

## **POLICY: Title IX Sex and Gender Discrimination**

As used in this document, the term “complainant” refers to the person impacted by alleged sexual harassment or discrimination. The term “respondent” refers to the person who has allegedly engaged in discrimination.

### **Applicable Scope**

Tusculum University affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. All policies below are subject to resolution using the Tusculum University’s Title IX Resolution Process (TIXRP), as detailed below. When the respondent is a member of the University community, the TIXRP is applicable regardless of the status of the complainant who may be a member or non-member of the campus community, including students, student organizations, faculty, administrators, staff, guests, visitors, campers, etc.

### **Title IX Coordinators**

The Title IX Coordinators oversee implementation of the Title IX Policy. The Title IX Coordinators head the Title IX Team and act with independence and authority free of conflicts of interest. To raise any concern involving a conflict of interest by the Title IX Coordinators, contact the University President, Dr. Scott Hummel. To raise concerns regarding a potential conflict of interest with any other administrator involved in the TIXRP, please contact a Title IX Coordinator.

Inquiries about and reports regarding this policy and procedure may be made internally to:

Erin Frizzell  
Title IX Coordinator  
Dean of Students  
P.O. Box 5049  
Greeneville, TN 37743  
Niswonger Commons, Office 225  
(423) 636-7300, Ext. 5090  
[efrizzell@tusculum.edu](mailto:efrizzell@tusculum.edu)

### **Deputy Title IX Coordinators:**

Rachael Barnett  
Student Support Services TRIO  
P.O. Box 5053  
Greeneville, TN 37743  
Niswonger Commons, Office 417  
(423) 636-7300, Ext. 5206  
[rbarnett@tusculum.edu](mailto:rbarnett@tusculum.edu)

Dr. David Cook  
Provost and Vice President of Academic Affairs  
P.O. Box 5047  
Greeneville, TN 37743  
McCormick Hall, Office 214  
(423) 636-7300, Ext. 5305  
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Deborah S. Davis  
Athletics Associate Athletic Director/SWA/Compliance  
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Executive Director of TRIO Programs  
P.O. Box 5053  
Greeneville, TN 37743  
Meen Center, Office 100  
(423) 636-7300, Ext. 5225  
[dsmith@tusculum.edu](mailto:dsmith@tusculum.edu)

Charles Sutton  
Vice-President of Student Affairs and Retention  
P.O. Box 5049  
Greeneville, TN 37743  
Niswonger Commons, Office 225  
(423) 636-7300, Ext. 5273  
[csutton@tusculum.edu](mailto:csutton@tusculum.edu)

Inquiries may be made externally to:  
Office for Civil Rights (OCR)  
U.S. Department of Education 400 Maryland Avenue, SW Washington, DC 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

Equal Employment Opportunity Commission (EEOC) Contact: <http://www.eeoc.gov/contact/>

**Notice to Applicants for Admissions and Employment, Employees, Vendors, and Contractors (34 C.F.R. § 106.8)**

Tusculum University Offices of Admissions, Business, Financial Aid, Student Affairs, and Registrar:  
All applications of student admissions and any other publication provided to potential and/or admitted students, shall contain the following information concerning Title IX: Name, Title, Office Address, Electronic Email Address, and Telephone number of the employee(s) designated as the Title IX Coordinator(s); TU statement of Non-Discrimination (see below); how to file a complaint of sexual discrimination including sexual harassment; and a link to the TU Title IX grievance process and procedures.

**Tusculum University Office of Human Resources:**

All applications for employment and any other publication provided to potential and/or employed persons, shall contain the following information concerning Title IX: Name, Title, Office Address, Electronic Email Address, and Telephone number of the employee(s) designated as the Title IX Coordinator(s); TU statement of Non-Discrimination (see below); how to file a complaint of sexual

discrimination including sexual harassment; and a link to the TU Title IX grievance process and procedures.

All employees shall attend (whether in person or online) a mandatory annual in-service training which informs them of the following concerning Title IX: Name, Title, Office Address, Electronic Email Address, and Telephone number of the employee(s) designated as the Title IX Coordinator(s); how to file a complaint of sexual discrimination including sexual harassment; and who must report a violation of this policy to the Title IX Coordinators.

Each job description at Tusculum University shall contain the following information concerning Title IX: Name, Title, Office Address, Electronic Email Address, and Telephone number of the employee(s) designated as the Title IX Coordinator(s); TU statement of Non-Discrimination (see below); how to file a complaint of sexual discrimination including sexual harassment; and a link to the TU Title IX grievance process and procedures. Lastly, each job description must inform the employee whether they are a mandatory reporter regarding violations of Title IX

#### **Contract Managers:**

All contracts which Tusculum University is a party to; and, which consists of persons doing work on or at any property owned by Tusculum University or event sponsored in whole or part by Tusculum University must contain the following information concerning Title IX: Name, Title, Office Address, Electronic Email Address, and Telephone number of the employee(s) designated as the Title IX Coordinator(s) and how to file a complaint of sexual discrimination including sexual harassment. Additionally, all contracts must contain the TU statement of Non-Discrimination (see below).

#### **Facilities Management:**

All written agreements to reserve space on University owned property must include the following information regarding Title IX: Name, Title, Office Address, Electronic Email Address, and Telephone number of the employee(s) designated as the Title IX Coordinator(s) and how to file a complaint involving a violation of Title IX. Additionally, all written agreements to reserve space on University owned property must contain the TU statement of Non-Discrimination (see below).

#### **Reporting Discrimination including Sex-Based Discrimination and Sexual Harassment:**

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator(s), or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator(s):

Erin Frizzell  
Title IX Coordinator  
Dean of Students  
P.O. Box 5049  
Greeneville, TN 37743  
Niswonger Commons, Office 225  
(423) 636-7300, Ext. 5316  
[efrizzell@tusculum.edu](mailto:efrizzell@tusculum.edu)

All reports are acted upon promptly while every effort is made by the University to preserve the privacy of reports. Additionally, all employees who have authority to institute corrective measures on behalf of Tusculum University are designated as mandated reporters and shall share a report with the Title IX Coordinator(s) promptly. Mandatory reporters of potential violations of this policy are positions which students or employees may perceive have authority to address the reported behavior and take action on behalf of the institution (e.g., deans, department chairs, coaches, assistant coaches, supervisors to include work study supervisors, managers, cabinet members, and the President.) Confidentiality and mandated reporting is addressed more specifically below. Reports of misconduct or discrimination committed by the Title IX Coordinator(s) should be reported to the University President, Dr. Scott Hummel, [shummel@tusculum.edu](mailto:shummel@tusculum.edu), (423) 636-7300 ext. 5301.

## **Jurisdiction**

The University's jurisdiction over sexual harassment, domestic and dating violence, and stalking includes locations, events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the institution. This policy applies to behaviors that take place on the campus, at Tusculum University sponsored events and may also apply off-campus and to actions online when the Title IX Coordinators determine that the off-campus conduct affects a substantial University interest (e.g. events that spill over or impact the educational opportunities of another person associated with Tusculum University). A substantial University interest is defined to include:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law;
- b. Any situation where it appears that the respondent may present a danger or threat to the health or safety of self or others;
- c. Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests of the University.

