work." We are proud to be associated with a university that embodies the ideals of openness, equal opportunity, and social justice. As University President Richard Levin has stated, "[I]n the diversity of its students, its global outlook, and its outstanding research, it is also a university of compelling change."

An essential part of preserving a community that values the differences of its members is creating a transparent system by which students, faculty, and staff may address grievances. Implementation of our recommended policies and procedures would establish Yale as a leader in preventing and responding to instances of sexual misconduct on university campuses.

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I. OVERVIEW

Acting through its Working Group on Sexual Misconduct,¹ a collection of concerned stakeholders from across Yale University (the Working Group), the Yale University Women Faculty Forum Council has undertaken a comprehensive review of the University's policies on gender-based violence, harassment, discrimination, and other forms of sexual misconduct. Because no portion of the community can thrive while another struggles,² we examined policies for students, faculty, and staff in all parts of the University.

We recognize and applaud the ongoing efforts at Yale to address sexual misconduct, including the recent release by Yale College Dean Mary Miller of the *Report of the Committee on Sexual Harassment and Sexual Assault Prevention Education* (the *SHAPE Report*).³ Unfortunately, recent events underscore the need for the University to do more to ensure, in a proactive manner, the physical and psychological safety of its members.

Our primary goal is to help Yale develop and appropriately implement effective processes and procedures to prevent and respond to sexual misconduct in accordance with best practices and as required by applicable law. We aspire to do more than generate a series of rules, however; we also hope to strengthen a community that values the open and free exchange of ideas, respects all of its diverse members, and appreciates their unique contributions. To that end, we have prepared, with input from multiple members of Yale's community,⁴ a comprehensive policy on sexual misconduct (the *Proposed Yale Policy*), which is set forth in Appendix B. We urge the University to appoint a standing University-wide Committee on Sexual Misconduct to make a formal recommendation to the President and the Provost concerning the promulgation of the *Proposed Yale Policy* and its implementation.

To create a community that value differences, universities require transparent, effective mechanisms to address the grievances of students, faculty, and staff.⁵ The system must instill faith that physical and non-physical violations against other members of the community, especially on the basis of gender, sexual orientation, age, religion, race, national origin, cultural heritage, or ethnic background, will not be tolerated. We are concerned that the University's

¹ The members of the Working Group are listed on Appendix A.

² "Sexual harassment inflicts a collective injury" (Roberts, 2004: 365).

³ While Dean of Yale College, Peter Salovey commissioned the Committee on Sexual Harassment and Sexual Assault Prevention Education (the SHAPE Committee) in March 2008 to review "sexual harassment and sexual assault prevention education and response in Yale College" and recommend "alternative or additional programs and the best venues for presenting them." The SHAPE Committee submitted its report (the *SHAPE Report*) to Peter Salovey on May 22, 2008. Yale College Dean Mary Miller publicly released the *SHAPE Report* on September 2, 2009. It is available at <http://www.yale.edu/yalecollege/administration/policies/shape/index.html>.

⁴ This summer, the Working Group distributed drafts of this report and the *Proposed Yale Policy* to more than eighty members of the Yale community and received thoughtful comments from a wide variety of concerned parties, including those listed in Appendix A. Members of the Working Group also met on multiple occasions with University Associate General Counsel Susan Sawyer and Caroline Hendel and gratefully acknowledge their assistance.

⁵ See, e.g., *A Report by the Yale College Sexual Harassment Grievance Board to Dean Peter Salovey of its Review of the Handling of Reports from Yale Undergraduates Regarding Sexual Assault* (the *Grievance Board Report*), released April 24, 2006 (describing a commitment to making the University systems "more transparent and helpful to students bringing complaints") (*Grievance Board Report*, 2006: 1).

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current policies on sexual misconduct do not inspire the confidence of its members that such misconduct will be dealt with in a fair, confidential, sensitive, and non-retaliatory manner. As stated in the *SHAPE Report*, “Clear and strong statements from campus leaders that sexual harassment and assault will not be tolerated in our community” are critically important and must be supported by comprehensive, and effective policies and procedures.⁶

Education and training on issues of sexual assault, harassment and gender equality, especially when presented in idioms of community and professional ethics, have the potential to reinforce a university environment of accountability, integrity, authenticity, mutual respect, and engagement. However, this potential remains largely unrealized when policies are applied unevenly across the University. Similarly, policies that are unclear or obscured by outmoded methods of dissemination create structural impediments to accessing the system in a meaningful way. In addition, procedures that remain embedded within smaller university sub-populations can thwart the University’s goals of fostering faith in the objectivity and confidentiality of mediations and adjudications of sensitive issues.

A. Guiding Precepts

With this in mind, the Working Group conducted a comprehensive review of University policies and procedures dealing with the full spectrum of gender-related misconduct, from rape and sexual assault to creation of a hostile environment to the more subtle ways in which certain members of our community may feel intimidated or silenced because of their gender. We use the umbrella term “sexual misconduct” to refer to this full range of offenses. We also reviewed the scholarly literature on sexual misconduct and examined sexual misconduct policies at other leading universities.⁷ While recognizing Yale’s ongoing efforts to address sexual misconduct, we have identified multiple opportunities for improvement, most of which fall under one of the following four precepts.

1. Clarity

The policies for preventing and responding to sexual misconduct must be clear and readily accessible to all members of the University— students, faculty, and staff of every affiliation. In our research, we have found some clarity but much confusion; the sexual misconduct policies in some parts of the University are so obscure as to be potentially ineffectual. We recommend the immediate development of a single-point-of-entry University website to clarify existing procedures for the entire University community; this online resource should include clear definitions, regulations, and resources. As indicated below, we recommend that the University focus over the next academic year on rewriting and centralizing the policies themselves. A clear statement of policies would convey Yale’s commitment to all constituencies.

2. Transparency

⁶ The authorities cited in the *2007 Report of the Working Group in Examining Sexual Harassment and Sexual Assault Procedures at the Yale School of Medicine* (submitted to Dr. Robert Alpern, Dean of Yale School of Medicine, on December 7, 2007), included as Appendix D in the *SHAPE Report*, found that the most effective reform for reducing reports of sexual harassment and sexual assault was “the institution of ‘no tolerance’ statements with established and available protocols for disciplinary procedures in cases of sexual harassment and sexual assault.” (*SHAPE Report*: 53.)

⁷ See also the discussion of policies at peer institutions in the *Grievance Board Report* at 5-6.

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Yale needs to make its actions and deliberations on these matters more transparent to all members of the Yale community. While we recognize that disciplinary matters require confidentiality,⁸ the bulk of the administrative work on sexual misconduct—task force reports, reform initiatives, planning prevention campaigns, and the like—should take place under the public eye. Greater transparency would enable the formation of broad campus coalitions, which could work to reduce incidents of sexual misconduct, thereby increasing the chances for successful intervention. It would also make visible Yale’s sometimes-unrecognized efforts and commitment to prevent sexual misconduct.⁹ The discussions, responses, and actions prompted by the publication of this report can themselves provide a model for such transparency.

3. Centralization

Achieving clarity and transparency would be far easier if the University centralized its policies against and procedures for responding to sexual misconduct. The current varied array of policies and procedures is excessively unwieldy, making it unnecessarily difficult for both the individuals facing the threat or reality of sexual misconduct and those concerned with their welfare (including their faculty and mentors) to access the considerable resources Yale has marshaled to assist them. The variability and uneven quality of the sexual misconduct policies and procedures across the University also make it much more difficult for the individuals and institutional bodies charged with preventing and responding to sexual misconduct to develop the expertise necessary to carry out those functions effectively. Although some elements of the University’s work against sexual misconduct may need to be tailored to the specific needs of particular locations or constituencies,¹⁰ we recommend centralization of as many elements as possible.

4. Ongoing Evaluation and Improvement

It is crucial that evaluation of the University’s efforts to prevent and respond to sexual misconduct not be left to transient ad hoc committees. Creation of a University-wide standing Committee on Sexual Misconduct (as recommended by the *SHAPE Report* as well) would enable consistent, ongoing evaluation and improvement. It would also provide a repository for information regarding prior complaints, cases, and outcomes, thereby enhancing consistent application of University policies over time.

⁸ The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, also known as the “Buckley Amendment,” generally requires schools to keep student records confidential, with access to third parties only with written parental consent. It prohibits disclosure of personally identifiable information within those records and of information without reference to a particular student’s name if it is “easily traceable” to a particular student. Exceptions relevant to sexual misconduct include the following: (1) schools may release records to “appropriate persons” in a health or safety emergency, as necessary to protect the health or safety of the students or others (20 U.S.C. 1232g(b)(1) (I); 34 C.F.R. 99.36)); (2) schools may provide information to post-secondary-school victims of an alleged crime of violence or a nonforcible sex offense concerning the final results of any school disciplinary proceedings against the alleged perpetrator (20 U.S.C. 1232g (b)(6)(A)-(B); 34 C.F.R. 99.31(a)(13)); and (3) schools may make public the name of a student found to have violated school rules or policies with respect to an alleged crime of violence or nonforcible sex offense, together with a description of the violation committed and the sanction imposed (20 U.S.C. 1232 g(b)(6)(C)). *See also* Daggett & Huefner , 2001.

⁹ For example, prior to the public release of the *SHAPE Report* on September 2, 2009, the Yale College Dean’s Office produced the film *Relationships: Untitled*, which addresses sexual assault and the definition of effective consent. The film was shown to incoming freshmen in August 2009.

¹⁰ For example, aspects of the education and prevention efforts may be different for incoming freshmen than for graduate students, faculty, or staff.

B. Summary of Recommendations

The recommendations that follow are predicated on these four precepts. In particular, we recommend that the University:

(1) Immediately appoint a University-wide standing Committee on Sexual Misconduct with a charge:

- ◆ To proceed with all deliberate speed to evaluate the *Proposed Yale Policy*¹¹ and to make a recommendation regarding its adoption and implementation.
- ◆ To evaluate the efficacy of the University's sexual-misconduct policies and procedures on an ongoing basis.
- ◆ To recommend such improvements and changes in both the written policies and procedures and their implementation as may be appropriate to prevent and respond to sexual misconduct at Yale.

As befits its broad mission, the Committee on Sexual Misconduct should be distinct from any adjudicatory bodies hearing cases involving allegations of sexual misconduct.

(2) Adopt the *Proposed Yale Policy*, which:

- ◆ Bars sexual misconduct by any member of community (including faculty, staff, and students).
- ◆ Includes definitions of the umbrella term "sexual misconduct" and of "consent" and illustrative examples.
- ◆ Distinguishes sexual misconduct from other offenses while placing it within the context of community values and professional ethics.
- ◆ Provides comprehensive descriptions of procedural options.
- ◆ Links to a complete set of resources.

(3) Create anonymous and third-party reporting mechanisms and clarify the circumstances under which confidentiality can be assured.

(4) Develop a single, streamlined University-wide system for both informal and formal resolution of complaints of sexual misconduct, in place of the current disjointed set of procedures.

(5) Create immediately a comprehensive, single-point-of-entry online information resource that contains all of Yale's sexual misconduct policies, procedural options, and resources. Also add a tab to the Yale University home page, entitled "Safety at Yale," which would directly link to the sexual misconduct website and to all of the other University resources and departments dedicated to ensuring the safety of the various members of the Yale community.

(6) Ensure that every member of the University community (including all incoming graduate students, teaching assistants, lecturers, and faculty and staff in non-supervisory roles) receives training on sexual misconduct. The University should also commit to following up

¹¹ See Appendix B.

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with those who have already completed training sessions, both to evaluate the efficacy of these programs and to underscore the importance of the issues involved. Refresher courses should be required on at least an annual basis.

(7) Develop a rapid-response plan to ensure the prompt promulgation of information and updates on incidents of sexual misconduct and, when indicated, investigation, disciplinary action, remediation, and support.

(8) Under the aegis of the Committee on Sexual Misconduct, periodically administer data-gathering instruments to a representative sample of all University constituencies to assess (a) knowledge of the University policies and procedures on sexual misconduct, (b) faith in those systems, and (c) experience utilizing them. The Committee on Sexual Misconduct would gather and retain data on instances or allegations of sexual misconduct and the outcomes of any informal or disciplinary procedures related thereto.¹² After reviewing these data, the Committee would, consistent with assurances of confidentiality, be expected to disclose an appropriate subset of that data to the Yale community on a regular basis.

We urge the President and the Provost to consider our recommendations as part of the ongoing conversations aimed at “strengthening Yale as a great place to study, teach, research, and work.”¹³ We are proud to be associated with a university that seeks to embody “the democratic ideals of openness, of social justice and of equal opportunity.”¹⁴ As University President Richard Levin has stated, “[I]n the diversity of its students, its global outlook, and its outstanding research, it is also a university of compelling change.”¹⁵ Diversity has rightly become a prerequisite to both attaining and sustaining excellence.¹⁶

Sexual misconduct is an assault on our community values¹⁷ that diminishes each of our diverse members.¹⁸ We recognize that it will take time for the administration and its counsel to evaluate all of the recommendations in this report. Yet we urge the University to proceed expeditiously with those proposals, such as establishing a University-wide standing Committee on Sexual Misconduct, creating a single-point-of-entry online resource containing all of the University’s existing sexual misconduct policies and procedural options, and adding the safety tab to the Yale University home page, that can be readily implemented while more dramatic changes, such as creation of a centralized adjudicatory body, are under consideration. The members of the Women Faculty Forum look forward to assisting the administration in this important undertaking.

¹² Certain data might have to be redacted to conform to federal privacy protections. See note 8, *supra*.

¹³ Yale University President Richard Levin, “Yale Tomorrow,” *available at* www.yaletomorrow.yale.edu.

¹⁴ Benno Schmidt Jr. (Yale College 1963), *available at*, <http://www.yaledailynews.com/articles/view/17505>. One of Wolf’s Head’s most prominent alumni and president of the University at the time, Schmidt vowed not to return to his society until it agreed to admit women.

¹⁵ Richard Levin, “President’s Welcome,” *available at*, www.yale.edu.

¹⁶ Research shows that diverse, heterogeneous groups have increased levels of creativity and productivity. See, e.g., O’Reilly, Williams, & Barsade, 1998: 183-207.

¹⁷ See Op-ed by Yale College Dean Mary Miller (the *Miller Op-Ed*), “Speaking out for Community Values,” *Yale Daily News*, September 7, 2009, *available at*,

<http://www.yaledailynews.com/opinion/guestcolumns/2009/09/07/millerspeakingoutcommunityvalues/>. The *SHAPE Report* also emphasized the need to educate incoming freshmen that sexual harassment, intimidation and assault violate community standards (*SHAPE Report*: 6).

¹⁸ See Resnik, 2004 (reasoning that sexual harassment injures not just the immediate victim but the entire community).

II. METHODOLOGY AND FINDINGS

In this part of the report, we summarize our methodology and findings.

A. Methodology

Over the course of the 2008-2009 academic year, the Working Group collected data on sexual misconduct policies at Yale and other universities.¹⁹ After reading the applicable Yale policies and procedures, we conducted telephone and in-person interviews with individuals at Yale, in advocacy organizations, and elsewhere.²⁰ We also reviewed relevant scholarly literature.

This report attempts to build on high quality practices at Yale and elsewhere. While recognizing ongoing efforts to address sexual misconduct at Yale (especially by Yale College), we primarily address in this report the ways in which the University's existing policies and procedures are inconsistent, opaque, or otherwise inadequate to ensure respect for the individual and the overall reputation of the University. We hope that this report will spur redoubled efforts to make the University safe for all its members.

B. Findings

Sexual misconduct on university campuses is rampant. As many as 25 to 28.5 percent of women²¹ and 14 percent of men²² may experience sexual assault while in college. More than 50 percent of college women have reported "verbal victimization,"²³ and 81 percent of students (male and female) report being sexually harassed during their school career.²⁴ The Yale University Sexual Harassment & Assault Resources & Education Center (the SHARE Center)²⁵

¹⁹ The procedures represented in Appendix C are the results of information gathered online and subsequent emails and phone calls. In some cases, it has not been possible to verify procedures through these efforts, but these charts are a good faith representation of the information available.

²⁰ The Working Group initially considered designing and disseminating a survey to assess community members' knowledge and use of Yale's policies and procedures. After reviewing Yale's policies, however, we concluded that there was an urgent and compelling need to clarify and make transparent Yale's existing policies. Accordingly, it seemed best not to delay issuance of our report until completion of such a large-scale survey.

²¹ Fisher, Cullen, & Turner, 2000; Krebs, Lindquist, Warner, Fisher, & Martin, 2007.

²² Davies, Polland, & Archer, 2000. This study also demonstrated that male victims report higher levels of self-blame and depression after assault, suggesting that they are even less likely to report than female.

²³ Fisher, 2000.

²⁴ AAUW, 1993. Cortina, Swan, Fitzgerald, & Waldo, 1998, reported that more than 70 percent of graduate students beyond their fourth year in school had endured such incidents.

²⁵ Yale established the Sexual Harassment & Assault Resources & Education Center (the SHARE Center) in 2006. Headed by Dr. Carole Goldberg, the Center has a staff of mental health professionals who are available to field phone calls from students, faculty or staff calling for assistance or crisis support twenty-four hours a day, seven days a week. Counselors are available to talk by phone or to meet in person to provide counseling, to facilitate medical care, to accompany the individual to the Emergency Department at Yale New Haven Hospital for care or the collection of physical evidence, and to help the individual decide how best to proceed—with medical assistance, follow-up counseling, notifying the police, and deciding whether to press charges and whether to file a complaint with the University. The SHARE website can be accessed at http://www.yale.edu/yhp/med_services/share.html. The Center also conducts faculty training and works with student groups, such as One in Four – Men Against Rape, to raise awareness through assault prevention programs.

The *SHAPE Report* states: "In all of our discussions with students and administrators, the work of the SHARE Center and its director, Dr. Carole Goldberg, received the highest praise." (*SHAPE Report*: 13). The *Report* recommends allocating more resources to the Center, which we understand has been done. The *Report* also stated

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hotline receives a greater number of phone calls each year. Nationally, upwards of 40 percent of female employees report behavior that falls within the definition of sexual harassment.²⁶ The actual number of incidents of sexual misconduct on university campuses is almost certainly even higher. Research shows that all forms of sexual misconduct, including both sexual harassment and sexual assault, are severely underreported. Only about 5 percent of survivors reported their sexual assault to authorities.²⁷ When the offender is a friend or acquaintance, as nine out of ten offenders are in the campus setting, sexual assaults are more than twice as likely to go unreported.²⁸

There have been intense conversations around the University in response to a number of high-profile incidents, such as the widespread email distribution in August and early September of 2009 of a “Preseason Scouting Report,” which identified fifty-three freshmen women by name, home town, and college and made what the *Yale Daily News* characterized as “vulgar” comments on their sexual attractiveness and other physical attributes;²⁹ the “Yale sluts” incident in Yale

that the SHARE website is “currently the best source of information about sexual assault and sexual harassment.” *Id.* We concur.

²⁶ Adams & Barling, 1999; United States Merit Systems Protection Board, 1995; Ilies, Hausermad, Schwochau, & Stibal, 2003, report that 58 percent of women in academia experience harassing behavior.

²⁷ Fisher, 2000.

²⁸ California Coalition Against Sexual Assault, 2008.

²⁹ On September 3, 2009, the *Yale Daily News* published an article describing the widespread dissemination of an email entitled “Preseason Scouting Report,” which “lists the names, hometowns and residential colleges of 53 freshman women, who are organized into categories based on appearance.” See Vivian Yee & Lauren Rosenthal, “Vulgar e-mail targets freshmen,” *Yale Daily News*, September 3, 2009, available at, <http://www.yaledailynews.com/news/university-news/2009/09/03/vulgar-e-mail-targets-freshmen/>. Representatives from The Women’s Center wrote an op-ed linking this email to other negative aspects of Yale’s sexual culture and called on students to think about how to “establish a community in which women and men are free to explore their sexuality in ways that are meaningful and even (yes) fun.” See Emily Hoffman & Blair Lanier, “The opposite of what we need,” *Yale Daily News*, September 4, 2009, available at, <http://www.yaledailynews.com/opinion/letters/2009/09/04/letter-opposite-what-we-need/>. Another op-ed asserted that the “Preseason Scouting Report” email violated the *Undergraduate Regulations* regarding sexual harassment and expressed disappointment with the administration’s response to date. See Emma Sloan, “A clear and unambiguous offense,” *Yale Daily News*, September 4, 2009, available at, <http://www.yaledailynews.com/opinion/letters/2009/09/04/letter-clear-and-unambiguous-offense/>. The *Yale Daily News* article breaking the story had quoted Yale College Dean Mary Miller as saying only, “I can’t prejudge whether the email has violated University regulations.” On September 6, 2009, The Women’s Center organized a campus-wide community discussion of the incident, called “Let’s Talk About Sex: A Conversation about Sex at Yale,” with support from women’s athletic teams, sororities, and cultural houses. The event was announced in Vivian Yee & Lauren Rosenthal, “Community-wide discussion planned in wake of ‘Scouting Report,’” *Cross Campus*, September 5, 2009, available at, <http://www.yaledailynews.com/crosscampus/2009/09/05/community-wide-discussion-planned-response-scoutin/>. See also Vivian Yee & Lauren Rosenthal, “Students host sex forum,” *Yale Daily News*, September 7, 2009, available at, <http://www.yaledailynews.com/news/university-news/2009/09/07/students-host-sex-forum/>. On September 7, 2009, Yale College Dean Mary Miller published a *Yale Daily News* op-ed, which called the email an “assault on our community values” and encouraged students to continue to discuss the ramifications of such an act on our relationships with one another within our “close-knit community.” See *Miller Op-Ed*, note 17, *supra*. One of the named freshmen published an op-ed piece that same day. See Brenna Hughes Neghaiwi, “Neghaiwi: ‘Scouted,’ listed, now responding,” *Yale Daily News*, September 7, 2009, available at, <http://www.yaledailynews.com/opinion/guest-columns/2009/09/07/neghaiwi-scouted-listed-now-responding/>. On September 9, 2009, the incident was essentially closed when the email was declared untraceable. See Vivian Yee & Lauren Rosenthal, “Origins of email still unknown,” *Yale Daily News*, September 9, 2009, available at, <http://www.yaledailynews.com/news/university-news/2009/09/09/origins-e-mail-still-unknown/>. An op-ed published that same day once again expressed disappointment with the administration’s response to the entire incident. See Justin Berk, “Shameful inaction by the University,” *Yale Daily News*, September 9, 2009, available at,

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College in 2008;³⁰ a letter sent to the Yale School of Medicine administration in 2007 by more than 100 students expressing grave concern regarding pervasive sexual misconduct at the YSM;³¹ and the 2004 publication of an article in *New York Magazine* by Naomi Wolf accusing a Humanities professor of sexual harassment during her time at Yale.³² Sometimes in direct response to these incidents and sometimes independently, parts of the University have re-examined and reformed their policies.³³ Nonetheless, anecdotal evidence suggests that, particularly among the student populations at Yale, there is little faith in the ability of at least parts of the University to satisfactorily resolve complaints of sexual misconduct.³⁴ This is a

<http://www.yaledailynews.com/opinion/letters/2009/09/10/letter-shameful-inaction-university/>.

³⁰ The “Yale sluts” incident refers to an incident (and subsequent campus reaction) in which members of the Zeta Psi fraternity pledge class stood outside the Yale Women’s Center holding a sign reading “We Love Yale Sluts.” A picture of the event was later posted on facebook.com and published in the *Yale Daily News*. See Zachary Abramson, “Misogyny claim leveled at frat,” *Yale Daily News*, January 22, 2008, available at, <http://yaledailynews.com/articles/view/23045>. Jessica Svendsen (Yale College 2009), a student whose entry to The Women’s Center was blocked by the fraternity members, filed a complaint with Executive Committee charging intimidation and harassment. She was subsequently advised that the Zeta Psi brothers were found “not guilty.” See “ExComm found rushes ‘not guilty,’” *Yale Daily News*, April 28, 2008, available at <http://old.yaledailynews.com/articles/view/24723>.

