

August 2020

Tufts Title IX Policy

I. Statement of Policy

Unlawful discrimination and sexual violence has no place at Tufts University. It violates the University's core values, including its commitment to community safety, equal opportunity and inclusion, and will not be tolerated. Sexual harassment, sexual assault, dating violence, domestic violence and stalking is prohibited by this policy and violates Title IX of the Education Amendments of 1972. As a recipient of federal funding critical to supporting the University's mission, Tufts complies with Title IX. Title IX applies to the University's programs or activities, including admissions and employment. Retaliation is also a violation of this Title IX Policy and other University Policies. Retaliation as a result of an individual filing a report or complaint, testifying, assisting or participating in or refusing to participate in any manner in an investigation, proceeding or hearing afforded by the Title IX regulations is unlawful and against this policy.

The University, through its Office of Equal Opportunity (OEO), will respond to conduct prohibited by this Title IX Policy. The OEO will respond to any conduct made known to the University's Title IX Coordinator by any responsible employee, reporter or impacted party, or to any university official authorized to take corrective action under this Policy (which at Tufts includes the Title IX Coordinator and any OEO investigator). If the conduct of concern does not meet the definitions under this policy, the University reserves the right to address the behavior under different policies, including the University's [Sexual Misconduct Policy](#) and associated formal and informal procedures (See [Explanation of Informal Process Options](#)). Once any of these individuals receives a report from a complainant or impacted party regarding allegations which arise under this policy, the Title IX Coordinator will be notified and she or her designee will promptly contact the individual to discuss the availability of any supportive measures ([Resources and Supports](#)). The individual's wishes, with respect to any supportive measures, will be considered and the process for filing a [Formal Complaint](#) will be explained. Depending on the individual's wishes and the [Assessment of the Allegations](#), the Formal Complaint may lead to an informal or

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formal process. While the informal and formal options ([Explanation of Informal Process Options](#)) require the filing of a [Formal Complaint](#), supportive measures will be available to a complainant or impacted party regardless of whether a formal complaint is filed. The University's Title IX Coordinator is Jill Zellmer who may be contacted at any time at: jill.zellmer@tufts.edu or at: 617-627-3298. Ms. Zellmer is also the Executive Director of the University's OEO and the 504 Officer. She may designate OEO staff as her designee toward providing impacted parties with a prompt response.

Complainants or impacted parties may also choose to file a [Formal Complaint](#) and request an informal or a formal process against the respondent(s) at issue pursuant to the University's Title IX adjudication process entitled [SMAP-X](#). See [Explanation of Informal Process Options](#). To do so, the complainant will initiate the process by filling out a [Complaint Form](#) and submitting the completed, signed form to the Title IX Coordinator or by filing an [Ethicspoint](#) complaint. Please see the **SMAP-X** for the process which will apply to violations alleged under this policy and will be decided based on a preponderance of the evidence standard. Please also note that conduct prohibited by the University's Sexual Misconduct Policy, which remains an applicable code of sex and gender based conduct for all Tufts community members may also overlap with conduct alleged under this policy. The **SMAP-X** describes how overlapping policy matters will be adjudicated for students and employees, respectively, and what notifications will be provided at the appropriate times depending on the various options (See [Timeline](#).)

Reporting options and [Resources and Support](#) options for individuals affected by sexual misconduct are listed in Section IV of the University's Sexual Misconduct Policy, on the OEO website at: <https://oio.tufts.edu/> and on the University's Center for Awareness, Resources and Education (CARE)'s website at: <https://care.tufts.edu/>

II. Reason for this Policy

Effective August 14, 2020, Tufts will be required to comply with the U.S. Department of Education's new Title IX regulations. The University's Sexual Misconduct Policy will still apply to all students, staff, faculty and third parties and outlines the institution's expectations of the general standards of conduct for all its community members on the topic of sexual misconduct with a much

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broader geographic and jurisdictional scope. This Title IX Policy applies only to conduct prohibited under the new Title IX regulations and has been developed for the purpose of providing a clear definition of said prohibited conduct in compliance with the University's obligations under the law.

III. Individuals Affected by this Policy

This policy will apply to all students, staff, faculty and third parties.

IV. Scope:

Prohibited conduct under this policy includes "sexual harassment" as defined in the Title IX regulations as sexual assault, stalking, dating/domestic violence and/or unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity, including quid pro quo sexual harassment. In addition, it applies when this prohibited conduct occurs within the University's education programs or activities in the United States; and when said conduct has been alleged by a complainant that is, at the time of the making of the complaint, involved in the University's education program or activities. This policy also prohibits retaliation. The University has the discretion to proceed under this policy and applicable procedures in situations where the respondent is no longer involved in the University's education program or activities, including employment or when a complainant chooses to withdraw a complaint. In addition, in circumstances where a complainant is not willing to move forward with a formal complaint, the Title IX Coordinator reserves the right to bring forward an administrative complaint in the interest of the University community.

V. Selected Definitions

- A. **Reporter:** Responsible employee or impacted party who informs the Title IX Coordinator of a possible policy violation of this policy.
- B. **Impacted party:** An alleged victim of prohibited conduct under this policy before they file a Formal Complaint or if they opt against filing a complaint. Impacted parties may choose to remain anonymous and will still be eligible for resources and support.
- C. **Complainant:** Alleged victim of prohibited conduct under this policy.

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D. Respondent: Alleged perpetrator of prohibited conduct under this policy.

