

SEXUAL MISCONDUCT ADJUDICATION - PROCESS

Office of Equal Opportunity

Purpose: Adjudication Process for Complaints against Tufts University Students Involving Sexual Misconduct (including sex and gender based discrimination, sexual and sex and gender based harassment, sexual assault or rape, and sexual exploitation), Stalking and Relationship Violence (including dating and domestic violence)

Revised: December, 2015

Applicability: This document applies to current Tufts University students, alum and community members and third parties

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Introduction

The [Sexual Misconduct Adjudication Process \(SMAP\)](#) is the adjudication process applicable to complaints against Tufts students accused of sexual misconduct (including sex and gender discrimination; sexual and sex and gender based harassment; sexual assault and rape; sexual exploitation), stalking and relationship violence (including domestic and dating violence). This adjudication process is intended to be prompt, fair and impartial and will provide for disciplinary action, as appropriate. This adjudication process should be read in conjunction with the University's Sexual Misconduct, Stalking and Relationship Violence Policy, which also prohibits retaliation. The Tufts [Sexual Misconduct, Stalking and Relationship Violence Policy](#) is available on-line or may be requested by contacting the Office of Equal Opportunity (OEO) at 196 Boston Avenue, Medford, MA 02155 or by phone at 617-627-3298. Forms for use with the SMAP can be obtained from the Office of Equal Opportunity (OEO) (oeo@tufts.edu; 617-627-3298) or from any intake officer (see Section II, A, 1). Allegations of [sexual misconduct, stalking and/or relationship violence](#) against faculty, staff and third parties should be referred to the Office of Equal Opportunity (OEO) (oeo@tufts.edu; 617-627-3298) for resolution under the [Discrimination Complaint Guidelines](#).

As set forth in the Tufts Sexual Misconduct, Stalking and Relationship Violence Policy, unlawful discrimination and violence has no place at Tufts University and will not be tolerated. Discrimination and violence by or against any Tufts community member violates the University's core values, including the University's commitment to providing a safe community and equal opportunity to all. Sex and gender based discrimination, harassment and violence is prohibited by Tufts University policy and can constitute violations of state and/or federal law. State and federal law, including Title IX of the 1972 Education Amendments, prohibits sex and gender based discrimination in all of the University's programs and activities, and Title VII of the 1964 Civil Rights Act, and its state counterpart, M.G.L. c. 151B, prohibits sex and gender based discrimination in employment. Tufts University policy, the Violence Against Women Act (VAWA), as amended, and other state and federal laws also prohibit sexual assault, stalking and relationship violence (including dating and domestic violence).

The University will respond to complaints, reports or information about incidents of sexual misconduct, stalking and relationship violence that it knows or should know about to stop any

¹ The Tufts Sexual Misconduct, Stalking and Relationship Violence policy prohibits stalking and relationship violence (including dating and domestic violence) regardless of whether sex or gender is a factor in the conduct.

prohibited conduct, eliminate a hostile environment, take steps to prevent the recurrence, and to address any effects on campus from such conduct. The University will consider the effects of off-campus conduct when evaluating whether there is a hostile environment on campus.

The University will promptly proceed with the SMAP to the extent possible and appropriate under the circumstances of each case. The University's goal is to complete the adjudication of complaints filed within 60 days from the receipt of the disciplinary complaint, not including any appeals processes. Depending on the complexity of the investigation, the severity and extent of the conduct, or for other good cause, more or less time may be required to complete the adjudication process. In the event that the investigation exceeds 60 days, the Office of Equal Opportunity (OEO) will advise the parties of the delay in writing and offer an explanation of the timeline. Complainants and respondents are welcome to contact the investigator or OEO at any time for information regarding the status of the SMAP. The University will make every effort to conduct an investigation during school breaks or between school years, unless doing so would impact witness availability or otherwise compromise the investigative process.

Tufts University recognizes that the decision about whether to bring a disciplinary complaint can be complicated and challenging. Tufts takes all complaints seriously and matters brought to the University for adjudication through the SMAP will be thoroughly investigated. Victims/Survivors/Complainants who wish to discuss or bring forward sexual misconduct, stalking and/or relationship violence concerns confidentially or anonymously may consult with the Sexual Misconduct Resource Specialist, Nandi Bynoe (nandi.bynoe@tufts.edu; 617-627-0765), the Sexual Misconduct Prevention Specialist, Alexandra Donovan (alexandra.donovan@tufts.edu; 617-627-5140) or any other confidential resource (e.g. counseling, chaplaincy, and/or health services). More information about anonymous and confidential complaint options and resources are described in the Sexual Misconduct, Stalking and Relationship Violence Policy.

It should be noted that anonymous and confidential reporting may limit the University's ability to respond, including the ability to proceed with the investigative and disciplinary process, or otherwise address allegations and concerns. Victims/Survivors/Complainants who are initially anonymous or who are afforded confidential status may later decide to bring a formal complaint through this process at any time. Information provided by individuals seeking to remain anonymous or confidential will not initiate a SMAP unless a campus safety concern compels the University to move forward with an Administrative Complaint or other corrective action (see Section I, E, on Administrative Complaints).

Victims/Survivors/Complainants should understand that reports to a private but non-confidential University resource like the Office of Equal Opportunity (OEO) will afford the individual privacy but cannot provide legally or policy based confidentiality protections (such as those provided by the counseling center or the Sexual Misconduct Resource Specialist, respectively). In the event that the victim/survivor/complainant seeks confidentiality from a private but non-confidential source at the University (or does not seek to take any disciplinary or law enforcement action), the University will advise the victim/survivor/complainant whether it may afford the requested confidentiality and will endeavor to tell victims/survivors/complainants what information, if any, will be disclosed regarding their report, to whom and why.

The University affirms the right of a victim/survivor/complainant to decide whether they wish to be involved in a SMAP. At the same time, and under limited circumstances, when the conduct at issue involves a threat to campus safety (which includes, but is not limited to, the involvement of violence, the use of weapons, or repeat offenders) the University will be compelled to move forward with a SMAP through an administrative complaint (see Section I, E, Administrative Complaints below). Under these circumstances and whenever possible, the University will endeavor to inform the victim/survivor/complainant of its need to move forward prior to commencing the SMAP, and will inform the victim/survivor/complainant how their information will be shared.

Support resources and interim measures will be available to the victim/survivor/complainant and respondent, as appropriate, regardless of whether a SMAP is initiated. Additionally, a No Contact Order (NCO) will be put into place when a SMAP is pending (see section I, F below for more information about NCOs). The Sexual Misconduct Resource Specialist is available to help complainants, respondents and witnesses confidentially access available support resources both on and off campus. Additional information about support resources can also be found on the Office of Equal Opportunity website (<http://oeo.tufts.edu/sexualmisconduct/>). Complainants and respondents should also know that the SMAP allows them each to bring one support person/advisor of their choice to every SMAP meeting (see Section I, T for more information about support persons/advisors).

This document only addresses the internal disciplinary process within the University involving complaints against students. Individuals with sexual misconduct, stalking and/or relationship violence complaints may also have separate legal options and remedies available to them outside of Tufts, including the option to file charges with the police or other law enforcement, file a civil action and/or file an administrative action (i.e., with the U.S. Department of Education's Office for Civil Rights, OCR). More information about reporting options outside the University is described in the Sexual Misconduct, Stalking and Relationship Violence Policy.

I. PRELIMINARY ISSUES/DEFINITIONS

- A. **Complainant**: The victim/survivor who brings the complaint of sexual misconduct, stalking, and/or relationship violence under the Sexual Misconduct Adjudication Process (SMAP) is the *Complainant*. Although most cases involve one complainant and one respondent, more than one complainant may bring a complaint against one or more respondents under the SMAP. The University may also act as a Complainant (see Section I, E, Administrative Complaints below). An individual who has experienced sexual misconduct, stalking and/or relationship violence but has not made the decision to proceed as a complainant, is referred to in this document as a "victim/survivor."
- B. **Respondent**: The student(s) against whom the complaint of sexual misconduct, stalking, and/or relationship violence is filed is the *Respondent*. There may be more than one Respondent in a case.

- C. Reporting Party: Any individual who raises a complaint, concern or policy violation related to the University's Sexual Misconduct, Stalking and Relationship Violence policy (or other OEO policy) on behalf of another person. A *Reporting Party* can also make a request or raise a concern about support/interim measures for another person. In some circumstances, a reporting party may also be a complainant.
- D. Jurisdiction: Any person may file a complaint of sexual misconduct, stalking and/or relationship violence through the Sexual Misconduct Adjudication Process (SMAP) against any Tufts student (i.e. any person who has expressed the intent to continue to attend Tufts University or who has matriculated into any program at the University, as defined by that program) regardless of where the alleged sexual misconduct, stalking and/or relationship violence occurred. In determining whether the University has jurisdiction over a matter, SMAP focuses not on where the sexual misconduct, stalking and/or relationship violence happened, but on the affiliation of the individuals involved to Tufts. A complaint under the SMAP can be brought against incoming and matriculated Tufts students as well as non-matriculated Tufts students enrolled in courses, regardless of leave status or time of year, regarding both on and off campus behavior, from the time a student expresses intent to attend Tufts until they either graduate or formally withdraw from the University.

The complainant may be a Tufts student, employee or a third party. If the alleged conduct did not occur on campus, at a University-affiliated location or at a University-sponsored event, or if the person bringing the complaint is not a Tufts affiliate, the matter will be referred to the Director of OEO and Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298) to determine whether the University can exercise jurisdiction over the matter. In determining whether to exercise jurisdiction over these types of matters, Tufts will consider what, if any, effect off-campus conduct has on the Tufts community for faculty, staff, students, visitors and community members. Also, even where the status of the Respondent or the University's ability to exercise jurisdiction is unclear, the University will provide complainants with interim measures and support resources as appropriate.

- E. Timing of Complaints: There is ***no time limit*** for the submission of a complaint under the Sexual Misconduct Adjudication Process (SMAP). A complaint may be filed at any time. That complaint will be adjudicated as long as the University has jurisdiction over the respondent (as defined in Section I, C above). Although the University will investigate and adjudicate complaints to the best of its ability, sometimes the passage of time may have an impact on the availability and quality of information about an incident of sexual misconduct, stalking and/or relationship violence.
- F. Administrative Complaint: The University may independently initiate a formal disciplinary complaint against a student under the Sexual Misconduct Adjudication Process (SMAP), called an Administrative Complaint. This type of complaint may be initiated in situations where a victim/survivor is unable to or is uninterested in initiating a SMAP complaint directly. In those situations, the appropriate Dean, in consultation with the Title IX Coordinator, has

the option to initiate an Administrative SMAP complaint when sufficient information is available regarding the incident.