³¹ On December 7, 2007, 143 Yale Medical School students submitted a letter to the Dean of the Yale Medical School (the *2007 Medical School Letter*) in which they stated that “sexual harassment—including groping, intimidation, and verbal abuse—and acts of sexual assault—including rape” continue to occur within the YSM community without being appropriately addressed. The *2007 Medical School Letter* is available at http://medicine.yale.edu/policy/docs/YSM_Sexual_Harassment_Working_Group_Document_to_the_Dean-3-2-08.pdf.

³² See Naomi Wolf, “Sex and Silence at Yale,” *New York Magazine*, February 23, 2004, available at, http://nymag.com/nymetro/news/features/n_9932/.

³³ For example, while acknowledging that the administration had made certain changes in the YSM’s policies and procedures in response to the 2005 report *Concerns Regarding the Current Environment at YSM and Suggestions for Improvement* (submitted to Dean Nancy Angoff in April 2005), available at, <http://drs.library.yale.edu:8083/fedora/get/mssa:ru.1005/PDF>, the *2007 Medical School Letter* indicated that many of the 2005 report’s recommendations had still not been implemented. The students went on to state that the Yale School of Medicine “currently lacks open acknowledgement of problems of sexual harassment and assault, appropriate discipline of individuals who engage in sexual assault and sexual harassment, and a comprehensive proactive program to improve the learning environment. We believe that the tone set by the institution at the highest levels can result in a change in institutional culture and individual behavior. Each incident of sexual harassment that goes without an effective response is a missed opportunity to promote ethical behavior among future physicians. If perpetrators go unpunished, their actions put future patients at risk, and are a poor reflection of the physicians that YSM produces.”

On July 11, 2007, YSM Dean Robert Alpern appointed the Working Group in Examining Sexual Harassment and Sexual Assault Procedures and Processes at the Yale School of Medicine. That group issued its report on December 7, 2007. The Dean accepted the recommendations of this report and formed an Implementation Committee that worked throughout 2008 to ensure that all recommendations were systematically implemented. One of the Working Group’s recommendations was that “a vigorous reappraisal be undertaken to assess the structure, functioning and composition of the [YSM Dean’s] Board [on Sexual Harassment].” A special committee was convened to accomplish this task. This committee proposed a sweeping revision of the “Grievance Procedures for Complaints of Sexual Harassment Brought by Faculty, Students and Postdoctoral Fellows at the Yale University School of Medicine.” This report was approved by the YSM Dean in September 2009. As the final step to complete implementation of the Working Group’s recommendations, the structure of the YSM Dean’s Board on Sexual Harassment is now being revised according to the procedures outlined in this report.

³⁴ See note 33, *supra*, for a discussion of concerns raised by students at the Yale School of Medicine and subsequent reforms. At the Yale College level, several *Yale Daily News* articles expressed concern with the seeming lack of response by the administration to the “Yale sluts” incident and the apparent absence of changes to the sexual harassment policies, procedures and culture at Yale. See “Days later officials still ignoring ‘sluts’ incident,” *Yale*

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common phenomenon at universities. In one study, an average of 70 percent of college students indicated that they “do not have confidence in the process [of resolving complaints of sexual misconduct at their university] or those who administer it.”³⁵

Recent events offer the opportunity for the Yale administration both to publicize more broadly the steps the University has already taken to reduce incidents of sexual misconduct and to enact the comprehensive reforms necessary to enhance the physical³⁶ and psychological³⁷ safety of all members of the Yale community. Enactment of the reforms recommended by this report would demonstrate Yale’s serious, proactive, and transparent approach to addressing sexual misconduct on campus and vault Yale into a leadership position in this area.

Our research revealed wide variations among the policies and procedures on sexual misconduct applicable to different members of the Yale community. In addition, it can be difficult to locate the policies and procedures that do exist.

There is a University-wide *Statement on Sexual Harassment*,³⁸ but there is no University-wide or uniform set of policies and procedures for handling complaints of sexual harassment other than the Provost Procedure for Student Complaints, which is available only when a complaint of sexual harassment is brought by a student against a respondent from another school. There is, however, no University-wide definition of “sexual misconduct” and no University-wide policy banning forms of sexual misconduct other than sexual harassment and discrimination based on sex.

Certain schools have promulgated their own procedures for handling complaints of sexual harassment, but they apply only to cases involving complainants and respondents from that school. Sometimes they refer to Dean’s procedures without further elaboration.

Daily News, January 30, 2008, available at, <http://www.yaledailynews.com/opinion/staff-columns/2008/01/30/days-later-officials-still-ignoring-sluts-incident/#>; “‘Yale Sluts,’ fraternities consider forming council,” *Yale Daily News*, available at, <http://old.yaledailynews.com/articles/comments/23613>. “A year later,” the *Yale Daily News* reported, “[l]ittle impact from ‘Sluts’ controversy,” available at, <http://old.yaledailynews.com/articles/view/27753>. The *YDN* also reported students’ disappointment in the administration’s perceived inaction regarding the “Preseason Scouting Report” email. See, e.g., Sloan note 29, *supra*; Berk, note 29, *supra*.

A senior essay by Nicole Allan (Yale College 2009), entitled *To Break the Silence or be Broken by It: A genealogy of women who have refused to shut up about harassment at Yale*, focuses on a little known case of sexual harassment at Yale in 1977, reported at *Alexander v. Yale*, 459 F. Supp. 1 (D. Conn. 1977). Allan drew parallels to more contemporary issues of sexual harassment and assault at Yale, such as the “Yale Sluts” incident, and she noted frequent dissatisfaction with sexual misconduct proceedings within the Yale community.

³⁵ Sokolow, 2001.

³⁶ The tragic murder of the graduate student Annie M. Le in September 2009 shocked the entire Yale community and prompted renewed calls for enhanced security on campus. On September 17, 2009, the authorities announced the arrest of Raymond Clark III, a Yale lab technician who worked in the laboratory where Ms. Le worked and was killed, for her murder. As of the date of this report, the motivation for the killing had not been publicly disclosed.

³⁷ Safety is essential to ensure that the members of the community can hear all voices, including those often least heard. As stated in the Yale School of Management’s *Diversity Vision Statement*:

“While a breadth of perspectives is important, we are especially concerned with having the most difficult conversations, hearing the voices least heard and providing leadership where it is urgently needed.” Available at, <http://mba.yale.edu/why/diversity/vision.shtml>.

³⁸ Available at <http://www.yale.edu/yalecollege/publications/instructors/policy/harassment.html>.

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Yale College has recently promulgated a comprehensive ban on sexual misconduct, broadly defined.³⁹ We support the College's use of the umbrella term "sexual misconduct" and recommend that this terminology be adopted university-wide. Moreover, we urge the University to adopt uniform policies and procedures for resolving claims of sexual misconduct by students, faculty, or staff and to implement them through a centralized standing Sexual Misconduct Grievance Board (the Grievance Board) comprising students, faculty, and staff,⁴⁰ ideally under the aegis of the Office of the President or the Provost and the Committee on Sexual Misconduct.

We recognize that this marks a sharp departure from past practice. Historically, reforms in this area have been adopted primarily on a local level (that is, within sub-sections of the University), in response to local impetus, including all too often a major incident that has demonstrated the inadequacy of a given policy. This balkanized, ad hoc approach to reform has tended to result in grindingly slow, inefficient, and opaque change. Often those charged with reform have not reaped the benefit of others' experience or expertise. The opacity of the reform process may increase doubts, warranted or not, about the responsiveness of the University to complaints or incidents. Replacing the current decentralized, ad hoc, and less visible efforts at reform with a more centralized approach would establish Yale as a leader among universities for creating a unified but diverse community of scholars, learners, and educators committed to establishing the environment of trust essential to learning⁴¹ and to free academic inquiry and exchange.

³⁹ See *Undergraduate Regulations, Section G*, available at, <http://www.yale.edu/yalecollege/publications/uregs/appendix/sexual.html>.

⁴⁰ See "Resolution Procedures," *infra*.

⁴¹ See the reference to the importance of trust in the Yale University "Policy on Teacher-Student Consensual Relations," available at, <http://www.yale.edu/equalopportunity/policies/>. See also *Alexander v. Yale University*, 459 F. Supp. 1 (D. Conn. 1977), *aff'd*, 631 F.2d 178 (2d Cir. 1980).

III. DEFINITION OF “SEXUAL MISCONDUCT”

We use the term “sexual misconduct” as an umbrella term to include a broad range of gender-based offenses from rape and sexual assault (which includes any kind of non-consensual sexual contact), to any conduct of a sexual nature that is nonconsensual, or has the purpose or effect of threatening or intimidating the person against whom such conduct is directed, to gender discrimination and sexual stereotyping in the teaching, learning, and working environment.⁴² For a more detailed description of this spectrum of included offenses, please see Appendix B.

By referring to this suite of offensive behaviors as a “range,” we do not mean to minimize non-violent offenses, such as demeaning sexual joking and gender discrimination. Notwithstanding claims that “sexual banter and jokes provide a fun and jovial atmosphere at work and that sexual flirtation and invitations can be flattering and result in love and romance,”⁴³ Berdahl and Aquino (2009) found that employees who experienced sexual behavior of this sort reported more work withdrawal than employees who did not, regardless of whether they reportedly enjoyed the sexual behavior. Moreover, the more employees experienced sexual behavior, the worse their psychological well-being.⁴⁴ Richman, Rospenda, Nauyn, Flaherty, Fendrich, Drum, & Johnson (1999) also found a significant and consistent correlation for both genders between harassment and substance abuse and depression and anxiety.⁴⁵

The umbrella term “sexual misconduct” captures the ways in which different types of gender-based misbehavior often share similar motivations and, more importantly, have similar effects, namely, fear, shame, and silence. For example, research shows that even single incidents of relatively “subtle” harassment, such as inappropriate questions during a job interview, provoke fear and result in observable negative effects on job performance.⁴⁶

⁴² See, e.g., *PriceWaterhouse v. Hopkins*, 490 U.S. 228 (1989), in which the U.S. Supreme Court held that the accounting firm PriceWaterhouse had impermissibly discriminated against a woman denied partnership because she failed to meet the partnership policy board’s stereotypes of “appropriate female demeanor. She had been told that she needed to “walk for femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.” The Court found impermissible discrimination based on sex: “An employer who objects to aggressiveness in women but whose positions require this trait places women in an intolerable and impermissible Catch-22: out of a job if they behave aggressively and out of a job if they don’t. Title VII lifts women out of this bind.” This logic applies equally to males discriminated against for not being “manly enough.”

⁴³ Berdahl & Aquino, 2009: 34, citing Pierce, Byrne, & Aquino, 1996; Powell & Foley 1998; Williams, Giuffre, & Dellinger, 1999.

⁴⁴ Berdahl & Aquino, 2009.

⁴⁵ *But see* Frank Carrera, Stratton, Bickel, & Nora, 2006, which found no significant relation between clinically diagnosed depression and harassment. Frank et al., 2006, did, however, state that their data and that of others “suggest that, abusive behavior, especially by those in positions of power, contributes to [medical] students’ poor mental health.” (*Id.*: 6.)

⁴⁶ Woodzicka & LaFrance, 2005.

IV. POLICIES AND PROCEDURES ON SEXUAL MISCONDUCT

In the balance of this report, we discuss the seven components we consider necessary to create an effective set of sexual misconduct policies and procedures: (a) articulation of the policy and procedures; (b) establishment of appropriate reporting mechanisms; (c) creation of fair informal and formal resolution mechanisms; (d) widespread communication of the policy and procedures; (e) provision of adequate training; (f) adoption of a crisis-management protocol to deal with incidents of sexual misconduct and the aftermath thereof; and (g) ongoing collection of data, monitoring, and reassessment. For each component, we provide a brief summary of the literature and then summarize best practices drawn from within Yale, other universities, and from non-academic practitioners, such as the Connecticut Sexual Assault Crisis Services (CONNSACS). Finally, we evaluate Yale's existing practices with respect to each component and offer recommendations for improvement. We discuss implementation in Part V.

A. Policy Language

Crafting appropriate policy language is the first step in developing effective policies and procedures on sexual misconduct. Questions to be addressed include: Are the relevant terms clearly defined? Does the policy effectively communicate all pertinent information and procedural options, including rights of complainants and respondents, informal vs. formal resolution, all the reporting options, and possible sanctions? Does the language of the policy refer only to legal obligations or capture the aspiration to create a community that values the unique contributions of its diverse members?

1. Review

One of many reasons for failing to report incidents of sexual misconduct is lack of clarity in definitions, policies, and procedures.⁴⁷ Less than half of the women who reported facts constituting sexual harassment, as defined by the Equal Employment Opportunity Commission, the Department of Education or the courts, identified that conduct as sexual harassment per se.⁴⁸ Similar disparities exist for men who reported coercive or harassing sexual behavior, but did not label it as misconduct.⁴⁹ Although women in academia report more harassing behavior than women in industry, academics are significantly less likely to label this behavior as sexual harassment.⁵⁰ Lack of clarity is particularly problematic given the psychologically vulnerable state in which victims of sexual misconduct may find themselves.

Evidence suggests that clear definitions and graphic descriptions or illustrations of offending behaviors prompt more women to identify their experiences as a form of sexual assault.⁵¹ When included in written policies, definitions and descriptions make women feel more comfortable reporting.⁵²

⁴⁷ See also "Reporting Mechanisms" and "Communication of Policies and Procedures," *infra*.

⁴⁸ Ilies et al. 2003; Adams & Bauding, 1999.

⁴⁹ Krebs, 2007.

⁵⁰ Ilies et al., 2003.

⁵¹ Fisher, 2000.

⁵² Brooks & Perot, 1990.

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For example, Brett Sokolow, a lawyer specializing in risk management in higher education, particularly sexual misconduct policy, highly recommends the inclusion of illustrative, hypothetical examples to further explicate clear definitions.⁵³ Karjane et al. (2002) make the same recommendation:

First, behavioral definitions help to translate abstract legal concepts into behaviors understandable to an audience of young adults. Second, this form of education is particularly powerful within settings where facilitators provide male and female students with an opportunity to talk about—and listen to—how others perceive certain behaviors and how behaviors and definitions relate to one another. Since interpretations of behaviors are always laden with gender and other cultural norms of perception, it is important to illustrate definitions in forums where students have the opportunity to voice their understandings, and misunderstandings, regarding sexually appropriate behavior. Finally, behavioral illustrations enable students to identify their own prejudices and/or misinformation regarding rape.⁵⁴

This is not just a matter of underreporting. Clear definitions are also critical for potential perpetrator awareness and behavior. Well-communicated policies and practices make it clear that an organization takes the issue of sexual misconduct very seriously and thereby help reduce the occurrence of sexual misconduct and increase the likelihood that the incidents that do occur will be reported and dealt with effectively.⁵⁵

2. Status at Yale

The quality of Yale's written policies and resources varies significantly. Yale University's "Statement on Sexual Harassment," published in the "Sexual Harassment Guide Faculty, Students and Staff" (the *Sexual Harassment Guide*),⁵⁶ is clear, albeit somewhat legalistic. It defines "sexual harassment" as:

nonconsensual sexual advances, request for sexual favors, or other verbal or physical conduct of a sexual nature on or off campus, when: (1) submission to such conduct is made either explicitly or implicitly a condition of an individual's employment or academic standing; or (2) submission to or rejection of such conduct is used as the basis for employment decisions or for academic evaluation, grades, or advancement; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating or hostile academic or work environment.⁵⁷

The *Statement* notes that "[s]exual harassment may be found in a single episode, as well as in persistent behavior."⁵⁸

The *Sexual Harassment Guide* outlines the two general types of sexual harassment: quid pro quo⁵⁹ and hostile environment⁶⁰. It does not address other forms of sexual misconduct, such as

⁵³ Sokolow, 2001; Sokolow, 2004.

⁵⁴ Karjane, Fisher, & Cullen, 2002: 147.

⁵⁵ See "Communication of Policy," *infra*.

⁵⁶ See note 38, *supra*. Yale University's *Statement on Sexual Harassment* states: "Sexual harassment is antithetical to academic values and to a work environment free from the fact or appearance of coercion. It is a violation of University policy and may result in serious disciplinary action."

⁵⁷ *Id.*

⁵⁸ The *Statement* goes on to note: "Conduct that occurs in the process of application for admission to a program or selection for employment is covered by this policy, as well as conduct directed toward University students, faculty, or staff members."

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sexual assault, but does note that “[w]hen sexual harassment involves physical contact, the University’s policy on sexual assault may apply.” It provides no reference to where that policy may be found, however. The *Policy on Teacher-Student Consensual Relations* bans sexual relations between teachers and students regardless of whether the relationship is consensual.⁶¹

The Yale College definition of “sexual misconduct” in the 2009-2010 *Undergraduate Regulations*⁶² and the descriptions on the SHARE Center website are very helpful as is the

⁵⁹ See clauses (1) and (2) of the definition of “sexual harassment.”

⁶⁰ See clause (3) of the definition of “sexual harassment.”

⁶¹ *The Policy on Teacher-Student Consensual Relations* provides:

The integrity of the teacher-student relationship is the foundation of the University's educational mission. This relationship vests considerable trust in the teacher, who, in turn, bears authority and accountability as a mentor, educator, and evaluator. The unequal institutional power inherent in this relationship heightens the vulnerability of the student and the potential for coercion. The pedagogical relationship between teacher and student must be protected from influences or activities that can interfere with learning consistent with the goals and ideals of the University. Whenever a teacher is responsible for directly supervising a student, a sexual relationship between them is inappropriate. Any such relationship jeopardizes the integrity of the educational process by creating a conflict of interest and may lead to an inhospitable learning environment for other students.

Therefore, no teacher shall have a sexual relationship with a student over whom he or she has direct supervisory responsibilities regardless of whether the relationship is consensual. Teachers must avoid sexual relationships with their students, including those for whom they are likely to have future supervisory responsibility. Conversely, teachers must not directly supervise any student with whom they have a sexual relationship. Violations of or failure to correct violations of these conflict of interest principles by the teacher will be grounds for disciplinary action.

For purposes of this policy, “direct supervision” includes the following activities (on or off campus): course teaching, examining, grading, advising for a formal project such as a thesis or research, supervising required research or other academic activities, and recommending in an institutional capacity for employment, fellowships, or awards.

This policy applies to instructors in all ranks, including part-time, adjunct, and visiting instructors. This policy is available at <http://www.yale.edu/yalecollege/publications/instructors/policy/harassment.html>.

⁶² See note 39, *supra*. The *Undergraduate Regulations* provide as follows:

Definition of Sexual Misconduct Including Sexual Assault and Sexual Harassment:

Sexual misconduct encompasses a range of behavior including sexual harassment, sexual assault, and any conduct of a sexual nature that is nonconsensual, or has the effect of threatening or intimidating the person against whom such conduct is directed.

According to the statutes of the State of Connecticut, unwanted sexual contact or sexual assault may take the form of any of the following: vaginal or anal intercourse; fellatio or cunnilingus; or penetration with an object manipulated by the charged student into the vagina or anus. Unwanted sexual contact can also involve contact with the intimate parts of another person (the genitals, groin, anus, inner thighs, buttocks, or breasts). Such contact could be for the purpose of degrading or humiliating another person for the sexual gratification of the charged student, or it could entail use of a weapon, physical force, violence, or superior strength.

Sexual activity requires consent, which is defined as voluntary, positive agreement between the participants, to engage in specific sexual activity. Consent to sexual activity can be communicated in a variety of ways, but one should presume that consent has not been given in the absence of clear, positive agreement. While verbal consent is not an absolute requirement for consensual sexual activity, verbal communication prior to engaging in sex helps to clarify consent. Students, therefore, are strongly encouraged to communicate verbally before engaging in sexual activity. However potentially awkward it may seem, talking about your own and your partner’s sexual desires, needs, and limitations provides a basis for a positive experience.

Consent must be clear and unambiguous for each participant at every stage of a sexual encounter. The absence of “no” should not be understood to mean there is consent. A prior relationship does not indicate consent to future activity. A person who is asleep or mentally or physically incapacitated either

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discussion of consent in the *Undergraduate Regulations* and on the SHARE Center website. The new film *Relationships: Untitled*, which was produced by Assistant Yale College Dean Jill Cutler and first shown to the freshmen class in August 2009, highlights the role alcohol can play in vitiating consent to sexual relations.

Unfortunately, Yale's other schools lack comparable definitions. Nor are there detailed descriptions of the varied types of sexual misconduct. For example, the policies at certain professional schools do not provide their own comprehensive definitions, or even reliably link to the more complete definitions on the SHARE Center site. None of Yale's current policies include descriptive, hypothetical scenarios, which would illustrate the breadth and variety of possible incidents of sexual misconduct.

Other than the Yale College policy, University policies do not appear to refer to sexual misconduct by name. The newly adopted procedures adopted by the School of Medicine do, however, refer to both sexual harassment and sexual assault. Furthermore, there is often no indication of how the terms "sexual misconduct," "sexual harassment," and "sexual assault" relate to each other.⁶³ Even when it is mentioned, sexual misconduct is often not distinguished from other disciplinary offenses, such as violations of the fire code. For example, in *Honor Codes* across the University, sexual misconduct is too often elided into broader reference to disciplinary infractions, such as misuse of facilities and plagiarism. The procedures available to deal with these other infractions may not be well-suited to resolving emotionally charged cases of sexual misconduct and to protecting the parties involved.

3. Recommendations

Any and all references to sexual harassment or other forms of sexual misconduct should include, or be linked to, a centralized, comprehensive definition of the term "sexual misconduct." Sexual

through the effect of drugs or alcohol, or for any other reason, is not capable of giving valid consent. Additionally, the use of alcohol or drugs may seriously interfere with the participants' judgment about whether consent has been sought and given. When there is a lack of mutual consent about sexual activity, or there is ambiguity about whether consent has been given, a student can be charged with, and found guilty of, committing a sexual assault or another form of sexual misconduct.

The State of Connecticut amplifies the definition of lack of consent in the following ways: someone might not give consent because of mental incapacity (they might have consumed alcohol or drugs so as to become significantly impaired in awareness or judgment, or have been given, a drug or intoxicating substance against their will) or because of physical helplessness (they were unconscious or otherwise physically unable to communicate consent). A lack of physical resistance to sexual contact or intercourse does not imply a lack of consent. But the State of Connecticut is firm in its belief that a lack of physical resistance does not in itself indicate consent to a sexual contact.

[See Connecticut General Statutes Sections 53a-65(1-7); and Sections 53a-70(a) (1 and 2).]

Sexual harassment consists of nonconsensual sexual advances, requests for sexual favors, or other verbal or physical conduct on or off campus, when: (1) submission to such conduct is made either explicitly or implicitly a condition of an individual's employment or academic standing; or (2) submission to or rejection of such conduct is used as the basis for employment decisions or for academic evaluation, grades, or advancement; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating or hostile academic or work environment. Sexual harassment may be found in a single episode, as well as in persistent behavior.

Any student who engages in sexual misconduct should be aware that his or her behavior may be considered criminal under Connecticut statutes and could result in criminal prosecution, as well as disciplinary action by the Yale College Executive Committee.

⁶³ See Appendix B for further details of recommended definitions.

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misconduct should be used as an umbrella term that encompasses rape and sexual assault, sexual harassment, and other forms of sexual misconduct, with further, more nuanced gradations as appropriate. Sexual harassment must be understood as including creation of a hostile environment and quid pro quo harassment, as well as harassment predicated on sexual stereotyping.⁶⁴

Including a clear definition of effective consent is critical to ensure that all members of the community understand that sexual contact without consent is sexual assault. It is vital to reaffirm, as is now the case in the *Undergraduate Regulations*, that consent is vitiated if either party is incapacitated, including through the consumption of alcohol or drugs. The discussion of consent in the 2009-2010 *Undergraduate Regulations* should be adopted University-wide and incorporated in each school's policies and procedures on sexual misconduct. We agree that "verbal consent is not an absolute requirement for consensual activity"⁶⁵ but recommend that the University policy shift the burden of proving consent to the respondent when the complainant denies giving consent and the respondent concedes that no verbal consent was given.

