



APPENDIX I of Policy on Equal Opportunity/Anti-Discrimination:

Interim Federal Regulation Sexual Harassment Policy Amendment

I. Purpose of Appendix

Title IX of the Education Amendments Act of 1972 states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

The purpose of this Appendix is to articulate Tulane University's process for responding to allegations of Sexual Harassment that fall within the scope of the May 2020 amendments to the Title IX regulations (34 C.F.R. part 106).

The compliance requirements mandated by the Department of Education are complicated, and the interaction between Title IX and non-Federal Regulation Sexual Harassment can seem complex. We strongly encourage all individuals who have questions about the information in this Appendix to please contact the University's Assistant Provost for Title IX Compliance and Education or Deputy Title IX Coordinators listed in the [University's Assistant Provost for Title IX Compliance and Education section](#). The [Office of Student Conduct](#) (Student Conduct) can answer any questions regarding the student resolution options through either Alternative Resolution Options or the Formal Grievance Procedure; [Case Management & Victim Support Services](#) (CMVSS) can answer any questions regarding Supportive Measures available to student Complainants and Respondents. The [Office of Institutional Equity](#) (OIE) can answer any questions regarding employee Supportive Measures and grievance procedures regarding complaints of sex discrimination, harassment or retaliation.

II. Implementation

The definitions and processes described in this Appendix take effect on August 14, 2020. This does not retroactively apply to cases that were resolved prior to the implementation date. If investigations are in progress at the time of implementation, the policies and procedures that were in place at the time the investigation began will continue forward in its current process. If a person makes a complaint after this policy is implemented about an incident(s) that occurred prior to August 14, 2020, the procedures articulated in this policy will apply while the definitions of sexual misconduct will come from the policies that were in effect at the time of the incident.

At the time of this policy's implementation, the Title IX regulations (34 C.F.R. part 106) are subject to multiple lawsuits that challenge the legality and implementation of the regulations; if there is a stay in the enforcement of the Title IX regulations, the University retains the discretion to reevaluate the applicability of this policy and its associated procedures.

III. Sexual Harassment Defined

A) *Sexual Harassment* includes two distinct but overlapping definitions:

- 1) The May 2020 amendments to the Title IX regulations (34 C.F.R. part 106) define Sexual Harassment as conduct on the basis of sex that must satisfy one or more of the following:
 - a) A Tulane employee conditions the provision of an aid, benefit, or service of Tulane on an individual's participating in unwelcome sexual conduct; or
 - b) Unwelcome¹ conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Tulane's education program or activity; or
 - c) Sexual Assault, Dating Violence, Domestic Violence, and Stalking, as defined in Section III, Parts B, C, D, and E below.

Student conduct that meets this definition must be resolved using the Title IX Grievance Procedures articulated in this Appendix in Part VIII below.

- 2) In addition, consistent with Title VII of the Civil Rights Act of 1964 and the recognition that Sexual Harassment may also occur in a wider variety of contexts, Tulane also defines Sexual Harassment to include any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, electronic, or otherwise (*Sexual Harassment*); or, any act of intimidation or hostility, whether verbal or non-verbal, graphic, physical, or otherwise based on sex or gender, sexual orientation, gender identity, or gender expression, even if the acts do not involve conduct of a sexual nature (*gender-based harassment*); when one or more of the following conditions are present:
 - a) Submission to or rejection of such conduct is either an explicit or implicit term or condition of, or is used as the basis for decisions affecting, an individual's employment or advancement in employment, evaluation of academic work or advancement in an academic program, or basis for participation in any aspect of a Tulane program or activity (*quid pro quo*); or
 - b) The conduct is sufficiently severe, pervasive, or persistent that it has the purpose or effect of unreasonably interfering with, limiting or depriving an individual from participating in or benefiting from Tulane's learning, working, or residential programs under both an objective and subjective standard (*hostile environment*).

In evaluating whether a hostile environment exists, Tulane will evaluate the totality of known circumstances, including, but not limited to:

- i. the frequency, nature and severity of the conduct;
- ii. whether the conduct was physically threatening;
- iii. the effect of the conduct on the Complainant's mental or emotional state;

¹ Unwelcomeness, according to the Department of Education, is a subjective element evaluated from the perspective of the complainant. Severe, pervasive and objectively offensive elements are evaluated based on the totality of the circumstances from the objective perspective of a reasonable person in the same or similar circumstances.

- iv. whether the conduct was directed at more than one person;
- v. whether the conduct arose in the context of other discriminatory conduct;
- vi. whether the conduct unreasonably interfered with the Complainant's educational or work performance and/or Tulane programs or activities;
- vii. whether the conduct implicates academic freedom or protected speech; and,
- viii. other relevant factors that may arise from consideration of the reported facts and circumstances.

Conduct that does not meet the Title IX definition of Sexual Harassment but meets this second (Title VII) definition will be investigated and adjudicated according to the procedures articulated in Section X of this Equal Opportunity-Anti Discrimination Policy.

