

The Administrative Policies

TAP NO. 31: SEXUAL MISCONDUCT AND GENDER DISCRIMINATION

Scope

This Policy applies to faculty, students, and staff; all individuals doing business with or providing services to the University; and all other persons that participate in the University's educational programs and activities, including third-party visitors on campus. This Policy applies regardless of whether the Complainant and the Respondent are members of the same sex, and it applies regardless of national origin, immigration status, or citizenship status.

Purpose

To establish the University's policy prohibiting sex and/or gender-based discrimination; to provide guidance on the University's response to reported violations of this Policy; and to notify Complainants and Respondents of their rights and responsibilities when a violation is reported.

I. Policy Statement

It is the Policy of Duquesne University to provide an educational, employment, and business environment free of all forms of sex and/or gender-based discrimination, as further defined in this Policy and as otherwise prohibited by state and federal law. This Policy responds to the specific requirements of federal and state law, including Title IX of the Education Amendments Act of 1972 ("Title IX"), and the Violence Against Women Reauthorization Act (VAWA). Conduct prohibited by this Policy may also violate other applicable federal and state laws.

TAP 31 has three appendices. Appendix A provides resources for individuals who have experienced sexual assault. Appendix B sets forth the University's Resolution Process for addressing all reported violations of TAP 31. Appendix C provides guidance on what a Complainant and/or a Respondent can expect during the University's Resolution Process.

II. Jurisdiction

The University has jurisdiction over Title IX-related complaints regarding conduct that occurs on campus, during an official University program or activity (regardless of location), or off campus when the conduct creates a hostile environment on campus. The University's jurisdiction does not reach a Respondent who is not a member of the University community, but in such instances, the University will assist a Complainant with locating resources, including his or her local Police Department, or reporting to other University Title IX Coordinators as applicable.

III. Training

All University employees are required to complete Title IX training within their first thirty (30) days of employment and to re-train on Title IX every three (3) years. Full-time employees who do not timely comply with this requirement are not eligible to participate in the annual

salary increase pool, if any, and will not be considered for a raise; eligibility will be reviewed annually.

The Title IX Coordinator and Deputy Title IX Coordinators will receive regular training regarding Title IX, VAWA, and this Policy.

All Hearing and Appeal Panel members receive training prior to serving on a Panel and that training is refreshed on an annual basis.

IV. Standard of Proof

A finding with respect to a Respondent's responsibility for committing a violation of this Policy is made using a preponderance of the evidence standard. This means that a Hearing Panel will make a determination whether it is more likely than not that the Respondent is responsible for committing a violation.

V. Definitions

As used in this Policy and the accompanying appendices, the word "Complainant" refers to an individual who is affected by an alleged violation of this Policy, the word "Respondent" refers to an individual who allegedly violated this Policy, and the word "Reporter" refers to an individual who makes a report that this Policy has been violated. A Reporter is sometimes the same person as the Complainant. A "witness" is anyone with first-hand knowledge of the alleged violation of TAP 31.

VI. Conduct Prohibited by this Policy

a. Sexual Harassment - Sexual harassment is unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic, or physical conduct of a sexual nature, when:

1. Submission to or rejection of such conduct is made either explicitly or implicitly a condition of an individual's employment or academic standing, or is used as the basis for employment decisions or for academic evaluation, grades, or advancement. This quid pro quo sexual harassment can occur whether a person resists and suffers the threatened harm, or whether the person submits and avoids the threatened harm.
2. Such conduct creates a hostile environment that interferes with an individual's employment, education, or access to University programs, activities, and opportunities. A hostile environment can be created by conduct that is severe, persistent, or pervasive, or by a single severe episode. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment.

