

### Intake

The Title IX intake process is as follows: Once the Title IX Coordinator's Office receives notice of a report, the Title IX Coordinator will email and/or call the Reporting Party to conduct a preliminary investigation. Absent unusual circumstances, a face-to-face meeting will be held.

- The Reporting Party will complete the Sexual Misconduct Information Check List with the Title IX Coordinator.
- The Reporting Party will also be provided with on and off campus support resources as well as University services and support.
- Interim measures may be taken if appropriate (see section B.).
- The Reporting Party will also be provided assistance if they wish to meet with a counselor, seek medical attention, or notify law enforcement.

After the Reporting Party meets with the Title IX Coordinator, the Title IX Coordinator will contact the Responding Party to conduct a preliminary investigation. Absent unusual circumstances, a face-to-face meeting will be held.

- The Responding Party will also be provided with on and off campus support resources as well as University services and support.
- Interim measures will be taken if appropriate (see section B.).
- The Responding Party will also be provided assistance if they wish to meet with a counselor, seek medical attention, or notify law enforcement.

Based on the information gathered during the preliminary investigation, the Title IX Coordinator will determine if the investigation will move from preliminary to an informal or formal investigation. The Reporting Party has the right to request for a preliminary investigation with services only should they choose not to cooperate in an informal/formal investigation.

If the Reporting Party chooses not to file a report, the information provided by the Reporting Party will remain on file in the Title IX Office. The Title IX Coordinator will nonetheless determine to what additional action is required. The University reserves the right to contact law enforcement regardless of the Reporting Party's request *if* the report poses a threat to the health or safety of students and employees.

### Interim Measures

Depending on the severity of the sexual misconduct, the University reserves the right to take interim measures at any point throughout the process to protect the Reporting Party and the Responding Party. Such interim measures may include, but are not limited to:

- a. A change in academic and extracurricular activity schedules to eliminate or minimize contact between the Reporting Party and Responding Party.
- b. A change in living and dining arrangements.
- c. The offer of counseling to both the Reporting Party and Responding Party.
- d. Alternative testing arrangements, seeking incompletes, alternatives for course completion and similar measures.

- e. Increased monitoring, supervision or security at locations or activities where the alleged misconduct occurred.
- f. The opportunity to obtain health, mental health, academic support and counseling services.

Pre-determined disciplinary or other action against a Responding Party will be taken where, due to the severity and extent of the alleged conduct, such extraordinary action is appropriate. The Dean of Students may suspend or expel a student and provide that student with notice as soon as practicable. A suspension or expulsion may be appealed in writing to the Vice President of Student Affairs from off campus. Such an appeal must be received in the Vice President's office **no later than five days after the day the notice of suspension** is provided to the student by the University. The written request to appeal must identify with specificity the *facts*

### **Investigation and Outcome of Investigation**

Investigations of alleged sexual misconduct are the responsibility of the Title IX Coordinator and investigators designated by the Title IX Coordinator. An investigation will begin promptly and the University **will not wait** for the conclusion of a criminal investigation. The University prohibits retaliation against any party or participant in an investigation or hearing. Students found in violation of the retaliation policy will be suspended or expelled. During the investigation process, the Reporting Party and Responding Party will have the opportunity to provide any evidence that may exist to the Title IX Coordinator including copies of text messages, photos, social media posts, etc.

After the investigation, the Title IX Coordinator will determine if the Responding Party is in violation of Title IX policy and make sanction recommendations to the Judicial Officer. The Title IX Coordinator will notify the Reporting Party and Responding Party of the decision in writing. The Reporting Party will be notified by the Judicial Affairs Officer of the sanctions issued at which time the Responding Party may then enter one of two pleas:

1. In Violation, waiving their right to a hearing with the Sexual Misconduct Hearing Board.
2. If the Reporting Party determines they are not in violation of the Title IX policy the Responding Party may enter a plea of "Not in Violation". Responding Parties who enter a plea of "Not in Violation" may then request to have their case heard by the Sexual Misconduct Hearing Board based on the one or more of the following three tenants: (1) New information not previously presented (2) Procedural error or (3) New evidence not previously presented.

