

SEXUAL MISCONDUCT ADJUDICATION PROCESS

SMAP

Office of Equal Opportunity

Purpose: Adjudication process for complaints against Tufts University students alleging any violation of the Sexual Misconduct, Stalking and Relationship Violence Policy including sex and gender-based discrimination, sexual, sex and gender-based harassment, sexual assault or rape, sexual exploitation, stalking and relationship violence (including dating and domestic violence).

Revised: September 2021

Overview

The Sexual Misconduct Adjudication Process (“SMAP”) is the adjudication process for formal complaints filed against Tufts University students alleging any violation of the Sexual Misconduct Policy. “Sexual misconduct,” as referenced in the Sexual Misconduct, Stalking and Relationship Violence Policy (“Sexual Misconduct Policy”) and throughout this document, includes sex and gender-based discrimination, sexual and sex and gender-based harassment, sexual assault or rape, sexual exploitation, stalking and relationship violence (including dating and domestic violence).¹ Certain allegations of sex or gender-based discrimination that are not of a sexual nature and do not arise under the Sexual Misconduct Policy may be covered by the University’s Non-Discrimination Policy, and the associated Employee [Discrimination Complaint Guidelines](#). Allegations of any violation of the Sexual Misconduct Policy against faculty, staff, patients and/or other third parties should be referred to the OEO (oeo@tufts.edu; 617-627-3298) for resolution under the Employee [Discrimination Complaint Guidelines](#).

Individuals with who have experienced an incident of sexual misconduct, stalking and/or relationship violence 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) or other law enforcement and to otherwise pursue criminal charges, file a civil action and/or file an administrative complaint (i.e., with the U.S. Department of Education’s Office for Civil Rights, OCR). More information about reporting options outside the University is described in the Sexual Misconduct Policy and in resource and support pamphlets.

This adjudication process is intended to be prompt, fair and impartial, and to provide for disciplinary action, as appropriate. This adjudication process should be read in conjunction with the Tufts’ Sexual Misconduct Policy, which contains definitions and examples of prohibited conduct, including retaliation. The Sexual Misconduct Policy is available on-line or may be requested by contacting the Office of Equal Opportunity (OEO), at 196 Boston Avenue, Medford, MA 02155, or by phone at 617-627-3298. Forms for use with the SMAP can be obtained from the OEO (oeo@tufts.edu; 617-627-3298).

As set forth in the Sexual Misconduct Policy, unlawful discrimination and sexual violence, has no place at Tufts University and will not be tolerated. Discrimination and violence by or against any Tufts community member violates the University’s core values, including the University’s commitment to providing a safe community and equal opportunity to all. Sex and gender-based discrimination, harassment and violence is prohibited by Tufts University policy and can constitute violations of state and/or federal law. State and federal law, including Title IX of the 1972 Education Amendments, prohibits sex and gender based discrimination and associated retaliation in all of the University’s programs and activities, and Title VII of the 1964 Civil Rights

¹ The Sexual Misconduct Policy, available at: <https://oeo.tufts.edu>, prohibits stalking and relationship violence (including dating and domestic violence) regardless of whether sex or gender is a factor in the conduct.

Act, and its state counterpart, M.G.L. c. 151B, prohibits sex and gender based discrimination and associated retaliation in employment. Tufts University policy, the Violence Against Women Act (VAWA), as amended, and other state and federal laws also prohibit sexual assault, stalking and relationship violence (including dating and domestic violence). Please note that effective August 14, 2020, the University's [Title IX policy](#) and associated process, "[SMAP X](#)" will apply exclusively to allegations of sexual harassment that arise under the Title IX policy. Where allegations of a Tufts policy violation appear to arise under both the Title IX policy and the Sexual Misconduct policy or another OEO policy, OEO will: (i) join allegations and adjudicate under one process, and (ii) determine the process most suitable to the nature of the allegations and the interests of the parties and University. The parties will be informed of this determination and will be given an opportunity to respond. See the [Title IX Policy](#) and [SMAP X](#) process for more information.

The University will respond to complaints, reports or information about incidents of sexual misconduct, stalking and/or relationship violence about which it knows or should know, in order to stop any prohibited conduct, eliminate a hostile environment, take steps to prevent the recurrence of prohibited conduct, and address any effects on campus from such conduct. The University will consider the effects of off-campus conduct when evaluating whether there is a hostile environment on campus.

The University will promptly proceed with a SMAP to the extent possible and appropriate under the circumstances of each case. The University's goal is to complete the adjudication of complaints filed within 120 university business days from the receipt of the formal complaint, not including any appeals processes. Depending on the complexity of the investigation, the severity and extent of the conduct, or for other good cause, more or less time may be required to complete the adjudication process. If the investigation exceeds 120 university business days, the OEO will endeavor to advise the parties of the delay in writing and offer an explanation of the timeline. Complainants and respondents are welcome to contact the investigator or OEO at any time for information regarding the status of a SMAP investigation. The University will make every effort to conduct an investigation during school breaks or between school years, unless doing so would impact witness availability or otherwise compromise the investigative process. Please note: during times of national emergencies such as pandemic or other health or natural disasters, the OEO may temporarily suspend proceedings if, in its judgement, it is necessary or in the best interest of the parties and University.

Tufts University recognizes that the decision of whether to bring a complaint can be complicated and challenging. Tufts takes all complaints seriously and the University will investigate any allegation formally brought to the University for adjudication, which might constitute a violation of the Sexual Misconduct Policy. Complainants who wish to discuss or bring forward sexual misconduct, stalking and/or relationship violence concerns confidentially or anonymously may consult with a member of the [Center for Awareness, Resources and Education](#) (CARE) who are afforded confidentiality under University policy (limited confidentiality) or directly with a statutorily-based confidential resource (e.g. counseling, chaplaincy, and/or health services). More information about anonymous and confidential reporting or complaint options and resources are described in the Sexual Misconduct Policy.

It should be noted that anonymous and confidential reporting may limit the University's ability to respond, including the ability to proceed with the investigative and adjudication process, or to otherwise address allegations and concerns. Information provided by individuals seeking to remain anonymous or confidential will not initiate a SMAP unless a campus safety concern compels the University to move forward with an Administrative Complaint or other corrective action (see Section I, F, Administrative Complaints).

Complainants should understand that reports to a private but non-confidential University resource like the OEO will afford the reporting individual privacy but cannot provide legally (by statute) enforceable confidentiality protections such as those provided by the counseling center. If a complainant seeks confidentiality from a private but non-confidential source at the University (or does not seek to take formal disciplinary or law enforcement action), the University will advise the complainant whether it may afford the requested confidentiality. The University will also endeavor to tell complainants what information, if any, will be disclosed regarding their report, to whom, when and why.

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

Support resources and interim measures will be available to the complainant and respondent, as appropriate, regardless of the initiation or outcome of a SMAP. Additionally, a mutual Non-Contact Order (NCO) will be implemented when a SMAP is initiated and throughout the process (see section I, G, below for more information about NCOs). A member of the OEO staff is available to help complainants, respondents and witnesses to access available support resources both on and off campus. Additional information about support resources can also be found on the OEO website (<https://oio.tufts.edu/resources/>). The SMAP also allows complainants and respondents to bring one support person/advisor of their choice to every SMAP meeting (see Section I, S, Support Persons/Advisor).

I. PRELIMINARY ISSUES/DEFINITIONS

- A. **Complainant:** The individual(s) who brings a complaint of sexual misconduct, stalking, and/or relationship violence under the Sexual Misconduct Adjudication Process (SMAP) is the *complainant*. A complainant may also self-identify as "victim" or "survivor" throughout the SMAP. Although most cases involve one complainant and one respondent, more than one complainant may bring a complaint against one or more respondents under the SMAP. The University may also act as a complainant (see Section I, E, Administrative Complaints below).

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

If the alleged conduct did not occur on campus, at a University-affiliated location or at a University-sponsored event, if the alleged conduct occurred prior to matriculation or after graduation from a Tufts program, or if the person bringing the complaint is not a Tufts affiliate, the matter will be referred to the Executive Director of OEO and Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298) to determine whether the University can exercise jurisdiction over the matter. In determining whether to exercise jurisdiction over these types of matters, Tufts will consider what, if any, effect off-campus conduct has on the Tufts community for faculty, staff, students, visitors and community members. Also, where the status of a respondent or the University’s ability to exercise jurisdiction is unclear or not possible, the University will provide interim measures and support resources for both the complainant and respondent as appropriate.

- E. Timing of Complaints: There is ***no time limit*** for the submission of a complaint under the Sexual Misconduct Adjudication Process (SMAP). A complaint may be filed at any time and will be adjudicated if the University has jurisdiction over the respondent (as defined in Section I, C 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 misconduct, stalking and/or relationship violence, limiting the University’s ability to investigate and the types of sanctions that can be applied.

- F. Administrative Complaint: The University may independently initiate a formal complaint against a student under the Sexual Misconduct Adjudication Process (SMAP), called an Administrative Complaint. This type of complaint may be initiated in situations where a complainant is unable to or is uninterested in initiating a SMAP complaint directly. In those situations, the appropriate Dean, in consultation with the Title IX Coordinator, has the option to initiate an Administrative Complaint under the SMAP when sufficient information is available regarding the alleged incident. OEO reserves the right to look into a matter informally. Such an informal inquiry may be conducted for purposes of assessing whether there is a sufficient credible basis for proceeding with a formal complaint or other remedy. For more information about the OEO informal process please see the OEO website.

The University affirms the right of a complainant to decide whether they wish to be involved in a SMAP. At the same time, and under limited circumstances, when the conduct at issue involves a 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. The decision to proceed with a SMAP under these circumstances will be made by the University's Title IX Coordinator in consultation with the appropriate Dean of Students' office, other relevant university officials, and other relevant parties, 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 and how their information will be shared. Support resources and interim measures will be available to the complainant and respondent, as appropriate, and a No Contact Order (NCO) will be put into place (see Section I, G).