B) *Sexual Assault* is having or attempting to have sexual contact with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental incapacity.

- 1) Sexual contact includes:
 - a) sexual intercourse (anal, oral, or vaginal), including penetration with a body part (e.g., penis, finger, hand, or tongue) or an object, or requiring another to penetrate themselves with a body part or an object, however slight;
 - b) sexual touching of the private body parts, including, but not limited to, contact with the breasts, buttocks, groin, genitals, or other intimate part of an individual's body for the purpose of sexual gratification; and
 - c) attempts to commit sexual assault.

2) Consent

- a) Consent is defined as being:
 - 1. informed (knowing);
 - 2. voluntary (freely given); and
 - 3. active (not passive), meaning that, through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed-upon sexual activity.
- b) Consent cannot be obtained by Force. Force includes: the use of physical violence, threats, intimidation, and/or coercion.
 - 1. Physical violence means that a person is exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.
 - 2. Threats are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.
 - 3. Intimidation is an implied threat that menaces or causes reasonable fear in another person. A person's size, alone, does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation

(e.g., blocking access to an exit).

4. Coercion is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person makes clear a decision not to participate in a particular form of Sexual Contact or Sexual Intercourse, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion was used, the University will consider:
 - a. the frequency of the application of the pressure,
 - b. the intensity of the pressure,
 - c. the degree of isolation of the person being pressured, and
 - d. the duration of the pressure.
- c) Consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated. Incapacitation means that a person lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity. A person who is incapacitated is unable, temporarily or permanently, to give Consent because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.
- d) Being impaired by alcohol or other drugs is not a defense to not obtaining consent.

The statutory definition of sexual assault referenced by the Title IX regulations (34 C.F.R. part 106) also includes having or attempting to have sexual contact between persons who are related to each other within the degrees where marriage is prohibited by law.

C) *Dating Violence* is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

- 1) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- 2) Dating violence does not include acts covered under the definition of domestic violence.

D) Domestic Violence² includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction and includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive

² Tulane University has elected to adopt this definition of "Domestic Violence" as of August 2022 in accordance with the latest amendments and reauthorization to 34 U.S.C. 12291 – Violence Against Women Act (1994) effective on October 1, 2022.

behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who—

- 1) is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
- 2) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- 3) shares a child in common with the victim; or
- 4) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

E) Stalking is engaging in an intentional course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

- 1) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- 2) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- 3) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.

IV. Resources and Reporting

Choosing to Disclose

Choosing to disclose Sexual Harassment or Violence, let alone file a Formal Complaint to initiate a Grievance Procedure, is a personal decision. Tulane wants to ensure that employees are well informed and supported in their decision to disclose and in their decisions around participating in a Grievance Procedure. Tulane has amassed a list of trained resources available to provide support and guidance thorough the initiation, investigation, and resolution of a report of Federal Regulation Sexual Harassment as well as any other sexual misconduct at the [All In website](#).

Any individual who is uncertain what they wish to do in response to an alleged incident of Sexual Harassment, including how or whether to report the conduct, is encouraged to contact and consult a Confidential Resource to address questions and concerns in a confidential setting.

The Students may choose to either disclose incidents of Sexual Harassment and violence in a Report directly to the University's Assistant Provost for Title IX Compliance and Education or other designated response offices; or to any other non-confidential employee at Tulane. Either route an employee chooses will lead to prompt outreach from OIE.

Direct Reporting to Tulane

A Report is any official notification made to the University's Assistant Provost for Title IX Compliance and Education regarding incidents that implicate Title IX. **A Report is not the same as a Formal Complaint to initiate the Title IX Grievance Procedures.** A Report to the University's Assistant Provost for Title IX Compliance and Education is not a police report.

Individuals with questions or concerns about Tulane's processes may also contact the University's Assistant Provost for Title IX Compliance and Education directly as part of reporting an incident to Tulane. Any individual may make a report of Sexual Harassment under this policy regardless of affiliation with Tulane and regardless of whether or not the person reporting is the person alleged to be the victim of conduct. Reports can be made in person or via Zoom/other virtual platforms, by mail, by telephone, or by electronic mail, using the contact information listed for the University's Assistant Provost for Title IX Compliance and Education, or by any other means that results in the University's Assistant Provost for Title IX Compliance and Education receiving the person's verbal or written report. 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 University's Assistant Provost for Title IX Compliance and Education here:

Marcus Foster, JD
Office of Academic Affairs & Provost
Jones Hall 308
Tulane University New Orleans LA, 70118 (504) 865-5615
mfoster9@tulane.edu

Tulane has also designated Ruth Riley and Erica Woodley as Deputy Title IX Coordinators for employees and students, respectively:

Ruth Riley, Deputy for Employees
Assistant Vice President, Human Resources & Institutional Equity
Office of Institutional Equity
1555 Poydras St., Suite 964 New Orleans, LA 70112 (504) 862-8083
rariley@tulane.edu

Erica Woodley, Deputy for Students
Assistant Vice President & Dean of Students, Student Resources and Support Services Student Affairs
Lavin-Bernick Center, Suite G02 New Orleans, LA 70118
(504) 314-2160
ewoodley@tulane.edu

Reports made to the Office of Institutional Equity and the University's Assistant Provost for Title IX Compliance and Education involving employees are not shared with anyone without a need to know. Reports may be shared with designated staff only to enact Supportive Measures or coordinate other forms of care and response.

