

APPENDIX B – TAP 31 RESOLUTION PROCESS

I. General Principles

- a. Administration: The TAP 31 Resolution Process is administered by the University’s Title IX Coordinator and the University’s Deputy Title IX Coordinators. It is an accompanying Appendix to TAP 31, the terms of which are incorporated herein by reference. In the event of a discrepancy between Appendix B and TAP 31, TAP 31 controls.
- b. Application: Duquesne University is obligated to respond promptly, thoroughly and equitably when it learns of any reported violation of TAP 31. All alleged violations of TAP 31 are subject to the Resolution Process set forth in this Appendix.
- c. Timing: The TAP 31 Resolution Process will be completed in a reasonably prompt manner, which generally results in completion within a sixty (60) calendar day timeframe. However, the University will not compromise a thorough and fair process to meet the sixty (60) calendar day completion goal. The timeline and time frames contained herein may be extended, if necessary, by the Title IX Coordinator, in consultation with appropriate University administrators and with notice to the Parties.
- d. Deadline for Reporting: There is no deadline by which a report of an alleged TAP 31 violation must be made. However, Complainants and Reporters are encouraged to report soon after the alleged violation to maximize the University’s ability to investigate and respond.
- e. Support Person: The Complainant and Respondent (each a “party,” and collectively, the “parties”) may be accompanied by one Support Person throughout the TAP 31 Resolution Process. This Support Person may be an individual of the party’s choosing. Upon request, the Title IX Coordinator will connect a party with a member of the University community who can act as a Support Person. The Support Person shall not perform any function other than advising the party, and may not speak for, or on behalf of, the party. Additionally, delays in the Resolution Process will not normally be allowed due to a Support Person’s scheduling conflicts.
- f. Pending Criminal Investigation: Some reported violations of TAP 31 may also constitute criminal conduct. In such instances, the Complainant is also encouraged to file a report with the appropriate law enforcement authorities and, if requested, the University will assist the Complainant in doing so. The pendency of a criminal investigation, however, does not relieve the University of its obligation to respond to alleged violations of TAP 31. Therefore, to the extent doing so does not interfere with any criminal investigation, the University will proceed with this Resolution Process.

- g. Recordings: Hearings will be recorded and recordings will be maintained by the Title IX Office in accordance with the University's records retention policy. Recordings are the property of the University. No party or participant may make any recordings of any meetings, interviews, and/or hearings, other than the Title IX Coordinator for the purposes of recording the hearing.
- h. Official Method of Communication: Under the TAP 31 Resolution Process, a party or participant's University email account is the official method of communication. Parties and participants are required to periodically check their account for time critical notices or administrative notices requiring a timely response. Notice will be considered received one day following the date the notice is posted to an email account. Failure to check a University email account does not excuse or exempt a party or participant from any actions required by the University. Failure to check email is not an excuse to miss a deadline that is established under the TAP 31 Resolution Process. Party and participant communication regarding the TAP 31 Resolution Process should be generated from their Duquesne University personal email account.
- i. University Holidays and Closures: Days where the University is closed for breaks and/or Holidays do not count as business or calendar days for the purposes of the timeframes contained in this Policy.

II. The TAP 31 Resolution Process

a. Generally, the Resolution Process is as follows:

1. The Resolution Process begins when the Title IX Coordinator or one of the Deputy Title IX Coordinators receives a report from a Complainant and/or a Responsible Employee or a Reporter alleging that a Respondent has engaged in activity/activities prohibited by TAP 31. If the report comes from a Responsible Employee or Reporter, the Title IX Coordinator will request to meet with the Complainant. The Title IX Coordinator/Deputy Title IX Coordinator will ask if the Complainant wants to file a charge alleging that the Respondent engaged in activity/activities prohibited by TAP 31.

If the Complainant does not want to file a charge alleging the Respondent engaged in activity/activities prohibited by TAP 31, the Title IX Coordinator has an obligation to determine whether the University must bring a charge against the Respondent for alleged violation(s) of TAP 31 in order to provide a safe and nondiscriminatory environment for all members of the University community, including the Complainant. Factors the Title IX Coordinator will consider include, but are not limited to: whether there have been other reports about the Respondent, whether the Respondent allegedly threatened additional/further sexual assault or the sexual assault of others, and whether the alleged violation was committed with a weapon. However, even if the

Title IX Coordinator decides to pursue a charge against the Respondent, the Complainant is not obligated to participate in the Resolution Process. Further, even if a Complainant does file a charge, he or she may withdraw it at any time during the Resolution Process.