### **1. Tusculum University Policy on Nondiscrimination:**

Tusculum University adheres to all federal and state civil rights laws prohibiting discrimination in private institutions of higher education. Tusculum University will not discriminate against any employee, applicant for employment, student or applicant for admission on the basis of race, religion, hearing status, color, sex, pregnancy, religion, creed, ethnicity, national origin (including ancestry), citizenship status, physical or mental disability, age (over 40), marital status, gender, veteran or military status (including special disabled veteran, Vietnam-era veteran, or recently separated veteran), predisposing genetic characteristics, domestic violence victim status, physical appearance, or any other protected category under applicable local, state or federal law, including protections for those opposing discrimination or participating in any resolution process on campus or within the Equal Employment Opportunity Commission or other human rights agencies.

This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the campus community who acts to deny, deprive or limit the educational, employment, residential and/or social access, benefits and/or opportunities of any member of the

campus community, guest or visitor on the basis of their actual or perceived membership in the protected classes listed above is in violation of the Tusculum University policy on nondiscrimination. When brought to the attention of the University, any such discrimination will be appropriately addressed and remedied by the University according to the Equity Resolution Process described below. Non-members of the campus community who engage in discriminatory actions within University programs or on University property are not under the jurisdiction of this policy, but can be subject to actions that limit their access and/or involvement with University programs as the result of their misconduct. All vendors serving the University through third-party contracts are subject by those contracts to the policies and procedures of their employers [or to these policies and procedures, to which their employer has agreed to be bound].

## **2. Tusculum University Policy on Accommodation of Disabilities**

Tusculum University is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA and ADAAA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

An Associate Professor in the College of Education has been designated as the ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including investigation of any allegation of noncompliance.

### **a. Students with Disabilities**

Tusculum University is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of the University.

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the Director of Disability Services who coordinates services for students with disabilities. The Director of Disability Services reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate to the student's particular needs and academic programs.

### **b. Employees with Disabilities**

Pursuant to the ADA, Tusculum University will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship. An employee with a disability is responsible for requesting an accommodation in writing to Human Resources and provide appropriate documentation. The Human Resources Office will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

## **3. Tusculum University Policy on Discriminatory Harassment**

Students, staff, administrators, and faculty are entitled to a working environment and educational environment free of discriminatory harassment. Tusculum University's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom. The sections below describe the specific forms of prohibited harassment that are also prohibited under Tusculum University policy.

#### **a. Discriminatory and Bias-Related Harassment**

Harassment constitutes a form of discrimination that is prohibited by Tusculum University policy as well as the law. Tusculum University condemns and will not tolerate discriminatory harassment against any employee, student, visitor or guest on the basis of any status protected by policy or law. Tusculum University will remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, Tusculum University may also impose sanctions on the harasser through application of the Title IX Resolution Process (TIXRP) Tusculum University's harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

A hostile environment may be created by harassing verbal, written, graphic, or physical conduct that a reasonable person believes to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.

The University reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature not on the basis of a protected status. Addressing such behaviors may not result in the imposition of discipline under University policy, but will be addressed through respectful confrontation, remedial actions, education and/or effective conflict resolution mechanisms. For assistance with conflict resolution techniques, employees should contact Human Resources and students should contact the Dean of Students or designee.

#### **b. Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC) and the State of Tennessee regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. Tusculum University has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the university conditioning the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct;
2. 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 university's education program or activity; or
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

*Sexual Assault* means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

Sex Offenses, Forcible—Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

Forcible Rape— (Except Statutory Rape) The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

Forcible Sodomy—Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances 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.

Sexual Assault with An Object—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances 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.

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 in instances 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.

Sex Offenses, Nonforcible— (Except Prostitution Offenses) Unlawful, nonforcible sexual intercourse.

Incest—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape—Nonforcible sexual intercourse with a person who is under the statutory age of consent

*Dating Violence* means violence committed by a person –

- a. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b. 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 the interaction between the persons involved in the relationship.

*Domestic Violence* – The term “domestic violence” includes 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.

*Stalking* – The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to –  
Fear for his or her safety or the safety of others; or  
Suffer substantial emotional distress.

Anyone experiencing sexual harassment in any University program is encouraged to report it immediately to the Title IX Co-Coordinator(s). Remedies, education and/or training will be provided in response.

Some examples of possible Sexual Harassment may include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one student to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor’s office or on the exterior of a residence hall door.
- Two supervisors frequently ‘rate’ several employees’ bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.
- Male students take to calling a particular brunette student “Monica” because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, “sexual relations” and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

### **c. Tusculum University Amorous Relations Policy (Employee Handbook – 9.02)**

The College’s educational mission is promoted by professionalism in employee-student and supervisor-supervisee relationships, as well as the ability of an employee to conduct an unbiased evaluation of a student or other employee. Professionalism is fostered by an atmosphere of mutual trust and respect. Employee-student or supervisor-supervisee romantic and/or sexual relationships, even mutually consenting ones, are a basic violation of professional ethics when the faculty member or supervisor has, or is perceived to have, any professional responsibility for the academic performance or professional future of the student or other employee. Such amorous relationships create the potential for favoritism and cultivate a lack of trust in other students or employees, thereby undermining the actual or perceived fairness of the evaluative process. They also leave employees vulnerable to charges of sexual harassment, conflict of interest and/or abuse of power.

Even when the employee has no current direct professional responsibility for a student or other employee, amorous relationships may result in the appearance of impropriety and be disruptive to the College environment.



Therefore, while the College encourages a friendly and supportive relationship between employees and students, and among its employees, it generally prohibits romantic and/or professional responsibility.

Amorous relationships between employees and graduate students, and between two employees, outside the instructional and supervisory context are also strongly discouraged. Any such relationship must be disclosed to the Chief Human Resources Officer to ensure that no direct professional responsibility is assigned to the employee over the graduate student or other employee.

For the purpose of this policy, “direct professional responsibility” of a student refers to activities such as supervising, teaching, academic advising, coaching, service on evaluation committees, supervision of all college-sponsored academic, co-curricular, and extra-curricular activities, etc. In the employee context, “direct professional responsibility” includes any type of supervision, evaluation or decision-making that affects the employee’s work status.

The College recognizes that consensual amorous relationships may exist prior to the time a student enrolls, an employee is hired, or an employee is assigned direct professional responsibility of a student or other employee. In such cases, the employee must report the relationship in writing to the Chief Human Resources Officer. A student also has the duty to disclose such a relationship as outlined in the Student Handbook. Such relationships will only be permitted to continue if all direct professional responsibility for the student or other employee is removed. The Chief Human Resources Officer will meet with the employee and student or other employee in order to determine whether such resolution is possible through transfer, reassignment, etc. If it is not, the relationship must immediately cease.

Violation of this policy will result in disciplinary action up to and including termination. Nothing in this policy shall be deemed as supplanting or otherwise affecting the College’s Sexual and Other Discriminatory Harassment policy.

#### **d. Sexual Misconduct**

State law defines various violent and/or non-consensual sexual acts as crimes. While some of these acts may have parallels in criminal law, Tusculum University has defined categories of sex/gender discrimination as sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, Tusculum University considers Non-Consensual Sexual Intercourse violations to be the most serious of these offenses, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, the University reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other sex/gender-based offenses, including intimate partner (dating and/or domestic) violence, non-consensual sexual contact and/or stalking based on the facts and circumstances of the particular allegation. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation and/or gender identity of those involved. Violations include:

- i. Sexual Harassment (as defined in section 3.b above)**
- ii. Forcible Rape (as defined in section 3.b above)**
- iii. Forcible Sodomy (as defined in section 3.b. above)**
- iv. Sexual Assault with an Object (as defined in section 3.b. above)**

**v. Forcible Fondling (as defined in section 3.b. above)**

**vi. Sexual Exploitation**

Sexual Exploitation refers to any other situation that does not fall within the definitions of forcible rape, forcible sodomy, sexual assault with an object, or forcible fondling which also meets the definition of Sexual Harassment as defined in section 3.b. above. Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed).
- Invasion of sexual privacy.
- Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent).
- Prostitution.
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI) without informing the other person of the infection.
- Administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent (assuming the act is not completed).
- Exposing one's genitals in non-consensual circumstances.
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

**vii. Force and Consent**

**Force:** Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent ("Have sex with me or I'll hit you." "Okay, don't hit me, I'll do what you want.").

