

14th Annual OEO ADJUDICATOR TRAINING

Summer 2025

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Agenda

1. Introduction by Jill and introduction to the OEO team
2. Distinguishing SMAP v. SMAP-X with focus on adjudicator role
3. Review key principles from past trainings:
 - a. Evidentiary consideration
 - b. Eliciting questions from parties
 - c. Avoiding bias and considering trauma
 - d. Impact of drugs and alcohol
4. Group work: Reaching preliminary decisions in a SMAP
5. Group Work: Transitioning to SMAP-X
6. Closing remarks from Jill

Office of Equal Opportunity (OEO) Staff

Alida Bográn-Acosta, JD, Title VI Investigator

Marcia Blanchard, MHR, OEO Investigator

Christine Colacino, MA, OEO Coordinator

Johny Lainé, Senior Specialist, Accommodations and Leaves

Justin MacDowell, LLM, Title IX Investigator

Jennifer Magrone, MSW, Deputy Director and Title VII Investigator

Amin Fahimi Moghadam, MA, MSc, Accommodations Specialist

April Robbins, Resources and Support Specialist

Nadra Sultan, MS, Compliance Specialist

Katherine Vosker, Ed.M., Accommodations Manager and 504 Officer

Jill Zellmer, MSW, AVP, Title VI Officer and Title IX Coordinator

+ 1-2 student employees

Mohammad Hadi Ahmadi, AS&E, alum

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Tufts' Core Equity Principles

- Implements non-harassment policies through several processes; SMAP and SMAP-X are focal points for today
- Grievance procedures require prompt and equitable response for all; parties treated equitably
- No conflicts of interest, no bias, trauma-informed, understand impact of alcohol/drugs (see MA CSVP)
- Focus on fair process: opportunities to review information (inculpatory and exculpatory), direct questions
- Supportive measures available to anyone

Tufts' Equity Principles, cont.

- Utilize preponderance of the evidence standard
- Presumption of not responsible; no discipline or punitive measures until a finding of responsibility
- Notifications in writing to include determination, rationale, relevant procedures, and appeal options
- Title IX Coordinator coordinates remedies and sanctions
 - CARE Office has been successfully applying educative sanctions; OEO assures consistency in sanctions
- Note that Tufts does apply transcript notations

Nuts and Bolts: Intake and Notice

- Meet with individual making allegations
- Assess safety of the individuals and community (emergency removal considerations)
- Determine if facts implicate policy
- Draft a robust charge letter (see samples in your folder)
- Continue providing supportive messages and coordinating with other offices (e.g., CARE) re: same
- No Contact Orders (NCO) if desired and/or necessary (see sample in your folder)

Nuts and Bolts: Investigation

- Investigator(s) assigned; screened for conflicts.
- Investigator(s) begin investigation, seeking relevant witnesses and evidence.
- Investigator drafts report and shares report and evidence collects with parties. No final adjudication or sanctioning suggestions in report!
- Parties have opportunity to review and comment.
- After party review, investigator may supplement, interview additional witnesses, or declare final.
- Final report submitted to OEO with evidence and party responses attached; OEO provides to adjudicators.

Adjudication: SMAP v. SMAP-X

SMAP

- Cases that do not meet Title IX requirements (jurisdictional, definitional or otherwise)
- Decision-Making Panel: three trained, impartial individuals (no conflicts):
 - ✓ Utilize preponderance of the evidence standard
 - ✓ Majority decision; not unanimous
 - ✓ May request more investigation
- Separate Preliminary Decision Conferences with the parties to discuss preliminary findings; notify parties of the panel's preliminary outcome so parties can rebut

SMAP v. SMAP-X, cont.

SMAP Cont.

- After preliminary decision, additional information (typically rebuttal or impact evidence/statements) can be submitted by parties within 5 business days
- Decision-Making Panel considers additional information before they finalize decision
 - ✓ May again determine additional inquiry is needed
 - ✓ May finalize preliminary finding
- Determine responsibility for each noticed charge
- If responsible, determine sanction and/or remedy; panel will consult with OEO for consistency in sanction decision

SMAP v. SMAP-X, cont.

SMAP-X

- Cases that meet Title IX jurisdictional requirements
- Decision-Making Panel: three trained, impartial individuals (no conflicts):
 - ✓ Utilize preponderance of the evidence standard
 - ✓ Majority decision; not unanimous
 - ✓ May request more investigation
- A pre-hearing meeting, usually with just advisors, to provide an overview of the hearing and to go over order of operations; schedule of witnesses; identification of agreed upon facts or evidence; discussion of the handling of any prior sexual history issues; technology used in the hearing, etc.

SMAP v. SMAP-X

SMAP-X, cont.

