



**TUFTS UNIVERSITY’S RESPONSE TO
2020 OFFICE OF CIVIL RIGHTS (OCR) REGULATIONS,
and Compliance and Comparisons**

2011 OCR Guidance and 2014 Q&A	Initial Interpretations of the May 2020 OCR Regulations (for August implementation)	Tufts 2020 Interim Title IX Policy and corresponding Formal Sexual Misconduct Adjudication Process with Cross-Examination (SMAP-X)
<p>1) Expected Response to Sexual Misconduct:</p> <p>If on notice of sexual harassment or other misconduct that may create a hostile environment Title IX requires schools to take immediate action to eliminate any harassment, prevent its recurrence, and address its effects.</p>	<p>Schools must respond promptly under Title IX to a complaint presenting under the new definition of sexual harassment in a manner that is not “deliberately indifferent.” A school is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.</p> <p>The Title IX Coordinator must respond to all informal complaints with information about supportive measures, information about the informal and formal processes and to formal complainants with certain required information about the SMAP process and any informal process.</p> <p>A school must treat complainants and respondents equitably by offering resources and supports to both parties, as appropriate, and by following a formal adjudication process in accordance with the new regs (see below).</p> <p>A school cannot impose discipline against a respondent until a process concludes and then only if there is a finding. If the respondent poses a danger to the community emergency removal proceedings are</p>	<p>Tufts current policy and approach to reports of sexual misconduct is aimed at prompt and effective responses to any kind of sexual misconduct toward eliminating, addressing and preventing conduct of concern. Tufts currently provides access to Resources and Support for any person involved in a sexual misconduct matter.</p> <p>In response to the 2020 OCR regulations, Tufts has created the Interim Title IX Policy and Formal Sexual Misconduct Adjudication Process with Cross-Examination (SMAP-X) and has outlined the Explanation of Informal Process Options for those who file complaints. This chart is intended to provide information about both to the parties involved. OEO provides an Explanation of Informal Process Options and Resource and Support information during first meetings with the parties. More information is available on the OEO website: www.tufts.oeo.edu.</p> <p>During the Assessment of the Allegations phase, the details of the matter will be reviewed to determine if they trigger the new interim TIX Policy. See definitions in the interim Title IX Policy. If the matter does meet the new definitions, it can be resolved</p>

	<p>permitted under the new regulations with detailed process afforded for the respondent to respond to the allegations immediately after removal action is taken.</p> <p>The Title IX Coordinator can file an administrative complaint on behalf of a student or incident if the school believes a policy violation may have occurred.</p>	<p>through the corresponding SMAP-X process or, if the parties and the Title IX Coordinator agree, it can be moved to an Informal Process Option.</p> <p>The parties will not be prohibited from mutually and voluntarily agreeing to an alternative process for adjudication like a formal SMAP (without a recorded, live cross-examination).</p> <p>The Title IX Coordinator can initiate an Administrative Complaint if there are concerns that a policy violation may have occurred.</p> <p>The University occasionally removes parties for safety reasons after an individualized assessment. Please see Assessment of the Allegations.</p>
<p>2) Jurisdiction Jurisdiction was broadly defined to include a school’s education program or activity without regard to geographic limitations, and to include any effects on its campus originating from sexual misconduct occurring outside education program or activity.</p>	<p>Title IX applies to a school’s “education program or activity.” In the new regulations this includes locations, events or circumstances over which the school has substantial control over both the respondent and the context in which the sexual harassment occurred. This does include school-owned buildings and student organizations officially recognized by the school but does not include incidents at unaffiliated events or locations including those off campus, in study abroad programs (conduct must be “against a person in the United States”) and/ or without any Tufts affiliation.</p> <p><i>Other conduct policies may address inappropriate conduct or activity more broadly and beyond Title IX.</i></p>	<p>The 2020 OCR regulations have a much narrower scope and jurisdiction than they did previously. Tufts has crafted the interim Title IX Policy to comply with these narrowed definitions of sexual harassment and jurisdiction and has created the SMAP-X process to comport with the new OCR regulations.</p> <p>However, Tufts is also taking the discretion offered in the new OCR regulations and will be continuing to conduct inquiries and investigations into non-Title IX matters through different policies, such as the revised Sexual Misconduct Policy. The current Tufts Sexual Misconduct Policy is broadly construed in order to further the University’s mission of preventing and eliminating sexual misconduct by prohibiting a broad range of conduct. The Sexual Misconduct Policy will continue to apply as the University’s standard of conduct affecting community members in a variety of settings not covered under the Title IX regulations, (such as sex and gender based misconduct), and covering a broader jurisdiction which may include study abroad programs, internship sites and other on and off-campus locations for any matriculated student or employee.</p> <p>We will continue offering Resources and Support as appropriate to any matriculated student, any current employee and any Tufts affiliated complainant and respondent (i.e. alum) even if they choose not to file a formal complaint.</p>