Individuals may also report to those at Tulane who are designated with the authority to institute corrective measures on behalf of the University. The University has designated the staff in the following offices as those who can institute corrective measures on half of the University as these are the first-line responding

employees to issues of sexual discrimination, harassment, and violence on campus: the Office of Student Conduct, the Office of Institutional Equity, those individuals serving in the Student Affairs Professional On Call rotation, the Tulane University Police Department, and the Office of Case Management & Victim Support Services. These offices will receive a Report from an individual and notify the University's Assistant Provost for Title IX Compliance and Education.

Title IX Care Connections by Employees

To fulfill their mandate to share information as stated in Part V of the Equal Opportunity & Anti-Discrimination Policy. Employees (including Resident Assistants) who are not confidential are required to make a "Care Connection" via the Tulane Concerns Form (tulane.edu/concerns) so the University may make supportive outreach to any known impacted individuals. If a Care Connection concerns an employee, supportive outreach will come from OIE. The University's Assistant Provost for Title IX Compliance and Education is copied on Care Connections and will gatekeep whether the incident falls within Title IX or not (as outlined below in [Appendix Part VII](#)) so that OIE may fully discuss which (if any) University resolution processes are available to Complainants.

Supportive outreach is offered to all employees, regardless if the incident falls within the jurisdiction of Title IX or Equal Opportunity & Anti-Discrimination Policy. Employees may decline to meet with OIE about the incident during the Care Connection. If an employee declines to meet, they will receive an email outlining options for support if they would need assistance in the future.

Exceptions: Faculty are not required to make a Care Connection in response to disclosures made within the academic context, namely within classroom discussion or activities or in assignments (e.g., class journals, essays, creative nonfiction, etc.). If a faculty member is unsure if a disclosure should be excepted or not, please contact the University's Assistant Provost for Title IX Compliance and Education. Note that while faculty members do not need to share or forward disclosures in the academic context, they can still do so if they feel it is appropriate.

Retaliation and Privacy Protections

In addition to the prohibition on Retaliation found in the Code of Student Conduct, neither Tulane nor any 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 Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for other 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.

Reporting to Law Enforcement

All employees have the right to report to law enforcement as well. Whether or not the conduct occurred on or around Tulane's properties, students can reach out to the Tulane University Police Department to make a criminal report or receive assistance in emergency situations or when a crime is in progress. TUPD can also connect employees to law enforcement in other jurisdictions. Further, OIE can help connect students directly with detectives in the New Orleans Police Department if employees would like to disclose there. Disclosing to a non-TUPD Tulane employee is not reporting the police.

Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this policy has occurred.

V. Supportive Measures and Emergency Removals

Supportive Measures

Supportive Measures are individualized services offered to Complainants and Respondents that are offered as appropriate and reasonably available to restore or preserve equal access to Tulane's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Tulane's educational environment, or deter Sexual Harassment. Supportive Measures are available regardless of whether a Complainant wants to move forward with a Formal Complaint.

When Tulane has notice of potential Federal Regulation Sexual Harassment, the University will inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint and explain to the Complainant the process for filing a Formal Complaint.

Supportive Measures are non-disciplinary, non-punitive individualized measures offered as appropriate, as reasonably available and without fee or charge to the Complainant or Respondent. They may include:

- Access to counseling services and assistance in setting up initial appointments, both on and off campus
- Imposition of mutual Contact Restriction
- Rescheduling of exams and assignments
- Providing alternative course completion options
- Change in class schedule, including the ability to drop a course without penalty or to transfer sections
- Change in work schedule or job assignment
- Assistance from University support staff in completing housing relocation
- Access modifications to certain University facilities or activities pending resolution of the matter
- Voluntary leave of absence
- Providing an escort to assure safe movement between classes and activities
- Arranging for medical services
- Providing academic support services, such as tutoring

Tulane will consider a number of factors in determining which Supportive Measures to take, including the needs of the employee seeking Supportive Measures; the severity or pervasiveness of the alleged conduct; any continuing effects on the Complainant; whether the Complainant and the Respondent share the same residence hall, academic course(s), or job location(s); and whether judicial measures have been taken to protect the Complainant (e.g., protective orders). Tulane will work in good faith to implement the requirements of judicially issued protective orders and similar orders, to the extent that doing so is within its authority.