2. When a charge is filed, the Respondent is notified. Notice to the Respondent will include sufficient information to allow the Respondent an opportunity to respond to the alleged violation. It will also include information on the Resolution Process. If the Respondent accepts responsibility at this stage, the Title IX Coordinator will assign sanctions. The Complainant will be notified in writing that the Respondent accepted responsibility, and will be notified of sanctions which directly relate to the Complainant. If the Respondent accepts responsibility at this stage, there is no appeal option.
3. If the Respondent does not accept responsibility, the Title IX Coordinator and Deputy Title IX Coordinator(s) will gather facts about the alleged violation(s). They will request to meet with the Respondent and any witnesses discovered during the fact gathering or suggested by the parties, and may request to meet again with the Complainant. They may request multiple meetings with the parties and/or any witnesses.

A Deputy Title IX Coordinator will typically be present with the Title IX Coordinator at all meetings. The Title IX Coordinator and/or the Deputy Title IX Coordinator will take meeting notes, and will request copies of relevant material from the Complainant, Respondent, and any witnesses, including, but not limited to, texts, phone call logs, taxi/Uber/Lyft receipts, and social media posts.

4. Once the fact gathering stage has been completed, in approximately thirty (30) calendar days, the Complainant and the Respondent will be so notified and a hearing will be scheduled.
5. All of the following applies to hearings:
 - The Complainant and the Respondent will be given written notice of the hearing date; information about scheduling a time to review the hearing file (which includes interview notes, a summary of the allegations and remedy requested, the relevant policy/rules/provisions, a timeline of events, a witness list, and a document list); the timeline for submitting new and/or rebuttal evidence; the timeline for notifying the Title IX Coordinator of who the party will be bringing as a witness; and the timeline for notifying the Title IX Coordinator of who the party intends to bring as a Support Person to the hearing. Timelines in this letter are final and not flexible. Failure of a party to submit material by the time submitted in the letter shall not be

considered a material procedural error on the part of the University in the event of an appeal.

- The parties must identify witnesses they intend to bring to the hearing no later than three (3) business days before a hearing. In order to appear as a witness at a hearing, the witness must have first-hand knowledge of the alleged violation of TAP 31. The Title IX Coordinator will notify both parties in writing of the witnesses who will appear at the hearing.
- Each party must also identify the Support Person he or she intends to bring to the hearing no later than three (3) business days before a hearing.
- The Complainant and the Respondent may schedule a time to review the hearing file at any time between notice of the hearing and five (5) business days before the hearing date.
- After a review of the file, both parties will be given one (1) opportunity to submit new or rebuttal evidence no later than three (3) business days before the hearing.

New evidence is evidence that was not available at the time the hearing letter was sent, could not have been available based on reasonable and diligent inquiry, and is relevant to the matter.

Rebuttal evidence is evidence presented to contradict other evidence in the hearing file, and which could not have been reasonably anticipated by a party to be relevant information at the time of the fact gathering.

Decisions with respect to whether to admit new/rebuttal evidence after the parties have reviewed the hearing file will be made by the Title IX Coordinator.

If new and/or rebuttal evidence is admitted, the other party will be notified and given the opportunity to review it before the hearing.

This opportunity is intended to be permitted in rare instances to allow for the inclusion of information that was not available during the fact gathering or that could not have been reasonably anticipated to be relevant to rebut an issue that came to light upon a party's review of the hearing file.

No new and/or rebuttal evidence will be accepted at the hearing.

- If there is no new or rebuttal evidence, the hearing will proceed on the hearing file, the witnesses identified by the parties, and the availability of testimony of fact witnesses interviewed by the Title IX Coordinator during the fact gathering process. If new or rebuttal evidence is accepted, it will be added to the hearing file.
 - The Hearing Panel will consist of three regularly trained faculty and/or staff members. One member will be the Hearing Panel Chair, who is responsible for the administration of the hearing. The Panel members will receive the hearing file at least two (2) business days before the hearing.
 - The Title IX Coordinator and the University's Counsel will be present at the hearings. A party may recommend questions to the Hearing Panel for the other party or witnesses by submitting questions on notecards provided to the University Counsel, who will submit all appropriate questions to the Hearing Panel. The Hearing Panel may ask some, none, or all of the questions in their sole discretion.
 - A party may elect not to be in the same room as the other party during a hearing. If a party elects not to be in the same room as the other party, the Title IX Coordinator will arrange for that party's participation electronically via GoToMeeting or similar software. If a party chooses to participate electronically, the software will enable that party to hear all statements made during the hearing, enable that party to see the Hearing Panel, and enable the Hearing Panel to see that party. If a party chooses to participate electronically, he or she must advise the Title IX Coordinator no later than five (5) business days before a hearing.
 - The Hearing Panel will make a finding with respect to the Respondent's responsibility using a preponderance of the evidence standard as further explained in section IV of TAP 31.
 - Sanctions may be assigned to the Respondent in accordance with section XI of TAP 31.
6. The Hearing Panel may take up to five (5) business days after the hearing to review the documentation, hearing transcript, and hearing notes before making a finding with respect to responsibility and sanctions, if appropriate. The Complainant and Respondent will be notified in writing of the Hearing Panel's findings and sanctions, if any, within three (3) business days after the Hearing Panel makes the finding. The Complainant will be notified of the sanctions, if any, which directly relate to the Complainant.

