A large, solid blue diagonal shape that starts from the top right corner and extends towards the bottom left, creating a triangular area on the right side of the slide.

**Unlawful  
Harassment: on the  
basis of sex & other  
forms**

# What is “unlawful harassment”?

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Unlawful harassment is a form of discrimination

Specific Behavior



Protected Class

- Quid pro quo
  - Hostile environment
  - *Also includes*, sexual assault, dating violence, domestic violence, and stalking; forms of sexual harassment.
- Race
  - Color,
  - Religion,
  - Sex
  - Sexual orientation
  - Gender identity
  - National or ethnic origin
- Age
  - Status as an individual with a disability,
  - Protected veteran status,
  - Genetic information, or other protected classes under the law)

## Quid pro quo

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### Unwelcome behavior *for* employment or program participation

“A University employee conditions the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct.” (Policy on Title IX Sexual Harassment)

Specific Behavior

# Hostile Environment

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**Behavior either so severe and/or pervasive that it interferes with employment or program participation**

**Specific Behavior**

- “[V]erbal or physical conduct or conduct using technology that is **so severe or pervasive** that it has the purpose or effect of unreasonably interfering with an individual’s work performance or educational program participation, or that creates an intimidating, hostile, or offensive work or educational environment.” (Policy on Harassment, Discrimination and Sexual Misconduct)
- “Unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the University’s education program or activity.” (Policy on Title IX Sexual Harassment)

# Severe and/or Pervasive

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Specific Behavior

What happened?

“A totality of the circumstances”

Impact on the complainant

Nature/ severity of conduct

Frequency of conduct

Duration of conduct

Number of people affected

Relationship between the parties (incl. position of authority)

Ages of the parties

Context

# “Objectively Unreasonable”

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**How should we interpret what happened?**

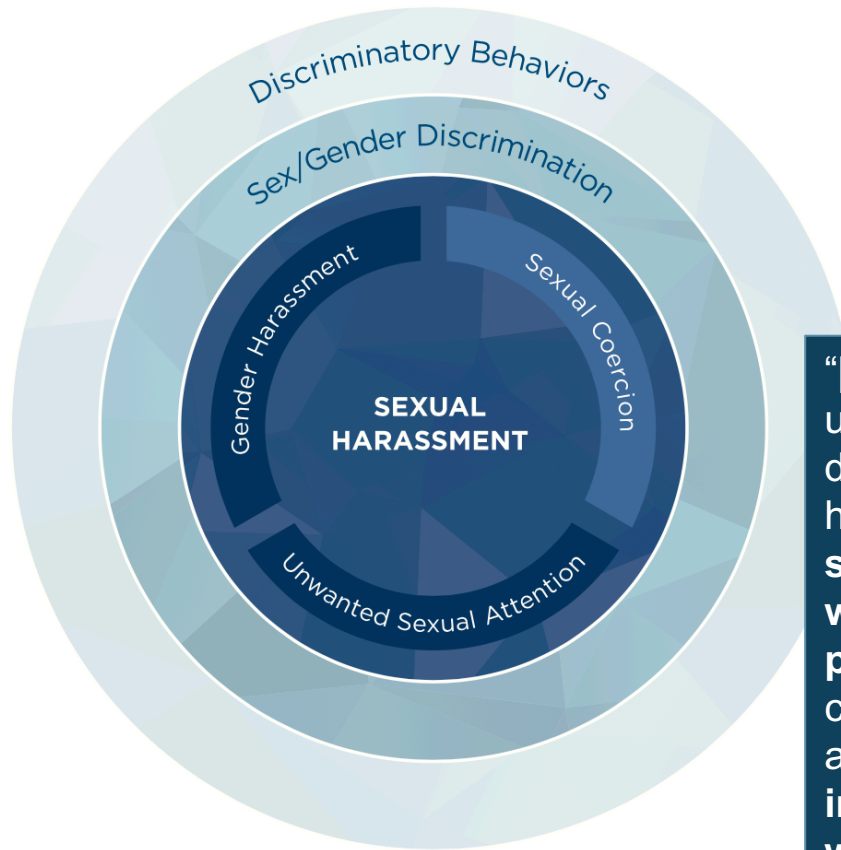
**Specific Behavior**

**Reasonable (person):** “of sound judgment, fair, sensible”

**Reasonable:** “just, rational, appropriate, ordinary, or usual in the circumstances”

## **Contrast:**

- “A person’s adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.” (Policy on Title IX Sexual Harassment)
- “A person’s subjective belief that behavior is intimidating, hostile, or offensive does not make that behavior harassment.” (Policy on Harassment, Discrimination, and Sexual Misconduct)
- “[A] reasonable person in the Title IX Complainant’s position.” (Policy on Title IX Sexual Harassment)