The University's Assistant Provost for Title IX Compliance and Education has designated the Office of Institutional Equity within the Division of Human Resources and Institutional Equity (OIE) to administer the offer and implementation of Supportive Measures for employee Complainants and Respondents.

The University's Assistant Provost for Title IX Compliance and Education is responsible for ensuring the implementation of Supportive Measures. To that end, if an employee feels as though they have been denied a reasonable Supportive Measure by OIE, they may file an appeal with the University's Assistant Provost for Title IX Compliance and Education.

Tulane will maintain the privacy of any Supportive Measures provided under this Appendix to the extent practicable and will promptly address any violation of protective measures.

The process for offering and implementing Supportive Measures to employees and related other individuals is as follows:

Complainants. Upon receipt of an employee disclosure of sexual misconduct, regardless of whether it falls within Title IX, OIE will promptly contact the Complainant and invite them to speak with OIE to discuss the availability of Supportive Measures, consider the Complainant's wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint. Complainants who either wish to or file a Formal Complaint with the university but have their complaints dismissed because of one of the reasons explained in the Dismissal section may be able to pursue conduct action through the Equal Opportunity & Anti-Discrimination Policy; Complainants will be informed of that option, as well as their option to appeal a complaint's dismissal. In addition to an in-person meeting, Tulane will provide the Complainant with written information about resources, procedural options, and reasonably available Supportive Measures. This written information shall include a notification about the process for seeking disability-based accommodations, academic adjustments, and/or auxiliary aids under Section 504 of the Rehabilitation Act and/or the Americans with Disabilities Act.

Once the University's Assistant Provost for Title IX Compliance and Education has determined that a report meets the threshold for Sexual Harassment as defined by the Title IX regulations (34 C.F.R. part 106), that Complainant will receive an email from the Coordinator offering to meet and further review their rights and options under Title IX as well.

Respondents. Once an employee has been named in a Formal Complaint and/or received notice that they are a Respondent in a Title IX matter, OIE will contact the Respondent and invite them to speak with an Investigator to learn about Supportive Measures available and the Title IX Grievance Procedure. The University's Assistant Provost for Title IX Compliance and Education will follow up with an offer to meet and further review their rights and options under Title IX as well.

Third Parties. Tulane will also provide reasonably available Supportive Measures for Invitees or Third Parties, provided that the Supportive Measures are within the scope of that individual's relationship to Tulane.

Emergency Removal

Based on the information in a Report, or information subsequently learned, the University may remove a Respondent from Tulane's education program or activity (including placing a non-student employee Respondent on administrative leave during the pendency of a grievance process) on an emergency basis.

An Emergency Removal requires that the University undertake an individualized safety and risk analysis and then determine if a removal is warranted due to an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal. This analysis will be conducted by the University's Behavioral Intervention Team with a final determination regarding removal made by a Deputy Title IX Coordinator (either the Deputy for Students or Deputy for Employees, depending on the respondent's identity). The respondent will be notified in writing as to the determination and reasoning for the removal decision; this notice will also detail how the respondent can choose to file an appeal immediately following the removal. All appeals will be heard by the University's Assistant Provost for Title IX Compliance and Education within thirty-six (36) hours of submission and a decision returned in writing to the respondent.

If the removal directly relates to the complainant, the complainant will be notified if a respondent has been subjected to an Emergency Removal and the outcome of any appeals the Respondent files to challenge their removal. If the respondent files an appeal to a removal decision, the complainant will have twenty-four (24) hours to provide information for consideration of the appeal. Removals will be re-evaluated on a weekly basis by the Behavioral Intervention Team.

VI. Filing a Formal Complaint

When a Complainant is contacted following either a Report of Sexual Harassment or a Care Connection, along with the information about Supportive Measures, Complainants are provided information on filing a Formal Complaint to initiate a Title IX resolution process: either an informal Alternative Resolution Option or the formal Title IX Grievance Procedure. A signed Formal Complaint is required to initiate any Title IX resolution process.

Both the informal resolution process (an option mutually chosen by the complainant and respondent) and the formal Title IX Grievance Process (investigation, hearing and appeal process) are initiated by the filing of a Formal Complaint.

A Formal Complaint is a document submitted to the University's Assistant Provost for Title IX Compliance and Education by the Complainant alleging that a Respondent engaged in Prohibited Conduct and requesting an investigation. The Formal Complaint may be submitted to the University's Assistant Provost for Title IX Compliance and Education in person, by mail, or by electronic mail, using the Formal Complaint form. The Complainant may also contact the University's Assistant Provost for Title IX Compliance and Education directly for assistance.