- Adjudicated through live (recorded) hearings conducted in person or virtually. (Primarily virtual to separate parties)
- Advisors required for cross-examination; if no advisor, Tufts provides at the onset of the investigation
- Panel members all have equal vote, Chair runs hearing and determines relevancy issues (with panel member support)
- No adverse inferences for a party's failure to take part, but panel can consider the totality of what is learned in the entire process
- If responsible, Panel will consult with OEO to understand sanctions for similar adjudications and consistency

Evidentiary Standards

In both SMAP and SMAP-X:

- Evidence includes inculpatory and exculpatory evidence
 - ✓ What does this mean?
- Evidence must be relevant: related to allegations of sex/gender discrimination under investigation; does it aid the decisionmakers in adjudicating this matter?
 - ✓ Redundant witnesses, e.g., everyone at the party?
 - ✓ Character witness?
- Impermissible evidence:
 - ✓ Privileged information unless privilege waived (in writing)
 - ✓ Treatment records unless voluntary written consent

Prior Sexual Behavior

The Investigator will typically **not** gather evidence (including asking questions) about a party's "sexual predisposition or prior sexual behavior" **unless** the evidence:

- Is offered to prove someone other than Respondent committed the alleged conduct;
- Relates to specific instances of the parties' prior sexual behavior with each other and are offered to prove or disprove consent in the issue at hand;
- Is relevant to explain an injury; and/or,
- Is relevant to show a pattern of behavior.

***OEO usually screens this out with advisors but sometimes advisors try to drop this information in during cross-examination**

Adjudication Basics

- Adjudicator(s) are expected to review the investigation report and all evidence prior to the meeting/hearing:
 - ✓ Any questions, **ask OEO**;
 - ✓ Any technical concerns (e.g., absence of a noticed charge), **ask OEO**;
 - ✓ Inability to act fairly and impartially, **ask OEO**;
 - ✓ Recognition of a conflict when reviewing materials, e.g., **ask OEO!**

Sensing a trend? These are important matters; Tufts wants to get this done right.

SMAP Group Work

- Meet up with your assigned group to review and discuss the fact pattern you were provided.
- Reach preliminary findings and discuss how you would address it with the parties. Choose a representative to provide the preliminary outcome to the Complainant and the Respondent. (Try to have everyone get involved in one of the group exercises.)
- Considerations:
 - ✓ How will you frame your preliminary determination?
 - ✓ What if the party/parties are upset with you? How will you handle?
 - ✓ What if one or both parties ask you the equivalent of “what else do you need to *change* your answer?”
 - ✓ If time, what sanction would you consider (assuming that OEO provided information on your specific matter)

Transition After Lunch

OEO Statistics from last decade



OEO Caseload of Reported Allegations FY 2015-2025

- Data for FY2025 is currently being finalized.
- For data from past years:
- <https://oeo.tufts.edu/>
 - Click on “About” in upper left corner
 - Click on “Data and Reports”
- https://oeo.tufts.edu/wp-content/uploads/OEO-Reporting-Statistics_2015_2024.pdf

- * Cases with more than one issue type are not counted twice.
- ** Title VI allegations were not tracked separately before 2016-2017 but were tracked in the Title VII tier
- *** ADA cases are monitored long-term and do not have set closed dates.

OEO Caseload of Reported Allegations FY 2015-2025

Case Type	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24	FY25
Title IX - Sexual Misconduct	109	135	145	208	189	157	165	220	225	194	229
Title VII - Employee Issues	101	93	83	145	176	188	177	200	188	219	164
Title VI - Student Non-Sexual	0	0	34	31	45	91	93	99	62	76	57
Referred Cases	10	55	75	82	108	100	114	174	207	357	352
Accommodations	102	119	148	133	150	182	264	556	680	655	716
Total Cases	322	402	485	599	668	718	813	1249	1362	1501	1518

* Cases with more than one issue type are not counted twice.

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SMAP-X Adjudication Basics

- During SMAP-X hearing, Chair and Panel asks questions of parties and any relevant witnesses called.
 - ✓ No direct questioning by parties/advisors, parties suggest questions;
 - ✓ Investigators are not witnesses but may be called in to clarify;
 - ✓ Parties do not need to participate, no adverse inferences;
 - ✓ Panel has final say on who is called as a witness or not but must justify denials or limitations;
 - ✓ Panel should not ask redundant, repetitive, or badgering questions;
 - ✓ No prohibited testimony (sexual history, medical information without a waiver, character witnesses);
 - ✓ Panel should consult with OEO for sanctions only after finding responsibility.

Questioning Witnesses

- What are the elements of the offense charged? What information do you need in the context of those elements?
- What does the investigation report say? Is it clear?
- Avoid compound questions
- Avoid overly complicated questions
- Avoid leading questions
- Think of how your question will sound and make sure appropriate:
 - ✓ “What were you wearing?” vs. “Did the Party remove your clothing? What was removed?”
 - ✓ “Why did you get so drunk” vs. “how much of X did you have to drink? How much do you normally drink?”