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

- G. No Contact Order (NCO): Upon the initiation of a complaint under the SMAP, a bilateral and mutual No Contact Order (NCO) will be put into place between the complainant and respondent (also referred to as "parties") by OEO. The NCO will bar any communication or contact between the parties and will prohibit any interaction or exchange between them, either directly or indirectly or through others (e.g. friends, family members, attorneys, others, etc.). OEO or its designee, issues the NCO and the OEO, with the support of the appropriate Dean's Office, enforces the NCO. OEO, working together with the appropriate Dean, will work with the parties to facilitate the terms of the NCO so all parties may attend classes and use University facilities, as appropriate. The goal of the NCO is to provide a non-punitive approach that will allow the parties, to the extent possible, to continue their academic and social endeavors while still avoiding contact during the adjudication of the complaint. The NCO can

be as detailed as necessary, including specific plans of where the complainant and respondent can be at specific times. Parties should understand, however, that the University is only able to enforce NCO's within its own jurisdiction (e.g. on campus, for University-sponsored programs, etc.). Parties who have concerns about contact outside the University's jurisdiction may wish to pursue protective orders (see below). The NCO may be kept in place after the conclusion of the SMAP and may be modified to be more unilateral if there is a policy violation found against the respondent. An NCO is not documented in a student's academic record. However, the violation of an NCO may be adjudicated as a disciplinary matter and noted upon a student's academic record. In cases where a demonstrated violation of this Order has been shown, the responsible individual may be separated from the University pending the final resolution of the disciplinary complaint (SMAP) as an interim measure (see Section I, H). The parties may be able to seek restraining orders or other orders of protection outside the University, through the courts as appropriate. Restraining orders or other orders of protections are considered external orders of protection for purposes of this policy. Information regarding restraining orders or other orders of protection can be obtained from the Tufts University Police Department (Medford: 617.627.3030; Boston: 617.636.6610; Grafton: 508.887.4900) or through local law enforcement.

H. Resources and Supportive Measures

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

Resources and supportive measures may include but are not limited to: health and counseling services; bilateral mutual No Contact Orders; no trespass orders; voluntary leaves of absence; schedule and/or housing changes; academic supports or adjustments; information about student financial aid and visa/immigration related issues, and/or work adjustments.

Information regarding resources and supportive measures available both on and off-campus can be obtained by contacting OEO. Additional information regarding support resources can be found on the OEO website (<http://oio.tufts.edu/sexual-misconduct/>).

The Title IX Coordinator is responsible for implementing, coordinating and overseeing resources and supportive measures with the assistance of various departments throughout the University, as necessary. Requests for resources and supportive measures may be made

by or on behalf of a complainant, respondent, witness or other individual involved in a sexual misconduct, stalking and/or relationship violence matter to any University official, including the Title IX Coordinator or the appropriate Dean. The Title IX Coordinator, in consultation with the appropriate Dean or other relevant University administrators, will be responsible for implementing the appropriate resources and supportive measures and/or for coordinating with the appropriate offices on campus to effectuate these measures.

- I. No Retaliation: The University strictly prohibits retaliation against any individual who submits a good faith report or complaint of conduct the individual believes in good faith constitutes sexual misconduct, stalking and/or relationship violence, or who in any way participates in an inquiry or investigation of sexual misconduct, stalking and/or relationship violence under the Sexual Misconduct Adjudication Process (SMAP). A person is also protected from retaliation when they reasonably object to conduct they believe in good faith to be a violation of law or policy.

The University takes seriously all reports of retaliation, and will address retaliatory behavior by any individual, including students, faculty, staff or third parties. Any person found to have engaged in retaliatory conduct is subject to disciplinary action or other appropriate action by the University. Depending on the nature of the retaliatory conduct, discipline for students engaged in retaliation may include a warning, denial of privileges, disciplinary probation, suspension and expulsion. The University will also provide resources and supportive measures 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 should be reported promptly to the appropriate Dean (see Section I, BB), any OEO liaison (see Section II, A, 1) or to the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298). The Tufts University Police Department (TUPD) may be able to address retaliation by a person not affiliated with the University.

- J. OEO/Title IX Coordinator: The OEO is responsible for making inquiries into allegations of conduct that may violate the University's Sexual Misconduct Policy (oeo@tufts.edu; 617-627-3298). The Title IX Coordinator coordinates the University's response regarding issues of sexual misconduct, stalking and relationship violence and compliance with Title IX. The OEO provides the fact-finding investigators for all complaints brought under the Sexual Misconduct Adjudication Process (SMAP). Within the SMAP, the Title IX Coordinator or designee assigns investigators and selects panel members for the Decision-Making and Appellate Officers for appeals processes. The Title IX Coordinator also coordinates resources and supportive measures and remedies (if necessary) and facilitates the Decision-Making Conferences. The Title IX Coordinator also facilitates the communication of the Decision-Making Panel's Decision and Appellate Decision to the complainant and respondent. The Title IX Coordinator for Tufts University is Jill Zellmer (jill.zellmer@tufts.edu; 617-627-3298).

- K. Investigator: The investigator is responsible for conducting the intake, notice, and fact-finding investigation portion of the Sexual Misconduct Adjudication Process (SMAP). The SMAP does not involve a hearing or other live or face-to-face meetings between parties. Instead, the investigator will gather the complainant and respondent statements and any other information relevant to the complaint. It is the responsibility of the investigator, **not** the complainant or respondent, to gather information relevant to the resolution of the complaint. In all cases, the investigator will make best efforts to conduct a prompt, fair and impartial investigation into the allegations of the complaint, reviewing all information deemed to be relevant by the investigator. It is the responsibility of the investigator to determine whether the issues raised and/or documents presented are relevant and probative of the alleged conduct.

After completing the investigation, the investigator writes and makes available, by a secure on-line access portal, a draft investigation report to the parties, containing all information relevant for the resolution of the complaint. The parties will have **five (5) university business days** to review the investigative report and to respond to, or otherwise rebut, the information contained in the draft report. The investigator will consider each parties' response or rebuttal and, at the investigator's discretion, will make revisions to the draft investigative report as appropriate. OEO will then submit the final investigative report to the Decision-Making Panel. For more information regarding the fact-finding investigation, see Section II, C.

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

- L. Decision-Making Panel: Under the Sexual Misconduct Adjudication Process (SMAP), the decision regarding the facts alleged in the complaint will be made by a Decision-Making Panel based on a preponderance of the evidence. The decision-making panel shall consist of three trained, impartial faculty, staff members from throughout University or other trained professional as determined by the Title IX Coordinator. Panelists have been trained on the SMAP and on topics relevant to the adjudication of sexual misconduct, stalking and/or relationship violence complaints. The three panel members will be chosen by the Title IX Coordinator who will communicate their identities to the complainant and respondent along with a brief biographical summary of each panelist's professional experience. Best efforts will be made to have the Decision-Making Panel be reflective of the demographics/identities of the complainant and/or respondent, particularly if requested by either or both of the parties, and if known and available. The Title IX Coordinator will ask the complainant and

respondent and each panel member if there are any conflicts of interest related to the chosen panel members. Each party has the right to raise any concerns they may have. If a conflict is raised, the Title IX Coordinator may choose another trained panel member to sit in the place of the original panelist. The Title IX Coordinator will select the Panel Chair. Decisions regarding the composition of the Panel are made at the discretion of the Title IX Coordinator or designee (see Section N, Impartiality).

The Title IX Coordinator will facilitate a Pre-Decision Conference where each party will meet individually with the Panel Chair to discuss the complaint, the investigation, any preliminary findings regarding policy violations and any corresponding discipline (if necessary), and the Decision-Making Panel's basis for any such preliminary findings. During the Pre-Decision Conference, the Panel Chair will have the opportunity to ask the parties any additional questions; similarly, each party will have the opportunity to express concerns or ask questions about the basis for any preliminary findings. Following the Pre-Decision Conference, the parties will have **five (5) university business days** to submit any additional rebuttal or impact statement to the Title IX Coordinator for the Decision-Making Panel's review and consideration before issuing a final decision.

- M. Appellate Panel: Once a Decision-Making Panel's decision has been issued, both the complainant and respondent have a right to appeal the decision. For more information about the appellate process, see Section II, H. Any appeal will be considered by an *Appellate Officer* who is a trained administrator, faculty or staff member, or other trained professional as determined by the Title IX Coordinator. The Appellate Officer pool will be trained annually in the adjudication of matters covered by the Sexual Misconduct Adjudication Process (SMAP). The Appellate Officer's identity will be communicated to the complainant and respondent, along with a brief biographical summary of the Appellate Officer's professional experience. The Title IX Coordinator will ask the complainant and respondent if there are any conflicts of interest or other objection related to the chosen Appellate Officer and each party has the right to raise any concerns they may have. If a conflict is raised, the Title IX Coordinator may choose another trained Appellate Officer as an alternative. Decisions regarding the Appellate Officer are made at the discretion of the Title IX Coordinator or designee. The decision of the Appellate Officer is the final step in the SMAP (see Section N, on Impartiality).
- N. Impartiality: The Title IX Coordinator, Investigators, Decision-Making Panelists and Appellate Officers are impartial, well-trained and free from any known conflicts of interest regarding any pending Sexual Misconduct Adjudication Process (SMAP) and its related complaint. The complainant and respondent will be notified in advance of the names of the individuals who act as the investigator and who will be serving on the panels. The University will make every effort to address any perceived concerns or conflicts of any kind. Any conflicts of interest or concerns about impartiality should be reported promptly to the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298). These issues will be addressed promptly by the Title IX Coordinator. Concerns about the impartiality of the Title IX Coordinator should be reported promptly to the General Counsel of the University (mary.jeka@tufts.edu; 617-627-4220).

- O. Leniency Regarding Other Offenses: Individuals may be concerned about reporting sexual misconduct, stalking and/or relationship violence, believing that other behavior in which they were engaged might subject them to disciplinary action (e.g., a complainant or witness is underage and was using alcohol or drugs at the time of the alleged incident). Witnesses, complainants and respondents should be assured that the focus in the University's review of alleged violations of the Sexual Misconduct Policy is always on the reported behavior, **not** on whether someone was, for example, using alcohol or drugs at the time or whether another policy may have been violated. Individuals are encouraged to come forward and report sexual misconduct, stalking and/or relationship violence regardless of the surrounding circumstances. In situations reviewed under the Sexual Misconduct Adjudication Process (SMAP), the University will, to the extent allowed by applicable laws and University policy, focus its investigation or disciplinary action on the alleged sexual misconduct, stalking and/or relationship violence, as opposed to other alleged conduct violations (e.g., underage drinking, individual drug use). In such circumstances, the University will exercise clemency or leniency regarding other conduct violations.

