

# **SEXUAL MISCONDUCT ADJUDICATION PROCESS:**

Revised September 2014

## **For Students In The School Of Arts and Sciences, The Graduate School Of Arts & Sciences And The School Of Engineering At Tufts University**

---

### **I. INTRODUCTION:**

Title IX of the Education Amendments of 1972 is a federal civil rights law that prohibits discrimination on the basis of sex/gender in educational programs as it effectively bars the victim/survivor and complainant's access to educational opportunities or benefits. Title IX rights and responsibilities cover all of the University's programs and activities. Sex/gender discrimination is prohibited by University policy as well. Tufts' policy on Sexual Misconduct/Sexual Assault applies to students, faculty, staff, and third parties (including visitors and community members) and this process, which applies to students should be read in conjunction with the expectations set forth in that policy which prohibits: sexual harassment, sex/gender discrimination, sexual exploitation, sexual assault, rape and other gender-based misconduct, stalking, relationship violence (including dating/domestic violence) and related retaliation. See <http://oeo.tufts.edu/wp-content/uploads/Sexual-Misconduct-Policy-December-2012.pdf> This conduct is generally referred to as "Sexual Misconduct."

Tufts University is committed to investigating all allegations of Sexual Misconduct that are alleged against any individual by a Tufts University student, faculty member, staff member, or anyone else affiliated with Tufts University. Under the Sexual Misconduct Policy and this process, the University will also consider the effects of off-campus conduct when evaluating whether there is a hostile environment on campus. Sexual assault is a crime of violence that is never acceptable and will not be tolerated at Tufts University. The University is dedicated to the elimination of Sexual Misconduct and all other discrimination within the Tufts community, and has adopted policies to that end, including a Sexual Misconduct/ Sexual Assault Policy, a Sexual Harassment Policy and a Non-Discrimination Policy, all of which can be found on the website for the Office of Equal Opportunity (OEO): <http://oeo.tufts.edu/policies-and-procedures/>.

Any incidents or concerns regarding Sexual Misconduct should be reported immediately, even if the person(s) concerned about or harmed by the misconduct is unsure about pursuing a disciplinary complaint through this process. Please note that managers, supervisors and other responsible employees (employees with significant responsibility for student and campus activities at Tufts) have an obligation to promptly report any Sexual Misconduct they observe or learn about to the Office of Equal Opportunity ([oeo@tufts.edu](mailto:oeo@tufts.edu) 617-627-3298).

Tufts is committed to assisting complainant/victim/survivors of Sexual Misconduct through various support services available for students. These support services (sometimes referred to

as interim measures) are available to students even if they chose not to file or pursue a disciplinary complaint or if the status of a respondent to the university is unclear (unenrolled student, non-employee, etc.). Students should feel assured that these support services will be available to them throughout this process and even after the conclusion of the adjudication process. Students who wish to receive confidential support services are encouraged to report this conduct to the counselors at Counseling and Mental Health Services (x 73360 or 617-627-3360) and/or to seek medical attention (Tufts Health Services x 73350 or 617-627-3350). Students should contact the Tufts University Police Department (TUPD) if they have concerns about their safety or need transportation for medical services (emergency no. 617-627-6911 or 66911; main no. 617-627-3030). Such conduct can also be reported to any of the Sexual Misconduct (Title IX) Reporting Liaisons (<http://oeo.tufts.edu/tufts-university-title-ix-liaisons/>) who can assist in finding support services and can explain the different options for action inside and outside of the University. Support services can also be requested from any University official, including Jill Zellmer, the Title IX Coordinator ([jill.zellmer@tufts.edu](mailto:jill.zellmer@tufts.edu) 617-627-3298) or through the Office of the Dean of Student Affairs (617-627-3158). The Title IX Coordinator, also the Director of the OEO, is responsible for overseeing and coordinating interim measures which are necessary to the safety of the parties and the Tufts community. For a full listing of resources available both on and off campus please refer to <http://oeo.tufts.edu/resources/>

Within the School of Arts & Sciences, the Graduate School of Arts & Sciences and the School of Engineering, complaints of Sexual Misconduct can be filed against a student in these schools with the Judicial Affairs Administrator, Mickey Toogood, in the Office of the Dean of Student Affairs ([Michael.Toogood@tufts.edu](mailto:Michael.Toogood@tufts.edu) 617-627-3158) or the Office OEO ([oeo@tufts.edu](mailto:oeo@tufts.edu) 617-627-3298). The University affirms the right of complainants/victims/survivors of Sexual Misconduct to decide how to best use University resources, their school's judicial process and/or the criminal process to address these offenses. If a student decides to utilize the Sexual Misconduct Adjudication Process, the University will promptly proceed with that process to the extent possible. Please note that Tufts will never utilize mediation for the resolution of issues of sexual assault or other sexual violence and parties will not be required to resolve this matter through direct communication with each other at any time. However, the University will always respond to complaints, reports, allegations or information about Sexual Misconduct, to the best of its ability, to stop the prohibited conduct, to eliminate any hostile environment, to take steps to prevent its recurrence, and address any lingering effects on campus from this conduct, regardless of whether the complainant/survivor decides to proceed with a complaint. The University will respond to incidents of Sexual Misconduct that it knows about or should know about. Retaliation against anyone who reports an incident or brings forward a complaint of Sexual Misconduct is strictly prohibited. Any person responsible for or involved in retaliation will be subject to disciplinary action by the University.

## **II. PRELIMINARY ISSUES/DEFINITIONS**

- A. Jurisdiction: Any person may file a complaint of Sexual Misconduct through this process against a Tufts student who is currently enrolled in the School of Arts & Sciences, the

Graduate School of Arts & Sciences and the School of Engineering regardless of where the alleged Sexual Misconduct occurred. The person filing the complaint is the *Complainant*. The student against who the complaint is filed is the *Respondent*. The Complainant need not be a Tufts student, although the majority of disciplinary charges brought against Tufts students are brought by other Tufts students. If the person bringing the complaint is not a current Tufts student and/or the alleged conduct did not occur on campus, at a University affiliated location or at a University sponsored event, the matter will be referred to the Title IX Coordinator ([jill.zellmer@tufts.edu](mailto:jill.zellmer@tufts.edu) 617-627-3298) for a determination regarding whether the University can exercise jurisdiction over the matter. Although there is no geographical limitation to invoking this process, it should be noted that the greater the distance away from campus that the Sexual Misconduct is alleged to have occurred, the more difficult it may be for the University to investigate and address the conduct. In cases where Tufts has exercised jurisdiction, the University will investigate the incident of Sexual Misconduct to the best of its ability regardless of location.