b. Gender-Based Harassment - Gender-based harassment is behavior consisting of physical or verbal conduct based on gender, sexual orientation, gender-stereotyping, perceived gender, and/or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe or pervasive such that it substantially interferes with an individual's employment, education, or ability to participate in or benefit from University programs, activities, or opportunities and would detrimentally affect a reasonable person under the same circumstances. Gender-based harassment may include, but is not limited to, verbal or physical attacks, graphic or written statements, threats, or slurs. Alleged gender-based harassment may also violate TAP 30.

c. Sexual Misconduct - Sexual misconduct is a broad term encompassing any unwelcome behavior of a sexual nature that is committed without consent, or by force, intimidation, coercion, or manipulation. Sexual misconduct can be committed by strangers, acquaintances, and family members, as well as casual and long-term dating partners.

d. Sexual Assault - Sexual assault is actual or attempted sexual contact or behavior that occurs without the Complainant's consent and/or by force. Some forms of sexual assault include: rape; forcing a Complainant to perform sexual acts; penetration that is unconsented to; and/or unwanted touching or fondling.

e. Sexual Exploitation - Sexual exploitation involves taking non-consensual sexual advantage of another person. Examples may include, but are not limited to: electronically recording, photographing, or transmitting intimate or sexual utterances, sounds, or images without the knowledge and consent of all parties involved; voyeurism; and/or distributing intimate sexual information about another person without that person's consent.

f. Stalking - Stalking is a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her safety or the safety of others, or to suffer substantial emotional distress. Stalking may include repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device or method.

g. Dating Violence - 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 victim. The existence of such a relationship will be based on the Complainant/Reporter's statements and with consideration of the length and type of relationship and the frequency of interaction between the persons involved in the relationship. Dating violence includes but is not limited to sexual or physical abuse or the threat of such abuse. Dating violence can also include emotional, verbal, and economic abuse, and can exist without the presence of physical abuse.

h. Domestic Violence - Domestic violence is a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.

i. Retaliation - Retaliation means any adverse action or threat taken or made against an individual for making a report alleging a violation of this Policy or participating in any investigation or proceeding related to this policy. No individual who complains of or reports an alleged violation of this Policy or who participates in the investigation or resolution of such a complaint shall be subject to retaliation as a result of such activity or participation.

VII. Prohibition of Romantic Relationships in Certain Situations

Because of the potential for sexual harassment in certain situations, the University prohibits romantic and/or sexual relationships in the following situations:

a. No faculty member may engage in a romantic and/or sexual relationship or in romantic and/or sexual conduct with any student currently enrolled at Duquesne University.

b. No athletic department employee may engage in a romantic and/or sexual relationship or in romantic and /or sexual conduct with a student athlete.

c. No campus police officer or security officer may engage in a romantic and/or sexual relationship or in romantic and/or sexual conduct with any student currently enrolled at Duquesne University.

d. No Residence Life staff member may engage in a romantic and/or sexual relationship or in romantic and/or sexual conduct with any student currently enrolled at Duquesne University.

e. A supervisor may not engage in a romantic and/or sexual relationship or in romantic and/or sexual conduct with any employee 1) over whom the supervisor has managerial authority or indirect influence regarding conditions of employment, 2) who is in the supervisor's direct or indirect reporting line, and/or 3) who is in the supervisor's department if the supervisor is at any level other than first level supervisor.

All universities hold a special relationship with their students. At Duquesne our actions are guided by our identity and mission as a Catholic university. Therefore, we expect all employees to exercise good judgment and to demonstrate appropriate professional behavior when interacting with students.

Parties to a relationship that is not prohibited herein must not use their relationship to disadvantage or harm third parties who are not involved in the relationship.

VIII. Consent

a. What is consent:

A party must actively and positively agree to sexual contact for the sexual contact to be considered consensual. Both parties must receive verbal agreement and positive cooperation. For additional information, please see www.duq.edu/titleix.