The University affirms the right of a victim/survivor to decide whether they wish to be involved in a SMAP. At the same time, and under limited circumstances, when the conduct at issue involves a threat to campus safety (which includes, but is not limited to, the involvement of violence, the use of weapons, or repeat offenders) the University will be compelled to move forward with a SMAP. Under these circumstances and whenever possible, the University will endeavor to inform the victim/survivor of its need to move forward prior to commencing the SMAP, and will inform the victim/survivor how their information will be shared. Support resources and interim measures will be available to the victim/survivor and respondent, as appropriate, and a No Contact Order (NCO) will be put into place (see section I, F below for more information about NCOs).

In an Administrative Complaint, the University will act as the complainant in the adjudication of a sexual misconduct, stalking and/or relationship violence complaint against a respondent. A victim/survivor will be considered a witness in an Administrative Complaint and will be given the option to be as involved or as uninvolved as they wish in the process. At any point, the victim/survivor may decide to join the SMAP as a complainant. For more information about Administrative Complaints, see Section II, A, 2.

- G. No Contact Order (NCO): Upon the initiation of a complaint under the Sexual Misconduct Adjudication Process (SMAP), a University *No Contact Order (NCO)* will be put into place between the complainant and respondent. The NCO will bar any communication or contact between the complainant and respondent and will prohibit any interaction or exchange between them, either directly or through others (e.g. friends, family members, attorneys, others, etc.). The appropriate intake officer (see Section II, A, 1) will work with the complainant and the respondent to facilitate the terms of the NCO so that they may both attend classes and use University facilities as appropriate. The goal of the NCO is to allow both the complainant and respondent, to the extent possible, to continue their academic and social endeavors while still avoiding contact during the adjudication of the complaint. The NCO can be as detailed as necessary, including specific plans of where the complainant and respondent can or cannot be at specific times. An NCO may be kept in place after the conclusion of the SMAP.

In cases where there is a demonstrated violation of the NCO, the responsible party may be separated from the University pending the final resolution of the disciplinary complaint as an interim measure, as discussed in Section I, H, and the individuals responsible may be subject to additional disciplinary action by the appropriate Dean. Complainants and respondents may also seek restraining orders or other orders of protection outside of the University (e.g. through the courts); once issued, the University will comply with these orders. Information regarding those types of orders can be obtained from the Tufts University Police Department (Medford: 617-627-3030; Boston: 617-636-6610; Grafton: 508-887-4900) or by contacting local law enforcement. A Stay Away Request (SAR) is another tool available to witnesses and

other persons involved in this process to limit contact with another person. Information about SARs can be obtained from the appropriate intake officer (see Section II, A, 1), the Sexual Misconduct Resource Specialist (nandi.bynoe@tufts.edu; 617-627-0765) or the Sexual Misconduct Prevention Specialist (alexandra.donovan@tufts.edu; 617-627-5140).

H. Support Resources/Interim Measures

The University will provide support resources/interim measures and/or information about support resources/interim measures, as appropriate, for the complainant, respondent, witnesses, and others involved with an issue of sexual misconduct, stalking and/or relationship violence. Support resources/interim measures are expected to ensure equal access to Tufts' educational programs and activities, to protect students, and/or to address any safety concerns to the Tufts community. Support resources/interim measure are available, as appropriate, even if a victim/survivor does not file a complaint or discontinues pursuit of a complaint, as well as after the conclusion of any disciplinary process. When providing support resources/interim measures, the University will make reasonable efforts, as appropriate, to minimize the burden on the complainant and will observe privacy to the extent possible.

Support resources/interim measures may include, but are not limited to: health and counseling services; stay away requests; no-contact orders; no trespass orders; separation from the University pending the final resolution of the disciplinary complaint/interim suspensions; voluntary leaves of absence; schedule and/or housing changes; academic supports or adjustments; information about student financial aid and visa/immigration related issues, and/or work adjustments.

Information regarding support resources/interim measures available both on and off-campus can be obtained *confidentially* through the Sexual Misconduct Resource Specialist (nandi.bynoe@tufts.edu; 617-627-0765) or the Sexual Misconduct Prevention Specialist (alexandra.donovan@tufts.edu; 617-627-5140). Additional information regarding support resources can be found on the Office of Equal Opportunity website (<http://oeo.tufts.edu/sexualmisconduct/>).

The Title IX Coordinator is responsible for overseeing and coordinating support resources/interim measures. The implementation of these support resources/interim measures is coordinated by the Title IX Coordinator with the assistance of various departments throughout the University, as necessary. Requests for support resources/interim measures may be made by or on behalf of the complainant, respondent or other individual involved in a sexual misconduct, stalking and/or relationship violence matter to any University official, including the Title IX Coordinator or the appropriate Dean (see Section I, DD). The Title IX Coordinator, in consultation with the appropriate Dean or other relevant University administrators, will be responsible for the implementation of the appropriate support resources/interim measures and/or for coordinating with the appropriate offices on campus to effectuate these measures.

- I. No Retaliation: Retaliation against anyone who makes a good faith report or complaint of an incident of sexual misconduct, or in any way participates in an inquiry or investigation of sexual misconduct, stalking and/or relationship violence under the Sexual Misconduct Adjudication Process (SMAP) is strictly prohibited. A person is protected from retaliation when they reasonably object to conduct they believe to be a violation of law or policy. All reports of retaliation will be taken seriously by the University. The University will address retaliatory behavior by any individual, including students, faculty, staff or third parties, to the best of its ability. Any person found to have engaged in retaliatory conduct will be subject to disciplinary action or other appropriate action by the University. Depending on the nature of the retaliatory conduct, discipline for students engaged in retaliation may include denial of privileges, warning, disciplinary probation, suspension and expulsion. Depending on the retaliation found, discipline for employees may include warnings (verbal or written), demotions, suspensions, and termination.

The University will also provide interim measures and/or other support resources in response to retaliation-related concerns, as appropriate, in order to stop prohibited conduct, prevent its recurrence, prevent and/or eliminate any hostile environment, and, where appropriate, address any effects on campus from such conduct. In some instances, these measures may lead to the immediate removal from campus of the person engaging in retaliation or other various available and appropriate interim measures. Retaliation should be reported promptly to the appropriate Dean (see section I, DD), any intake officer (see section II, A, 1) or to the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298). University Police may be able to address retaliation by a person not affiliated with the University.

- J. Office of Equal Opportunity/Title IX Coordinator: The Office of Equal Opportunity (OEO) is responsible for making inquiries into allegations of conduct that may violate the University's policy on Sexual Misconduct, Stalking and Relationship Violence (oeo@tufts.edu; 617-627-3298). The Title IX Coordinator coordinates the University's response regarding issues of sexual misconduct, stalking and relationship violence and compliance with Title IX. OEO provides the fact-finding investigators for all complaints brought under the Sexual Misconduct Adjudication Process (SMAP). Within the SMAP, the Title IX Coordinator assigns investigators and selects panel members for the Decision-Making and Appellate Panels. The Title IX Coordinator also coordinates interim measures and support resources, and facilitates the Pre-Decision Conferences. The Title IX Coordinator also facilitates the communication of the Decision-Making Panel's Decision and Appellate Decision to the complainant and respondent. The Title IX Coordinator for Tufts University is Jill Zellmer (jill.zellmer@tufts.edu; 617-627-3298).
- K. Investigator: The *Investigator* is responsible for conducting the fact-finding investigation portion of the Sexual Misconduct Adjudication Process (SMAP). The SMAP does not involve a hearing. Instead, the investigator will gather information relevant to the complaint and any information in the complainant and respondent statements. It is the responsibility of the investigator, **not** the complainant or respondent, to gather information that the investigator deems necessary for the resolution of the complaint. In all cases, the investigator will conduct

a prompt, fair, and impartial investigation into the allegations of the disciplinary complaint, reviewing all information deemed to be relevant by the investigator. It is the responsibility of the investigator to determine whether the issues raised and/or documents presented are relevant and probative of the alleged conduct. After completing the investigation, the investigator will submit all information that is relevant for the resolution of the complaint to the Decision-Making Panel through the investigation report. For more information regarding the fact-finding investigation, see Section II, C.

Investigations will only be conducted by investigators who have been specially trained on investigation techniques, analyzing complaints under applicable law (i.e., Title IX, VAWA) and University policy, and who have received training on issues relevant to investigating complaints of sexual misconduct, stalking and/or relationship violence. Assigned investigators will have received training on the principles of confidentiality and privacy applicable throughout a SMAP, including: 1) confidentiality in reporting, generally; 2) how to respond to and adhere to, as appropriate, requests for confidentiality; 3) factors to consider when a complainant requests confidentiality and how to explain to complainants when confidentiality cannot be afforded; and, 4) information about available confidential resources on and off campus.

- L. Decision-Making Panel: Under the Sexual Misconduct Adjudication Process (SMAP), the decision regarding the complaint will be made by a *Decision-Making Panel* consisting of three faculty or staff members from throughout University. These panelists will be chosen from a pool of University administrators, faculty and staff, all of whom have been specially trained on the SMAP process and on topics relevant to the adjudication of sexual misconduct, stalking and/or relationship violence complaints. The three panel members will be chosen by the Title IX Coordinator, who will communicate their identities to the complainant and respondent. Best efforts will be made to have the Panel be reflective of the demographics/identities of the complainant and/or respondent, particularly if requested by either or both of the parties, and if known and available. The Title IX Coordinator will ask the complainant and respondent and each panel member if there are any conflicts of interest related to the chosen panel members. Each party has the right to raise any concerns they may have. If a conflict is raised, the Title IX Coordinator may choose another trained panel member to sit in the place of the original panelist. The Title IX Coordinator will select the Panel Chair. Decisions regarding the composition of the Panel are made at the sole discretion of the Title IX Coordinator (see Section N, on Impartiality).

- M. Appellate Panel: Once a Decision-Making Panel's decision has been issued, both the complainant and respondent have a right to appeal the result. For more information about the appellate process, see Section II, I. Any appeal will be considered by a three-person *Appellate Panel* consisting of three trained administrators, faculty or staff members from throughout the University. The Appellate Panel will consist of three different individuals than those who served on the initial Decision-Making Panel. These panelists will be chosen from the same pool of University administrators, faculty and staff, all of whom have been specially trained, and continue to be trained annually, in the adjudication of matter covered by the

Sexual Misconduct Adjudication Process (SMAP). The three appellate panel members will again be chosen by the Title IX Coordinator, who will communicate their identities to the complainant and respondent. Best efforts will be made to have the panel be reflective of the demographics/identities of the complainant and respondent, particularly if requested by either or both of the parties, and if known and available. The Title IX Coordinator will ask the complainant and respondent and each panel member if there are any conflicts of interest related to chosen panel members and each party has the right to raise any concerns they may have. If a conflict is raised, the Title IX Coordinator may choose another trained panel member to sit in the place of the original panelist. The Title IX Coordinator will select the Panel Chair. Decisions regarding the composition of the Panel are made at the sole discretion of the Title IX Coordinator. The decision of the Appellate Panel is the final step in the SMAP (see Section N, on Impartiality).