- B. Administrative Complaint: The University may independently initiate a disciplinary complaint against a student under the Sexual Misconduct Adjudication Process, called a “Dean’s Complaint.” In this type of Administrative Complaint, the University will act as the complainant in the adjudication of a Sexual Misconduct complaint against a student. Such complaints will proceed under the processes outlined herein and may result in disciplinary action as if the complainant were a student.
- C. Timing of Complaints: There is no time limit for the submission of a complaint alleging Sexual Misconduct. A complaint may be filed in the School of Arts & Sciences, the Graduate School of Arts & Sciences and the School of Engineering at any time during the semester, as long as the accused student(s) remains enrolled at the University. A complaint received after the semester has ended or during a University break may result in a delay in the adjudication of the complaint until the beginning of the subsequent semester in which the respondent is enrolled. Please note that the University only has jurisdiction over a student when they are enrolled at Tufts (as discussed above in Section II, Paragraph A).

The University reserves the right to initiate adjudication of a complaint immediately when necessary to protect the interests and safety of the Tufts community, even when the incident takes place after the end of the semester.

- D. Intentional Presentation of False Information: Participants in the Sexual Misconduct Adjudication Process must, present in, good faith, truthful and accurate information to the Dean of Student Affairs, the Judicial Affairs Administrator and the Investigator. Knowingly making false statements or presenting inaccurate information is unacceptable and will result in a separate disciplinary action regarding that conduct. Please note that filing a complaint or providing information which a party or witness genuinely believes is accurate, but which is ultimately dismissed due to insufficient evidence or found to be untrue, does NOT constitute the intentional presentation of false information.

- E. Reporting Conduct/Leniency: Students may be concerned about reporting Sexual Misconduct believing that their own behavior might subject them to disciplinary action (e.g., a victim or witness is underage and was using alcohol or drugs at the time of the incident). Witnesses and complainant/victim/survivors should be assured that the focus in matters of Sexual Misconduct is always on the reported behavior, not on whether someone was, for example, using alcohol or drugs at the time. Individuals are encouraged to come forward and report such conduct regardless of the surrounding circumstances. In situations involving allegations of Sexual Misconduct, Tufts University will, to the extent allowed by applicable laws and University policy, seek to make the Sexual Misconduct allegation the primary focus of any investigation or disciplinary action. In such circumstances, the University will exercise leniency regarding secondary conduct violations (e.g. underage drinking) and those issue will not subjected to adjudication. It should be noted that the use of alcohol or drugs does not excuse Sexual Misconduct and a person who has been incapacitated through the use of alcohol and drugs (or by any other means) cannot give effective consent to sexual activity.
- F. Right To Investigate And Decide Related Matters: The Fact-Finding Investigation and the Panel's Decision will not be restricted to the violations alleged in the disciplinary complaint. The Panel reserves the authority to pursue any additional potential violations of University Policy that have been identified through the Sexual Misconduct Adjudication Process Investigation. The Panel Chair or the Title IX Coordinator will notify the parties of the new allegations, and will decide whether such allegations will be investigated by the Sexual Misconduct Adjudication Process Investigator or will be considered in another student judicial process. In any case, the adjudication of any other violations of Policy outside of the realm of Sexual Misconduct will not delay the prompt resolution of the pending sexual misconduct complaint.
- G. No Contact Between Participants: When the Dean's Office receives a complaint alleging Sexual Misconduct, a University No Contact Order will be issued barring any communication between the Complainant and the Respondent. This Order prohibits any attempt to contact or respond to any communication from the other party, either directly or through others (e.g. friends, family members, attorneys, others). The Judicial Affairs Officer will work with students involved in the Sexual Misconduct Adjudication Process to help facilitate the No Contact Order between the parties, so that they may attend classes and use University facilities as appropriate. A No Contact Order may be extended after the conclusion of the adjudication process at the request of either party. In cases where a demonstrated violation of this Order has been shown, the responsible student may be separated from the University pending the final resolution of the disciplinary complaint. Tufts Police are able to provide information and assistance to students who wish to seek a protective order from the courts.
- H. Interim Remedial Measures: The University will not automatically restrict a student from attending classes or participating in other University activities on the basis of a disciplinary complaint pending in the Sexual Misconduct Adjudication Process. However, the University

does reserve the right to impose interim remedial measures at any time upon learning of an allegation of Sexual Misconduct, if the University has concerns about the safety of the Tufts community. Such measures may include, but are not limited to, restrictions regarding movement on campus, removal from University housing and/or removal from campus. The decision to impose interim remedial measures is made solely at the discretion of the Dean of Student Affairs. The University will also enforce any orders that are issued by the Courts of the Commonwealth of Massachusetts.

- I. No Retaliation: Retaliation against anyone who brings forward a complaint of Sexual Misconduct or who participates in this Process in any manner is strictly prohibited. Retaliation is also prohibited against anyone who opposes, in a reasonable manner, an act or policy believed to constitute a violation of the Sexual Misconduct or Sexual Harassment Policy. Retaliation includes things like hostility, intimidation, threats, exclusion or in any way discriminating against an individual because of the individual's complaint or participation in this Process. Anyone responsible for retaliation or threats of retaliation, whether that person is the accused party or another person, will be subject to disciplinary action by the University. A party may also be responsible for retaliation by someone affiliated with them (i.e. a friend or family member). Retaliation should be reported promptly to the Dean of Student Affairs or to the Title IX Coordinator ([jill.zellmer@tufts.edu](mailto:jill.zellmer@tufts.edu) 617-627-3298). Retaliation by a person not affiliated with the University may be addressed by the police.
- J. Witnesses: The Complainant and Respondent have the right to identify any individuals who may be witnesses to the conduct alleged in the complaint of Sexual Misconduct. The parties should be aware that it is possible for both the Respondent and Complainant to list the same people to speak as witnesses on their behalf. Witnesses should only be encouraged to cooperate and to speak the truth. Witnesses should not be intimidated, threatened, or improperly influenced in any way by either party or through others (e.g. friends, family members, attorneys, others). Any attempt to threaten, intimidate or the otherwise improperly influence the testimony of a witness will result in a separate disciplinary action by the University. The Investigator will attempt to contact and interview any witnesses identified by the parties that the Investigator deems to be relevant to the resolution of the disciplinary complaint.
- K. Support Person: Students involved in the Sexual Misconduct Adjudication Process as Complainants or Respondents may be more comfortable navigating the process with the help of a support person. A support person is someone whom the student trusts to provide advice and support during the process. A support person can be any person the student feels comfortable confiding in, and need not be affiliated with the University (i.e. a friend, a family member, a person from a support or advocacy agency). A support person may accompany the student to any part of the adjudication process, including any meetings with the Dean, Panel and Investigator. The support person does not participate in the process and, as such, cannot be a witness to the allegations in the complaint. Attorneys may serve