IX. Resources for Reporting

a. Title IX Coordinator - The University's Title IX Coordinator is Lee Robbins, 412-396-2560, robbinsl1@duq.edu. It is the responsibility of the Title IX Coordinator to:

1. Receive report and complaints under this Policy;
2. Coordinate dissemination of information and education and training programs;
3. Assist members of the University community in understanding the actions that are prohibited by this Policy;
4. Answer questions about this Policy;
5. Ensure that employees and students are aware of the procedures for reporting and addressing a complaint of a violation of this Policy;
6. Oversee the prompt, fair, and impartial Resolution Process of complaints/reports of violations of this Policy filed with the University in accordance with the provisions of this Policy and the TAP 31 Resolution Process; and

7. Chair the Title IX Advisory Committee. This Committee monitors and addresses trends and pervasive patterns of violations of this Policy, evaluates current Title IX training and preventative programming, and proposes new trainings and programming as appropriate.

b. Deputy Title IX Coordinators - The University's Deputy Title IX Coordinators are:

Jeffrie Mallory, 412-396-1117, malloryj@duq.edu;

Sherene Brantley, 412-396-5243, lemoniass@duq.edu;

Anne Mullarkey Sawa, 412-396-6642, mullarke@duq.edu; and

Ryan Dawson, 412-396-5881, dawsonr@duq.edu.

The Deputy Title IX Coordinators may receive reports of alleged violations of this Policy. They will also answer questions about this Policy, ensure employees and students are aware of this Policy and its procedures for reporting, and will act along with the Title IX Coordinator in administering this Policy.

c. University Police - In situations involving danger to persons or property, individuals are encouraged to report the incident to the applicable local police department or Duquesne's Public Safety department at 412-396-2677.

d. Confidential Resources - Some University employees may talk with a Complainant in confidence. These resources are:

1. Spiritan Campus Ministry, 412-396-6020
2. University Counseling, 412-396-6204
3. University Psychology Clinic, 412-396-6562
4. Health Services, 412-396-1650

Off-campus confidential resources include:

1. Pittsburgh Action Against Rape (PAAR): 24 hour helpline: 1-866-END-RAPE.
2. Center for Victims of Violence and Crime (CVVC): 24 hour helpline: 1-866-644-2882.
3. Resolve Crisis Network: 24 hour helpline: 1.888.7.YOU.CAN.

All Confidential Resources may have reporting requirements and/or other obligations under state or federal law, including reporting requirements under the Clery Act, which mandates reporting of certain crimes but does not require the report to include any personally identifiable information.

e. Responsible Employees - At Duquesne, all employees are Responsible Employees, except for those who are deemed "Confidential Resources" in this Policy.

A Responsible Employee is not a Confidential Resource. A Responsible Employee with knowledge of an alleged or actual violation of this Policy must report it to the Title IX Coordinator, and must report all relevant details about the alleged or actual violation of this Policy, including the name of the Complainant, the name of the Respondent (if known), other individuals involved, and relevant facts including the date, time, and location.

X. Remedial and/or Protective Measures

The University offers a wide range of resources for students and employees, whether as Complainants or Respondents, to provide support and guidance throughout the initiation, investigation, and resolution of a report of conduct that is prohibited by this Policy. Further, the University will offer reasonable and appropriate measures to protect a Complainant and facilitate the Complainant's continued access to University employment and/or educational programs and activities. These measures may be remedial or protective, as follows:

a. Remedial measures: measures designed to maintain a Complainant's continued access to educational programs or activities. Remedial measures may be temporary or permanent, and are available regardless of whether a Complainant decides to file a charge with the University, make a report to law enforcement agencies, or participate in the TAP 31 Resolution Process. Examples may include:

1. Extensions of deadlines and other academic supports,
2. Change in the Complainant's work schedule or job assignment,
3. Change in the Complainant's campus housing, and/or
4. Escort and other safety planning steps.

b. Protective measures: measures involving a restrictive action against a Respondent. Protective measures are temporary pending the completion of the TAP 31 Resolution Process. Protective measures are not automatically enforced, but are determined on a case by case basis. Examples may include:

1. Change in the Respondent's class schedule,
2. Change in the Respondent's work schedule or job assignment,
3. Change in the Respondent's campus housing,
4. Exclusion from all or part of University housing or specified activities or areas of campus,
5. Prohibition from participating in student activities or representing the University in any capacity,
6. Imposition of a no-contact directive between the Respondent and Complainant, and/or
7. Interim suspension.

