



# Sexual Misconduct/Violence and Sex/Gender Discrimination

**Policy Type:** Administrative

**Responsible Office:** Equity and Access Services, Office of the President

**Initial Policy Approved:** August 5, 2015

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## Policy Statement and Purpose

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Membership in a university community carries with it the responsibility for mutual trust and respect and adherence to the standards of conduct established by the community. Virginia Commonwealth University (“VCU” or “university”) is committed to providing an environment that emphasizes the dignity and value of every member of its community and that is free from sexual misconduct, assault, harassment or any form of discrimination based on sex/gender. VCU does not tolerate Sexual Assault, Sexual Exploitation, Partner or Relationship Violence, Sex or Gender-Based Discrimination, Retaliation or Complicity (“Prohibited Conduct”). These behaviors are harmful to the well-being of our community members, the university’s learning/working environment and collegial relationships among our students, faculty and staff. All forms of Prohibited Conduct under this policy are regarded as serious offenses and violations will result in discipline or other administrative action. In developing and implementing this policy and procedures, VCU is committed to providing a fair and impartial process for all parties. VCU will take prompt and appropriate action to eliminate Prohibited Conduct, prevent its recurrence and remedy its effects.

This policy prohibits specific forms of behavior that may violate Title IX of the Education Amendments of 1972 (“Title IX”); relevant provisions of the Violence Against Women Reauthorization Act of 2013 (“VAWA”); Title VII of the Civil Rights Act of 1964 (“Title VII”); the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”); and the Virginia Human Rights Act. State and federal criminal laws also address conduct that may meet VCU’s definitions of Prohibited Conduct, and criminal prosecution may take place independently of any disciplinary action instituted by VCU.

This policy includes VCU’s investigative, administrative and disciplinary procedures that will be followed in response to allegations of Prohibited Conduct. In any case of alleged Prohibited Conduct, this policy supersedes other university policies and procedures. Employees or students who violate this policy may face disciplinary action up to and including termination or expulsion. Third parties who violate this policy may be permanently barred from VCU, from VCU programs, services or activities, or may be subject to other restrictions.

It is the responsibility of every member of the VCU community to foster an environment free of Prohibited Conduct. All members of the VCU community are encouraged to take reasonable and prudent actions to prevent or stop an act of Prohibited Conduct. VCU community members who take such actions will be supported by VCU and protected from retaliation. As detailed in this policy, most VCU employees are also required to report incidents of Prohibited Conduct that might involve criminal acts such as sexual assault, exploitation or violence immediately. VCU conducts ongoing prevention, awareness and training programs for employees and students to facilitate the goals of this policy.

This policy applies to all Prohibited Conduct reported on or after the effective date of this policy. Where the date of the Prohibited Conduct precedes the effective date of this policy, the definitions of misconduct in existence at the time of the alleged incident(s) will be used. The procedures established under this policy, however, will be used to address, investigate and/or resolve all uncompleted cases on or after the effective date of this policy, regardless of when the underlying conduct occurred.

VCU applies the Preponderance of the Evidence standard when determining whether this policy has been violated. "Preponderance of the Evidence" means that it is more likely than not that a policy violation occurred.

Noncompliance with this policy may result in disciplinary action up to and including termination. VCU supports an environment free from retaliation. Retaliation against any individual who brings forth a good faith concern, asks a clarifying question or participates in an investigation is prohibited.

This policy is lengthy and detailed. Summarized information is available at [equity.vcu.edu](http://equity.vcu.edu).

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## Who Should Know This Policy

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This policy governs the conduct of VCU students (regardless of enrollment status), faculty, staff and third parties (i.e., non-members of the VCU community, such as vendors, alumni/ae, visitors, university affiliates or local residents). Third parties are both protected by and subject to this policy. A third party may make a complaint or report of a violation of this policy committed by a member of the VCU community, and a third party is subject to this policy when participating in conduct that harms a VCU community member, occurs on VCU property or is associated with a VCU-sponsored event as described below.

This policy applies in a variety of circumstances, starting with conduct that occurs on VCU property (i.e., on campus). All actions by a member of the VCU community that involve the use of VCU's computing and network resources from a remote location, including but not limited to accessing email accounts, will be deemed to have occurred on campus. This policy also applies to conduct that occurs off VCU property

(i.e., off campus) when the conduct is associated with a VCU-sponsored program or activity, such as travel, research or internship programs, or when such conduct may have a continuing adverse effect or could create a hostile environment on campus. Judgments about these matters will depend on the facts of an individual case and will be made by VCU in its reasonable discretion.

Because Prohibited Conduct may constitute both a violation of VCU policy and criminal activity, the university encourages all persons to report any conduct that might involve sexual assault, exploitation or violence promptly to the VCU Police or local law enforcement agencies. Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. However, because the standard of proof for criminal law differs from the university's standard, criminal investigations or reports do not determine whether Prohibited Conduct has occurred under this policy. In other words, behavior that does not constitute a crime, or that law enforcement agencies decline to prosecute for lack of sufficient evidence or other reasons, still may constitute Prohibited Conduct under this policy.

The filing of a report of Prohibited Conduct with VCU is independent of any criminal investigation or proceeding. With the exception of temporary delays while criminal investigators are gathering evidence, VCU will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation and to take interim measures to protect the reporting party and the university community, if necessary.

## Reporting Prohibited Conduct

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There are multiple channels for Complainants and others to report Prohibited Conduct. A report may be made to the university, to law enforcement or to both. These reporting options are not exclusive. Complainants may simultaneously pursue criminal and university administrative action. The university will support Complainants in understanding and assessing these options. The VCU Police Department has specially trained victim/witness specialists who can inform Complainants of all of the available options. These officers also will assist the Complainant throughout the entire process.

a. **Law Enforcement:** Complainants have the right to notify or decline to notify law enforcement. In keeping with its commitment to taking all appropriate steps to eliminate, prevent and remedy all Prohibited Conduct, however, the university urges Complainants to report Prohibited Conduct ***immediately*** to local law enforcement by contacting:

- 911 (for emergencies)
- VCU Police (804) 828-1234 (emergencies); (804) 828-1196 (non-emergencies)
- City of Richmond Police (804-646-5100) (for non-emergencies)

Police have unique legal authority, including the power to seek and execute search warrants, collect forensic evidence, make arrests and assist in seeking Emergency Protective Orders. Although a police report may be made at any time, Complainants should be aware that a one-year statute of limitations

may apply to certain misdemeanors in Virginia. The university will assist Complainants in notifying law enforcement if they choose to do so.

b. **The university:** Most VCU employees have mandatory reporting responsibilities. The university also urges any person with knowledge of an incident of Prohibited Conduct to report the incident ***immediately*** to the university through the following reporting options:

- By contacting the university's Title IX Coordinator or any Deputy Title IX Coordinator by telephone, email or in person during regular office hours at their respective locations, email addresses and/or phone numbers:

**Laura Walsh Rugless**, Title IX Coordinator  
(804) 828-6404  
lrugless@vcu.edu  
titleix@vcu.edu

**Matthew Meneely**, Deputy Title IX Coordinator for Investigations  
(804) 827-8319  
mmeneely@vcu.edu

**Tammi Slovinsky**, Deputy Title IX Coordinator for Students  
(804) 827-1963  
tslovinsky@vcu.edu

**Cathleen C. Burke**, Deputy Title IX Coordinator for Employees  
(804) 828-3248  
ccburke@vcu.edu

**Sofia A. Hiort-Wright**, Deputy Title IX Coordinator for Athletics  
(804) 828-2184  
shiort@vcu.edu

- Through the [Sexual Misconduct/Violence and Sex/Gender Discrimination Incident Reporting Form](#), the university's form for online reporting.
- Through the [VCU Helpline](#), the university's website for online reporting (which also allows for anonymous reporting)

## Definitions

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**Many terms used in this policy, including definitions of Prohibited Conduct, are detailed in applicable sections and are not repeated here.**

## Complainant

The student, employee or third party who presents as the victim of any Prohibited Conduct under this policy, regardless of whether that person makes a report or seeks action under this policy. The university may also step in as a Complainant where it determines that it must move forward with an investigation despite a Complainant's request that no investigation occur or where a Complainant has requested confidentiality.

**Employee**

Any person (faculty and/or staff) with a direct employment relationship with VCU, including those who work on a part-time or adjunct basis. An individual can hold a status as both a student and employee. Cases arising under this policy will be addressed consistent with the role principally held by such individuals as described in Section 1, below.

**Prohibited Conduct**

Sexual Assault, Sexual Exploitation, Partner or Relationship Violence, Sex or Gender-Based Discrimination, Retaliation and Complicity as defined in Section 7 of this policy.

**Respondent**

The student, employee or third party who has been reported to have committed Prohibited Conduct.