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<p>3) Standard of Proof:</p> <p>Schools must use a preponderance of the evidence standard (i.e., it is more likely than not that sexual harassment or violence occurred).</p>	<p>New regulations permit Schools to select the applicable standard of proof in sexual harassment cases, including the preponderance of the evidence standard.</p>	<p>Tufts has used the preponderance of evidence standard for decades and does not plan to change our standard for any matter.</p>
<p>4) Definition of Sexual Harassment</p> <p>Sexual harassment is broadly defined as conduct of a sexual nature.</p>	<p>“Sexual harassment” is defined in the new OCR regulations as conduct on the basis of sex that satisfies one or more of the following:</p> <ol style="list-style-type: none"> (1) Unwelcome conduct determined by a reasonable person to be so severe and pervasive, and objectively offensive that it denies a person equal access to their education (2) Quid Pro Quo Sexual Harassment where an employee solicits the participation of a student (or someone else with less power, authority or control) into unwelcome conduct in exchange for some benefit. (3) “Sexual assault” or “dating violence” or “domestic violence” or “stalking are now included in this definition. 	<p>While the interim Title IX Policy will be used to comport with the new and more narrow Title IX regulations’ definitions of sexual harassment, the Sexual Misconduct Policy continues to define sexual harassment and sexual misconduct more broadly and includes other forms of sex and gender based misconduct, including conduct which could violate other state and federal laws.</p> <p>Tufts will continue to address conduct prohibited by our current standards with the Sexual Misconduct Policy while also maintaining compliance with the new Title IX standards through the interim Title IX Policy.</p>
<p>5. University Non-Discrimination Policies</p>	<p>If the conduct alleged in a formal complaint would not violate the new sexual harassment definition (see above) or if the conduct occurs outside of the school’s educational program or activity, a school must dismiss the complaint from the Title IX process. <i>However, such a dismissal does not preclude a school from action under other policies.</i></p>	<p>The Tufts Sexual Misconduct, Non-Discrimination, Consensual Relations and Working with One Another Policies are University conduct policies for employees and students and may apply to conduct that does not meet the definition of sexual harassment under the new regulations. Tufts hopes to continue to address conduct prohibited by our current standards with these policies while maintaining compliance with the new Title IX standards through the interim Title IX Policy.</p>
<p>6. Responsible Employees and Actual Knowledge</p>	<p>Regulations define “actual knowledge” to the University as notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any official of</p>	<p>Tufts will continue to require all employees (“responsible employees”) to give notice to OEO of any allegation or violation of all OEO policies including University’s Non-Discrimination</p>