All definitions should be accompanied by descriptions and illustrative examples accessible to laypersons. Although definitions should be universal, certain examples may work best when tailored differently to different members of the community (faculty, staff, undergraduates, or graduate students). We encourage the SHARE Center to add additional examples to its website, which should be cross-referenced through links in the University policy.

The policy should make it clear that sexual misconduct is antithetical to the community values of the University as a whole as well as its constituent schools. It diminishes and injures⁶⁶ each of us, not just the targeted individuals.⁶⁷ Statements condemning sexual misconduct may be particularly effective when presented in the professional ethic of a given community.⁶⁸ Broader disciplinary statements should indicate that sexual misconduct (as well as other kinds of identity-based harassment) is particularly offensive and can be criminally disruptive to the community's stated values.

⁶⁴ "The guidance clarifies that gender-based harassment, including that predicated on sex-stereotyping, is covered by Title IX if it is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program. Thus, it can be discrimination on the basis of sex to harass a student on the basis of the victim's failure to conform to stereotyped notions of masculinity and femininity." (Department of Education, 2001.)

⁶⁵ See *Undergraduate Regulations*, note 39, *supra*.

⁶⁶ See authorities cited in notes 43-46, *supra*.

⁶⁷ See Resnik, 2004.

⁶⁸ A good extant example of a professional ethics-based statement of community values can be found on the School of Management website (*available at* <http://mba.yale.edu/why/diversity/index.shtml>):

Diversity is an essential element of the Yale School of Management's mission to educate leaders for business and society, and of our distinctive model of values based leadership. An effective leader for business and society is one who is able to hear, understand and communicate with people from all segments of society. In order to educate such leaders, Yale SOM is committed to promoting diversity and creating a community that cultivates a wealth of perspectives. Leaders from Yale SOM are comfortable with difference, believe in the value of diverse perspectives and aspire to lead organizations and communities across boundaries.

We are committed to building a Yale School of Management community that is diverse across many dimensions, including race, gender, ethnicity, sexual orientation, physical ability, nationality, socioeconomic status, religion, political opinion, education, and professional experience and aspirations. While a breadth of perspectives is important, we are especially concerned with having the most difficult conversations, hearing the voices least heard and providing leadership where it is urgently needed.

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Similarly, the relationship of procedures for the resolution of incidents of sexual misconduct to other disciplinary mechanisms should be clearly articulated, especially when there are informal mechanisms unique to sexual misconduct. In addition to including clear descriptions of jurisdiction, rules of evidence, and possible sanctions, the policy should include a commitment to confidentiality along with a clear articulation of its limits (especially when the scope of confidentiality varies according to the procedural choice).⁶⁹ As is the case now at Yale, any form of retaliation must be prohibited.⁷⁰ The policy should identify the campus and community resources available to victims, respondents, and their friends and advisers, along with reporting options.⁷¹

B. Reporting Mechanisms

Research reveals that most sexual misconduct is unreported. Common reasons include fear of being disbelieved, lack of understanding of or faith in the policies, as well as shame, self-blame, fear of reprisal from the accused, and fear of secondary victimization (namely, that friends, family, or authorities will blame or judge the complainant for what happened to him or her).⁷² Mechanisms for reporting incidents of sexual misconduct that are confusing, or that fail to ensure confidentiality, impartiality, and protection from retribution, constitute structural impediments to an effective system. Ideally, those who must have experienced sexual misconduct have access to a variety of reporting mechanisms.

1. Review

Nationwide, reporting for incidents of sexual misconduct is disproportionately low compared with other offenses. In addition to lack of clarity in policy, other commonly cited impediments to reporting are fear of being disbelieved, shame, self-blame, fear of reprisal from the accused, and fear of secondary victimization (that friends, family, or authorities will blame or judge the person for what happened to him or her).⁷³

Experts agree that there is a tension between offering absolute confidentiality and ensuring that reports of sexual misconduct in fact trigger prompt and appropriate corrective action. Moreover, under certain circumstances requests for confidentiality cannot be honored as a matter of law. For example, if a patient discloses to a physician or licensed mental health professional that he or she is in imminent physical danger, then that professional has a duty to file a report with the police.⁷⁴

⁶⁹ For example, although most communications with a physician or licensed mental health care professional are privileged, other communications may be subject to disclosure pursuant to a subpoena in a civil or criminal action. *See also* text accompanying note 74, *infra*.

⁷⁰ This prohibition should extend to complaints, witnesses, advisors, and members of the Sexual Misconduct Grievance Board and the Committee on Sexual Misconduct.

⁷¹ *See also* Karjane et al., 2002; Sokolow, 2001.

⁷² Fisher et al., 2000; Rudman, Bogida, & Robertson, 1995; Sokolow, 2001.

⁷³ Fisher et al., 2000; Sokolow, 2001.

⁷⁴ This report does not purport to provide an exhaustive analysis of the contours of confidentiality in sexual misconduct cases. We do recommend that the Office of General Counsel provide guidance in this area to all members of the community.

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Studies suggest that skepticism regarding the likelihood that filing a complaint will prompt an appropriate response is also a barrier to reporting.⁷⁵ No single intervention is likely to address all of these issues, but the creation of multiple reporting options and their effective communication make it more likely that victims will come forward.

2. Status at Yale

Since 2004, Yale has done much to improve its reporting procedures, notably by establishing the SHARE Center and its hotline. In 2008, the Yale Campus Security Report cited eight instances of sexual assault. This report, which is prepared annually in accordance with federal law and detailed federal regulations, cites reports of sexual assault that occur in a specifically defined geographic area, which generally includes campus property and areas immediately adjacent to campus. Without limiting geographic scope, the SHARE Center reported twenty-four incidents of sexual assault and seven incidents of sexual harassment in 2008. Even the SHARE Center figure is still lower than the sixty-three attempted or completed rapes (among undergraduate women alone) predicted by experts⁷⁶ for a campus of Yale's size. Given the evidence of underreporting on university campuses⁷⁷ and the anecdotal evidence at Yale, we believe that Yale can do more to address incidents of sexual misconduct on campus.

3. Recommendations

Data suggest that after experiencing sexual misconduct, an individual is thirteen times more likely to tell a friend or confidante than to file an official report.⁷⁸ Yale could get a better sense of the occurrence of sexual misconduct on campus if it created anonymous and third-party reporting opportunities, similar to what the University of Virginia offers on its sexual misconduct resource website.⁷⁹ Yale's experiences with the Human Resources hotline for whistleblowers may prove instructive in this regard.

If the Committee on Sexual Misconduct were given access to the assailant/harasser data provided in anonymous or third-party reports, then the issue of repeat offenders going unreported could be better addressed, or at least monitored. This may not be appropriate in all cases, however, especially when the complaining party expresses fears of retaliation. In such cases, even a general description of incidents would provide valuable information to the University administration and might justify additional training for a specific group or department.

Additionally, Yale should more widely promote current reporting options via multiple modes of communication, such as phone, email, mail, and in-person. We believe that utilization of the SHARE Center would increase significantly if it were publicized more broadly outside of the undergraduate community. We recommend the creation of a tab on the Yale University home

⁷⁵ Adams & Barling, 1999; Bergman, Langhout, Palmieri, 2002; Rudman et al. , 1995.

⁷⁶ Fisher, 2000.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ The University of Virginia sexual assault report is *available at* http://sexualassault.virginia.edu/third_party_report.html. This form could be modified to include sexual harassment and all other forms of sexual misconduct. Karjane et al., 2002, recommend adoption of the type of anonymous and third-party reporting options offered by University of California at Los Angeles. We recognize that anonymous and third-party reporting can complicate the reporting of incidents of sexual misconduct, but we believe that the benefits of such reporting outweigh the costs.

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page entitled “Safety at Yale,”⁸⁰ which would link to the SHARE Center and other resources, such as the Yale Police. Another reporting option that appears to be under-promoted is the Office of Equal Opportunity Programs (OEOP). OEOP’s brief spans all areas of the University and the office can register, if not actively address, issues from any member of the community. This is an excellent option for community members who wish to report to someone with whom they do not have day-to-day contact. Even if a complainant prefers a more localized point of contact, relaying the report to the OEOP makes it possible to create a more comprehensive record of incidents of sexual misconduct, even if no action emanates from that office.

University policy should also take into consideration the heightened risk of sexual misconduct perpetrated against international students, postdocs and visiting scholars and against lesbian, gay, bisexual, transgendered and queer/questioning (LGBTQ) persons and against men and women of color. Visa issues may make certain members of the community particularly vulnerable; cultural differences may pose additional challenges. In addition, data suggest that sexual misconduct in the LGBTQ community is even more underreported than in the broader community, as at least some LGBTQ persons may fear, often justifiably, retaliation or disbelief if they reveal their sexual orientation and/or gender identity.⁸¹ Similar statistics on underreporting exist for women of color. (Information about men of color is not as readily available.) This is particularly disturbing as women of color, especially African-American women between the ages of twenty and twenty-four, experience higher rates of sexual assault and harassment than their Caucasian peers.⁸² The University should conduct significant outreach to groups on campus, including international students, postdocs, and scholars, and utilize resources at the Cultural Houses, the LGBT Co-Op, and Faculty and Staff Affinity Groups, as these places may be the first place that an international student, postdoc, student or a LGBTQ person or a man or woman of color feels comfortable going for help.

C. Resolution Procedures

Resolution procedures include both informal and formal mechanisms for resolving complaints of sexual misconduct and imposing sanctions. Questions addressed in this section include: What informal procedures exist and how might they be improved? How does the formal adjudicatory process work? What is the composition of the adjudicatory board and how are the members trained? What, if any, are the established jurisdictional and evidentiary standards? What sanctions, if any, are available? What are the options for a complainant or respondent unsatisfied with the results of a given procedure? Who has the power to make the final ruling on a formal resolution involving sanctions?

1. Review

There is little peer-reviewed research on resolution and adjudication procedures for sexual misconduct (especially in academic settings), particularly when compared with the relative wealth of information on occurrence, reporting, and training. However, given the limited

⁸⁰ The School of Medicine came to a similar conclusion in the 2008-2009 revisions of their grievance procedures for sexual misconduct, which encourage their community members to make greater use of the SHARE Center.

⁸¹ CALCASA, 2008.

⁸² *Id.*

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literature and recommended practices from experts and peer institutions (as well as best practices within Yale), strong recommendations may still be made.

Consider the following sobering statistic:

7 out of 10 students on college campuses, asked for their opinions on how their administration handles sexual assault complaints, say that they do not have confidence in the process or those who administer it. This staggering and often undeserved vote of “no confidence” is typical of students on college campuses, whether based on rumor, implication, evidence, or assumption. Moreover, students don’t just see bias as the problem, but a perceived incompetence coupled with a desire to sweep rape under the carpet.⁸³

Resolution mechanisms, both informal and formal, should provide for the highest level of confidentiality possible (consistent with applicable law), protection from retaliation, and impartiality for all parties involved. Both complainants and respondents must be able to utilize these procedures with the utmost confidence.

From start to finish, and regardless of which procedural options are chosen, procedures should recognize

the victim’s need to control the pace of the process and be in charge of making decisions as she or he moves through the campus and/or community law enforcement system. . . . Student victims may choose whether to move to the next step in the process and are made aware of the consequences of each action they may take, what to expect, and how their confidentiality will be maintained.⁸⁴

Of the ten comparable institutions we surveyed, Brown,⁸⁵ Columbia,⁸⁶ Cornell,⁸⁷ and University of Virginia⁸⁸ each offer procedural options for the resolution of allegations of sexual misconduct that are more centralized, streamlined, and well-articulated than Yale’s current system.⁸⁹ Despite having diverse and often decentralized systems of academic and non-academic units, these institutions have found it advantageous to consolidate their procedures, as advocated by Karjane et al. (2002) and Sokolow (2001). Establishing a board whose only charge is to investigate charges of sexual misconduct “sends a message about how seriously the college takes sexual violence, and provides a sense of specialized competence with this type of complaint, which is reassuring to complainants, and hopefully to respondents as well.”⁹⁰

Policies should specify the size, composition, and training of each hearing board; the rules of evidence and standard of proof; any applicable statute of limitations; the timeline of proceedings;

⁸³ Sokolow, 2001: 12.

⁸⁴ Karjane et al., 2002: 131.

⁸⁵ Brown divides the applicability of its procedures by faculty, student and staff classifications, but it does not subdivide thereafter.

⁸⁶ Since 2000, the *Columbia University Disciplinary Procedure for Sexual Misconduct* has applied to all faculty, students, and staff, with the exception of the Law School.

⁸⁷ Since 1996, Cornell has offered a single, university-wide policy for the resolution of sexual harassment.

⁸⁸ Since 1999, all students at UVA have been able to adjudicate sexual misconduct and assault through the Sexual Assault Board proceedings. They may also seek resolution for sexual harassment through the *Student Judicial Proceedings* or *Equal Opportunity Programs (EOP) Complaint Procedures*. Faculty and staff may resolve complaints through the EOP procedures.

⁸⁹ For links, see the *SHAPE Report*.

⁹⁰ Sokolow, 2001: 15.

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the logistics of proceedings, including notification of the respondent and representation of the complainant and respondent; and the decision-making procedures and available sanctions.⁹¹

2. Status at Yale

Yale has a confusing, patchwork quilt system of formal and informal procedures for the resolution of incidents of sexual misconduct.⁹² The procedural options vary depending on the status of the complainant and respondent (as student, faculty, or staff) and the identity of the dean or administrator to whom the parties are subject. It is perhaps too much to expect that an administrator in a given sub-section of the University will be fluent in every procedure but, as we have learned, obtaining information can be difficult at times. Even after scouring on-line and published University sources and multiple e-mails and telephone calls, we cannot be sure that the information presented in Appendix C is entirely correct. The complexity of the system, as compounded by communication issues, creates a significant structural impediment to its utilization.

The quality of the current procedures varies significantly, with Yale College leading the way in clarity and comprehensiveness. Certain University publications refer to unpublished procedures “available at the respective school’s Dean’s office”⁹³; several schools appear to lack articulated procedures altogether. The procedures in some parts of the University appear to conflict with other University procedures. Certain procedures appear incomplete and do not include articulated jurisdictional constraints, such as temporal (statute of limitations), personal (by whom and against whom), and geographic (where the incident must take place to be within the jurisdiction of a given board) limitations; clear evidentiary standards; or practices that accommodate the privacy concerns particular to adjudicating incidents of assault and harassment.

Informal resolution procedures are not always clearly related to formal complaint procedures, which they may or may not presage. The boards that implement the complaint procedures are sometimes ad hoc and often lack the training we believe is a prerequisite to adjudicating complaints of sexual misconduct in a consistent manner. In other instances, formal complaints are brought to the same boards as other disciplinary complaints, including plagiarism or misuse of facilities. Again, these boards, not being designated specifically for the task of dealing with harassment and assault (particularly of a gendered nature), may lack the training to ensure confidence in the sensitivity of the hearing panels. Boards designed to deal with issues such as plagiarism may simply be structurally incapable of dealing with interpersonal offenses, particularly sensitive ones such as sexual misconduct. To modify them adequately may render them unwieldy in the case of non-interpersonal offenses and makes such modifications either

⁹¹ *Id.*

⁹² See Appendix C. For example, the applicable statutes of limitation vary from two years from the date of the incident in cases brought pursuant to the procedures for Yale College, the Graduate School of Arts and Sciences, and the Nursing School, to one year in cases brought pursuant to the Medical School or the Divinity School procedures, to forty-five days in cases brought under *The Dean’s Procedure for Student Complaints* and *The Provost’s Procedure for Student Complaints*. We recommend a uniform limitation period of two years with a stipulation that “the Board is willing to discuss but may decide not to take formal action on a complaint about an incident of sexual misconduct that happened more than two years after the date of the incident as long as it occurred at any time when the complainant was a student, scholar, faculty member, lecturer, staff member, or employee at Yale University.”

⁹³ See, e.g., Yale University, *Promoting Diversity and Equal Opportunity at Yale University: Policies, Resources, and Procedures* (Feb. 2009: 8).

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inefficient or ineffective. For instance, procedures that assign only one board member as a fact finder may lack the rigor of inquiry and debate necessary for ferreting out the true course of complex interpersonal interactions.

Most importantly, resolution procedures and decision making are embedded at the level of the separate academic-professional communities. Although there is a University-wide Provost's Procedure for Student Complaints (the Provost Procedure) for cases involving a student complainant and a respondent from a different part of the University (see Appendix C), cases involving students from the College or from the same school are subject to the idiosyncratic procedures of the common unit. Particularly in small schools or departments, this creates a barrier to bringing a complaint. Even when strict confidentiality is assured (which is usually not the case), having to bring a complaint to other members of one's very small community can generate fear of disrupting existing relationships and power dynamics, if not provoking outright reprisals. It also raises concerns about impartiality. In addition to what can be legitimate fear of damage to one's career or other reprisals, there seems to be, from our anecdotal evidence, a general disinclination to "rock the boat" within one's own (small) community.

In short, reporting systems are effective only insofar as they inspire confidence by offering genuine confidentiality (even anonymity), transparency, and impartiality. This is perhaps the greatest structural impediment to a holistically functional system identified by the Working Group.

3. Recommendations

We recommend that the University (a) create a single, centralized set of procedures for addressing sexual misconduct, (b) establish a standing University-wide Committee on Sexual Misconduct, and (c) establish a standing Sexual Misconduct Grievance Board, comprising representatives from throughout the University, specially charged with the responsibility for resolving of complaints of sexual misconduct. Members of both the informal response teams formed to respond to informal complaints of sexual misconduct and the adjudicatory bodies responsible for adjudicating formal complaints of sexual misconduct would be drawn from the standing Grievance Board. Members of the Grievance Board should serve staggered terms of three years and report regularly to the Committee on Sexual Misconduct to promote institutional memory and consistency. The University could thereby ensure the consistency of its rules of procedure, evidence, and jurisdiction; the training of board members; and the elimination of existing structural impediments to reporting. By institutionalizing these policies in a centralized fashion, the University would benefit from the diverse experiences of board members and be able to enact reform more rapidly.

A centralized procedure for students already exists in the Provost's Procedure, but that option is currently available only when a student brings a complaint against a member of the community under the authority of a dean different from the complainant's own. We recommend that Yale create a similarly centralized system with jurisdiction over any student, faculty member, and staff member of any school bringing a complaint against any other member of the community, regardless of the dean under whose authority the complainant and respondent may fall. Although the University could adapt the existing Provost's Procedure and reconstitute its hearing board to perform this function, we do not consider this optimal.

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In particular, we recommend that the University offer those who have experienced sexual misconduct two centralized, University-wide procedural options: (a) an informal, non-adjudicatory resolution process utilizing an informal response team, which might include some form of mediation; and (b) a formal adjudicatory process with the power to levy sanctions on the respondent. We recognize that the 2000 Department of Education Office of Civil Rights Guidance suggests that universities should not use mediation to address sexual assault, largely because of the power imbalance often present in such cases. Yet, the University of Virginia and other schools have reported that giving students the options of mediation or a “structured meeting”⁹⁴ can be useful when a complainant wishes to confront the respondent, but does not wish to begin a formal proceeding.

We recommend that the President or the Provost appoint a twenty-person University-wide grievance board for complaints of sexual misconduct (the Sexual Misconduct Grievance Board), with authority over both the non-adjudicatory and adjudicatory procedures. The informal response team would not have the power to recommend or impose sanctions. It could, however, facilitate non-punitive resolutions, such as a change in housing. Even if a complainant initially seeks the less formal discussions and hearing offered in the non-adjudicatory phase, the complainant would retain the option (subject to any applicable statute of limitations) to transfer the case to an adjudicatory body at any time. The adjudicatory board would conduct a formal hearing and have the power to determine what sanctions, if any, are warranted. Membership of the two bodies must be distinct to enhance the likelihood that parties will not hold back in the non-adjudicatory phase for fear that admissions or concessions made during that phase will be used against them in the adjudication phase.

Both the informal response team and the adjudicatory body would have the power to designate fact-finding personnel (i.e., investigators) from among their members or an outside source. Whenever an investigator is deemed necessary in a given case, the Grievance Board should appoint two investigators, not just one. As with the process of peer-review for scholarly work, this will help ensure a full exploration and more comprehensive discussion of the facts in a given case. The investigators would not have the power to vote in any case they are charged with investigating.

The composition of both the informal response team and the adjudicatory body in any given case may require tailoring depending on the identity of the complainant and the respondent, including the parties’ status as student, faculty, or staff and the affiliated school or program. For example, a case brought by a Yale medical student alleging sexual harassment by a physician not employed by Yale might require greater representation by members of the Medical School community than one brought by one Medical School student against another.

We believe that both the informal response teams and the adjudicatory bodies should be composed of students, faculty, and staff (with no one group predominating) and include at least one person with professional counseling or mental health experience. They should have roughly comparable numbers of men and women. All members of the Sexual Misconduct Grievance

⁹⁴ A trained chair, who acts as the University’s representative, provides guidance and structured questioning in a session between the complainant and the respondent. This may result in the chair recommending that the respondent receive training or counseling. It may provide a viable alternative when the complainant is not likely to be successful in an adjudicatory proceeding but still makes a credible claim. It presents an interesting compromise in what would otherwise be a sort of “all-or-nothing” venture (both in the sense of choosing adjudication, or nothing, and in the results of adjudication, which can often feel all-or-nothing to a complainant).

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Board should receive comprehensive training about sexual misconduct issues and their adjudication at the beginning of their terms. Any member of a board handling student complaints should also receive alcohol and substance-abuse training. Both the respondent and the complainant should have the right to request the recusal of any member of the board in the case of a conflict of interest.⁹⁵

The entire resolution process should be described in language understandable to all and be widely communicated to ensure transparency. We offer, as a synthesis of our research on best practices, the *Proposed Yale Policy* on sexual misconduct in Appendix B. Some of the language comes from a variety of sources, including literature and best practices from within and without the University, as well as previous sections of this report.

D. Communication of Policy and Procedures

No policy, no matter how well designed, will be effective if it is not adequately communicated. Opaque standards and procedures create a structural impediment to understanding and accessing the system in place. Questions to consider include: Where is information located? How is it presented? Is it user-friendly and readily accessible on a confidential basis to all members of the community but especially those who have experienced misconduct or are likely to be called on to respond to a complaint?

1. Review

Research on sexual misconduct shows that clearly stated and user-friendly policies, prefaced with a comprehensive introduction, serve both preventative and corrective purposes in an institutional or workplace setting. They signal that the institution is committed to adequately addressing the issue. Wide dissemination makes potential perpetrators less likely to commit offenses and victims more likely to report them when they occur.⁹⁶

Not having policies and procedures that are articulated clearly, in a user-friendly manner, in as many venues at as many junctures as possible, creates a structural impediment to accessing the system.⁹⁷ Fortunately, it is an impediment that is easily removed.

2. Status at Yale

Currently, the communication of Yale policies across the University is highly uneven. For example, the policy on consensual relations appears to be well-publicized to faculty but less so to teaching assistants in at least certain schools. Some information sources are quite comprehensive, albeit within their own briefs. For instance, the SHARE Center website provides thorough information, including emergency contacts and instructions, counseling information, definitions, policy texts, and more. Yale College and the Faculty of Arts and Sciences (FAS) Graduate School also provide fairly comprehensive online descriptions of their own policies, procedural

⁹⁵ The Working Group recommends that further consideration be given to possible additional provisions for the complainant and the respondent to challenge composition of the adjudicatory panel for a given case. See, e.g., “Rights and Duties of Members of the Yale Law School,” Section III.

