

## Sexual Misconduct Adjudication Process with Direct Cross-Examination (SMAP-X)

*Purpose:* This is the adjudication process for complaints against Tufts University students, faculty, staff or other community members alleging any violation of the [Title IX Policy](#)<sup>1</sup> when conduct prohibited under that policy occurs within the University's education programs or activities in the United States, and when said conduct has been alleged by a complainant that is, at the time of the complaint, involved in the University's education program or activities.

*Applicability:* This Process applies to Tufts University students, faculty, staff and other community members such as alumni, patients, third parties and other Tufts University community members.

*Effective:* August 14, 2020<sup>2</sup>

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<sup>1</sup> Prohibited conduct under the Title IX Policy includes "sexual harassment" as defined in the Title IX regulations as sexual assault, stalking, dating/domestic violence and/or unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity, including quid pro quo sexual harassment.

<sup>2</sup> Any complaints filed regarding allegations of prohibited conduct occurring before August 14th, 2020 will be resolved pursuant to the University's Sexual Misconduct Policy and associated Sexual Misconduct Adjudication Process (SMAP). All complaints alleging conduct prohibited by the Title IX Policy occurring after August 14, 2020 will be resolved using this Sexual Misconduct Adjudication Process with Direct Cross Examination (SMAP-X). The University reserves the right to use SMAP-X if any additional allegations extend after August 14, 2020 or if the individual situation would, in the University's sole discretion, would be better suited for the SMAP-X.

## I. Overview

The Title IX Sexual Misconduct Adjudication Process with Direct Cross-Examination (SMAP-X) is the adjudication process for formal complaints filed against Tufts University students, faculty, staff, third parties and other community members alleging any violation of the **Title IX Policy**. The Title IX Policy only covers allegations of “sexual harassment” as defined in the Title IX regulations. Other behavior of a sexual or gender-based nature that is not defined under the Title IX Policy will be addressed by Tufts’ Sexual Misconduct Policy and utilize the [SMAP](#).

Discrimination and sexual violence by or against any Tufts community member, student, faculty, staff or patient violates the University’s core values, including the University’s commitment to providing a safe community and equal opportunity to all. Conduct prohibited by the University’s Title IX Policy can constitute violations of other federal law and/or state laws including Title IX of the 1972 Education Amendments<sup>3</sup>, the Jeanne CLERY Act<sup>4</sup> of 1990 and the Violence Against Women’s Reauthorization Act of 2013 (VAWA),<sup>5</sup> Title VII of the 1964 Civil Rights Act, and M.G.L. c. 151B. Individuals who have experienced an incident of sexual harassment as defined in the Title IX Policy may also have separate legal options and remedies available to them outside of OEO, including the option to file a complaint with the police (including the Tufts University Police Department, TUPD) or other law enforcement and to otherwise pursue criminal charges, file a civil action and/or file an administrative complaint with the appropriate state or federal administrative agency, including the Department of Education’s Office for Civil Rights (OCR). Reporting options and resources and support options for individuals affected by sexual misconduct are listed in Section IV of the University’s Sexual Misconduct Policy, on the OEO website at: <https://oio.tufts.edu/> and on the University’s Center for Awareness, Resources and Education (CARE)’s website at: <https://care.tufts.edu/> OEO has also developed a one page document entitled **Resources and Supports** which provides a helpful summary of this information.

## II. Jurisdiction

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<sup>3</sup> Prohibits sex discrimination, including sexual harassment as defined in its regulations, in educational institutions that receive federal funds.

<sup>4</sup> Requires, among other requirements, the reporting of crimes, timely warnings, education/prevention programs, and policies and procedures for sexual assault.

<sup>5</sup> Amends Clery to expand sexual assault requirements and include dating violence, domestic violence, and stalking; applies to all students and employees.

To fall within the jurisdiction of the Title IX Policy and the SMAP-X, a complaint must not only include allegations arising under the definition of sexual harassment in the Title IX policy but the complainant and respondent must be a enrolled or participating in a Tufts educational program or activity and the alleged conduct must have occurred in a location, event or circumstance over which Tufts University has substantial control, such as a building owned or controlled by Tufts University or in a student organization that is officially recognized or utilized by Tufts University. The conduct of concern must also have occurred in the United States.

This definition of sexual harassment includes sexual assault, stalking, dating/domestic violence and/or unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity, including quid pro quo sexual harassment.

Allegations of sex or gender-based harassment, discrimination or other sexual misconduct that do not meet the above definitions and/or are outside of the jurisdiction of the Title IX policy (e.g., occurred outside the United States or outside an educational program or activity of the University) may be covered by the Tufts [Sexual Misconduct Policy](#) (and the corresponding Sexual Misconduct Adjudication Process ([SMAP](#)) applicable to students or the Discrimination Complaint Process for Employees applicable to faculty, staff and third parties), the Tufts [Non-Discrimination Policy](#) (and the corresponding Discrimination Complaint Process for Employees for all community members). Other University policies and their corresponding procedures may also apply depending on the allegations.