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

NOTE: Silence or the absence of resistance alone is not consent. There is no requirement on a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of consent is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

**Consent:** Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent can be withdrawn once given, as long as the withdrawal is clearly communicated.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the

context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the respondent was intoxicated and, therefore, did not realize the incapacity of the complainant.

Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from the taking of incapacitating drugs.

In the State of Tennessee, a minor (meaning a person under the age of 18 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 18 years old may be a crime, and a potential violation of this policy, even if the minor wanted to engage in the act.

#### **Examples of lack of consent:**

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being “a prude.” Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a “hand job” (hand to genital contact). Amanda would never had done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. **Bill is responsible for violating the university Non-Consensual Sexual Contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.**
2. Jiang is a junior at the university. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? **Jiang may be held responsible in this scenario for forcible rape. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear as possible as to whether or not sexual contact is desired, and to be aware that for psychological reasons, or**

**because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.**

3. Sharon and John are at a party. Sharon is not sure how much John has been drinking, but she is pretty sure it's a lot. After the party, she walks John to his room, and John comes on to Sharon, initiating sexual activity. Sharon asks him if he is really up to this, and John says yes. Clothes go flying, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Sharon thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Sharon is having a good time, though she can't help but notice that John seems pretty groggy and passive, and she thinks John may have even passed out briefly during the sex, but she does not let that stop her. When Sharon runs into John the next day, she thanks him for the wild night. John remembers nothing, and decides to make a report to the Dean. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Sharon should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Sharon was well aware that John had consumed a large amount of alcohol, and Sharon thought John was physically ill, and that he passed out during sex. Sharon should be held accountable for taking advantage of John in his condition. This is not the level of respectful conduct the university expects.**

### **Other Civil Rights Offenses**

In addition to the forms of sexual misconduct described above, the following behaviors are also prohibited as forms of discrimination when the act is based upon the complainant's actual or perceived sex or gender.

- Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
- Discrimination, defined as actions that deprive, limit or deny other members of the community of educational or employment access, benefits or opportunities;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
- Bullying, defined as
  - Repeated and/or severe
  - Aggressive behavior
  - Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
  - That is not speech or conduct otherwise protected by the 1st Amendment.
- Dating Violence, as defined in section 3.b. above
  - Examples:
    - A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence policy.
    - A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
    - A boyfriend and girlfriend are arguing in a dorm room and one of them stands in the doorway refusing to allow the other to leave.
- Domestic Violence (as defined in section 3.b. above)
  - Examples:

- Married employees are witnessed in the parking lot, with one partner slapping and scratching the other in the midst of an argument.
  - A married employee is trying to leave work and her spouse has blocked her car in and is refusing to allow her to leave.
- Stalking (as defined in section 3.b. above)
  - Examples of Stalking
    - A student repeatedly shows up at another student's on-campus residence, always notifying the front desk attendant that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus place of employment requesting that they go out on a date together (Stalking 1).
    - A graduate student working as a on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate if the gift deliveries stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at
      - home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together" (Stalking 2).
- Any other University policies may fall within this section when a violation is motivated by the actual or perceived membership of the complainant's sex or gender.

Sanctions for the above-listed "Other Civil Rights Behaviors" behaviors range from reprimand through expulsion (students) or termination of employment.

#### **4. Retaliation**

Acts of alleged retaliation should be reported immediately to the Title IX Co-Coordinators and will be promptly investigated. Tusculum University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Tusculum University nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing related to a violation of our title IX. 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, constitutes retaliation. The university must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination located in this document.

*Specific circumstances.* (1) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under paragraph (a) of this section.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under the university's retaliation section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Examples of Retaliation:

- Student-athlete A files an allegation against a coach for sexual harassment; the coach subsequently cuts the student-athlete's playing time in half without a legitimate justification.
- A faculty member complains of gender inequity in pay within her department; the Department Chair then revokes his prior approval allowing her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual misconduct hearing against the responding individual – also a member of Organization A; the student is subsequently removed as a member of Organization A because he participated in the hearing.

## **5. Supportive Measures**

*Supportive measures* means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before and/or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the university'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 harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Tusculum University must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the university to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Tusculum University will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor upon a finding that they have engaged in harassing or discriminatory behavior or retaliation.

Procedures for handling reported incidents are fully described below.

## **6. Confidentiality and Reporting of Offenses Under This Policy**

All Tusculum University employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate university officials – thereby offering options and advice

without any obligation to inform an outside agency or campus official unless a complainant has requested information to be shared. Other resources exist for reporting parties to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the reporting options at Tusculum University:

### **a. Confidential Reporting**

If a complainant would like the details of an incident to be kept confidential, the complainant may speak with:

- On-campus licensed professional counselors and staff who are employed by the University to provide licensed professional counseling to students/employees.
- On-campus health service providers and staff IF employed by the University to provide health services to students/employees.
- On-campus members of the clergy/chaplains working within the scope of their licensure or ordination AND employed/appointed by the University in that scope
- Off-campus (non-employees):
  - Licensed professional counselors
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains

All of the above-listed individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. The campus counselor and/or the Employee Assistance Program are available to help free of charge and can be seen on an emergency basis during normal business hours. University employees listed above will submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient or parishioner.

### **b. Formal Reporting Options**

All Tusculum University employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Employees must promptly share all details of the reports they receive. Generally, climate surveys, classroom writing assignments or discussions, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Title IX Co-Coordinators by employees, unless the complainant clearly indicates that they wish a report to be made. Remedial actions may result from such disclosures without formal University action.

If a complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the complainant may make such a request to the Title IX Co-Coordinator(s) who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. Note that the University’s ability to remedy and respond to a reported incident may be limited if the complainant does not want the institution to proceed with an investigation and/or the Title IX Resolution Process (TIXRP).

In cases indicating pattern, predation, threat, weapons and/or violence (PPTWV), the University will likely be unable to honor a request for confidentiality. In cases where the complainant requests confidentiality and the circumstances allow the University to honor that request, the University will offer interim supports and remedies to the complainant and the community, but will not otherwise pursue formal action. A complainant has the right, and can expect, to have allegations taken seriously by Tusculum University when formally reported, and to have those incidents investigated and properly

resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: Investigators who are assigned to conduct the investigation and Deputy Title IX coordinator(s). Information will be shared as necessary with investigators, witnesses and the respondent. The circle of people with this knowledge will be kept as limited as possible to preserve a complainant's rights and privacy.

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex/gender harassment or discrimination of which they become aware is a violation of University policy and can be subject to disciplinary action for failure to comply and may cause disciplinary action up to and including termination of employment.