⁹⁶ Adams & Barling, 1999; Bergman et al., 2002; Lindenberg, 2003; Sokolow, 2001; Williams, Lam, & Shively, 1992.

⁹⁷ Sokolow, 2001; Karjane et al., 2002; Krebs et al., 2007; Williams et al., 1992.

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options, and other resources. Most schools do not, however, include sexual assault in the policies governing other forms of sexual misconduct or provide a clear link to the SHARE Center.

There is currently no one comprehensive source that describes the various decentralized policies that a given member of the community may need to review to make an informed decision about how to proceed, as a complainant, respondent, or adviser to either. Options depend not only on the status of the complainant (student, faculty, or staff) and the school of the cognizant dean (e.g., Yale College or Yale School of Medicine), but also the status and dean of the respondent.⁹⁸ This system is confusing, and the current presentation of information does nothing to simplify matters. Currently, for instance, a student from a given professional school, starting at the online description of their own school's statement on sexual misconduct (assuming there is one), is not consistently directed to the SHARE Center website or any other school's policies; nor would that student, starting at the SHARE Center website, necessarily find an easy path to his or her own school's statement on sexual misconduct.

Moreover, the publicized information is often far from complete. A complete set of policies and procedures for a given school are often not readily available online. Students may be directed to a dean or Title IX officer but contact information may not be current or provided at all. In compiling information for this report, researchers for the Working Group found that multiple e-mails and/or phone calls to multiple offices were sometimes necessary to gather the necessary information; in some instances, we had no way to verify the accuracy of what we tried to piece together from multiple sources. No one in a situation sensitive enough to require this information should have to undertake a research project to find it.

The balkanization of information, as well as its inconsistencies, incompleteness and unavailability, creates a significant structural impediment to accessing the University's system and resources. The confusing presentation also suggests a lack of accountability and transparency, which can further erode confidence.

3. Recommendations

The University should create a comprehensive online information source for all University policies pertaining to sexual misconduct. Posting the information online provides anonymity and thereby preserves privacy and confidentiality; it also reflects the simple reality that the internet has become a first stop for people of every generation seeking information. This online source should provide centralized information on *all* University policies, procedures, counseling resources, and the like.

In our judgment, all information relevant to sexual misconduct on campus should be posted on a single University website. The College and each school should then provide a clear link to this site.⁹⁹ Thus, a single website might link outwards to other information (for instance, a given professional school's disciplinary committee proceedings), but all external websites would, in turn, link inward to the University's centralized website on sexual misconduct. If, for logistical reasons, it is not feasible to post all the information on a single site, then it is critical for the sites to link clearly to each other.

⁹⁸ See Appendix C for charts of the current procedural options.

⁹⁹ The *Grievance Board Report* similarly recommended that the Yale College home page link to a website for students to access the available "procedures and options." The *Report* cited the exemplary online resources provided at peer institutions, such as UC-Berkeley, Brown, and Stanford. (*Grievance Board Report*: 3.)

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Furthermore, appropriate mechanisms are needed to ensure that all information is complete, and up-to-date. Additionally, recent changes to policies, or the existence of committees to review and revise policies, should be prominently posted. Creating a comprehensive online source would enhance transparency and should improve utilization of the systems described.

We also recommend adding a tab to the Yale University home page, entitled “Safety at Yale,” which would directly link to the sexual misconduct website and to all of the other University resources and departments dedicated to ensuring the safety of the various members of the Yale community, including the resources President Richard Levin identified in his email of September 30, 2009, entitled “Security of the Yale Campus.” The tab should also link to the annual Yale report on campus security¹⁰⁰ and the other resources currently posted under the directory link “Public Safety at Yale.”¹⁰¹ Ideally the tab would follow “Working at Yale” and precede “Yale and New Haven” and include the SHARE Center under “Public Safety Links.”

E. Training

Adequate training for all members of the community will help reduce the occurrence of sexual misconduct, both by educating participants about what behavior is acceptable and by underscoring the University’s commitment to eliminating sexual misconduct. When crafting the training program, one should consider such questions as: Who should receive training? How is it best conducted (e.g., online, by lecture, or as a workshop)? How often does training occur? What is the content of the training? Are community members who are responsible for resolving complaints given adequate training concerning what is sexual misconduct and the proof necessary to establish that it has occurred?

1. Review

Reese and Lindenberg (2003) characterize training as “the critical link between sexual harassment policies and perceived positive outcomes.” These positive outcomes include willingness to use policies, satisfaction with those policies, and possible reduction of incidents of misbehavior. (Of course, the salutary effects of training may be lost if authority figures or supervisors appear unresponsive to complaints.) All new hires and students should be exposed to policies and training as soon as possible after arrival at an institution. Most researchers also recommend regular and periodic training and assessments, rather than only a single session, to promote long-term changes in attitudes and awareness.¹⁰²

Multi-study reviews of research on sexual assault education programming also bear on training: “The most effective rape/sexual assault prevention programs should make sure that they have culturally relevant material and that having something which is interactive (discussion format) is more effective than a didactic presentation where only information is provided without any

¹⁰⁰ The report for the 2008 calendar year was circulated by Martha C. Highsmith, Deputy Secretary of the University, via email to “Members of the Yale Community” on September 30, 2008, *available at*, <http://www.yale.edu/publicsafety/report.html>. It reported thirteen forcible sex offenses, accompanied with eight in 2007 and nine in 2006.

¹⁰¹ *Available at* <http://www.yale.edu/publicsafety/>.

¹⁰² Penney, Tucker, & Lowery, 2000; Reese & Lindenberg, 2003; Bell, Quick, & Cycyota, 2002; Anderson & Whiston, 2005; Northwest Arkansas Rape Crisis Inc., 2002.

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meaningful discussion.”¹⁰³ Anderson and Whiston (2005), in their own meta-analysis, found that the following factors made for more effective presentations: professional, rather than peer, presenters; longer, rather than shorter, sessions; inclusion of content on risk reduction; discussion of gender-role socialization; and provision of information and discussion of myths and facts about sexual assault.

A review of studies of programs aimed specifically at minority students showed that “culturally relevant” presentations were more effective than “generic” presentations.¹⁰⁴ Anderson and Whiston (2005) suggest that “women are more likely to receive a risk-reduction intervention, while men may be more likely to receive an empathy [-based] intervention.” While these data speak directly to issues of ethnicity/race or gender, they may also suggest that, in general, programs tailored to groups more specific than “college students” may prove more relevant than untailored programming.

2. Status at Yale

Yale is currently committed to providing most members of the community training on issues of sexual misconduct. Anecdotal evidence suggests that the quality of these programs and the extent of their implementation vary. For instance, the Human Resources supervisor training, which is conducted in person, is considered to be good, if perhaps somewhat legalistic. However, the online training is viewed by some as less engaging. For certain constituencies, such as faculty, in-person training by experienced personnel, such as the Director of the SHARE Center, may prove more effective and be resented less than existing online programs.¹⁰⁵ *Relationships: Untitled*, the freshman sexual assault training program, has generally been well-received.¹⁰⁶ New educational programming emanating from the SHARE Center is also promising.

It is difficult to assess accurately the efficacy of Yale’s existing educational programs without comprehensive follow-up evaluations. We are particularly concerned about the uneven manner in which teaching assistants are educated concerning Yale’s policy against sexual relations between teaching assistants and the students for whom they are responsible. We have been advised that the FAS Graduate School now requires an on-line training session on the prevention of sexual misconduct for all graduate students prior to successful registration for their second semester at Yale. However, no such measures appear to be in place at the professional schools.

The training should make it clear that all TAs and lecturers fall under the auspices of the policy on consensual relations. It is also important to require that all faculty members undergo sexual misconduct training.

3. Recommendations

¹⁰³ NWARC, 2002: 4.

¹⁰⁴ *Id.*

¹⁰⁵ As one senior faculty member put it: “[M]any of us feel over-trained, e.g. we’ve been talking and being talked to for decades. As one colleague put it when asked to schedule himself for training, ‘Sign me up for the session Rick [Levin] attends.’”

¹⁰⁶ Eric Randall & Divya Subrahmanyam, “Film replaces ‘Sex Signals,’ to mixed reviews,” *Yale Daily News*, September 3, 2009, available at, www.yaledailynews.com/news/university-news/2009/09/03/film-replaces-sex-signals-mixed-reviews/.

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We believe that the University should continue its commitment to sexual misconduct training and education.¹⁰⁷ It should also integrate a functional feedback system for training procedures so that programs can be modified or abandoned if they are not serving their intended purpose. This feedback system must include not only the post-programming evaluations that are sometimes currently used, but also a content-based follow-up survey, designed to measure how much information is retained from the training. The University should involve experts as well as representatives of varied constituencies when assessing and modifying training protocols. The Committee on Sexual Misconduct should evaluate the results of such evaluations and surveys on a regular basis and make appropriate recommendations for improvement.

Furthermore, we consider it vital that all members of the community receive training in a way that resonates with them. The new film *Relationships: Untitled* does a commendable job of presenting three situations heterosexual Yale freshmen are likely to encounter. Although we encourage the administration to include a broader range of sexual relationships and other types of sexual misconduct, such as creation of a hostile environment, in future films, we congratulate Assistant Dean of Yale College Jill Cutler on the successful completion of this project. We believe that the College should show the film to sophomores and upper classmen in the College and provide opportunities for students to discuss it in small groups. We encourage the College to make the film available to students in other parts of the University as well.

Again, we believe that a community-values based approach to training is best. Dean Mary Miller's op-ed piece in the *Yale Daily News*, published in response to the "Preseason Scouting Report" email, is an excellent example of this approach. Her discussion of the contours of freedom of expression at Yale and its relationship to prohibitions on sexual misconduct should be endorsed by each of the schools and be posted as part of each school's policy on sexual misconduct. In addition, offering a panel discussion of the interplay between freedom of expression and bans on certain types of abusive and intimidating speech¹⁰⁸ would be both educational in its own right and help members of the community better understand why certain types of offensive speech may not necessarily result in University sanctions.

For supervisors, a risk management or legal context is valuable. Training for incoming students should emphasize how sexual misconduct is a violation of both professional ethics and the new community in which students find themselves. A good example is the approach the School of Management used when addressing sexual harassment in the 2008 student orientation. It was active, participatory, and challenged the students' ideas of what sexual harassment means within the context of their own sense of professional responsibility.¹⁰⁹

¹⁰⁷ The *SHAPE Report* recommends increased programming and education for freshmen regarding sexual harassment and assault prevention. It also strongly recommends increased training and education for Freshmen Counselors, Deans, Masters regarding sexual assault and sexual harassment, including the impact of sexual misconduct, Yale's policies, procedures and definitions, and how to respond to a student concern (*SHAPE Report* : 6-10).

¹⁰⁸ See, e.g., Earle & Cava, 1997; see also *Virginia v. Black*, 538 U.S. 343 (2003) (upholding conviction pursuant to Virginia statute prohibiting burning crosses with intent to intimidate and rejecting defendant's assertion that their conduct was protected by their constitutional right to freedom of speech).

¹⁰⁹ Dean Joel Podolny changed the School of Management's orientation procedures in 2008 to reflect more strongly the school's commitment to diversity as a community and professional value. During orientation, students were presented with scenarios that presented a diversity-based ethical dilemma in a business setting, then asked to discuss the issues in small groups and report back their conclusions to the full group. Dean Podolny encouraged students to

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All training should be aimed at shaping the culture of a community and reinforcing the values to which it aspires. Accordingly, educational programs should demonstrate how any incident on the entire spectrum of misconduct (from gender stereotyping and hostile environment to rape) undermines the values of that community,¹¹⁰ diminishes each member of the community, and is accordingly not acceptable.

Training should include information on how different community members, especially faculty, are expected to respond if approached by someone reporting an incident. Because faculty members mentor both students and junior colleagues, they may be called on in these situations. At Rutgers University, for example, all 2,000 faculty members receive annual victim-response training.¹¹¹

It is critical to include information about both the scope of confidentiality available to complainants and respondents and the circumstances under which University personnel are required to report incidents to the police, the Office of General Counsel, or others. We recommend that the Office of General Counsel provide written guidance on this issue and publish it on the sexual-misconduct website. We also recommend that the administration underscore, especially to the faculty and senior staff, the importance of preserving confidentiality to the greatest extent feasible.

F. Crisis Management

Sexual misconduct and other violations of law and University policy are what Max Bazerman and Michael Watkins (2004) call “predictable surprises.” Even organizations with the best of policies may find themselves fielding complaints or press inquiries, often with little advance warning. Having a crisis-management plan in place can be key to preserving the values, reputation, and assets of a great organization and to retaining a modicum of control during uncertain times. As explained elsewhere in this report, it is critical to be open and transparent when dealing with incidents of sexual misconduct that come to the community’s attention.

1. Review

Organizations that adopted “engaged” responses to sexual harassment and other crises (e.g., by expressing concern, remaining open to the possibility of wrongdoing, and sharing information with the public) were perceived more positively than organizations that responded defensively.¹¹² In addition, failure to respond or issuance of a no-comment response was just as detrimental to the organization’s reputation as responding defensively.¹¹³

integrate these community values into their daily behavior, bearing in mind the question of what a visitor to a classroom would understand the community’s values to be from what he or she observed.

¹¹⁰ For instance, in undergraduate orientation, the emphasis is on sexual assault prevention. While this is laudable, it does not address the more subtle issues, such as gender stereotyping, inappropriate sexual joking, and other more insidious conduct that undermines a respectful and healthy environment.

¹¹¹ See Brett A. Sokolow, “Who’s Helping Whom: Are Our Sexual Assault Response Protocols Working?” *available at*, <http://ncherm.org/>.

¹¹² Uhlmann, Newman, Brescoll, Galinsky, & Diermeier, 2009.

¹¹³ *Id.*

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Experts praised Johnson & Johnson's prompt assumption of responsibility for the safety of its products after the firm discovered in 1982 that several Tylenol capsules had been laced with cyanide. Johnson & Johnson immediately withdrew all Tylenol capsules from the market even though it was initially unclear what had caused the contamination. As it was subsequently determined, the cyanide was added after the products had shipped. The recall cost approximately \$100 million but enabled the firm to regain its market share within a matter of months and enhanced its reputation for integrity and social responsibility. CEO James Burke commented: "Dozens of people had to make hundreds of decisions on the fly. There was no doubt in their minds that the public was going to come first in this issue because we had spelled it out [in our credo] as their responsibility."¹¹⁴

2. Status at Yale

We understand that the Dean of Yale College will be publishing in the near future a set of protocols for dealing with various emergencies, including sexual misconduct. We applaud the manner in which the University handled the tragic news of the disappearance and murder of graduate student Annie Le and recommend that similar communication techniques be used when dealing with incidents of sexual misconduct. President Richard Levin, University Vice President and Secretary Linda Lorimer, and Dean of the Graduate School Jon Butler sent frequent and timely messages updating the community on the progress of the investigations. Linda Lorimer's early messages concerning Ms. Le's disappearance and death made it clear that counseling and support services were available for all members of the Yale community.

We also commend Yale Police Chief Perrotti for his timely and effective statement regarding a third-party report of "date rape" in 2008. He stated in a University-wide email:

In order to increase awareness of personal safety and consistent with federal reporting requirements, I write to let you know that the University Police have received a report of an acquaintance rape that occurred on April 18th on the Old Campus. We are investigating this very serious matter. I urge all members of the university community to exercise care in social settings, and if you have been the victim of such an incident or you have knowledge that such an incident has occurred, please call the Yale Police. We will assist in any way we can, including providing referrals to other resources such as the Sexual Harassment and Assault Resource and Education Center, Yale University Health Services or a victim advocate.

3. Recommendations

We recommend that Yale adopt a protocol for proactive sexual-misconduct crisis management as an operational strategy.¹¹⁵ In particular, we recommend that the President and the Provost proceed with all due speed to develop a sexual-misconduct rapid-response plan with the following five elements: immediate response, second response, periodic updates, closure report, and ongoing programmatic responses.

a. Immediate Response

¹¹⁴ Tedlow, 2005.

¹¹⁵ Uhlmann et al., 2009.

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It is crucial for the Yale administration to act swiftly when faced with public disclosure of sexual misconduct. Such a rapid response would reaffirm Yale's values and its commitment to safety and security for all its members.¹¹⁶ Silence is particularly dangerous given the opportunity for the viral dissemination of injurious material through email, as happened with the "Preseason Scouting Report."

Absent exigent circumstances, the relevant administrator should issue a statement to the entire Yale community within twenty-four hours of becoming aware, in a non-privileged communication, of a "public" breach or alleged breach of the University policy on sexual misconduct. An incident would be deemed "public" if it (1) is publicized in a report or community email by the Yale Police; (2) becomes widely known, through emails, the publication of articles, or otherwise; (3) is likely to become widely known through any such means; or (4) is a matter of community interest (for example, if it concerns a group of perpetrators or targets or otherwise implicates larger communities interests). The identity of the relevant administrators will vary depending on the particulars of each incident and the identity of the parties involved and may include the President, the Provost, the Dean of Yale College, the Dean of the Graduate School, or the dean of a professional school.

The statement should indicate that a breach has been reported or alleged. To the extent that the facts are undisputed, they should be included in the statement. When the facts are in dispute, then the statement should indicate what investigations are being undertaken to ascertain the truth.

We recognize that it may be premature for the administration to take a position at this early stage on whether a particular incident has violated University regulations, and we appreciate the importance of consulting with the Office of General Counsel to craft such language as may be needed to protect the rights of the accused. Although it is important not to compromise an ongoing investigation of facts, the initial statement should indicate that violations of University policy will be not be tolerated. In addition, when the facts evidence a violation of community values, then the statement should include appropriate language to that effect while reserving the ultimate determination of whether there has been a violation of University regulations. Silence or a policy of no-comment can be particularly damning.

Using the "Preseason Scouting Report" as an example, our recommended protocol would have called upon the Dean of Yale College to issue a University-wide email describing the widespread transmission of the offensive email within twenty-four hours of becoming aware of it. The statement would include language to the effect: "Investigations are ongoing and we are working with the Office of General Counsel to determine whether this latest incident constitutes a violation of University policy. Let us be clear, however, that behavior of this sort violates our community values and diminishes each of us." We commend Dean Miller for making such a statement in her op-ed published in the *Yale Daily News* on September 7, 2009, but we believe that the delay in releasing her full statement publicly unnecessarily called into question the College's commitment to preventing sexual misconduct¹¹⁷

¹¹⁶ Here, we do distinguish incidents where facts are undisputed, e.g. the recent "Preseason Scouting Report" email and those where facts are in dispute, especially when a criminal investigation is ongoing. In the rare instances where the incident is the subject of a criminal case, delay in making an *immediate response* statement about violation of community values might be justified.

¹¹⁷ The *Yale Daily News* quoted only the following statement by Dean Miller in its initial coverage of the incident: "I can't prejudge whether the e-mail has violated University regulations." See Vivian Lee & Lauren Rosenthal,

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b. Second Response

We recommend that within seventy-two hours of becoming aware of a public incident, the administration inform the community of the facts of the incident as known at that juncture, outlining what further investigations are ongoing. This communication should include information regarding all of the sources of support available to help any member of the community deal with the incident (e.g., Masters, Deans, counselors at the SHARE Center, physicians at Yale University Health Services). The recent unequivocal statement by Dean Miller that the “Preseason Scouting Report” email violated the values of the entire community is an important shift in approach, which we laud and would like to promote at Yale.

As with the initial statement, the second response should be published in an official University-wide email. The establishment of a centralized portal (e.g., a “Safety at Yale” tab on the Yale home page linking to a comprehensive list of available resources) would streamline these efforts and reaffirm Yale’s commitment to ensuring the safety of its community in the wake of a breach of University policies.

c. Periodic Updates

We also recommend that, as the investigation unfolds, the administration release details relevant to the case and describe any additional steps being taken to ensure the community’s safety. Developments should not be discussed behind closed doors.

d. Closure Response

Once the investigation of a public incident of sexual misconduct has concluded and the pertinent facts have been determined, it is vital to inform the entire community of the outcome. Failure to

“Vulgar email targets freshmen,” *Yale Daily News*, September 3, 2009, *available at*, <http://www.yaledailynews.com/news/university-news/2009/09/03/vulgar-e-mail-targets-freshmen/>. Apparently, the *Yale Daily News* failed to report other statements by Dean Miller that condemned the email as a violation of community values. The abbreviated Miller quote prompted an op-ed that asserted: “If Yale is serious about better educating the student body about issues of sexual harassment and assault, the administrators must take a stronger stance in condemning behavior that uses gender as the basis for deliberate degradation.” See Emma Sloan, “A clear and unambiguous offense,” *Yale Daily News*, September 4, 2009, *available at*, <http://www.yaledailynews.com/opinion/letters/2009/09/04/letter-clear-and-unambiguous-offense/>. Three comments posted online in response to the “Vulgar email” article expressed concern that Yale did not identify this instance as a clear case of sexual harassment. Had the Dean’s office preempted the *Yale Daily News* articles with a public statement disseminated to the entire Yale community, the Dean could have publicly announced a commitment to preserving community values before that commitment was called into question.

An initial statement could also have described other steps being taken to deal with the incident, including the following. On August 31, 2009, Dr. Carole Goldberg, Director of the SHARE Center, received an e-mail from a freshman counselor, a residential dean, Dean of Freshman Affairs, Raymond Ou, and the Dean of Students, Marichal Gentry, notifying her of the dissemination of the “Preseason Scouting Report” email and forwarding her a copy. Dean Gentry and Dr. Goldberg spoke by telephone, and Dr. Goldberg wrote a response that was to be forwarded to the residential deans as a way to approach freshmen women either directly or through the freshmen counselors. Both Dean Mary Miller and Dr. Lorraine Siggins, Chief Psychiatrist at the Yale University Health Services, approved the message. On Tuesday, September 1, 2009, Dr. Goldberg was invited to attend the annual meeting at the Athletics Department with the coaches and captains. This meeting had been scheduled previously and is conducted at the beginning of each academic year to acknowledge accomplishments in the previous year and to help captains work with their new teams. The Athletics Department asked Dr. Goldberg to talk about the “Scouting” email and to discuss how it might impact students. The captains and coaches broke into about five smaller groups to discuss how to talk to their freshmen and how to prevent similar situations in the future. The discussions proceeded in a meaningful and sensitive manner, and the session was extremely well received.

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report back to the community prevents the University from garnering credit for the resources that it does provide.¹¹⁸ By providing closure reports, the University would seize the opportunity to provide accurate information about outcomes rather than leaving it up to less reliable sources.

If the perpetrators are disciplined or censured by the Sexual Misconduct Grievance Board, then the administration should disclose the outcome of the case, unless such disclosure would violate privacy protections provided by applicable law.¹¹⁹ Even in cases where disclosure of the particulars of the results of a disciplinary matter is prohibited, the University should use incidents of sexual misconduct as “teachable moments.” Educational programs, such as panel discussions and lectures, can create heightened awareness, prevent future breaches, and provide a sense of closure for the community.

e. Ongoing Programmatic Responses

Outside the context of a specific breach, we recommend that Yale identify, create, and continuously improve a set of ongoing programmatic resources addressing sexual misconduct and its nuances as part and parcel of its orientation activities for all new and current students, faculty, and staff. The new film *Relationships: Untitled* is a significant step in the right direction. We encourage the production and dissemination of materials addressing other types of sexual misconduct, such as creation of a hostile environment, and hope that publication of this report will help prove helpful in this regard.