### **III. Before Filing a Formal Complaint**

Tufts University recognizes that the decision about whether to bring a complaint can be complicated and challenging. OEO's [Explanation of Informal Process Options](#) document as well as the [Resources and Support](#) document offers community members information about their options. Individuals who wish to discuss concerns about sexual harassment as defined in the Title IX Policy confidentially or anonymously may consult with ombuds members of the Center for Awareness, Resources and Education ([CARE](#)).<sup>6</sup> Parties may also discuss their concerns directly with a legally based confidential resource (e.g. chaplain, counseling or health services). In addition, community members can anonymously report concerns via [Ethicspoint](#). It should be noted that anonymous and confidential reporting may limit the University's ability

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<sup>6</sup> Certain employees of CARE do not have statutory confidentiality but are not responsible employees under this policy and have limited confidentiality privileges; as such, these staff are still required to report non-identifying information to TUPD about criminal conduct for purposes of the University's CLERY Act reporting requirements and their records may be subject to subpoena or other legal process.

to respond, including the ability to proceed with the investigation and SMAP-X adjudication process or to otherwise address allegations and concerns.

Anonymous reporters or individuals who obtain confidential support without filing a formal complaint may later decide to bring a formal complaint at any time and can generally decide if they wish to resolve the matter informally or formally. See [Explanation of Informal Process Options](#). The University affirms the right of a complainant to decide whether they wish to be involved in a SMAP-X after they file a Formal Complaint. If the Complainant does not want to be involved in a SMAP-X process there are other options described in the [Explanation of Informal Process Options](#) document and/or can be discussed with a member of OEO. More information about anonymous and confidential reporting or complaint processing options and resources are described further on the [OEO](#) website.

#### **IV. Resources and Supports**

Supportive measures or [Resources and Supports](#) will be available, as appropriate to a complainant, a respondent, or to any party otherwise impacted by conduct alleged to violate the Title IX Policy and regardless of the initiation of a SMAP-X. Supportive measures are expected to ensure equal access to Tufts' employment and educational programs and activities, to protect parties involved in a SMAP-X and/or to address any safety concerns to the Tufts community. Supportive measures are also available through OEO through informal resolution process options, as well as after the conclusion of the adjudication process. Supportive measures may include but are not limited to: health and counseling services, stay away requests, bilateral no contact orders; no trespass orders, voluntary leaves of absence, schedule and/or housing changes, academic supports or adjustments, information about financial aid and visa/immigration related issues and/or work adjustments. Confidential support is also an option for both parties in the [Tufts Counseling Service](#), [CARE](#) office or the [Chaplain's Office](#).

The Title IX Coordinator <sup>7</sup> is responsible for overseeing resources and supportive measures for all members of the Tufts community, including the parties involved in a Formal Title IX Complaint. The Title IX Coordinator will oversee the provision of these measures consistent with her obligations and with the assistance of various departments throughout the University, as necessary. The University's Title IX Coordinator is Executive Director of the OEO and Title IX/504 Coordinator, Jill Zellmer who can be reached at any time at 617.627.3298 or [jill.zellmer@tufts.edu](mailto:jill.zellmer@tufts.edu) Jill Zellmer will also accept complaints, questions and disclosures via the University's reporting tool, [Ethicspoint](#). Where the Title IX Coordinator or any other University official or employee is listed as the designated point of contact for any role in the Policy, the Title IX Coordinator may designate another qualified member of the University community to

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<sup>7</sup> Where the Title IX Coordinator or any other University official or employee is listed as the designated point of contact for any role in the Policy, the Title IX Coordinator may designate another qualified member of the University community to assume the role at issue, as necessary and appropriate. Any appointed individual in lieu of a named individual in this Policy will be identified to the parties, as appropriate.

assume the role at issue, as necessary and appropriate. Any appointed individual in lieu of a named individual in this Policy will be identified to the parties, as appropriate.

## V. Timelines

Tufts takes all complaints seriously and the University will investigate any allegation formally brought (“**Formal Complaint**”) to the University for adjudication through the corresponding process. Following receipt of a Formal Complaint of allegations arising under the Title IX Policy, the University will promptly proceed with a [SMAP-X](#) to the extent possible and appropriate under the circumstances of each case and/or may determine or refer alleged conduct to be reviewed under a different policy. The University’s goal is to complete the adjudication of complaints filed within 120 University business days from the receipt of the Complaint, not including any appeals processes, which are expected to resolve within 30 University business days. (See [Timeline](#)) Depending on the complexity of the investigation, the severity and extent of the conduct alleged, or for other good cause, more or less time may be required to complete this adjudication process. OEO will provide status updates either upon request or periodically throughout the investigative phase of the process. Complainants or Respondents are welcome to contact the Investigator or OEO at any time for information regarding the status of a SMAP-X investigation. The University will make every effort to continue its investigation during academic breaks or between academic years, unless doing so would impact witness availability or otherwise compromise the investigation.

*There is no time limit for the submission of a complaint under the SMAP-X. A complaint may be filed at any time and will be adjudicated if the University has jurisdiction (as defined above). Although the University will investigate and adjudicate formal 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 harassment, sexual assault, stalking and/or relationship violence, limiting both the University’s ability to investigate and/or the types of sanctions that can be applied.*

## VI. Evidence Standard and Sanctions

The University applies the preponderance of the evidence standard in the SMAP-X to determine whether the Title IX 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 SMAP-X Panel will be made based on whether the facts presented in the investigation report support a finding that is “more likely than not” that University Policy was violated. The SMAP-X Panel will be reached by a majority. If a majority of the SMAP-X Panel agrees that it is more likely than not, based on the facts of the case, that there was a policy violation, the SMAP-X Panel will issue a finding of responsibility with corresponding sanction/discipline. If a Respondent is found responsible, the disciplinary decision will become part of their personnel file if they are an

employee. If they are a student, the finding of responsibility and discipline will become a part of their student record and transcript (i.e. staff or faculty may have the SMAP-X decision placed in their personnel file and a student's transcript may say "Suspended September 2020-May 2021.").