<p>OCR called for the identification of responsible employees and their reporting requirements to the University on reports of sexual misconduct.</p>	<p>the school who has authority to institute corrective measures on behalf of the School. The Regulations do not acknowledge the “responsible employee” doctrine <i>but they also do not prohibit it.</i></p>	<p>Policy, the new interim Title IX Policy and the Sexual Misconduct Policy.</p> <p>Exceptions will continue to be limited to employees who hold policy confidentiality (CARE ombuds staff) and statutorily defined confidentiality (counseling, clergy staff).</p>
<p>7. 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>The timeframe for investigations must be “reasonably prompt” and include timeframes for filing and resolving appeals and the informal resolution process. The school must allow for temporary delays in the grievance process or limited extensions of time frames for good cause with written notice to the parties as to reasons for the delay. “Good cause” for delay may include the absence of a party or their advisor or a witness, concurrent law enforcement activity, language assistance requests or requests for disability or religious-related accommodations.</p>	<p>Tufts SMAP-X sets a goal for timely adjudication of formal complaints of up to 120 days, acknowledging that various factors may influence the process and may result in either a longer or shorter timeframe. Please see the new Timeline for the Formal SMAP-X and informal options.</p> <p>Tufts OEO has continued to grant reasonable extensions in the past and plans to continue to do so.</p>
<p>8. Mediation in Sexual Assault Cases and Alternative Dispute Resolution (ADR) in Sexual Misconduct 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>Regulations provide for robust informal resolutions available <i>only after the filing of a formal complaint.</i></p> <p>Procedural requirements will need to be explained to complainants, including the ability of any party to return to the formal process at any point in an informal process.</p> <p>Informal resolutions are not available for cases in which the allegation involves sexual harassment of a student by an employee.</p>	<p>Currently, Tufts uses a variety of informal resolution options (see Explanation of Informal Process Options) prior to and after the filing of a Formal Complaint and plans to continue this practice. Generally, a complainant can still choose which process they wish to follow.</p> <p>OEO does not currently offer Alternative Dispute Resolution (ADR) (such as mediation) for sexual assault matters and will continue this practice. Also, consistent with the Title IX regulations, OEO will not offer informal resolution options for matters involving complaints involving a student complainant and a respondent employee.</p> <p>Tufts has enhanced our informal resolution options (see Explanation of Informal Process Options), including offering ADR such as mediation for certain sexual harassment matters and will continue to facilitate them only if both parties and the Title IX Coordinator agree.</p>

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<p>9. Grievance/SMAP Process:</p> <p>OCR strongly discourages schools from allowing the parties to personally question or cross-examine each other during the hearing. There is no requirement that the grievance procedures of a school must involve a formal hearings process.</p>	<p>Live, “real time” hearings of formally filed complaints are required; technology can facilitate the hearing by having the parties in different rooms with appropriate audio/visual capabilities.</p> <p>The investigator cannot be the decision-maker/hearing officer.</p> <p>Direct, oral, cross examination of the parties and witnesses in real time must be facilitated by advisors only. For any student who does not have an advisor for this purpose, the University will appoint an advisor. Advisors need not be attorneys.</p> <p>Relevancy of questions in the hearing are to be determined by a hearing officer. Recording of the hearing must be made and retained by the University and made available to the parties.</p> <p>The hearings process is required for all sexual harassment matters including those involving University employees (staff and faculty).</p>	<p>The new interim Title IX Policy and corresponding process, SMAP-X, will be used for matters involving students and employees and involving allegations that meet the definition of “sexual harassment” under the new Title IX regulations. Any allegations of sexual misconduct will be evaluated upon receipt for coverage under the Title IX Policy. The parties will receive an Assessment of the Allegations and will be informed which OEO policies apply to the matter and which process will govern. This assessment will be reviewed and confirmed at the conclusion of the next phase, the investigative phase. Please see the timeline for the corresponding Formal SMAP-X process which must include a neutral fact finding investigator who produces a report and related information collected for both parties to respond to, followed by a live, recorded hearing which requires direct cross-examination of the parties and witnesses by the parties’ advisors. Parties have the option of participating remotely, using technology, if they wish. These matters will be adjudicated by two Tufts adjudicators and led by an external Panel Chair who will manage the required cross-examination, decision and sanction (if any). See SMAP-X for more information. Tufts will provide an advisor for cross examination at the hearing to a party who does not have an advisor. See Right to an Advisor. The parties will not be prohibited from agreeing to a different process to resolve the matter. See Explanation of Informal Process Options.</p> <p>The interim Title IX Policy and corresponding SMAP-X process must be used in cases that trigger the Title IX Policy where claims are filed by a student against an employee. See Assessment of Allegations.</p> <p>For allegations that arise under the Title IX Policy, the corresponding SMAP-X will be used if both parties are employees and cannot agree, along with the Title IX Coordinator, on another process option to resolve the matter. See Explanation of Informal Options.</p>