- N. Impartiality: The Title IX Coordinator, Investigators, Decision-Making Panel and Appellate Panel members will be impartial, well-trained and free from any known conflicts of interest regarding the pending Sexual Misconduct Adjudication Process (SMAP) and its related complaint. The complainant and respondent will be notified in advance of the names of the individuals who act as the investigator and who will be serving on the Panels. The University will make every effort to address any perceived concerns or conflicts of any kind. Any conflicts of interest or concerns about impartiality should be reported promptly to the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298). These issues will be addressed promptly by the Title IX Coordinator. Concerns about the impartiality of the Title IX Coordinator should be raised immediately to the appropriate Dean (see Section I, DD.)
- O. Leniency Regarding Other Offenses: Individuals may be concerned about reporting sexual misconduct, stalking and/or relationship violence, believing that other behavior they were engaged in might subject them to disciplinary action (e.g., a victim/survivor/complainant or witness is underage and was using alcohol or drugs at the time of the incident). Witnesses, complainant and respondent should be assured that the focus in the University's review of violations of the University's policy against sexual misconduct, stalking, and relationship violence 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 sexual misconduct, stalking and/or relationship violence regardless of the surrounding circumstances. In situations reviewed under the Sexual Misconduct Adjudication Process (SMAP), Tufts University will, to the extent allowed by applicable laws and University policy, seek to make the sexual misconduct, stalking and/or relationship violence allegation(s) the focus of any investigation or disciplinary action. In such circumstances, the University will exercise leniency regarding other conduct violations (e.g., underage drinking, individual drug use).

It is important to know that, under the University's policy against sexual misconduct, stalking and relationship violence, a person's use of alcohol or drugs does not excuse behavior prohibited conduct under the policy. Also, 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. For more information about alcohol, drug use, incapacity and sexual misconduct, stalking and relationship violence, see, Section II, A and B, on the Sexual Misconduct, Stalking and Relationship Violence Policy.

- P. Right to Investigate and Decide Other Conduct Violations: As appropriate, and subject to Section, I, O above, the University will not be restricted to investigating only the violations alleged in the disciplinary complaint if other serious conduct violations are discovered in the course of an investigation pursuant to the Sexual Misconduct Adjudication Process (SMAP) (e.g. drug dealing, use of weapons, other violent behavior or safety concerns). However, matters with no bearing on the case under review will be referred to the appropriate University administrators for review and adjudication as appropriate. The Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298), in consultation with the appropriate Dean (see Section I, DD), will notify the complainant and respondent when additional allegations have been identified and will decide whether such allegations will be decided by the SMAP Decision-Making Panel or will be considered in another student judicial process. In any case, the adjudication of any other violations of policy unrelated to sexual misconduct, stalking and/or relationship violence will not delay or unfairly prejudice the prompt resolution of the pending SMAP complaint.
- Q. Obligation To Be Truthful: The complainant, respondent and witnesses in the Sexual Misconduct Adjudication Process (SMAP) must present information in good faith, and provide truthful, complete and accurate information. Truthfulness is required, encouraged and expected within the SMAP. Knowingly making false statements or presenting inaccurate or incomplete information may result in a separate disciplinary action and may also be taken into consideration by the Decision-Making Panel and/or Appellate Panel. Please note that filing a complaint or providing information which a complainant, respondent or witness genuinely believes is accurate, but which is ultimately dismissed due to insufficient information or found to be untrue, does **not** constitute the intentional presentation of false information.
- R. Witnesses: The complainant and respondent have the right to identify any individuals who may be witnesses to the conduct alleged in the Sexual Misconduct Adjudication Process (SMAP) complaint. *Witnesses* can include individuals who may have seen and/or heard the incident and individuals to whom the complainant and/or respondent may have spoken to about the incident. Please note that because the focus of an inquiry is on facts, character witnesses are not used within this process. It is possible for both the complainant and respondent to identify the same people as witnesses. The complainant and respondent may tell an individual that they have been identified as a witness. That individual can expect to be contacted by the investigator, but should refrain from discussing any details of the complaint in order to preserve the integrity of the investigation.

Witnesses should not be intimidated, threatened, or improperly influenced in any way by either the complainant or respondent or through others (e.g. friends, family members, attorneys, etc.). Any attempt to threaten, intimidate or otherwise improperly influence the

testimony of a witness may result in a separate disciplinary action by the University. The investigator will attempt to contact and interview any witnesses identified by the complainant and respondent that the investigator deems to be relevant to the resolution of the disciplinary complaint. The investigator may also identify additional witnesses through the Investigation. For more information about the Investigation process, please see Section II, C.

Witnesses have an obligation to cooperate with the investigator regarding the investigation of a complaint under the SMAP and to be truthful, as discussed in Section I, Q. The failure or refusal of a witness to meet and cooperate with the investigator or any administrator within this process regarding a complaint may result in a separate disciplinary action as determined by the appropriate Dean (see Section I, DD). Witnesses will be required to sign and comply with the Privacy/Non-Retaliation Acknowledgment (see Section I, T).

- S. Support Person/Advisor: Individuals involved in the Sexual Misconduct Adjudication Process (SMAP) as complainants or respondents may be more comfortable navigating the process with the help of a support person or an advisor of their choice. A *Support Person/Advisor* is someone whom the complainant or respondent trusts to provide support, guidance or advice during the process. A support person/advisor can be a person the complainant or respondent feels comfortable confiding in, and need not be affiliated with the University (e.g. a friend, a family member, a person from a support or advocacy agency, legal counsel, etc.). A support person may accompany the complainant/respondent to any part of the adjudication process, including to any meetings with the Dean, intake officer, investigator, Decision-Making Panel, and/or Appellate Panel. Complainants and respondents are entitled to have one support person, each, at every meeting. The complainant and respondent must provide the identity and contact information (e-mail and telephone) of the support person/advisor who will be accompanying them to the person with whom they are meeting within **one** University business day prior to the meeting.

A support person/advisor's role in these meetings is to observe the proceedings and support the complainant or respondent. A support person/advisor does not participate in any conversations, but instead provides support to the complainant/respondent in meetings solely through their presence. The support person/advisor will **not** be allowed to speak or otherwise interject in a meeting. A support person/advisor will be required to sign and comply with the Privacy/Non-Retaliation Acknowledgment form. If, at any point, an individual support person/advisor becomes disruptive or is otherwise unable to comport themselves within the parameters of the support person/advisor role, they will be asked to leave the meeting or may be restricted from further participation in the process.

- T. Privacy/Non-Retaliation Acknowledgment: All complainants, respondents, witnesses and support persons/advisors in the Sexual Misconduct Adjudication Process (SMAP) will be required to sign a *Privacy/Non-Retaliation Acknowledgment*, which will confirm that the investigator or intake officer has discussed the privacy considerations surrounding the SMAP and that the individual understands the importance of maintaining discretion and respecting

the privacy of the process. Through this Acknowledgment, the complainant, respondent, witnesses and support persons/advisors also agree to refrain from any retaliatory conduct against anyone else involved in this process in any manner and will encourage others to refrain from retaliation as well. While discretion remains important during this process, neither the complainant nor the respondent will be restricted from discussing or sharing information related to their complaint or response with others who may help them or assist them in presenting their case. The complainant and respondent are also able to discuss the facts underlying the disciplinary complaint and the process with confidential persons, such as counselors, clergy, healthcare providers, other therapeutic professionals, attorneys, the Sexual Misconduct Resource Specialist (nandi.bynoe@tufts.edu; 617.627.0765) or the Sexual Misconduct Prevention Specialist (alexandra.donovan@tufts.edu; 617-627-5140).

Using discretion, and being mindful of privacy concerns, the complainant and respondent will also be allowed to discuss the pending disciplinary complaint with their families or guardians. It will be expected that the identity of any and all persons who are not confidential, and with whom a complainant or respondent wishes to share information, will be disclosed to the investigator prior to sharing information. Students with questions or concerns about the persons with whom they may disclose information should consult with the appropriate Dean (see Section I, DD), intake officer (see Section II, A, 1) or the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298). For more information about the privacy consideration surrounding the SMAP, please see Section I, U and V.

- U. Privacy Considerations in the Process: The University will respect the privacy of the individuals involved in the Sexual Misconduct Adjudication Process (SMAP) to the fullest extent possible and will share its privacy expectations with all individuals involved in the SMAP. The University will also attempt to keep individuals apprised of the persons with whom information has been shared, the reasons for sharing the information and how the information has been or will be shared. With the importance of privacy and the appropriate use of information in mind, the University will require all participants in the SMAP (parties, witnesses, support persons, etc.) to review and sign a Privacy/Non-Retaliation Acknowledgement form (see Section I, T).

In some instances, concerns about privacy must be balanced against the University's need to investigate and to take action in situations where the behavior at issue impacts the interests and safety of the Tufts community (which can include but is not limited to the involvement of violence, the use of weapons, or repeat offenders). For more information about when the University may need to independently initiate action, please see Section I, E. Privacy expectations will remain in full force even after the conclusion of the disciplinary case, with the exception of generic (not personally identifying) reporting of the case in the University's Annual Security and Fire Safety Report, as appropriate.

The Office of Equal Opportunity (OEO) and the appropriate Dean's office will maintain files relating to the adjudication of complaints under the SMAP in a safe and private manner, for purposes of compliance with Title IX and consistent with University's record keeping

practices. University employees will only be provided with limited access to SMAP records maintained by the University consistent with the Federal Educational Rights and Privacy Act (FERPA) and on a limited need to know basis as determined by the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298) or the appropriate Dean (see Section I, DD).

All individuals involved in the SMAP should understand that any and all documents provided to and maintained by OEO – including complaints, responses, statements, investigative reports, documents, and other information examined as part of an investigation (such as video, photographs, etc.) – may be subject to disclosure by subpoena or court order at any time. The University will endeavor to advise the appropriate party of such a request unless otherwise prohibited by law.