Violations of this policy are subject to disciplinary action. Depending on the nature of the violation, disciplinary consequences for violations of this policy may include denial of privileges, disciplinary probation, suspension and expulsion for students, and may include warnings (verbal or written), demotions, suspensions and termination for employees.

## VII. No Retaliation

The University prohibits retaliation against any individual who submits a good faith report or complaint of conduct that the individual believes constitutes a violation of the Title IX Policy, or who in any way participates in a SMAP-X. A person is also protected from retaliation when they reasonably object to conduct they believe in good faith to be a violation of the law or policy.

The University takes seriously all reports of retaliation and will address retaliatory behavior by an individual, including students, faculty, staff, or third parties. Any person found to have engaged in retaliatory conduct is subject to separate disciplinary action or other appropriate action by the University. Tufts will provide supportive 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.

Retaliation for participation in SMAP-X should be report promptly to the Executive Director of the OEO and Title IX Coordinator, Jill Zellmer at 617.627.3298 or [jill.zellmer@tufts.edu](mailto:jill.zellmer@tufts.edu). The TUPD may also be able to address retaliation by a person not affiliated with the University.

## VIII. Definitions

**Complainant:** The individual(s) who brings a complaint of "sexual harassment" as defined in the Title IX Policy under the SMAP-X is the *complainant*. A complainant may self-identify as "victim" or "survivor" throughout the SMAP-X. 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-X. The University may also act as a complainant (see Administrative Complaints below).

**Respondent:** The student(s) against whom a complaint under the Title IX Policy is filed through the SMAP-X is the *respondent*. A respondent may self-identify as the "accused" throughout the process. There may be more than one respondent in a case or the respondent may be a group or organization. The respondent shall be given written notification in the form

of a [Notice and Assessment of Allegations](#) document when a disciplinary complaint has been filed against them.

**Reporting Party:** Any individual who raises a concern or policy violation related to the SMAP-X (or other OEO policy) on behalf of another person. In some circumstances, a reporting party may also be a complainant. In other circumstances the reporting party may be a “Responsible Employee” or third party.

**Administrative Complaint:** The Title IX Coordinator on behalf of the University may independently initiate a formal complaint against a student under the SMAP-X, called an Administrative Complaint. This type of complaint may be initiated in situations where a complainant is reluctant, unable to, or is uninterested in initiating a complaint directly. In those situations, the Title IX Coordinator has the option to initiate an Administrative Complaint under the SMAP-X when sufficient concern and information is available regarding the alleged incident. OEO reserves the right to look into a matter informally. For more information about the OEO informal process options, please see [Explanation of Informal Resolution Options](#).

The University affirms the right of a complainant to decide whether they wish to be involved in a SMAP-X. At the same time, and under limited circumstances, when the conduct at issue involves a potential threat to campus safety (which includes, but is not limited to, factors such as the alleged involvement of violence, the use of weapons, or repeat offenders) the University will be compelled to move forward with an Administrative Complaint under the SMAP-X. The decision to proceed with a SMAP-X under these circumstances will be made by the University’s Title IX Coordinator in consultation with the appropriate Dean of Students, the Tufts University Police Department (TUPD) other relevant university officials, as appropriate. Under these circumstances and whenever possible, the University will endeavor to inform the complainant of its need to move forward prior to commencing the SMAP-X.

In an Administrative Complaint, the University may act as the complainant in the adjudication of a sexual harassment, sexual assault, stalking and/or relationship violence complaint or other prohibited conduct under the Title IX Policy against a respondent.

## **IX. SMAP-X Process**

### **A. Assessment of Allegations Phase, Initial Steps and Considerations**

After receiving a report of conduct that could fall under the Title IX Policy, the Title IX Coordinator<sup>8</sup> will take a number of initial steps; these initial steps are *not* an investigation but are called the [Assessment of the Allegations](#). This assessment is required and will enable the

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<sup>8</sup> Note: Where the Title IX Coordinator is listed as the point of contact for any role in the Title IX and Sexual Misconduct Policies, they may designate another qualified member of the OEO to assume the role, as necessary and appropriate.

University to determine if any immediate action is necessary to address the safety and health needs of the parties involved in a matter and to help the parties determine the next appropriate steps, whether under this Policy or with a referral to another policy.