**Third Party**

Any individual who is not a VCU student, faculty member or staff member (i.e., vendors, alumni/ae or local residents).

**Contacts** \_\_\_\_\_

Equity and Access Services officially interprets this policy. Equity and Access Services is responsible for obtaining approval for any revisions as required by the policy *Creating and Maintaining Policies and Procedures* through the appropriate governance structures. Please direct policy questions to Equity and Access Services, [equity@vcu.edu](mailto:equity@vcu.edu).

**Policy Specifics and Procedures** \_\_\_\_\_

**1. General Application and Scope of this Policy**

All procedures are governed by the same principles of fairness and respect for Complainants and Respondents and provide for a prompt and appropriate response to reports of Prohibited Conduct. The procedures designate specific timeframes for major stages of the process and provide for thorough and impartial investigations that afford all parties notice and an opportunity to present witnesses and evidence and to view the information that will be used in determining whether a policy violation has occurred.

**a. Status of Respondent Dictates Certain Procedures**

The procedures for addressing allegations of Prohibited Conduct are based, in part, upon the nature of the Respondent's relationship to the university (student, employee or third party).

In situations where the Respondent is both a student and an employee, (a) any student-Respondent specific procedures will apply if the Respondent is a full-time student but not a full-time employee; (b) any employee-Respondent procedures will apply if the Respondent is a full-time employee but not a full-time student; and (c) in cases where there is a question as to the predominant role of the Respondent, the university's Title IX Coordinator will determine which procedures apply based on the facts and circumstances (such as which role predominates in the context of the Prohibited Conduct). Further, where a Respondent is both a student and an employee, the Respondent may be subject to any of the sanctions applicable to students or employees.

The university's ability to take appropriate corrective action against a third party will be determined by the nature of the relationship of the third party to the university. The Title IX Coordinator will determine the appropriate manner of resolution consistent with the university's commitment to a prompt and appropriate process, consistent with federal law, federal guidance and this policy.

**b. Timeframe for Filing Complaints**

Complaints should be filed under this policy within **two years of the date of the alleged incident**. In most situations involving complaints filed later than this timeframe, the university will not initiate a formal investigation. However, where the Complainant or the Respondent remains a student or employee of VCU, the university will evaluate complaints filed later than two years from an alleged incident to determine whether supportive or interim measures are needed by the Complainant; whether a continuing threat to the university community exists; and if so, whether formal investigation is warranted and practically feasible.

The Title IX Office will preserve a record of reports of Prohibited Conduct that were not subject to university investigation or adjudication, to ensure that patterns involving the same individual or groups can be evaluated and addressed over time.

This statement of the university's commitment to investigate and address complaints of Prohibited Conduct under this policy for a period longer than is otherwise set under relevant state or federal laws does not constitute a waiver of any statute of limitations or defenses that might be applicable to the university under state or federal laws.

**c. Amnesty for Certain Infractions**

To encourage both reporting and cooperation in investigations, the university will not pursue disciplinary action based on disclosure of personal consumption of drugs or alcohol where such disclosures are made in connection with a good faith report of Prohibited Conduct or an individual's cooperation in an investigation under this policy.

**2. VCU's Title IX Coordinator**

The VCU Title IX Coordinator (“Title IX Coordinator”) is the **Director of Equity and Access Services**. The Title IX Coordinator is responsible for overseeing the investigation of all reports of Prohibited Conduct in accordance with this policy. The Title IX Coordinator also works with Deputy Title IX Coordinators in Student Affairs, Athletics, Human Resources, Equity and Access Services, Academic and Faculty Affairs, and elsewhere, as may be appointed by the Title IX Coordinator to implement this policy and deliver programs and services that address the university’s state and federal responsibilities. The Title IX Coordinator may delegate responsibilities under this policy to Deputy Title IX Coordinators and other trained administrators. References to the “Title IX Coordinator” in this policy include such delegates. The Title IX Coordinator will be informed of all complaints or reports of violations of this policy, and specifically oversees VCU’s compliance with Title IX, the Violence Against Women Act (VAWA) and the Clery Act. In conjunction with other responsible VCU administrative offices, the Title IX Coordinator’s responsibilities include (but are not limited to):

- Communicating with all members of the VCU community regarding Title IX and VAWA, and providing information about how individuals may address their rights
- Reviewing applicable VCU policies to ensure institutional compliance with Title IX, VAWA and the Clery Act
- Monitoring VCU’s administration of its own applicable policies, including record keeping, timeframes and other procedural requirements
- Implementing campus training regarding Title IX, VAWA, required reporting and Prohibited Conduct defined in this policy
- Responding to any complaint or report regarding Prohibited Conduct by overseeing the investigation and resolution of such alleged misconduct, directing the provision of any remedial measures and monitoring the administration of any related appeal

Concerns about the university’s application of Title IX, VAWA, Title VII, the Clery Act or the Virginia Human Rights Act may be addressed to the Title IX Coordinator; the United States Department of Education, Clery Act Compliance Division (at [clery@ed.gov](mailto:clery@ed.gov)); the United States Department of Education, Office for Civil Rights (at [OCR@ed.gov](mailto:OCR@ed.gov) or (800) 421-3481); and/or the Equal Employment Opportunity Commission (at [info@eeoc.gov](mailto:info@eeoc.gov) or (800) 669-4000).

- Policy related resources and information are found at [equity.vcu.edu](http://equity.vcu.edu).
- Sexual violence related resources are also posted at: <http://www.thewell.vcu.edu/sexual-violence/sexual-assault/>.

The Title IX Coordinator and Deputy Title IX Coordinators can be contacted by telephone or email or in-person during regular office hours:

**Laura Walsh Rugless**, Title IX Coordinator  
(804) 828-6404



lrugless@vcu.edu  
titleix@vcu.edu

**Matthew Meneely**, Deputy Title IX Coordinator for Investigations  
(804) 827-8319  
mmeneely@vcu.edu

**Tammi Slovinsky**, Deputy Title IX Coordinator for Students  
(804) 827-1963  
tslovinsky@vcu.edu

**Cathleen C. Burke**, Deputy Title IX Coordinator for Employees  
(804) 828-3248  
ccburke@vcu.edu

**Sofia A. Hiort-Wright**, Deputy Title IX Coordinator for Athletics  
(804) 828-2184  
shiort@vcu.edu

### **3. Remedial and Protective Measures**

VCU will offer reasonable and appropriate measures to protect a Complainant and facilitate the Complainant's continued access to university employment or education programs and activities. These measures may be remedial (designed to address a Complainant's safety and well-being and continued access to educational opportunities), protective (involving action against a Respondent) or both.

Remedial and protective measures, which may be temporary or permanent, may include:

- no-contact directives
- residence modifications
- academic modifications and support
- counseling and other support services
- work schedule and/or location modifications
- interim suspension
- administrative holds
- suspension from employment
- pre-disciplinary leave (with or without pay)

Remedial measures are available regardless of whether a formal complaint or investigation under this policy is pursued.

The university will maintain the privacy of any remedial and protective measures provided under this policy to the extent practicable. The Title IX Coordinator has the discretion to ensure the appropriateness of any interim measure based on all available information, and may meet with a Complainant or Respondent to address any concerns about the provision of interim measures. Respondents also may request consideration of appropriate and reasonable interim measures pending resolution of an allegation of Prohibited Conduct.

All individuals are encouraged to report concerns about the failure of another to abide by any restrictions imposed by an interim measure. The university will take immediate action to enforce a previously implemented measure, and disciplinary penalties can be imposed for failing to abide by a university measure.

The university will provide reasonable remedial and protective measures to third parties as appropriate and available, taking into account the role of the third party and the nature of any contractual relationship with the university. Additional information regarding remedial and protective measures is found in Section 12 of this policy.

#### **4. Privacy and Confidentiality**

The university is also committed to providing assistance to help students, employees and third parties make informed choices about their options under this policy and applicable law. With respect to any report under this policy, the university will make reasonable efforts to protect the privacy of participants while balancing the need to gather information to assess the report and to take steps to eliminate Prohibited Conduct, prevent its recurrence and remedy its effects.

Privacy and confidentiality have distinct meanings under this policy.

##### **a. Privacy**

Privacy means that information related to a report of Prohibited Conduct will be shared with a limited circle of university employees who “need to know” in order to assist in the assessment, investigation and resolution of the report. All employees who are involved in the university’s Title IX response receive specific training and guidance about safeguarding private information.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in the university’s FERPA policy. The privacy of an individual’s medical and related records generally is protected by the Health Insurance Portability and Accountability Act (“HIPAA”), excepting health records protected by FERPA and by Virginia’s Health Records Privacy statute, Va. Code § 32.1-127.1:03. Access to an employee’s personnel records in Virginia may be restricted in accordance with the Virginia Freedom of Information Act and, where applicable, Department of Human Resource Management (“DHRM”) Policy 6.05 Personnel Records Disclosure and DHRM Policy 6.10 Records Management.