as support persons. A support person must agree to maintain the confidentiality of the process and agree to sign a Confidentiality/Non-Retaliation Acknowledgment form.

- L. Confidentiality: Any information or written material related to a disciplinary complaint filed under the Sexual Misconduct Adjudication Process will be treated as confidential. Disclosure of such information by parties or witnesses to anyone other than the Dean, the Panel, the Investigator, legal counsel, support persons, clergy, and/or confidential counselors is strictly prohibited and may subject the person responsible for the disclosure to disciplinary action. Although discretion will remain important, the parties are not restricted from discussing and sharing information relating to their complaint with others that may support them or assist them in preparing their complaint. However, please note that parties will be required to disclose the names of any person to whom such confidential information will be shared. Any person with whom such confidential information is shared will be required to sign a Confidentiality/Non-Retaliation Acknowledgement. The Investigator, the Panel, legal counsel, support persons, clergy, confidential counselors and any other authorized person with whom a student has shared disciplinary case materials are prohibited from disclosing that information to others without the express written permission of the Dean of Student Affairs or the Title IX Coordinator. Any disclosure of confidential information without written permission may subject the student who made the initial disclosure to disciplinary action. Accordingly, students should carefully consider the persons with whom they share information. Complainants or Respondents shall not share their statements with anyone not authorized to see it, at any time during the process.

These confidentiality obligations are intended to help protect the privacy of all participants, as well as the integrity of the disciplinary process. Participants should be aware that the University maintains the discretion to share confidential information internally, if necessary, to comply with its obligations regarding campus safety and Title IX. If a student participant in this process is also enrolled in another institution, the University may be required to disclose information regarding the pending complaint to that organization. In either situation, such disclosures will be made in the most limited manner possible and the recipients will be advised that the information must be maintained in a confidential manner.

Confidentiality will remain in full force even after the conclusion of the disciplinary case, with the exception of generic reporting of the case in the University's annual unified crime report.

In some instances, the Respondent can be spoken to without the Complainant being identified and without filing or moving forward with a formal complaint. In these instances the privacy and confidentiality of the individual raising a concern will be protected to the extent possible. In other cases, issues of confidentiality must be balanced against the University's need to investigate and to take appropriate action.

Students with questions or concerns about the persons with whom they may disclose information should consult with the Dean of Student Affairs or the Title IX Coordinator ([jill.zellmer@tufts.edu](mailto:jill.zellmer@tufts.edu) 617-627-3298).

- M. Attorneys: Although not necessary, the Complainant and Respondent have the right to seek the assistance of a private attorney, at their own expense, regarding a disciplinary complaint. An attorney for a party may inquire with University Legal Counsel regarding the pending complaint.
- N. Criminal Conduct: Participants should seek legal advice about how this disciplinary process could impact any criminal case in which they are or may become involved.

The University will conduct its own investigation and adjudication of a disciplinary complaint, regardless of whether the alleged Sexual Misconduct is also being pursued through the criminal justice system. The University will comply with law enforcement requests for cooperation. At times, that cooperation may require the University to temporarily suspend its fact-finding investigation while law enforcement gathers evidence. The University will promptly resume its fact-finding investigation as soon as it is notified that doing so would not impede any law enforcement activities.

- O. Admissibility of evidence: The Fact-Finding Investigation process is intended to arrive at the truth of the matter, without the formalities associated with rules and procedures specifically designed by lawyers to manage courtroom litigation. Students can address issues and present documents to the Investigator without concerns about admissibility. It should be noted that if the Investigator determines that the issues raised and/or documents presented are relevant and probative of whether the alleged conduct occurred, then, in the interest of fairness, that information will be disclosed to the opposing party.
  - 1. *Sexual History*: In a case of Sexual Misconduct, the past sexual history of the Complainant and/or the Respondent or either party's sexual history with others will NOT be used in determining whether the Sexual Misconduct occurred. Prior consensual sexual activity between the two parties will not be determinative of the issue of consent in the pending disciplinary complaint. Consent to one sexual act does not constitute consent for another sexual act.
  - 2. *Medical and Counseling Records*: The use of medical and/or counseling records in the Sexual Misconduct Adjudication Process is rare. Medical and counseling records are privileged and confidential documents that students will never be required to disclose in this Process. Medical and counseling documents being privileged means that they cannot be shared with anyone other than the treating professional unless the patient agrees to disclosure. ***Students should be aware that there are legal implications to agreeing to produce privileged records.*** Students are encouraged to seek advice from a knowledgeable source about the possible consequences of releasing this information. A

list of additional resources that can provide information regarding this topic can be found at <http://ase.tufts.edu/healthed/topicsSexual.htm> under off-campus resources.

A Complainant/Respondent who, after due consideration, believes that his/her own medical or counseling records would be helpful in determining whether Sexual Misconduct occurred, has several options for *voluntarily* presenting this information:

- a. The Complainant/Respondent can voluntarily decide to present his/her own medical or counseling records to the Investigator as part of the documents which he/she would like to have the fact-finder consider in deciding the disciplinary complaint. Please note that if a party decides to produce such records, they must be produced in their entirety. The production of excerpts or selected documents is inappropriate and will not be considered;
- b. On occasion, the Investigator may ask the Complainant/Respondent to voluntarily agree to provide these records if the Investigator believes that such documentation exists and that it would be helpful in deciding the disciplinary complaint. A party is under **no obligation** to provide this information and may simply say “no” to this request. A party has a right to refuse to provide these records and that refusal is completely acceptable. Prior to responding to such a request, a party is encouraged to consult with their support person about the implications of agreeing or denying the request. Please note that if a party does decide to produce such records, they must be produced in their entirety. The production of excerpts or selected documents is inappropriate and will not be considered.
- c. The Investigator may ask a Complainant or Respondent to voluntarily provide a verification of therapeutic or medical services to confirm simply that such treatment occurred, but not providing any details regarding that treatment.