The Title IX Coordinator has the discretion to impose and/or modify any remedial and/or protective measure based on all available information, and is available to meet with a Complainant or Respondent to address any concerns about the provision of remedial and/or protective measures.

XI. Sanctions

a. How Sanctions are Determined: When a Respondent has been found responsible for violating TAP 31, appropriate sanctions may be assigned which are adequate to protect the safety of the campus community and reflective of the seriousness of the sexual misconduct, sexual violence, and the other prohibitions contained within this Policy. Previous conduct violations by a Respondent may be considered when assigning sanctions.

b. Potential Sanctions against Students: Students are subject to the non-exhaustive list of disciplinary sanctions in the Code of Student Rights, Responsibilities, and Conduct for violations of the Code. These may include one or more of the following measures: written reprimand, loss of privileges, disciplinary probation, educational research/projects, restitution, fines, intervention, no contact orders, fees, suspension, and/or expulsion. As set forth in the Code of Student Rights, Responsibilities, and Conduct, the University reserves the right to impose other sanctions in response to the specific circumstances of a violation of this Policy.

c. Potential Sanctions against Employees: Disciplinary sanctions for employee violations of this Policy may range from a disciplinary warning to termination from the University. Disciplinary sanctions may include one or more of the following measures: termination from the University, unpaid suspension, change in working facility, mandated enrollment in an Employee Assistance Program, written reprimand in personnel file, and/or withholding of salary increase. The University reserves the right to impose other sanctions in addition to those listed above in response to the specific circumstances of a violation of this Policy.

XII. Amnesty for Student Drug or Alcohol Violations

Duquesne considers the reporting of alleged violations of sexual misconduct to be of great importance to our campus community. To encourage reporting, students reporting alleged violations of TAP 31 may be granted immunity from student conduct charges for possession or consumption of alcohol or drugs. For the full Amnesty Policy, see the Student Handbook.

XIII. Relationship with Student Handbook

In the event a student's conduct violates this Policy and other policies contained in the Code of Student Rights, Responsibilities and Conduct, a student may be subject to concurrent processing of both violations.

XIV. Related Information

TAP No. 30, Affirmative Action, Equal Educational and Employment Opportunity and Human Relations in the Workplace and Classroom

The Faculty Handbook.

The Code of Student Rights, Responsibilities, and Conduct.

[TAP No. 31 Appendix A - If You or Someone You Know Have Experienced Sexual Assault 1-2019](#)

[TAP No. 31 Appendix B - TAP No. 31 Resolution Process 1-2019](#)

[TAP No. 31 Appendix C - Rights and Responsibilities of the Complainant, Respondent, and University Under TAP No. 31 1-2019](#)

XV. Violations

Violations of this Policy are subject to the sanctions set forth in Section XI.

XVI. History

Date of most recent revision: May 2019.

XVII. Ownership of Policy

Title IX Coordinator.

TAP 31 APPENDIX A

IF YOU OR SOMEONE YOU KNOW HAVE EXPERIENCED SEXUAL ASSAULT:

- **First, ensure your safety.** Call Public Safety at 412-396-2677. If a threat to the campus community is imminent, a timely warning will be issued.

