

Tuskegee University Title IX Policy

NON-DISCRIMINATION STATEMENT

Tuskegee University (TU) prohibits discrimination based on sex in employment and education programs and activities. This policy applies to all students and employees and to conduct occurring in locations, events, or circumstances over which TU exercises substantial control over both (1) the respondent, and (2) the context in which the conduct occurs, including on school grounds, any building owned or controlled by a student organization officially recognized by TU; and through technology resources provided by TU or impacting a student or employee at a location owned, leased or controlled by TU or a recognized student organization.

TU will process all sex discrimination reports it receives, including reports of sexual harassment as defined in 34 C.F.R. § 106.30, to determine whether the conduct alleged in the report, if proved, would constitute sexual harassment as defined in said regulation. This includes complaints of sexual harassment made by students and employees, and against students and employees. TU reserves the right to address potential disciplinary infractions that fall outside of the Title IX's scope under its student, employee and faculty codes of conduct. TU will take appropriate action should it receive a formal complaint, as defined herein, that any contractor, vendor, partner, or other affiliate has engaged in sex-based misconduct, up to and including termination of the business relationship.

A. Title IX Coordinator

Reports of discrimination on the basis of sex or sexual harassment as defined in 34 C.F.R. § 106.30 and other conduct prohibited under this policy and inquiries concerning the application of Title IX and its regulations should be directed to the TU Title IX Coordinator listed below:

Title IX Coordinator

Mia Maxwell, Esq.
Kresge Center
Suite 322
334.727.8794
mmaxwell@tuskegee.edu

To schedule an appointment to make an in-person report, contact Constanza Hoffman at choffman@tuskegee.edu

The Title IX Coordinator coordinates the University's compliance with Title IX and University policies related to sexual misconduct. The Title IX Coordinator oversees the University's centralized responses to ensure compliance with Title IX and the 2013 Amendments to the Violence Against Women Reauthorization Act (VAWA as amended). The Title IX Coordinator's responsibilities also include receipt and review of reports, complaints, investigating or overseeing the investigation of complaints of alleged sexual misconduct or harassment; ensuring that consistent standards and practices apply to all investigations; being available to meet with students and employees who believe a violation of this policy has occurred; and assisting campus security or law enforcement as needed. For more information regarding Title IX students and employees may also contact the U.S. Department of Education, Office for Civil Rights at (800) 421-3481 or visit ocr@ed.gov.

B. Policy Definitions

Actual knowledge means notice of sexual harassment, as defined herein or allegations of sexual harassment, as defined herein, to TU's Title IX Coordinator or any TU official who has authority to institute corrective measures on behalf of TU

including the Title IX Coordinator, the Vice President for student Affairs, the Human Resources Lead, or the President. There can be no imputation of knowledge based solely on vicarious liability or constructive notice, and the "actual knowledge" requirement is not satisfied when the only TU official with actual knowledge is the respondent.

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment as defined herein. A complainant must be enrolled at or employed by TU when the formal complaint is filed.

Education program or activity includes locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by TU.

Forcible Compulsion means physical force that overcomes earnest resistance or a threat, express or implied, that places a person in fear of immediate death or serious physical injury to himself or another person.

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment, as defined herein against, a respondent and requesting that TU investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of TU. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by e-mail using the contact information for the Title IX Coordinator listed in this policy and other publications. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.

Intimate partner is an individual with whom one has or had a short or long term relationship that provides romantic and/or physical intimacy or emotional dependence. Intimate relationships can occur between individuals of the same gender or different genders and may include (but are not limited to) marriages, civil unions, dating relationships, "hook-up" relationships, relationships in which partners are characterized as "girlfriends" or "boyfriends," and relationships between individuals with a child in common.

Lack of consent results from either of the following:

- (1) Forcible compulsion.
- (2) Being incapable of consent.*

*A person is deemed incapable of consent if he or she is either:

- (1) Less than 16 years old.
- (2) Incapacitated.

Consent to engage in sexual intercourse, sodomy, sexual acts, or sexual contact may be communicated by words or actions. The existence of a current or previous marital, dating, social, or sexual relationship with

the defendant is not sufficient to constitute consent. Evidence that the victim suggested, requested, or otherwise communicated to the defendant that the defendant use a condom or other birth control device or sexually transmitted disease protection, without additional evidence of consent, is not sufficient to constitute consent.

Mentally Incapacitated means a person is rendered temporarily incapable of appraising or controlling his/her conduct due to the influence of a narcotic, anesthetic, alcohol, or other substance, including substances administered without consent, or due to any other act committed upon the victim without consent.