- V. Individual Privacy Considerations: All participants in the Sexual Misconduct Adjudication Process (SMAP), including complainants and respondents, should understand that privacy and discretion is critical to a thorough and reliable investigation and to the integrity of the SMAP process in general. The complainant and respondent should understand that observance of these privacy considerations help preserve the integrity of the investigative process within the SMAP and are intended to protect the privacy of the individuals involved in this process. They are also meant to prevent additional claims, including claims of retaliation or claims of the creation or exacerbation of a hostile environment. Despite these important privacy considerations, the complainant and respondent will not be restricted from discussing or sharing information related to their complaint with others who may support them or assist them in presenting their case. Complainant and respondent may also freely share information with investigators, panel members (Decision-Making and/or Appeal panelists) or other relevant administrators in the usual course of a SMAP. The complainant and respondent are also able to discuss the facts underlying the disciplinary complaint and the process with confidential persons, such as counselors, clergy, healthcare providers, other therapeutic professionals, attorneys, the Sexual Misconduct Resource Specialist (nandi.bynoe@tufts.edu; 617.627.0765), and the Sexual Misconduct Prevention Specialist (alexandra.donovan@tufts.edu; 617-627-5140).

Using discretion and being mindful of privacy expectations, the complainant and respondent will also be allowed to discuss the pending disciplinary complaint with their families or guardians. It will be expected that the identity of any and all persons who are not confidential and with whom a complainant or respondent(s) wishes to share information will be disclosed to the investigator prior to sharing information. Complainant, respondent, support persons/advisors, and witnesses will also be asked to sign the Privacy/Non-Retaliation Acknowledgment (see Section I, T). Persons with questions or concerns about with whom they may disclose information should consult with the appropriate Dean (see Section I, DD), intake officer (see Section II, A, 1) or the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298).

The complainant and respondent should understand that the failure to maintain discretion and privacy may result in negative consequences impacting the adjudication of the sexual

misconduct, stalking and/or relationship violence complaint. The complainant and respondent must balance their need to heal and talk about their experiences with the need of the University to resolve and address disciplinary complaints in an accurate and discrete manner. The complainant and respondent should be mindful about with whom they discuss the pending adjudication, as over-sharing can result in unintended consequences such as retaliation, the creation or exacerbation of a hostile environment, and may damage the credibility and integrity of witnesses or information relevant to the resolution of the complaint.

As set forth in the introduction to the SMAP, a victim/survivor/complainant can request that their name not be revealed to the accused student or ask that the University not investigate or take action under the SMAP. In those situations, if the University determines that it can honor this request, the victim/survivor/complainant should understand that Tufts' ability to respond to the incident may be limited and that, at their request, this adjudication process may not be initiated. Under limited circumstances, when the conduct at issue poses a threat to campus safety (which includes, but is not limited to, the involvement of violence, the use of weapons or repeat offenders), the University will be compelled to move forward even when a victim/survivor does not wish to be involved. Under these circumstances, whenever possible, the University will endeavor to inform the victim/survivor of its need to move forward prior to commencing the disciplinary process. Support resources and interim measures will be available to the victim/survivor, as appropriate, and a No Contact Order (NCO) will be put into place. See Section I, E for more information regarding when the University would need to take action.

- W. Attorneys: Although not required, the complainant and respondent have the right to seek the assistance of a private attorney, at their own expense or through an advocacy agency, about sexual misconduct, stalking and/or relationship violence concerns. An *Attorney* may act as a support person/advisor (see Section I, S). Attorneys acting as support persons/advisors may make process related inquiries directly to the Office of Equal Opportunity. Attorneys acting in a representative capacity and/or seeking to discuss legal claims or other legal matters should direct inquiries to the Office of University Counsel.
- X. Criminal Conduct: The Sexual Misconduct Adjudication Process (SMAP) does not attempt to create a courtroom environment and is different from a civil or criminal legal proceeding. This process only makes determinations about whether conduct violates University policy and does not consider whether it may also violate the law. However, some complaints involve allegations that may also constitute *Criminal Conduct*. In such situations, an individual is advised to seek legal counsel before making any written or oral statements, since such a statement could have ramifications in any legal proceedings outside of the University. An individual should seek legal advice about how this disciplinary process could impact any civil or criminal case in which they are or may become involved. In most cases law enforcement will need the victim/survivor's cooperation in order to proceed with criminal charges.

The University will conduct its own investigation and adjudication of a disciplinary complaint, regardless of whether the alleged conduct is also being pursued through the civil or 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 information. The University will promptly resume its fact-finding investigation as soon as it is notified by law enforcement that doing so would not impede any law enforcement activities.

Y. Submission of Information: 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 hearsay or questioning whether such information can be submitted in the process. It should be noted that it is the responsibility of the investigator to determine whether the issues raised and/or documents presented are relevant and probative of the alleged conduct. If the investigator determines that information or documents submitted by one individual are relevant to the resolution of the complaint, then that information **will** be disclosed to the opposing party in the course of the investigation. That information will also be shared with the Decision-Making Panel and, if used, the Appellate Panel (see Section I, L and M). An individual receiving information or documents through this process has the responsibility of maintaining the privacy of that information.

1. *Sexual History*: In a case of sexual misconduct, stalking or relationship violence, the 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, stalking and/or relationship violence conduct occurred. Consent to one sexual act does not constitute consent for another sexual act. (See the Tufts definition of consent in the Sexual Misconduct, Stalking and Relationship Violence policy).
2. *Medical and Counseling Records*: Medical and counseling records are privileged and confidential documents that students will never be required to disclose in this process. Medical and counseling documents are "privileged" which means that they cannot be shared with anyone other than the treating professional unless the patient agrees to disclosure. **Therefore, individuals should be aware that there are legal implications to agreeing to share and produce privileged records; the production of partial records may lead to the waiver of privilege and the production of additional records.** Individuals are encouraged to seek advice from a knowledgeable source about the possible consequences of releasing this type of information.

A complainant or respondent who, after due consideration, believes that their own medical or counseling records would be helpful in determining whether sexual misconduct, stalking and/or relationship violence occurred, has several options for *voluntarily* presenting this information:

- a. The complainant and/or respondent can voluntarily decide to present their own medical or counseling records to the investigator. The investigator will review the records and will use discretion to determine what information is relevant to the adjudication of the complaint. Only the records deemed to be relevant to the resolution of the complaint will be shared with the opposing party and the Decision-Making Panel. Please note that if an individual decides to produce such records, they must be produced in their entirety. The production of excerpts or selected documents is unacceptable and will not be considered.
 - b. On rare occasions, the investigator may discuss with the complainant and/or respondent whether or not the production of medical or counseling records may be helpful to the resolution of the disciplinary complaint. In these situations, an individual maintains control to determine whether to voluntarily share such information. As discussed above, an individual should understand that there are legal implications to deciding to produce such records and it should not be done without consideration of the possible consequences in doing so (see Section Y.2, above). An individual is under **no obligation** to provide this information and may simply say “no.” An individual has a right to decide not to provide these records and that decision is completely acceptable. Prior to responding to such a request, an individual is advised to consult with a support person/advisor or to seek advice from a knowledgeable source about the possible consequences of releasing this information. Please note that if an individual does decide to produce such records, they must be produced in their entirety. The production of excerpts or selected documents is unacceptable and will not be considered. If produced, the investigator will review the provided records and will use their discretion to determine what information is relevant to the adjudication of the complaint. Only the records deemed to be relevant to the resolution of the complaint will be shared with the opposing party and the Decision-Making Panel.
 - c. A complainant or respondent may also decide to voluntarily provide a verification of therapeutic or medical services to the investigator, confirming simply that such treatment occurred, but not providing any details regarding that treatment.
- Z. Student Transcript/Record Notations: When a complaint is filed under the Sexual Misconduct Adjudication Process (SMAP) and the respondent has been notified of the complaint, the notation “Disciplinary Charges Pending” will be placed on the Respondent’s student transcript/record. This notation will be removed or changed as appropriate following final resolution of the sexual misconduct complaint. A respondent cannot receive a degree while there is a pending, unresolved disciplinary complaint against them.

If there is no finding made against the respondent through this process then the transcript/record notation will be removed. If a finding is made against the respondent then the transcript notation will be changed to reflect the disciplinary sanction imposed. 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/record stating, "Student Withdrew with Disciplinary Charges Pending." A student who leaves Tufts under these circumstances will not be eligible to return to the University at any time.

AA. Family Notification: Since the University views students of legal age as adults, parents, guardians and/or spouses will not be notified when a disciplinary complaint is filed under the Sexual Misconduct Adjudication Process (SMAP). Students are encouraged to inform their family if they are involved in a disciplinary complaint. Parent(s), guardian(s) and/or spouse(s) with questions about a pending complaint can contact the appropriate Dean (see Section I, DD) or the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298). Information may only be shared with a student's family consistent with the Family Educational Rights and Privacy Act (FERPA). In most cases, this means that a student will need to sign a FERPA waiver for the University to communicate private information with a parent, guardian and/or spouse.

BB. Reporting Information by the University: Information collected by the Office of Equal Opportunity as part of the Sexual Misconduct Adjudication Process (SMAP) is considered private and is protected by the federal privacy law entitled "Family Educational Rights and Privacy Act" (FERPA). This information may also be protected under state and local law. While the University will comply with privacy requirements, the University reserves its right to share information consistent with FERPA, and under certain circumstances information may be shared externally such as with other educational institutions, licensing boards, law enforcement, and government agencies as permitted or required by law or other applicable rules. Also, every year, OEO reports de-identified information to the University's Department of Environmental and Public Safety for use in the University's Annual Security and Fire Safety Report, as appropriate. This reporting is legally required of OEO -- and other University officials -- as a Campus Safety Authority ("CSA"). Other external disclosure of this information may also be made subject to subpoena or other court action. In situations where an external disclosure of information will be made, the individual whose information will be shared will be told what information will be provided, to whom and why, unless otherwise prohibited by law. As a matter of practice, the University does not share information regarding SMAP complaints with the media without student permission

CC. Alternative Dispute Resolution/Mediation: Mediation is not available or used in cases involving sexual assault or other incidents of sexual violence. Individuals who report or file a complaint of sexual misconduct, stalking, and/or relationship violence will not be required to resolve the matter directly with the respondent.