E. Consent: To be effective, consent must be an informed, deliberate and voluntary decision to engage in mutually acceptable sexual activity. Consent is an affirmative process. It is the responsibility of the person who wants to engage in sexual activity to make sure that they have received consent from any other person(s) involved. If an individual initiating sexual activity is not sure if they have received consent, they have an obligation to seek additional clarification. Failure to do so could violate this policy and lead to disciplinary action. Consent cannot be based on assumptions. Tufts policy always requires that individuals obtain consent before engaging in sexual activity. *For more information about the Tufts definition of consent see the University's [Sexual Misconduct Policy](#).*

F. Sexual Harassment (as defined by the 2020 Title IX regulations):

- (1) an employee of the University conditioning the provision of an aid, benefit, or service of the recipient on the individual's participation in unwelcome sexual conduct;
- (2) unwelcome (or non-consensual) conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v)(a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation which includes forcible rape, sodomy or fondling, sexual assault with an object or incest or statutory rape)¹;

¹ "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v)(a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation describes "forcible" as any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent. The following terms are also further defined in the statute:

1. **Forcible Rape** – The carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).
2. **Forcible Sodomy** – Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
3. **Sexual Assault With An Object** – The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or

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- (4) “dating violence” as defined in 34 U.S.C. 12291(a)(10)(violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) the frequency of interaction between the persons involved in the relationship.)
- (5) “domestic violence” as defined in 34 USC 12291(a)(8)(felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or [youth](#) victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction).
- (6) “stalking” as defined in 34 U.S.C. 12291(a)(30)(engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress.

G. Incapacity: Incapacity is a state in which someone cannot make a decision because they lack the ability to fully understand what is happening and therefore cannot consent even if they appear to be a willing participant. An individual who is intoxicated may be able to consent to sexual activity. However, when an individual passes from intoxication to a state of

against that person’s will; or not forcibly or against this person’s will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

4. **Forcible Fondling** – The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person’s will; or, not forcibly or against the person’s will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity.

“**Non-Forcible**” is defined as unlawful, non-forcible sexual intercourse. The following terms are also further defined in the statute:

1. **Incest**–Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
2. **Statutory Rape**–Non-forcible sexual intercourse with a person who is under the statutory age of consent.

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incapacitation, they no longer have the ability to give consent under this policy. When incapacitated, an individual moves from being simply drunk and/or under the influence of drugs and/or alcohol and becomes physically and/or mentally debilitated due to their drug or alcohol consumption. Individuals can also be incapacitated because they are unconscious or asleep. *For more information about the Tufts definition of incapacity see the University's [Sexual Misconduct Policy](#).*

- H. *Retaliation:*** Retaliation under this policy can include intimidation, threats, coercion or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX or its applicable regulations because the individual made a report or complaint, testified, assisted or participated in or refused to participate in any manner in an investigation, proceeding or hearing afforded by this policy or associated process. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its applicable regulations, constitutes retaliation. Retaliation allegations may be consolidated with other forms of prohibited conduct defined in this section if the facts and circumstances significantly overlap. If the facts and circumstances do not significantly overlap, the University retains discretion to adjudicate the allegation under a different but appropriate policy such as the [Sexual Misconduct Policy](#) and corresponding [SMAP](#) process. For example, if a Respondent retaliates against a Complainant for filing a complaint against them, that behavior could be consolidated with the other prohibited conduct alleged, provided appropriate notice is afforded. On the other hand, if the retaliatory conduct is committed by one of the parties' friend group who are not otherwise subject to a grievance under this Policy, that behavior could be adjudicated under another student or employee conduct policy which prohibits such behavior.
- I. *Educational Program or Activity:*** A location, event or circumstances over which the University exercises substantial control over both the respondent and the context in which sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University. Incidents that occur outside of Tufts'

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substantial control or in non-Tufts locations but to Tufts faculty, staff and students may be covered or processed under the [Sexual Misconduct Policy](#).

- J. *Supportive Measures:* Tufts will provide supportive measures (see [Resources and Support](#)) for students and employees with sexual misconduct concerns associated with this and other policies, as appropriate. These supportive measures are available to impacted parties even if they choose not to file or pursue a **Formal Complaint** or if the status of a respondent to the University is unclear (un-enrolled student, non-employee, etc.).

Various available and appropriate supportive measures include a variety of non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of Formal Complaint or where no Formal Complaint has been filed. These supportive measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment or deter sexual misconduct. The University will also prioritize confidentiality while implementing the measures as effectively as possible. Some of these supportive measures include but are not limited to: health and counseling services, bilateral or mutual stay away orders, bilateral or mutual no-contact orders, bilateral or mutual no trespass orders, safety planning, schedule and housing changes, academic supports or adjustments, and information about financial aid and visa/immigration related issues. For more information about supportive measures see [Resources and Supports](#).

VI. Standard of Evidence and Sanctions for Violations

Tufts University uses the preponderance of evidence standard when reviewing all Title IX (and other) allegations of misconduct. Violations of this policy are subject to disciplinary action. Depending on the nature of the violation, disciplinary consequences for violations of this policy may include denial of privileges, disciplinary probation, suspension and expulsion for students, and may include warnings (verbal or written), demotions, suspensions and termination for employees.

VII. Related Documents, Forms and Procedures

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Complaints under this policy are processed through the University's Title IX adjudication process entitled SMAP-X. Any questions about this policy or the procedures associated with it may be raised with the University's Title IX Coordinator directly, or by contacting the University's Office of Equal Opportunity at 617.627.3298 or jill.zellmer@tufts.edu, or by contacting the University's OEO at oeo@tufts.edu.

VIII. Relevant Administrative Agency

U.S. Department of Education, Office for Civil Rights (OCR)
5 Post Office Square, 8th floor
Boston, MA 02109-3921
617.289.0111

While OCR complaints should generally be filed within 180 days of the last date of the alleged discrimination, OCR may extend this filing deadline in a variety of circumstances.