Physically Helpless means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment, as defined herein. A respondent must be enrolled at or employed by TU when the formal complaint is filed.

Sex discrimination means an adverse action taken against an individual because of sex, including sexual harassment as defined herein, and sexual exploitation. Both men and women can file complaints of sex discrimination.

Sexual exploitation is when one person takes nonconsensual or abusive sexual advantage of another person or violates the sexual privacy of another person without their consent. Examples include recording, photographing, transmitting, viewing, or distributing intimate or sexual images or sexual information without the knowledge and consent of all parties involved and voyeurism (i.e., spying on others who are in intimate or sexual situations). Sexual exploitation does not include non-consensual sexual penetration or non-consensual sexual contact.

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

- (1) **Quid pro quo** meaning an employee of TU conditioning provision of a TU aid, benefit, or service 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; and/or one or more of the following:
 - (3)
- (a) **Sexual assault** 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, Non-forcible—(Except Prostitution Offenses) Unlawful, non-forcible sexual intercourse.

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

Statutory Rape—Non-forcible sexual intercourse with a person who is under the statutory age of consent.

(b) **Dating violence** means violence committed by a person—
who is or has been in a social relationship of a romantic or intimate nature with the victim; and
where the existence of such a relationship shall be determined based on a consideration of the following factors:

The length of the relationship.

The type of relationship.

The frequency of interaction between the persons involved in the relationship.

(c) **Domestic violence** means any 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.

(d) **Stalking** includes electronic and cyberstalking and means 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.

Supportive measures means non-disciplinary, non-punitive, individualized services offered as appropriate, reasonably available, and without charge to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed. 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. The 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.

C. Prohibited Conduct

Any conduct by an employee or student that denies or limits the ability of a student or employee to participate in or receive the benefits, services, or opportunities of employment or any TU program or activity based on sex is prohibited. The following are examples of behaviors that are prohibited under this policy. This is not intended to be an exhaustive list:

1. An employment or educational decision or benefit is conditioned on submission to unwelcome conduct as defined herein;
2. Submission to, or rejection of, unwelcome conduct, as defined herein, is used as a basis for denying employment or an opportunity to participate in or benefit from a TU program or activity;
3. Conduct which alters the educational environment to the degree that it adversely affects the student's ability to participate in or benefit from any school program whether or not that student is the target of the harassment;
4. An instructor, administrator, volunteer, or other person in a position of authority engages in sex discrimination or sexual harassment of a student or employee; and/or
5. A student or a group of students engages in sexual exploitation or harassment, as defined herein of another student or students.
6. Unwelcome conduct, as defined herein, of a sexual nature including but not limited to advances, comments, innuendoes, jokes, propositions, suggestions or touching;
7. Attempted or actual physical assault;
8. Any nonconsensual sexual act, including but not limited to, rape and sexual assault;
9. Domestic violence, dating violence, sexual exploitation, and stalking;
10. Distribution of revenge porn or distribution of nude or sexually explicit images without expressed written permission of all parties; and

This policy specifically includes electronic communications, including but not limited to phone calls, text messages, e-mail, and social media communications such as Instagram, Snapchat, Twitter, and Facebook.

D. TU's Formal Grievance Process

All respondents are presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the formal grievance process. TU will treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment, as defined herein, has been made against the respondent, and by following a grievance process that complies with applicable regulations before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in 34 C.F.R. § 106.30, against a respondent.

The grievance process consist of (1) the filing of a formal complaint (2) an investigation; (3) a live hearing; (4) an appeal; and (5) where applicable the imposition of sanctions and remedies.

(1) **Formal Complaint** A formal complaint as defined herein, must be filed before an investigation begins. At the time a student or employee files a formal complaint, the student or employee must be employed by TU or currently enrolled in or attempting to participate in a TU education program or activity. Upon receipt of a formal complaint, TU will provide the written notices to the parties who are known.

(2) **Investigation** Formal complaints are investigated by the Title IX coordinator or a designee. At its discretion, TU can utilize external personnel to serve as an investigator. Other TU officials may assist in gathering facts during the investigation and information from TUPD or other law enforcement officials may be considered.

(3) **Live Hearings** At the live hearing, the decision-maker(s) will 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, notwithstanding the discretion of the recipient under pertinent regulation to otherwise restrict the extent to which advisors may participate in the proceedings. Either party may request 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) will 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, TU will provide without fee or charge to that party, an advisor of the recipient'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 may be conducted with all parties physically present in the same geographic location or, at TU'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. TU will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

A written determination regarding responsibility will be prepared using the preponderance of the evidence standard. Said statement will be provide to the parties simultaneously. The determination regarding

responsibility becomes final either on the date that TU 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.