DD. Appropriate Dean: Under the Sexual Misconduct Adjudication Process (SMAP), the appropriate Dean (or their designee) for the school in which the respondent is a student will be responsible for initiating the disciplinary process and for implementing the decision of the

Decision-Making and/or Appellate Panel. The Dean will participate in the implementation of any discipline issued as part of the SMAP. The Dean will also address issues of retaliation, non-cooperation by parties or witnesses, and other conduct violations that may be identified through this process. Below is a list of the appropriate Deans for the different schools within Tufts University:

| <u>School of Arts, Sciences & Engineering (AS&E)</u> | <u>The Fletcher School of Law and Diplomacy</u> | <u>Sackler School of Graduate Biomedical Sciences</u> |
|---|--|--|
| Mary Pat McMahon | Gerard Sheehan | Naomi Rosenberg |
| Dean of Students, | Executive Associate Dean | Dean |
| 617.627.3158 | 617.627.5997 | 617. 636.2143 |
| Mary.McMahon@tufts.edu | Gerard.Sheehan@tufts.edu | Naomi.Rosenberg@tufts.edu |

| <u>Cummings School of Veterinary Medicine</u> | <u>Friedman School of Nutrition Science and Policy</u> | <u>Public Health and Professional Degree Programs</u> |
|--|--|--|
| Barbara Berman | Edward Saltzman | Aviva Must |
| Assistant Dean of Student Affairs | Academic Dean of Education | Public Health Program |
| 508.887.4725 | 617. 556.3245 | 617. 636.0446 |
| Barbara.Berman@tufts.edu | Edward.Saltzman@tufts.edu | Aviva.Must@tufts.edu |

| <u>School of Dental Medicine</u> | <u>School of Medicine</u> |
|--|--|
| Robert Kasberg, Jr. | Amy Kuhlik |
| Associate Dean of Admissions and Student Affairs | Dean of Student Affairs |
| 617.636.6539 | 617.636.6534 |
| Robert.Kasberg@tufts.edu | Amy.Kuhlik@tufts.edu |

EE. Preponderance of the Evidence Standard: Tufts applies the preponderance of the evidence standard in the Sexual Misconduct Adjudication Process (SMAP) to determine

whether the Sexual Misconduct, Stalking and Relationship Violence Policy has been violated. The *Preponderance of the Evidence Standard* applies to any factual issue that will need to be decided and panels will also use this standard of proof to determine a policy violation. In short, the decision of the Decision-Making Panel will be made based 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 Decision-Making Panel will be reached by a majority. If a majority of the Decision-Making Panel agrees that it is more likely than not based on the facts of the case that there was a policy violation, there will be a finding of responsibility made by the Panel. For more information about the Decision-Making Panel, see Section I, L.

FF. Disciplinary Range: Depending on the nature of the violation, disciplinary consequences for findings of sexual misconduct, stalking and/or relationship violence may include disciplinary probation, censure, suspension, indefinite dismissal, and expulsion for students. For more information, see [disciplinary guidelines](#).

II. THE SEXUAL MISCONDUCT ADJUDICATION PROCESS

- A. Initiating the Disciplinary Process
 - 1. Complainant Initiated Complaints
 - a. Complainant's Statement
 - b. Complaint Form
 - c. Privacy/ Non-Retaliation Acknowledgment
 - d. No Contact Order
 - 2. Administrative Complaints
- B. Responding to a Disciplinary Complaint
 - 1. Initial Notification Meeting
 - a. Privacy/ Non-Retaliation Acknowledgment
 - b. Duty to Cooperate
 - c. Complaint Form
 - d. No Contact Order
 - 2. Respondent has Two Options
 - a. Option one - Pre-Fact-Finding Investigation Resolution of Complaint/
Acceptance of Allegations
 - b. Option two - Respondent's Statement
- C. Fact-Finding Investigation
 - 1. Document Review
 - 2. Party Interviews
 - 3. Witness Interviews
 - 4. Expert Witnesses
- D. Investigation Report

- E. Pre- Decision Conference
- F. Withdrawal From University/Acceptance of Charges
 - 1. Respondent May Accept Responsibility
 - 2. Respondent May Withdraw
 - 3. Complainant May Withdraw Complaint
- G. Disciplinary History
- H. Decision-Making Panel's Decision
- I. Appellate Process
 - 1. Procedural Error
 - 2. New Information
 - 3. Disciplinary Action too Severe or not Severe Enough
- J. Conclusion of the Case
 - 1. Document Retention
 - 2. Internal Reporting
 - 3. External Reporting

A. Initiating the Disciplinary Process

Complaints based on sexual misconduct, stalking and/or relationship violence can be initiated under this process in two ways.

1. Complainant Initiated Complaints

An individual can decide to personally file a complaint against a student or more than one student. Under this option, the person bringing the allegation is called the *Complainant* (see Section I, A). The person(s) against whom the complaint is file is called the *Respondent* (see Section I, B). The complainant will be asked to submit three forms to initiate the disciplinary complaint – Complainant's Statement, Complaint Form and the Privacy/Non-Retaliation Acknowledgment (as discussed below). The complainant's forms should be signed, dated, and submitted to the Office of Equal Opportunity (OEO) or to any of the intake officers listed below. Email submission of the Complainant's Statement directly to OEO (oeo@tufts.edu; 617-627-3298) or any of the intake officers listed below is also acceptable. The complainant is welcome to bring one support person/advisor with them to any meetings with OEO or the intake officer (see Section I, S for more information regarding support persons/advisors).

Complaints can be filed with any of these intake officers:

| | | |
|---|--|--|
| <u>Office of Equal Opportunity</u> Jill Zellmer Title IX Coordinator and Director of OEO 617.627.3298 Jill.Zellmer@tufts.edu | <u>School of Arts, Sciences & Engineering (AS&E)</u> Mickey (Michael) Toogood Judicial Affairs Administrator 617.627.3158 Michael.Toogood@tufts.edu | <u>The Fletcher School of Law & Diplomacy</u> Laurie Hurley Director of Admissions 617.627.2410 Laurie.Hurley@tufts.edu |
| <u>Public Health & Professional Degree Programs (PHPD)</u> Robin Glover Associate Dean 617.636.2497 Robin.Glover@tufts.edu | <u>School of Dental Medicine</u> Katherine Vosker Director of Student Affairs 617.636.0887 Katherine.Vosker@tufts.edu | <u>School of Medicine</u> Janet Kerle Associate Dean of Students 617.636.6534 Janet.Kerle@tufts.edu |
| <u>Sackler School of Graduate Biomedical Sciences</u> Kathryn Lange Associate Dean 617.636.6767 Kathryn.Lange@tufts.edu | <u>Friedman School of Nutrition Science & Policy</u> Matthew Hast Assistant Dean of Student Affairs 617.636.6719 Matthew.Hast@tufts.edu | <u>Cummings School of Veterinary Medicine</u> Rebecca Russo Director of Admissions 508.887.4725 Rebecca.Russo@tufts.edu |

a. **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, stalking and/or relationship violence. This statement is the first opportunity for the complainant to describe the allegations against the respondent. This is the only written statement that will be submitted by the complainant in this process, so it should be given time and attention while it is being crafted. After the Complainant's Statement has been submitted, the complainant will be able to discuss any clarifications, corrections or additions to the statement with the investigator. However, once submitted, the written Complainant's Statement may not be amended in writing.

The statement should communicate the complainant's full account of the incident(s) and context, as well as the complainant's reflections. This statement should provide as much detail as possible about the facts surrounding the alleged misconduct, including the name of the accused student(s), the date(s) and location(s) of the incident(s), the details of the alleged misconduct and any other relevant information. To facilitate the process, the complainant should:

- *Tell the story in full.* The complainant should relate in full the facts of the incident as remembered. The complainant should take care to distinguish between what they saw,

heard, or experienced first-hand and what they may have learned later from others. Both types of information, however, should be included.

- *Describe the context.* It is important for the complainant to provide any observation or insight into the respondent's conduct and the context in which the alleged incident occurred, including its location, and any witnesses to it.

- *Reflect on the incident.* It is helpful for the complainant to provide any conclusions they may have drawn about the incident, stating clearly why they believe the respondent's actions may have violated University policy.

The statement must be written by the complainant. Statements written by parents, attorneys, support person/advisors or others will not be accepted. However, complainants are encouraged to consult with a support person/advisor of their choice or share a draft of the statement with a person who is well-positioned to discuss, among other matters, the statement's style, organization, length, and clarity, while also anticipating questions that may be raised for the fact-finder. It is not appropriate for intake officers or the Office of Equal Opportunity to review draft statements. The complainant will be required to sign a statement verifying that they wrote their Complainant's Statement.

The respondent will not be given the Complainant's Statement until **after** they have filed their statement in response with the appropriate intake officer. Instead, prior to submitting their Respondent's Statement, the respondent will only be given a copy of the Complaint Form (discussed below). Once the respondent has submitted their statement, the complainant should be aware that the respondent will be given a copy of the Complainant's Statement in its entirety. The complainant will also be given a copy of the Respondent's Statement.

The Complainant's Statement should also include a descriptive list of all sources of information.

- i. *Witnesses:* This list should include the names and contact information of any witnesses who may have seen and/or heard the incident and witnesses to whom the complainant may have spoken to about the incident (see Section I, R). When identifying witnesses, please include a brief description of what information that person might possess. In order to preserve the integrity of the investigation, the complainant should refrain from talking with the individuals who have been identified as witnesses. The complainant may tell a person that they have been identified as a witness, but should refrain from discussing any details of the complaint with them. Please note that character witnesses are not used within this process.
- ii. *Documents:* This list should identify any relevant documentation regarding the incident that includes (but is not limited to) texts, e-mails, video, journal entries or social media correspondence between the complainant and respondent or others

regarding the incident. This list should include a brief explanation of the information contained in the documentation and who might be in possession of that document. The complainant should identify the sources and/or location of this supporting information but should not attempt to collect information that is not in their possession. The Investigator will endeavor to solicit any relevant statements or documents referenced through this process.

- b. **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 respondent, 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 to respond adequately. The respondent will be given access to the Complaint Form *prior* to filing their written response statement.
- c. **Privacy/ Non-Retaliation Acknowledgment:** All complainants, respondent, witnesses and support persons/advisors (see Section I, S) in this process will be required to sign a Privacy/Non-Retaliation Acknowledgment (Acknowledgement) which will confirm that the investigator or intake officer has discussed the privacy policy surrounding the SMAP and that the individual understands the importance of maintaining discretion and respecting the privacy of the process. Through this Acknowledgment, the complainant, respondent, witnesses and support persons/advisors also agree to refrain from any retaliatory conduct against anyone else involved in this process in any manner and will encourage others to refrain from retaliation as well. While discretion remains important during this process, neither the complainant nor the respondent will be restricted from discussing or sharing information related to their complaint with others who may support them or assist them in presenting their case. The complainant and respondent is also able to discuss the facts underlying the disciplinary complaint and the process with confidential persons, such as counselors, clergy, healthcare providers, other therapeutic professionals, attorneys, the Sexual Misconduct Resource Specialist (nandi.bynoe@tufts.edu; 617-627-0765), and the Sexual Misconduct Prevention Specialist (alexandra.donovan@tufts.edu; 617-627-5140). The complainant and respondent will also be allowed to discuss the pending disciplinary complaint with their families or guardians. It will be expected that the identity of any and all persons who are not confidential and with whom a complainant or respondent wishes to share information will be disclosed to the investigator prior to sharing information.