It is important to know that a person's use of alcohol or drugs does not excuse prohibited conduct under the Sexual Misconduct Policy. Also, a person who has been incapacitated through the use of alcohol and drugs (or by any other means) **cannot** give effective consent to sexual activity. For more information about alcohol, drug use, incapacity and sexual misconduct, stalking and/or relationship violence, see Section II, A and B, of the Sexual Misconduct Policy.

- P. Right to Investigate and Decide Other Conduct Violations: As appropriate, and subject to Section, I, O, above, the University will not be restricted to investigating only the violations alleged in the complaint if other serious conduct violations are discovered during an investigation pursuant to the Sexual Misconduct Adjudication Process (SMAP) (e.g., additional allegations of sexual misconduct, drug dealing, use of weapons, other violent behavior or safety concerns). However, matters with no bearing on the case under review will be referred to the appropriate University administrators for review and adjudication as appropriate. The investigator or Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298), in consultation with the appropriate Dean (see Section I, BB), will notify the complainant and respondent when additional allegations have been identified and will decide whether such allegations will be decided by the SMAP Decision-Making Panel or will be considered in another student judicial process. In any case, the adjudication of any other violations of policy unrelated to sexual misconduct, stalking and/or relationship violence will not delay or unfairly prejudice the prompt resolution of the pending SMAP complaint. The University reserves the right to amend a complaint at any time throughout the investigation process as new information becomes available. In such cases where new allegations are added to the complaint, the parties will be afforded notice and an opportunity to respond, consistent with the process set forth herein.

- Q. Obligation to Be Truthful: The complainant, respondent and witnesses in the Sexual Misconduct Adjudication Process (SMAP) must present information in good faith, and provide

truthful, complete and accurate information. Truthfulness is required, encouraged and expected within the SMAP. Knowingly making false statements or presenting inaccurate or incomplete information may result in a separate disciplinary action and may also be taken into consideration by the Decision-Making Panel and/or Appellate Officer. Please note that filing a complaint or providing information which a complainant, respondent or witness genuinely believes is accurate but which is ultimately dismissed due to insufficient information or found to be untrue, does **not** constitute the intentional presentation of false information.

- R. Witnesses: The complainant and respondent have the right to identify witnesses who may have information relevant to the conduct alleged in the Sexual Misconduct Adjudication Process (SMAP) complaint. Witnesses can include individuals who may have seen and/or heard the incident and individuals to whom the complainant and/or respondent may have spoken to about the incident. Investigators may ask a party what a witness may contribute or know about the allegations and will make determinations as to relevancy. Please note that because the focus of an inquiry is on facts, character witnesses are not used within this process.

It is possible for the complainant and respondent to identify the same people as witnesses. The parties should carefully consider whether to discuss any details of the complaint with any witness as doing so may impact the integrity of the investigation and lead to unintended consequences described in more detail in Sections U and V, below (e.g., creation or exacerbation of a hostile environment, retaliation, etc.).

Witnesses should not be intimidated, threatened, or improperly influenced in any way by either the complainant or respondent or through others (e.g. friends, family members, attorneys, etc.). Any attempt to threaten, intimidate or otherwise improperly influence the testimony of a witness may result in a separate disciplinary action by the University and may negatively impact the reliability of statements by the witness and others, including a complainant or respondent. The investigator will attempt to contact and interview any witnesses identified by the complainant and respondent that the investigator deems relevant to the resolution of the disciplinary complaint. The investigator may also identify additional witnesses through the Investigation. These decisions are made at the discretion of the investigator and in conjunction with all the facts gathered. For more information about the investigation process, please see Section II, C.

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

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

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

- T. Privacy/Non-Retaliation Acknowledgment: Complainants, respondents, witnesses and support persons/advisors in the Sexual Misconduct Adjudication Process (SMAP) will be advised of the Privacy/Non-Retaliation policies, and may be required to sign a privacy Non-Retaliation Acknowledgement, which will confirm that the investigator or Dean or their designee has discussed the privacy considerations surrounding the SMAP and that the individual understands the importance of maintaining discretion and respecting the privacy of the process. Through this Acknowledgment, the complainant, respondent, witnesses and support persons/advisors also agree to refrain from any retaliatory conduct against anyone else involved in this process in any manner and will encourage others to refrain from retaliation as well. While discretion remains important during this process, neither the complainant nor the respondent will be restricted from discussing or sharing information related to their complaint or response with others who may help them or assist them in presenting their case. The complainant and respondent are also able to discuss the facts underlying the disciplinary complaint and the process with confidential persons, such as counselors, clergy, healthcare providers, other therapeutic professionals, attorneys, or with a policy confidential member of the [CARE office](#).

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

- U. Additional Privacy Considerations in the Process: All participants in the Sexual Misconduct Adjudication Process (SMAP), including complainants and respondents, should understand that privacy and discretion is critical to a thorough and reliable investigation and to the integrity of the SMAP process in general. The complainant and respondent should understand that observance of these privacy considerations is intended to protect the privacy of the individuals involved in this process and prevent additional claims, including claims of retaliation or claims of the creation or exacerbation of a hostile environment.

The OEO will respect the privacy of the individuals involved in the SMAP to the fullest extent possible and will share its privacy expectations with all individuals involved in the SMAP. With the importance of privacy and the appropriate use of information in mind, the University will advise all participants in the SMAP (parties, witnesses, support persons, etc.) to review the Privacy/Non-Retaliation Policies and may require the signing of a Privacy/Non-Retaliation Acknowledgement form (see Section I, T).

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

The OEO and the appropriate Dean's office will maintain files relating to the adjudication of complaints under the SMAP in a safe and private manner, for purposes of compliance with Title IX and consistent with OEO's record keeping practices. University employees will only be provided with limited access to SMAP records maintained by the University consistent with the federal privacy law entitled "Family Educational Rights and Privacy Act" (FERPA), University policy and on a limited need to know basis as determined by the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298) or the appropriate Dean (see Section I, BB). Complainants and respondents will only be given access to investigative reports and other SMAP-related documentation through the secure web-based portal in order to minimize the risk of this information being released into a public forum.

The complainant and respondent must balance their need to heal and talk about their experiences with their involvement in the SMAP investigation. The investigator will also balance understanding this need with the requirement of the University to resolve and address disciplinary complaints in an accurate and discrete manner. Sharing details during an investigation separate from sharing for the purposes of gaining resources and support can result in unintended consequences such as retaliation, the creation or exacerbation of a hostile environment and may also damage the reliability of witness statements or information relevant to the resolution of the complaint.

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

As set forth in the introduction to the SMAP, and as set forth in more detail in the Sexual Misconduct Policy, a complainant requesting an informal process can request to remain anonymous (i.e., not have their name revealed to the accused student), or ask that the University not formally investigate or take formal action under the SMAP. If OEO determines it can honor a complainant's request for anonymity and/or for an informal response to a report through the OEO's informal process, the complainant should understand that the University's ability to respond to the alleged incident may be limited and that, at the complainant's request, this adjudication process may not be initiated. Support resources and interim measures remain available to complainants and respondents during the OEO informal process, as appropriate, and a No Contact Order (NCO) may still be put into place. Following the OEO informal process, a complainant retains the right to file a formal complaint for adjudication through the SMAP as long as the University still has jurisdiction over the respondent.

Under limited circumstances, when the conduct at issue poses a potential threat to campus safety (which includes, but is not limited to, the alleged involvement of violence, the use of weapons or repeat offenders), the University will be compelled to move forward even when a complainant has requested anonymity or does not otherwise wish to be involved. Under these circumstances, whenever possible, the University will endeavor to inform the complainant of its need to move forward with a formal adjudication process prior to commencing it (see Section I, F, for more information regarding when the University is compelled to proceed with an Administrative Complaint).

- V. Attorneys: Although not required, the complainant and respondent have the right to seek the assistance of a private attorney, at their own expense or through an advocacy agency, about sexual misconduct, stalking and/or relationship violence concerns. An attorney may act as a support person/advisor (see Section I, S). Attorneys acting as support

persons/advisors may make process-related inquiries directly to the Title IX Coordinator. Attorneys acting in a representative capacity and/or seeking to discuss legal claims or other legal matters should direct inquiries to the Office of University Counsel.

- W. Criminal Conduct: The Sexual Misconduct Adjudication Process (SMAP) does not attempt to create a courtroom environment and is different from a civil or criminal legal proceeding. The purpose of the SMAP is to determine whether conduct violates University policy and does not consider whether it may also violate the law. However, some complaints involve allegations that may also constitute criminal conduct. In such situations, an individual is advised to seek legal counsel before making any written or oral statements, since such a statement could have ramifications in any legal proceedings outside of the University. An individual should seek legal advice about how this adjudication process could impact any civil or criminal case in which they are or may become involved. In most cases law enforcement will need the complainant's cooperation to proceed with criminal charges.

The University will conduct its own investigation and adjudication of a disciplinary complaint, regardless of whether the alleged conduct is also being pursued through the civil or criminal justice system. The University will comply with law enforcement requests for cooperation. At times, that cooperation may require the University to temporarily suspend its fact-finding investigation while law enforcement gathers information. The University will promptly resume its fact-finding investigation as soon as it is notified by law enforcement that doing so would not impede any law enforcement activities.

- X. Submission of Information: The fact-finding investigation process is intended to arrive at the truth of the matter, without the formalities associated with rules and procedures specifically designed by lawyers to manage courtroom litigation. Students can address issues and present documents to the investigator without concerns about hearsay or questioning whether such information can be submitted in the process. It should be noted that it is the responsibility of the investigator to determine whether the issues raised and/or documents presented are relevant and probative of the alleged conduct. It is the investigator's responsibility to ensure that parties be apprised of the information relevant to the resolution of the complaint and given a meaningful opportunity to respond. Relevant and probative information will be shared with the Decision-Making Panel and, if used, the Appellate Officer (see Section I, L and M). An individual receiving information or documents through this process has the responsibility of maintaining the privacy of that information.