(4) **Appeals** Either or both parties may appeal a determination regarding responsibility, and dismissal of a formal complaint or any allegations therein, on the following bases:

(A) Procedural irregularity that affected the outcome of the matter;

(B) 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; and

(C) 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.

In the event of an appeal a written statement will be issued simultaneously to both parties describing the result of the appeal and the rationale for the result.

(5) **Sanction/Remedies** Remedies may include the same individualized services used as “supportive measures”; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. The range of possible disciplinary sanctions TU may implement following a determination of responsibility are the sanctions for disciplinary misconduct set forth for faculty, staff, and students in TU’s codes of conduct and handbooks for faculty, staff and students. This ranges from educational interventions, counseling, restriction from housing, campus and activities, community service, and probation up to and including termination for faculty and staff, and suspension or expulsion for students.

Individualized services must be offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. If a violation of this policy is proven by a preponderance of the evidence (i.e., that it is more likely than not that sexual harassment occurred), immediate action, including protective measures, will be implemented to end the harassment and prevent its recurrence. For students, once a student is found responsible for a sexual misconduct violation, before a sanction is imposed, TU should consider: (1) how best to enforce its Code of Conduct; (2) the impact of separating a student from his or her education; and (3) whether the proposed sanction is a proportionate response to the violation.

Any sanction imposed on the respondent that relates directly to the complainant, such as a "no contact" order, transfer to different classes or housing, or a suspension will be disclosed to the complainant. The complainant and respondent will not be notified of the individual remedies offered or provided other than no-contact orders.

E. TU's Informal Resolution Process

TU offers informal resolution processes such as mediation as alternatives to a full investigation and adjudication of the formal complaint. Informal resolution requires that both parties give voluntary, written consent. Informal resolution cannot be used for complaints against employees alleging sexual harassment of students. In addition:

- (a) TU will not require the parties to participate in an informal resolution process and will not offer an informal resolution process unless a formal complaint is filed.
- (b) 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 —
 - (i) The parties receive written notice disclosing the allegations, and 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;
 - (ii) Either party has the right to withdraw from informal resolution and resume a grievance process at any time before agreeing to a resolution;
 - (iii) The parties will not be required to work out problems directly with one another and will instead be facilitated by a mediator provided by TU.
 - (iv) Informal resolution processes can be used to resolve sexual misconduct cases if both parties agree.
- (c) The parties are free to negotiate the terms of the agreement such as confidentiality and sanctions, and once entered into, the informal resolution agreement becomes binding according to its terms.
- (d) Individuals mediating or facilitating informal resolution must be free from conflicts of interest, bias, and trained to serve impartially.
- (e) Parties must be advised in writing and fully aware of the consequences of choosing informal resolution, including the records that will be maintained, that could or could not be shared, and the possibility of confidentiality requirements as a condition of entering into a final agreement.

The informal resolution process will be resolved within a reasonable period of time and may be temporarily delayed or limited extensions of time frames allowed for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

F. Recordkeeping

TU will maintain for a period of seven years records of -

- (A) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under paragraph (b)(6)(i) of this section, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;

(B) Any appeal and the result therefrom;

(C) Any informal resolution and the result therefrom; and

(D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

G. Training

Any individual serving as a Title IX Coordinator, investigator, or decision-maker, and persons designated by TU to facilitate the informal resolution process, must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must receive training on the following:

1. The definition of sexual harassment in §106.30;
2. The scope of the University's education programs and activities;
3. How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes;
4. The presumption that the respondent is not responsible for the alleged conduct; and
5. How to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias.

Decision-makers must also receive training on:

6. Any technology to be used at a live hearing; and
7. 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.

All training provided by the Title IX Coordinator must be gender neutral and free of any sex bias or sex stereotyping. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

H. Non-retaliation

Retaliation against a student, employee, or other individual who reports or complains about sex discrimination to an appropriate school official or participates in a report, investigation or proceeding involving a claim or allegation under this policy because he or she made a complaint, testified, or participated in an investigation or proceedings is prohibited.

I. Dissemination of policy

This policy must be distributed to:

1. Students
2. Administrators, faculty, other employees, and volunteers

3. Applicants for admission
4. Application for employment This policy must be available:
 1. On the University website
 2. In hard copy at multiple campus locations
 3. In both printed and electronic publications, including student, staff, and faculty handbooks, codes of conduct, and catalogs