Additionally, a Report may allege certain facts that compel Tulane to continue forward with an investigation, if not file a Formal Complaint, despite the Complainant choosing not to sign a Formal Complaint. Such circumstances may be present where a risk of imminent harm to an individual or others or a threat to the physical health and safety of the campus is determined to exist. After an evaluation of the

available information, if such circumstances are present, a Formal Complaints can be filed and signed by the University's Assistant Provost for Title IX Compliance and Education to continue the resolution process. If a Formal Complaint is initiated without the Complainant's participation, the Complainant will be notified and given an explanation of why the University is compelled to continue. Absent such extraordinary circumstances, the University will not proceed with its Formal Grievance Procedure without a participating Complainant.

Tulane may consolidate Formal Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Prohibited Conduct arise out of the same facts or circumstances.

VII. Determining if the Title IX Process, as Outlined in this Appendix, Applies

Reports of potential sexual discrimination, harassment, or violence are routed to the University's Assistant Provost for Title IX Compliance and Education and to OIE to initiate the University's response. Some alleged violations of Title IX (such as disparate treatment sex discrimination) fall within the scope of Title IX, but do not fall within the scope of the new Sexual Harassment investigative and hearing process proscribed by the May 2020 Title IX regulations.

While OIE makes supportive outreach in the manner explained in the above section, the University's Assistant Provost for Title IX Compliance and Education conducts a gatekeeping evaluation of the Report to determine whether it falls within the bounds of Title IX, and regarding which process applies to the matter. This gatekeeping evaluation occurs whether a Formal Complaint has been filed or not, and employees will be informed whether their allegations fall within the jurisdiction of Title IX (and informed about which process may apply) in the initial supportive outreach meeting and/or before filing a Formal Complaint whenever possible.

The University's Assistant Provost for Title IX Compliance and Education or designee will be responsible for determining whether the reported conduct falls within Federal Regulation Sexual Harassment jurisdiction as defined by the Title IX regulations (34 C.F.R. part 106). If so, Tulane may move forward with a Formal Complaint process as described in the previous section. If not, Tulane may be required to dismiss any Formal Complaint. The University's Assistant Provost for Title IX Compliance and Education will evaluate reasonably available information to make the following determinations:

- 1) Did the reported conduct occur within Tulane's Education Program or Activity? This must be answered in three parts:
 - a. Does Tulane have substantial control over the Respondent? And,
 - b. Does Tulane have substantial control over the context in which the conduct is reported to have occurred; or did the conduct occur in a building owned or controlled by a student organization that is officially recognized by Tulane? And,
 - c. Is the Complainant currently participating or attempting to participate in a Tulane Education Program or Activity?
- 2) Did the reported conduct occur in the United States?
- 3) Would the facts set forth by the report, if substantiated, constitute a violation of Sexual Harassment as defined by the Title IX regulations (34 C.F.R. part 106) and Section III of this Appendix?

Based on the answers to these questions, the University's Assistant Provost for Title IX Compliance and Education will make a determination about scope and process. This is a threshold determination regarding scope and jurisdiction, which will determine appropriate next steps as follows:

- If the answer to these three questions is yes, and a Formal Complaint is filed, then Tulane will follow the formal Grievance Procedure required by the Title IX regulations (34 C.F.R. part 106) for Sexual Harassment matters. The Title IX Grievance Process includes, among other measures, a hearing with cross-examination by each parties' advisors. The hearing will allow the participants to simultaneously see and hear each other but may be conducted remotely through videoconferencing technology.
- If the answer to any of these three questions is no, and a Formal Complaint has been filed, then Tulane must dismiss the allegations in the Formal Complaint related to Sexual Harassment as defined in the Title IX regulations in Section III of the Appendix, while also retaining the discretion to proceed according to processes outlined in other Tulane policies (such as the Code of Student Conduct, for investigation and adjudication of matters other than Federal Regulation Sexual Harassment; or the Equal Opportunity Policies, for investigation and adjudication of sex discrimination that implicates Title VII).

The University's Assistant Provost for Title IX Compliance and Education or designee will provide written notice of the determination as to scope and jurisdiction to the Complainant, refer that individual to the appropriate resources, including local law enforcement resources as applicable, and provide reasonably available Supportive Measures.

In the event a Respondent is charged with a violation of an applicable conduct code that is related to the report of Sexual Harassment, OIE may also investigate and resolve the related conduct charge through the Title IX Grievance Procedure jointly (i.e., if there is an allegation of conduct that violates Title VI and Title XI) or separate the two and use their proscribed individual processes but without sharing information between the two systems. If the Respondent is charged with a violation of another Tulane policy that is unrelated to the alleged violation of Federal Regulation Sexual Harassment, OIE shall coordinate its investigation and resolution as appropriate with any such investigation or resolution under the other applicable Tulane policy.

Appeals of the Dismissal of Formal Complaints

If a Complainant or Respondent would like to appeal the University's Assistant Provost for Title IX Compliance and Education's decision to dismiss a Formal Complaint, they may submit an appeal to the Senior Vice President for Academic Affairs and Provost or their designee within one week of receiving the dismissal. The other party will be notified about the filing of the appeal and will then has one week to provide information for consideration of the appeal. The Provost will return a decision on the appeal within one week of receiving all information, notifying both parties simultaneously of the outcome.