Questioning Witnesses, cont.

- Don't promise a question will be asked or not asked because it might change in the process, e.g., redundant questions may not need be asked and irrelevant questions may become relevant
- Do not be bullied or pressured into asking a question. If guidance is needed, OEO can support the Panel against pressure (though OEO may not give you an answer if it means overstepping their role)
- Rules of decorum apply – no belligerent parties or advisors
- Consider culture, disability, and related issue – is a party behaving in a specific way because of a disability, is behavior tied to culture, e.g., might people of a certain race or a certain status not cooperate with a process? Does not excuse violations; may mitigate sanction.
- Considering trauma is important, but if a question is critical to the analysis, it must be asked...just asked appropriately.

Trauma

- Who can experience trauma?
 - Anyone: either party, any witness
 - Can be from the event at issue or prior events, *e.g.*, triggering events
- Does that mean an individual who experienced trauma is always being truthful?
- Being trauma-informed does not mean you should avoid critical questions; rather, it is a matter of *how* do you ask the questions in a thoughtful manner.
- Be mindful *not* to assume credibility or truth – in either direction
 - solely based on trauma, *e.g.*, “Party A was traumatized by this event, which means it must have happened.”

SMAP-X Group Work

- Using the same fact pattern as the SMAP exercise but now you are questioning various parties/witnesses
- Think about the following:
 - ✓ What are the elements of the conduct charged?
 - ✓ What information are you unclear about?
 - ✓ How will you ask questions to get best answers?
- Reach a determination (in a real case, the Chair would also be charged with drafting an outcome letter to the parties)

Hostile Environment Standard

“...unwelcome (or non-consensual) conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the University’s education program or activity...”

- Fact specific inquiry
- Totality of the evidence
- Type, frequency, and duration of the conduct
- Whether unwelcome may come down to consent
- “Education program or activity” – what is the scope?

Hostile environment standard key in Title VI cases, too!

Sample Checklist: Non-consensual Sexual Touching

- ☐ Intentional touching, however slight....
- ☐ ...of another person's intimate parts
 - ☐ Policy defines “intimate parts” as genitalia, groin, breast, buttocks, mouth, and/or clothing covering them
 - ☐ Confirm the “other person” is the Complainant?
- ☐ ...without consent
 - ☐ No affirmative consent?
 - ☐ Use of threat or force?
 - ☐ Coercion?
 - ☐ Individual incapacitated?

Sample Checklist: Stalking

- ☐ Intentional course of repeated conduct or behavior over time, which may include
 - ☐ Following a person
 - ☐ Appearing at a person's home, class, work, or other place they have a right to be
 - ☐ Making frequent phone calls, e-mails, texts messages, etc.
 - ☐ Leaving written messages or objects
 - ☐ Vandalizing a person's property
- ☐ ...which causes a person to feel alarm, annoyance, emotional distress and/or fear
- ☐ Was the person's fear reasonable?*

Sample Checklist: Sexual Harassment

- ☐ Unwelcome conduct
 - ☐ Was it consensual?
 - ☐ How did the party express that it was unwanted
- ☐ ...determined by a reasonable person...
- ☐ ...that is:
 - ☐ Severe AND
 - ☐ Pervasive AND
 - ☐ Offensive
- ☐ That it effectively denies a person equal access to Tufts' education program or activities

Review: Avoiding Bias

- **Stereotype-Based Bias versus Cultural Competency**
 - ✓ Stereotypes based on race, gender, sexual orientation, religion, etc.
 - ✓ “People of that religious faith would never/always...”
 - ✓ “Transgender relationships are always/never like...”
- **Confirmation Bias**
 - ✓ Phenomenon explaining how people tend to seek out information that:
 - ❑ Confirms their existing opinions, and
 - ❑ Overlooks or ignores information that refutes their beliefs
- **Prejudgment & Conflicts**
 - ✓ You should not prejudge a case or a fact based on bias of any form.
 - ✓ Tufts seeks to avoid any conflicts of interest.
 - ✓ Pre-hearing meeting: “I read the file and the Respondent did it...”

Review: Impact of Drugs and Alcohol

- Drugs and alcohol can cloud judgment and interfere with clear communication, and clear communication is necessary for consent.
- Use of drugs and alcohol may impact understanding, communication, and/or ability to take part in any form of sexual activity.
- The big question: intoxication versus incapacitation.
 - What types of drugs/alcohol?
 - How much? Usual amount ingested?
 - Physical impact?
 - Cognitive impact?
 - Visible signs?
 - Witness statements?
 - Other forms of evidence?



Questions?