1. *Sexual History*: In the Sexual Misconduct Adjudication Process (SMAP) for a complaint of sexual misconduct, stalking and/or relationship violence, the sexual history of the complainant and/or the respondent, or either party's sexual history with others, will **not** be a factor in determining whether the alleged sexual misconduct, stalking and/or relationship violence at issue in the complaint occurred. Narrow exceptions may include cases where the sexual misconduct at issue is alleged to consist of a pattern of behavior or habitual conduct relevant to the fact finding. For example, if a respondent allegedly has a particular method of operating, e.g., using date rape drugs, the investigator and the

Decision-Making Panel may appropriately gather and consider such information. An exception must be approved by the Title IX Coordinator before the information in question is shared with any decision-maker. The University's policy is that consent to one sexual act does not constitute consent for another sexual act (see the Tufts definition of consent in the Sexual Misconduct Policy). However, it is appropriate for an investigator to gather information related to any additional incidents of sexual misconduct identified during the course of an investigation.

2. *Medical and Counseling Records:* The University will never require that students disclose medical and counseling records, which are privileged and confidential documents; such records cannot be shared with anyone other than the treating professional unless the patient agrees to disclosure. **Therefore, individuals should be aware that there are legal implications to agreeing to share and produce privileged records; the production of partial records may lead to the waiver of privilege and the production of additional records.** Individuals are encouraged to seek advice from a knowledgeable source about the possible consequences of releasing this type of information.

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

- a. The complainant or respondent can voluntarily decide to present their own medical or counseling records to the investigator. The investigator will review the records and will use discretion to determine what information is relevant to the adjudication of the complaint. Only the records deemed to be relevant to the resolution of the complaint will be shared with the opposing party and the Decision-Making Panel. Please note that if an individual decides to produce such records, they must be produced in their entirety. The production of excerpts or selected documents is unacceptable and will not be considered.
- b. On rare occasions, the investigator may discuss with the complainant and/or respondent whether the production of medical or counseling records may be helpful to the resolution of the disciplinary complaint. In these situations, an individual maintains control to determine whether to voluntarily share such information. As discussed above, an individual should understand that there are legal implications to deciding to produce such records and it should not be done without consideration of the possible consequences in doing so (see Section X, 2, above). An individual is under **no obligation** to provide this information and may simply say "no." An individual has a right to decide not to provide these records and that decision is completely acceptable. Prior to responding to such a request, an individual is advised to consult with a support person/advisor or to seek advice from a knowledgeable source about the

possible consequences of releasing this information. Please note that if an individual does decide to produce such records, they must be produced in their entirety. The production of excerpts or selected documents is unacceptable and will not be considered. If produced, the investigator will review the provided records and will use their discretion to determine what information is relevant to the adjudication of the complaint. Only the records deemed to be relevant to the resolution of the complaint will be shared with the opposing party and the Decision-Making Panel.

- c. A complainant or respondent may also decide to voluntarily provide a verification of therapeutic or medical services to the investigator, confirming simply that such treatment occurred, but not providing any details regarding that treatment.
- Y. Family Notification: Since the University views students of legal age as adults, neither parents/guardians nor spouses will be notified when a disciplinary complaint is filed under the Sexual Misconduct Adjudication Process (SMAP). Students are encouraged to inform their families if they are involved in a disciplinary complaint. Parent(s), guardian(s) and/or spouse(s) with questions about a pending complaint can contact the appropriate Dean (see Section I, BB) or the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298). Information may only be shared with a student's family consistent with the federal privacy law entitled "Family Educational Rights and Privacy Act" (FERPA). In most cases, this means a student will need to sign a FERPA waiver for the University to communicate private information with a parent, guardian and/or spouse.
- Z. Reporting Information by the University: Information collected by the OEO as part of the Sexual Misconduct Adjudication Process (SMAP) is considered private and is protected by the federal privacy law entitled "Family Educational Rights and Privacy Act" (FERPA). This information may also be protected under state and local law. While the University will comply with privacy requirements, the University reserves its right to share information consistent with FERPA, and under certain circumstances information may be shared externally such as with other educational institutions, licensing boards, law enforcement, and government agencies as permitted or required by law or other applicable rules. Also, every year, OEO reports de-identified information to the University's Department of Environmental and Public Safety for use in the University's Annual Security and Fire Safety Report, as appropriate. This reporting is legally required of OEO -- and other University officials -- as a Campus Safety Authority ("CSA"). Other external disclosure of this information may also be made subject to subpoena or other court action. In situations where an external disclosure of information will be made, the individual whose information will be shared will be told what information will be provided, to whom and why, unless otherwise prohibited by law. As a matter of practice, the University does not share information regarding SMAP complaints with the media without student permission.

AA. Alternative Options: There are several ways that the OEO may be able to address or even resolve concerns raised under the Sexual Misconduct Policy (see [Explanation of Options](#)) prior to or in lieu of initiating the formal Sexual Misconduct Adjudication Process (SMAP):

- a. *Informal Process*: Some complainants may choose to exercise their right to pursue an informal process in lieu of the formal SMAP process, without limiting their right to pursue a formal complaint through the SMAP in the future. Some complainants may choose to exercise their right to pursue an informal process in lieu of the SMAP process which resolves the matter entirely, foregoing any further process. Informal process options are varied and may include an OEO Conversation with a student reported to have allegedly violated the Sexual Misconduct Policy, mediation or other resolution tailored to the matter. For more information about the informal process, please go to [Explanation of Options](#).

BB. Appropriate Dean: Under the Sexual Misconduct Adjudication Process (SMAP), the appropriate Dean for the school in which the respondent is a student will be responsible for enforcing the mutual or bilateral No Contact Order (NCO) between the complainant and the respondent upon initiation of the SMAP and for implementing the decision of the Decision-Making and/or Appellate Officer. The OEO will initiate the NCO at the onset of the process and share the information with the appropriate Dean. The Dean will participate in the implementation of any discipline issued as part of the SMAP. The Dean will also address issues of retaliation, non-cooperation by parties or witnesses, and other conduct violations that may be identified through this process. Below is a list of the appropriate Deans for the different schools within Tufts University:

School of Arts, Sciences & Engineering (AS&E)

Camille Lizarribar
Dean of Student Affairs,
617.627.3158
Camille.Lizarribar@tufts.edu

The Fletcher School of Law and Diplomacy

Katie Mulroy
Associate Dean of Student
Affairs
617-627-5997
Katie.Mulroy@tufts.edu

School of Graduate Biomedical Sciences

Daniel Volchok
Dean of Students
617. 636.6767
Daniel.volchok@tufts.edu

Cummings School of Veterinary Medicine

Barbara Berman
Assistant Dean of Student
Affairs
508.887.4725
Barbara.Berman@tufts.edu

Friedman School of Nutrition Science and Policy

Matthew Hast
Assistant Dean of Student
Affairs
617. 636.6719
<http://Matthew.Hast@tufts.edu>

Public Health and Professional Degree Programs

Aviva Must
Public Health Program
617. 636.0446
Aviva.Must@tufts.edu

School of Dental Medicine

Robert Kasberg, Jr.
Assoc. Dean of Admissions
and Student Affairs
617.636.6539
Robert.Kasberg@tufts.edu

School of Medicine

Dr. Amy Kuhlik
Dean of Student Affairs
617.636.6534
Amy.Kuhlik@tufts.edu

SMFA

Laura DaRos
Assistant Dean
617.636.3212
<http://Laura.DaRos@tufts.edu>

CC. Preponderance of the Evidence Standard: The University applies the preponderance of the evidence standard in the Sexual Misconduct Adjudication Process (SMAP), to determine whether the Sexual Misconduct 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. The decision of the Decision-Making Panel will be made based on the preponderance of the evidence standard, that is whether the facts presented in the investigation report support a finding that it is more likely than not that University policy has been violated. The decision of the Decision-Making Panel will be reached by a majority. If a majority of the Decision-Making Panel agrees that it is more likely than not based on the facts of the case that there was a policy violation, there will be a finding of responsibility made by the Panel. For more information about the Decision-Making Panel, see Section I, L.

DD. Disciplinary Range: Depending on the nature of the violation, disciplinary consequences for findings of sexual misconduct, stalking and/or relationship violence may include disciplinary warnings, probation, suspension, indefinite dismissal, and expulsion for students. Disciplinary action may also include revocation of a Tufts degree or the limitation or denial of community and/or alumni privileges.

EE. Respondent Withdrawal: At any time prior to the Decision-Making Panel's issuance of a decision through a written notice of outcome, a respondent has the right to withdraw as a student from Tufts University. A respondent's withdrawal from the University may not terminate the Sexual Misconduct Adjudication Process (SMAP) for that complaint to determine whether, based on a preponderance of the evidence, the facts presented in the investigation support a finding that it is more likely than not that University policy has been violated, and the Decision-Making Panel will issue a written notice of outcome to the parties. A student who leaves Tufts during an investigation will not be eligible to return to the University in any capacity until the investigative process has concluded.

FF. Complaint Withdrawal: At any time prior to the Decision-Making Panel's issuance of a decision through a written notice of outcome, a complainant may withdraw the disciplinary complaint by notifying the Title IX Coordinator of their desire to do so. Once a complaint has been withdrawn, it cannot be filed again by the complainant within this process. The

University reserves the right to move forward with the disciplinary complaint, even after a complainant decides to withdraw a complaint in order to protect the interests and safety of the Tufts community. If the University moves forward with the Sexual Misconduct Adjudication Process (SMAP) in an administrative manner for that complaint, the Decision-Making Panel will issue a written notice of outcome based on a preponderance of evidence.

GG. Student Organizations/Groups: The Sexual Misconduct Adjudication Process (SMAP) applies to student organizations, groups, and teams, including, but not limited to, those devoted to academic, athletic, community, cultural, Greek life, leadership, pre-professional or other student activities. Unacceptable behaviors by individuals functioning as members or officers of a student organization may have consequences for those individuals as well as for the organization. Also, the privilege of being an officer of a student organization carries with it particular responsibility for the reasonable anticipation and prevention of behavior of the organization's members or guests which may violate the Sexual Misconduct Policy.