Legal Classifications:

- Quid pro quo sexual harassment
- Hostile environment harassment

## Sexual Harassment

“[T]he motivation underlying sexual coercion and unwanted sexual attention behaviors appears different from the motivation underlying gender harassment. . . . **[S]exual coercion and unwanted sexual attention can be viewed as “come-ons,” while gender harassment is, for all intents and purposes, a “put-down.”** However, . . . these come-on behaviors are not necessarily about attraction to women; more often than not, **they are instead motivated by the desire to devalue women or punish those who violate gender norms.**”

*From: NASEM Sexual Harassment of Women Report (2018) at 27 (emphasis added).*



## Sexual Harassment

*From: NASEM Sexual Harassment of Women Report (2018) at 26.*



# Hostile Environment in the Classroom?

“[T]he University’s fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be

**offensive,  
unwise,  
immoral, or  
wrong-headed.**

It is for the individual members of the University community, not for the University as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose.

**Indeed, fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the University’s educational mission.”** – Chicago Principles at 2.

Discrimination (harassment) can deny the ability to participate altogether.



# Hostile Environment in the Classroom?

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## Specific Behavior

**Behavior either so severe or pervasive that it interferes with employment or program participation  
*and***

- **Targets specific person(s);**
- **Abusive;**
- **Serves no bona fide academic purpose.**

“Expression occurring in an academic, educational or research context is considered a special case and is broadly protected by academic freedom. Such expression will not constitute harassment unless (in addition to satisfying the above definition) it is targeted at a specific person or persons, is abusive, and serves no bona fide academic purpose.”

(Policy on Harassment, Discrimination and Sexual Misconduct”

# Why “unlawful” harassment?

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In a way, those who felt #MeToo had not gone far enough and those who protested that it was going too far were saying some of the same things. There was a lack of process or clear enough rules. **The public did not fully agree on the precise meaning of the words like *harassment* or *assault*, let alone how**

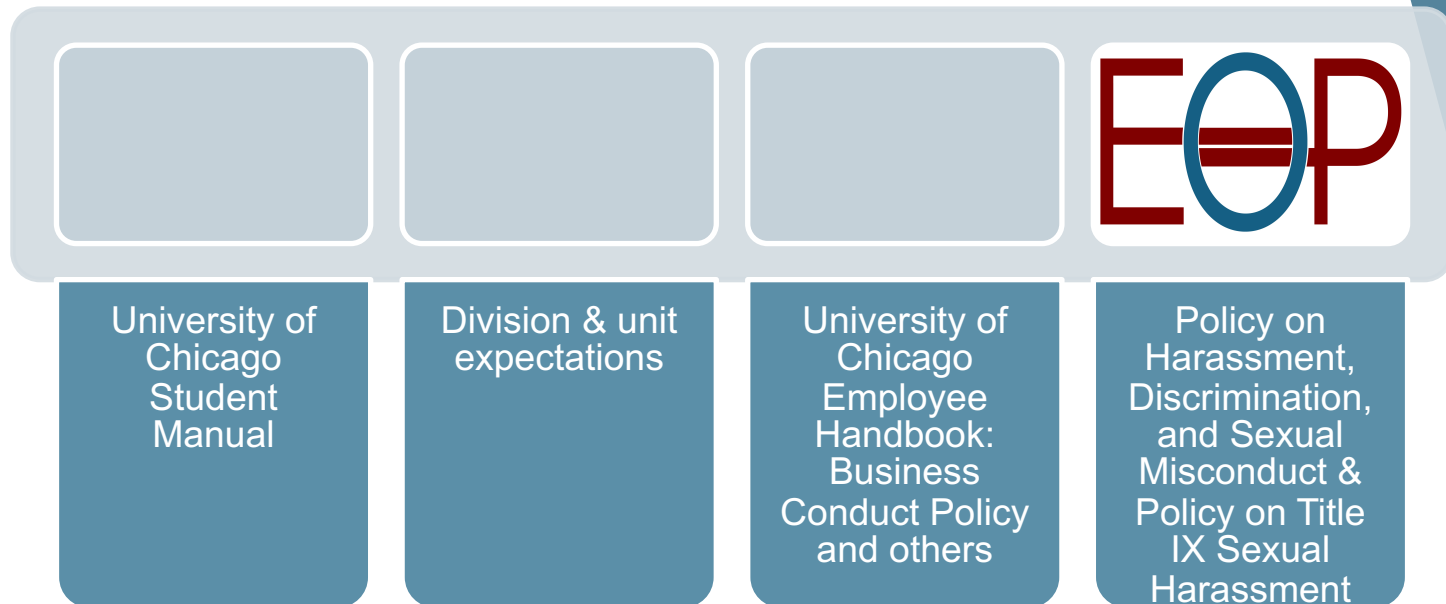
**businesses or schools should investigate or punish them.** Everyone from corporate boards to friends in bars seemed to be struggling to devise their own new guidelines, which made for fascinating conversations but also a kind of overall chaos. It was not clear how the country would ever agree on effective new standards or resolve the ocean of outstanding complaints. Instead, the feelings of unfairness on both sides just continued to mount."