We recommend that the Yale administration encourage members of the community to engage intellectually in discussions of how best to provide a safe teaching, learning, and working environment. One such initiative might be a panel discussion on the tensions that can exist between ensuring academic freedom and freedom of speech and preventing creation of a hostile environment. Panelists could include faculty at the Law School, other experts, and administrators. We recommend making these sessions available on the sexual misconduct website for future educational purposes.¹²⁰

We also recommend that the Office of the General Counsel issue written guidance to the community regarding (1) the extent and limits of confidentiality, (2) the limits on the public reporting of student disciplinary cases, and (3) the criteria used to determine when the right to free expression trumps the right to a non-hostile environment under applicable law and University regulations. Such guidance would better prepare University first responders and help all members of the community better understand why the University might be taking a particular stand (e.g., by not punishing certain types of hurtful speech).

¹¹⁸ The *SHAPE Report* was submitted in May 2008 but was not publicly released until September 2009. However, the report’s recommendations elicited strong support from the administration as demonstrated by the increased funds designated to the SHARE Center and the production of *Relationships: Untitled*. More prompt public acknowledgement of the *SHAPE Report* findings and Yale College’s subsequent steps to implement the report’s recommendations would have helped ensure that the University received the credit it was due.

¹¹⁹ The *Yale University Policy Statement on Student Records* (which is in accordance with FERPA, see note 8, *supra*) generally prohibits the University from disclosing the names of students subject to disciplinary actions, except as follows: (1) the University may disclose to an alleged victim of any crime of violence (including a forcible sex offense) and of any non-forcible sex offense the results of any disciplinary proceeding conducted by the University against the alleged perpetrator of such a crime; and (2) the University may disclose the outcome of any University disciplinary proceeding alleging a crime of violence (including a forcible sex offense or a non-forcible sex offense), as long as the University has determined that the student committed a violation of Yale’s rules or policies with respect to the alleged crime.

¹²⁰ See also the recommendations regarding community education in the *SHAPE Report*.

G. Data Collection, Monitoring, and Reassessment

Policies and procedures should be dynamic and subject to ongoing self-assessment and monitoring. Questions to consider include: What data should be collected? How should anonymous reports be handled? Who should be responsible for analyzing and retaining reports of sexual misconduct? Who should be responsible for recommending changing in policies and procedures in light of the available data?

1. Review

Even the best of policies and procedures need to be assessed on a regular basis based on solid data. As described above, the more an institution signals a commitment to the issue of sexual misconduct and demonstrates efforts at transparency and fairness, the more confidence people have in the system, leading to a reduction of incidence and increased reporting.¹²¹ Researchers recommend a semi-annual review, such as the one the Lafayette College Presidential Oversight Committee conducts:

Lafayette College's Presidential Oversight Committee (POC) is charged with a semi-annual review of the institution's policy, procedures, and implementation of education and prevention programs, and recommending revisions necessary to comply with Federal and state mandates, as well as aligning the policy and practices with the school's mission. Chaired by the school's legal counsel, POC membership includes students, faculty, and staff appointed by the college president.¹²²

2. Status at Yale

No mechanism currently exists to evaluate the efficacy of Yale's mechanisms for dealing with incidents of sexual misconduct. Given the confidential nature of complaint procedures, it is difficult to assess use of and satisfaction with these mechanisms outside of an anonymous and centrally administered survey tool. To our knowledge, the University has never conducted such a survey. This current paucity of information makes it impossible for the University, or any section of it, to actively monitor its procedures or revise them when necessary. Furthermore, the less information that is gathered and reported, the murkier the system appears. Once again, this lack of transparency erodes confidence in the system, especially among those most likely to consider utilizing it.

3. Recommendations

We believe that Yale, acting through its Committee on Sexual Misconduct, should administer a survey instrument to a representative sample of all constituencies in the community assessing (a) knowledge of University mechanisms, (b) faith in those mechanisms, (c) utilization of mechanisms, (d) satisfaction with experience using mechanisms, and (e) incidences of sexual misconduct. This survey should be conducted on a regular basis (at least annually) and the results should be published by the Committee on Sexual Misconduct both online and in a campus print bulletin. The Committee should retain the survey data in a central location, along with relevant data from the SHARE Center, University hot-lines or other anonymous reporting mechanisms,

¹²¹ See "Communication of Policy and Procedures," *supra*.

¹²² Karjane et al., 2002: 149.

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informal-response teams, adjudicatory bodies hearing cases of sexual misconduct, the Yale Police, and others with jurisdiction over instances of sexual misconduct. The Committee should analyze these data as part of a program of ongoing self-assessment, to ensure that the mechanisms for dealing with sexual misconduct remain responsive to community needs.

V. IMPLEMENTATION

We are fully cognizant that the recommendations in this report are not equal in terms of the amount of effort and upheaval each may entail. Certain recommendations may require more study than others, and some members of the administration may consider it prudent to gather more data before implementing a particular recommendation. Other recommendations may require time to build consensus or may be more logistically difficult to implement. Even though we do not expect the University to act on all of our recommendations immediately, we urge the President or the Provost to appoint immediately a Committee on Sexual Misconduct to review the recommendations in this report. The administration should also be able to add promptly a “Safety at Yale” tab to the University home page. It may be possible to implement certain other reforms in the immediate future, and we expect the administration to do so.

Although consideration of longer-term items should not delay the implementation of more easily implementable items, we view the ultimate implementation of all the recommendations in this report as essential for a holistic and effective system for dealing with sexual misconduct at Yale. We therefore encourage the University to take interim steps as soon as possible, recognizing that this will be an ongoing and organic process.

We believe that the major issues of communication of policy and procedure can be addressed, at least in part, with minimum effort and in a short period of time by creating the comprehensive web resources described in this report. This process will have to be repeated as further recommendations concerning the content of policies and procedures are implemented, but we believe that prompt action is essential to remove a structural barrier to proper functioning of the system in the interim.

This process will have the added benefit of alerting individual schools to instances where the existing written policies are incomplete or inadequate. We urge the University to take swift action to encourage individual units to update and revise existing policies where they are lacking.

We urge the University to take further action to institute improved training procedures by the beginning of the 2010-2011 academic year.¹²³ More urgently, the University should take immediate action to ensure that all teaching assistants receive training on the University’s policy on consensual sexual relations. We recognize that a wholesale revision of Yale’s training programs will take more time, but we urge the University to conduct a comprehensive evaluation of the effectiveness of existing training programs this academic year.

We anticipate that the most complicated recommendations to implement will be, by far, universal revisions in policy standards and the unification of resolution procedures. However, we hope that the process of consulting appropriate parties in each school, including the individual deans, deans of student affairs, Title IX officers, and other administrators with experience in the implementation of sexual misconduct policies, will begin promptly. With strong signaling from the President about the importance of such collaborative efforts, we believe that it should be possible to implement uniform policies and procedures by the beginning of the 2010-2011 academic year.

¹²³ For instance, the University could use the TSDAM system to create significant barriers pending completion of a training program in sexual misconduct.

VI. CONCLUSION

In this report, we have summarized pertinent research and best practices regarding preventing and dealing with sexual misconduct on university campuses, reviewed current University policies and procedures on sexual misconduct, and suggested improvements to the current system. The Women Faculty Forum commends the ongoing efforts in various parts of the University to deal with sexual misconduct, and we offer our support to the President and the Provost as they consider the recommendations in this report. We look forward to working with the administration to create the most efficacious, holistic sexual misconduct policy possible. In particular we recommend that the University:

(1) Immediately appoint a University-wide standing Committee on Sexual Misconduct with a charge:

- ◆ To proceed with all deliberate speed to evaluate the Proposed Yale Policy and to make a recommendation regarding its adoption and implementation.
- ◆ To evaluate the efficacy of the University's sexual-misconduct policies and procedures on an ongoing basis.
- ◆ To recommend such improvements and changes in both the written policies and procedures and their implementation as may be appropriate to prevent and respond to sexual misconduct at Yale.

As befits its broad mission, this new committee should be distinct from any adjudicatory bodies hearing cases involving allegations of sexual misconduct.

(2) Adopt the *Proposed Yale Policy*,¹²⁴ which:

- ◆ Bars sexual misconduct by any member of community (including faculty, staff, and students).
- ◆ Includes definitions of the umbrella term “sexual misconduct” and of “consent” and illustrative examples.
- ◆ Distinguishes sexual misconduct from other offenses while placing it within the context of community values and professional ethics.
- ◆ Provides comprehensive descriptions of procedural options.
- ◆ Links to a complete set of resources.

(3) Create anonymous and third-party reporting mechanisms and clarify the circumstances under which confidentiality can be assured.

(4) Develop a single, streamlined University-wide system for both informal and formal resolution of complaints of sexual misconduct, in place of the current disjointed set of procedures.

(5) Create immediately a comprehensive, single-point-of-entry online information resource that contains all of Yale's sexual misconduct policies, procedural options, and resources. Also add a tab to the Yale University home page, entitled “Safety at Yale,” which would

¹²⁴ See Appendix B.

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directly link to the sexual misconduct website and to all of the other University resources and departments dedicated to ensuring the safety of the various members of the Yale community.

(6) Ensure that every member of the University community (including all incoming graduate students, teaching assistants, lecturers, and faculty and staff in non-supervisory roles) receives training on sexual misconduct. The University should also commit to following up with those who have already completed training sessions, both to evaluate the efficacy of these programs and to underscore the importance of the issues involved. Refresher courses should be required on at least an annual basis.

(7) Develop a rapid-response plan to ensure the prompt promulgation of information and updates on incidents of sexual misconduct and, when indicated, investigation, disciplinary action, remediation, and support.

(8) Under the aegis of the Committee on Sexual Misconduct, periodically administer data-gathering instruments to a representative sample of all University constituencies to assess (a) knowledge of the University policies and procedures on sexual misconduct, (b) faith in those systems, and (c) experience utilizing them. The Committee on Sexual Misconduct would gather and retain data on incidents or allegations of sexual misconduct and the outcomes of any informal or disciplinary procedures related thereto.¹²⁵ After reviewing these data, the Committee would be expected to disclose an appropriate subset of that data to the Yale community on a regular basis.

We believe that centralized University action is the only way to make the necessary systemic reforms. The University must begin addressing potential problems *before* they arise, through a proactive, comprehensive, and top-down revision of policies and procedures across the entire University. We hope that the information contained in this report demonstrates the pressing need for such a revision, not only to manage the legal risk to the University but also to promote the kind of community to which Yale is dedicated: a community that is open, democratic, and supportive of excellence through the cultivation of diversity. The members of the Women Faculty Forum look forward to assisting the administration in this important undertaking.

¹²⁵ Certain data might have to be redacted to conform to federal privacy protections. See note 8, *supra*.

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APPENDIX A: MEMBERS OF WFF WORKING GROUP ON SEXUAL MISCONDUCT

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APPENDIX B: PROPOSED YALE UNIVERSITY POLICY ON SEXUAL MISCONDUCT

The presentation of this material is presumed to be on a multi-page website, and so the length and detail of this description should be taken in that context. Brief notes are made as to formatting. Underlined words or phrases indicate a link to another page, described in the footnote following. See Figure 1: Graphic Depiction of Yale Policy on Sexual Misconduct at the end of Appendix B for a chart detailing the recommended policy and procedures.

YALE UNIVERSITY POLICY ON SEXUAL MISCONDUCT¹²⁶

Yale University is a community that aspires to ideals of openness, equality, and justice for all its members: students, staff, faculty, and visitors. The University is committed to preventing and eliminating all physical and non-physical violations against other members of the community, especially on the basis of gender, sexual orientation, age, religion, race, national origin, cultural heritage, or ethnic background. These behaviors, which include gender-based, or sexual, misconduct, violate the values of the Yale community and jeopardize Yale's ability to create an environment in which faculty, staff, and students have the opportunity to learn from each other, including the voices often least heard. Sexual and other forms of misconduct will not be tolerated. Furthermore, these behaviors may violate other University regulations, Connecticut state laws, and federal law. They may subject the offender to University disciplinary action, civil liability, and criminal prosecution.

Sexual misconduct includes any conduct that has the purpose or effect of threatening or intimidating the person against whom such conduct is directed by reason of his or her gender.¹²⁷ It includes a broad range of inappropriate conduct from sexual assault to sexual harassment of various kinds (including creation of a hostile environment and sexual stereotyping), to other forms of sexual misconduct. Although certain types of sexual misconduct may not constitute "assault" or "harassment," they are also serious. The following sections will describe these more specifically, give illustrative examples, and describe what your options are if you or someone you know has experienced or been accused of sexual misconduct.

Any gesture or remark of a sexual nature that makes you feel uncomfortable, threatened, intimidated or pressured may be a sign that you are experiencing sexual misconduct.

Don't Delay. Don't be led into believing that if you just wait a while this will all blow over and go away. It probably won't. The longer you delay, the more difficult it may be to resolve the problem.

Take Action. Don't ignore the situation. Silence may be misinterpreted as consent. Unless you do something about the situation, it is unlikely that the inappropriate behavior

¹²⁶ This is meant to be the first page that any member of the community comes across when searching any related terms (e.g., "sexual misconduct," "sexual harassment," and "sexual assault").

¹²⁷ Last phrase from Yale College handbook, *available at*, <http://www.yale.edu/yalecollege/publications/uregs/appendix/sexual.html>.

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will stop. Report the complaint and make note of any relevant events, dates and witnesses.¹²⁸

We also encourage anyone grappling with these issues to visit the SHARE Center¹²⁹ website and take advantage of their resources. Many people¹³⁰ are available to help you, and you should talk to whomever you feel most comfortable.

I. How do I know whether I've experienced or engaged in sexual misconduct?¹³¹

II. To whom can I talk if I think I may have experienced sexual misconduct?

III. What are my options for dealing with sexual misconduct?

IV. What should I do if I have been accused of sexual misconduct?

V. What is Yale doing to prevent and respond to sexual misconduct?¹³²

Figure 1: Graphic Depiction of Yale Policy on Sexual Misconduct

I. HOW DO I KNOW WHETHER I'VE EXPERIENCED OR ENGAGED IN SEXUAL MISCONDUCT?

Sexual misconduct is an umbrella term that can be broken down roughly into three categories: sexual assault, sexual harassment, and other forms of sexual misconduct.

Sexual misconduct is sometimes a difficult concept to fully process. These hypothetical situations¹³³ may help you better understand what constitutes sexual misconduct.

A. *Sexual Assault*¹³⁴

Sexual assault includes non-consensual sexual intercourse and non-consensual sexual contact.

Non-Consensual Sexual Intercourse is:

Any sexual intercourse (anal, oral or vaginal), however slight, with any object, by a man or a woman upon a man or a woman, without effective consent. This is often described as rape.

Non-Consensual Sexual Contact is:

Any sexual touching, however slight, with any object, by a man or a woman upon a man or a woman, without effective consent.

Key to understanding sexual assault is the concept of "consent."

Consent must be clear and unambiguous for each participant at every stage of a sexual encounter. The

¹²⁸ Adapted from *Yale Sexual Harassment Guide*.

¹²⁹ Link to SHARE Center main page, *available at*, http://www.yale.edu/uhs/med_services/share.html.

¹³⁰ Link to "Who can I talk to...?" page (a list of reporting options).

¹³¹ Each underscored item should link to a page containing a detailed table of contents for that section and then the full text of that section.

¹³² This would link to a section that keeps the community updated on reforms in process. Right now, for instance, it might give details about the progress of the procedures being written for post-doctoral fellows.

¹³³ Link to a page entitled "Examples of Sexual Misconduct," which describes hypothetical scenarios that demonstrate types of sexual misconduct, available through SHARE website.

¹³⁴ These definitions come primarily from Sokolow, 2001.

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absence of “no” should not be understood to mean there is consent. A prior relationship does not indicate consent to future activity. A person who is asleep or mentally or physically incapacitated either through the effect of drugs or alcohol, or for any other reason, is not capable of giving valid consent. Additionally, the use of alcohol or drugs may seriously interfere with the participants' judgment about whether consent has been sought and given. When there is a lack of mutual consent about sexual activity, or there is ambiguity about whether consent has been given, a student can be charged with, and found guilty of, committing a sexual assault or another form of sexual misconduct.

The State of Connecticut amplifies the definition of lack of consent in the following ways: someone might not give consent because of mental incapacity (they might have consumed alcohol or drugs so as to become significantly impaired in awareness or judgment, or have been given, a drug or intoxicating substance against their will) or because of physical helplessness (they were unconscious or otherwise physically unable to communicate consent). A lack of physical resistance to sexual contact or intercourse does not imply a lack of consent. But the State of Connecticut is firm in its belief that a lack of physical resistance does not in itself indicate consent to a sexual contact.

[See Connecticut General Statutes Sections 53a-65(1-7); and Sections 53a-70(a) (1 and 2).]

If you have been a victim of sexual assault, no matter what course of action you ultimately choose to take, it is important to take certain emergency steps¹³⁵ to preserve evidence that may later be important. This may include filing a police report and seeking immediate medical attention. Do not delay reporting and incident in hopes that the problem may go away. You are encouraged to seek counseling.¹³⁶

B. Sexual Harassment

Sexual harassment is antithetical to academic values and to a work environment free from the fact or appearance of coercion, and it is a violation of University policy.

The frequently articulated, formal definition of **sexual harassment** is: nonconsensual sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature on or off campus, when: (1) submission to such conduct is made either explicitly or implicitly a condition of an individual's employment or academic standing; or (2) submission to or rejection of such conduct is used as the basis for employment decisions or for academic evaluation, grades, or advancement; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating or hostile academic or work environment. The first two types are referred to as quid pro quo harassment. The third is referred to as hostile-environment harassment. Sexual harassment may be found in a single episode, as well as in persistent behavior.

In some instances, sexual harassment is obvious and may involve an overt action, a threat, or a reprisal. In other cases, sexual harassment may be more subtle and indirect, possibly even unintentional, with a coercive aspect that is unstated. Individuals may find themselves feeling pressure or unwanted attention in a variety of perplexing situations. Harassment by peers or coworkers is as unacceptable as harassment by more senior members of the University.

Sexual harassment can include:

- ◆ Intrusive sexually explicit questions

¹³⁵ Link to SHARE emergency information, *available at*, http://www.yale.edu/uhs/med_services/share/assault-emergencies.html.

¹³⁶ Link to SHARE counseling information, *available at*, http://www.yale.edu/uhs/med_services/share/assault-emergencies.html#days.

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- ◆ Remarking on a person’s sexual attractiveness
- ◆ Disparaging remarks to a person about his or her gender, body or gender identity
- ◆ Pervasive displays of pictures, calendars, cartoons or other material with sexually explicit or graphic content
- ◆ Asking about a person’s sexual fantasies, sexual preferences or sexual activities
- ◆ Repeatedly asking for a date after the person has implicitly or explicitly expressed disinterest
- ◆ Spreading rumors about a person’s sexuality
- ◆ Frequent jokes about sex or gender stereotypes
- ◆ Name calling, such as “bitch,” “slut,” “whore,” “fag,” or “dyke”
- ◆ Ogling, winking, leering, or staring at an individual’s body parts
- ◆ Terms of endearment that are inappropriate for the setting, such as “honey,” “cutie,” “sweetie,” “doll.” or “baby”
- ◆ Unwanted letters, notes, telephone calls, e-mails or material of a sexual nature
- ◆ Unwanted, casual/fleeting physical contact
- ◆ Jokes, comments, or gestures of a sexual nature
- ◆ Creation of hostile, coercive or intimidating environments because of sexualized comments or themes
- ◆ Being ignored, overlooked, or not invited in a work or academic setting because of gender or because others are deemed more appealing.

Whether a particular action constitutes sexual harassment can vary depending on the context. A query about sexual preferences may be permissible in the dining hall but not in the workplace. In general, offensive comments targeted at named individuals are considered more intimidating—and are therefore more likely to constitute impermissible harassment—than comments aimed at an undifferentiated group. The ultimate question in hostile environment cases is whether the conduct unreasonably interferes with an individual’s work or academic environment or creates a hostile or intimidating environment.¹³⁷ The University recognizes the importance of free expression in pursuit of knowledge and truth¹³⁸ but will not tolerate verbal or physical conduct of a sexual nature on or off campus that has the purpose or effect of (1) unreasonably interfering with an individual’s work or academic performance or (2) creating an intimidating or hostile academic or work environment.¹³⁹

The 2001 Department of Education guidance clarifies that gender-based harassment, “including that predicated on sex-stereotyping, is covered by Title IX if it is sufficiently serious to deny or

¹³⁷ Link to *Office of General Counsel Guidance on What Constitutes Sexual Harassment*.

¹³⁸ Link to *Report of the Committee on Freedom of Expression at Yale*, chaired by C. Vann Woodward and published in January 1975 (the “Woodward Report”).

¹³⁹ Link to the *Miller Op-Ed*, note 17, *supra*, and to *Office of General Counsel Guidance on Free Expression and the University’s Ban on Sexual Misconduct*.

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limit a student's ability to participate in or benefit from the program. Thus, it can be discrimination on the basis of sex to harass a student on the basis of the victim's failure to conform to stereotyped notions of masculinity and femininity.”

C. Other Forms of Sexual Misconduct

Other types of behavior may not be classified as sexual harassment or assault but may, by reason of their sexual or gendered content and the psychological and/or physical sense of violation they cause, still constitute sexual misconduct. These offenses include, but are not limited to:

- ◆ **Stalking:** Stalking can be defined as a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking is against the law in every state. Stalking across state lines or in federal territories is illegal under federal law.¹⁴⁰ Stalking may not include physical contact, as sexual assault would.
- ◆ **Peeping Tommery**
- ◆ Any act that **exceeds the bounds of knowing consent**. This may include things like videotaping a sexual encounter without permission or the knowing transmission of STDs without first notifying one's partner of the disease.
- ◆ Some kinds of **hazing** may also constitute sexual misconduct. Hazing is not permitted at Yale University, and it is illegal in the state of Connecticut.¹⁴¹ Hazing would also qualify as sexual misconduct when withstanding sexual harassment or the performance of sexualized activity is implicitly or explicitly a prerequisite for acceptance in an organized team, society, club or other organization. In these cases, consent is considered coerced, and thus ineffective.
- ◆ **Gender-based discrimination** is discrimination in employment or participation in an academic program based on sex, pregnancy or related medical conditions. It includes discrimination in connection with employee hiring, firing, promotion, or compensation, or in connection with academic evaluation, grades, or advancement. It also includes retaliation against a person for exercising his or her protected rights by, for example, making a claim of discrimination even if the claim is ultimately found to be unfounded.
- ◆ **Targeted Email/Online Harassment** is harassment meted out to specific individuals or groups of individuals via inappropriate emails and other online communications.

II. TO WHOM CAN I TALK IF I THINK I MAY HAVE EXPERIENCED SEXUAL MISCONDUCT?

As difficult as it can be to discuss issues of sexual misconduct, the University seeks to provide as many trained responders as possible, so that each member of the community feels as comfortable as possible talking to at least one other person. Any University personnel to whom you report are bound to keep your confidence if, on balance, that is feasible.¹⁴²

¹⁴⁰ Definition from SHARE website.

¹⁴¹ Available at http://www.stophazing.org/laws/ct_law.htm.

¹⁴² All link to appropriate website or page with list of names and contact information and affiliation.

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A note on confidentiality: Although any University personnel with whom you choose to consult are dedicated to keeping your confidence whenever feasible, there are circumstances in which their legal obligations to the University and the rest of the community will require disclosure. In some cases, a responder may be legally bound to report the incident to the police, a supervisor or administrator so that it can be properly dealt with; this is particularly vital in the case of an offender who may continue to behave in a way that may threaten others in the University community.¹⁴³ Disclosure may also be required as a matter of law pursuant to a subpoena in a civil or criminal case. Any time “confidential” or “confidentially” is used in relation to the University’s policy or procedures for sexual misconduct it is with this understanding. Retaliation against a member of the community for reporting a violation is, in any circumstance, a separate and very serious offense.

Any member of the community can, and should, call the SHARE Center and the Office of Equal Opportunity Programs (OEOP). You may submit anonymous or third-party reports of incidents to both of these offices, by phone or by using these forms.¹⁴⁴ In either case, reports will be held, confidentially, on file. These records help the University to properly assess and deal with issues of sexual misconduct.