VIII. Title IX Grievance Procedure: Investigation, Hearing, and Appeal

The investigation of Federal Regulation Sexual Harassment matters is dictated by the May 2020 Amendments to the Title IX Federal Regulations (34 C.F.R. part 106). Tulane's Federal Regulation Sexual Harassment Grievance Procedures for resolving Formal Complaints involving employee Respondents builds upon the processes described previously in this policy regarding the investigation and adjudication

of other civil rights matters. This section describes the investigation of Formal Complaints for all Tulane employee affiliates; it also outlines the adjudication process for employees.

The process for tenure-track and other faculty is outlined in the Faculty Handbook. To the extent that conflicts exist between the process outlined in this policy and the process outlined in the Faculty Handbook, the process outlined in this policy will control.

The University is committed to providing a prompt and impartial investigation and adjudication of all Formal Complaints alleging violations of this policy. During the Grievance Process, both parties (Complainant and Respondent) have equal rights to participate.

Presumptions of Good Faith and Non-Responsibility

The University presumes that reports of prohibited conduct are made in good faith. A finding that the alleged behavior does not constitute a violation of this policy or that there is insufficient evidence to establish that the alleged conduct occurred as reported does not mean that the report was made in bad faith. Further, Tulane makes no determinations as to the outcome of an allegation until the completion of an investigation; this includes a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

In all proceedings under this policy, including at the hearing, the complainant, the respondent, and the witnesses and other individuals sharing information are expected to provide truthful information.

Advisors

Throughout the Grievance Process, each party may have an Advisor of their choice; parties may change their advisor at any time during the Grievance Process. An Advisor is an individual chosen by a Complainant or a Respondent to provide guidance during the grievance process. An advisor may be a member or non-member of the University community and may be an attorney.

The role of the advisor is narrow in scope: the Advisor may attend any interview or meeting connected with the Grievance Process, but the Advisor may not actively participate in interviews and may not serve as a proxy for the party, including in communications to the University. The Advisor may attend the hearing and may conduct cross-examination of the other party and any witnesses at the hearing; otherwise, the Advisor may not actively participate in the hearing.

If a party does not have an Advisor present at the hearing to conduct cross examination, the University will provide without fee or charge to that party an advisor selected by the University (who may be, but is not required to be, an attorney) to conduct cross-examination of the other party and/or any witnesses.

Any individual who serves as an advisor is expected to make themselves available for meetings and interviews throughout the investigation process, as well as the hearing, as scheduled by the University. The University (including any official acting on behalf of the University such as an investigator or a hearing panelist) has the right at all times to determine what constitutes appropriate behavior on the part of an advisor and to take appropriate steps to ensure compliance with this policy.

Procedural Review

A Procedural Review is an informational meeting where a member of the Office of Institutional Equity overviews Tulane's investigation and adjudication procedures.

A Procedural Review can happen before or after a Formal Complaint has been filed. Having a Procedural Review does not initiate the conduct process unless a Complainant expressly states they want to initiate that process; in Title IX matters, the conduct process cannot be initiated without a signed Formal Complaint. While a Complainant can file a Formal Complaint without having a Procedural Review first, it is strongly encouraged. Complainants will be given the information to file a Formal Complaint following their Procedural Review. If a Formal Complaint is filed before a Procedural Review, one will be scheduled promptly. Respondents will be contacted for a Procedural Review following the notice of investigation.

Procedural Reviews are conducted with both Complainants and Respondents. During the Procedural Review, parties will learn about the conduct investigation process in detail, including all rights, privileges and responsibilities. Parties will also learn review the available Supportive Measures in place to help students navigate this process. Parties will also learn details about communication and timeline. Parties will receive a written summary of the meeting for their reference. Advisors may also join the parties in this meeting.

Informal Resolution Process

Subject to the consent of the parties and the approval of the University's Assistant Provost for Title IX Compliance and Education, the University permits informal resolution processes in cases in which a formal complaint has been filed with the University's Assistant Provost for Title IX Compliance and Education. Subject to approval by the University's Assistant Provost for Title IX Compliance and Education, the informal resolution process is available in matters involving a student complainant and a student respondent as well as in matters involving a faculty/staff complainant and a faculty/staff respondent; the informal resolution process is not available in matters involving a student and an employee.

The informal resolution process is a voluntary, remedies-based process designed to provide parties with an option to resolve disputes with other students in a forum that is separate and distinct from the University's formal grievance processes under the Federal Regulation Sexual Harassment policy. The purpose of the informal resolution process is to address the conduct which has been reported by the complainant and place the parties in a position to pursue their academic and non-academic interests in a safe, respectful, and productive educational and working environment. Under this process, there will be no disciplinary action taken against a respondent, and the resolution will not appear on the respondent's disciplinary record.