- Jodi Kantor & Megan Twohey, *She Said* at 188.

# “Unlawful” as the standard

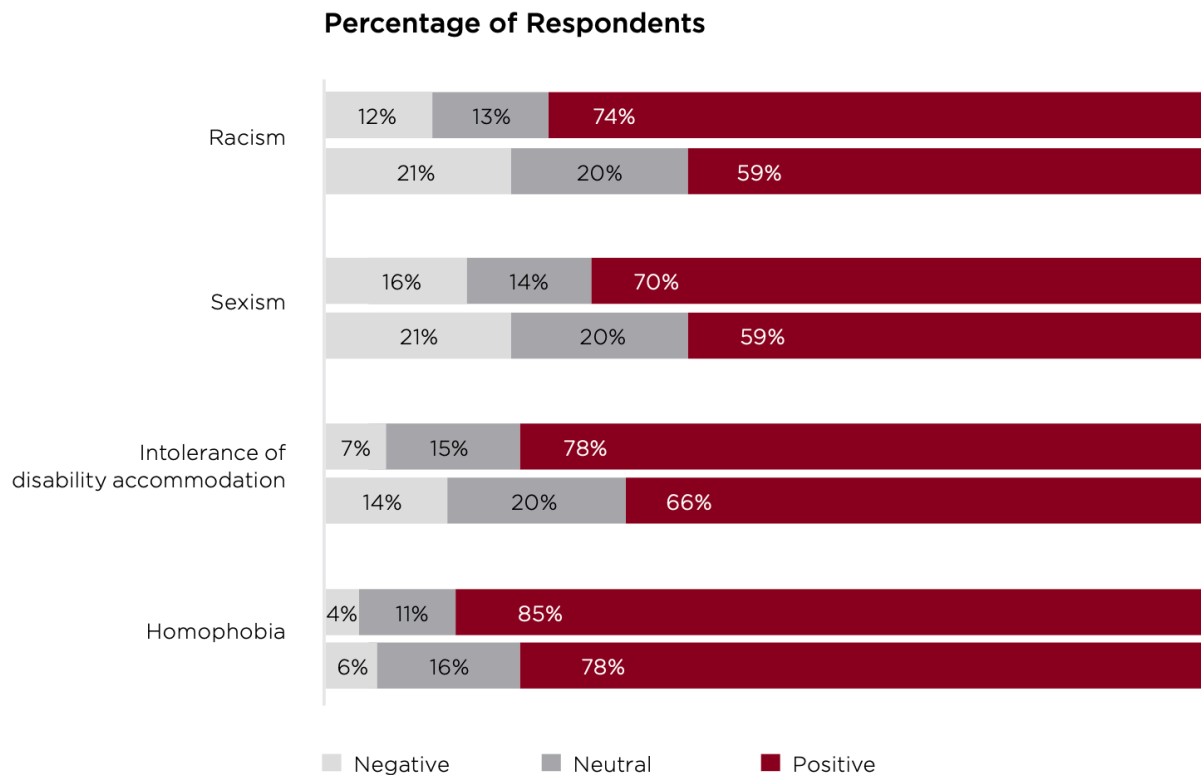
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Distinguish from, **harassment** generally (aka “aggressive pressure or intimidation,” Oxford English Dictionary), ex. yelling, insults, repeated unwelcome email communications, etc.