Faculty can also talk to a Title IX Officer, their Dean, or any member of the Sexual Misconduct Grievance Board.

Staff can talk to their supervisor, union representative, human resources representative, or any member of the Sexual Misconduct Grievance Board.

Students can talk to a Title IX Officer or any member of the Sexual Misconduct Grievance Board. Undergraduates can talk to their residential college dean or master or freshman counselor. Graduate students can talk to their Dean of Student Affairs. [By 2012, every faculty member should have basic responder training, so any trusted advisor or professor should be able to help you]. The Yale Women’s Center, LGBTQ Co-Op, or Cultural Houses may also be useful resources.

If you have been a victim of sexual assault, no matter what course of action you ultimately choose to take, it is important to take certain emergency steps¹⁴⁵ to preserve evidence that may later be important. This may include filing a police report and seeking immediate medical attention. You are encouraged to seek counseling.¹⁴⁶

III. WHAT SHOULD I DO IF I HAVE BEEN ACCUSED OF SEXUAL MISCONDUCT?

Allegations of sexual misconduct are very serious and should be attended to immediately. Respondents should consider discussing the matter with any of the responders listed in Part II. Consultation with personal legal counsel should be considered, especially when responding to charges of sexual assault, which can give rise to criminal prosecution.

¹⁴³ Link to *Office of the General Counsel Guidance on Confidentiality in Cases of Sexual Misconduct*.

¹⁴⁴ Link to pdfs of anonymous/third party report forms.

¹⁴⁵ Link to SHARE emergency info, *available at*, http://www.yale.edu/uhs/med_services/share/assault-emergencies.html.

¹⁴⁶ Link to SHARE counseling information, *available at*, http://www.yale.edu/uhs/med_services/share/assault-emergencies.html#days.

IV. WHAT ARE MY OPTIONS FOR DEALING WITH SEXUAL MISCONDUCT?

The experience of sexual misconduct is almost always a violating one, but one that every person may wish to deal with differently. In an attempt to respect this, the University seeks to provide clear, simple procedural options for dealing with an incident that, as much as possible, leave the complainant in control of his or her own process. At the same time, the University seeks to provide procedural safeguards for individuals accused of sexual misconduct. Trained responders¹⁴⁷ are available to help complainants and responders navigate their way through this process. The chart in Figure 1: Graphic Depiction of Yale Policy on Sexual Misconduct shows how the Yale process works.

A. Sexual Misconduct Grievance Board

The University's Sexual Misconduct Grievance Board (the "Grievance Board" or the "Board") has jurisdiction over all complaints of sexual misconduct brought by a current or former (i) Yale student,¹⁴⁸ (ii) Yale faculty member, or (iii) staff member¹⁴⁹ or administrator at Yale made against any current Yale student, current Yale faculty member, or current Yale staff member.¹⁵⁰ The Board is appointed by the Provost to serve for staggered three-year terms and comprises twenty members selected from around the University, including all schools on a rotating basis. All members receive training on sexual misconduct and the resolution of complaints pertaining to it at the beginning of each year of service.

As explained further below, complaints may be resolved informally, with assistance from an Informal Response Team, or formally after a hearing by an adjudicatory body drawn from the Grievance Board. Any two members of the Board may serve as members of an Informal Response Team. Any seven members of the Board may serve as an adjudicatory body in a formal hearing (with five constituting a quorum). The two members comprising the Informal Response Team in a particular case are not eligible to serve on the adjudicatory body for that case.

B. Initial Steps

The first step in a process of dealing with sexual misconduct is often a consultation with a trusted source, or a trained University responder.

- ◆ If you have been a victim of sexual assault, no matter what course of action you ultimately choose to take, it is important to take certain emergency steps to preserve evidence that may later be important. This may include filing a police report and seeking immediate medical attention. You are encouraged to seek counseling.
- ◆ In the case of sexual harassment, the complainant is urged to contact the SHARE Center before trying to address the harasser directly. You should only approach

¹⁴⁷ Link back up to "Who can I talk to...?" section.

¹⁴⁸ References in this policy to "student" include visiting scholars.

¹⁴⁹ References in this report to "staff" include independent contractors who have agreed to abide by this policy.

¹⁵⁰ If the respondent to a complaint is a staff member who is a member of a union with a separately negotiated Grievance Procedure, the Grievance Board will not be able to impose sanctions. However, union members may consult with any member of the Board for advice or to help facilitate an informal resolution to their complaint, as respondent or complainant.

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the harasser if you feel safe doing so and are adequately prepared. If, for any reason, you feel uncomfortable approaching the harasser or if your efforts to engage the harasser prove ineffective, trained personnel from the Office of Equal Opportunity Programs (OEOP)¹⁵¹ can intercede and address the harasser on your behalf.

The University encourages the reporting of sexual misconduct, even if only through available anonymous or third-party mechanisms. These records help the University adequately assess and deal with issues of sexual misconduct, including identifying long-term patterns of misconduct.

When considering whether to file a formal complaint through the Grievance Board,¹⁵² the complainant has several options. In the next sections we outline the alternatives and the circumstances to consider when deciding how best to proceed.

C. Timing of Complaints

The optimal time for lodging a complaint is usually close to the time the incident occurred. Counselors at the SHARE Center are available to help you decide how best to proceed. As time goes by, memories may become less reliable and information and witnesses may become unavailable. In short, the passage of time often makes an investigation increasingly difficult. In general, a formal complaint must be brought within two years after the date of the last incident of sexual misconduct. The Board is willing to discuss but may decide not to take formal action on a complaint about an incident of sexual misconduct that occurred more than two years after the date of the incident. A former student, faculty member, staff member or administrator may bring a complaint of sexual misconduct up to one year after leaving Yale if the date of filing the complaint is within two years after the incident giving rise to the complaint. The Board may take action on a complaint that is filed later if there are extenuating circumstances. If a complaint by a student is in some manner associated with the conduct of a course, the student may request that no action be taken on the complaint until after the conclusion of the term in which the course was offered.

D. Filing a Complaint

Any person who brings an informal or a formal complaint to a member of the Grievance Board will be assigned an individual (the “Advocate”) to help the complainant better understand the procedural options and navigate the system of informal and formal procedures. This person will not be eligible to serve on the informal response team or adjudicatory body for that complaint. The Advocate would not necessarily be expected to provide any psychological services but should be well-versed in the services available at the SHARE Center, the Yale New Haven Hospital, and elsewhere.

1. Informal Complaint

Any member of the University community may present an **informal complaint** to any member the Grievance Board, either orally or in writing. The Board is also available to answer questions concerning procedure. Members of the Grievance Board are trained to be sensitive to the thoughts and feelings of those involved and will treat every consultation and complaint with seriousness and with all possible confidentiality. If you wish to just inform the named person

¹⁵¹ Link to SHARE or OEOP.

¹⁵² Hereafter referred to as the “Grievance Procedure.”

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about the problem while remaining unidentified, the Grievance Board may, at its discretion, agree to assist by speaking informally with the named person without identifying you. At any juncture, the complainant can transfer an informal complaint to a formal complaint.

2. Formal Complaint

After an informal discussion with a member of the Grievance Board or any other responder or trusted source, you may decide to make a formal complaint.¹⁵³ You may **initiate a formal complaint** with the Board within the time limits specified above by submitting a written request¹⁵⁴ directly to the Chair of the Board. If the Chair determines that the complaint falls within the Board's mandate, the respondent will receive a copy and may provide a written response to the complaint within two weeks of receiving it. The respondent's response, if any, will be provided to the complainant. Without identifying the complainant or the respondent, the Grievance Board will inform the Office of the General Counsel and the Office of Equal Opportunity Programs that a complaint has been made and provide a summary of the general nature of the alleged behavior.

E. Informal Response Team¹⁵⁵

After receiving an oral or written complaint, the Chair of the Grievance Board will, unless the complainant elects otherwise, appoint an Informal Response Team (IRT). Ordinarily the IRT will comprise a faculty member or senior staff member and at least one person with counseling experience. Because certain members of the Board may be called upon to adjudicate a formal complaint, members of the IRT will not be involved in that adjudication, should it occur. If there are individuals who the complainant feels should be excluded from the IRT or subsequent processes based on a conflict of interest or similar, such concerns will be taken into consideration.

The Informal Response Team will consult with the complainant concerning the situation and, if the complainant wishes, may also talk with the respondent. The IRT will help facilitate immediate remedies appropriate to the situation, including but not limited to allowing a complainant to change a section, alter living arrangements, extend a deadline, or change a reader or supervisor.

The IRT may also provide a "structured meeting," consisting of one or more sessions of guidance and structured questioning. A structured meeting does not necessarily require the complainant and the respondent to meet face to face. The IRT may meet with each person individually and seek to facilitate a resolution in this way. Alternatively, if both parties so choose, they may meet together with the IRT. The IRT will do this through interviews with the complainant and the respondent, as well as following up on any additional sources of information provided by either party.¹⁵⁶ In addition to the remedies mentioned above, a

¹⁵³ The complainant has the option of making a formal complaint but delaying identification to the named person and any action by the Board until a later date (e.g., the end of the term).

¹⁵⁴ Link to request form.

¹⁵⁵ These procedures borrow language and structure and are adapted from the Divinity School's revised procedures for resolving issues of sexual harassment, the Yale College Sexual Harassment Grievance Board Procedures, and University of Virginia's grievance procedures.

¹⁵⁶ However, this is not an official "fact-finding" process. Any information gathered during the IRT process will not be provided to the adjudicatory body should a formal hearing occur, and the members of the IRT responsible for that case are ineligible to serve on the adjudicatory body hearing that case.

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structured meeting may result in the recommendation that the respondent receive training or counseling. A structured meeting may provide a viable alternative when the complainant is not likely to be successful in an adjudicatory proceeding, which is sometimes felt to be an “all-or-nothing” venture.

The Informal Response Team will inform the Board of the proposed resolution of the complaint. If both parties agree to the proposed resolution, then it will be implemented. If either party is not satisfied with the remedies proposed by the IRT, then either the complainant or the respondent may request a formal review of the complaint by the full Board. At any point during the process, the complainant may decide to take no further action on the complaint, and end his or her involvement in the process.

F. Adjudication Procedure for Formal Complaints of Sexual Misconduct

Upon receipt of a formal complaint, the Chair of the Sexual Misconduct Grievance Board will appoint two faculty or senior staff members of the Board to conduct a **preliminary investigation**. Alternatively, the Board may, at its option, appoint third parties to serve as investigators and report back to the Board. Normally, the preliminary investigation will proceed as follows:

- ◆ The investigators will talk with the complainant in order to gain a fuller understanding of the situation.
- ◆ The investigators will talk with the respondent and present to him or her the issues raised by the complainant.
- ◆ After consultation with the full Board, the investigators may talk to other persons.
- ◆ The investigators will report their findings, in writing, to the full Board but are not eligible to serve as voting members of the adjudicatory body hearing the case for which they are served as an investigator.

Based on the investigators’ report, the Board may determine that the complaint falls outside its mandate or is clearly without merit and may close its review. In such a case, the Chair will inform the complainant and the respondent in writing and may suggest other possible courses of action for the complainant.¹⁵⁷ In either case, the Board will provide both complainant and respondent with a copy of the report.

If the Board determines that the complaint is within its mandate and warrants further review, the Chair will inform the complainant and the respondent and schedule a **formal hearing** by a seven-person adjudicatory body selected by the Chair from among the members of the Board. The complainant and the respondent may each challenge the participation of individual members of the Board in a particular case for cause. Students may also request that the student representative be replaced by a non-student. The other members of the Board will generally decide whether such a challenge should be allowed.¹⁵⁸ If a person is removed from an adjudicatory body by challenge, the Provost will appoint a replacement from among the other members of the Board or from a pre-determined and trained pool of alternates.

¹⁵⁷ In the case of a formal complaint filed with the Grievance Board, if a respondent does not contest the complaint, he or she may opt for a disposition without hearing. The decision rendered by the Chair may be appealed to the full Board, which would conduct a preliminary investigation.

¹⁵⁸ This decision may be appealed to the [Appeals Committee](#) [link to Appeal Committee section] after the hearing.

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The complainant and the respondent will have the opportunity to present information and propose that the adjudicatory body interview relevant witnesses. The complainant and the respondent may be permitted to inspect documents or parts of documents that the Board deems directly relevant to the specific complaint and that were not written under a presumption of confidentiality. As its inquiry proceeds, the members of the Board and any third parties appointed by the Board to serve as investigators may interview the witnesses proposed by the complainant or the respondent and any other person they deem relevant. The Board shall not be required to follow the State of Connecticut or federal rules of evidence.

In meetings with the Board, the complainant and the respondent may each be accompanied by any member of the Yale community (i.e., student, faculty member, dean, administrator, or other employee); however, these advisers may not have legal training, except in the case that either complainant or respondent is a student or faculty member of the Law School. The complainant may also be accompanied by his or her Advocate. Although the advisers or the Advocate may counsel the individual whom they are accompanying, they may not participate directly in the proceedings.

When the complainant, the respondent, or another witness is meeting with the Board, the other party may be present in person only if agreed to by the parties and the Board. If a session is closed during the testimony of one party, the other party will be allowed to listen to the testimony from another room by audio transmission. At the end of the formal review process, all documents presented to the Board, including electronic communications, will be gathered and provided to the Provost's Office, which will destroy them after seven years, unless the Office of the General Counsel has instructed that the documents be preserved.

G. Sanctions and Other Outcomes

Based on the findings of the adjudicatory body, the Grievance Board shall provide a written ruling on the merits of the complaint to the complainant, the respondent, and the Provost. The burden is on the complainant to demonstrate by a preponderance of the evidence that the respondent engaged in sexual misconduct. Preponderance of the evidence is not as exacting a standard as the proof beyond a reasonable doubt used in criminal cases. Proof by preponderance of the evidence means that it is more likely than not that an offense has occurred. If the adjudicatory body finds that the complainant has met that burden, then the Board shall recommend appropriate sanctions. Available sanctions include, but are not limited to:

- ◆ Sexual harassment training
- ◆ Counseling
- ◆ Verbal warning or reprimand
- ◆ Written warning or reprimand
- ◆ Report included in permanent personnel or academic record of respondent
- ◆ Change in job responsibilities (e.g., lower status or horizontal movement)
- ◆ Invocation or continuation of probationary period
- ◆ Withholding of salary increment (no merit increase)

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- ◆ Probation or suspension with or without pay
- ◆ Academic suspension
- ◆ Discharge or expulsion

The Board may also mandate training or other remediation measures and specify the boundaries and conditions of future interactions between the complainant and the respondent. If these conditions are violated, it may be grounds for further adjudicatory action. Even if an adjudicatory body does not find misconduct, any retaliatory act by the respondent or others will be grounds for disciplinary actions, including expulsion or termination.

Except as provided below, the sanctions and other recommendations of the Board will go into effect no later than thirty business days after the Board's decision is delivered to the complainant, the respondent, and the Provost unless either party files an appeal to the Provost or the Provost stays the imposition of sanctions within that thirty-day period. The Provost has the power to stay the imposition of sanctions if he or she determines that (1) the findings of the adjudicatory body were not supported by the evidence, (2) the proposed sanctions were clearly inappropriate, or (3) further proceedings are required by applicable collective bargaining agreements,¹⁵⁹ by the University policies applicable to the proposed termination of tenured faculty,¹⁶⁰ or by applicable law. The Provost may, in cases (1) and (2), accept, modify or reject the findings of the adjudicatory body or the Board's recommendations. If the Provost modifies or rejects the findings or recommendations, then the Provost will submit a written report to the Board explaining the reasons for doing so. The Provost will then render a decision on the matter and convey his or her findings and mandated sanctions in writing to the complainant, the respondent, the Board, and the Committee on Sexual Misconduct. In case (3), the Provost shall order such further proceedings as may be required.

These policies and procedures are depicted in Figure 1: Graphic Depiction of Yale Policy on Sexual Misconduct.

H. Protection Against Retaliation

It is a clear violation of University policy to retaliate against any person for making a complaint of sexual misconduct, regardless of the ultimate outcome of the matter, or for serving as a witness, adviser, or member of the Grievance Board or the Committee on Sexual Misconduct. Threats of retaliation are also prohibited. These prohibitions apply with equal force after a complaint has been heard. Retaliation complaints may be brought along with the original complaint or filed as a separate complaint at a later time. Any person may submit a complaint of retaliation to the Grievance Board within two years of the retaliatory act or threat of retaliation. The Board shall review the facts and undertake such additional investigation as it deems appropriate. The Board shall then make a finding and specify what, sanctions, if any, are to be levied. Available sanctions include expulsion or termination.

V. WHAT IS YALE DOING TO PREVENT AND RESPOND TO SEXUAL MISCONDUCT?

¹⁵⁹ Link to applicable sections of collective bargaining agreements.

¹⁶⁰ Sanctions against tenured faculty may include a prohibition on hiring students or staff for a specified period of time.

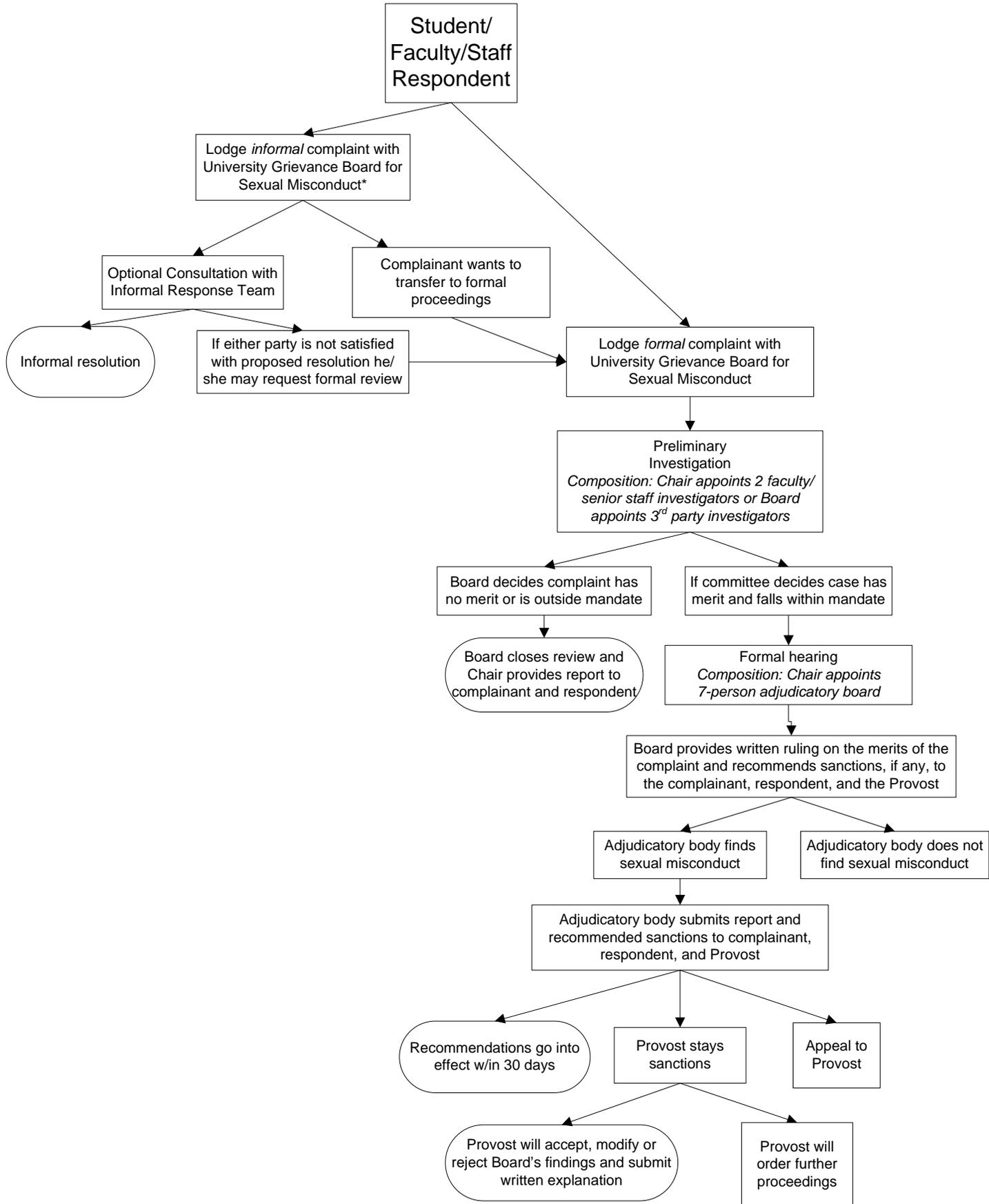
Report of the Women Faculty Forum Council on Sexual Misconduct at Yale

[In this section, the University would post updates on changes to policies or procedure, etc., ideally giving the whole system a greater sense of transparency. Examples might be:

“The Grievance Board will issue its Annual Report on May 31, 2010. Past reports can be found [here].

The University conducts a regular review of its Sexual Misconduct Policy. The Committee on Sexual Misconduct will conduct its next review between September 2010 and May 2011. For more information about this process, see [this page].”]

FIGURE 1: Graphic Depiction of Yale Policy on Sexual Misconduct*



* The University Grievance Board for Complaints of Sexual Misconduct (the Board) will attend to complaints of sexual misconduct brought by (i) a Yale student, (ii) a Yale faculty member, or (iii) a staff member or administrator at Yale made against any current Yale student, current Yale faculty member, or current Yale staff member. Any member of the community may access this system by contacting a member, (preferably the chair) of the Grievance Board. Complainants shall use this procedure if resolution is not reached, or complainant does not desire informal resolution

APPENDIX C: CURRENT PROCEDURES

The procedures represented in the charts in Appendix C are the results of information gathered online, and pursued through subsequent emails and phone calls. In some cases, it has not been possible to verify procedures through these efforts, but these charts are a good faith representation of the information available.

Each chart represents the resolution procedures open to a given person who feels they have been a victim of sexual misconduct (the “complainant”). Within the University, the determination of which procedures are available to a given complainant appears to be determined (a) by the status of the complainant (faculty, student, or staff) and the identity of the dean under whose authority the complainant falls, and then (b) by the status (faculty, staff, or student) of the alleged perpetrator, or “respondent,” and the identity of the dean under whose authority the respondent falls. A complainant must then determine what outcome they hope to achieve given the type of incident and the options open to him or her.