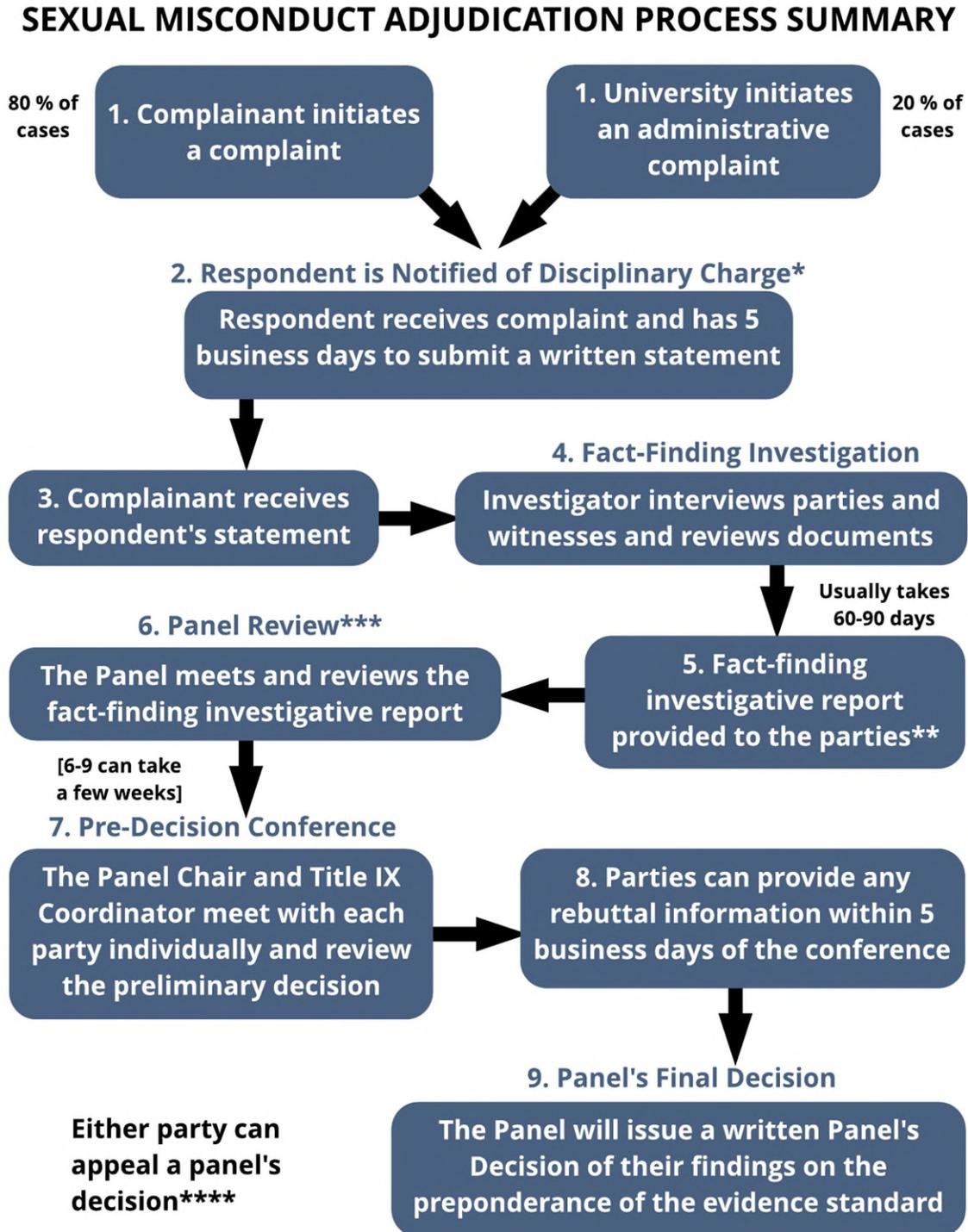
In general, a recognized student organization may be held accountable for the behavior of its members and guests on its premises, at events sponsored (or co-sponsored) by the organization, or when a group including a significant number of members or guests violates the Sexual Misconduct Policy. Organizations that violate the Sexual Misconduct Policy are subject to sanctions. In determining whether an organization or its officers failed to take reasonable precautions to prevent violations of this policy, the Decision-Making Panel may consider the repeated occurrence of other relevant incidents involving the organization.

In the interest of providing a safe environment that is responsive to the needs of the community, student leaders, officers, peer mentors, and volunteers in leadership positions in student organizations/groups are responsible for promptly reporting allegations of sexual misconduct that they observe or learn about in their capacity as a student leader to the OEO Executive Director and Title IX Coordinator, Jill Zellmer (email oeo@tufts.edu or call 617.627.3298) or to any Title IX Liaison listed in Section II, A, 1, below.

Although student leaders are expected to report incidents of sexual misconduct under the Sexual Misconduct Policy to OEO, as well as in accordance with the standard incident reporting protocol of their student organization/group, student leaders will otherwise maintain the privacy of the information related to the matter reported. Student leaders may also report such conduct online through the EthicsPoint reporting portal, providing all known details of the situation: tufts-oeo.ethicspoint.com.

All student leaders are responsible for reporting any incident of sexual misconduct, even if the person(s) concerned about or affected by the misconduct is unsure about pursuing a formal disciplinary complaint. OEO will review and assess the reported allegation(s) and first consult with the complainant(s) on and off-campus supports and services and explain all the options available for formally or informally responding to an incident.

II. THE SEXUAL MISCONDUCT ADJUDICATION PROCESS FLOWCHART



Questions? Please contact the Office of Equal Opportunity (OEO) at (617) 627-3298 or oeo@tufts.edu or Director OEO and Title IX Coordinator Jill Zellmer

***An automatic no contact order is put in place and both parties signs Privacy/Non-Retaliation Acknowledgments.**

****The report is accessed through a secure portal.**

*****The Panel is assembled by the Title IX Coordinator. All panel members affirm they can be neutral and parties confirm they do not know any of the panel members.**

******Either party can appeal a Panel's decision within 7 business days, on 3 bases: procedural error, new evidence, and/or severity of discipline. For the appeals process a new panel is convened.**



**Office of Equal Opportunity
Jill Zellmer, Executive Director, Title IX
Coordinator and 504 Officer
196 Boston Ave Medford, 4th floor MA 02155
617.627.3298 | oeo.tufts.edu
tufts-oeo.ethicspoint.com**

August 2020

A. Initiating the Adjudication Process

Formal complaints based on sexual misconduct, stalking and/or relationship violence can be initiated under this process in two ways: (1) through a complainant-initiated complaint or (2) through a University initiated administrative complaint. The process can be discussed with any of these OEO liaisons or [others](#) :

<p><u>Office of Equal Opportunity (OEO)</u> Pamela Droukas Ring Deputy Title IX Coordinator and Title IX Investigator, OEO 617.627.3298 pamela.ring@tufts.edu</p> <p>Jill Zellmer, Title IX Coordinator, 504 Officer and Executive Director of OEO 617.627.3298 Jill.Zellmer@tufts.edu</p>	<p><u>School of Arts, Sciences & Engineering (AS&E)</u> Camille Lizarribar, Dean of Student Affairs Chief Student Affairs Officer 617.627.0440 Camille.Lizarribar@tufts.edu</p>	<p><u>The Fletcher School of Law & Diplomacy</u> Laurie Hurley, Associate Dean of Student Affairs and Director of Admissions 617.627.2410 Laurie.Hurley@tufts.edu</p> <p>Katie Mulroy, Director of Student Affairs 617.627.5997 Katie.Mulroy@tufts.edu</p>
<p><u>Public Health & Professional Degree Programs (PHPD)</u> Janice Gilkes Dean of Students 617.636.2954 Janice.Gilkes@tufts.edu</p>	<p><u>School of Dental Medicine</u> Katherine Vosker Director of Student Affairs 617.636.0887 Katherine.Vosker@tufts.edu</p>	<p><u>School of Medicine</u> John Matias Dean of Admissions 617.636.6568 John.matias@tufts.edu</p>
<p><u>School of Graduate Biomedical Sciences</u> Daniel Volchok Associate Dean 617.636.6767 Daniel.Volchok@tufts.edu</p>	<p><u>Friedman School of Nutrition Science & Policy</u> Matthew Hast Assistant Dean of Student Affairs 617.636.6719 Matthew.Hast@tufts.edu</p>	<p><u>Cummings School of Veterinary Medicine</u> Rebecca Russo Director of Admissions 508.887.4725 Rebecca.Russo@tufts.edu</p>

1. Complainant Initiated Complaints

An individual can decide to personally file a formal complaint against a student, more than one student or a student organization/group. Under this option, the person bringing the allegation is called the complainant (see Section I, A). The person(s) or student organization/group against whom the complaint is filed is called the respondent (see Section I, B). The complainant will be asked to submit two forms to initiate the disciplinary complaint – the Complainant’s Statement and the Privacy/Non-Retaliation Acknowledgment (as discussed below).

The Complainant’s Statement should be signed, dated, and submitted to the OEO or otherwise verified to the satisfaction of the Title IX Coordinator. Email submission of the Complainant’s Statement directly to OEO (oeo@tufts.edu; 617-627-3298) is also acceptable. The complainant is welcome to bring one support person/advisor to any Sexual Misconduct Adjudication Process (SMAP) meetings with OEO (see Section I, S for more information regarding support persons/advisors).

- a. **Complainant’s Statement:** To file a disciplinary complaint against a student, the complainant must submit a written statement detailing the allegations of the sexual misconduct, stalking and/or relationship violence. This statement is the first opportunity for the complainant to describe the allegations against the respondent. This may be the only written statement that will be submitted by the complainant in this process, so it should be given time and attention while it is being crafted. After the Complainant’s Statement has been signed and submitted, the complainant will be able to discuss any clarifications, corrections or additions to the statement with the investigator. In limited circumstances, a complainant may need to dictate a statement. In such circumstances, the complainant will review and edit the transcript and then sign (or otherwise verify) the Complainant’s Statement to verify and confirm accuracy and completeness.

The statement should communicate the complainant’s full account of the incident(s) and context, as well as the complainant’s reflections, to the extent practicable given the circumstances. To facilitate the process, the complainant should:

- relate to the best of their ability the facts of the incident as remembered. The complainant should take care to distinguish between what they saw, heard, or experienced first-hand and what they may have learned later from others. Both types of information, however, should be included.
- provide any observation or insight into the respondent’s conduct and the context in which the alleged incident occurred, including its location, and any witnesses to it.

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

- i. *Witnesses:* This list should include the names and contact information of any witnesses who may have seen and/or heard the incident and witnesses to whom the complainant may have spoken to about the incident (see Section I, R). When identifying witnesses, please include a brief description of what information that person might possess. Please note that character witnesses are not used within this process.
- ii. *Documents:* This list should identify any relevant documentation regarding the incident that includes (but is not limited to) texts, e-mails, video, journal entries or social media correspondence between the complainant and respondent or others regarding the incident. This list should include a brief explanation of the information contained in the documentation and who might be in possession of that document. The complainant should identify the sources and/or location of this supporting information but should not attempt to collect information that is not in their possession. The Investigator will endeavor to solicit any relevant statements or documents referenced through this process.
- iii. *Suggested Questions or Areas of Inquiry:* Although the investigative process is conducted by the assigned investigator, the complainant is permitted to suggest any questions or area of inquiry to the investigator at the time of the filing of the complaint or through the investigation. The decision to pursue any related questioning or areas of inquiry remain within the discretion of the investigator.