- **Second, you are encouraged to seek medical care for your physical and mental health and wellbeing, and to preserve physical evidence.** UPMC Mercy's Emergency Room number is 412-232-8222. UPMC Mercy and Magee-Women's Hospital of UPMC (412-641-4933) are staffed with nurses with specialized expertise in sexual assault. Public Safety can transport you to and from the hospital. Hospital personnel will collect evidence. It is important to preserve physical evidence in the event you might wish to file criminal charges later. Prior to going to the hospital, try not to shower, bathe, brush your teeth, smoke, or wash your clothes. These activities might destroy evidence. If you change clothes prior to going to the hospital, you should take your clothes with you in a paper bag to preserve evidence – plastic bags destroy evidence. It is also important to know that hospitals are required to report any injuries which are the result of a crime. However, going to the hospital for medical care, even though evidence is collected and the hospital has a reporting requirement, does not require you to file criminal charges.

- **Third, consider your resources.** There are many resources on and off campus that can help. Confidential resources are noted with an asterisk. Note that counselors and advocates may have certain reporting or other obligations under state law.

Campus resources include:

- University Counseling Services*, 412-396-6204 (*after 4:30 PM call 412-396-2677*);
- The on-call Residence Life staff member, 412-396-5888;
- Health Services*, 412-396-1650;
- Spiritan Campus Ministry*, 412-396-6020;
- DU CARES, 412-396-5834; and
- The Department of Public Safety, 412-396-2677.

Off-campus resources include:

- Pittsburgh Action Against Rape (PAAR)*, 1-866-END-RAPE;
- The Center for Victims of Violence and Crime (CVVC)*, 24 hour helpline: 1-866-644-2882;
- Resolve Crisis Network*, 1-888-796-8226;
- Mercy Hospital, 412-232-8222; and
- Emergency Services, 911.

- **Fourth, you are encouraged to report incidents of sexual assault to the University.** The Title IX Coordinator (Lee K. Robbins, robbinsl1@duq.edu or 412-396-2560), a Deputy Title IX Coordinator, or any Responsible Employee or Confidential Resource can address the situation and provide you with resources and follow-up care.

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. In the event that a Respondent is an employee or member of the Faculty, or where a student Respondent is sanctioned with suspension or expulsion under this process, certain exceptions apply as detailed in IV below.
- c. Timing: The TAP 31 Resolution Process will be completed in a reasonably prompt manner, which generally results in completion within approximately sixty (60) calendar days. 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. Parties will receive ongoing communication regarding the progress of the TAP 31 Resolution Process.
- 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 has been trained as a Hearing or Appeal Panel member 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, a Responsible Employee and/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. A Complainant who files a charge may decide to withdraw the charge at any time during the Resolution Process.
 2. If the Complainant chooses to file a charge, the Respondent is notified of the charge. Notice to the Respondent will include sufficient information to allow the Respondent a meaningful opportunity to respond to the alleged violation. It will also include information on the Resolution Process.

3. 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.
4. If the Respondent does not accept responsibility, the Title IX Coordinator and Deputy Title IX Coordinator(s) will conduct a fact gathering about the alleged violation(s). This is the fact gathering stage of the process. 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.

5. 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 engage in fact gathering 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.

This fact gathering will require the Title IX Coordinator to meet with the Respondent and witnesses. The Title IX Coordinator will provide to the Respondent sufficient information to allow the Respondent a meaningful opportunity to respond to the alleged violation.

If the Title IX Coordinator determines that the University must bring a charge against the Respondent, the Respondent will be notified and paragraphs 3 and 4, above, will apply.

Where the Title IX Coordinator determines that the University must pursue a charge against the Respondent, the Complainant is not obligated to participate in the Resolution Process.

6. 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.
7. 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 by the Complainant, if any, 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(es); 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 relevant to the alleged violation of TAP 31. Prior to the hearing, 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. 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.

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.

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 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 Title IX Coordinator, 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.
8. 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 then be notified in writing of the Hearing Panel's findings and sanctions, if any. 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, 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.