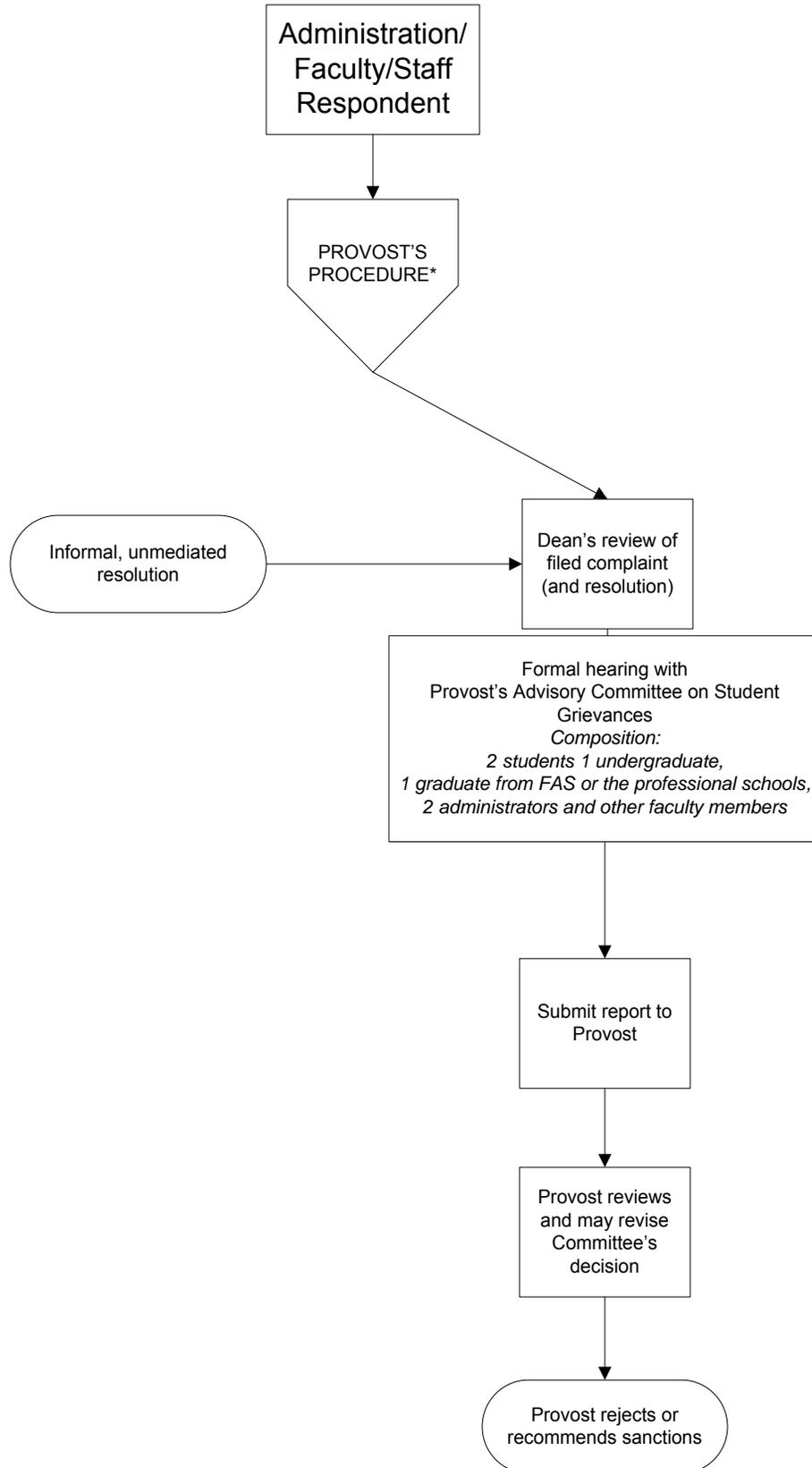
Available options include (non-judicial) grievance procedures, which are often only available to a complainant and respondent of the same type (faculty, staff, or students of a given school). In some cases, adjudication (with punitive results) is best achieved by bringing the complaint to the *disciplinary* board of a student respondent’s school (these boards are more likely to orient themselves around the respondent, e.g., the Disciplinary Board of FAS Graduate School is open to complaints against any grad student by *any* member of the Yale community, affiliated with the FAS Graduate School or not). These exist as such in YSN, YSM, FES, FAS Graduate School, Yale College, the Divinity School, and the Art School. In some cases, these complaints can only be brought when a police report has been filed. Almost all procedures allow for the postponement of the disclosure of a complainant’s identity (i.e., until the end of a class or evaluation).

These charts do not illustrate all of the informal processes that almost always precede the initiation of formal (judicial or non-judicial) proceedings. Complainants are sometimes referred to the Office of Equal Opportunity Programs, their cognizant deans, the chair of the relevant sexual harassment grievance board, the Provost, a Title IX officer, the Office of Human Resources, or the SHARE Center. These conversations and consultations may result in informal resolutions. If efforts at informal meetings fail, or a complainant brings a formal complaint to a sexual harassment grievance board with authority to hear such a complaint, then the procedures outlined in Appendix C come into play. These charts are not meant to imply that all or even most issues reach the stage of formal resolution mechanisms (adjudicatory or non-adjudicatory).



The icon indicates that the procedural option with which it is labeled is more fully illustrated on another page.

Provost's Procedure Student Complainant



* This is to be used by any student in the university against any faculty member, administrator or employee not under the authority of that student's dean.

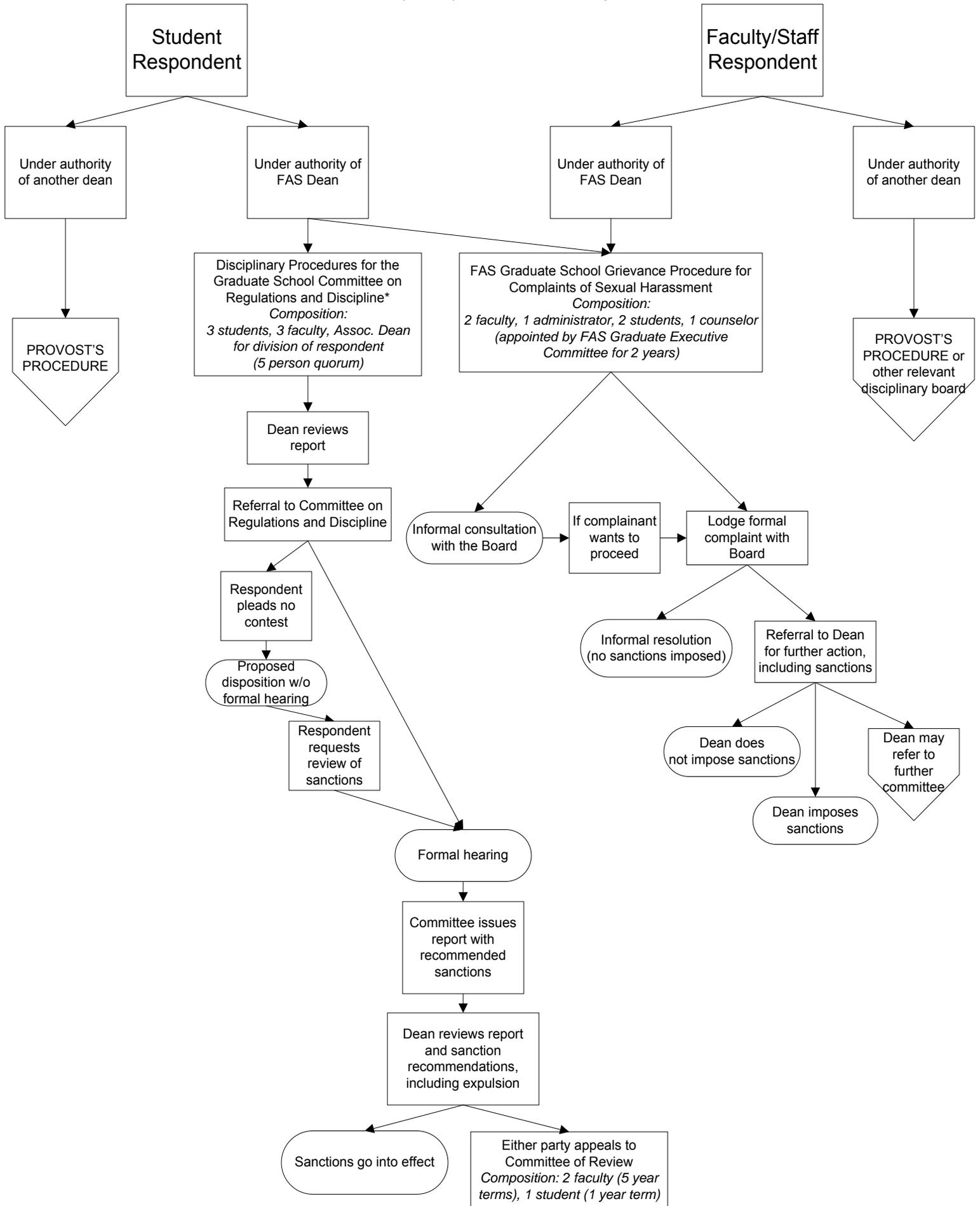
Yale College Complainant



Note: Special language about procedures involving harassment and assault are enumerated in the Yale College Handbook, but procedures remain substantively the same.

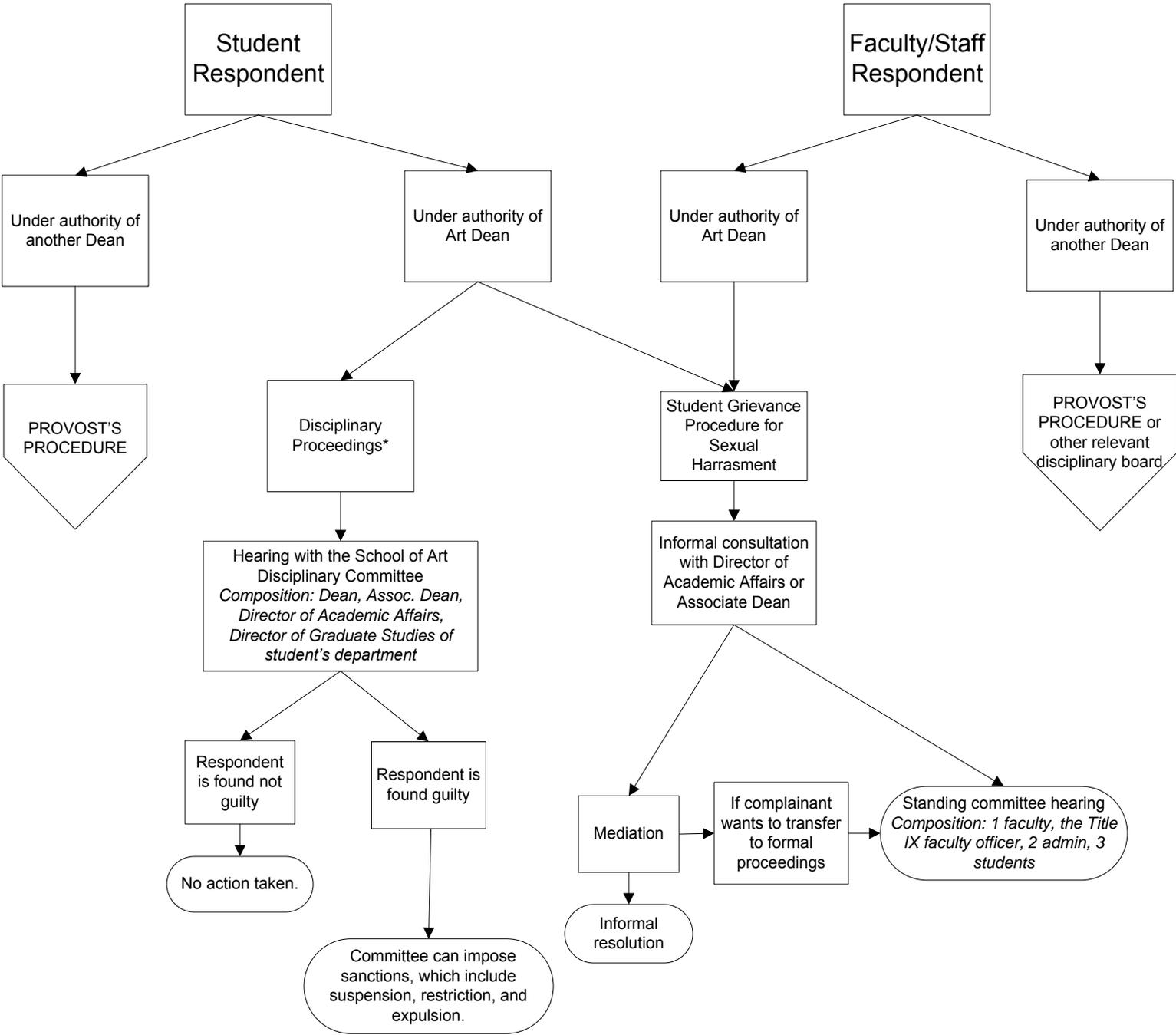
* This disciplinary procedure may be initiated against any undergraduate, when a police report of an incident has been filed by any member of the Yale community (faculty, student, or staff) in any school or member of the public.

Graduate (FAS) Student Complainant



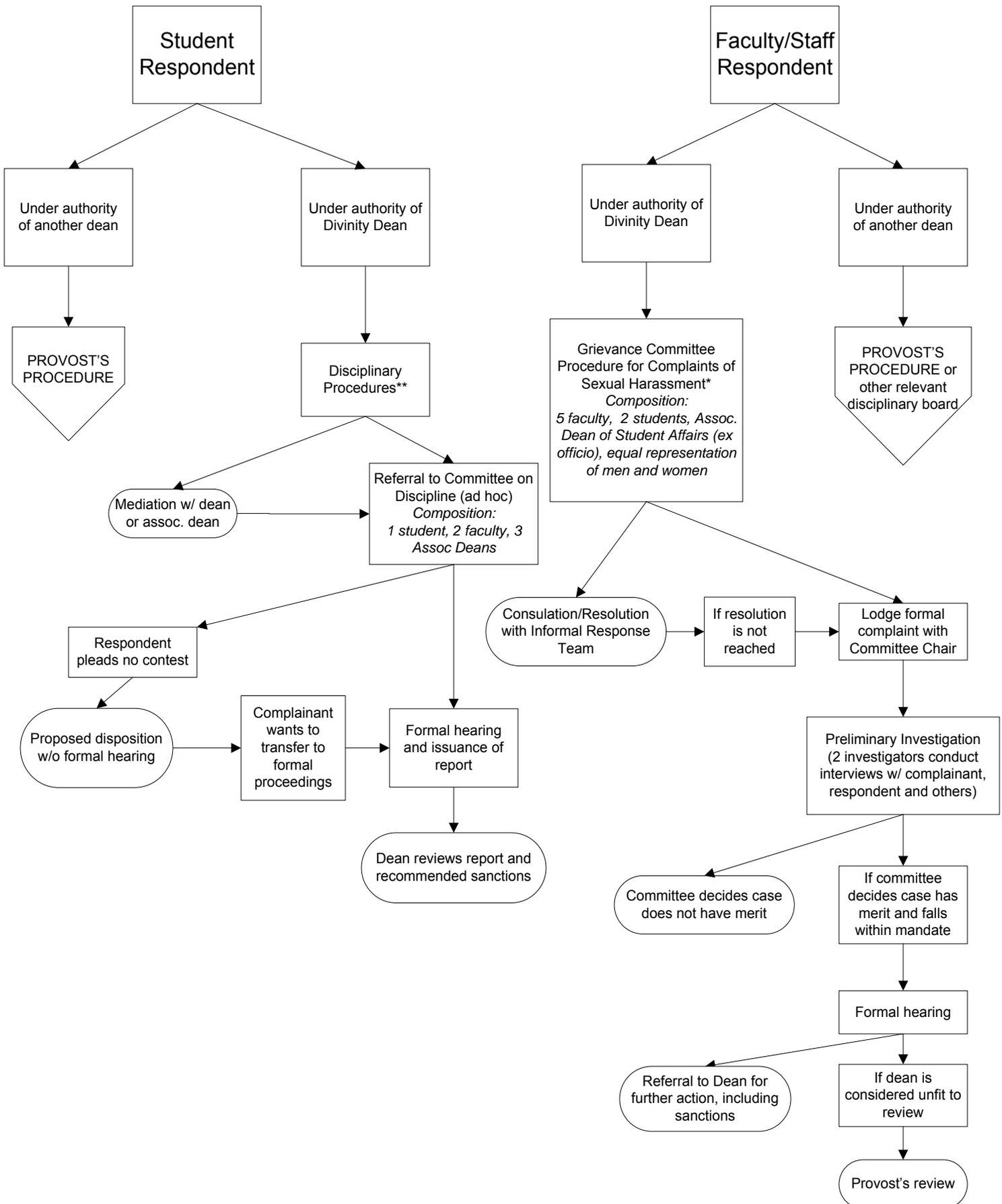
* This disciplinary procedure may be initiated against any FAS graduate student by a report from any member of the Yale community (faculty, student, staff) in any school or member of the public.

Art Student Complainant



* This disciplinary procedure may be initiated against any Art student by a report from any member of the Yale community (faculty, student, staff) in any school or member of the public.

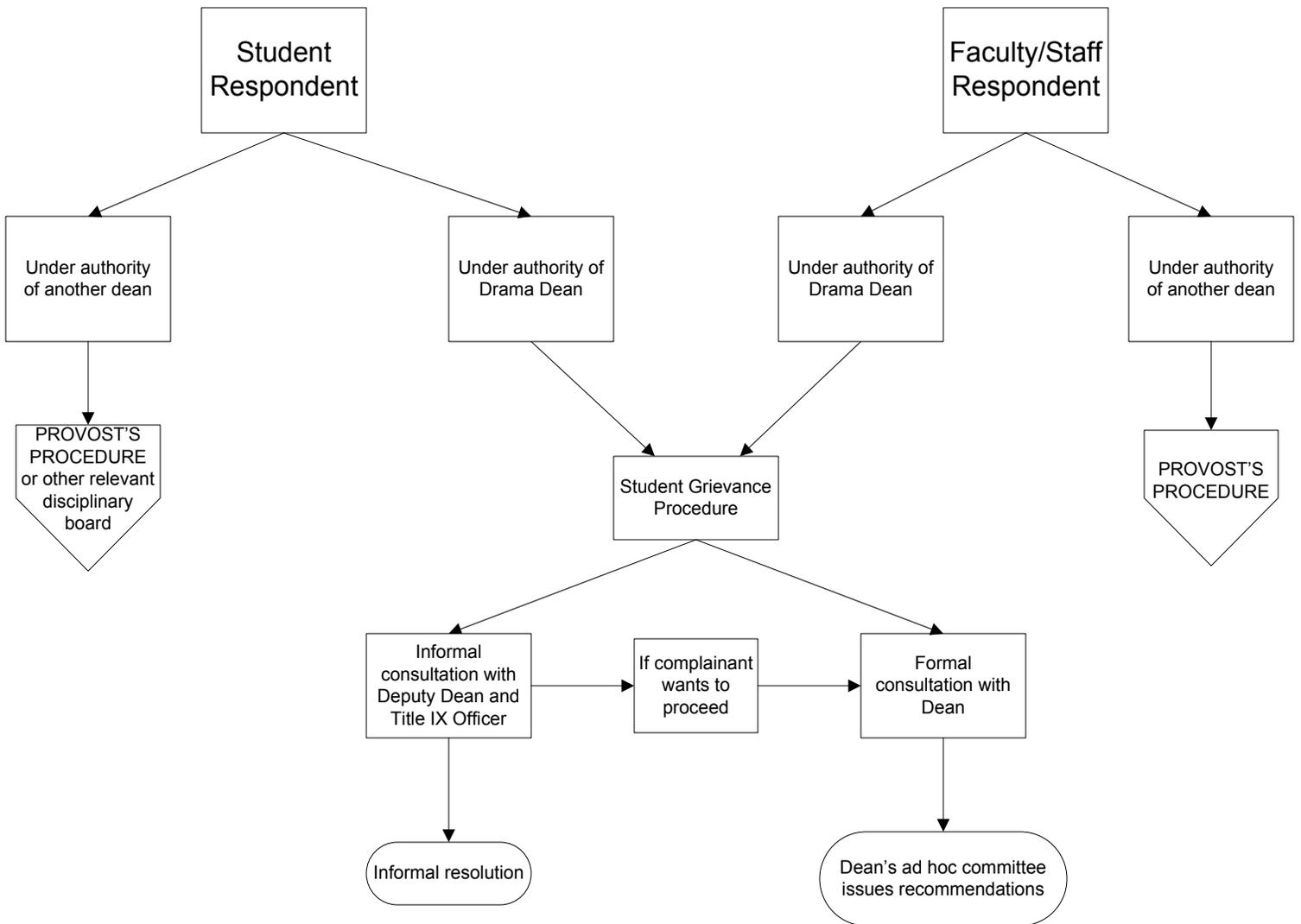
Divinity Student Complainant



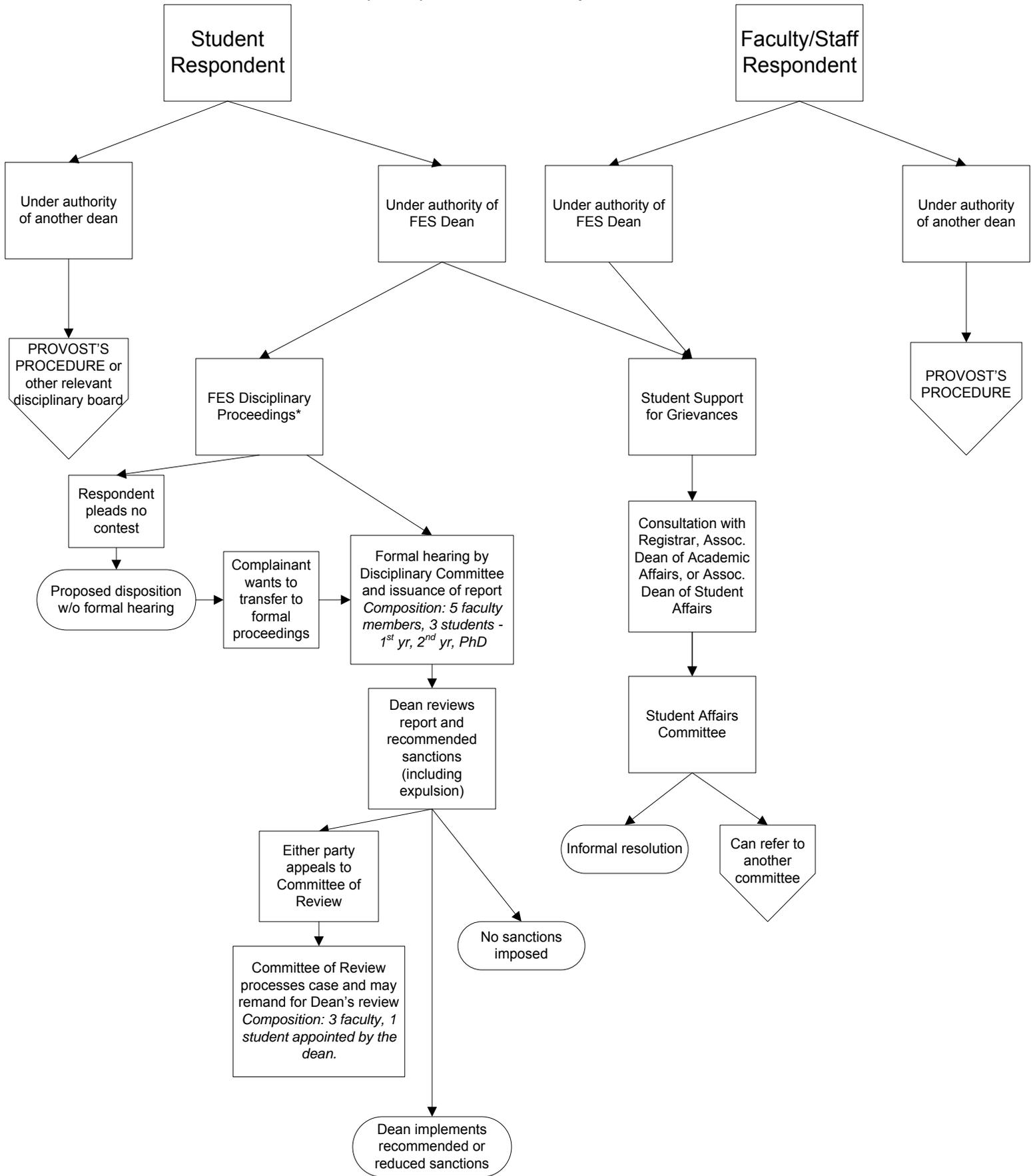
* The Committee will attend to complaints of sexual harassment brought by (i) a YDS student, (ii) a YDS faculty member, or (iii) a staff member or administrator supervised by the Dean of YDS, the Dean of Berkeley Divinity School, or the Director of the Institute of Sacred Music ("YDS Staff Member") made against any current YDS student, current YDS faculty member, or current YDS Staff Member.

** This disciplinary procedure may be initiated against any DIV student when a police report has been filed by any member of the Yale community (faculty, student, staff) in any school or member of the public.