The Complainant's Statement must be written or dictated by the complainant. Statements written by parents, attorneys, support person/advisors or others will not be accepted. However, complainants are encouraged to consult with a support person/advisor of their choice or share a draft of the statement with a person who is well-positioned to discuss, among other matters, the statement's style, organization, length, and clarity, while also anticipating questions that may be raised by the investigator. It is not appropriate for the Dean's office or OEO staff to review draft statements. The complainant will be required to sign a statement or otherwise verify that they wrote or dictated their Complainant's Statement. The complainant should be aware that the respondent will be given a copy of the Complainant's Statement in its entirety. The complainant will also be given a copy of the Respondent's Statement once submitted.

- b. ***Privacy/ Non-Retaliation Acknowledgment:*** Any complainant(s), respondent(s), witnesses and support persons/advisors (see Section I, S) in this process will be advised of, and may be required to sign, a Privacy/Non-Retaliation Acknowledgment (Acknowledgment) which will confirm that the investigator has discussed the privacy policy surrounding the Sexual Misconduct Adjudication Process (SMAP) and that the individual understands the importance of maintaining discretion and respecting the privacy of the process. Through

this Acknowledgment, the complainant, respondent, witnesses and support persons/advisors also agree to refrain from any retaliatory conduct against anyone else involved in this process in any manner and will encourage others to refrain from retaliation as well. While discretion remains important during this process, neither the complainant nor the respondent will be restricted from discussing or sharing information related to their complaint with others who may support them or assist them in presenting their case. The complainant and respondent are also able to discuss the facts underlying the disciplinary complaint and the process with confidential persons, such as counselors, clergy, healthcare providers, other therapeutic professionals, attorneys, or a policy confidential member of the [CARE office](#). The complainant and respondent will also be allowed to discuss the pending disciplinary complaint with their families or guardians. It will be expected that the identity of any and all persons who are not confidential and with whom a complainant or respondent wishes to share information will be disclosed to the investigator prior to sharing information.

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

- c. ***Complainant's Duty to Cooperate:*** The complainant has an obligation to cooperate with the investigator regarding this matter. While a complainant may choose to withdraw the complaint at any time, if the complaint remains pending in the formal process in their name, their cooperation is expected. Refusal/failure by the complainant to respond or meet and cooperate with the investigator regarding this matter or to sign the Privacy/Non-Retaliation Acknowledgment may result in (1) dismissal of the complaint, or (2) the adjudication of the disciplinary complaint without input from the complainant.
- d. ***No Contact Order:*** Upon initiation of a complaint under the SMAP, a bilateral and mutual No Contact Order (NCO) will be put into place between the complainant and respondent (also referred to as "parties") by OEO. The NCO will bar any communication or contact between the parties and will prohibit any interaction or exchange between them, either directly or indirectly or through others (e.g. friends, family members, attorneys, others, etc.). OEO or its designee, issues the NCO and the OEO, with the support of the appropriate Dean's Office, enforces the NCO. OEO, working together with the appropriate Dean, will work with the parties to facilitate the terms of the NCO so all parties may attend classes

and use University facilities, as appropriate. The goal of the NCO is to provide a non-punitive approach that will allow the parties, to the extent possible, to continue their academic and social endeavors while still avoiding contact during the adjudication of the complaint. The NCO can be as detailed as necessary, including specific plans of where the complainant and respondent can be at specific times. Parties should understand, however, that the University is only able to enforce NCO's within its own jurisdiction (e.g. o campus, for University-sponsored programs, etc.). Parties who have concerns about contact outside the University's jurisdiction may wish to pursue protective orders (see below). The NCO may be kept in place after the conclusion of the SMAP and may be modified to be more unilateral if there is a policy violation found against the respondent. In cases where a demonstrated violation of this Order has been shown, the responsible individual may be separated from the University pending the final resolution of the disciplinary complaint (SMAP) as an interim measure (see Section I, H). The parties may be able to seek restraining orders or other orders of protection outside the University, through the courts. Information regarding restraining orders or other orders of protection can be obtained from the Tufts University Police Department (Medford: 617.627.3030; Boston: 617.636.6610; Grafton: 508.887.4900) or through local law enforcement.

2. Administrative Complaints

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

The University affirms the right of a complainant to decide whether they wish to be involved in a SMAP. At the same time, and under limited circumstances, when the conduct at issue involves a potential threat to campus safety (which includes, but is not limited to, the alleged involvement of violence, the use of weapons, repeat offenders or potential patterns of conduct) the University will be compelled to move forward with a SMAP. 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 and will inform the complainant how their information will be shared. Support resources and interim measures will be available to the complainant and the respondent as appropriate and a mutual No Contact Order (NCO) will be implemented (see Section I, G for more information about NCOs).

To initiate an Administrative Complaint, the University will obtain enough information about the alleged incident to prepare an Administrative Complaint Statement to be used in place of

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

The investigator will notify the respondent when an Administrative Complaint is initiated and provide the respondent with the Administrative Complaint Statement in place of the Complainant's Statement. The respondent will be given the opportunity to submit a written Respondent's Statement in response as discussed below and the adjudication of the complaint will proceed under the process outlined herein.

A complainant interested in discussing an Administrative Complaint may contact the OEO (oeo@tufts.edu; 617-627-3298), or a policy confidential member of the CARE office <https://care.tufts.edu>.

B. Responding to a Disciplinary Complaint

The person against whom the disciplinary complaint is brought is called the respondent. The respondent shall be given written notification when a disciplinary complaint has been filed against them.

1. ***Initial Notification Meeting:*** Within ***five university business (5) days*** of receiving notice that a disciplinary complaint has been filed against them, the respondent must meet with the OEO. The respondent is welcome to bring one support person/advisor (see Section I, S) with them to any meetings. At this meeting, several things will happen:
 - a. ***Privacy/Non-Retaliation Acknowledgment:*** First, the respondent will be required to sign a [Privacy/Non-Retaliation Acknowledgment](#). All complainants, respondents, witnesses and support persons/advisors (see Section I, S) in this process will be required to sign a [Privacy/Non-Retaliation Acknowledgment](#) (Acknowledgment) which will confirm that the investigator has discussed the privacy policy surrounding the Sexual Misconduct Adjudication Process (SMAP) and that the individual understands the importance of maintaining discretion and respecting the privacy of the process. Through this Acknowledgment, the complainant, respondent, witnesses and support persons/advisors also agree to refrain from any retaliatory conduct against anyone else involved in this process in any manner and will encourage others to refrain from retaliation as well. While discretion remains important during this process, the complainant and respondent will not be restricted from discussing or sharing information related to their complaint with others who may support them or assist them in presenting their case. The complainant and respondent are also able to discuss the facts underlying the disciplinary complaint and the

process with confidential persons, such as counselors, clergy, healthcare providers, other therapeutic professionals, attorneys or a policy confidential member of the [CARE office](#). The complainant and respondent will also be allowed to discuss the pending disciplinary complaint with their families or guardians as discussed previously in this document. It will be expected that the identity of all persons who are not confidential and with whom a complainant and respondent wishes to share information will be disclosed to the investigator prior to sharing information to preserve the integrity of the investigation.

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

- b. **Duty to Cooperate:*** The respondent has an obligation to cooperate with the investigator regarding this matter. While a respondent may choose to withdraw from the University at any time before the Decision-Making Panel issues a decision, if they remain enrolled, their cooperation is expected. Refusal/failure by the respondent to meet and cooperate with the appropriate Dean or investigator regarding this matter or to sign the Privacy/Non-Retaliation Acknowledgment may result in (1) the removal of the respondent from the University as an interim measure (see Section I, H) and/or referral for further disciplinary action, and/or (2) the adjudication of the disciplinary complaint without input from the respondent.
- c. **Complainant's Statement:*** Once the respondent has signed the Privacy/Non-Retaliation Acknowledgment, they will be provided with a copy of the Complainant's Statement or Administrative Complaint Statement. The investigator can discuss the nature of the Complaint with the respondent and will explain the rights and responsibilities of the respondent within this process. The respondent will also be given a copy of the SMAP as well as the Sexual Misconduct Policy, and any other policy or process applicable to any of the allegations raised.
- d. **No Contact Order:*** Upon initiation of a complaint under the SMAP, a bilateral and mutual No Contact Order (NCO) will be put into place between the complainant and respondent (also referred to as "parties") by OEO. The NCO will bar any communication or contact between the parties and will prohibit any interaction or exchange between them, either directly or indirectly or through others (e.g. friends, family members, attorneys, others, etc.). OEO or its designee, issues the NCO and the OEO, with the support of the appropriate

Dean's Office, enforces the NCO. OEO, working together with the appropriate Dean, will work with the parties to facilitate the terms of the NCO so all parties may attend classes and use University facilities, as appropriate. The goal of the NCO is to provide a non-punitive approach that will allow the parties, to the extent possible, to continue their academic and social endeavors while still avoiding contact during the adjudication of the complaint. The NCO can be as detailed as necessary, including specific plans of where the complainant and respondent can be at specific times. Parties should understand, however, that the University is only able to enforce NCO's within its own jurisdiction (e.g. o campus, for University-sponsored programs, etc.). Parties who have concerns about contact outside the University's jurisdiction may wish to pursue protective orders (see below). The NCO may be kept in place after the conclusion of the SMAP and may be modified to be more unilateral if there is a policy violation found against the respondent. In cases where a demonstrated violation of this Order has been shown, the responsible individual may be separated from the University pending the final resolution of the disciplinary complaint (SMAP) as an interim measure (see Section I, H). The parties may be able to seek restraining orders or other orders of protection outside the University, through the courts. Information regarding restraining orders or other orders of protection can be obtained from the Tufts University Police Department (Medford: 617.627.3030; Boston: 617.636.6610; Grafton: 508.887.4900) or through local law enforcement.