On rare occasions, a person may be in possession of the medical and/or counseling records of another party or witness. Such records can only be presented to the Investigator under the following circumstances: (i) the person can show that the records are relevant to the pending disciplinary complaint; (ii) the person can document or otherwise prove that the records were legally obtained; and (iii) the records can be authenticated. Failure to meet any of these conditions means that the records will not be considered in the determination regarding Sexual Misconduct.

- P. Effect of Pending Complaint on Respondent: When a complaint is filed under this Sexual Misconduct Adjudication Process and the Respondent has received the Notice of Disciplinary Complaint, the notation “Disciplinary Charges Pending” will be placed on the Respondent’s student transcript, so long as the complaint was filed before the semester ended (before the end of the last day of classes). If a complaint is filed after the semester is ended, the transcript notation may not be made until the beginning of the subsequent



semester in which the Respondent is enrolled. This notation will be removed or changed as appropriate following final resolution of the disciplinary complaint. If the Respondent withdraws from the University while the disciplinary complaint is pending, a permanent notation will be placed on the Respondent's student transcript stating, "Student Withdrew with Disciplinary Charges Pending." A student who leaves under these circumstances will not be eligible to return to the University. A Respondent cannot receive a degree while there is a pending, unresolved disciplinary complaint against him or her.

- Q. Parental Notification: Since the University views students as adults, parents and guardians will not be notified when a disciplinary complaint is filed under the Sexual Misconduct Adjudication Process. Students are encouraged to inform their parent(s) or guardian(s) if they are involved in a disciplinary complaint and should refer them to the Dean of Student Affairs) if they have questions. If, at the conclusion of the Sexual Misconduct Adjudication Process, a student is separated from University housing, placed on Disciplinary Probation II, is suspended or is expelled, the University generally will attempt to inform that student's parent(s) or guardian(s) at the time such discipline is imposed.
- R. Office of Equal Opportunity/ Title IX: Under state and federal law, including Title IX, Sexual Misconduct (which includes sexual harassment, sex/gender discrimination, sexual exploitation, rape, sexual assault and/or relationship violence or stalking) is prohibited. (Definitions of this conduct and options for addressing this conduct are included in the Sexual Misconduct and Sexual Harassment policies). Pursuant to its obligations under the law, including Title IX, the University will make an inquiry into all allegations of Sexual Misconduct of which it becomes aware, regardless of whether a disciplinary complaint has been filed. The Office of Equal Opportunity (OEO), the Title IX Coordinator and the Investigator act as the neutral fact-finding body responsible for making inquiries into allegations of conduct that may violate Title IX ([oeo@tufts.edu](mailto:oeo@tufts.edu); 617-627-3298). As such, it is possible that the parties may have been interviewed by OEO prior to a formal complaint having been filed. OEO will act as the Fact-Finding Investigators for all cases of Sexual Misconduct brought under the Sexual Misconduct Adjudication Process. Upon the initiation of a Fact-Finding Investigation by the Judicial Affairs Administrator under this process, the Investigator will review any information previously obtained through an inquiry (if made), in light of the information provided through the statements of the parties regarding the complaint. The Investigator will then conduct any additional investigation that is necessary to address the allegations of the complaint. The Investigator will include all relevant findings from the investigation in the Investigation Report submitted to the Decision-Making Panel. Investigations will only be conducted by investigators who have been specially trained to address issues of sexual misconduct and who are otherwise knowledgeable about investigating and analyzing Title IX complaints.
- S. Decision-Making Panel: Under the Sexual Misconduct Adjudication Process for the School of Arts and Sciences and the School of Engineering and the Graduate School of Arts and Sciences, the final decision regarding the complaint will be made by a Panel of three trained individuals. This Panel will consist of three administrators or faculty members from within

the University. These panelists will be chosen from a pool of administrators, all of whom will be specially trained in the adjudication of Sexual Misconduct. The panelists from this pool will be chosen by the Title IX Coordinator. Either party has the right to raise any concerns he/she may have regarding a possible conflict of interest with any of the Panel members who have been assigned to the matter. In the event that one of the members has a conflict of interest, they may recuse themselves from the Panel. The Title IX Coordinator will then choose another trained Panel member to sit in the place of the original panelist. The Title IX Coordinator will select a Panel Chair. Decisions regarding the composition of the Panel are made at the sole discretion of the Title IX Coordinator. An effort will be made to have the Panel be reflective the demographics/identities of the parties, if known.

### **III. THE SEXUAL MISCONDUCT ADJUDICATION PROCESS**

- A. Filing a Disciplinary Complaint
  - 1. Complainant's Statement
  - 2. Complaint Form
  - 3. Confidentiality/ Non-Retaliation Acknowledgment
- B. Responding to a Disciplinary Complaint
  - 1. Initial Meeting/ Confidentiality/ Non-Retaliation Acknowledgment
  - 2. Pre-Fact-Finding Resolution of Complaint/ Acceptance
  - 3. Respondent's Statement
- C. Fact-Finding Investigation
  - 1. Document Review
  - 2. Party Interviews
  - 3. Witness Interviews
  - 4. Expert Witnesses
- D. Investigation Report
- E. Preliminary Decision Conference
- F. Withdrawal/Acceptance of Charges
  - 1. Complainant May Withdraw Complaint
  - 2. Respondent May Accept Responsibility
  - 3. Respondent May Withdraw
- G. Panel's Decision
- H. Appellate Process
  - 1. Procedural Error
  - 2. New Evidence
  - 3. Disciplinary Action too severe or not severe enough

- I. Conclusion of the Case
  1. Document Retention
  2. Internal Reporting

This is the adjudication process under which allegations of Sexual Misconduct, including sexual assault, will be resolved within the School of Arts & Sciences, the Graduate School of Arts & Sciences and the School of Engineering. This document only addresses the internal process within these schools. Under ordinary circumstances during the academic year, the Sexual Misconduct Adjudication Process should be completed within 60 to 90 days from the receipt of the disciplinary complaint. Forms for use with the Sexual Misconduct Adjudication Process can be obtained from the Judicial Affairs Administrator, Mickey Toogood ([Michael.Toogood@tufts.edu](mailto:Michael.Toogood@tufts.edu) 617-627-3158) or from OEO ([oeo@tufts.edu](mailto:oeo@tufts.edu) 617-627-3298). Students also may have legal remedies available outside of Tufts, including filing charges with the police, filing a civil action and/or filing an administrative action.