## b. Confidentiality

Confidentiality exists in the context of laws that protect certain relationships, including with medical and clinical care providers (and those who provide administrative services related to the provision of medical and clinical care), mental health providers, counselors and ordained clergy, all of whom may engage in confidential communications under Virginia law. The university has designated individuals who have the ability to have privileged communications as “Confidential Employees.” When information is shared by an individual with a Confidential Employee or a community professional with the same legal protections, the Confidential Employee (and/or such community professional) cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (1) the individual gives written consent for its disclosure; (2) there is a concern that the individual will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18.

## 5. Mandatory Reporting

All VCU employees are either “Confidential Employees” or “Responsible Employees” as defined in this policy. **All Responsible Employees have a responsibility to immediately report any incidents of Prohibited Conduct involving Sexual Assault, Sexual Exploitation and Partner or Relationship Violence** to the Title IX Coordinator. Confidential Employees as defined herein do not.

### a. Confidential Employee

A Confidential Employee is: (1) any employee who is a licensed medical, clinical or mental-health professional (i.e., physicians, nurses, physicians’ assistants, psychologists, psychiatrists, professional counselors and social workers and those performing services under their supervision), when acting in his or her professional role in the provision of services to a patient who is a student (“health care providers”); and (2) any employee providing administrative, operational and/or related support for such health care providers in their performance of such services or providing individual intake, advocacy, and referrals to clinical and counseling services through the VCU Wellness Resource Center. A Confidential Employee will not disclose information obtained from patients, clients or persons otherwise counseled or treated to the university’s Title IX Coordinator or others without the individual’s permission except as provided for or required by law.

### b. Responsible Employee

A Responsible Employee is any university employee who is not a Confidential Employee. This includes student employees when they are acting in their capacity as a university employee. A Responsible Employee is required to report to the Title IX Coordinator all relevant details (obtained directly or indirectly) about an incident involving Sexual Assault, Sexual Exploitation and Partner or Relationship Violence, including the dates, times, locations and names of parties and witnesses. Generally, disclosures made through climate surveys, classroom writing assignments or discussions, human subjects research (i.e., where a student is a subject in an Institutional Review Board-approved research protocol) or at public awareness events such as “Take Back the Night” marches or speak-outs

do not provide notice that must be reported to the Title IX Coordinator by employees, unless the reporting party clearly indicates that they wish a report to be made. Remedial actions may result from such disclosures without formal university action. Disclosures at public awareness events and certain human subjects research disclosures may be reported to the Title IX Coordinator in a de-identified form to inform a need for community-wide education and prevention efforts, but will not trigger an individual investigation of Prohibited Conduct or mandated reporting responsibilities for employees or the university.

When a Responsible Employee fails to make a required report to the Title IX Coordinator, the university is unable to acquire the information necessary to stop, remedy, and prevent Prohibited Conduct. As a result, the employee may face disciplinary consequences up to and including termination of employment with the university.

**c. Responsibility to Report Sex or Gender-Based Discrimination (including Harassment)**

Under this policy, supervisors, management and human resources professionals are required to report incidents regarding Sex or Gender-Based Discrimination to the university's Title IX Coordinator. Reporting is required when such supervisors, management and human resource professionals know (by reason of a direct or indirect disclosure) or reasonably should know of such incidents or conduct. For academic faculty, supervisors include department chairs, deans and other unit administrators.

**d. Clery Act Reporting**

Pursuant to the Clery Act, the university includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. The Clery Act also requires the university to issue timely warnings to the university community about certain crimes that have been reported and may continue to pose a serious or continuing threat to students and employees. Consistent with the Clery Act, the university withholds the names and other personally identifying information of Complainants when issuing timely warnings to the university community.

**6. Confidential Resources**

There are a number of resources within the university and Richmond communities where students and employees can obtain confidential, trauma-informed counseling and support. These resources include:

**Student Resources:**

- **University Counseling Services:** Monroe Park Campus (804) 828-6200 or MCV Campus (804) 828-3964; assists students who have experienced sexual misconduct by providing counseling and support.
- **University Student Health Services:** Monroe Park Campus (804) 828-8828 or MCV Campus (804) 828-9220; assists students who have experienced sexual misconduct by providing examination, consultation and treatment.

- **Wellness Resource Center:** Sexual Assault, Intimate Partner Violence & Stalking Advocacy Services, Monroe Park Campus, (804) 828-9355; assists students who have experienced Prohibited Conduct by providing advocacy services and resources, and assists the university community by providing prevention, awareness and training programs.

**Employee Resources:**

- Employees can obtain counseling through the Employee Assistance Program at 1-855-223-9277.

**General Resources:**

- **Local Sexual Violence/IPV Response Organizations:** Regional Hotline through Richmond YWCA (804) 612-6126; assists survivors of sexual violence, intimate partner violence and/or stalking by facilitating contact with local non-profit agencies that provide crisis intervention, counseling and advocacy support.
- **The Family Violence and Sexual Assault Virginia Hotline:** (800) 838-8238, also available via chat or text at (804) 793-9999; assists survivors of sexual violence, intimate partner violence and/or stalking by providing crisis intervention, support and referrals to local resources.

**7. Prohibited Conduct Defined Under this Policy**

Conduct is prohibited under this policy regardless of the sex, sexual orientation, gender identity or gender expression of the Complainant or Respondent. The Prohibited Conduct addressed by this policy covers various forms of sex/gender discrimination and includes the following specifically defined forms of behavior: Sexual Assault, Sexual Exploitation, Partner or Relationship Violence, Sex or Gender-Based Discrimination, Retaliation and Complicity.

In determining whether alleged conduct violates this policy, VCU will consider the totality of the facts and circumstances involved in the incident, including the nature of the alleged conduct and the context in which it occurred. Any of the Prohibited Conduct defined in this policy can be committed by individuals of any gender and it can occur between individuals of the same gender or different genders. It can occur between strangers or acquaintances, as well as people involved in intimate personal relationships or sexual encounters.

Prohibited Conduct involving force, duress or inducement of incapacitation, or where the perpetrator has deliberately taken advantage of another person's state of incapacitation, will be deemed especially egregious and is likely to result in expulsion from the university and/or termination of employment. The consumption of alcohol or the use of illegal substances does not constitute a mitigating circumstance when it contributes to a violation of this policy. In most cases, the university will treat attempts to commit Prohibited Conduct as if those attempts had been completed. Violations of no contact directives issued under this policy also constitute Prohibited Conduct which may be addressed under this policy, the Student Code of Conduct, or relevant employee policy.

**Definitions:**

## a. **Sexual Assault**

The following behaviors constitute sexual assault. All forms of sexual assault are serious offenses and will result in VCU disciplinary consequences.

- **Non-Consensual Sexual Penetration:** Any act of vaginal or anal penetration by a person's penis, finger, other body part or an object, or oral penetration by genitalia, without consent.
- **Non-Consensual Sexual Contact:** Any sexual touching without consent, other than non-consensual sexual penetration. Examples of non-consensual sexual contact may include: genital-genital or oral-genital contact not involving penetration; contact with breasts, buttocks or genital area, including over clothing; removing the clothing of another person; and kissing.

## b. **Sexual Exploitation**

Sexual Exploitation occurs when one person takes non-consensual abusive sexual advantage of another person, whether for their own benefit or the benefit of another person. Examples include any of the following:

- Causing the incapacitation of another person (through alcohol, drugs or any other means) for the purpose of compromising that person's ability to give Affirmative Consent to sexual activity
- Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or livestreaming of images)
- Engaging in voyeurism (e.g., watching private sexual activity without the consent of all participants or viewing another person's intimate parts, including genitalia, groin, breasts or buttocks, in a place where that person would have a reasonable expectation of privacy)
- Recording or photographing private sexual activity and/or a person's intimate parts, including genitalia, groin, breasts or buttocks, without consent
- Disseminating or posting images of private sexual activity and/or a person's intimate parts, including genitalia, groin, breasts or buttocks, without consent
- Sexually-based stalking, hazing and/or bullying
- Prostituting another person
- Intentionally exposing another person to a sexually transmitted infection or virus without the other's knowledge

## c. **Partner or Relationship Violence**

Partner or Relationship Violence involves any of the following prohibited behaviors, defined in relation

to or under VAWA:

- **Intimate Relationship Violence (also known as dating violence or intimate partner violence):** Acts of violence, threat or intimidation that harm or injure a partner in a current or former intimate relationship (defined below). These acts may be physical, emotional/psychological, sexual or economic in nature. Intimate relationship violence can be a single act or pattern of behavior. Intimate Partner Violence includes “dating violence” and “domestic violence.” The university will evaluate the existence of an intimate relationship based upon the Complainant’s statement and taking into consideration the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.
- **Domestic Violence in the Context of Intimate Relationships:** A particular type of intimate relationship violence that occurs when partners in a current or former intimate relationship are or have been cohabiting in the same space or have a child in common. Students are deemed to be cohabiting when they share access to the same private living space or bathroom.
- **Stalking in the Context of Intimate Relationships:** A course of conduct (i.e., more than one act) directed at a partner that would cause a reasonable person to feel fear, to experience emotional distress or to fear for the safety of a third person. Acts that together constitute stalking may be direct actions or may be communicated by a third party, and can include, but are not limited to: threats of harm to self or others; pursuing or following; non-consensual (unwanted) communication by any means; unwanted gifts; trespassing; and surveillance or other types of observation.

d. **Sex or Gender-Based Discrimination**

Sex or gender-based discrimination is adverse treatment of an individual based on sex or gender, rather than individual merit. Sex or gender-based discrimination encompasses sexual misconduct but also includes other discriminatory behavior that does not constitute sexual misconduct. Sex or gender-based discrimination also may include harassment and other abusive behavior, whether verbal or physical, that is based on sex or gender, including actual or perceived gender roles, including seeking sex or sexual favors. Examples of conduct that can constitute discrimination because of sex, sexual orientation, gender identity or gender expression include but are not limited to:

- Singling out or targeting an individual for different or adverse treatment (i.e., more severe discipline, lower salary increase)
- Failing or refusing to hire or allow participation by an individual in a university activity
- Terminating or removing an individual from employment or an educational program
- Verbally harassing, abusing or demeaning a targeted individual in a manner that is sufficiently severe, persistent, and/or pervasive to have the effect of unreasonably interfering with an individual’s educational experience, working conditions or living conditions by creating an intimidating, hostile or offensive environment
- Sexual harassment is also a form of discrimination and is unwelcome, sexual, sex or gender-

based, verbal or physical conduct, including unwelcome sexual advances, requests for sexual favors and other conduct of a sexual nature. Purpose or intent is not a required element of sexual harassment. Some forms of sexual harassment also may constitute other Prohibited Conduct, such as coercion or interpersonal violence.

*Quid pro quo harassment* involves unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature by a person having power or authority over another person when submission to or rejection of such conduct is made implicitly or explicitly a term or condition of instruction/education or employment, including when submission would be a condition for access to receiving the benefits of any VCU program or activity.

A *hostile environment* is created when sexual harassment is sufficiently severe, persistent or pervasive and objectively offensive that it unreasonably interferes with, denies or limits an individual's ability to participate in or benefit from the university's educational, employment, social or residential programs. Sexual harassment undertaken out of retaliatory motive (for example because an individual reports or files a complaint against another individual) may constitute both sexual harassment and retaliation, prohibited under this policy.

#### e. **Retaliation**

Retaliation is any attempt to seek retribution against an individual or group of individuals involved in filing a complaint or report under this policy, filing an external complaint, participating in a disciplinary process or opposing in a reasonable manner an action believed to constitute a violation of this policy. Retaliation can take many forms, including abuse or violence, threats, harassment and intimidation. Actions in response to a good faith report or response under this policy are considered retaliatory if they have a materially adverse effect on the working, academic or VCU-controlled living environment of an individual; or if they hinder or prevent the individual from effectively carrying out his or her VCU responsibilities.

#### f. **Complicity**

Complicity is any act taken with the purpose of aiding, facilitating, promoting or encouraging the commission of an act of Prohibited Conduct by another person. Individuals can be charged with complicity in aiding, facilitating, promoting or encouraging others to engage in Prohibited Conduct under this policy.

### 8. **Affirmative Consent and Incapacitation**

In reviewing possible violations of this Policy, the university considers Affirmative Consent to be voluntary, informed, non-coerced agreement through words and actions freely given, which a reasonable person would interpret as a willingness to participate in mutually agreed-upon sexual acts. Affirmative Consent to sexual activity happens when each partner willingly and affirmatively chooses to participate. ***Affirmative Consent is informed (knowing); voluntary (freely given); active (not passive), meaning that through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed-upon sexual activity.***



Important points regarding Affirmative Consent include:

- Consent to one act does not constitute consent to another act
- Consent on a prior occasion does not constitute consent on a subsequent occasion
- The existence of a prior or current relationship does not, in itself, constitute consent
- Consent can be withdrawn or modified at any time before or during sexual activity
- Consent is not implicit in a person's manner of dress or flirtatious behavior
- Accepting a meal, a gift or an invitation for a date does not imply or constitute consent
- Silence, passivity or lack of resistance does not alone constitute consent
- Initiation or participation by someone who a reasonable person knows or should have known to be deemed incapacitated is not consent

In the context of this policy, incapacitation is the state in which a person's perception or judgment is so impaired that he or she lacks the cognitive capacity to make or act on conscious decisions and, specifically, that a person lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity. A person who is incapacitated is unable, temporarily or permanently, to give Affirmative Consent because they are mentally or physically helpless, asleep, unconscious or unaware that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.

Engaging in sexual activity with an individual who is incapacitated (and therefore unable to consent), where a person knows or ought reasonably to have understood that the individual is incapacitated, constitutes sexual assault. Affirmative Consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated.

Affirmative Consent cannot be obtained by force. Force includes the use of **physical violence, threats, intimidation** and/or **coercion**.

- **Physical violence** means that a person is exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, strangulation and brandishing or using any weapon.
- **Threats** are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person physically, to reveal private information to harm a person's reputation or to cause a person academic or economic harm.
- **Intimidation** is an implied threat that menaces or causes reasonable fear in another person. A

person's size, alone, does not constitute intimidation; however, a person can use their size or physical power in a manner that constitutes intimidation (for example, by blocking access to an exit).

- **Coercion** is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice or attract another person to have sex. When a person makes clear that they do not want to participate in a particular form of sexual contact or sexual intercourse, that they want to stop or that they do not want to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion was used, the frequency of the application of the pressure, the intensity of the pressure, the degree of isolation of the person being pressured and the duration of the pressure are all relevant factors.

### **Additional Guidance on Affirmative Consent and Assessing Incapacitation**

A person who wants to engage in a specific sexual activity is responsible for obtaining Affirmative Consent for that activity. Lack of protest does not constitute Affirmative Consent. Lack of resistance does not constitute Affirmative Consent. Silence and/or passivity also do not constitute Affirmative Consent. Relying solely on non-verbal communication before or during sexual activity can lead to misunderstanding and may result in a violation of this Policy. It is important not to make assumptions about whether a potential partner is consenting. In order to avoid confusion or ambiguity, participants are encouraged to talk with one another before and throughout engaging in sexual activity. If confusion or ambiguity arises during sexual activity, participants are encouraged to stop and clarify a mutual willingness to continue that activity.

Affirmative Consent to one form of sexual activity does not, by itself, constitute Affirmative Consent to another form of sexual activity. For example, one should not presume that Affirmative Consent to oral-genital contact constitutes Affirmative Consent to vaginal or anal penetration. Affirmative Consent to sexual activity on a prior occasion does not, by itself, constitute Affirmative Consent to future sexual activity.

Affirmative Consent can be withdrawn at any time. An individual who seeks to withdraw Affirmative Consent must communicate, through clear words or actions, that they no longer wish to engage in the sexual activity. Once Affirmative Consent is withdrawn, the sexual activity must cease immediately.

In evaluating Affirmative Consent in cases of alleged incapacitation, the university asks two questions: (a) *did the person initiating sexual activity know that their partner was incapacitated; or*, (b) *should a sober, reasonable person in the same situation have known that their partner was incapacitated?* If the answer to either of these questions is "YES," Affirmative Consent was absent and the conduct is likely to be deemed a violation of this policy.

Incapacitation is a state beyond drunkenness or intoxication. A person is not incapacitated merely because they have been drinking or using drugs. The impact of alcohol and other drugs varies from person to person.

One is not expected to be a medical expert in assessing incapacitation. One must look for the common and obvious warning signs that show a person may be incapacitated or approaching incapacitation. Although every individual may manifest signs of incapacitation differently, typical signs include slurred or

incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting or incontinence. A person who is incapacitated may not be able to understand some or all of the following questions: “Do you know where you are?” “Do you know how you got here?” “Do you know what is happening?” “Do you know whom you are with?”

One should be cautious before engaging in Sexual Contact or Sexual Intercourse when either party has been drinking alcohol or using other drugs. The introduction of alcohol or other drugs may create ambiguity for either party as to whether Affirmative Consent has been sought or given. If one has doubt about either party’s level of intoxication, the safe thing to do is to forego all sexual activity.