These initial steps and considerations may include, but are not limited to, the following:

1. The Title IX Coordinator will contact the party making the initial allegation (the “Reporting Party”) and encourage them to meet virtually or in person to discuss the nature and circumstances of the reported conduct, review relevant documentation that is available, and describe the various options available to them ([Explanation of Informal Process Options](#)).
2. Regardless of whether a Reporting Party decides to participate in an adjudication process, they may be entitled to supportive measures or [Resources and Supports](#). OEO is required to provide information about supportive measures to all Reporting Parties, regardless of whether they want to follow an OEO process or not.<sup>9</sup> Supportive measures are non-disciplinary, non-punitive individualized services, offered as appropriate, as reasonably available, and without fee or charge to either the Reporting Party or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to the University’s educational programs or activities, including employment, and they will be designed so as not to unreasonably burden the other party. Supportive measures may include but are not limited to: counseling; academic accommodations, such as extensions of deadlines or other course-related adjustments; course changes or drops; modifications of work or class schedules; campus safety planning; mutual restrictions on contact between the parties (bilateral/mutual Stay Away Requests or bilateral/mutual No Contact Orders); residential accommodations, including but not limited to arranging for new housing, or providing temporary housing options, as appropriate; changes in work locations; leaves of absence; increased security and monitoring of certain areas of the campus; and no trespass notices, among others. Factors to be considered in determining reasonable supportive measures may include the following:
  - the specific need expressed by the reporting party;
  - the severity and/or pervasiveness of the allegations;
  - any continuing effects on the reporting party;

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<sup>9</sup> Based on the facts and the choices of the Reporting Party, a Reporting Party could become the Complainant, as defined in this Policy, once they determine to file a Formal Complaint

- whether the parties share the same residence hall, dining hall, class, extracurricular activities, transportation and/or job location; and
- whether other judicial measures have been taken to protect a party or the parties.

The decision to impose any interim non-punitive restrictions such as bilateral/mutual No Contact Orders (NCOs) will be communicated by the Title IX Coordinator in writing. The University will seek to be transparent with regard to the supportive measures provided to the parties and which impacts both parties. The University may be limited in certain situations when student or employee privacy issues prevent disclosures.

The Title IX Coordinator will explain to the Reporting Party the Title IX Policy and any other applicable policies as well as the different process options and protections available to the parties. The Title IX Coordinator will also discuss and send the Reporting Party the [Explanation of Informal Process Options](#) document. If the Reporting Party wishes to move forward with a formal complaint under the Title IX Policy, the Reporting Party must provide a completed and signed **Formal Complaint** form or they may choose to submit the complaint via [Ethicspoint](#). The formal complaint must include sufficient details including the identity of any parties involved and any witnesses, a description of the conduct alleged to violate the Title IX Policy as well as the date and location of the incident. Once the Formal Complaint is filed, the Reporting Party becomes the Complainant, as defined under this Policy, and will be provided with the **Right to Advisor** form which describes the parties' rights to an advisor for the hearing process. This advisor can be, but is not required to be, an attorney. Also, the parties will be asked to review and sign the **Privacy and Non-Retaliation Acknowledgement** form which outlines the expectation that the parties will refrain from retaliation and consider the important principles of privacy and discretion as the matter proceeds.

3. The Title IX Coordinator will also explain the right to report, and the right to delay or decline to report the allegations to the University. If, at this time, the Reporting Party requests that the process not move forward, the University will weigh that request against the obligation to address any risk of harm to the Reporting Party or other individuals in the community, given the nature of the incident. The University reserves the right to move forward with a formal complaint process unilaterally by filing an Administrative Complaint against a respondent. The Administrative Complaint will be utilized in limited situations in which the University has a concern related to the safety of the broader community and there is a reluctant Reporting Party. Once a Reporting Party submits a Formal Complaint, they become a "Complainant."

4. In some cases where allegations may warrant, the Title IX Coordinator in consultation with others including the Tufts University Police Department (TUPD) and the corresponding Dean of Students (or their designee), may conduct a threat assessment to determine if the any party or related individual is a threat, including to the complainant or to the Tufts community, and therefore subject to emergency removal. If emergency removal is warranted, the respondent will be suspended/placed on leave pending the outcome of the investigation and adjudication process. The removed party will be informed in writing of this decision and its basis. This individual may seek an appeal of this decision by submitting a written response which will be reviewed by an external appellate decision- maker.
5. The Reporting Party may choose to report their complaint to local law enforcement if the conduct is potentially criminal in nature. Such a report will not change the University's obligation to potentially investigate the matter but it may briefly delay the timing of the investigation if a law enforcement agency requests that the University delay its process for a reasonable amount of time to allow it to gather evidence of criminal conduct. The University will typically not consider a criminal proceeding on the same facts in its process because the University does not use the same process or standard of proof as a criminal process. Typically, the University will only inquire about criminal processes if they impact an individual's ability to access or utilize the University's process. In no instance will a concurrent criminal proceeding, by itself, lead to an adverse inference against the Respondent.
6. Upon reviewing any written complaint materials, if the Title IX Coordinator determines that the conduct would, if proven, be prohibited by the Title IX Policy, the matter will move from the Assessment Phase to the next phase of this process. If the conduct, if proven, would *not* implicate the Title IX Policy, the Title IX Coordinator must dismiss the matter under the Title IX Policy and from the SMAP-X. This dismissal will not limit the individual's ability to provide additional information, and/or to raise and/or resolve the matter through another appropriate OEO policy and process such as the Sexual Misconduct Policy, the Non-Discrimination Policy, or another applicable University policy. For example, a claim of harassment that is based on race or disability status, even if proven, may not violate the Title IX Policy. In this case, the OEO could refer the matter directly for review and resolution under the University's Non-Discrimination Policy which prohibits race and disability harassment and discrimination. Similarly, if a complaint alleges sexual harassment which occurred in a program run by another institution outside the United States, this would not be covered by

the Title IX Policy. However, the OEO could still refer the matter for review and resolution under the University's Sexual Misconduct Policy.