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 Involvement: 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 Involvement: 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. Human Resources Involvement: Where an employee is a Respondent, the fact gathering portion of the Resolution Process will proceed as set forth herein. At the conclusion of the fact gathering stage, the matter will be turned over to Human Resources. There will not be a hearing, and Human Resources will assign appropriate sanctions after a review of the Title IX Coordinator's file and interviews with parties and witnesses as appropriate.
- d. 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.

TAP 31 APPENDIX C
RIGHTS AND RESPONSIBILITIES OF THE COMPLAINANT, RESPONDENT,
AND UNIVERSITY UNDER TAP 31

I. STATEMENT OF COMPLAINANT, RESPONDENT, AND UNIVERSITY RIGHTS

Duquesne University's TAP 31 Resolution Process is designed to be accessible, prompt, equitable, and impartial.

Throughout the Resolution Process, both the Complainant and Respondent have the following rights:

- To be treated with respect, dignity, and sensitivity.
- To be accompanied by a Support Person of their choosing at all meetings and the hearing, if one occurs.
- To be guaranteed privacy to the extent possible, consistent with applicable law and TAP 31.
- To expect a prompt and thorough review of the allegations that a violation of TAP 31 was committed.
- To be informed about the University's TAP 31 and the TAP 31 Resolution Process, including applicable timeframes.
- To receive regular updates regarding the progress of the University's response to an allegation of a violation of TAP 31.
- To be given adequate time to review the hearing file in the Office of Title IX Coordinator.
- To supplement the Title IX Coordinator's file with new or rebuttal evidence pursuant to Appendix B of Tap 31.
- To identify witnesses for a hearing. To receive notice of the other party's witnesses prior to a hearing.
- In the event of a hearing, to recommend questions for the other party and any witnesses to the Hearing Panel, which the Hearing Panel may or may not ask in its discretion.
- To receive written notice of the Hearing Panel's finding.
- To appeal a Hearing Panel's decision to an Appeal Panel in accordance with the appeal rules set forth in Appendix B of TAP 31.
- To receive written notice of the Appeal Panel's finding.
- To expect that Hearing and Appeal Panel members will receive annual training on TAP 31 and related state and federal laws including Title IX.
- To expect that the Hearing and Appeal Panels will make findings based upon a preponderance of the evidence standard.

In addition to the above-named rights, the Complainant has the following rights:

- To report the incident to law enforcement (including Duquesne University Public Safety or the police department in the jurisdiction in which the incident occurred) at any time.

- To decline to participate in the TAP 31 Resolution Process. A Complainant's decision not to participate in the Resolution Process will not prevent the University from proceeding with the information available if necessary to protect the broader university community, including the Complainant.
- To receive written notice of sanctions against the Respondent, if any, that directly relate to the Complainant.
- To expect that irrelevant prior sexual history will not be admitted as evidence at a hearing.
- To withdraw a charge at any time during the Resolution Process.

In addition to the above-named rights, the Respondent has the following rights:

- To expect notice of the allegations raised under TAP 31 and to have a meaningful opportunity to respond.

In addition to the above-named rights, the University has the following rights:

- To initiate charges against a Respondent where the Complainant does not wish to pursue charges, consistent with the University's obligation to provide a safe, non-discriminatory environment for all members of the University community, including the Complainant.
- To impose Remedial and/or Protective Measures in its discretion, consistent with the information contained in TAP 31.
- To maintain, release, and allow inspection of disciplinary records consistent with the Family Educational Rights and Privacy Act and other applicable state and federal law and reporting requirements.

II. RESPONSIBILITIES OF THE COMPLAINANT, RESPONDENT, AND UNIVERSITY

Throughout the Resolution Process, the Complainant, Respondent, and University have the following responsibilities:

- The Complainant and the Respondent are expected to be truthful throughout the TAP 31 Resolution Process.
- The Complainant and the Respondent, and all University participants, are expected to refrain from retaliating against anyone who participates in the TAP 31 Resolution Process
- The University is expected to follow TAP 31 and its attached Appendices without material deviation.