Tufts University recognizes that the decision about whether to bring a disciplinary complaint against another student can be complicated and challenging. Nevertheless, students should know that all complaints will be taken seriously and will be investigated.

#### **A. Filing A Disciplinary Complaint**

A person who has experienced an incident of Sexual Misconduct, including sexual harassment, sex/gender discrimination, sexual assault, relationship violence, stalking, sexual exploitation and any other sexual misconduct committed by a Tufts student, may file a complaint against the School of Arts and Sciences or School of Engineering student responsible for that conduct. Complaints should be filed with either:

Mickey Toogood  
Judicial Affairs Administrator  
Dowling Hall - Room 701  
Tufts University  
Medford, MA 02155  
617-627-3158  
[Michael.Toogood@tufts.edu](mailto:Michael.Toogood@tufts.edu)

Jill Zellmer  
Title IX Coordinator and Director of the  
Office of Equal Opportunity  
196 Boston Avenue, Suite 3800  
Medford, MA 02155  
617-627-3298  
[jill.zellmer@tufts.edu](mailto:jill.zellmer@tufts.edu)

The individual bringing the allegation is called the *Complainant*. The Complainant will be asked to submit three forms (as noted below) to initiate the disciplinary complaint. The Complainant's forms should be signed, dated, and submitted to the Judicial Affairs Administrator or OEO. Email submission of the Complainant's Statement directly to the Judicial Affairs Administrator ([Michael.Toogood@tufts.edu](mailto:Michael.Toogood@tufts.edu) 617-627-3158) or OEO ([oeo@tufts.edu](mailto:oeo@tufts.edu) 617-627-3298) is also acceptable. The Complainant is welcome to bring a support person with them to any meetings with the Judicial Affairs Administrator or OEO.

1. *Complainant's Statement:* To file a disciplinary complaint against a student, the Complainant must submit a written statement detailing the allegations of the Sexual Misconduct. This statement is the first opportunity for the Complainant to describe the allegations against the accused student. The statement should communicate the Complainant's full account of the event and its context, as well as the Complainant's reflections. To facilitate the process, the Complainant should:

*-Tell the story in full.* Relate in full the facts of the incident as you recall them. Take care to distinguish between what you saw, heard, or experienced first-hand from what you may have learned later from others.

*-Describe the context.* It is important for you to give your perception of the Respondent's conduct and the context in which the alleged incident occurred, including its location, and any witnesses to it.

*-Reflect on the event.* It is helpful for you to provide any conclusions you have drawn about the incident, stating clearly why you believe the respondent's actions may have violated University policy or the Code of Conduct.

The Complainant's Statement should include the name of the accused student, the date and location of the alleged Sexual Misconduct and the details of the alleged misconduct. This statement should provide as much detail as possible about the facts surrounding the alleged Sexual Misconduct.

A descriptive list of all sources of information (e.g., witnesses, correspondence, records, etc.) should be attached to the Complainant's Statement. This list should include information which the Complainant believes should be considered in deciding this disciplinary complaint, along with a brief explanation of why this information would be relevant and helpful to the process. Please identify the sources and/or location of this supporting information but do not attempt to obtain this information yourself. The Investigator will solicit any relevant statements or documents referenced through this process.

The Complainant's Statement is one of the most important documents to be considered in the Sexual Misconduct Adjudication Process. Once submitted, the Complainant's Statement may not be amended. The statement must be written by the Complainant. It is unacceptable for a Complainant to submit a statement written by others, including parents, support persons, or attorneys. However, Complainants are encouraged to share a draft of the statement with a support person who is well-positioned to discuss, among other matters, the statement's style, organization, length, and clarity, while also anticipating questions it may raise for the fact-finder. The Complainant will be required to sign a statement verifying that he/she wrote the Complainant's Statement.

The accused student, or *Respondent*, will not be allowed to see the Complainant's Statement until **after** he/she has filed their statement in response. Once the Respondent has submitted his/her statement, they will be given a copy of the Complainant's Statement. The Complainant will also be given a copy of the Respondent's Statement.

2. *Complaint Form:* In addition to the Complainant's Statement, the Complainant will be asked to complete a less detailed Complaint Form. This document will contain basic information about the complaint made against the accused student, such as the time, date, location, and brief description of the allegations underlying the disciplinary complaint. This Complaint Form must contain sufficient detail to permit the Respondent to understand the charges being brought and to be able adequately respond. The Respondent will be given access to the Complaint Form **prior** to filing his/her written response statement.
3. *Confidentiality/ Non-Retaliation Acknowledgment:* The Complainant will be required to sign a Confidentiality/Non-Retaliation Acknowledgment, agreeing not to disclose or discuss anything relating to the disciplinary complaint with anyone other than those authorized to see such information under this process. The Complainant will still be able to discuss the facts underlying the subject the disciplinary complaint with counselors, clergy, other therapeutic professionals and family. The Complainant should refrain from discussing the disciplinary complaint itself and/or the adjudication process with anyone affiliated with Tufts. This is to preserve the integrity of the investigative process and also to prevent allegations of retaliation. Through this Acknowledgment, the Complainant also agrees to refrain from any retaliatory conduct against the Respondent or any witnesses in the matter, as discuss under Section II, Paragraph I, and may be responsible for any retaliation by persons affiliated with the Complainant (i.e. a friend or family member).

## **B. Responding To A Disciplinary Complaint**

The person against whom the disciplinary complaint is brought is called the *Respondent*. The Respondent shall be given written notification when a disciplinary complaint has been filed against him or her.