## **7. Federal Timely Warning Obligations**

Parties reporting sexual misconduct should be aware that under the Clery Act, University administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The University will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## **8. False Allegations**

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

## **9. Amnesty for Complainant and Witnesses**

The University community encourages the reporting of misconduct and crimes by reporting parties and witnesses. Sometimes, reporting parties or witnesses are hesitant to report to University officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that reporting parties choose to report to university officials, and that witnesses come forward to share what they know.

To encourage reporting, Tusculum University pursues a policy of offering reporting parties and witnesses amnesty from minor policy violations related to the incident.

**Students:** Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual misconduct victim to Campus Safety). The University pursues a policy of amnesty for students who offer help to others in need. While policy violations cannot be completely overlooked, the university will provide educational options, rather than punishment, to those who offer their assistance to others in need.

**Employees:** Sometimes, employees are also hesitant report harassment or discrimination they have experienced for fear that they may get themselves in trouble. For example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to University/College officials. The institution may, at its discretion, offer employee reporting parties amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to witnesses on a case-by-case basis.



## **10. Parental Notification (allegations involving students)**

The University reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The university may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the University will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The University also reserves the right to designate which university officials have a need to know about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act.

## **11. Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to [campus law enforcement] regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student affairs/student conduct, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

## **TITLE IX RESOLUTION PROCESS (TIXRP)**

Tusculum University will act on any formal or informal allegation or notice of violation of the policy on Equal Opportunity, Harassment and Nondiscrimination, that is received by the Title IX Co-Coordinators or a member of the administration, faculty, or other employee.

The procedures described below apply to all allegations of harassment or discrimination on the basis of protected class involving students, staff or faculty members. These procedures may also be used to address collateral misconduct occurring in conjunction with harassing or discriminatory conduct (e.g.: vandalism, physical abuse of another, etc.). All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective student, faculty and staff handbooks.

### **Overview**

Upon notice to the Title IX Co-Coordinators, this resolution process involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. If so, the University will initiate a confidential investigation that is thorough, reliable, impartial, prompt and fair. The investigation and the subsequent resolution process determine whether the nondiscrimination policy has been violated. If so, the University will promptly implement effective remedies designed to end the discrimination, prevent its recurrence and address its effects.

### **Title IX Resolution Process (TIXRP)**

Allegations under the policy on nondiscrimination are resolved using the TIXRP. Members of the TIXRP pool are trained in all aspects of the resolution process, and can serve in any of the following roles, at the direction of the Title IX Co-Coordinators:

- To provide sensitive intake for and initial advice pertaining to allegations
- To serve in a mediation or restorative justice role in conflict resolution
- To investigate allegations
- To act as process advisors and cross-examiners (upon request) to those involved in the Equity Resolution Process
- To serve on hearing panels for allegations
- To serve on appeal panels for allegations

TIXRP pool members also recommend proactive policies, and serve in an educative role for the community. The Vice-President of Human Resources, in consultation with the Title IX Co-Coordinators, appoints the TIXRP pool, which reports to the Title IX Co-Coordinators.

TIXRP pool members receive annual training organized by the Title IX Co-Coordinators, including a review of University policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety and promote accountability. This training will include, but is not limited to: how to appropriately remedy, investigate, render findings and determine appropriate sanctions in reference to all forms of harassment and discrimination allegations; the University's Discrimination and Harassment Policies and Procedures (including Sexual Misconduct); confidentiality and privacy; and applicable laws, regulations and federal regulatory guidance. All TIXRP pool members are required to attend this annual training to be eligible to serve.

The Equity Resolution Process pool includes faculty and staff members of the University that have been trained as civil rights investigators.

Appointments to the pool should be made with attention to representation of groups protected by the harassment and non-discrimination policy. Individuals who are interested in serving in the pool are encouraged to contact the Title IX Co-Coordinators.

### **Reporting Misconduct**

Anyone who believes that the policy on Title IX Sex and Gender Discrimination has been violated should contact the Title IX Co-Coordinator(s) via phone, email, letter, or office visit. Reports may be made anytime and by anyone.

It is also possible for employees to notify a supervisor, or for students to notify an administrative advisor or faculty member. Any member of the community, including visitors, may contact the Title IX Coordinator(s) to make a report.

**All employees receiving reports of a potential violation of University policy are expected to promptly contact the Title IX Co-Coordinator(s), within 24 hours of becoming aware of a report or incident.** All initial contacts will be treated with privacy: specific information on any allegations received by any party must be reported to the Title IX Co-Coordinator(s), but, subject to the University's obligation to redress violations, every effort will be made to maintain the privacy of those initiating a complaint. In all cases, Tusculum University will give consideration to the complainant with respect to how the reported misconduct is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution even when a complainant chooses not to initiate or participate in the resolution process.

## **Preliminary Inquiry**

Following receipt of formal report of misconduct and request that the university investigate the alleged misconduct, the Title IX Co-Coordinator(s) engage in a preliminary inquiry to determine if there is reasonable cause to believe the Title IX Sex and Gender Discrimination policy has been violated. The preliminary inquiry is typically one to three (1-3) days in duration. This inquiry may also serve to help the Title IX Co-Coordinator(s) determine if the allegations evidence violence, threat, pattern, predation and/or weapon (TPPVW), in the event that the complainant has asked for no action to be taken. In any case where violence, threat, pattern, predation, and/or weapon is not evidenced, the Title IX Co-Coordinator(s) may respect a complainant's request for no action, and will investigate only so far as necessary to determine appropriate remedies. As necessary to protect the safety of our community, the University reserves the right to initiate resolution proceedings without a formal report or participation by the complainant.

In cases where the complainant wishes to proceed or the University determines it must proceed, and the preliminary inquiry shows that reasonable cause exists, the Title IX Co-Coordinator(s) will direct a formal investigation to commence and the allegation will be resolved through one of three processes discussed briefly here and in greater detail below:

- Conflict Resolution – typically used for less serious offenses and only when both parties agree to conflict resolution
- Informal Resolution – a resolution without a hearing panel, or
- Formal Resolution – a resolution of contested allegations with a hearing panel.

The process followed considers the preference of the parties, but is ultimately determined at the discretion of the Title IX Co-Coordinator(s). Conflict Resolution may only occur if selected by all parties. The parties can elect for Informal Resolution, but Informal Resolution may also apply if the respondent accepts responsibility for all alleged violations of policy. If either party or both parties select Formal Resolution, or the Title IX Co-Coordinator(s) determines that Formal Resolution is appropriate, the allegation will be addressed using the Formal Resolution option.

If conflict resolution is desired by the complainant, and appears appropriate given the nature of the alleged behavior, then the report does not proceed to investigation, unless a pattern of misconduct is suspected or there is an actual or perceived threat of further harm to the community or any of its members.

Once a formal investigation is commenced, the Title IX Co-Coordinator(s) will provide written notification of the investigation to the parties at an appropriate time during the investigation. This notification shall include: notice of the university's grievance process, including any informal resolution process; notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in section 3.b. above, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment as defined above, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review all evidence collected and available. The written notice must inform the parties of any provision in the university's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The University aims to complete all investigations promptly, which can be extended as necessary for appropriate cause by the Title IX Co-Coordinators with written notice to the parties as appropriate.

***Dismissal of a formal complaint***—(i) The university must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in Section 3.d. of the TU Title IX Policy even if proved, did not occur in Tusculum University's education program or activity, or did not occur against a person in the United States, then the university must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX; such a dismissal does not preclude action under another provision of the university's code of conduct.