The University may facilitate the informal resolution process prior to conducting a hearing. Before the informal resolution process is used, both parties must provide voluntary, written consent to the informal resolution process and must receive 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), and any outcomes resulting from participating in the informal resolution process (including the records that will be maintained or could be shared). At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Federal Regulation Sexual Harassment grievance process with respect to the formal complaint.

The University will 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 Federal Regulation Sexual Harassment. Similarly, the University will not require, encourage, or discourage the parties from participating in the informal resolution process.

Investigation

Following the receipt and review of the formal complaint by the University's Assistant Provost for Title IX Compliance and Education, and it being determined that the matter properly falls under this Federal Regulation Sexual Harassment policy, the parties will be informed in writing of the initiation of the investigation. The written information shall include:

- The identities of the parties, if known.
- A concise summary of the alleged conduct at issue (including when and where it occurred, if known).
- Notice of the allegations potentially constituting Federal Regulation Sexual Harassment.
- A statement that the respondent is presumed not responsible and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement informing the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney.
- A statement informing the parties that they may request to inspect and review evidence.
- A statement informing the parties that knowingly making false statements or knowingly submitting false information during the grievance process may constitute a violation of University policy.
- Information regarding the applicable grievance procedures, including the informal resolution process.

If, during the investigation, additional information is disclosed that may also constitute prohibited conduct under this policy, the Respondent and Complainant will be informed in writing that such additional information will be included in the grievance process.

This investigation process will continue forward as explained absent the parties agreeing to use an informal resolution.

Collection of Evidence

The investigators will collect information from each party. While the complainant and the respondent are not restricted from gathering and presenting relevant evidence, the investigators are responsible for gathering relevant evidence to the extent reasonably possible. However, each party will be given an equal opportunity to suggest witnesses; provide other relevant information, such as documents, communications, photographs, and other evidence; and suggest questions to be posed to the other party or witnesses. Parties and witnesses are expected to provide all available relevant evidence to the investigators during the investigation. If a party or witness fails to provide available relevant evidence during the investigation, such evidence may, at the discretion of the Hearing Chair(s), be excluded from consideration at the hearing. While parties are not restricted from presenting information attesting to the parties' character, such evidence generally is not considered relevant.

Investigators will draft a complete investigative report, outlining material facts (those in dispute and not in dispute); collecting all Respondent, Complainant and relevant witness and impact statements; asking any needed follow up questions; and collecting and organizing all relevant evidence. The investigator will evaluate all relevant evidence – including both inculpatory and exculpatory evidence. This report will be

reviewed by the Associate Vice President of Human Resources and the University's Assistant Provost for Title IX Compliance and Education for compliance and consistency purposes.

Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

Relevance of Evidence

Tulane will objectively evaluate all relevant evidence (inculpatory and exculpatory) but retains discretion with respect to how persuasive the hearing chair finds particular evidence to be. Relevant evidence is of consequence to the matter at hand, tending to make a fact more or less probable than it would be without the evidence. Additionally, the Hearing Chair cannot rely on statements of a party or witness who has not submitted to cross-examination at the live hearing.

There are also evidentiary protections similar to "rape shield" protections in criminal law which deem questions and evidence about a complainant's prior sexual history to be irrelevant with two limited exceptions:

- 1) if offered to prove that someone other than the respondent committed the alleged sexual harassment; or
- 2) if the question or evidence concerns sexual behavior between the complainant and the respondent and is offered to prove consent.

Hearing Process

The report will then be turned over to a separate Hearing Chair for adjudication. The Hearing Chair may gather additional information, including speaking with any identified party. Please note that the assignment of the Hearing Chair is in Tulane's sole discretion, and the Hearing Chair may include (but is not required to be) an outside attorney who is not an employee of Tulane. For the adjudication of complaints involving faculty, the Hearing Chair will join the existing faculty grievance committee and serve as a non-voting member.

The Hearing Chair will then preside over a live hearing, in which advisors of both the Respondent and Complainant may cross-examine any individual that has made a statement or provided evidence, including any and all witnesses, the Respondent or the Complainant. Each party must be represented by an advisor. If the Complainant or Respondent does not have an advisor, the University will provide one. If a party's chosen advisor does not appear, the University will appoint an advisor to provide cross-examination of the evidence on the party's behalf. The Hearing Chair will determine if a question or evidence is relevant or admissible. The Hearing Chair may question witnesses, the Respondent and Complainant. At no time will advisors answer on behalf of their students.

The Hearing Chair will have absolute discretion with respect to administering the hearing. The Hearing Chair will decide whether evidence and witnesses are relevant or irrelevant, with the understanding that the introduction of relevant evidence and witnesses will always be permitted. The Hearing Chair will be responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a party, witness, or advisor.

While the hearing is not intended to be a repeat of the investigation, the parties will be provided with an equal opportunity for their advisors to conduct cross examination of the other party and/or of relevant witnesses. A typical hearing may include brief opening remarks by the Hearing Chair; questions posed by

the Hearing Chair to one or both of the parties; questions posed by the Hearing Chair to any relevant witnesses; and cross-examination by either party's advisor of the other party and relevant witnesses.