## 9. Relationships with Individuals in Positions of Authority

A **consensual** sexual or romantic relationship involving individuals in a faculty-student relationship or in the context of employment supervision or evaluation is not, in and of itself, Prohibited Conduct as defined by this policy. However, sexual or romantic relationships between faculty and students or in other situations where one individual has authority over another, easily can become situations involving claims of sexual harassment or other conduct prohibited under this policy. Moreover, such interactions or relationships will typically constitute a violation of the [VCU Policy on Employee - Student Consensual Relationships](#) and be subject to separate disciplinary procedures. Further, such relationships also may violate professional standards and norms with independent regulatory consequences for the faculty or professionals involved.

A conflict of interest also exists if there is a consensual romantic or sexual relationship in the context of employment supervision or evaluation. Therefore, a supervisor may not influence, directly or indirectly, salary, promotion, performance appraisals, work assignments or other working conditions for an employee with whom such a relationship exists. Such actions violate the [VCU Code of Conduct](#).

## 10. Violations of Law

Behavior that violates this policy also may constitute a crime under the laws of the jurisdiction in which the incident occurred. For example, the Commonwealth of Virginia criminalizes and punishes some forms of Sexual Assault, Intimate Partner Violence, Sexual Exploitation, Stalking and Physical Assault.

- The criminal statutes that may apply in cases of **Physical Assault** and **Intimate Partner Violence** are found in various sections of **Chapter 4, Articles 1 ([Homicide](#)) and 4 ([Assaults and Bodily Woundings](#))**, of **Title 18.2 of the [Code of Virginia](#)**.
- The criminal statutes relating to **Sexual Assault** are found in **[Sections 18.2-61 to 18.2-67.10 of the \[Code of Virginia\]\(#\)](#)**. **[Section 18.2-60.3 of the \[Code of Virginia\]\(#\)](#)** defines and identifies the penalty for criminal stalking.
- Finally, **[Sections 18.2-386.1 and 18.2-386.2 of the \[Code of Virginia\]\(#\)](#)** provide for criminal penalties in some cases of **Sexual Exploitation**.

This compilation of criminal statutes is not exhaustive but is offered to notify the university community that, in some cases, the alleged conduct may also constitute a crime under Virginia law, which may subject a person to criminal prosecution and punishment in addition to any sanctions under this Policy.

Behavior that violates this policy also may subject a person to civil liability.

## **11. Obligation to Provide Truthful Information and Right to Advisers**

All university community members are expected to provide truthful information in any report or proceeding under this Policy. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions under the university's Honor Code and/or disciplinary action under the appropriate employee disciplinary policy. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

Both the Complainant and the Respondent have the right to be accompanied by an adviser of their choosing. The adviser may be anyone, including an attorney, who is not otherwise a party or witness. While the adviser may provide support and advice, the adviser may not speak on behalf of the party or otherwise directly participate in, or in any manner disrupt, any proceeding or process under this policy. The university reserves the right to remove any individual whose actions are disruptive to the proceedings.

## **12. Assessment**

Reports of Prohibited Conduct are assessed immediately to identify appropriate protections and care for Complainants, to evaluate whether further investigation is needed and to determine whether criminal reporting must occur under applicable state or federal laws.

### **12.01 Initial Assessment by the Title IX Coordinator**

Upon receipt of a report of Prohibited Conduct, the Title IX Coordinator will make an initial assessment of the reported information to determine whether a violation of this policy may have occurred and respond to any immediate health or safety concerns raised by the report. In this initial assessment, the Title IX Coordinator will:

- Assess the Complainant's safety and well-being and offer the university's immediate support and assistance
- Inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence
- Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement and/or seek a protective order
- Inform the Complainant about university and community resources, the right to seek appropriate and available remedial and protective measures, and how to request those resources and measures
- Inform the Complainant of the right to seek resolution under these Procedures, and determine whether the Complainant wishes (a) to seek such resolution or (b) to request confidentiality (i.e.,

that his or her name or other identifying information not be shared with the Respondent, that no investigation be pursued and/or that no disciplinary action be taken)

- Explain the university's prohibition against Retaliation
- Assess the nature and circumstances of the report, including whether it provides any identifiable information and requires further investigation
- Ascertain the ages of the Complainant and the Respondent and, where either of the parties is a minor (under 18), advise the reporting party to contact the appropriate child protective service agency or undertake such reporting directly
- Determine whether the report triggers any Clery Act obligations, including entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations

When a decision is reached to impose interim protective measures, to initiate an investigation or to take any action that involves notifying Respondents, the Title IX Coordinator will also ensure that the Respondents receive a written explanation of all their resources and options and are offered the opportunity to meet with the Title IX Coordinator to discuss those resources and options.

## **12.02 Threat Assessment**

### **a. Review Committee**

In addition to the steps taken in the initial assessment, the university will use a Review Committee to conduct a threat assessment for all reports of Prohibited Conduct that involve charges of Sexual Assault, Sexual Exploitation, Partner or Relationship Violence or that are otherwise deemed appropriate for targeted review. The Review Committee will be comprised of a subset of the university's Threat Assessment Team (the "TAT") and other individuals that include: (1) the Title IX Coordinator; (2) a representative of the university Police Department; and (3) a representative from the Division of Student Affairs. In addition, the subset may include a representative from Human Resources or the Office of the Provost, depending on the status of the Respondent and the circumstances of the report. The Review Committee shall meet within seventy-two (72) hours of the Title IX Coordinator's receipt of a report involving the above-noted offenses. The Review Committee shall operate in a manner that complies with Va. Code § 23-9.2:15.

The TAT operates pursuant to Va. Code § 23-9.2:10 and has access, under Virginia law, to certain otherwise confidential information, including law enforcement records and criminal history information, as provided in Va. Code § 19.2-389 and § 19.2-389.1; health records, as provided in Va. Code § 32.1-127.1:03; university disciplinary, academic and/or personnel records; and prior reports of Prohibited Conduct maintained by the Title IX Coordinator. The TAT will have access to all available facts and circumstances and may seek additional information about the reported incident through any other legally permissible means.

### **b. Health or Safety Risk**

The Review Committee will determine whether the report and any other available information presents a rational basis for concluding that there is a risk of serious harm to the Complainant or any member of the university community. The Review Committee will make this determination based upon the following factors (the "Risk Factors"):

- Whether the Respondent has prior arrests, reports and/or complaints related to any form of Prohibited Conduct or any history of violent behavior
- Whether the Respondent has a history of failing to comply with any university no-contact directive, other university protective measures and/or any judicial protective order
- Whether the Respondent has threatened to commit violence or any form of Prohibited Conduct in the future
- Whether the Prohibited Conduct involved multiple Complainants and/or Respondents;
- Whether the Prohibited Conduct involved physical violence ("Physical violence" means exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking and brandishing or using any weapon.)
- Whether the report reveals a pattern of Prohibited Conduct (e.g., by the Respondent, by a particular group or organization, around a particular recurring event or activity or at a particular location)
- Whether the Prohibited Conduct was facilitated through the use of drugs or intoxicants
- Whether the Prohibited Conduct occurred while the Complainant was unconscious, physically helpless or unaware that the Prohibited Conduct was occurring
- Whether the Complainant is (or was at the time of the Prohibited Conduct) a minor (under 18)
- Whether any other aggravating circumstances or signs of predatory behavior are present such as manipulation or intentional isolation of the Complainant

### **12.03 Actions Following Threat Assessment**

Where the Review Committee Panel determines that the report presents a health or safety risk to the Complainant and/or to the university community, it will advise the Title IX Coordinator and the law enforcement representative to undertake any reporting required by applicable state (and/or federal) laws. The Review Committee shall also consider and recommend other appropriate or necessary university actions, which may include: (a) imposition of a no-contact directive or an Interim Disciplinary Suspension on the Respondent; (b) causing the university Registrar to place a "hold" on the Respondent's university transcript; (c) initiating an investigation and Formal Resolution under these Procedures; (d) additional remedial and/or protective measures beyond any already in place.

Where the Complainant has requested confidentiality, that no investigation occur, and/or that no disciplinary action be taken, the university will seek to honor this request. Consistent with its obligation to ensure the health and safety of the university community, where the university (through the Review Committee) determines that it must move forward with an investigation despite a Complainant's request for confidentiality, the university will notify the Complainant and will make reasonable efforts to protect the privacy of the Complainant to the extent possible. However, certain actions that may be required as part of the university's response, including an investigation and disciplinary resolution, will involve speaking with the Respondent and others who may have relevant information, in which case the Complainant's identity may have to be disclosed. In such cases, the university will notify the Complainant that it intends to move forward with an investigation, but in no event will the Complainant be required to participate in any such actions undertaken by the university.