The Responding Party must present the appeal within (5) days of the issued sanction.

If the Title IX Coordinator determines that a case will be presented to the Sexual Misconduct Hearing Board, the Dean of Students will convene the board. The Title IX Coordinator will provide the Dean of Students with the documents comprising the investigative file via the Maxient system. The Dean of Students will notify the Reporting Party and Responding Party information about the hearing in writing within (10) days of the Appeal notice received.

The Dean of Students will provide both parties with the evidence packet (all evidence collected during the investigation) and the evidence packet will be provided to the Sexual Misconduct Hearing Board as part of the hearing process.

### **Administrative Hearing before Dean of Students**

An administrative hearing may be conducted by the Dean of Students or her appointee in her absence. An administrative hearing is appropriate under certain limited circumstances such as where the Responding Party has accepted responsibility for both the misconduct and the proposed sanctions, cases involving the violation of the sexual misconduct policy by a student organization, or cases where the circumstances are extremely sensitive in nature and both the Reporting Party and Responding Party voluntarily and without coercion, request the case not be heard by the sexual misconduct Hearing Board. The Title IX Coordinator will determine whether an administrative hearing is appropriate. Administrative action by the Dean of Students in an administrative hearing will conclude reports of sexual misconduct without any further hearing(s).

### **Sexual Misconduct Hearing Board**

If the Title IX Coordinator determines that, based on the outcome of the investigation, a hearing on the allegations should be held, the hearing will be conducted by the Sexual Misconduct Hearing Board. Five to seven employees, comprised of faculty, staff and administrators, will make up the members of Sexual Misconduct Hearing Board. The “Preponderance of Evidence” standard, (i.e. “more likely than not”) will be used by the Hearing Board. The Title IX Coordinator will appoint one of these individuals to be Presiding Hearing Board Member. The Dean of Students will serve as an advisor to the Hearing Board. The Presiding Hearing Board Member will, in consultation with the Dean of Students or her designee, determine the outcome of all procedural and evidentiary issues raised at the hearing.

No individual may attend the Hearing Board hearing unless they serve as an advisor to the Reporting Party or Responding Party or are otherwise permitted to do so by the Presiding Hearing Board Member. All Hearing Board witnesses will be separated and no witnesses other than the Reporting Party and Responding Party may be present in the hearing room during witness testimony.

Hearing Board members may meet prior to the hearing to discuss logistics and review evidence that has been provided to both the Reporting Party and Responding Party. Prior to the hearing, the Hearing Board is empowered to request that additional information from the investigators be made available to it. Once the hearing is convened, the Hearing Board is also empowered to call witnesses of its choosing. Witnesses are not required to participate but are encouraged to do so.

### **Resolution Hearing Notice**

The Chair, in coordination with the Conduct Body, will select a date and time for the resolution hearing. The Chair will notify the Responding party and the Reporting party of the hearing date and time at least five (5) days prior to the hearing. The hearing notice will be in writing and will include the following information:

- a. The date, time, and location of the hearing;
- b. The names of the Conduct Body Members;
- c. Information about how to submit witness names to Chair;
- d. Information about how to submit Advisor name to Chair.
- e. A Responding party or Reporting party who cannot attend the scheduled hearing must contact the Chair to request a new date and/or time for the meeting at least two (2) business prior to

the hearing. It is at the discretion of the Chair if the hearing will be rescheduled and a Responding party and a Reporting party may only request one change to the date and/or time of the hearing.

- f. If, after proper notice, the Responding party does not appear at the scheduled date and/or time, the Conduct Body may conduct the meeting without the Responding party's participation, determine the Responding party's responsibility for the alleged violation(s) and assign sanctions based on the information in its possession. An unexcused absence from a meeting, without just cause, may also result in additional charges under the Student Code.
- g. A hearing may be conducted on a non-business day at the discretion of Chair, as applicable, with the agreement of all involved participants.