7. The Title IX Coordinator has sole discretion to include any behavior alleged in a complaint that may fall outside the jurisdiction of the Title IX Policy for adjudication in the SMAP-X, or to have that conduct proceed in the appropriate process parallel to the SMAP-X. However, any behavior that the Title IX Coordinator includes in the SMAP-X must have certain factual overlap and will proceed consistent with the SMAP-X process even if the behavior would be subject to a different review process through another policy. If conduct does not trigger the Title IX Policy or the corresponding SMAP-X Process and the Title IX prohibited conduct is dismissed, the Title IX Coordinator has the discretion to refer any remaining allegations back to the original process they would have fallen under if not for the consolidation with the Title IX matter. For example, if a complaint filed by an employee includes allegations of sexual assault as defined in the Title IX Policy and race discrimination (which normally proceeds under the Non-Discrimination Policy), the Title IX Coordinator will either inform the parties of the decision to join all allegations in the SMAP-X process *or* that the race discrimination complaint will proceed in a parallel process under the Non-Discrimination process for employees (or if the complainant is a student, then under the Title VI process for students) while the sexual assault allegations proceed independently in the SMAP-X. The Title IX Coordinator will inform the parties of this decision in the [Assessment of Allegations](#) notification and will also confirm the decision at the conclusion of the investigation in the post-investigative conference described in more detail below.

## **B. The Investigation Phase**

**Notice of an Investigation.** If it is determined that an investigation will begin, the Title IX Coordinator will prepare a written notice ([Assessment of Allegations](#)) to both parties that will include a description of the allegations as they are understood at the time and including the name(s) of the parties, the date and location of the conduct in question, the allegations and the portions of the policy that are alleged to have been violated, the timeframe for the first interviews for each party, and any supportive or interim measures OEO will be putting in place, such as a bilateral/mutual NCO. Further, the Assessment of Allegations includes a statement that the Respondent is presumed not responsible for the alleged conduct and confirms that the Complainant acknowledges and agrees that the information provided in the Complaint is true and accurate to the best of the Complainant's knowledge, includes information about any applicable codes of conduct requiring the parties to refrain from knowingly making false statements or knowingly submitting false information, and describes how both parties can review and respond to evidence gathered and received. This written notice does not constitute

a finding or a determination of responsibility. Further, this written notice will be updated or amended if new allegations are raised by either party and accepted for investigation as part of the SMAP-X.

### **C. Response to Complaint**

After the Respondent receives the Notice and [Assessment of Allegations](#), the Respondent has two options:

**Option One** - Acceptance of the Charges: Five (5) business days after receiving the Assessment of Allegations and the Complainant's Statement or Administrative Complaint, the Respondent may accept responsibility for the conduct alleged. If the Respondent accepts responsibility for the conduct alleged, the process does not proceed to the fact-finding investigation. Instead, the matter is referred to the SMAP-X Panel to decide appropriate disciplinary action. Once the Respondent accepts responsibility, such acceptance cannot be withdrawn. The SMAP-X Panel will issue a written finding of the Respondent's acceptance of responsibility and will take it into consideration in determining appropriate disciplinary action. The SMAP-X final decision will become part of the Respondent's student records and will be shared with the Complainant.

**Option Two** - If the respondent does not accept responsibility for the conduct alleged, they must provide a written response within ten (10) business days of receipt of the Assessment of the Allegations and Complainant's Statement/Administrative Complaint.

### **D. Information about Advisors**

In connection with an allegation of conduct covered by the Title IX Policy, each party may have a single advisor of their choice ([Right to Advisor](#)) present during any formal disciplinary proceeding, including any related meeting, interview, or hearing held during the SMAP-X.<sup>10</sup> Except to the extent expressly permitted in the hearing process outlined below, the advisor may only advise their respective party privately and cannot act as a speaking advocate at a meeting. University staff and internal/external investigators may delay or terminate meetings, remove advisors, and/or proceed with the investigation if an advisor is disruptive or otherwise refuses to comply with the requirements of this policy.

An advisor is subject to the same expectations applicable to others in attendance and like the parties and witnesses must sign a [Privacy and Non-Retaliation Acknowledgement](#) form before the hearing. Unreasonable requests for the re-scheduling of interviews or reviews, will

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<sup>10</sup> If a party does not have an advisor, OEO will provide them one free of charge for use during the pre-conference meeting and during the adjudication hearing for the direct cross-examination.

not be granted for any advisors, in general. Advisors are not permitted to attend a meeting or proceeding without the party they advise being present unless they have received prior approval of the Title IX Coordinator. The University reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as described in the [Right to an Advisor](#) letter.