The Title IX Coordinator will inform the Complainant of the chosen course of action and of any additional actions taken by the university to address a health or safety risk.

Although the university's ability to meaningfully investigate and respond to a report may be limited if the Complainant requests that his or her name not be disclosed to the Respondent or declines to participate in an investigation, the Title IX Coordinator may continue to investigate claims not involving a community health or safety threat if it is possible to do so without the Complainant's participation in the investigation or resolution (i.e., where there is other relevant evidence of the Prohibited Conduct, such as recordings from security cameras, corroborating reports from other witnesses or physical evidence). In the absence of such other evidence, however, the university will only be able to respond to the report in limited and general ways, such as providing targeted training or prevention programs, and/or offering appropriate remedial measures to the Complainant. In such cases, the report and threat assessment will be documented and retained by the university, in accordance with applicable law.

A Complainant who has requested confidentiality, that no investigation occur and/or that no disciplinary action be taken, may, at any time within the two year time frame set under this policy, request that the report be re-opened and pursued under these Procedures. The Title IX Coordinator also may request that a report be re-opened and pursued under these Procedures if any new or additional information becomes available suggesting the presence of a health or safety risk to individuals or the community.

#### **12.04 Notice of Interim Measures**

The Complainant and the Respondent will be notified and be given an opportunity to respond when the university takes interim protective measures or other actions that will directly affect them. The Title IX Coordinator has the discretion to ensure the appropriateness of any interim measure based on all available information. An interim protective measure will remain in effect until the university resolution process is complete unless new circumstances arise which warrant reconsideration of the protective measure prior to the conclusion of that process. A Complainant or Respondent may express concerns regarding an interim protective measure or other action, or failure to impose such, by contacting the Title IX Coordinator. In general, the university will attempt to minimize the burden of a measure on the Complainant.

### **13. University Resolution**

These Procedures offer two forms of resolution of reports made under the Policy: **Alternative Resolution**, which includes a variety of informal options and channels for resolving reports; and **Formal Resolution**, which involves an investigation, review and sanction, if applicable, by a Review Panel and the Vice Provost for Student Affairs, as outlined below.

### 13.01 Alternative Resolution

The Complainant may request Alternative Resolution in place of an investigation and Formal Resolution. The university, however, has the discretion to determine whether the nature of the reported conduct is appropriate for Alternative Resolution, to determine the type of Alternative Resolution that may be appropriate in a specific case and to refer a report for Formal Resolution at any time. In addition, Alternative Resolution may not be available where the Review Committee Panel has determined that one or more of the Risk Factors is present. **Forms of Alternative Resolution such as mediation, are not available in cases involving sexual assault.**

Participation in Alternative Resolution is voluntary. The university will not compel a Complainant or Respondent to engage in Alternative Resolution, will not compel a Complainant to directly confront the Respondent and will allow a Complainant or Respondent to withdraw from Alternative Resolution at any time. The university may decline the request for Alternative Resolution in any particular case and may terminate an ongoing Alternative Resolution process at any time. Pursuing Alternative Resolution does not preclude later use of Formal Resolution if the Alternative Resolution fails to achieve a resolution acceptable to the parties and the university or if a Respondent fails to comply with the terms of an agreement. Where the Complainant or the Respondent withdraws from Alternative Resolution, Alternative Resolution is otherwise terminated for any reason or an agreement is breached by either party, any statements or disclosures made by the parties during the course of the Alternative Resolution may be considered in a subsequent investigation and Formal Resolution.

With any form of Alternative Resolution, each party has the right to consult with an adviser of their choosing; subject to the constraints and responsibilities placed on advisers herein.

Alternative Resolution will include:

- **Assistance of a Third Party:** If a Complainant requests assistance in informally resolving a report of Prohibited Conduct, the Title IX Coordinator can arrange to have a trained representative facilitate a meeting or meetings between the parties. The availability of this form of Alternative Resolution, and any resolution reached through such form of Alternative Resolution, is subject to the agreement of the Title IX Coordinator, the Complainant and the Respondent. This form of Alternative Resolution may not be used where the allegation involves sexual assault.
- **A Written Agreement between the Parties:** Alternative Resolution agreements may involve a wide range of interventions, remedies or agreed-upon actions to be undertaken by the Respondent. If an agreement resolving the complaint acceptable to the university, the Complainant and the Respondent is reached through Alternative Resolution, the terms of the agreement will be implemented and the matter will be considered resolved and closed. If an agreement is not reached or if a Respondent fails to comply with the terms of the Alternative



Resolution, the Complainant or the Title IX Coordinator may decide to proceed to an investigation and Formal Resolution under these Procedures.

- **A Process Completed Within Thirty (30) Business Days:** Because the university has a responsibility to complete investigation and adjudication of reports of Prohibited Conduct within a short time frame, Alternative Resolution must be completed within thirty (30) business days of initiation.
- **Records:** The Title IX Coordinator will maintain records of all reports and conduct referred for Alternative Resolution along with copies of all agreements reached through the Alternative Resolution process.

### **13.02 Formal Resolution**

Formal Resolution is commenced when one of the following occurs:

- A Complainant reports that an individual subject to this Policy has engaged in one or more instances of Prohibited Conduct and requests that the Title IX Coordinator initiate an investigation and resolution under these Procedures
- Alternative Resolution does not resolve a reported incident of Prohibited Conduct and, the Complainant or the Title IX Coordinator decides that an investigation of the report of Prohibited Conduct is appropriate
- At the conclusion of the university's threat assessment process, the Review Committee has determined that the presence of one or more Risk Factors requires an investigation of the Prohibited Conduct, notwithstanding the Complainant's request that no investigation be pursued or that no disciplinary action be taken

### **13.03 Investigation**

Under any of the above circumstances, the Title IX Coordinator will designate one or more Investigators from the university's Equity and Access Services and/or an experienced external investigator to conduct a prompt, thorough, fair and impartial investigation. Any investigator used by the university will receive annual training on the issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence, stalking, trauma and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard and protects the safety of victims while promoting accountability.

#### **a. Notice of Investigation**

The Title IX Coordinator will notify the Complainant and the Respondent, in writing, of the commencement of an investigation. Such notice will: (1) identify the Complainant and the Respondent; (2) specify the date, time (if known), location and nature of the alleged Prohibited Conduct; (3) identify the reported Policy violation(s); (4) identify the Investigator; (5) include information about the parties'

respective rights and responsibilities under the Policy and these Procedures; (6) explain the prohibition against retaliation; (7) instruct the parties to preserve any potentially relevant evidence in any format; (8) inform the parties how to challenge participation by the Investigator on the basis of a conflict of interest; and (9) provide a copy of the Policy and these Procedures.

**b. Other Forms of Discriminatory and/or Harassing Conduct**

If a report of Prohibited Conduct also implicates other forms of discriminatory and/or harassing conduct prohibited by the university, the Title IX Coordinator will evaluate all reported allegations to determine whether the alleged Prohibited Conduct may be appropriately investigated in combination with other alleged policy violations without unduly delaying the resolution of the report of Prohibited Conduct. Where the Title IX Coordinator determines that a single investigation is appropriate, the determination of whether the Respondent violated university policy will be evaluated under the definitions afforded under the appropriate policy, but the investigation and resolution will be conducted solely in accordance with these Procedures. Alleged violations of no contact directives or similar misconduct may also be investigated and adjudicated under the Student Code of Conduct or relevant employee policy.

**c. Presumption of Non-Responsibility and Participation by the Parties**

The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Investigator and/or Review Panel conclude, by a Preponderance of the Evidence, that there is sufficient evidence that the Respondent violated this Policy. Neither a Complainant nor a Respondent is required to participate in the investigation or any form of Resolution under the Policy. Recognizing that a Respondent may face parallel criminal charges, the Investigator will not draw any adverse inference from a decision by the Respondent not to participate in the investigation or Review Panel. The investigation and Resolution, however, may proceed, and a finding of responsibility and imposition of any sanction(s) may occur without the participation of the Respondent or the Complainant.

**d. Timeframe for Completion of Investigation**

Typically, the period from commencement of an investigation through resolution (finding and sanction, if any) will not exceed sixty (60) business days, as more specifically outlined below. This timeframe may be extended for good cause, which may exist if Alternative Resolution has been attempted by the parties, additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement for a temporary delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses, to account for university breaks or closings, to account for complexities of a case (including the number of witnesses and volume of information provided by the parties) or for other legitimate reasons. The Investigator will notify the parties in writing of any anticipated extension of this timeframe and the reason for such extension.