# Reports from the University

Figure 1: Responses to Overall and Proximal Climate Questions



*From the  
2016  
Campus  
Climate  
Survey*

# Impact of Unlawful Harassment

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*From the 2016 Campus Climate Survey*

**57%**

Considered **transferring/ applying** to another University

**26%**

Considered **dropping out/ quitting**

**40%**

Considered **not recommending** University

*For example, people who experience sexual harassment may:*

- Make changes to research/ field of study to avoid respondent;
- Leave field and/or institution altogether;
- Leave positions of leadership

*From: NASEM: Sexual Harassment of Women Consensus Study Report Highlights (June 2018)*

# Applying the Standards: Case Study 1

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Annie, the only woman in her department and a staff member, returns from maternity leave and requests additional time to pump for breastfeeding her child. Annie's supervisor, Joe, repeatedly schedules team meetings during pumping time, assures her that she is not missing much. Annie later learns that opportunities to lead new projects are assigned at these meetings. Annie's supervisor also makes comments, specifically: jokes about breastfeeding and Annie's change in weight since her pregnancy. Her supervisor also hosts a holiday (after hours) party only for male colleagues in department; when Annie asks about it, her supervisor said he did not think she would attend because of her new child at home.

**\*Alternative 1:** Supervisor, Joann, identifies as a woman;

**\*\*Alternative 2:** Joann is Annie's colleague.

# Applying the Standards: Analysis

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**Is this behavior that may be unlawful harassment?  
(specific behavior + protected class)**

- What is the specific behavior that may be concerning? (severe, pervasive, objectively unreasonable)
- Is it on the basis of a protected class?
- What is the impact of the behavior?
- What might want to know more about?



## Applying the Standards: Case Study 2

Danielle, an undergraduate student, attends office hours with the Frank, a graduate student TA. When she first met with Frank, she saw that he was looking at pornography on his computer. Danielle felt a little uncomfortable, but concerned about her performance and so follows up with Frank to schedule another meeting. At their next (scheduled) office hours, Frank displayed pornography again. Danielle remains for the rest of the session, but does not follow-up with Frank for any further offices hours. Frank texts her to check-in and offers to meet her one-one for another office hour. Danielle declines and begins to skip the classes that he attends.

# Applying the Standards: Analysis

---

**Is this behavior that may be unlawful harassment?  
(specific behavior + protected class)**

- What is the specific behavior that may be concerning? (severe, pervasive, objectively unreasonable)
- Is it on the basis of a protected class?
- What is the impact of the behavior?
- What might want to know more about?

## Applying the Standards: Case Study 3

A postdoc, Barbara, supervises colleagues in lab, including a number of staff, including one staff member, Carl. It is an informal and friendly environment and staff often go out for happy hour after work. On several occasions, Barbara and Carl hug goodbye, always initiated by Barbara. Barbara comments several times on Carl's appearance. Barbara also has offered to spend additional time with Carl on his research that he is prepping for completion for the PI. He accepts, and when they are alone in the lab, Barbara touches Carl's shoulders as they are working side by side. To celebrate completion of the research study, Barbara invites Carl out for drinks at her home. He declines. In subsequent weeks, Carl does not get assigned any new projects from Barbara.

**\*Alternative 1:** Carl is a graduate student.

# Applying the Standards: Analysis

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**Is this behavior that may be unlawful harassment?  
(specific behavior + protected class)**

- What is the specific behavior that may be concerning? (severe, pervasive, objectively unreasonable)
- Is it on the basis of a protected class?
- What is the impact of the behavior?
- What might want to know more about?

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**THANK YOU**



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