2. **Respondent Has Two Options:** Once the respondent has met with the investigator, they have ***five (5) university business days*** to either:
 - a. ***Option One - Acceptance of Charges:*** After meeting with the OEO investigator and reviewing the Complainant's Statement, the respondent may accept responsibility for the conduct alleged in the Complainant's Statement. If the respondent accepts responsibility for the conduct alleged in the Complainant's Statement, the process does not proceed to the fact-finding investigation. Instead, the matter is referred to the Decision-Making Panel to decide appropriate disciplinary action.

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

If the respondent does not wish to accept responsibility for the conduct alleged in the Complainant's Statement, then they will need to prepare a Respondent's Statement as noted below. The respondent must decide whether they would like to utilize this acceptance/resolution process within ***five university business (5) days*** of meeting with the OEO investigator. However, if the respondent decides they do not wish to use this acceptance/resolution process, they must then submit their Respondent's Statement within ***five university business (5) days*** of meeting with the OEO investigator.

- b. ***Option Two - Respondent's Statement:*** If the respondent does not accept responsibility for the conduct alleged in the Complainant's Statement, they must provide a written response to the information contained in the Complainant's Statement. The Respondent's Statement must be submitted to the investigator within ***five (5) university business days*** after the initial meeting between the respondent and the investigator.

This Respondent's Statement is the first opportunity for the respondent to address the allegations brought against them. This is the only written document that may be submitted by the respondent in this part of the process, so it should be given time and attention while it is being crafted. After the Respondent's Statement has been submitted, the respondent will be able to discuss any clarifications, corrections or additions to the statement with the investigator. In limited circumstances, a respondent may need to dictate a statement. In such circumstances, the respondent will review and edit the transcript for accuracy and the respondent will sign the respondent statement to verify and confirm accuracy and completeness. If transcription is requested, the OEO investigator may permit a reasonable time extension.

The Respondent's Statement should communicate the respondent's full account of the incident(s) alleged and its context, with as much detail as possible about the facts surrounding the alleged misconduct and should not simply be responsive to the Complainant's Statement. It is the respondent's reflections on the complaint. To facilitate the process, the respondent should:

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

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

- i. *Witnesses:* This list should include the names and contact information of any witnesses who may have seen and/or heard the incident and witnesses to whom the respondent may have spoken to about the incident (see Section I, R). When identifying witnesses, please include a brief description of what information that person might possess. In order to preserve the integrity of the investigation, the

respondent should refrain from talking with the individuals who have been identified as witnesses. The respondent may tell a person that they have been identified as a witness, but they should refrain from discussing any details of the complaint with them, and they should **not** solicit witnesses or ask individuals if they are willing to be a witness in an investigation. Please note that character witnesses are not used within this process.

- ii. *Documents:* This list should identify any relevant documentation regarding the incident which includes (but is not limited to) texts, e-mails, video, journal entries or social media correspondence between the complainant and respondent or others regarding the incident. This list should include a brief explanation of the information contained in the documentation and who might be in possession of that document. The respondent should identify the sources and/or location of this supporting information but should not attempt to collect information that is not in their possession. The investigator will endeavor to solicit any relevant statements or documents referenced through this process.
- iii. *Suggested Questions or Areas of Inquiry:* Although the investigative process is conducted by the assigned investigator, the respondent is permitted to suggest any questions or area of inquiry to the investigator at the time of the response to the complaint or through the investigation. The decision to pursue any related questioning or areas of inquiry remain within the discretion of the investigator.

The Respondent's Statement must be written by the respondent. Statements written by parents, attorneys, support person/advisors or others will not be accepted. However, respondents are encouraged to consult with a support person/advisor of their choice or to share a draft of the statement with a person who is well-positioned to discuss, among other matters, the statement's style, organization, length, and clarity, while also anticipating questions that may be raised by the investigator. It is not appropriate for anyone in the Dean's office or OEO staff to review draft statements. The respondent will be required to sign a statement verifying that they wrote their own Respondent's Statement. The respondent should be aware that the complainant will be given a copy of the Respondent's Statement in its entirety.

C. Fact-Finding Investigation

After both the complainant and respondent have submitted their statements, the investigator will initiate the fact-finding investigation. The investigator will gather information relevant to the complaint and the facts raised in the complainant and respondent statements. It is the responsibility of the investigator, **not** the complainant and respondent, to gather the information that the investigator deems appropriate for the resolution of the complaint. Neither the complainant nor the respondent should collect this information, but should instead do their best to preserve and share with the investigator any relevant information they may have in their possession. The scope of the fact-finding investigation is not limited to information provided by

the complainant and respondent or to the violations outlined in the disciplinary complaint. In all cases, the investigator will conduct a complete, reliable and impartial investigation into the allegations of the disciplinary complaint, reviewing all information deemed relevant by the investigator.

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

During the course of the investigation, the investigator may utilize some or all of the following procedures, in whatever order the investigator deems most appropriate.

1. Document Review: Once complainant and respondent statements have been submitted and exchanged, the investigator will review these statements and all of the supporting material referenced. The investigator will then attempt to obtain any documents or other materials deemed relevant to the investigation. As determined by the investigator, any documents or information deemed to be material to the findings regarding the disciplinary complaint or any other violations will be disclosed to both the complainant and respondent for comment or rebuttal during the course of the investigation. Please note that documents include both paper and digital items, such as text messages, journal entries, e-mails, video and other social media communications.
2. Complainant/Respondent Interviews: The investigator will interview the complainant and the respondent separately. Interviews are an opportunity for the complainant and respondent to discuss their recollection of the event(s) in question, supplement written statements already submitted, voice concerns, and to work with the investigator to determine what additional information may be helpful in the investigation of the allegations. The complainant and respondent may also discuss the impact that this experience has had on them.

The investigator may interview the complainant and respondent more than once, as necessary. During the interview(s), the investigator will inform the complainant and respondent of information gathered and will provide them with an opportunity to comment or respond to that information to the extent practicable. If additional policy or code violations have been identified by the investigator during the course of the investigation, the complainant and respondent will be notified of those issues during their interview and will be given an opportunity to respond.

The complainant's or respondent's support person/advisor (see Section I, S) may accompany them to all the meetings with the investigator but may not participate in the

conversation. Prior to sitting in on any interviews, the complainant and respondent must disclose the name and contact information for their support person/advisor. The support person/advisor will be required to sign a Privacy/Non-Retaliation Acknowledgment.

3. *Witness Interviews:* The investigator will interview any witnesses identified by the complainant and/or respondent that the investigator deems relevant to the resolution of the disciplinary complaint. The investigator may also interview any other persons that they believe may have information relevant to this matter. The investigator will employ best efforts to interview relevant witnesses who are no longer on campus or in the Boston area, attempting to contact them by phone or internet (i.e. Skype). Investigators may ask a party what a witness may contribute or know about the allegations and will make determinations as to relevancy. Decisions related to witnesses are made at the discretion of the investigator and in conjunction with all the facts gathered.

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

4. *Expert Witnesses:* The investigator reserves the right to consult with any experts they deem necessary to the determination of the facts of this case. An expert witness could be consulted to review or provide a professional opinion regarding evidence discovered in the fact-finding investigation including, but not limited to, sexual assault forensic exam (SAFE) kits and toxicology reports. Any expert witnesses will be required to sign and abide by the terms of the Privacy/Non-Retaliation Acknowledgment and University policy even if they are not members of the Tufts community.
5. *Site Visits:* The investigator may, based on the case under review, decide to visit a relevant location to observe and/or collect information about the location.

D. Investigation Report

Once the fact-finding investigation has been completed, the investigator will prepare a report summarizing and analyzing the relevant facts obtained through the investigation. Before the report is finalized, the investigator will provide the parties access to review the draft investigation report, redacted for witness privacy, via secure on-line portal and will provide both parties with an opportunity to submit comments in writing for the investigator's consideration before the

final report goes to the Panel. The parties will also be provided access to the information collected in the case for review and response.

Either party may submit names of additional witnesses indicating the information or kind of information the witness is expected to provide, and/or to raise questions or areas of inquiry for the investigator to consider in furtherance of the investigation at this process point. Any further investigation will be conducted at the investigator's discretion. Any comments must be provided within **five (5) university business days** from the investigator's notice of the availability of the report. At the end of the response period, the investigator will make any adjustments to the report that the investigator, at their discretion, deems appropriate to finalize the report. The final report will be submitted to parties and to the Decision-Making Panel for its consideration.

E. Pre-Decision Conference

A Decision-Making Panel consisting of three trained, impartial administration, faculty or staff members from throughout University will be assembled to act as the final decision-maker in the Sexual Misconduct Adjudication Process (SMAP), (see Section I, L). The Decision-Making Panel will have the responsibility to determine for each act of alleged sexual misconduct, stalking and/or relationship violence, based on a preponderance of the evidence, preliminary findings on the following: (1) whether the respondent violated the Sexual Misconduct Policy and, if so, to identify the type of sexual misconduct found; and (2) what specific disciplinary sanction and/or remedy should be imposed.

Upon receipt of the final investigation report, the Decision-Making Panel will meet and review the report. The Panel may determine that additional inquiry is needed for a decision to be rendered. If so, the Panel Chair will ask the investigator to conduct a supplemental fact-finding investigation focused on the specific inquiries posed by the Decision-Making Panel; the investigator will prepare and submit a supplemental investigation report to the Panel that will also be shared with the parties via secure on-line portal.

After reviewing the final investigation report but prior to issuing its decision, the Decision-Making Panel Chair and Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298) will schedule **separate** Pre-Decision Conferences with the complainant and respondent. The Decision-Making Panel Chair reserves the right to include all three members of the Decision-Making Panel in the Pre-Decision Conferences at their discretion. During the Pre-Decision Conferences, the Decision-Making Panel member(s) or Chair will share the Panel's preliminary findings with respect to the sexual misconduct alleged in the complaint, as well as any preliminary investigative findings related to policy or code violations found beyond those noted in the original complaint. The Decision-Making Panel's preliminary decision will be made on the preponderance of the evidence standard, that is whether the facts presented in the investigation report support a preliminary finding that it is more likely than not that the respondent violated the Sexual Misconduct Policy. The preliminary decision of the Decision-Making Panel will be reached by a majority.