The university may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the university; or specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

(ii) Upon a dismissal required or permitted pursuant to the above, the university must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

### **Interim Remedies/Actions**

The Title IX Co-Coordinators may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the complainant and the community and to prevent further violations.

These remedies may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Altering the housing situation of the respondent (resident student or resident employee (or the complainant, if desired))
- Altering work arrangements for employees
- Providing campus escorts
- Providing transportation accommodations
- Implementing contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

The University may interim suspend (emergency removal) a student, employee or organization pending the completion of TIXRP investigation and procedures, particularly when in the judgment of the Title IX Co-Coordinators, after they have completed an individualized safety and risk analysis, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the respondent or the ongoing activity of a student organization whose behavior is in question. In all cases in which an interim suspension (emergency removal) is imposed, the student, employee or student organization will immediately be provided with notice and be given the option to meet with the Title IX Co-Coordinators in order to challenge such suspension (emergency removal) being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Title IX Co-Coordinators, along with the Vice-President of Academic Affairs have the sole discretion to implement or stay an interim suspension and to determine its conditions and duration. Violation of an interim suspension under this policy will be grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to University housing and/or the University campus/facilities/events. As determined by the Title IX Co- Coordinators, this restriction can include classes and/or all other University activities or privileges for which the student might otherwise be eligible. At the discretion of the Title IX Co-Coordinators, alternative coursework options may be pursued to ensure as minimal an impact as possible on the respondent.

The institution will maintain as confidential any interim actions or protective measures, provided confidentiality does not impair the institution's ability to provide the interim actions or protective measures.

## **Investigation**

Once the decision is made to commence a formal investigation, the Title IX Co- Coordinators appoints TIXRP pool members to conduct the investigation (typically using a team of two TIXRP investigators), usually within two (2) days of determining that an investigation should proceed. Investigations are completed expeditiously, normally within thirty (30) days, though some investigations take months, depending on the nature, extent and complexity of the allegations, availability of witnesses, police involvement, etc.

The University may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The University will promptly resume its investigation and resolution processes once notified by law enforcement that the initial evidence collection process is complete. University action will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

All investigations will be thorough, reliable, impartial, prompt and fair. Investigations entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, as necessary.

The investigators will typically take the following steps, if not already completed (not necessarily in order):

- In coordination with campus partners (e.g.: the Title IX Co-Coordinators), initiate or assist with any necessary remedial actions;
- Determine the identity and contact information of the complainant;
- Identify all policies allegedly violated;
- Meet with the complainant to finalize their statement;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the respondent, who may be given notice prior to or at the time of the interview; Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the university and not on the parties provided that the university cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the university obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the university must obtain the voluntary, written

consent of a “parent,” as defined in 34 CFR 99.3);

- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the university may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
- Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the investigators or Title IX Coordinator(s) must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The investigators must make all such evidence subject to the parties’ inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
- Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party’s advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

### **Witnesses Participation**

Witnesses (as distinguished from the parties) are expected to cooperate with and participate in the University’s investigation and the TIXRP. Any witness who declines to participate in or cooperate with an investigation will not be permitted to offer evidence or testimony later in a hearing (if a hearing is held).

**Failure of a witness to cooperate with and/or participate in the investigation or TIXRP constitutes a violation of policy and may be subject to discipline.** At the discretion of the Title IX Coordinator(s),

witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, Skype (or similar technology), if they cannot be interviewed in person or if the investigators determine that timeliness or efficiency dictate a need for remote interviewing.

Parties who elect not to participate in the investigation or to withhold information from the investigation will not have the opportunity to offer evidence during the hearing and/or appeal stages of the process if it could have been offered during the investigation. Failure to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence.

### **Unauthorized Recordings of Meetings, Investigations, and Proceedings**

No unauthorized audio or video recording of any kind is permitted during investigation meetings or other TIXRP proceedings.

## **Advisors**

Each party is allowed to have an advisor of their choice present with them for all TIXRP meetings and proceedings, from intake through to final determination. The parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and available, and usually not otherwise involved in the resolution process, such as serving as a witness. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is available and eligible. Witnesses cannot also serve as advisors. The parties may choose advisors from inside or outside the campus community. The parties may choose their advisor from the TIXRP pool, choose a non-trained advisor from outside the pool, if preferred, or proceed without an advisor.

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The University cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the University is not obligated to provide one. Additionally, responding parties may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>)

Reporting parties may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>), or the
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association

All advisors are subject to the same campus rules, whether they are attorneys or not. Advisors may not address campus officials in a meeting or interview unless invited to. The advisor may not make a presentation or represent the complainant or the respondent during any meeting or proceeding (except as designated in the cross-examination section below) and may not speak on behalf of the advisee to the investigators or hearing panelists (except as designated in the cross-examination section below). The parties are expected to ask and respond to questions on their own behalf, without representation by their advisor. Advisors may confer quietly with their advisees or in writing as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. Advisors will typically be given an opportunity to meet in advance of any interview or meeting with the administrative officials conducting that interview or meeting. This pre-meeting will allow advisors to clarify any questions they may have, and allows the University an opportunity to clarify the role the advisor is expected to take.

Advisors are expected to refrain from interference with the investigation and resolution. Any advisor who steps out of their role will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the Title IX Co- Coordinators will determine whether the advisor may be reinstated or may be replaced by a different advisor.

The University expects that the parties will wish to share documentation related to the allegations with their advisors. The University provides a consent form that authorizes such sharing. The parties must complete this form before the University is able to share records with an advisor, though parties may

share the information directly with their advisor if they wish. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with 3rd parties, disclosed publicly, or used for purposes not explicitly authorized by the University. The University may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

The University expects an advisor to adjust their schedule to allow them to attend University meetings when scheduled. The University does not typically change scheduled meetings to accommodate an advisor's inability to attend. The University will, however, make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process, and is not locked into using the same advisor throughout.

The parties must advise the investigators of the identity of their advisor at least one (1) day before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties must provide timely notice to investigators if they change advisors at any time.

### **Conflict Resolution and Informal Resolution**

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings in accord with University policy. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors.

#### **a) Conflict Resolution**

Conflict Resolution is often used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the formal hearing process to resolve conflicts. The Title IX Coordinator(s) will determine if conflict resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue and the susceptibility of the conduct to conflict resolution. In a conflict resolution meeting, a trained administrator will facilitate a dialogue with the parties to an effective resolution, if possible. Sanctions are not possible as the result of a conflict resolution process, though the parties may agree to appropriate remedies. The Title IX Co-Coordinators will keep records of any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions.

Conflict Resolution will not be the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the formal process is completed should the parties and the Title IX Co-Coordinator(s) believe that it could be beneficial. Mediation will not be used in cases of sexual violence. It is not necessary to pursue conflict resolution first in order to pursue Informal or Formal Resolution, and either party participating in Conflict Resolution can stop that process at any time and request a shift to either Informal or Formal Resolution.

#### **b) Informal Resolution: Resolution Without a Hearing Panel**

Informal Resolution (or Resolution Without a Hearing Panel) can be pursued for any behavior that falls within the policy on Title IX Sex and Gender Discrimination, at any time during the process. This option may be used when:



- A respondent admits responsibility for all or part of the alleged policy violations at any point in the process;
- When the investigation reaches a finding that the parties accept;
- When both parties elect to resolve the allegation using the Informal Resolution process and the Title IX Co-Coordinators assents;
- When the Title IX Co-Coordinators implements the results of an investigation for an at-will employee.