		<p>If a matter does not arise under the Title IX Policy, it may be dismissed from the SMAP-X process during the Assessment of Allegations phase and addressed through a different policy, such as the revised Sexual Misconduct Policy or the Non-Discrimination Policy. Please see Explanation of Informal Options.</p>
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<p>10. 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>A school’s appeal process must be made available to both parties on three bases, (1) procedural irregularities; (2) new evidence or (3) conflicts of interest or bias by Title IX Coordinator, investigator or decision maker. Additional bases are permitted provided they are available to all parties.</p>	<p>Tufts provides an appeal process in the SMAP-X for both parties on the basis of 1) procedural irregularities (which can include conflict of interest or bias); 2) new evidence and 3) conflict of interest of the Title IX Coordinator, investigator or decision maker, and (4) severity of the sanction.</p>
<p>11. Disciplinary actions in sexual misconduct cases:</p> <p>No clear directive but OCR actions indicated severe sanctions warranted for violations.</p>	<p>Disciplinary action to the respondent is permitted and remedies to the complainant should be designed to restore or preserve equal access to the University’s educational program or activity. Possible discipline and remedies in sexual harassment matters must be described to the parties in initial notifications.</p>	<p>Tufts publishes possible disciplinary sanctions in all the formal process documents. The sanctions range from a coaching and counseling conversation to separation from the University.</p>

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<p>12. Training materials and investigative techniques:</p> <p>The focus is on a trauma-informed approach, and care in attending to rights of complainant.</p>	<p>Title IX Coordinator, investigator, decision maker and anyone facilitating an informal or formal resolution process or any decision-makers in this process must receive training on the definition of sexual harassment, the scope/jurisdiction of Tufts, how to conduct an investigation and grievance process, how to arrive at informal resolutions, how to serve impartially and how</p>	<p>Tufts Title IX Coordinator, Investigators, Liaisons and Adjudicators receive regular annual training on all non-discrimination policies, procedures and laws including sexual misconduct as well as best practices and current issues in the practice of non-discrimination including sexual misconduct. Please see the 2020 Title IX Training materials. Internal and external investigators, OEO liaisons and adjudicators, external adjudication chairs and school deans attended this training.</p>