**e. Overview of Investigation**

During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information and to submit questions that they believe should be directed by the Investigator to each other or to any witness. The

Investigator will notify and seek to meet separately with the Complainant, the Respondent and third-party witnesses and will gather other relevant and available evidence and information, including electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs (including those stored on computers and smartphones) and medical records (subject to the consent of the applicable party).

f. **Advisers**

Both the Complainant and the Respondent have the right to be accompanied at any stage of proceedings or processes under this policy by an adviser of their choosing. The adviser may be anyone, including an attorney, who is not otherwise a party or witness. While the adviser may provide support and advice, the adviser may not speak on behalf of the party or otherwise participate in, or in any manner disrupt, any proceeding. The university reserves the right to remove any individual whose actions are disruptive to the proceedings or processes.

g. **Prior or Subsequent Conduct**

Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive or absence of mistake. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Policy violation, may be deemed relevant to the determination of responsibility for the Prohibited Conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Prohibited Conduct. Such prior or subsequent conduct also may constitute a violation of other university policies, in which case it may be subject to additional sanctions. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.

h. **Prior Sexual History**

The sexual history of a Complainant or Respondent will never be used to prove character or reputation. Moreover, evidence related to the prior sexual history of either of the parties is generally not relevant to the determination of a Policy violation and will be considered only in limited circumstances. For example, if the existence of Affirmative Consent is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether Affirmative Consent was sought and given during the incident in question. In addition, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve another question raised by the report. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant.

i. **Relevance**

The Investigator has the discretion to determine the relevance of any proffered evidence and to include or exclude certain types of evidence. In general, the Investigator will not consider statements of

personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any party's general reputation for any character trait.

**j. Credibility**

The Investigator has the discretion to assess and make findings and conclusions that take into account the credibility and truthfulness of all persons interviewed.

**k. Site Visit(s)**

The Investigator may visit relevant sites or locations and record observations through written, photographic or other means.

**l. Expert Consultation(s)**

The Investigator may consult medical, forensic, technological or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation.

**m. Coordination with Law Enforcement**

The Investigator will contact any law enforcement agency known to be conducting its own investigation to inform that agency that a university investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the university in its investigation. At the request of law enforcement, the Investigator may delay the university investigation temporarily while an external law enforcement agency is gathering evidence. In the event of such a delay, the Investigator will promptly resume the university investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.

**n. Parties' Review and Response to Draft Investigation Report**

At the conclusion of the investigation, the Investigator will prepare a Draft Investigation Report summarizing the information gathered and outlining the contested and uncontested information. The Draft Investigation Report will not include any findings. The Complainant and the Respondent will each have ample opportunity to review the Draft Investigation Report; meet with the Investigator; submit additional comments and information to the Investigator; identify any additional witnesses or evidence for the Investigator to pursue; and submit further questions that they believe should be directed by the Investigator to the other party or to any witness. The Investigator will designate a reasonable time for this review and response by the parties, not to exceed five (5) business days. In the absence of good and substantial cause, information discoverable by either the Complainant or the Respondent through the exercise of due diligence that is not provided to the Investigator at this juncture will not be considered in the determination of responsibility for a violation of the Policy and will not be considered by the Review Panel (see below).

**o. Final Investigation Report**

Unless there are significant additional investigation steps requested by the parties or identified by the Investigator, within five (5) business days after receipt and consideration of additional comments, questions and/or information from the parties, the Investigator will prepare a Final Investigation Report, which will include a recommendation to the Title IX Coordinator as to whether there is sufficient information, by a Preponderance of the Evidence, to support a finding of responsibility for a violation of the Policy. The Investigator may review the Final Report with university legal counsel as needed and the Final Investigation Report will be filed with the Title IX Coordinator. The Title IX Coordinator will notify both parties, simultaneously, that the Final Investigation Report is complete and available for review.

**p. Recommended Finding(s) of Responsibility**

When the Investigator determines that there is sufficient information, by a Preponderance of the Evidence, to support a finding of responsibility on one or more of the allegations, the Respondent shall respond within five (5) business days and shall accept or contest such recommended finding(s) by so notifying the Title IX Coordinator in writing. If the Respondent accepts the recommended finding(s) of responsibility, the Title IX Coordinator will refer the case for a Hearing before the Review Panel solely on the issue of sanction, as outlined below. If the Respondent contests one or more of the recommended finding(s), the Respondent shall include a statement explaining why the Respondent contests such finding(s). The Title IX Coordinator will ensure that the Complainant has an opportunity to review and respond in writing to any such statement within five (5) business days. The Title IX Coordinator shall review these statements and may return the case for additional investigation or provide the Final Investigation Report, together with any statements by the parties, to the Review Panel for further proceedings as outlined below, notifying the parties of the action taken.

**q. Recommended Finding(s) of No Responsibility**

When the Investigator determines that there is insufficient information, by a Preponderance of the Evidence, to support a finding of responsibility on one or more of the allegations, the Complainant shall respond within five (5) business days and shall accept or contest the recommended finding(s) by so notifying the Title IX Coordinator in writing. If the Complainant accepts the recommended finding(s) of no responsibility, the investigation will be closed and documented in accordance with applicable university policies. If the Complainant contests one or more of the recommended finding(s), the Complainant shall include a statement explaining why the Complainant contests such finding(s). The Title IX Coordinator will ensure that the Respondent has an opportunity to review and respond in writing to any such statement within five (5) business days. The Title IX Coordinator shall review these statements and may return the case for additional investigation or provide the Final Investigation Report, together with any statements by the parties, to the Review Panel, notifying the parties of the action taken.

**r. Impact and Mitigation Statements**

Where there is a finding of responsibility on one or more of the allegations, both parties may submit a statement to the Title IX Coordinator for consideration by the Review Panel in recommending an

appropriate sanction. The Complainant may submit a written statement describing the impact of the Prohibited Conduct on the Complainant and expressing a preference about the sanction(s) to be imposed. The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed. The Title IX Coordinator will ensure that each of the parties has a reasonable opportunity to review any statement submitted by the other party. The timeframe for submitting such statements shall not exceed five (5) business days from the date the Final Investigation Report is submitted to the Review Panel.

#### **13.04 Acceptance of Responsibility**

The Respondent may, at any time, elect to resolve the Formal Resolution process by accepting responsibility for the Prohibited Conduct. In cases where the Complainant, the Respondent, the Title IX Coordinator, the Vice Provost for Student Affairs or the responsible senior management executive (in the case of employees) agree upon an appropriate sanction, the case may be resolved without referral to the Review Panel. In all other cases, the Title IX Coordinator will refer the matter to the Review Panel to recommend the appropriate sanction(s). In such situations, the Respondent and the Complainant may both submit an impact and/or mitigation statement to the Review Panel.

#### **13.05 Review Panel Hearing**

The VCU Office of the Provost shall appoint a standing pool of individuals who can serve as Review Panel members. This pool shall include trained members of the university community and also may include external professionals with appropriate experience and training at the university's discretion. The Office of the Provost will select from this pool (a) three members to serve on the Review Panel, and (b) an individual to serve as the non-voting Hearing Chair. All persons serving on any Review Panel (or as the Hearing Chair) must be impartial and free from actual bias and conflict of interest. The Faculty Senate and the Staff Senate shall be invited to nominate individuals to be trained and to serve in the pool. The Review Panel will carefully review all materials submitted to it in a case.

##### **a. Review Standard**

If either of the parties contests the Investigator's recommended finding(s) of responsibility (or no responsibility) for an alleged violation of the Policy, the Review Panel will hold a Hearing to determine whether the Preponderance of the Evidence standard was appropriately applied by the Investigator. In determining whether the standard was appropriately applied, the Review Panel will consider: (1) whether the concerns stated by the contesting party raise substantial doubt about the thoroughness, fairness and/or impartiality of the investigation; and, if not, (2) whether there is sufficient evidence to support the Investigator's recommended finding(s) by a Preponderance of the Evidence.

##### **b. Notice and Timing of Hearing**

Typically, a Hearing will be held within ten (10) business days from the date the Investigation Report and Impact and Mitigation Statements are submitted by the Title IX Coordinator to the Review Panel, subject to short extensions for good cause. The Hearing Chair will notify the parties in writing of the date, time and location of the Hearing; the names of the persons on the Review Panel and the Hearing Chair; and how to challenge participation by any member of the Review Panel or the Hearing Chair.

Good cause for short extensions may include the availability of the parties, the timing of semester breaks or university holidays, or other extenuating circumstances. Any extension, and the reason for the extension, will be shared with the parties in writing.

**c. Postponement of Hearing**

Permission to postpone a Hearing may be granted provided that the request to do so is based on a compelling emergency and communicated to the Hearing Chair prior to the time of the Hearing.