*Informal resolution.* The university may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, the university may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the university may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the university –

- Provides to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- Obtains the parties' voluntary, written consent to the informal resolution process; and
- Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

In Informal Resolution, the investigator has the authority to address all misconduct related to Title IX, meaning that they hear all allegations of discrimination, harassment and retaliation, but also may refer any additional alleged policy violations that have occurred in concert with the discrimination, harassment or retaliation, even though those collateral allegations may not specifically fall within the policy on Title IX.

Any evidence that the investigator believes is relevant and credible may be considered, including history and pattern evidence. The investigator may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.

Unless the investigator determines it is appropriate, the investigation and the finding will not consider: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the sexual history of the complainant (though there may be a limited exception made in regards to the sexual history between the parties), (3) or the character of the complainant.

The investigator(s) will not meet with character witnesses, but investigators will accept up to two (2) letters supporting the character of each of the parties.

**The investigator(s) will base the determination(s) on the clear and convincing standard of evidence, meaning the evidence is highly and substantially more probable to be true rather than untrue that the respondent violated policy as alleged.**

Typically, within ten (10) days of the close of an investigation which has determined that a respondent is in violation of policy, the Title IX Co-Coordinators will meet with the respondent and complainant to explain the finding(s) of the investigation. Once informed, the respondent may choose to admit responsibility for all or part of the alleged policy violations. If the respondent admits responsibility, in whole or in part, the Title IX Co- Coordinators will render a determination that the individual is in violation of University policy for the admitted conduct, and will normally proceed to convene a formal hearing on any remaining disputed violations. Conversely, within ten (10) days of the close of an investigation which has determined that a respondent is NOT in violation of policy, the Title IX Coordinator(s) will meet with the respondent and complainant to explain the finding(s) and inform them of further actions/supporting measures, if any.

If the respondent admits to the violation(s), the Title IX Co-Coordinators, in consultation as appropriate, will determine an appropriate sanction or responsive action. If the sanction/responsive action is accepted by both the complainant and respondent, the Title IX Co-Coordinators will implement the finding and sanction, and act promptly and effectively to stop the harassment or discrimination, prevent its recurrence and remedy the effects of the discriminatory conduct. No appeal is permitted.

If either party rejects the sanction/responsive action, a formal hearing will be held on the sanction/responsive action only, according to the Formal Resolution procedures below. Keep in mind that this may cause a delay in the total process as the university must shift gears in order to follow the TIXRP.

If alleged misconduct is resolved at this stage, the Title IX Co-Coordinators will inform the parties of the final determination within three (3) days of the resolution, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official University records; or emailed to the parties' University-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which the University is permitted to share the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law. The notice will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and any appeals options that are available.

At any point during the Informal Resolution process, up to the point where the parties have agreed to a resolution, either party may request that the matter be referred to the Formal Resolution Process for presentation before a hearing panel, except in cases where the respondent is an at-will employee. In cases involving at-will employees, all findings and responsive actions will be determined by the Chief Human Resources Officer in collaboration with the Title IX Co-Coordinators, based on the results of the investigation.

### **c) Formal Resolution: Resolution with a Hearing Panel**

For all contested allegations that are not resolved through either Conflict Resolution or Informal Resolution, the Title IX Co-Coordinators will initiate a formal hearing panel within ten (10) days of the conclusion of the investigation, barring unusual circumstances.

## **Formal Hearing Panel Procedures**

### **1) Hearing Panels**

The Title IX Co-Coordinators will refer the investigative report to one of the non-voting panel Chairs in the TIXRP Pool depending on whether the respondent is an employee or a student. The Chair will empanel three members from the available pool to the hearing panel, none of whom have been previously involved with the allegation. An alternate will sit in throughout the process if needed or at the discretion of the Chair. Those who served as investigators will be witnesses in the hearing of the allegation and therefore may not serve as hearing panel members. Those who are serving the parties as advisors, if any, are not eligible to serve as panelists. The panel will meet at a time determined by the Chair.

## **2) Notice of Hearing**

At least five (5) days prior to the hearing, or as far in advance as is reasonably possible if an accelerated hearing is scheduled with the consent of the parties, the Chair or Title IX Coordinator(s) will send a letter to the parties with the following information. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The letter will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result.
- The time, date and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities. If any party does not appear at the scheduled hearing, the hearing will be held in their absence. For compelling reasons, the Co-chair may reschedule the hearing.
- Notification that the parties may have the assistance of a TIXRP Pool member or other advisor of their choosing at the hearing (See Section “Advisors” above).

Hearings for possible violations that occur near or after the end of an academic term and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the sixty (60) day goal for resolution.

## **3) Hearing Procedures**

Hearing panels will usually be convened within ten (10) days of the completion of the investigation, and will be conducted in private. The panel has the authority to hear only instances of alleged sexual harassment or sexual misconduct, meaning that it hears only the allegations of discrimination, harassment and retaliation, and will only consider any alleged conduct that has been specifically charged and evidence collected for the hearing purposes. Accordingly, investigations should be conducted with as narrow a scope as necessary. However, any alleged misconduct that has not been charged and investigated, or misconduct not covered under the Title IX Policy shall be referred to the proper office for follow up.

Participants will include the non-voting Chair, the three (3) members of the panel, the investigator(s) who conducted the investigation, the complainant, respondent (or three (3) organizational representatives where an organization is charged), advisors to the parties and any called witnesses.

### **i. Pre-Hearing**

The Chair will exchange the names of witnesses who will be participating in the hearing, two days (2 days) prior to the hearing. Any witness scheduled to participate in the hearing must have been interviewed first by investigators (or have proffered a written statement), unless all parties consent to

the participation of that witness in the hearing. In addition, the parties will be given a list of the names of each of the hearing panel members at least two (2) days in advance of the hearing. All objections to any panelist must be raised in writing to the Chair as soon as possible. Hearing panel members will only be unseated if the Chair concludes that their bias precludes an impartial hearing of the allegation. The panelists will be given a list of the names of each parties and witnesses at least two (2) days in advance of the hearing. Any panelist or Chair who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties and all witnesses in advance of the hearing.

The Chair, in consultation with the parties and investigators, may decide in advance of the hearing that certain witnesses do not need to be physically present if their testimony can be adequately summarized by the investigator(s) in the investigation report or during the hearing. All parties will have ample opportunity to present facts and arguments in full and question all present witnesses during the hearing, though formal cross-examination is not used between the parties except as described below in section 3.c.iv. If alternative attendance or questioning mechanisms are desired, such as the complainant not wanting to be in the same room as the respondent for the hearing (e.g., Zoom or Skype) the parties should request them from the Chair at least two (2) days prior to the hearing. In the case of documented disabilities for which accommodations in the process are necessary, Tusculum University will make reasonable accommodations for the parties when requested in advance.

## **ii. Investigator Presents the Report**

Once the procedures are explained and the participants are introduced, the investigator will present the report of the investigation first, and be subject to questioning by the parties and the panel. The investigator(s) will be present during the entire hearing process, but will only be present during deliberations at the request of the Chair. The findings of the investigation are not binding on the panel, though any undisputed conclusions of the investigation report will not be revisited, except as necessary to determine sanctions/responsive actions. Once the investigator(s) present their report and are questioned, the panel will permit the parties to provide relevant information in turn and permit questioning of and by the parties. The panel will then permit all present witnesses to provide relevant information and the panel and the parties will each be allowed to ask questions of the witnesses.