1. *Initial Meeting/ Confidentiality/Non-Retaliation Acknowledgment:* Within **five (5) days** of receiving notice of the disciplinary complaint, the Respondent must meet with the Judicial Affairs Administrator ([Michael.Toogood@tufts.edu](mailto:Michael.Toogood@tufts.edu) 617-627-3158). The Respondent is welcome to bring a support person with them to any meetings with the Judicial Affairs Administrator. At this meeting, the Judicial Affairs Administrator will provide the Respondent with a copy of the Complaint Form, discuss the nature of the Complaint, explain the rights and responsibilities of the Respondent, explain the prohibition against retaliation, explain the Sexual Misconduct Adjudication Process and

give the Respondent a copy of the relevant policies. Prior to reviewing the Complaint Form, the Respondent will be required to sign a Confidentiality/Non-Retaliation Acknowledgment, agreeing not to disclose or discuss anything relating to the disciplinary complaint with anyone other than those authorized to see/hear such information under this process. Through this Acknowledgment, the Respondent also agrees to refrain from any retaliatory conduct against the Complainant or any witnesses in the matter, as discussed under Section II, Paragraph I and may be responsible for any retaliation by persons affiliated with the Respondent (i.e. a friend or family member). Refusal/failure by the Respondent to meet and cooperate with the Judicial Affairs Administrator or Investigator regarding this matter or to sign the Confidentiality/Non-Retaliation Acknowledgment, as determined by the Dean of Student Affairs, may result in either (1) an automatic suspension of the Respondent from the University and/or (2) the adjudication of the disciplinary complaint without input from the Respondent.

2. *Pre-Fact-Finding Resolution of Complaint/Acceptance:* After meeting with the Judicial Affairs Administrator and reviewing the Complaint Form, the Respondent has the right to end the Sexual Misconduct Adjudication Process by accepting responsibility for the conduct alleged in the Complaint Form. If the Respondent accepts responsibility for the conduct alleged in the Complaint Form, the process would not proceed to the Fact-Finding Investigation phase. Instead, the matter would be referred to the Panel to decide the issue of the appropriate disciplinary action against the Respondent.

The Panel may take the Respondent's acceptance of responsibility into consideration in determining the appropriate sanction. Once the Respondent accepts responsibility, such acceptance cannot be withdrawn. A written finding of the acceptance of responsibility and the resulting disciplinary action will be issued by the Panel, which will become part of the Respondent's student records and will be shared with the Complainant. If the Respondent does not wish to participate in this resolution process, then he/she will need to prepare a Respondent's Statement as noted below. The Respondent must decide whether he/she would like to utilize this resolution process before expiration of the seven (7) days for submitting the Respondent's Statement.

3. *Respondent's Statement:* Like the Complainant, the Respondent will be asked to provide a written response to the information contained in the Complaint Form. The Respondent's Statement must be submitted to the Judicial Affairs Administrator within **seven (7) days** after the meeting between the Respondent and the Judicial Affairs Administrator. The Respondent's Statement should contain the Respondent's full recollection of the alleged incident. This statement is the Respondent's first opportunity to respond to the allegations made by the Complainant. The statement should communicate the Respondent's recollection of the event and its context, as well as the Respondent's reflections:

*-Tell the story in full.* Relate in full the facts of the incident as you recall them. You should take care to distinguish between what you saw, heard, or experienced from what you may have learned later from others.

*-Describe the context.* It is important for you to give your perception of the conduct and the context in which the alleged incident occurred, including its location, and any witnesses to it.

*-Reflect on the event.* It is helpful for you to provide any conclusions you have drawn about the incident, stating clearly why you believe that your actions have not violated University policy or the Code of Conduct.

A descriptive list of all sources of information (e.g., witnesses, correspondence, records, etc.) should be attached to the Respondent's Statement. That list should include information which the Respondent believes should be considered in deciding the disciplinary complaint, along with a brief explanation of why this information would be relevant and helpful to the process. Please identify the sources and/or location of this supporting information but do not attempt to obtain the information yourself. The Investigator will solicit relevant statements or documents referenced through this process.

The Respondent's Statement will be one of the most important documents to be considered in the Sexual Misconduct Adjudication Process. Once submitted, the Respondent's Statement may not be amended. The statement must be written by the Respondent. It is unacceptable for a Respondent to submit a statement written by others, including parents, support persons, or attorneys. However, Respondents are encouraged to share a draft of the statement with a support person who is well-positioned to discuss, among other matters, the statement's style, organization, length, and clarity, while also anticipating questions it may raise for the fact-finder. The Respondent will be required to sign a statement verifying that he/she wrote the Respondent's Statement. Once the Respondent has submitted his/her statement, they will be given a copy of the Complainant's Statement. The Complainant will also be given a copy of the Respondent's Statement.

### **C. Fact-Finding Investigation**

After both parties have submitted their statements, the Judicial Affairs Administrator will initiate a Fact-Finding Investigation, utilizing the University's neutral investigators within the Office of Equal Opportunity (OEO). It is the responsibility of the Investigator, not the parties, to gather the evidence relevant to the Complaint and the facts raised in the parties' statement, to

the extent reasonably possible. During the course of the investigation, the Investigator may utilize some or all of the following procedures, in whatever order the Investigator deems most appropriate. The scope of the Fact-Finding Investigation will not be limited to information provided by the parties or to the violations outlined in the disciplinary complaint. In all cases, the Investigator will conduct an adequate, reliable, and impartial investigation into the allegations of the disciplinary complaint, reviewing all evidence deemed to be relevant. Parties and Witnesses will make themselves reasonably available to the Investigator. Refusal by a party or witness to cooperate with the Investigator in the Fact-Finding Investigation, as determined by the Dean of Student Affairs, may result in disciplinary action against the person refusing to cooperate.