Both parties must return the [Right to an Advisor](#) letter to OEO with the name, address, phone number and email of their advisor within a week after receipt of the Assessment of Allegations. Further, absent prior approval from the Title IX Coordinator, the Parties will have after receipt of the Assessment of Allegations to decide which process - formal or informal and as appropriate - they wish to follow (presuming OEO does not have to submit an Administrative Complaint). OEO will inform the Parties of the process that will apply to the matter and answer any questions the Respondent may have about that process ([Explanation of Informal Process Option](#)).<sup>11</sup>

### **E. Designation of Investigator**

The Title IX Coordinator will designate at least one investigator to conduct a prompt, fair, and impartial fact-finding investigation of the reported conduct and prepare a draft report of investigative findings (the "Draft Investigative Report"). All investigators will be selected from a group of qualified and trained individuals employed by or engaged by the University for the purpose of conducting investigations under the Title IX policy. The Title IX Coordinator will provide the parties with the name of the person(s) assigned to investigate the reported conduct and email introduce the investigator(s) to the parties and advisors, separately. As soon as possible, but no later than three (3) University business days after delivery of the identity of the Investigator(s), the parties shall inform the Title IX Coordinator in writing of any concerns about conflicts of interest with regard to the selected Investigator(s). The Title IX Coordinator will consider the nature of the conflict and determine if different individuals should be assigned as Investigator(s). The Title IX Coordinator's decision regarding any conflicts is final. The Title IX Officer may consult with other University personnel to discuss any conflicts of interest.

**a. Nature of the Investigation.** The investigation provides an opportunity for fact-finding and will include separate interviews with the reporting party, the responding party, and any relevant witnesses. The Investigator(s) will provide the parties with advance notice of meetings at which their presence is required.

**b. The Parties' Identification of Potential Witnesses and Documentation.** The parties have the opportunity (and are expected) to provide the Investigator(s) with the identification of potential witnesses who have specific information about the reported conduct and with whom they would like the Investigator(s) to speak. The parties also

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<sup>11</sup> The parties are prohibited from using the informal process improperly (e.g. harassment or delay). The Title IX Coordinator may decline to pursue the informal process or terminate the informal process at her discretion.

have the opportunity (and are expected) to provide the Investigator(s) any documentation or other items or questions they would like to be considered. All information described in this section must be presented to the Investigator(s) in writing and include a brief description as to how the persons, documents, and/or items are relevant to the reported conduct. This information must be provided to the Investigator(s) during the Investigation Phase and without delay upon becoming aware of it. The Investigator(s) will exercise discretion in their determination of what information to consider and which potential witnesses can provide relevant information to the investigation. Furthermore, the investigator(s) reserves the right to interview any member of the University community that may have specific information about the incident reported.

#### **F. Investigation Prohibitions**

At no point will the investigation require both parties to be in the same room. At no point will either party be permitted to question or cross-examine the other party or any witness directly during the investigation, adjudication conference or appeal process. The parties may ask questions of the other party and/or witnesses at the Adjudication Conference, described below, but all such questions must be asked through the party's advisor and only after the adjudication chair has determined that the question may proceed based on their determination of relevancy. Additionally, neither the Investigator(s) nor the Adjudication Chair will consider information related to either party's sexual history unless such questions and information about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

#### **G. Other Informal Processes**

At any time prior to convening a Pre-Hearing Conference, either Party may request an informal resolution of a complaint rather than an investigation and/or hearing by contacting the Title IX Coordinator. In such instances, the Parties will still receive the [Assessment of Allegations](#) notice and will receive a copy of the Explanation of Informal Process Options form. The Title IX Coordinator will assess the request for informal resolution against the severity of the alleged violation and the potential risks to campus community members. All Parties and the Title IX Coordinator must agree in writing to an informal resolution for this option to be used. Please note that informal options are not available in cases where a student is alleging a violation of the Title IX Policy against an employee.

The Title IX Coordinator will designate an OEO employee, University representative or outside service provider to afford the parties the agreed upon informal option. The Title IX

Coordinator can end such a process if it becomes unproductive and/or abusive. The allegation will only be deemed resolved when the Parties expressly agree to an outcome that is acceptable to them and is approved by the Title IX Coordinator in consultation with other appropriate administrators. Either Party may withdraw from the informal resolution process at any time. The informal resolution process will be conducted in accordance with procedures specified by the Title IX Coordinator, as determined in his/her sole discretion and outlined for the parties in the Explanation of Informal Process Options.

#### **H. Final Investigative Report and Determination of the Adjudication Conference**

- 1. Content of the Investigative Report.** At the conclusion of the Investigation Phase, the Investigator(s) will prepare a Draft Investigative Report, which should include a summary of the factual information presented during the Investigation Phase, and may include a separate section where the Investigator(s) point out relevant consistencies or inconsistencies (if any) between all sources of information. Attached to the Draft Report or made available with the Draft Report, the Investigator will provide any relevant evidence gathered, whether inculpatory (i.e., proving the responsibility of a party) or exculpatory (i.e., proving that a party did not commit the conduct alleged). The Draft Investigative Report will not include a determination as to whether a party has violated the Title IX Policy (or other policy implicated by the matter) or what sanctions may be appropriate. Similarly, any statements regarding inconsistencies will be considered as merely the perspective of the Investigator(s), with the Adjudication Panel making any final conclusions on these points. All final determinations will be made by the adjudicators, as described below.
- 2. Review by the Parties.** Both parties will have an opportunity to review the entire Draft Investigative Report and to submit written comments and/or questions about the content of the Draft Investigative Report to the Investigator(s) within ten (10) calendar days of the date they are notified that the Draft Investigative Report is available for review on the University's OneHub on-line system. The time to submit written comments can be extended for a brief period if the Title IX Coordinator concludes, in their sole discretion, that the additional time is warranted. In circumstances where an extension is provided to one party, it will be provided to the other party, as well. The parties' advisors will also be provided with access to OneHub to review the Draft Investigative Report.