III. Appeals

- a. Appeal Timing: Either party may appeal a Hearing Panel's decision within five (5) business days of receipt of the Hearing Panel's findings. Once the appeal deadline has passed without an appeal made by either party, the Hearing Panel's finding and sanctions are final.
- b. Appeal Grounds: A party may appeal on the following limited grounds: substantial procedural error that materially affected the outcome, and/or material, new evidence not reasonably available at the time of the hearing. Dissatisfaction with the hearing outcome is not grounds for an appeal.
- c. Appeal Process: Appeals are heard by an Appeal Panel consisting of three (3) trained faculty and/or staff members who did not participate in the original hearing. The Appeal Panel's responsibility is limited to determining if there was substantial procedural error that materially affected the outcome and/or whether the new evidence not reasonably available at the time of the underlying hearing is material and reasonably likely to change the outcome of the underlying hearing. If either or both are found by the Appeal Panel, the appeal will be granted. If the appeal is denied, the matter will be closed.

If the appeal is granted:

1. Due to a substantial procedural error, the matter will be heard by a new Hearing Panel within ten (10) business days. The Appeal Panel will provide directions for the Title IX Coordinator on how to mitigate the procedural errors before the new hearing.

The new Hearing Panel will oversee a de novo hearing. A de novo hearing means a new hearing will occur as if the underlying hearing never occurred. Decisions with respect to responsibility and sanctions will be made as if the underlying hearing and appeal never occurred. The new Hearing Panel will be provided with the underlying hearing file, as well as any additional information which corrects procedural errors. All parties and witnesses who attended the underlying hearing shall be present at the new, de novo hearing.

The new Hearing Panel has five (5) business days after the de novo hearing to make a finding with respect to responsibility and sanctions, if appropriate.

The Complainant and Respondent will be notified in writing of the new Hearing Panel's findings and sanctions, if any, within three (3) business days after the Hearing Panel makes the finding.

The new Hearing Panel's finding will be final and not subject to further appeal.

2. Due to the discovery of new evidence not reasonably available at the time of the initial hearing, the matter will be returned to the same Hearing Panel which originally heard the matter for reconsideration in light of the new evidence within ten (10) business days. The Appeal Panel will give the original Hearing Panel instructions regarding the nature and extent of its reconsideration, including whether the parties and/or any witnesses should be invited to be re-interviewed by the original Hearing Panel.

The original Hearing Panel has five (5) business days after hearing the matter for reconsideration before upholding and/or making a new finding with respect to responsibility and sanctions.

The Complainant and Respondent will be notified in writing of the Hearing Panel's findings within three (3) business days.

The finding of the Hearing Panel in this second hearing will be final and not subject to further appeal.

IV. EXCEPTIONS

- a. Vice President of Student Life Review: In the event a student Respondent is sanctioned with suspension or expulsion, the student Respondent may petition the Vice President of Student Life for a review of the matter. Petitions for review must be made within two (2) business days of a final finding and sanctioning letter. The Vice President for Student Life's decision on the matter will be final.
- b. Provost Review: Where a faculty member is a Respondent, the Hearing Panel's findings and assigned sanctions shall constitute a recommendation for the Provost. The Provost shall issue a finding and assign sanctions based on the recommendations of the Hearing Panel. These findings and sanctions may be appealed to the Faculty Grievance Committee in accordance with the process set forth in the Faculty Handbook.
- c. Volunteers and Visitors: In certain circumstances where the individual who allegedly violated this Policy is not a student, faculty, or staff, but is participating in the University's educational programs and activities in another capacity, such as a volunteer or visiting student, the Title IX Coordinator may, in his or her discretion, resolve violations informally/outside of the scope of the TAP 31 Resolution Process.