1. Document Review: Once statements have been submitted by the parties, the Investigator will review the statements and all of the supporting material referenced. The Investigator will then attempt to obtain any documents or other materials deemed relevant to the investigation. Any documents or information deemed to be material to the findings regarding the disciplinary complaint or any other violations will be disclosed to both parties for comment or rebuttal.
2. Party Interviews: The Investigator will interview the Complainant and the Respondent separately. This meeting is an opportunity for the participant to discuss his/her recollection of the event in question, supplement any written statements already submitted, voice any concerns, and to work with the Investigator to determine what information may helpful in the investigation of the allegations. Parties may also discuss the impact that this experience has had on them. All of the materials provided to the Investigator by either the Complainant or the Respondent will be disclosed to the other party in advance of their respective interviews, including the complete statement of the other party. The Investigator may interview the parties more than once, as necessary. The Complainant's or Respondent's support person may accompany him/her to all the meetings with the Investigator but may not participate in the conversation. Prior to sitting in on any interviews, the support person will be required to sign a Confidentiality/Non-Retaliation Acknowledgment, agreeing not to disclose or discuss anything relating to the disciplinary complaint with anyone other than those authorized to see or hear such information under this process. At the conclusion of the interview, participants are permitted to make an optional closing statement.
3. Witness Interviews: The Investigator will attempt to contact and interview any witnesses identified by the parties that the Investigator deems to be relevant to the resolution of the disciplinary complaint. The Investigator may also interview any other persons which he or she finds to be potentially relevant to this matter. Witnesses may not bring support persons to their interviews. Prior to being interviewed, a witness will be required to sign a Confidentiality/ Non-Retaliation Acknowledgement, agreeing not to disclose or discuss anything relating to the disciplinary complaint and their interview with anyone. Through this Acknowledgment, the witness will also agree to refrain from any retaliatory conduct against the parties or any witnesses in the matter, as discuss under Section II, Paragraph I and may be responsible for any retaliation by persons



affiliated with them (i.e. a friend or family member). The Investigator will employ best efforts to interview relevant witnesses who are no longer on campus or in the Boston area, attempting to contact them by phone or internet.

4. Expert Witnesses: The Investigator reserves the right to consult with any experts which he/she deems necessary to the determination of the facts of this case. An expert witness could be consulted to review or provide a professional opinion regarding evidence discovered in the Fact-Finding Investigation.

#### **D. Investigation Report**

Once the Fact-Finding Investigation has been completed, the Investigator will evaluate the information obtained during this process. The Investigator will prepare a report summarizing and analyzing the relevant facts received through the Investigation, noting any supporting documentation or statements. The Investigator may draw conclusions regarding the credibility of witnesses and reliability of documentation. The Investigator will present the Investigation Report to the Panel. Under ordinary circumstances, the Investigation Report should be submitted to the Panel within 15 days after the completion of the Fact-Finding Investigation. The Investigation Report will not be shared with the parties. It will only be given to the Panel and the Title IX Coordinator.

#### **E. Preliminary Decision Conference**

As discussed in Section II, Paragraph S, a Panel will be assembled to act as the final decision-maker in the Sexual Misconduct Adjudication Process. The Panel will have the ultimate responsibility to determine whether University policy has been violated. The Panel will base its decision on the facts presented in the Investigation Report. Upon receipt of the Investigation Report, the Panel will meet and review the document. After reviewing the Investigation Report, but prior to issuing the Panel's Decision, the Panel Chair and Title IX Coordinator will schedule a Preliminary Decision Conference with the Complainant and the Respondent *separately*. Under ordinary circumstances, these conferences will be scheduled within seven (7) days after the receipt of the Investigation Report by the Panel. During the Preliminary Decision Conferences, with the Title IX Coordinator present, the Panel Chair will provide each party with an overview of the Investigation Report, noting the facts from which conclusions will be drawn in the Panel's Decision. The Panel Chair will also discuss any investigative findings relating to policy or code violations found beyond those noted in the disciplinary complaint. At this time, each party will have an opportunity to comment on and respond to the information presented and provide any additional information that may not have been reviewed by the Investigator but should be considered prior to a decision being rendered regarding the disciplinary complaint. The parties must provide any rebuttal statements, documents or other new information regarding the sources of potentially relevant information and/or witnesses, in writing to the Title IX Coordinator, within 24 hours of their Preliminary Decision Conference.

After meeting with the parties and reviewing any additional information submitted for consideration, the Panel may determine that additional inquiry is needed in order for a decision to be rendered regarding the disciplinary complaint. If so, the Panel Chair will ask OEO to conduct a Supplemental Fact-Finding Investigation regarding the areas of concern. The Investigator will focus any additional investigation on the specific inquiries made by the Panel. The Investigator will then prepare and submit a Supplemental Investigation Report addressing the findings as to the issues raised by the Panel. Under ordinary circumstances, any additional investigation and Supplemental Investigation Report should be completed and submitted to the Panel within 30 days of the request for Supplemental Fact-Finding. The Panel Chair reserves the right to schedule a subsequent Preliminary Decision Conference to address the findings from the supplemental investigation with the parties separately, should the Panel feel, at its discretion, that such a meeting would be helpful to the process.

#### **F. Withdrawal/Acceptance of Charges**

1. Complainant May Withdraw the Complaint: Prior to the Panel's Decision, the Complainant may withdraw the disciplinary complaint. Withdrawal of the Complaint will, under most circumstances, end the Sexual Misconduct Adjudication Process for that complaint. Once a complaint has been withdrawn, it cannot be filed again by the Complainant within this Process. The University reserves the right to move forward with the disciplinary complaint, even after the Complainant decides to withdraw it, at the request of the Respondent or in order to protect the interests and safety of the Tufts community.
2. Respondent May Accept Responsibility: Prior to the Panel's Decision, the Respondent may accept responsibility for the Sexual Misconduct alleged in the disciplinary complaint. This acceptance, under most circumstances, will end the Sexual Misconduct Adjudication Process and the matter would then be referred to the Panel to decide the issue of the appropriate disciplinary action against the Respondent.

The Panel may take the Respondent's acceptance of responsibility into consideration in determining the appropriate sanction. Once the Respondent accepts responsibility, such acceptance cannot be withdrawn. A written finding of the accepted complaint and the resulting disciplinary action will be issued by the Panel, which will become part of the Respondent's student records and will be shared with the Complainant.