This Acknowledgment is meant to help preserve the integrity of the investigative process and protect the privacy of the individuals involved in this process. This Acknowledgment is also meant to prevent retaliation (see Section I, I) by or against complainant, respondent, witnesses and persons outside of this process. Complainant and respondent should be aware that they may be held responsible for retaliation by any persons affiliated with them (i.e. friends, teammates, roommates, family members, etc.) if they knew of and/or facilitated that behavior. There will be disciplinary and possibly legal ramifications for engaging in retaliation and it may have a negative impact on the disciplinary process.

Students with questions or concerns about the persons with whom they may disclose information should consult with the appropriate Dean (see Section I, DD), intake officer or the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298). For more information about the privacy consideration surrounding the SMAP, please see Section I, U and V.

- d. **No Contact Order:** Upon the initiation of a complaint under the Sexual Misconduct Adjudication Process (SMAP), a University No Contact Order (NCO) will be put into place between the complainant and respondent. The NCO will bar any communication or contact between the complainant and respondent and will prohibit any interaction or exchange between them, either directly or through others (e.g. friends, family members, attorneys, others, etc.). The appropriate intake officer (see Section II, A, 1) will work with the complainant and respondent to facilitate the terms of the NCO so that they may attend classes and use University facilities as appropriate. The goal of the NCO is to allow both the complainant and respondent, to the extent possible, to continue their academic and social endeavors while still avoiding contact during the adjudication of the complaint. The NCO can be as detailed as necessary, including specific plans of where the complainant and respondent can be at specific times. An NCO may be kept in place after the conclusion of the SMAP. In cases where a demonstrated violation of the NCO has been shown, the responsible party may be separated from the University pending the final resolution of the disciplinary complaint as an interim measure (see Section I, H). The complainant and/or respondent may also be able to seek restraining orders or other orders of protection outside of the University, through the courts; the University will also endeavor, as possible, to enforce these orders of protection on campus. Information regarding those types of orders can be obtained from the Tufts University Police Department (Medford: 617-627-3030; Boston: 617-636-6610; Grafton: 508-887-4900) or through local law enforcement.

2. Administrative Complaints

The University may independently initiate a disciplinary complaint against a student under the Sexual Misconduct Adjudication Process (SMAP) called an Administrative Complaint (see Section I, E). This type of complaint may be initiated in situations where a victim/survivor is unable or uninterested in initiating a SMAP complaint directly. In those situations, the appropriate Dean (see Section I, DD), in consultation with the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298), has the option to initiate an Administrative SMAP complaint when sufficient information is available regarding the incident. In this type of Administrative Complaint, the University will act as the complainant in the adjudication of a sexual misconduct, stalking and/or relationship violence complaint against a respondent. A victim/survivor will be considered a witness in an Administrative Complaint and will be given the option to be as involved or as uninvolved as they wish.

The University affirms the right of a victim/survivor to decide whether they wish to be involved in a SMAP. At the same time, and under limited circumstances, when the conduct at issue involves a threat to campus safety (which includes but is not limited to the involvement of violence, the use of weapons, or repeat offenders) the University will be

compelled to move forward with a SMAP. Under these circumstances and whenever possible, the University will endeavor to inform the victim/survivor of its need to move forward prior to commencing the SMAP, and will inform the victim/survivor how their information will be shared. Support resources and interim measures will be available to the victim/survivor as appropriate and a No Contact Order (NCO) will be put into place (see Section I, F for more information about NCOs).

To initiate an Administrative Complaint, the University will obtain enough information about the incident to prepare a complaint statement which will be used in place of the Complainant's Statement within this process. The gathering of information for the complaint statement usually involves obtaining an account from the victim/survivor, if they are willing to provide such information. After obtaining that account, a victim/survivor will be treated as a witness within the adjudication of the Administrative complaint. The victim/survivor will have the option to receive information regarding the progress of the adjudication or may request not to receive such information. Although the victim/survivor is not the initiator of this action, they will be given the opportunity to participate in a pre- decision conference and will be informed of the outcome. At any point, the victim/survivor may decide to join the SMAP as a complainant.

The respondent will be notified when an Administrative Complaint is initiated and will be provided with a letter from the appropriate Dean's office in place of the Complaint Form. The respondent will be given the opportunity to submit a written Respondent's Statement in response as discussed below. Once the respondent has submitted their written response, they will be given a copy of the complaint statement. Then the adjudication of the complaint will proceed under the process outlined herein.

A victim/survivor interested in discussing an Administrative Complaint may contact the Office of Equal Opportunity (oeo@tufts.edu; 617-627-3298), the Sexual Misconduct Resource Specialist (nandi.bynoe@tufts.edu; 617-627-0765), or the Sexual Misconduct Prevention Specialist (alexandra.donovan@tufts.edu; 617-627-5140,) to discuss this option confidentially.

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 them.

1. ***Initial Notification Meeting:*** Within ***five university business (5) days*** of receiving notice of the disciplinary complaint, the respondent must meet with the intake officer for their school within Tufts University. The respondent is welcome to bring one support person/advisor (see Section I, S) with them to any meetings with the intake officer. At this meeting, several things will happen:

a. Privacy/Non-Retaliation Acknowledgment: First, the respondent will be required to sign a Privacy/Non-Retaliation Acknowledgment. All complainants, respondents, witnesses and support persons/advisors (see Section I, S) in this process will be required to sign a Privacy/Non-Retaliation Acknowledgment (Acknowledgment) which will confirm that the investigator or intake officer has discussed the privacy policy surrounding the Sexual Misconduct Adjudication Process (SMAP) and that the individual understands the importance of maintaining discretion and respecting the privacy of the process. Through this Acknowledgment, the complainant, respondent, witnesses and support persons/advisors also agree to refrain from any retaliatory conduct against anyone else involved in this process in any manner and will encourage others to refrain from retaliation as well. While discretion remains important during this process, the complainant and respondent will not be restricted from discussing or sharing information related to their complaint with others who may support them or assist them in presenting their case. The complainant and respondent are also able to discuss the facts underlying the disciplinary complaint and the process with confidential persons, such as counselors, clergy, healthcare providers, other therapeutic professionals, attorneys, the Sexual Misconduct Resource Specialist (nandi.bynoe@tufts.edu; 617-627-0765) and the Sexual Misconduct Prevention Specialist (alexandra.donovan@tufts.edu; 617-627-5140). The complainant and respondent will also be allowed to discuss the pending disciplinary complaint with their families or guardians. It will be expected that the identity of any and all persons who are not confidential and with whom a complainant and Respondent wishes to share information will be disclosed to the investigator prior to sharing information.

This Acknowledgment is meant to help preserve the integrity of the investigative process and to protect the privacy of the individuals involved in this process. This Acknowledgment is also meant to prevent retaliation (see Section I, I) by or against complainant, respondent, witnesses or persons outside of this process. Complainant and respondent should be aware that they may be held responsible for retaliation by any persons affiliated with them (i.e. friends, teammates, roommates, family members, etc.) if they knew of and/or facilitated that behavior. There will be disciplinary and possibly legal ramifications for engaging in retaliation and it may have a negative impact on the disciplinary process. Students with questions or concerns about the persons with whom they may disclose information should consult with the appropriate Dean, intake officer or the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298). For more information about the privacy consideration surrounding the SMAP, please see Section I, U and V.

b. Duty to Cooperate: The respondent has an obligation to cooperate with the intake officer and investigator regarding this matter. Refusal/failure by the respondent to meet and cooperate with the intake officer or investigator regarding this matter or to sign the Privacy/Non-Retaliation Acknowledgment, as determined by the appropriate Dean, may result in (1) the removal of the respondent from the University as an interim measure (see Section I, H) and/or (2) the adjudication of the disciplinary complaint without input from the respondent.

*c. **Complaint Form:*** Once the respondent has signed the Privacy/Non-Retaliation Acknowledgment, they will be provided with a copy of the Complaint Form. The intake officer can discuss the nature of the Complaint with the respondent and will explain the rights and responsibilities of the respondent within this process. The respondent will be given a copy of the Sexual Misconduct Adjudication Process (SMAP) as well as the University's policy on sexual misconduct, stalking and relationship violence.

*d. **No Contact Order:*** Upon the initiation of a complaint under the Sexual Misconduct Adjudication Process (SMAP), a University No Contact Order (NCO) will be put into place between the complainant and respondent. The NCO will bar any communication or contact between the complainant and respondent(s) and will prohibit any interaction or exchange between them, either directly or through others (e.g. friends, family members, attorneys, others, etc.). The appropriate intake officer (see Section II, A, 1) will work with the complainant and respondent to facilitate the terms of the NCO so that they may attend classes and use University facilities as appropriate. The goal of the NCO is to allow both the complainant and respondent, to the extent possible, to continue their academic and social endeavors while still avoiding contact during the adjudication of the complaint. The NCO can be as detailed as necessary, including specific plans of where the complainant and respondent can be at specific times. A NCO may be kept in place after the conclusion of the SMAP. In cases where a demonstrated violation of this Order has been shown, the responsible individual may be separated from the University pending the final resolution of the disciplinary complaint as an interim measure (see Section I, H). Complainant and respondent may also be able to seek restraining orders or other orders of protection outside of the University, through the courts. Information regarding those types of orders can be obtained from the Tufts University Police Department (Medford: 617-627-3030; Boston: 617-636-6610; Grafton: 508-887-4900) or through local law enforcement.

2. *Respondent Has Two Options:* Once the respondent has met with the intake officer, they have **seven (7) university business days** in which to decide how to proceed with the process. The respondent has two options:

a. ***Option One - Acceptance of Charges:*** After meeting with the intake officer and reviewing the Complaint Form, the respondent may accept responsibility for the conduct alleged in the Complaint Form. If the respondent accepts responsibility for the conduct alleged in the Complaint Form, the process does not proceed to the fact-finding investigation. Instead, the matter is referred to the Decision-Making Panel to decide appropriate disciplinary action.

Once the respondent accepts responsibility, such acceptance cannot be withdrawn. The Decision-Making Panel will issue a written finding of the respondent's acceptance of responsibility and may take it into consideration in determining the final determination in the matter and appropriate disciplinary action. The final determination and resulting disciplinary action will become part of the respondent's student records and will be shared with the complainant.