### **Hearing Procedures**

- When requested, the University will make arrangements so that during the Hearing Board hearing the Reporting Party and the Responding Party do not have to be present in the same room at the same time.
- The University will not require the Reporting Party to be present at the Hearing Board hearing for the hearing to take place.
- If the Responding Party chooses not to participate in the hearing, it will nonetheless be held and the Hearing Board will render its decision based on the information that is presented to it.
- The University will not permit the parties to cross-examine each other. However, each party may submit written questions to the Title IX Coordinator for consideration, at least forty-eight hours before the time the hearing starts. Approved questions will be forwarded to the Hearing Board and the Hearing Board may, in its discretion ask these questions on behalf of the Reporting Party and Responding Party without disclosing the author of the question.
- Questions about the Reporting Party's sexual history with anyone other than the Responding Party will not be permitted. The same restriction applies to the Responding Party's sexual history with anyone other than the Reporting Party.
- The Presiding Officer or the Dean of Students, acting as advisor to the hearing process, may not allow certain questions if the question is perceived as irrelevant to the case or inappropriate.
- The University will allow both parties to be accompanied to any University disciplinary proceedings and any related meetings by the advisor of their choice. However, the advisor may not actively participate in the investigative or disciplinary process.

### **Witnesses and Supporting Information:**

- a. All documents to be presented at the hearing by the Reporting party or the Responding party must be submitted to the Chair at least three (3) business days prior to the hearing. Copies of submitted hearing documents are available by written request to the Reporting party and Responding party at least two (3) business days prior to the hearing, consistent with FERPA or other regulation governing the disclosure of educational records.
- b. Witness lists must be provided by the Responding party and the Reporting party to the Chair at least three (3) business days prior to the hearing.
- c. Members of the University community are encouraged to appear at the hearing as witnesses if they have knowledge or information regarding the incident or alleged violation in question and if they have been requested to appear. Individuals who are not members of the University community will generally be permitted to appear as a witness if they have direct knowledge or information regarding the incident or alleged violation in question.

- d. Character witnesses are not accepted during the hearing.

**The order of a Hearing Board hearing will be as follows:**

1. The person initiating the report (Reporting Party) will give his or her evidence of the misconduct alleged. The Reporting Party may choose not to participate in the hearing but does so with the understanding that it may impact the Hearing Board's decision regarding whether or not the misconduct occurred and what the appropriate actions should be if it did occur. In place of the Reporting Party, this evidence may be provided by the party responsible for the investigation of the allegations.
2. The Responding Party may give his or her evidence of the misconduct alleged. If the Responding Party chooses not to participate in the hearing, the hearing will nonetheless be held and the hearing board will render its decision based on the information presented.
3. Any witnesses for either party may appear individually before the Hearing Board. The number of such witnesses will be pre-determined by the Dean of Students in consultation with the Title IX Coordinator. Both parties will have the opportunity to present the same number of witnesses.
4. Both parties will have the opportunity to review witness accounts or statements.
5. The Hearing Board may ask questions of the witnesses should they choose to participate.
6. The Reporting Party and Responding Party will not be permitted to question each other directly. Both may submit questions for the other party to the Title IX Coordinator, in writing, at least 48 hours prior to the hearing for consideration (see Hearing Procedures).
7. The Hearing Board may ask questions of the Reporting Party or the party responsible for the investigation.
8. The Hearing Board may ask questions of the Responding Party.
9. The Reporting Party may make a closing statement, including an impact statement and a description of the desired outcome from the hearing.
10. The Responding Party may make a closing statement, including an impact statement and a description of the desired outcome from the hearing.
11. The parties will leave the hearing in such a way to avoid contact with each other.

**Notice of Outcome of Hearing Board Hearing**

Both parties will be notified concurrently in writing [sent by email and/or first class mail] about the outcome of the report and appeal rights. In the notification to the Reporting Party, the University will provide:

- (i) a conclusion as to whether or not, based upon a preponderance of the evidence, the alleged conduct occurred;
- (ii) any individual remedies provided to the Reporting Party;
- (iii) any sanctions imposed on the Responding Party that directly relate to the Reporting Party, and other steps the University took or will take to eliminate a hostile environment, if the University finds one to exist and the steps taken and/or to be taken to eliminate the hostile environment. Information regarding the appeal process will also be provided to both parties.