The comments submitted by the parties may not exceed ten (10) double spaced pages unless a higher page limit is otherwise determined to be necessary and appropriate in the sole discretion of the Title IX Coordinator. After reviewing the submissions, if any, from the parties, the Investigator(s) may determine that either additional investigation is required, or no further investigation is needed. If OEO determines further investigation is conducted, the Investigator(s) will include any additional relevant information in the Draft Investigative Report.

If, at any point in this review process or in the prior investigation, it becomes apparent that a witness will not take part and subject themselves to a live, recorded Adjudication Conference, the Investigator may revise the Draft Investigative Report to remove that information so as not to impact the Adjudication Conference. If this decision is made prior to the Parties' review, it will be noted in an Addendum in the Draft Investigative Report. If the decision is made following the Parties' review, it will be communicated to the Parties and they will be informed in writing of any information that will be removed prior to the Adjudication Conference.

The Draft Investigative Report will then be finalized by the Investigator(s), now "Final Investigative Report" and submitted to the Title IX Coordinator. Any submissions made by either party pursuant to this section, as well as any other documentation deemed relevant by the Investigator(s), will be attached to the Final Investigative Report.

## **I. Post-Investigation Conference**

Once the investigative report is completed, the parties and their advisors will meet with the Title IX Coordinator. During this conference, the appropriate process options available to the parties, based on the allegations addressed in the investigative report and the applicable policies, will be confirmed by the Title IX Coordinator and the parties will have an opportunity to ask any questions about the process options and next steps. The Title IX Coordinator will confirm with the parties and their advisors as to an appropriate course for addressing any additional claims that are not covered by the Title IX Policy and will consider the wishes of the parties. The parties are not prohibited from mutually agreeing to an alternative process.

## **J. The Adjudication Conference: Conflicts and Provision of the Final Report**

The OEO will inform the parties of the identity of the Adjudication Panel members and the Adjudication Panel members will be asked if they have conflicts serving on this Adjudication Conference. No later than three (3) business days after emailing the parties information about the identity of the assigned Adjudicators, the Parties should inform the Title IX Coordinator in writing of any conflicts of interest regarding the selected Adjudicators. If a conflict of interest is raised regarding any of the adjudicator(s) assigned, the Title IX Coordinator will consider the nature of the conflict and determine if a different adjudicator

should be assigned to hear the matter. This decision regarding any conflicts is final. The Title IX Coordinator will then provide the Adjudication Panel with the Final Investigative Report and set a subsequent meeting date for the Adjudication Hearing.

### **K. Adjudication Panel**

The Adjudication Panel will consist of a panel of three trained and experienced adjudicators, two chosen from the [List of Adjudicators](#) who are OEO trained Tufts employees and a third OEO trained external adjudicator who will be the Chair of the Adjudication Conference. Each adjudicator will have an equal vote in the proceedings. The Adjudication Panel will make a determination as to whether or not the Respondent is responsible for violating the Title IX Policy (or any other policy included in this process) by having engaged in some or all of the reported conduct. The Adjudication Panel has the authority to accept the Final Investigative Report without seeking additional investigation, or to ask the Investigator(s) to conduct additional investigation on specific points.

### **L. Pre-Hearing Conference**

Prior to the SMAP-X Hearing Conference, the Panel Chair will meet with the parties and their advisors to provide an overview of the hearing and discuss at least the following topics associated with the hearing: schedule of witnesses; identification of any agreed upon facts or evidence; discussion of the handling of any prior sexual history issues; technology used in the hearing.

### **M. SMAP-X Hearing Process**

Any formal complaints filed under this Policy are adjudicated through live and recorded hearings that can be conducted in person or virtually, as required by federal mandate. The following are the roles and processes to be followed during the adjudication conference.

The Adjudication Panel will preside over the conference and make the decision by a preponderance of the evidence as to whether or not the Respondent violated the policy provisions at issue. The Adjudication Panel has broad authority to determine the process, timing and conduct of such a conference. For example, in consultation with the other panelists, as necessary and appropriate, the Adjudication Panel Chair will make any necessary decisions about the order of presentation, timing and overall duration of the conference, what information and evidence will be heard, what information and questions are relevant to the determination of the matter, and what cross-examination questions will or will not be permitted.

Each party may have an advisor of their choice present at the Adjudication Conference for the limited purpose of conducting cross-examination on behalf of that party. Advisors may be, but are not required to be, attorneys. If a party does not have an advisor of their choice

present at a hearing, the University will provide one, without fee or charge to the party. No later than 10 calendar days before the hearing, parties should inform the Title IX Officer of the identity of any advisor who will accompany them to the hearing, so that the University will know whether or not it needs to arrange for the presence of a University-provided advisor. Please see [Right to an Advisor](#) document.

At a time and manner deemed appropriate by the Adjudication Panel, the advisor for each party will be permitted to ask the other party and any witnesses all relevant cross-examination questions and follow-up questions, including those challenging credibility. All questions as to relevance will be processed through the Chair of the Adjudication Panel to ensure they are relevant and appropriate prior to a response being provided. For example, if an advisor sought to ask badgering questions about every sexual partner a party had, that would be inappropriate and irrelevant to determining whether consent was requested on a specific occurrence. Except for this limited role, advisors may not participate actively in the hearing and may not speak or otherwise communicate on behalf of the party they are advising. However, the advisor may consult privately in a non-disruptive manner with their advisee during and/or at a recess in the conference. The University reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the Adjudication Chair who may include exclusion of the advisor from the hearing and the appointment of an alternate University-provided advisor.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Respondent's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Information protected under a legally recognized privilege (*e.g.*, privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), are not relevant unless the person holding the privilege has waived the privilege.