Drama Student Complainant

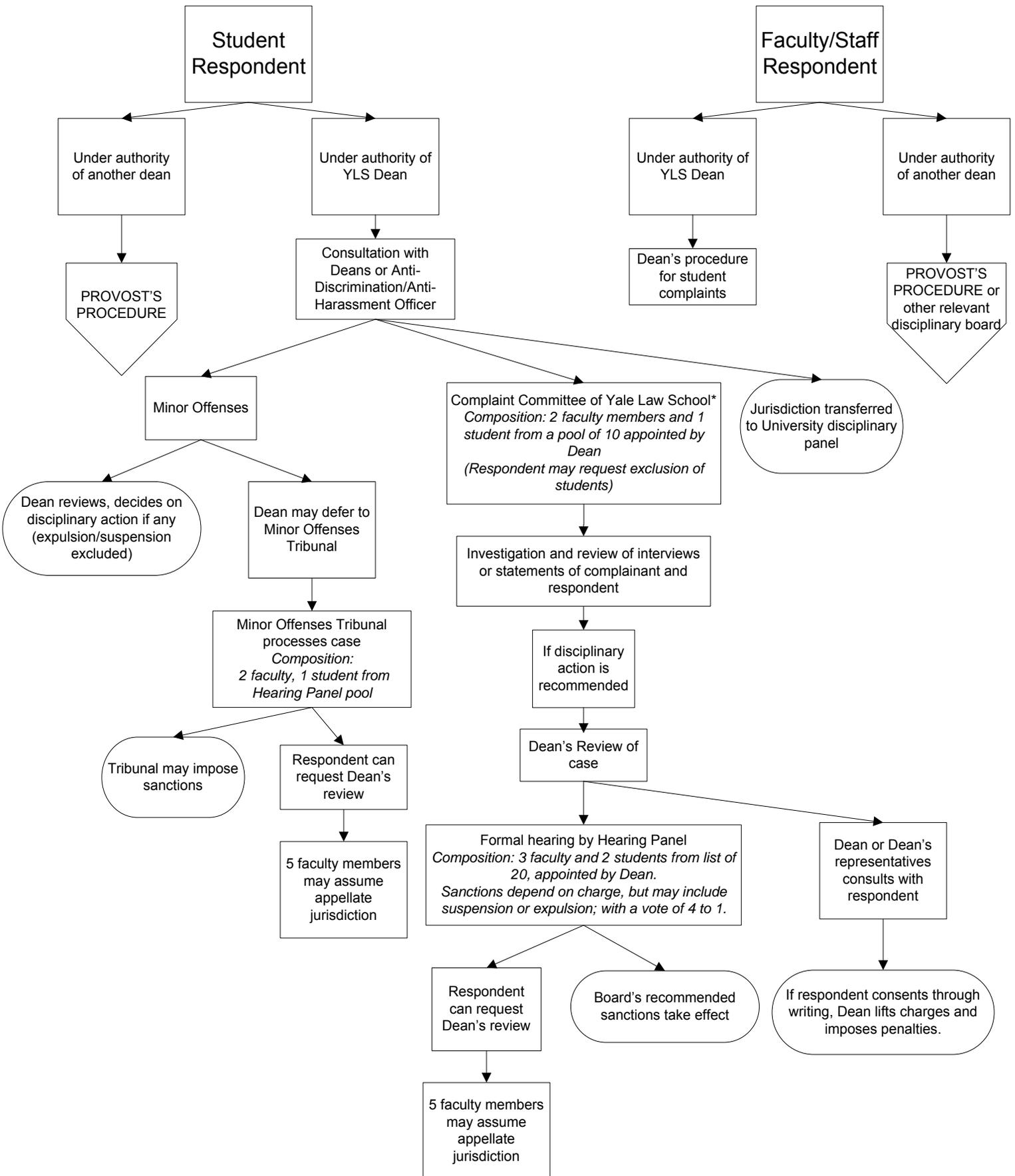


Forestry and Environmental Studies (FES) Student Complainant



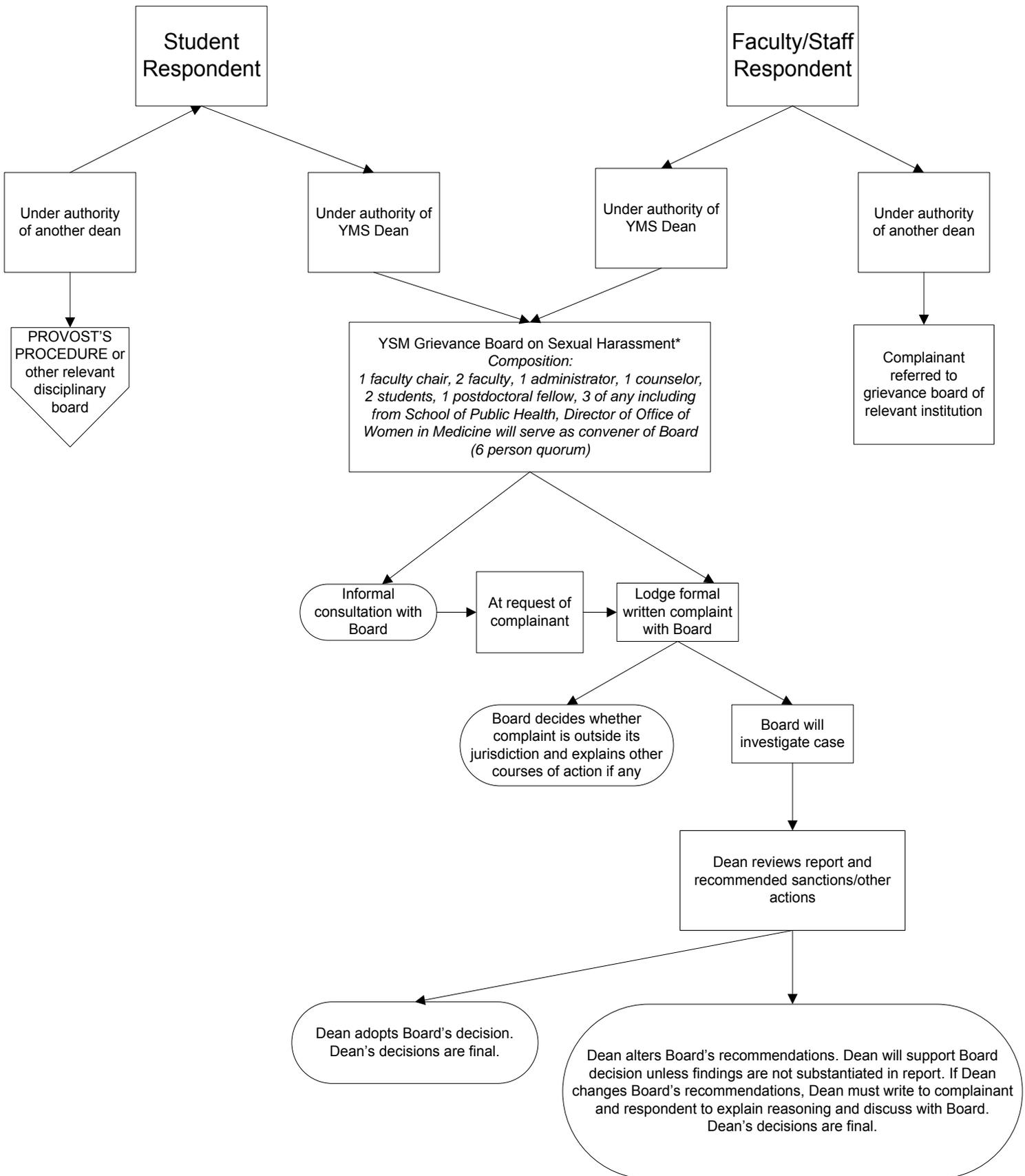
* This disciplinary procedure may be initiated against any Forestry and Environmental Studies School student by a report from any member of the Yale community (faculty, student, staff) in any school or member of the public.

Law Student Complainant



* The complaint committee deals with any violations of the Rights and Duties of the Members of the Yale Law School. This includes offenses (including "force or violence harassment, abuse, or coercion") against any member (faculty, student or staff) or visitor to the Law School, by any member or visitor.

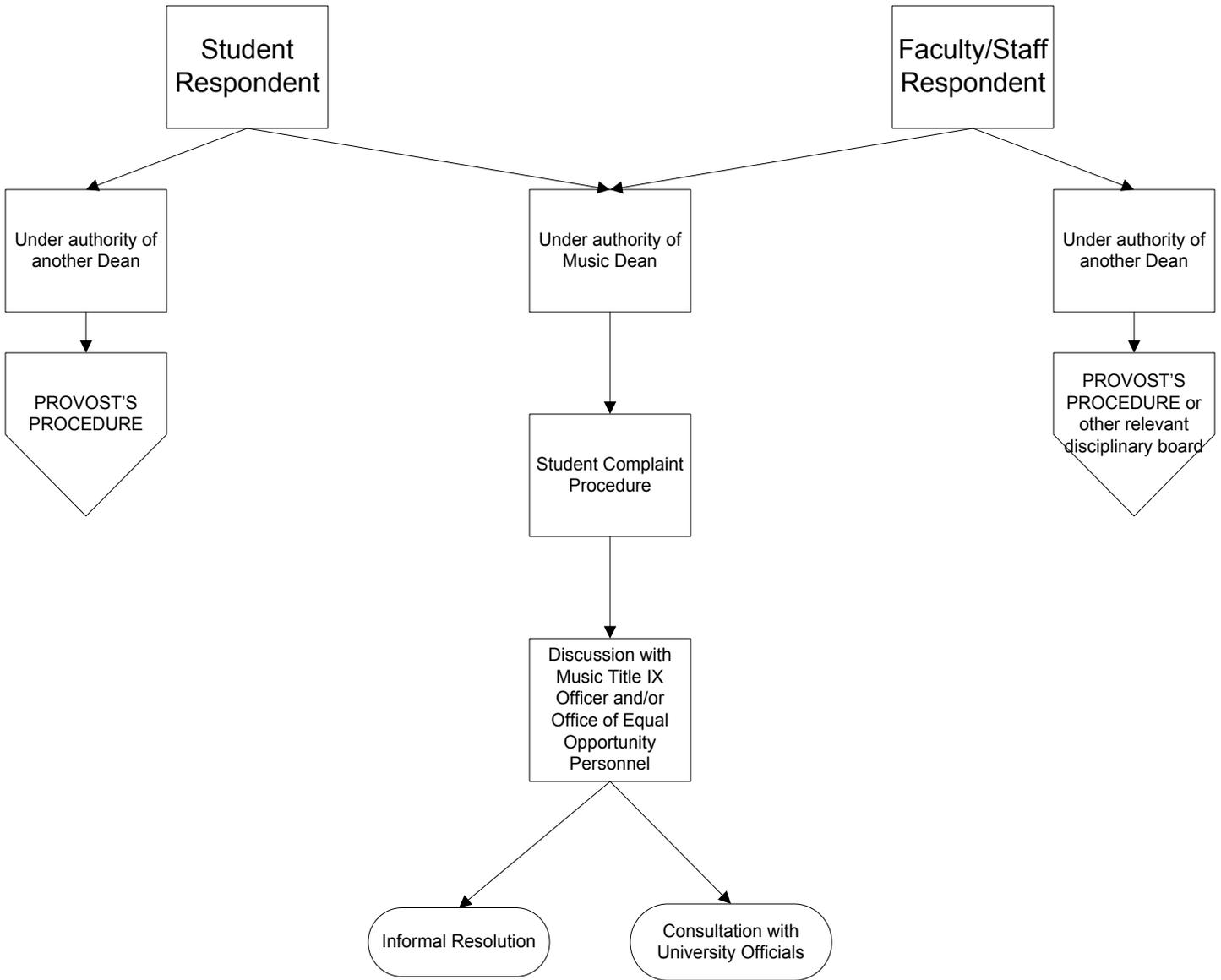
Medical Student Complainant



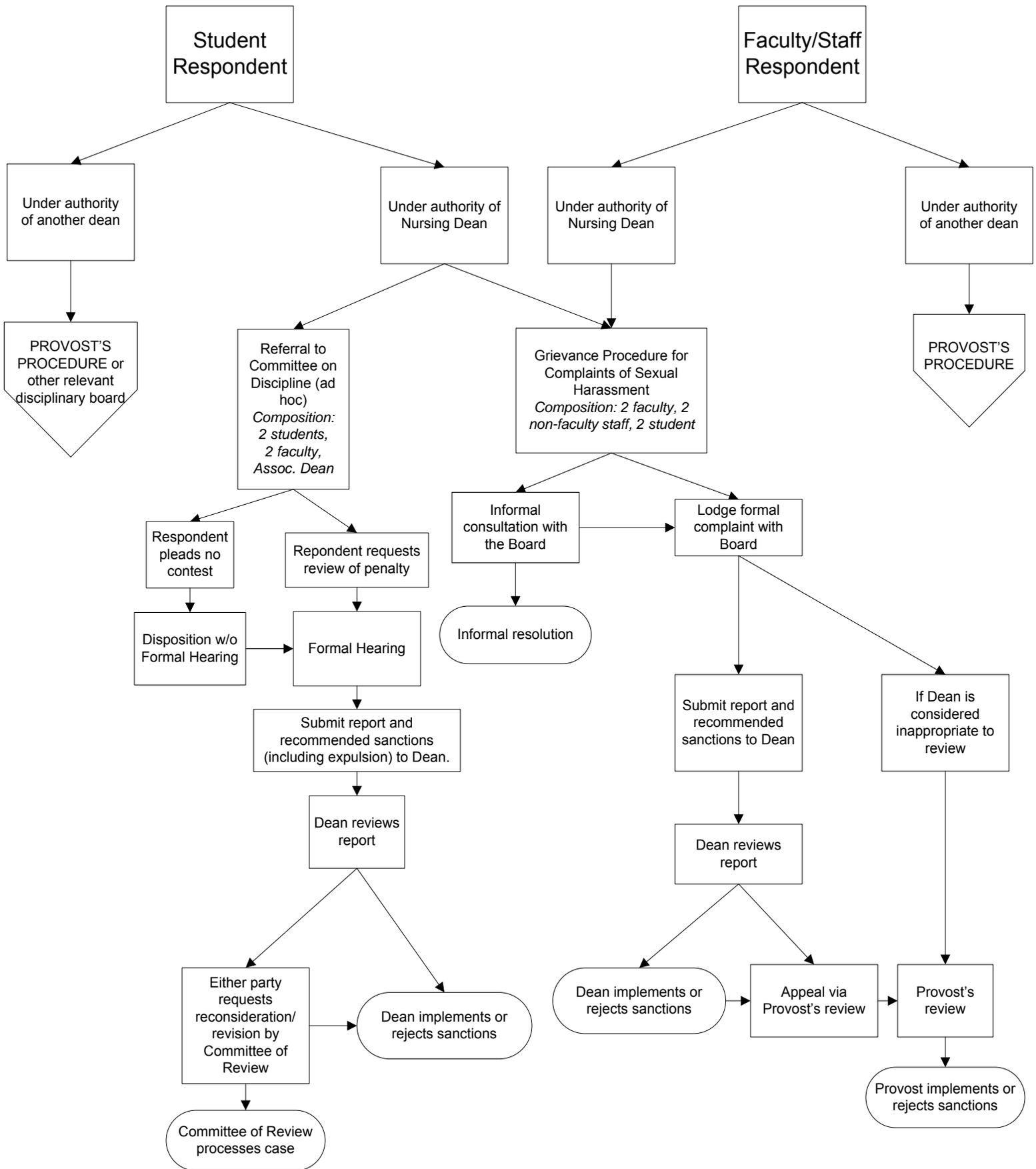
Note: Sexual Assault is currently defined procedurally as an extreme of sexual harassment and may be addressed using this procedure.

* This chart includes the recent revisions to the YSM Grievance Board Procedures released Spring 2009. The Board is an advisory body that includes students. The decisions are made by the YSM Dean.

Music School Complainant

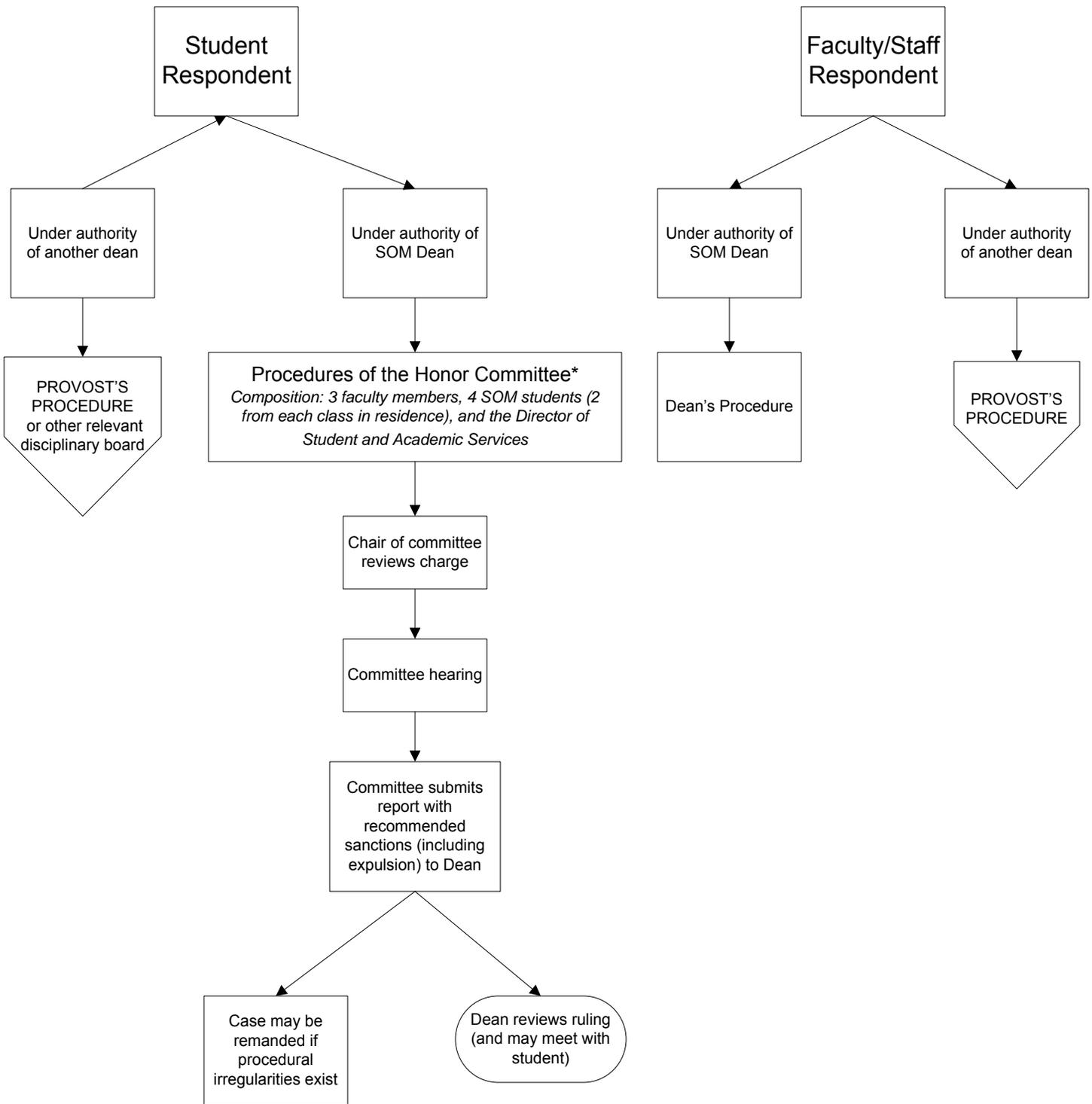


Nursing Student Complainant



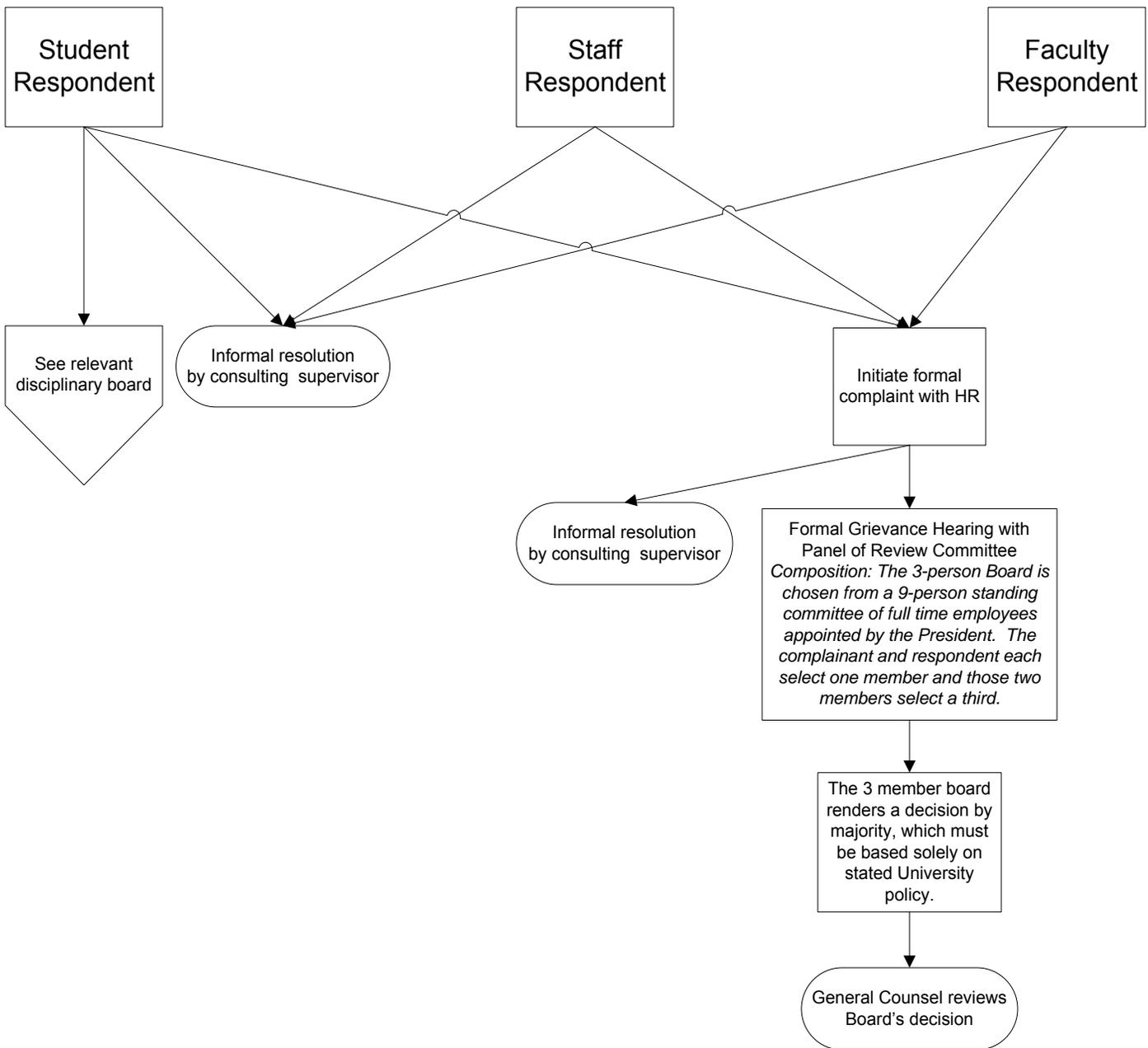
Note: Sexual harassment at Nursing School may include "sexist behavior, gender harassment, harassment based on sexual orientation."

SOM Student Complainant



* This disciplinary procedure may be initiated against any SOM student by a report from any member of the Yale community (faculty, student, staff) in any school or member of the public.

Non-Union Staff Complainant*



* The depicted procedure is the generic human resources procedure open to all non-union permanent and temporary staff.