**Determination and Possible Sanctions**

At the conclusion of the hearing, the Hearing Board will adjourn to evaluate the record of the proceedings. Thereafter the Hearing Board will render its written decision on the Reporting Party's

report. As a result, the Hearing Board may either dismiss the report without further action or recommend one or more of the following sanctions:

1. **Warning.** The Responding Party is warned that his or her behavior is unacceptable to the University community. The Responding Party may also be warned that further violations will result in more severe disciplinary action.
2. **Restitution.** The Responding Party may be assessed charges for any damages or losses which may have resulted from the sexual misconduct.
3. **Fines.** The Responding Party may be assessed fines as appropriate in addition to charges for restitution.
4. **Disciplinary Probation.** Disciplinary probation may be accompanied by additional sanctions or by special conditions including, but not limited to, required counseling.
5. **Counseling.** The Responding Party may be required to attend counseling.
6. **Restricted access** on campus, at University events, University housing, etc.
7. **Restricted communication** with other party or witnesses associated with the case.
8. **Suspension.** The Hearing Board will determine the appropriate length of time for the suspension.
9. **Expulsion.** Permanent separation of the Responding Party from the University and the University community.

The Hearing Board's written decision will be sent by email and/or first class mail concurrently to the Reporting Party and the Responding Party.

#### **Appeals from Determination of Hearing Board**

Following the determination of the Hearing Board, both parties have the right to appeal the determination but solely for the following reasons:

1. There is evidence that the hearing procedures outlined in the Sexual Misconduct Policy were not adequately followed.
2. There is new evidence that will materially impact the Hearing Board's decision and this evidence was not presented at the Hearing Board hearing for good cause shown as determined by the Title IX Coordinator.

A request for an appeal must be made in writing and submitted by email to the Title IX Coordinator [twilson@tuskegee.edu] within three (3) business days [Monday – Friday] after the date the Hearing Board's written decision is received by the appealing party. The request for an appeal letter should include a statement for the grounds for appeal, which at a minimum should contain a list of alleged errors in the decision or procedure, statement of why the decision or sanctions are in error and supporting documentation, including specific dates, details, and any other information in support of the claim if newly available information is the grounds for appeal.

The Hearing Board's written decision will be sent to both parties by email and/or certified mail and the three day period will be counted using the date the first method of delivery was received by the appealing party. The Title IX Coordinator and Vice President for Student Affairs will determine if an appeal may be taken. If a decision is made to hear the appeal, the non-requesting party will receive a copy of the appeal letter and notification that the appeal has been granted.

**For an appeal hearing, the following process will be followed:**

The Sexual Misconduct Appeals Hearing Board will be comprised of a total of three faculty and administrators, selected by the Dean of Students from the pool of Hearing Board members. None of the Appeals Board members may have served on the original hearing board. The appeals board will make every effort to decide each appeal as quickly as possible, preferably within two weeks of the time the request for appeal was granted by the Title IX Coordinator. The sanctions from the original hearing will be upheld, if applicable, until the appeal is heard.

The Appeals Board will be provided copies of all evidence received by the Hearing Board, including a transcript of the initial hearing. The Hearing Board will consider new evidence if permitted by the Title IX Coordinator.

The Appeals Board will meet, with all members present to review the transcript of the Hearing Board hearing and all evidence submitted to and accepted by the Hearing Board. After considering this material, the Appeals Board may:

1. Affirm the findings and sanctions determined by the Hearing Board;
2. Affirm the findings but adjust the severity of the sanction to a greater or lesser degree;
3. Reverse the finding and as such make a determination that, based on the “preponderance of evidence” standard, there was insufficient evidence to find the Responding Party committed the offense(s) complained of;
4. Reverse the Hearing Board’s decision and order a new hearing. The Appeals Board’s written decision will be sent by email and first class mail to both parties concurrently. Decision of the Appeals Hearing Board is final.

The University reserves the right to modify the hearing and appeal procedures to provide for what in its sole opinion, is equitable treatment of the Reporting Party and Responding Party.

Appeals will be shared with the other party, who will have three (3) business days upon notification to provide a written response to any new information that has been presented in the appeal. The 3-Panel Sexual Misconduct Hearing Committee will render a decision within ten (10) business days following the receipt of the appeal.