## **iii. Evidence Presented at the Hearing**

Formal rules of evidence do not apply. Any evidence that the panel believes is relevant and credible may be considered, including history and pattern evidence. The Chair will address any evidentiary concerns prior to and/or during the hearing, may exclude irrelevant or immaterial evidence and may ask the panel to disregard evidence lacking in credibility or that is improperly prejudicial. The Chair will determine all questions of procedure and evidence. Anyone appearing at the hearing to provide information will respond to questions on his/her own behalf.

Unless the Chair determines it is appropriate, no one will present information or raise questions concerning: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the sexual history of the complainant (though there may be a limited exception made in regards to the sexual history between the parties), (3) or the character of the complainant.

There will be no observers in the hearing. The Chair may allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the panel or the parties involved, and then be excused. The panel does not hear from character witnesses, but will accept up to two (2) letters supporting the character of each of the parties.

In hearings involving more than one respondent or in which two (2) or more reporting parties have accused the same individual of substantially similar conduct, the standard procedure will be to hear the allegations jointly; however, the Title IX Co-Coordinators may permit the hearing pertinent to each respondent to be conducted separately. In joint hearings, separate determinations of responsibility will be made for each respondent.

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings in accord with University policy. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors.

Hearings (except for deliberations) are recorded for purposes of review in the event of an appeal. **The parties may not record the proceedings and no other unauthorized recordings are permitted.** Panel members, the parties, and appropriate administrative officers of the University will be allowed to listen to the recording in a location determined by the Title IX Co-Coordinators. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Co-Coordinators.

#### **iv. Questioning and Cross-Examination During a Live Hearing**

At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally,

At the request of either party, the university must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

If a party does not have an advisor present at the live hearing, the university must provide without fee or charge to that party, an advisor of the university's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

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

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Live hearings pursuant to this section may be conducted with all parties physically present in the same geographic location or, at the university's discretion, any or all parties, witnesses, and other participants

may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

**The university must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.**

### **Deliberation and Decisions**

The three (3) members of the hearing panel and the non-voting Chair will deliberate in closed session to determine whether the respondent is responsible or not responsible for the policy violation(s) in question. **The panel will base its determination(s) on a clear and convincing standard of the evidence (i.e., the evidence is highly and substantially more probable to be true rather than untrue that the respondent violated policy as alleged).**

If a respondent or organization is found responsible by a majority of the panel, the panel will recommend appropriate sanctions.

The Chair will prepare a written determination regarding responsibility report and deliver it to the Title IX Co-Coordinators. The written determination report must include:

- A. Identification of the allegations potentially constituting sexual harassment as defined in section 3.b. above;
- B. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- C. Findings of fact supporting the determination;
- D. Conclusions regarding the application of the university's code of conduct to the facts;
- E. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the university imposes on the respondent, and whether remedies designed to restore or preserve equal access to the university's education program or activity will be provided by the university to the complainant; and
- F. The university's procedures and permissible bases for the complainant and respondent to appeal.

The university must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the university provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The Title IX Co-Coordinators will finalize the recommendations and will inform the parties of the final determination – both the finding(s) and applicable sanction(s) within three (3) days of the hearing, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official University records; or emailed to the parties' University-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

### **Sanctions**

The hearing panel assigned to the resolution will recommend sanctions or responsive actions to the Title

IX Co-Coordinators. Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- Any other information deemed relevant by the hearing panel
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation
- The need to remedy the effects of the discrimination, harassment and/or retaliation on the complainant and the community

### **Student Sanctions**

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- **Warning:** A formal statement that the behavior was unacceptable and a warning that further infractions of any University policy, procedure or directive will result in more severe sanctions/responsive actions.
- **Probation:** A written reprimand for violation of the Code of Student Conduct, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any University policy, procedure or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, non-contact orders and/or other measures deemed appropriate.
- **Suspension:** Termination of student status for a definite period of time not to exceed two years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure at University. This sanction may be noted as a Conduct Suspension on the student's official transcript, at the discretion of the Title IX Co-Coordinators.
- **Expulsion:** Permanent termination of student status, revocation of rights to be on campus for any reason or attend University-sponsored events. This sanction will be noted as a Conduct Expulsion on the student's official transcript.
- **Withholding Diploma:** The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending, or as a sanction if the student is found responsible for an alleged violation.
- **Revocation of Degree:** The University reserves the right to revoke a degree awarded from the University for fraud, misrepresentation or other violation of University policies, procedures or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Organizational Sanctions:** Deactivation, de-recognition, loss of all privileges (including University registration), for a specified period of time.
- **Other Actions:** In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

### **Employee Sanctions**

Responsive actions for an employee who has engaged in harassment, discrimination and/or retaliation include

- Warning – Verbal or Written

- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education
- Probation
- Loss of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with pay
- Suspension without pay
- Termination
- Other Actions: In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

### **Withdrawal or Resignation While Charges Pending**

Students: The University does not permit a student to withdraw if that student has an allegation pending for violation of the policy on Equal Opportunity, Harassment and Nondiscrimination. Should a student decide to leave and/or not participate in the TIXRP, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to University unless all sanctions have been satisfied. The student will not have access to an academic transcript until the allegations have been resolved.

Employees: Should an employee resign with unresolved allegations pending, the records of the Title IX Co-Coordinators will reflect that status, and any University responses to future inquiries regarding employment references for that individual will indicate the former employee is ineligible for rehire.

### **Appeals**

All requests for appeal consideration must be submitted in writing to the Title IX Co- Coordinators within three (3) days of the delivery of the written finding of the hearing panel. Any party may appeal the findings and/or sanctions only under the grounds described, below

A three-member appeals panel chosen from the TIXRP pool will be designated by the Title IX Co-Coordinators from those who have not been involved in the process previously. Any party may appeal, but appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

As to all appeals, the university must:

- A. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- B. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;



- C. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- D. Issue a written decision describing the result of the appeal and the rationale for the result; and
- E. Provide the written decision simultaneously to both parties.

The appeals panel will review the appeal. The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately. When any party requests an appeal, the Title IX Co-Coordinator will share the appeal request with the other party(ies), who may file a response within three (3) days and/or bring their own appeal on separate grounds within the original timeframe. If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within three (3) days. Any response or appeal request will be shared with each party.

Where the appeals panel finds that at least one of the grounds is met by at least one party, additional principles governing the hearing of appeals will include the following:

- Decisions by the appeals panel are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. An appeal is not an opportunity for appeals panelists to substitute their judgment for that of the original hearing panel merely because they disagree with its finding and/or sanctions.
- Appeals granted based on new evidence should normally be remanded to the original hearing panel or investigators for reconsideration. Other appeals may be remanded at the discretion of the Title IX Co-Coordinator or, in limited circumstances, heard by the three-member appeals panel.
- Sanctions imposed as the result of the Formal or Informal Resolution processes are implemented immediately unless the Title IX Co-Coordinator or designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- For students: Graduation, study abroad, internships/ externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- The Title IX Co-Coordinator will confer with the appeals panel, incorporate the results of any remanded grounds, and render a written decision on the appeal to all parties within three (3) days from hearing of the appeal or remand.
- All parties should be informed of whether the grounds for an appeal are accepted and the results of the appeal decision or remand.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- All parties will be informed in writing within three (3) days of the outcome of the Appeals Panel, without significant time delay between notifications, and in accordance with the standards for notice of outcome as defined above.
- In rare cases where a procedural [or substantive] error cannot be cured by the original hearing panel (as in cases of bias), the appeals panel may recommend a new hearing with a new hearing panel. The results of a remand to a hearing panel cannot be appealed. The results of a new hearing can be appealed, once, on any of the three applicable grounds for appeals.