The parties' advisors will have the opportunity to cross examine the other party (and witnesses, if any). Such cross examination must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. Only relevant cross examination questions may be asked of a party or witness. Before a party or witness answers a cross-examination question that has been posed by a party's advisor, the Hearing Chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

If the complainant, the respondent, or a witness informs the University that they will not attend the hearing (or will refuse to be cross-examined), the hearing may proceed, as determined by the University's Assistant Provost for Title IX Compliance and Education. The Hearing Panel may not, however: (a) rely on any statement or information provided by that non-participating individual in reaching a determination regarding responsibility; or (b) draw any adverse inference in reaching a determination regarding responsibility based solely on the individual's absence from the hearing (or their refusal to be cross-examined).

Other University administrators may attend the hearing at the request of or with the prior approval of the Hearing Chair, but the parties will be notified in advance of anyone else who will be in attendance.

The Hearing Chair will make a finding of responsible or not responsible for all charges and provide a rationale for each finding. The Hearing Chair will make an independent decision based on a thorough review of all relevant evidence collected. The Hearing Chair shall write a written determination, which will contain: (1) the allegations potentially constituting Federal Regulation Sexual Harassment; (2) 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 (if any), methods used to gather other information, and the hearing); (3) findings of fact supporting the determination; (4) conclusions regarding the application of this policy to the facts; (5) a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility (i.e., whether a policy violation occurred), any disciplinary sanctions imposed by the Sanction Officer if there has been a finding of responsibility, and whether any remedies designed to restore or preserve equal access to the University's education program or activity or working environment will be implemented; and (6) relevant appeal information for the parties.

If there is a finding of responsibility, the Hearing Chair will consider the scope of the case, impact on students and community and prior history when assigning sanctions. The Hearing Chair will also decide if remedies are appropriate in order to restore or preserve equal access to their education at Tulane. Such remedies may include the same individualized services described as "Supportive Measures;" however, unlike Supportive Measures, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. All sanctions must be approved by the Director of Student Conduct and remedies approved by the University's Assistant Provost for Title IX Compliance and Education. Upon completion, cases will be turned over to the Office of Student Conduct and the Title IX office and any other appropriate administrators for sanction and remedy implementation.

A Respondent in these cases may acknowledge responsibility at any time and accept sanctions imposed by the Office of Student Conduct. A Complainant may withdraw the complaint at any time. Either of these occurrences would cease any investigation.

Sanctions for a finding of responsibility for these cases ranges from a warning to expulsion and may also include a variety of educational sanctions. Supportive Measures cannot be used as sanctions.

Appeals

The appeal process is as described previously in the policy, but in Title IX cases, appeals may be submitted on the following bases: (1) procedural irregularity that affected the outcome of the matter; (2) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made which could affect the outcome of the matter; (3) the University's Assistant Provost for Title IX Compliance and Education or the University's staff, investigator(s), or any Hearing Chair 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; and/or (4) the sanctions (or recommended sanctions) are not commensurate with the violation.

IX. Training, Conflict of Interest, and Bias

Individuals who fill certain roles in the Title IX Grievance Procedure must receive annual training to ensure awareness of their compliance obligations and in order to best provide equitable treatment to Complainants and Respondents and be compliant with the Grievance Procedures required by Title IX. These individuals are University's Assistant Provost for Title IX Compliance and Education, Deputy Coordinators, Investigators, Hearing Chairs and other decision-makers (including appellate board members), and any person facilitating an Alternative Resolution Option within the Informal Process. Training subjects must include: the definition of Sexual Harassment as proscribed by the Title IX regulations (34 C.F.R. part 106); the scope of the University's education program or activity; how to conduct an Investigation and Grievance Process including Hearings, Appeals, and informal resolution processes, as applicable.

Additionally, the Hearing Chair(s) must receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant. Investigators must also receive the appropriate training needed to create an investigative report that fairly summarizes relevant evidence.

The Title IX regulations (34 C.F.R. part 106) further require Tulane to make publicly available information on these trainings. A list of trainings attended by these individuals is available at <https://allin.tulane.edu/content/training>. These are both internal and external trainings. The list includes the materials used in the training, all of which are provided for public review. These materials will be kept for seven years.

Further, any individual designated by Tulane as a Title IX Coordinator, Investigator, Hearing Chair, or any person facilitating an Alternative Resolution Option within the Informal Process, will not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. They will also be required to receive training on how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Any materials used to train Title IX Coordinator, investigators, Hearing Chairs, and any person facilitating an Alternative Resolution Option within the Informal Process must not rely on sex stereotypes and must promote impartial investigations

and adjudications of Formal Complaints of Sexual Harassment. Any training materials on these subjects will be publicly shared in the manner described in the training section above.