At the request of either party, OEO will provide for the Adjudication Conference to occur with the parties located in separate rooms with technology (*e.g.* Zoom, WebEx) enabling the Adjudication Panel and the parties and their advisors to simultaneously see and hear the other party and advisor or a witness answering questions. Live, recorded conferences may be conducted with all parties physically present in the same geographic location or, at OEO's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

If a party or witness does not submit to cross-examination at the live, recorded hearing, the Adjudication Panel will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Adjudication Panel, in their sole discretion, will determine if any related evidence must be excluded. The Adjudication Panel will also not draw an inference about the determination regarding responsibility based *solely* on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions nor will their Adjudication Decision reflect the statement of a party or witness who did not appear or participate in the cross-examination.

If the Adjudication Panel determines that a party is responsible for violating the Title IX Policy, they may request from the Title IX Coordinator de-identified information on prior sanctioning decisions so that the Adjudication Panel can consider other sanctions previously issued in the matter at hand.

OEO will create an audio or audiovisual recording, or transcript of any live hearing and make it available to the parties for inspection and review. It will not be provided for distribution other than for the parties, unless otherwise required by law.

#### **N. Notification of Investigation Outcome**

The Title IX Coordinator will inform the parties simultaneously and in writing of (i) the outcome of the Adjudication Conference; and (ii) the procedures for either party to appeal the result of the Adjudication Conference.

#### **O. Appeals**

The following process applies to all appeals. Within five (5) calendar days of the delivery of the Adjudication Conference decision, either party may appeal the decision by submitting to the Title IX Coordinator a letter stating why they believe the decision was inappropriate. A party may only appeal on the following grounds:

1. Procedural error that materially prejudiced the findings/outcome.
2. Newly discovered material information that was not known/available and which likely would have changed the finding of responsibility or the sanction imposed had it been available.
3. Bias or a conflict of interest with regard to the Title IX Coordinator, Investigator(s), or Adjudicators that materially impacted the outcome or the sanction.
4. Severity of the Sanction.

The party submitting the appeal must set forth in detail the grounds for review and must attach all materials that they wish to have considered in the appeal process. The Title IX Coordinator will provide a copy of the appeal to the other party, at which time they may provide a written response if they choose.

The Appellate Officer: In the instance of an appeal, the Title IX Coordinator will choose a different external OEO trained adjudicator to be the Appellate Officer for the appeal(s). The Title IX Coordinator will provide both parties with the names of the Appellate Officer for their case. As soon as possible, but no later than three (3) business days after delivery of the identity of the Appellate Officer, the parties should inform the Title IX Coordinator in writing of any conflicts of interest in regard to the assigned Appellate Officer. The Title IX Coordinator will consider the nature of the conflict and determine if different individual(s) should be assigned to review the appeal(s).

Sanctions of all types may be imposed while an appeal is pending at the sole discretion of the University.

## **P. Conclusion of the Case**

1. Document Retention: The OEO will maintain the investigative files, including any determination regarding responsibility, any disciplinary sanctions imposed on respondent, any remedies provided to the complainant, any appeals and its results and/or any resource and supports provided to both parties for purposes of Title IX compliance and consistent with University for at least seven (7) years. The University also strongly encourages parties and witnesses to preserve materials associated with a SMAP-X.
2. Privacy: All information regarding a complaint under the SMAP-X is considered private and is protected by federal law for students under the Family Educational Rights and Privacy Act (FERPA) and for employees under 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 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 written permission.

3. Subsequent Related Proceedings: Following the conclusion of a SMAP-X where findings of responsibility are made, respondents should understand that any disciplinary sanction issued will be reviewed by the appropriate Dean or supervisor. 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-X finding by the applicable Ethics and/or Professionalism Committees. In addition, respondents with pre-existing discipline should contact their appropriate Dean or supervisor with questions about the possible impact of any finding of responsibility on their ongoing student or employment status. In certain circumstances, a finding of responsibility under the SMAP-X may result in more severe discipline issued by the appropriate Dean or supervisor if there is a pre-existing record of discipline that would reasonably warrant it.

#### **Q. Exceptional Circumstances**

In exceptional circumstances the University reserves the right to determine, in its sole discretion, if it will address a report of conduct that falls under the Title IX Policy outside of the process described in the SMAP-X with regard to investigative approach, sanctions issued, or any other aspect of the process that may interfere with the University reaching a fair and appropriate result. If the University determines the exercise of its options under this provision is warranted, its actions will nonetheless be in accord with Title IX and its regulations and will remain consistent with the spirit of the SMAP-X to the extent possible. Factors applicable to these exceptional situations include those where the safety of the University community is at risk, the material facts of the matter are undisputed, there are extenuating circumstances involving either of the parties, or if the Title IX Coordinator, in consultation with appropriate administrators, determines it is in the best interest of the University and/or the community. If the University exercises this option, the University will explain to the parties any alternate processes it will take in the given situation and the reasons therefore, as appropriate.