If the respondent does not wish to accept responsibility for the conduct alleged in the Complaint Form, then they will need to prepare a Respondent's Statement as noted below. The respondent must decide whether they would like to utilize this resolution process after meeting with the intake officer. However, if the respondent decides they do not wish to use this resolution, they must then submit their Respondent's Statement within **seven university business (7) days** of meeting with the intake officer.

- b. **Option Two - Respondent's Statement:** If the respondent does not accept responsibility for the conduct alleged in the Complaint Form, they will be required to provide a written response to the information contained in the Complaint Form. The Respondent's Statement must be submitted to the intake officer within **seven (7) university business days** after the initial meeting between the respondent and the intake officer.

This Respondent's Statement is the first opportunity for the respondent to address the allegations brought against them. This is the only written document that will be submitted by the respondent in this process, so it should be given time and attention while it is being crafted. After the Respondent's Statement has been submitted, the respondent will be able to discuss any clarifications, corrections or additions to the statement with the investigator. However, once submitted, the written Respondent's Statement may not be amended in writing.

The statement should communicate the respondent's full account of the incident(s) alleged and its context, and should not simply be responsive to the Complaint Form. It is the respondent's reflections on the complaint. To facilitate the process, the respondent should:

- *Tell the story in full.* The respondent should relate in full the facts of the incident as remembered. The respondent should take care to distinguish between what they saw, heard, or experienced first-hand and what they may have learned later from others. Both types of information, however, should be included.
- *Describe the context.* It is important for the respondent to provide any observation or insight into the complainant's allegations and the context in which the alleged incident occurred, including its location, and any witnesses to it.
- *Reflect on the incident.* It is helpful for the respondent to provide any conclusions they may have drawn about the allegations, stating clearly why they believe their actions did not violate University policy.

The Respondent's Statement should include as much detail as possible about the facts surrounding the alleged misconduct.

The statement must be written by the respondent. Statements written by parents, attorneys, support person/advisors or others will not be accepted. However,

respondents are encouraged to consult with a support person/advisor of their choice or to share a draft of the statement with a person who is well-positioned to discuss, among other matters, the statement's style, organization, length, and clarity, while also anticipating questions that may be raised for the fact-finder. It is not appropriate for intake officers or the Office of Equal Opportunity to review draft statements. The respondent will be required to sign a statement verifying that they wrote their own Respondent's Statement.

The respondent should be aware that the complainant will be given a copy of their statement in its entirety. Once the respondent has submitted their statement, they will be given a copy of the Complainant's Statement in its entirety.

The Respondent's Statement should also include a descriptive list of all sources of information.

- i. *Witnesses:* This list should include the names and contact information of any witnesses who may have seen and/or heard the incident and witnesses to whom the respondent may have spoken to about the incident (see Section I, R). When identifying witnesses, please include a brief description of what information that person might possess. In order to preserve the integrity of the investigation, the respondent should refrain from talking with the individuals who have been identified as witnesses. The respondent may tell a person that they have been identified as a witness, but should refrain from discussing any details of the complaint with them. Please note the character witnesses are not used within this process.
- ii. *Documents:* This list should identify any relevant documentation regarding the incident which includes (but is not limited to) texts, e-mails, video, journal entries or social media correspondence between the complainant and respondent or others regarding the incident. This list should include a brief explanation of the information contained in the documentation and who might be in possession of that document. The respondent should identify the sources and/or location of this supporting information but should not attempt to collect information that is not in their possession. The investigator will endeavor to solicit any relevant statements or documents referenced through this process.

C. Fact-Finding Investigation

After both the complainant and respondent have submitted their statements, the intake officer will refer the complaint and these statements to the Office of Equal Opportunity (OEO) to initiate the fact-finding investigation. The Sexual Misconduct Adjudication Process (SMAP) does not involve a hearing. Instead, the investigator will gather information relevant to the complaint and the facts raised in the complainant and respondent statements. It is the responsibility of the investigator, **not** the complainant and respondent, to gather the information that the investigator

deems appropriate for the resolution of the complaint. Neither the complainant nor the respondent should collect this information, but should instead do their best to preserve any information they may have in their possession. The scope of the fact-finding investigation is not limited to information provided by the complainant and respondent 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 information deemed to be relevant by the investigator.

In order for the investigation to be conducted in a timely manner, it is required that complainant, respondent and witnesses make themselves available to the investigator, including over University holidays and breaks. Complainant, respondent and witnesses should know that they have an obligation to cooperate with University officials, including the investigator. The refusal to cooperate with the investigator, as determined by the appropriate Dean (see Section I, DD), may result in disciplinary action against the witness. In cases where a complainant or respondent refuses to cooperate, a finding on the complaint can be made without input from that complainant or respondent.

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.

1. *Document Review:* Once Complainant and Respondent Statements have been submitted and exchanged, the investigator will review these 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. As determined by the investigator, any documents or information deemed to be material to the findings regarding the disciplinary complaint or any other violations will be disclosed to both complainant and respondent for comment or rebuttal during the course of the investigation. Please note that documents include both paper and digital items, such as text messages, journal entries, e-mails, video and other social media communications.
2. *Complainant/Respondent Interviews:* The investigator will interview the complainant and the respondent separately. This meeting is an opportunity for the complainant and respondent to each discuss their recollection of the event(s) in question, supplement any written statements already submitted, voice any concerns, and to work with the investigator to determine what additional information may helpful in the investigation of the allegations. Complainant and respondent may also discuss the impact that this experience has had on them. The investigator may interview the complainant and respondent more than once, as necessary. During this interview, the investigator will inform the complainant and respondent of the evidence gathered in the investigation to date and will provide them with an opportunity to comment or respond to that information. If additional policy or code violations have been identified by the investigator during the course of the Investigation, the complainant and respondent will be notified of those issues during their interview and will be given an opportunity to respond.

The complainant's or respondent's support person/advisor (see Section I, R) may accompany them to all the meetings with the investigator but may not participate in the conversation. Prior to sitting in on any interviews, the complainant and respondent must disclose the name and contact information for their support person/advisor. The support person/advisor will be required to sign a Privacy/Non-Retaliation Acknowledgment.

3. *Witness Interviews:* The investigator will interview any witnesses identified by the complainant and/or respondent that the investigator deems to be relevant to the resolution of the disciplinary complaint. The investigator may also interview any other persons that they believe may have information relevant to this matter. 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 (i.e. Skype).

Witnesses may not bring support person/advisors to their interviews. Prior to being interviewed, a witness will be required to sign a Privacy/Non-Retaliation Acknowledgement (Acknowledgement). Through this Acknowledgment, witnesses agree that they have been advised to maintain the privacy of this process and that they will refrain from any retaliatory conduct against anyone else involved in this process in any manner and will encourage others to refrain from retaliation as well. Witnesses should be aware that they may be held responsible for retaliation by any persons affiliated with them (i.e. friends, teammates, roommates, family members, etc.) if they knew of and/or facilitated that behavior. There will be disciplinary and possibly legal ramifications for engaging in retaliation. For more information on retaliation and consequences for engaging in retaliatory conduct, see Tufts' Sexual Misconduct, Stalking and Relationship Violence Policy.

4. *Expert Witnesses:* The investigator reserves the right to consult with any experts who they deem 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 including, but not limited to, rape kits and toxicology reports. Any expert witnesses will be required to sign and abide by the terms of the Privacy/Non-Retaliation Acknowledgment and University policy even if they are not members of the Tufts community.

D. Investigation Report

Once the fact-finding investigation has been completed, the investigator will prepare a report summarizing and analyzing the relevant facts obtained through the investigation, noting any supporting documentation or statements. The investigator may draw conclusions regarding the credibility of statements of witnesses and the reliability of documentation. The investigation report will include references to any conflicting testimony or documents. The report will be submitted to the Decision-Making Panel (see Section I, L) for their consideration. The investigation report will neither be shared with the complainant nor the respondent, or any witnesses to a SMAP.

E. Pre- Decision Conference

A Decision-Making Panel will be assembled to act as the final decision-maker in the Sexual Misconduct Adjudication Process (SMAP) (see Section I, L). The Decision-Making Panel will have the responsibility to determine (1) whether University policy has been violated, and (2) what disciplinary action should be imposed if Tufts' Sexual Misconduct, Stalking and Relationship Violence policy is found to have been violated. Upon receipt of the investigation report, the Decision-Making Panel will meet and review the document. After reviewing the investigation report, but prior to issuing the Decision-Making Panel's Decision, the Decision-Making Panel Chair and Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298) will schedule separate Pre-Decision Conferences (Pre-Decision Conference) with the complainant and the respondent. The Decision-Making Panel Chair reserves the right to include all three members of the Decision-Making Panel in the Pre-Decision Conferences at their discretion. During the Pre-Decision Conferences, the Decision-Making Panel member will provide the complainant and respondent each with an overview of the investigation report, noting the facts from which preliminary conclusions were drawn. The Decision-Making Panel member will also discuss whether any investigative findings relating to policy or code violations were found beyond those noted in the original disciplinary complaint.

At this time, the complainant and respondent will each have an opportunity to comment on and respond to the pre-decision presented and provide any additional information that should be considered prior to a final decision being rendered regarding the disciplinary complaint. The complainant and respondent may each provide a rebuttal statement, impact statement or narrative, or identify any new documents or information that may be relevant to the finding. Any additional information or statements must be provided, in writing, to the Title IX Coordinator within **two (2) university business days** after the Pre-Decision Conferences. At no time are the complainant and respondent to contact any member of the Decision-Making Panel directly. All communication between the complainant and respondent and the Decision-Making Panel will be done through the Title IX Coordinator or a designee.

After meeting with the complainant and respondent and reviewing any additional information and/or narratives submitted for consideration, the Decision-Making Panel may determine that additional inquiry is needed in order for a decision to be rendered regarding the disciplinary complaint. If so, the Decision-Making Panel Chair will ask the investigator to conduct a supplemental fact-finding investigation into the areas of concern. The investigator will focus any additional investigation on the specific inquiries posed by the Decision-Making Panel. The investigator will then prepare and submit a Supplemental Investigation Report addressing the findings as to the issues raised by the Decision-Making Panel. If the supplemental fact-finding investigation causes the process to exceed the 60 day timeframe, OEO will advise the complainant and respondent in writing of the delay and offer an explanation of a timeline. The Decision-Making Panel Chair reserves the right to schedule subsequent, separate Pre-Decision Conferences to address the findings from the supplemental investigation with the complainant

and respondent, should the Decision-Making Panel feel, at its discretion, that such a meeting would be helpful to the process.