3. Respondent May Withdraw: At any time up until three (3) days after the Preliminary Decision Conference, the Respondent has the right to withdraw as a student from Tufts University. In such a case, the Respondent will leave the University with the notation "Student Withdrew with Disciplinary Charges Pending" on his/her student transcript. After withdrawing, the Respondent will not be eligible to return to the University. A Respondent's withdrawal will end the Sexual Misconduct Adjudication Process for that

complaint. On the fourth (4th) day after the Preliminary Decision Conference, the Respondent will no longer be allowed to withdraw, as the pending Panel's Decision and disciplinary action will determine his/her status with the University. Under certain circumstances, and at the discretion of the Panel, the time period for the Respondent to withdraw may be extended if a Supplemental Fact-Finding Investigation has been requested by the Panel. In that case, the Respondent's right to withdraw would expire three (3) days after any subsequent Preliminary Decision Conference is held, or after notice that a subsequent Preliminary Decision Conference will not be scheduled.

### **G. Panel's Decision**

Upon determining that all of the issues regarding the disciplinary complaint have been fully investigated and adequately addressed, the Panel will issue its Decision. The decision will be made on the preponderance of the evidence standard -- that is whether the facts presented in the Investigation Report support a finding that it is more likely than not that University policy has been violated. The decision of the Panel will be reached by a majority. The Panel will base its decision solely on the information presented in the Investigation Report and any Supplemental Investigation Report. Under ordinary circumstances, the Panel's Decision will be issued, in writing, within seven (7) days after the Preliminary Decision Conference and/or the receipt of any Supplemental Investigation Report. The Panel Chair will draft the Panel's written decision and submit it to the Title IX Coordinator.

The Panel may issue the following decisions to a disciplinary complaint:

- A finding that a University policy was violated. The Panel will then impose the appropriate disciplinary action.
- A finding that a University policy was not violated as there is insufficient information to substantiate the allegations of the disciplinary complaint. The Panel will then dismiss the disciplinary complaint.

Once the Panel's Decision has been issued, both the Complainant and the Respondent will be notified by the Dean of Student Affairs. Each party will meet with the Dean of Student Affairs and the Title IX Coordinator separately to receive a copy of the Panel's Decision, referencing the supporting information that the Panel relied on from the Investigation Report. The Panel's Decision is a confidential document that can only be shared with authorized persons as noted in this process (i.e. support persons, attorneys, counselors, clergy). Anyone disclosing the Panel's Decision to a person not authorized to see it shall be subject to disciplinary action. If the Panel's Decision results in disciplinary action which includes separation from campus, that sanction will be imposed immediately, regardless of whether an appeal has or will be filed. The Dean has the discretion to allow a Respondent to complete any pending coursework remotely, if deemed appropriate by the faculty members involved.

### **H. Appellate Process**

Both the Complainant and Respondent are entitled to appeal a Panel's Decision issued through the Sexual Misconduct Adjudication Process. The person filing the appeal is the *Appellant*. An appeal must be filed, in writing, within **ten (10) business days** of their meeting with the Dean and the Title IX Coordinator. The forms for filing an appeal can be obtained from the Judicial Affairs Administrator ([Michael.Toogood@tufts.edu](mailto:Michael.Toogood@tufts.edu) 617-627-3158) or OEO ([oeo@tufts.edu](mailto:oeo@tufts.edu) 617-627-3298). The opposing party will be notified if an appeal has been filed. In some situations, both parties may file an appeal. In this situation, the Appellate Panel will consider and review both appeals together.

The appeals form should be filed with:

Jill Zellmer, MSW  
Title IX Coordinator and Director of the  
Office of Equal Opportunity  
Tufts University  
196 Boston Ave, Suite 3800  
Medford, MA 02155  
617-627-3298  
[jill.zellmer@tufts.edu](mailto:jill.zellmer@tufts.edu)

The appeal will be considered by an impartial, trained, three-person Appellate Panel which will consist of different individuals than those who served on the initial Decision-Making Panel. The decision regarding the composition of the Appellate Panel will be made at the discretion of the Title IX Coordinator. In considering the appeal, the Appellate Panel will be given the appeal, the statements of the Complainant and Respondent, and the Panel's Decision to review.

There are only three grounds on which a Panel's Decision can be appealed:

1. *Procedural Error*: The Appellant alleges that there was a deviation or change from the procedures outlined in the Sexual Misconduct Adjudication Process which adversely impacted the outcome of the matter. If the appellate body determines that there was a procedural error which could have altered the outcome of the case, the matter will be remanded to the Panel for a determination regarding the impact of the procedural error on the outcome of the complaint.
2. *New Evidence*: The Appellant alleges that, subsequent to the issuing of the Panel's Decision, new evidence became available which would have impacted the outcome of the disciplinary complaint. The Appellant must: (i) present the new evidence; (ii) show why it was unavailable prior to the Panel's Decision; and (iii) show that the new evidence could have altered the outcome of the complaint. The opposing party will be given an opportunity to rebut these assertions by the Appellant. If the appellate body determines that there is evidence that meets these requirements, it will remand the matter to the Panel for investigation and review in light of the new evidence.

3. Severity of The Disciplinary Action: The Appellant alleges that the disciplinary action issued in the Panel's Decision is inconsistent with the type of discipline issued to others who were found to be responsible for a substantially similar violations or offenses. If the Appellate Panel determines that that disciplinary action was inconsistent with discipline for similar violations, it will vacate the discipline issued by the Panel and issue a new sanction in its place.

The written appeal must specifically state the grounds under which the appeal has been filed and must be submitted within the 10 day time limit after their meeting with the Dean and the Title IX Coordinator. The appeal must set forth the information/evidence to support the appeal. Appeals which do not comply with these requirements may not be considered. The appeal is not an opportunity to argue that the initial decision was wrong. The appeal is not a new fact-finding process. The appeals process will be completed within thirty (30) days from the filing of the appeal to the communication of the final decision to the parties of the appeals panel.

## **I. Conclusion of the Case**

1. Document Retention: After the Panel's Decision has been issued, and after all appeals by the parties have been exhausted, all materials created by or reviewed by the Panel and/or the Investigator will be destroyed except for the Investigation Report and the Panel's Decision. OEO will maintain its investigative files for purposes of Title IX compliance. Any and all documents retained at the conclusion of a formal or informal resolution of a complaint will be maintained by the University in a safe and confidential manner.
2. Internal Reporting: Once a final resolution has been reached, whether through a Panel Decision or by acceptance of responsibility, that disciplinary decision, if it includes a suspension or expulsion, will become a permanent part of the Respondent's student records. As such, the outcome of this disciplinary adjudication may be available to other administrators within the University for their review, if needed.