

**TUFTS UNIVERSITY’S RESPONSE TO
2017 OFFICE OF CIVIL RIGHTS (OCR) GUIDANCE**

| 2011 OCR Guidance and 2014 Q&A | 2017 OCR Guidance | Current Tufts Sexual Misconduct Policy |
|---|--|---|
| <p>1) Expected Response to Sexual Misconduct:</p> <p>Title IX requires the school to take immediate action to eliminate any harassment, prevent its recurrence, and address its effects if on notice of sexual harassment or other misconduct that may create a hostile environment.</p> | <p>Whether or not a student files a complaint of alleged sexual misconduct or otherwise asks the school to take action, where the school knows or reasonably should know of an incident of sexual misconduct, the school must take steps to understand what occurred and to respond appropriately.</p> | <p>Consistent with Tufts policy.</p> <p>Since 2012, Tufts process offers a formal and an informal option for those who file complaints.</p> <p>A dean’s office can also file an administrative complaint on behalf of a student who may not feel comfortable filing a formal or informal complaint or if the school believes a hostile environment has been created.</p> <p>SM Adjudication Process, Page 4</p> |
| <p>2) Standard of Proof:</p> <p>In order for a school’s grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred).</p> | <p>The findings of fact and conclusions should be reached by applying either a preponderance of the evidence standard or a clear and convincing evidence standard. The standard of evidence used should be consistent with the standard used in other student misconduct matters.</p> | <p>Tufts uses the preponderance of the evidence standard and will continue to do so. Use of this standard pre-dates the 2011 Guidance. The preponderance of the evidence standard is applied to all student misconduct matters.</p> <p>SM Adjudication Process, 18-19</p> |
| <p>3) Mediation in Sexual Assault Cases:</p> <p>In cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault complaints.</p> | <p>If all parties voluntarily agree to participate in mediation an informal resolution that does not involve a full investigation and adjudication after receiving a full disclosure of the allegations and their options for formal resolution and if a school determines that the particular Title IX complaint is appropriate for such a process, the school may facilitate such a mediation for the parties.</p> | <p>Tufts does not currently offer mediation in sexual assault matters. Tufts will consider mediation, if requested by a party, but will only agree to mediation if both parties are willing and able to participate.</p> |

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| <p>4) Time Frame for Investigations:</p> <p>Based on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint. Whether OCR considers complaint resolutions to be timely, however, will vary depending on the complexity of the investigation and the severity and extent of the harassment.</p> | <p>There is no fixed time frame under which a school must complete a Title IX investigation. OCR will evaluate a school’s “good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution.</p> | <p>Our current policy is consistent with 2011 guidance and provides for exceptions and notice to the parties if the investigative process will exceed 60 days.</p> <p>We were anticipating this change and will be changing our policy to a 60-90 day timeframe whenever possible.</p> |
| <p>5) Hearings Process:</p> <p>OCR strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing.</p> | <p>Any process made available to one party in the adjudication procedure should be made equally available to the other party (for example, the right to have an attorney or other advisor present and/or participate in an interview or hearing; the right to cross-examine parties and witnesses or to submit questions to be asked of parties and witnesses).</p> | <p>Tufts does not use a hearing process in sexual misconduct cases.</p> <p><u>SM Adjudication Process</u></p> <p>The SMAP process is equitable for both parties; both parties are afforded the same due process points throughout the process, including meeting with the panel chair (separately), the ability to read the investigative report and the ability to respond to submit a written rebuttal/impact statement to the panel before their final decision is issued.</p> |

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| <p>6) Appeals Process:</p> <p>OCR also recommends that schools provide an appeals process. If a school provides for appeal of the findings or remedy, it must do so for both parties.</p> | <p>If a school chooses to allow appeals from its decisions regarding responsibility and/or disciplinary sanctions, the school may choose to allow appeal (i) solely by the responding party; or (ii) by both parties, in which case any appeal procedures must be equally available to both parties.”</p> <p>OCR further states that a school “has discretion to reserve a right of appeal for the responding party based on its evaluation of due process concerns.”</p> | <p>Tufts currently provides an appeals process. The appellate process is available to both parties.</p> <p>Appeal Process (Page 35, Section H)</p> |
| <p>7) Disciplinary actions in sexual misconduct cases:</p> <p>No clear directive but OCR actions indicated severe sanctions warranted for violations.</p> | <p>Disciplinary sanction decisions must be made for the purpose of deciding how best to enforce the school’s code of student conduct while considering the impact of separating a student from her or his education. Any disciplinary decision must be made as a proportionate response to the violation.</p> | <p>The Tufts community drafted a disciplinary sanctions guideline (Student Disciplinary Guidelines)</p> <p>A three-person panel makes the policy violation decision and a corresponding disciplinary decision, if any, using the guideline document.</p> |
| <p>8) Training materials and investigative techniques:</p> <p>Focus on trauma informed approach, rights of complainant.</p> | <p>Training materials or investigative techniques and approaches that apply sex stereotypes or generalizations may violate Title IX and should be avoided so that the investigation proceeds objectively and impartially.</p> | <p>Tufts mandates all adjudicators and investigators to attend annual trainings.</p> <p>The panel is also chosen with the demographics and requests of the parties in mind.</p> |

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| <p>9) Notification of claims to Respondent:</p> <p>No requirements on approach.</p> | <p>Requires notification to Respondent of allegations made including:</p> <ul style="list-style-type: none"> • the identities of the parties involved; • the specific section of the code of conduct allegedly violated; • the precise conduct allegedly constituting the potential violation; and • the date and location of the alleged incident. <p>Should be provided in writing and before an initial interview.</p> | <p>A written complaint is shared with the Respondent who then has an opportunity to respond in writing before the investigator begins the investigative process.</p> <p>(SM Adjudication Process, Page 25)</p> |
| <p>10) Confidentiality of the investigative process:</p> <p>Complainants could not be prohibited from sharing information with those who could support them.</p> | <p>Restricting the ability of either party to discuss the investigation (e.g., through “gag orders”) is likely to deprive the parties of the ability to obtain and present evidence or otherwise to defend their interests and therefore is likely inequitable.</p> | <p>Tufts does not want to restrict the ability of either party to discuss the investigation with others for purposes of receiving support and will continue to balance this with the concerns about retaliation for both parties.</p> <p>(Confidentiality- Sharing Information - Page 13, Section V)</p> |
| <p>11) Investigative Report:</p> <p>No requirements.</p> | <p>The investigation should result in a written report summarizing the relevant exculpatory and inculpatory evidence, and should be provided to both parties for review and input before any further process. Both parties should also be provided with any evidence/documents to be used in assessing the matter. Final outcomes should address whether there has been a policy violation on every claim raised.</p> | <p>A trained and experienced neutral OEO fact-finder currently writes an investigative report. Effective July 1, 2017 both parties have been afforded the right to read the investigative report in the course of the investigative process.</p> <p>OEO does send a letter of outcome to parties who participate in the SMAP.</p> |
| <p>12) Application of the Clery Act (VAWA Amendments):</p> <p>Regulations went into effect in 2014.</p> | <p>Clery/VAWA still applicable.</p> | <p>Tufts policy and Clery compliance incorporates VAWA requirements.</p> |