- In cases where the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **Long-Term Remedies/Actions**

Following the conclusion of the Equity Resolution Process and in addition to any sanctions implemented, the Title IX Co-Coordinators may utilize long-term remedies or actions to stop the harassment or discrimination, remedy its effects and prevent their reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Permanently altering the housing situation of the respondent (resident student or resident employee (or the complainant, if desired))
- Permanently altering work arrangements for employees
- Providing campus escorts
- Climate surveys
- Policy modification
- Providing transportation accommodations
- Implementing long-term contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Co-Coordinators, long-term remedies may also be provided even when the respondent is found not responsible.

The institution will maintain as confidential any long-term remedies/actions or protective measures, provided confidentiality does not impair the institution's ability to provide the actions or protective measures.

### **Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions**

All responding parties are expected to comply with conduct sanctions, responsive actions and corrective actions within the timeframe specified by the Title IX Co-Coordinators.

Failure to abide by these conduct sanctions, responsive actions and corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from the University/College and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Co-Coordinators.

### **Records**

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept by the Title IX Co-Coordinators indefinitely in the Title IX Co- Coordinators database.

### **Statement of the Rights of the Parties**

#### *Statement of the Complainant's rights:*

The right to investigation and appropriate resolution of all credible allegations of sexual misconduct or

discrimination made in good faith to University officials;

The right to be informed in advance of any public release of information regarding the incident;

The right not to have any personally identifiable information released to the public, without their consent;

The right to be treated with respect by University officials.

The right to have University policies and procedures followed without material deviation;

The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence;

The right not to be discouraged by University officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities;

The right to be informed by University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the complainant so chooses. This also includes the right not to be pressured to report, as well;

The right to have reports of sexual misconduct responded to promptly and with sensitivity by campus law enforcement and other campus officials;

The right to be notified of available counseling, mental health, victim advocacy, health, legal assistance, student financial aid, visa and immigration assistance, or other student services, both on campus and in the community;

The right to a campus no contact order (or a trespass order against a non-affiliated third party) when someone has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the complainant or others;

The right to notification of and options for, and available assistance in, changing academic and living situations after an alleged sexual misconduct incident, if so requested by the complainant and if such changes are reasonably available (no formal report, or investigation, campus or criminal, need occur before this option is available). Accommodations may include:

- Change of an on-campus student's housing to a different on-campus location;
- Assistance from University support staff in completing the relocation;
- Transportation accommodations;
- Arranging to dissolve a housing contract and pro-rating a refund;
- Exam (paper, assignment) rescheduling;
- Taking an incomplete in a class;
- Transferring class sections;
- Temporary withdrawal;
- Alternative course completion options.

The right to have the University maintain such accommodations for as long as is necessary, and for protective measures to remain confidential, provided confidentiality does not impair the institution's ability to provide the accommodations or protective measures;

The right to be fully informed of campus policies and procedures as well as the nature and extent of all alleged violations contained within the report;

The right to ask the investigators to identify and question relevant witnesses, including expert witnesses;

The right to review all documentary evidence available regarding the report, subject to the privacy limitations imposed by state and federal law, at least 48 hours prior to the hearing;

The right to be informed of the names of all witnesses who will be called to give testimony, at least two (2) days prior to the hearing, except in cases where a witness's identity will not be revealed to the respondent for compelling safety reasons (this does not include the name of the complainant, which will always be revealed);

The right not to have irrelevant prior sexual history admitted as evidence;

The right to regular updates on the status of the investigation and/or resolution.

The right to have reports heard by hearing and appeals officers who have received at least eight hours of annual sexual misconduct training;

The right to a panel that is not single-sex in its composition, if a panel is used;

The right to preservation of privacy, to the extent possible and permitted by law;

The right to meetings, interviews and/or hearings that are closed to the public;

The right to petition that any University representative in the process be recused on the basis of demonstrated bias and/or conflict of interest;

The right to bring a victim advocate or advisor of the complainant's choosing to all phases of the investigation and resolution proceeding;

The right to provide evidence by means other than being in the same room with the respondent;

The right to have the university compel the participation of student, faculty and staff witnesses, and the opportunity (if desired) to ask questions, directly or indirectly, of all present witnesses including the respondent, and the right to challenge documentary evidence;

The right to be present for all testimony given and evidence presented during any resolution-related hearing;

The right to submit an impact statement in person or in writing to the hearing officers following determination of responsibility, but prior to sanctioning;

The right to be promptly informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties;

The right to be informed in writing of when a decision by the University is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the finding and sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University;

*Statement of the Respondent's rights:*

The rights of the respondent should also be prominently indicated. These should include, among others particular to your University:

The right to investigation and appropriate resolution of all credible reports of sexual misconduct and/or discrimination made in good faith to University administrators;

The right to be informed in advance, when possible, of any public release of information regarding the report;

The right to be treated with respect by University officials;

The right to have University policies and procedures followed without material deviation;

The right to be informed of and have access to campus resources for medical, health, counseling, and advisory services;

The right to timely written notice of all alleged violations, including the nature of the violation(s), the applicable policies and procedures and possible sanctions;

The right to a hearing on the report, including timely notice of the hearing date, and adequate time for preparation; (does not apply to at-will employees)

The right to review all documentary evidence available regarding the report, subject to the privacy limitations imposed by state and federal law, at least two (2) days prior to the hearing;

The right to be informed of the names of all witnesses who will be called to give testimony, at least two (2) days prior to the hearing, except in cases where a witness's identity will not be revealed to the respondent for compelling safety reasons (this does not include the name of the complainant, which will always be revealed);

The right not to have irrelevant prior sexual history admitted as evidence in a campus resolution process;

The right to have reports heard by hearing and appeals officers who have received at least 8 hours of annual training;

The right to petition that any University representative be recused from the resolution process on the basis of demonstrated bias and/or conflict of interest;

The right to a panel that is not single-sex in its composition, if a panel is used;

The right to meetings, interviews and hearings that are closed to the public;

The right to have the University compel the participation of student, faculty and staff witnesses, and the opportunity to ask questions, directly or indirectly, of all present witnesses, and the right to challenge documentary evidence;

The right to have an advisor of their choice to accompany and assist in the campus resolution process;

The right to a fundamentally fair resolution, as defined in these procedures;

The right to submit an impact statement in person or in writing to the hearing officers board following any determination of responsibility, but prior to sanctioning;

The right to a decision based solely on evidence presented during the resolution process. Such evidence shall be credible, relevant, based in fact, and without prejudice;

The right to be promptly informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties;

The right to be informed in writing of when a decision of the University is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the finding and sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.

### **Disabilities Accommodation in the Equity Resolution Process**

Tusculum University is committed to providing qualified students, employees or others with disabilities with reasonable accommodations and support needed to ensure equal access to the Equity Resolution Process at the University. Anyone needing such accommodations or support should contact the Director of Disability Services, who will review the request and, in consultation with the person requesting the accommodation, and the Title IX Co-Coordinators, determine which accommodations are appropriate and necessary for full participation.

### **Revision**

These policies and procedures will be reviewed and updated annually by the Title IX Co- Coordinators. The University reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. The Title IX Co- Coordinators may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules, etc. The Title IX Co-Coordinators may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred. Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

This policy and procedure was implemented in August 2020.

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