F. Withdrawal From University/Acceptance of Charges

1. *Respondent May Accept Responsibility:* Prior to the Decision-Making Panel's Decision, the respondent may accept responsibility for the sexual misconduct, stalking and/or relationship violence alleged in the disciplinary complaint. If the respondent accepts responsibility for the conduct alleged in the disciplinary complaint, the fact-finding investigation will end. The matter would then be referred to the Decision-Making Panel to decide the appropriate disciplinary action against the respondent. The Decision-Making Panel may take the respondent's acceptance of responsibility into consideration in determining the appropriate disciplinary action. Once the respondent accepts responsibility, such acceptance cannot be withdrawn. A written decision will be issued by the Decision-Making Panel. These documents will become part of the respondent's student records in accordance with that individual school's policies and procedures and the outcome of the SMAP will be shared with the complainant consistent with the Family and Educational Rights and Privacy Act (FERPA).
2. *Respondent May Withdraw From the University:* At any time up until **three (3) university business days** after the Pre-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 permanent notation "Student Withdrew with Disciplinary Charges Pending" on their student transcript and will not be eligible to return to Tufts at any time in the future. The respondent's withdrawal from the University will end the Sexual Misconduct Adjudication Process (SMAP) for that complaint.

Beyond the fourth (4th) university business day after the Pre-Decision Conference, the respondent will no longer be allowed to withdraw, as the pending process and Decision-Making Panel's Decision will determine their status with the University. Under certain circumstances, and at the discretion of the Decision-Making Panel, the time period for the respondent to withdraw may be extended if a supplemental fact-finding investigation has been requested by the Decision-Making Panel. In that case, the respondent's right to withdraw would expire three (3) university business days after any subsequent Pre-Decision Conference is held, or after notice that a subsequent Pre-Decision Conference will not be scheduled.

3. *Complainant May Withdraw the Complaint:* Prior to the Decision-Making Panel's decision, the complainant may withdraw the disciplinary complaint by notifying the Title IX Coordinator or the intake officer of their desire to do so. 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. If the University does not choose

to move forward, the withdrawal of the complaint will, under most circumstances, end the Sexual Misconduct Adjudication Process (SMAP) for that complaint. Even if a complainant chooses to withdraw their complaint, they will still be given the opportunity to participate in a pre-decision conference and will be informed of the outcome of the SMAP in writing consistent with the Family and Educational Rights and Privacy Act (FERPA).

G. Decision-Making Panel's Decision

Upon determining that all of the issues regarding the disciplinary complaint have been fully investigated and adequately addressed, the Decision-Making Panel (see Section I, L) 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 Decision-Making Panel will be reached by a majority. The Decision-Making Panel will base its decision on the information presented in the investigation report, any supplemental investigation report or clarifications provided by the investigator, and any statements provided by the parties during or following the pre- decision conference. The Panel Chair will draft the Decision-Making Panel's written decision and submit it to the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298).

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

- A finding that a University policy was violated. The Decision-Making 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 Decision-Making Panel will then dismiss the disciplinary complaint.

Once the Decision-Making Panel's Decision has been issued, the Title IX Coordinator will notify both the complainant and the respondent contemporaneously but separately of the decision in writing. Both the complainant and the respondent will have a separate meeting with the appropriate Dean (see Section I, DD) and the Title IX Coordinator to discuss the outcome of the Sexual Misconduct Adjudication Process (SMAP). The decision will be kept by the University as a permanent record consistent with its record keeping policies even if the finding is that Tufts policy was not violated.

The Decision-Making Panel's decision is a private document. Therefore, the University strongly encourages the complainant and respondent to share the document with confidential persons such as counselors, clergy, other therapeutic professionals, attorneys, the Sexual Misconduct Resource Specialist (nandi.bynoe@tufts.edu; 617-627-0765), the Sexual Misconduct Prevention Specialist (alexandra.donovan@tufts.edu; 617-627-5140) or support persons who have been advised of and understand the importance of the privacy and non-retaliation aspects of the SMAP.

If the Decision-Making Panel's decision results in disciplinary action which includes separation from campus (i.e. suspension or expulsion), that disciplinary action will be imposed immediately, regardless of whether an appeal has or will be filed, although the official transcript notation of that disciplinary action will not be made until the time for an appeal has passed. The Dean has the discretion to allow a respondent to complete any pending coursework remotely, if deemed appropriate by the Title IX Coordinator, the Dean and the faculty members involved.

H. Appellate Process

Both the complainant and respondent are entitled to appeal a Decision-Making Panel's Decision issued through the Sexual Misconduct Adjudication Process (SMAP). The complainant and the respondent are both only entitled to one appeal. The person filing the appeal is the *Appellant*. An appeal must be filed, in writing, on the Notice of Appeal Form within **seven (7) university business days** of the appellant's meeting with the Dean and the Title IX Coordinator. The Notice of Appeal form can be obtained from the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298). The other party to the SMAP will be notified if an appeal has been filed and will be provided with a copy of the Notice of Appeal. In some situations, both the complainant and respondent may file an appeal. In this situation, the Appellate Panel will consider and review both appeals together. If neither party to the SMAP files an appeal within the seven (7) university business day timeframe, the Decision-Making Panel's decision will be considered final and the adjudication process will be permanently closed.

The Notice of Appeal Form should be filed with:

Jill Zellmer
Title IX/504 Coordinator and Director, Office of Equal Opportunity
Tufts University
196 Boston Ave, Suite 3800
Medford, MA 02155
Tel: 617-627-3298
E-mail: jill.zellmer@tufts.edu

The appeal will be considered by an impartial, trained, three-person Appellate Panel (see Section I, M) 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 with the same controls, concerns and process for assessing conflicts as the Decision-Making Panel (see Section I, M). In considering the appeal, the Appellate Panel will be given the Notice of Appeal, the statements of the complainant and respondent, the Decision-Making Panel's decision, and the investigation report(s) and information to review.

The written appeal must be submitted on the Notice of Appeal Form, specifically stating the grounds under which the appeal has been filed. The Notice of Appeal Form must be submitted within the **seven (7) university business day** time limit after the Appellant's meeting with the Dean and the Title IX Coordinator. The appeal is not an opportunity to argue that a complainant

and/or respondent disagrees with the initial decision. The appeal is also not a new fact-finding process. Although a complainant and/or respondent may disagree with the finding in the Decision-Making Panel's decision, there are only three grounds on which a Decision-Making Panel's decision can be appealed, as noted below. The appeal must set forth the information and/or evidence to support the appeal. Appeals which do not comply with these requirements may not be considered. The other party to the SMAP will be given an opportunity to respond to the assertions made by the appellant, in writing, within **five (5) university business days**.

The three grounds on which a Decision-Making Panel's decision can be appealed (more than one can be used) are:

1. **Procedural Error:** The appellant alleges that there was a (i) deviation or change from the procedures outlined in the Sexual Misconduct Adjudication Process (SMAP) and (ii) that deviation had an adverse impact on the outcome of the complaint against the appellant. If the Appellate Panel determines that there was a procedural error that could have altered the outcome of the case, the appeal will be submitted to the original Decision-Making Panel for a determination regarding the impact that the procedural error had on the outcome of the complaint.
2. **New Information:** The appellant alleges that, subsequent to the issuance of the Decision-Making Panel's decision, new information became available which would have impacted the outcome of the disciplinary complaint. The appellant must: (i) present the new information; (ii) show why it was unavailable prior to the Decision-Making Panel's decision; and (iii) show that the new information could have altered the outcome of the complaint. If the Appellate Panel determines that there is information that meets these three requirements, the appeal will be submitted to the original Decision-Making Panel for review in light of the new information. At the Decision-Making Panel's discretion, additional investigation of the new information can be requested.
3. **Severity of The Disciplinary Action:** The appellant alleges that the disciplinary action issued in the Decision-Making Panel's decision is inappropriate for the behavior alleged or is inconsistent with the type of discipline issued by the University to others who were found to be responsible for substantially similar violations or offenses. If the Appellate Panel determines that the disciplinary action was inappropriate for the behavior alleged or is inconsistent with discipline for similar violations, it will remove the discipline issued by the Decision-Making Panel and issue a new disciplinary action in its place. Disciplinary actions can be increased or decreased in severity at the discretion of the Appellate Panel.

The appeals process will usually be completed within thirty (30) days from the filing of the Notice of Appeal to the communication of the final decision of the Appellate Panel to the parties. In the event the appeals process exceeds the 30 day time frame, the Office of Equal Opportunity (OEO) will advise the parties in writing of the delay and offer an explanation of a timeline. The parties are also welcome to contact the Office of Equal Opportunity (OEO) at any time for information regarding the status of SMAP.

I. Conclusion of the Case

1. **Document Retention:** At the conclusion of the Sexual Misconduct Adjudication Process (SMAP), all materials created by or reviewed by the Panel(s) will be destroyed except for the investigation report(s) and any documents communicating the final outcome of the SMAP. The Office of Equal Opportunity and the appropriate Dean's office will maintain its investigative files for purposes of Title IX compliance and consistent with University record retention policies and practices as set forth previously in this document.
2. **Internal Reporting:** Once a final resolution has been reached, any disciplinary decision will become a permanent part of the respondent's student records if it includes a suspension or expulsion. Other disciplinary actions may temporarily become part of the respondent's student records depending on the action taken, in accordance with the policy and practices of the appropriate Dean's office. When this disciplinary action is a part of the respondent's student records, it may be available to other administrators within the University for their review on a limited need to know basis.
3. **External Reporting:** All information regarding a complaint under the Sexual Misconduct Adjudication Process (SMAP) is considered private and is protected by federal law under the Family Educational Rights and Privacy Act (FERPA), and may also have protection under other state or federal law, including state privacy law. Under certain circumstances information may be shared externally with other educational institutions, licensing boards and government agencies as permitted or required by law or other applicable rules. External disclosure of this information may also be made subject to subpoena or other court action. In situations where an external disclosure of information will be made, the University will endeavor to advise the individual whose information will be shared will be told what information will be provided, to whom and why, unless prohibited by law. As a matter of practice, the University does not share information regarding complaints with the media without permission.
4. **Subsequent Related Proceedings:** Following the conclusion of a Sexual Misconduct Adjudication Process (SMAP) where findings of responsibility are made, students should understand that any disciplinary sanction issued will be reviewed by the appropriate Dean. In certain circumstances, this review may result in further process and additional sanctions. For instance, students enrolled in Tufts' graduate health sciences programs are subject to ethical and professional requirements that may warrant further review of any SMAP finding by the applicable Ethics and/or Professionalism Committees. In addition, students of any school with pre-existing discipline should contact their appropriate Dean (see Section I, DD) with questions about the possible impact of any finding of responsibility on their ongoing student status. In certain circumstances, a finding of responsibility under the SMAP may result in more severe discipline issued by the appropriate Dean if there is a pre-existing record of discipline that would reasonably warrant it.