	<p>to use the technology necessary to facilitate these decisions.</p> <p>Title IX Coordinator, investigator and decision makers cannot have a conflict of interest with or bias toward any of the parties.</p> <p>The investigator, Title IX Coordinator and any other decision makers involved must not rely on sex stereotypes and must promote impartiality throughout the formal or informal process.</p> <p>A factual report requires an objective review of all evidence from a trained investigator.</p> <p>Training materials must be maintained as part of record-keeping requirements and made available for inspection by members of the public.</p> <p>The decision-maker/hearing officer must know how to determine the relevance of questions/cross-examination in a live hearing in a way that is neutral and not predisposing.</p> <p>A school can now dismiss an allegation or complaint without investigating the matter if the conduct alleged does not rise to the level of the new sexual harassment definition (see above) or was not within the jurisdiction of the school. <i>However, this dismissal does not preclude the school from acting on conduct of concern under a different policy.</i></p>	<p>OEO also has process controls to eliminate conflicts of interest for all involved in any OEO process. All OEO staff and SMAP-X and SMAP decision-makers are also required to attend training to identify bias and stereotypes and to maintain impartiality. They must recuse themselves from a process if they cannot be neutral.</p>
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<p>13. Notification of claims to Respondent:</p> <p>No significant requirements on approach except that notifications should be provided contemporaneously to all parties.</p>	<p>Requires written notice to the respondent at the beginning of the process with sufficient details of the allegations to permit a response (e.g., identification of parties, conduct alleged, date and location of incident) before meeting with the investigator.</p> <p>Written notice to the parties must be given at the beginning of the formal process as to their right to an advisor of choice (who may be an attorney).</p> <p>The written notice must also include language that a respondent is not responsible for the alleged conduct until a determination is made at the conclusion of the grievance process. And this written notice must also include a statement that prohibits parties from knowingly making false statements and submitting false information in the grievance process.</p> <p>Written notice must also be given at the beginning of the formal process as to the party’s right to inspect and review information obtained as part of the investigation and of their responsibility not to make false statements or knowingly submit false information.</p>	<p>Parties in a formal SMAP-X are entitled to advisors who can be attorneys. Please see Right to an Advisor.</p> <p>Tufts currently provides respondents with written notice of claims against them and will comply with the new regulations which require the inclusion of language that a respondent is not responsible for the alleged conduct until a determination is made and informs both parties of any codes of conduct which prohibit the parties from knowingly making false statements and submitting false information in the formal SMAP-X process. See Assessment of Allegations.</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 phase of the process. Both parties will have an opportunity to review and respond to the draft investigative report and the information collected during the investigation before it is finalized and sent to the SMAP-X panel for adjudication.</p>
<p>14. Confidentiality of the investigative process:</p> <p>Complainants could not be prohibited from sharing information with those who could support them.</p>	<p>Medical, psychological or similar records (Rape Shield Law) cannot and should not be used and are not required disclosures.</p> <p>Parties have a right to discuss the allegations and defend their interests. Schools can warn parties about retaliation concerns.</p>	<p>Tufts process does not require the disclosure of medical, psychological or similar records.</p> <p>Tufts currently notifies parties in writing of the importance of privacy and of its prohibition against retaliation and does not prohibit parties from speaking with those who can support them. OEO requests all parties to review and sign an acknowledgement that they have reviewed the expected code of conduct relative to privacy and the avoidance of retaliation at the onset of the investigation. See Non-Retaliation and Privacy Acknowledgement.</p>

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<p>15. Investigative Report: Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence.</p>	<p>The report must include inculpatory and exculpatory evidence. Credibility determinations cannot rely on the identity of an individual as a complainant, respondent or witness.</p> <p>The parties and their advisors will have an opportunity to review the evidence 10 days before the completion of the investigative report (before it goes to a hearing) and then will have 10 days to provide feedback on the investigative report before it is finalized.</p> <p>The University will be required to <i>send the report</i> to the parties and their advisors at least 10 days before the hearing.</p>	<p>Tufts currently provides access to the draft investigative report (via OneHub) to the parties and their advisors through an internet portal so they can review and respond to it before the adjudication panel receives it. Information collected during the investigation can also be shared through OneHub. Once the investigator has made any final edits to the draft report upon receiving the parties' responses, OEO will finalize the investigative report and send it to the SMAP-X adjudication panel.</p> <p>The parties will be provided with 10 business days (and can ask for up to a one-week extension) to provide feedback to a draft report before it is finalized and sent to the SMAP-X adjudication panel.</p> <p>Tufts plans to comply with the other new information sharing requirements in the SMAP-X process such as recording the cross-examination hearing and making it available to the parties via ONEHUB, upon request.</p>
<p>16. Application of the CLERY Act (VAWA Amendments): Regulations went into effect in 2014.</p>	<p>New regulations incorporate VAWA crimes of sexual assault, dating and domestic violence and stalking into definition of sexual harassment.</p>	<p>The interim Title IX Policy incorporates certain VAWA and CLERY definitions of sexual assault, dating and domestic violence and stalking into its definition language. The University's Sexual Misconduct Policy is also intended to comply with Clery and VAWA.</p>