At the Pre-Decision Conference, the Decision-Making Panel will share with the complainant and respondent either of the following preliminary decisions with respect to each alleged act of sexual misconduct in a disciplinary complaint:

- Based on the preponderance of the evidence, a preliminary finding that a provision of the Sexual Misconduct Policy was violated as there is sufficient information to substantiate an allegation of the disciplinary complaint; and/or
- Based on the preponderance of the evidence, a preliminary finding that a provision of the Sexual Misconduct Policy was not violated as there is insufficient information to substantiate an allegation of the disciplinary complaint.

Following the Pre-Decision Conference, the complainant and respondent may each provide a rebuttal statement, impact statement or narrative, or identify any new documents or information that may be relevant to the finding. Any additional information or statements must be provided, in writing, to the Title IX Coordinator or designee within **five (5) university business days** after the Pre-Decision Conference.

The Decision-Making Panel will consider any rebuttal or impact statements and/or narratives and may determine that additional inquiry is needed for a decision to be rendered regarding the disciplinary complaint. If so, the Decision-Making Panel Chair will ask the investigator to conduct a supplemental fact-finding investigation into the areas of concern. The investigator will focus any additional investigation on the specific inquiries posed by the Decision-Making Panel. The investigator will then prepare and submit a Supplemental Investigation Report addressing the findings as to the issues raised by the Decision-Making Panel that will also be shared with the parties via secure portal.

The Decision-Making Panel Chair reserves the right to schedule subsequent, separate Pre-Decision Conferences to address the findings from the supplemental investigation with the complainant and respondent, should the Decision-Making Panel feel, at its discretion, that such a meeting would be helpful to the process.

At no time are the complainant and respondent to contact any member of the Decision-Making Panel directly. All communication between the complainant and respondent and the Decision-Making Panel must occur through the Title IX Coordinator or a designee.

F. Acceptance of Charges

At any time prior to the Decision-Making Panel's Decision, the respondent may accept responsibility for the sexual misconduct, stalking and/or relationship violence alleged in the complaint. If the respondent accepts responsibility for the conduct alleged in the complaint, the matter will be referred to the Decision-Making Panel to decide the appropriate disciplinary sanction against the respondent. The Decision-Making Panel may take the respondent's acceptance of responsibility into consideration in determining the appropriate disciplinary

action. Once the respondent accepts responsibility, such acceptance cannot be withdrawn. A written notice of outcome will be issued by the Decision-Making Panel. These documents will become part of the respondent's student records in accordance with that individual school's policies and procedures and the outcome of the Sexual Misconduct Adjudication Process (SMAP) will be shared with the complainant consistent with the Family and Educational Rights and Privacy Act (FERPA).

G. Decision-Making Panel's Decision

Upon determining that all allegations in the disciplinary complaint have been adequately investigated, the Decision-Making Panel (see Section I, L) will issue a final decision based on the information presented in the investigation report, rebuttals and impact statements/narratives, any supplemental investigation report or clarifications provided by the investigator, and any statements provided by the parties during or following the Pre-Decision Conference. The decision will be made on the preponderance of the evidence standard, i.e., whether it is more likely than not that the respondent violated the Sexual Misconduct Policy, and the decision will be based on the determination of a majority of the Decision-Making Panel. The Panel Chair will draft the Decision-Making Panel's decision and submit it in writing to the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298).

The Decision-Making Panel may make either of the following decisions with respect to each alleged act of sexual misconduct in a complaint:

- Based on the preponderance of the evidence, a preliminary finding that a provision of the Sexual Misconduct Policy was violated as there is sufficient information to substantiate an allegation of the disciplinary complaint. The Decision-Making Panel will then impose the appropriate disciplinary action; and/or
- Based on the preponderance of the evidence, a preliminary finding that a provision of the Sexual Misconduct was not violated as there is insufficient information to substantiate an allegation of the disciplinary complaint.

The Title IX Coordinator will separately and, if possible, contemporaneously notify the complainant and respondent of the Panel's final decision in writing. Both the complainant and the respondent may have a separate meeting with the Title IX Coordinator and appropriate Dean (see Section I, BB) to discuss the outcome of the SMAP and any appropriate sanctions and/or remedies. This meeting is optional and must be scheduled within five (5) university business days of the Panel's final decision.

The Decision-Making Panel's decision is a private document. Therefore, the University strongly encourages the complainant and respondent to share the document with confidential persons or support persons who have been advised of and understand the importance of the privacy and non-retaliation aspects of the SMAP, such as counselors, clergy, other therapeutic professionals, attorneys, or a policy confidential member of the CARE office <https://care.tufts.edu>. The decision

will be kept by the University as a permanent record consistent with its record keeping policies even if the finding is that the Sexual Misconduct Policy was not violated.

H. Appellate Process

Both the complainant and respondent are entitled to one appeal of the Decision-Making Panel's decision issued through the Sexual Misconduct Adjudication Process (SMAP). The person(s) filing the appeal is the Appellant. An appeal must be filed, in writing, on the Notice of Appeal Form within **five (5) university business days** of the appellant's optional meeting with the Title IX Coordinator and the Dean or within **five (5) university business days** of the Panel's final decision, whichever is later. The **Notice of Appeal** form can be obtained from the Title IX Coordinator (jill.zellmer@tufts.edu; 617-627-3298). The other party to the SMAP will be notified if an appeal has been filed and will be provided with a copy of the Notice of Appeal Form. In some situations, both the complainant and respondent may file an appeal. In this situation, the Appellate Panel will consider and review both appeals together. If neither party to the SMAP files an appeal within the five (5) university business day timeframe, the Decision-Making Panel's decision will be considered final and the adjudication process will be permanently closed.

The Notice of Appeal Form should be requested from and filed with: Jill Zellmer, Title IX/504 Coordinator and Executive Director, OEO, Tufts University, 196 Boston Ave, Suite 3800, Medford, MA 02155; Tel: 617-627-3298; E-mail: jill.zellmer@tufts.edu

The appeal will be considered by an impartial, trained Appellate Officer (see Section I, M). The decision regarding the selection of the Appellate Officer will be made at the discretion of the Title IX Coordinator. In considering the appeal, the Appellate Officer will be given the Notice of Appeal, the statements of the complainant and respondent, the Decision-Making Panel's decision, the investigation report(s) and any other information they may request to review.

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

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

1. **Procedural Error**: The appellant alleges that there was a significant (i) deviation or change from the procedures outlined in the SMAP and (ii) that deviation had an adverse impact on the outcome of the complaint against the appellant. If the Appellate Officer determines that there was a procedural error that could have altered the outcome of the

case, the appeal will be submitted to the original Decision-Making Panel for a determination regarding the impact that the procedural error had on the outcome of the complaint.

2. *New Information:* The appellant alleges that, subsequent to the issuance of the Decision-Making Panel's decision, new information became available which would have impacted the outcome of the disciplinary complaint. The appellant must: (i) present the new information; (ii) show why it was unavailable prior to the Decision-Making Panel's decision; and (iii) show that the new information would have altered the outcome of the complaint. If the Appellate Panel determines that there is information that meets these three requirements, the appeal will be submitted to the original Decision-Making Panel for review in light of the new information. At the Decision-Making Panel's discretion, additional investigation of the new information can be requested and the sanction may be adjusted accordingly.
3. *Conflict of interest or bias:* The Appellant alleges that the Title IX Coordinator, investigator or decision-making panel had a conflict of interest or bias for or against the party that affected the outcome of the matter.
4. *Severity of The Disciplinary Action:* The Appellant alleges that the disciplinary action issued in the Decision-Making Panel's decision is inappropriate for the behavior alleged or is inconsistent with the type of discipline issued by the University to others who were found to be responsible for substantially similar violations or offenses. If the Appellate Officer determines that the disciplinary action was inappropriate for the behavior alleged or is inconsistent with discipline for similar violations, it will remove the discipline issued by the Decision-Making Panel and issue a new disciplinary action in its place.

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

I. 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/ any informal resolution and its results for purposes of Title IX compliance and consistent with University for at least seven (7) years.
2. *Internal Reporting:* Once a final resolution has been reached, any disciplinary decision will become a permanent part of the respondent's student records if it includes a

suspension or expulsion. Other disciplinary actions may temporarily become part of the respondent's student records depending on the action taken, in accordance with the policy and practices of the appropriate Dean's office. When this disciplinary action is a part of the respondent's student records, it may be available to other administrators within the University for their review on a limited need to know basis.

3. External Reporting: All information regarding a complaint under the Sexual Misconduct Adjudication Process (SMAP) is considered private and is protected by federal law under the Family Educational Rights and Privacy Act (FERPA) and may also have protection under other state or federal law, including state privacy law. Under certain circumstances information may be shared externally with other educational institutions, licensing boards and government agencies as permitted or required by law or other applicable rules. External disclosure of this information may also be made subject to subpoena or other court action. In situations where an external disclosure of information will be made, the University will endeavor to advise the individual whose information will be shared 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.
4. Subsequent Related Proceedings: Following the conclusion of a Sexual Misconduct Adjudication Process (SMAP) where findings of responsibility are made, students should understand that any disciplinary sanction issued will be reviewed by the appropriate Dean. In certain circumstances, this review may result in further process and additional sanctions. For instance, students enrolled in Tufts' graduate health sciences programs are subject to ethical and professional requirements that may warrant further review of any SMAP finding by the applicable Ethics and/or Professionalism Committees. In addition, students of any school with pre-existing discipline should contact their appropriate Dean (see Section I, BB) with questions about the possible impact of any finding of responsibility on their ongoing student status. In certain circumstances, a finding of responsibility under the SMAP may result in more severe discipline issued by the appropriate Dean if there is a pre-existing record of discipline that would reasonably warrant it.

Notice of Outcome: At the conclusion of the University's review of any report relating to the University's Sexual Misconduct Policy, OEO will inform the reporting party and/or complainant and the respondent(s) of the result of the inquiry and/or disciplinary proceeding and any corresponding sanction and/or remedy, the rationale for the result, and any procedures for seeking further review of the matter. In circumstances where a final determination has not been reached but OEO's investigative or other procedures conclude (e.g., respondent withdraws prior to the conclusion of a SMAP or accepts responsibility, or a complainant withdraws a complaint) OEO will nonetheless issue a notice of outcome outlining the status of the matter and endeavor to provide said notice to the appropriate parties.

J. 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 Sexual Misconduct, Stalking and Relationship Violence Policy outside of the process described in the Sexual Misconduct Adjudication Process (SMAP) 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 will remain consistent with the spirit of the SMAP 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.