**d. Hearing Format**

The Hearing is an opportunity for the parties to address the Review Panel, in person, about whether the Preponderance of the Evidence standard was appropriately applied by the Investigator, whether the investigation was thorough, fair and impartial and whether there is sufficient evidence to support the Investigator's recommended finding(s) by a Preponderance of the Evidence. The parties may address any information in the Final Investigation Report, supplemental statements submitted in response to the Final Investigation Report or impact and mitigation statements. Each party has the opportunity to be heard and to respond to any questions of the Review Panel. The parties may not directly question one another, although they may proffer questions for the Review Panel, who may choose, in their discretion, to pose appropriate and relevant questions of the Investigator, the parties or any witnesses called by the Review Panel. A typical hearing may include brief opening remarks by the Complainant and/or Respondent, with follow-up questions posed by the Review Panel; information presented by the Investigator or witnesses, if deemed relevant by the Review Panel, with follow-up questions by the Review Panel of the Investigator or witnesses; and brief concluding remarks by the Complainant and/or Respondent. The Chair of the Review Panel has the discretion to determine the specific Hearing format.

**e. Participation in Hearing**

- **Parties:** Both the Complainant and the Respondent have a right to be present at the Hearing. Either party may request alternative methods for participating in the Hearing that do not require physical proximity to the other party, including participating through electronic means. This request should be submitted to the Hearing Chair at least two (2) calendar days prior to the Hearing. If, despite being notified of the date, time and location of the Hearing, either party is not in attendance, the Hearing may proceed and applicable sanctions may be imposed. Neither party is required to participate in the Hearing in order for the Hearing to proceed.
- **Investigator or Other Witnesses:** The parties are responsible for identifying all individuals with relevant information during the Investigation process and may not request that witnesses appear before the Review Panel. In its sole discretion, the Review Panel may request the presence of the Investigator or any other witness the Panel deems necessary to its determination, and will provide sufficient notice to those requested to be present.

- **Advisers:** As noted, both the Complainant and the Respondent have the right to be accompanied at the Hearing by an adviser of their choosing, subject to the constraints and responsibilities placed on advisers herein.

### **13.06 Case Resolution - Cases Involving Respondents Who Are Students**

#### **a. Determination by the Review Panel**

Where either of the parties has contested the recommended finding(s) of responsibility, the members of the Review Panel will, at the conclusion of the Hearing, determine by majority vote, whether the Preponderance of the Evidence standard was appropriately applied by the Investigator by making a finding: (1) whether the concern(s) stated by the contesting party raise substantial doubt about the thoroughness, fairness and/or impartiality of the investigation; and, if not, (2) whether there is sufficient evidence to support the Investigator's recommended finding(s) by a Preponderance of the Evidence.

If the Review Panel finds that concerns stated by the contesting party raise substantial doubt about the thoroughness, fairness and/or impartiality of the investigation, it will remand the matter to the Title IX Coordinator with instructions for further investigation or other action. The instructions may include guidance regarding the scope of information to be further investigated and any appropriate stipulations, including the appointment of a new Investigator.

If the Review Panel finds no cause for substantial doubt about the thoroughness, fairness and/or impartiality of the investigation, but determines there is insufficient evidence to support the Investigator's recommended finding, it may remand the matter for further investigation, as specified above, or reject the Investigator's recommended finding(s) and make alternative finding(s).

If the Review Panel finds no cause for substantial doubt about the thoroughness, fairness and/or impartiality of the investigation *and* affirms that there is sufficient evidence to support a finding of responsibility by a Preponderance of the Evidence, it will then determine by majority vote, the appropriate sanction(s) for the Prohibited Conduct.

If the Review Panel finds no cause for substantial doubt about the thoroughness, fairness and/or impartiality of the investigation *and* affirms a recommended finding of no responsibility, the matter will be considered resolved and the Formal Resolution process will be closed. Appropriate remedial measures may, however, remain in effect to support a Complainant.

#### **b. Sanctions**

The Policy prohibits a broad range of conduct, all of which is serious in nature. Where there is a finding of responsibility, the Review Panel may recommend imposition of one or more sanctions. The appropriateness of any particular sanction is reviewed on an individual basis based on the unique facts and circumstances as found by the Review Panel. In keeping with the university's commitment to foster an environment that is safe, inclusive and free from discrimination and harassment, the Policy provides the Review Panel with wide latitude in the recommendation of sanctions tailored to the facts and circumstances of each report, the impact of the conduct on the Complainant and surrounding community and accountability for the Respondent. The ultimate determination and imposition of



sanctions is made by the Vice Provost for Student Affairs based on recommendations made by the Review Panel. Sanctions are intended to eliminate Prohibited Conduct, prevent its recurrence and remedy its effects, hold the responsible individual accountable for their actions, and support the university's educational mission and federal obligations. Sanctions may include educational, restorative, rehabilitative and punitive components. Some conduct is so egregious in nature, harmful to the individuals involved or so deleterious to the educational process, that it requires severe sanctions, including suspension or expulsion from the university. In determining the appropriate sanction(s), the Review Panel and the Vice Provost for Student Affairs will be guided by a number of considerations, including:

- The severity, persistence or pervasiveness of the Prohibited Conduct
- The nature or violence of the Prohibited Conduct
- The impact of the Prohibited Conduct on the Complainant
- The impact or implications of the Prohibited Conduct within the university community
- Prior misconduct by the Respondent, including the Respondent's relevant prior discipline history, at the university or elsewhere, and any relevant criminal convictions
- Whether, for less severe Prohibited Conduct, the Respondent has accepted responsibility for the Prohibited Conduct
- The maintenance of a safe, nondiscriminatory and respectful environment conducive to learning
- Any other mitigating, aggravating or compelling factors

Sanctions are effective immediately, unless otherwise specified by the Vice Provost for Student Affairs. They may include any of the sanctions below, individually or in combination, including:

- **Expulsion:** Permanent termination of student status.
- **Campus Ban:** Prohibits access to all or a portion of the VCU campus.
- **Admission Revocation** (for example in the case of a VCU undergraduate student admitted to a VCU graduate or professional program).
- **Disciplinary Probation:** a specified period of time requiring a student to avoid a recurrence of any misconduct.
- **Suspension Held in Abeyance:** Removal from campus and exclusion from classes and other privileges or activities or from the university for a definite period of time to be enforced if the student is found responsible for a subsequent violation.

- **Suspension:** Removal from campus and exclusion from classes and other privileges or activities or from the university for a definite period of time.
- **Loss of University-Related Privileges:** Attendance at university events, access to university facilities or programs.
- **Termination or suspension of university employment.**
- **Restitution:** Reimbursement for damages or misappropriation of property.
- **Reprimand:** A written censure for violation of the Policy and any specified Standards of Conduct placed in the student's record, including the possibility of more severe disciplinary sanctions should another violation occur within a stated period of time.
- **Admonition:** An oral statement to a student that he or she has violated the Policy and any specified Standards of Conduct.

In addition to other sanctions, the Review Panel may recommend imposition or extension of a no-contact directive or extension of academic, university housing and/or university employment modifications, as may be appropriate; increased monitoring, supervision and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur; conducting targeted or broad-based educational programming or training for relevant persons or groups; or one or more restorative remedies to encourage a Respondent to develop insight about the Prohibited Conduct, learn about the impact of that Prohibited Conduct on the Complainant and the university community and identify how to prevent that Prohibited Conduct in the future (including community service and mandatory participation in training, education and/or prevention programs related to the Prohibited Conduct); and/or impose any other remedial or protective measures that are tailored to achieve the goals of the Policy. Final actions in response to such recommendations are taken by the Vice Provost for Student Affairs.

#### c. **Transcript Notations and Completed Resolution**

If a sanction of expulsion or suspension is imposed, or if a Respondent withdraws from the university while under investigation for an offense involving sexual violence as defined under state law, the Title IX Coordinator will notify the university Registrar to place a notation on the Respondent's transcript stating that the Respondent was suspended from, permanently dismissed (expelled) from or withdrew from the university while under investigation for an offense involving sexual violence, as applicable. Respondents who withdraw from or leave the university while under investigation for any Prohibited Conduct may not return until the complaint has been fully resolved as provided under this policy.

#### d. **Decision of the Vice Provost for Student Affairs is Final**

The decision of the Vice Provost for Student Affairs, is final, without further recourse or appeal by either party.

**e. Final Outcome Letter**

The Vice Provost for Student Affairs (through the Review Panel Chair) will simultaneously issue a written decision (the "Final Outcome Letter") to both the Complainant and the Respondent, with a copy to the Title IX Coordinator, within ten (10) business days following the Review Panel Hearing or within a reasonable amount of time thereafter as determined in consultation with the Title IX Coordinator. The Final Outcome Letter will set forth the violation(s) of the Policy for which the Respondent was found responsible or not responsible, as supported by the rationale set forth in the Final Investigation Report and/or modified by the Review Panel or the Vice Provost for Student Affairs; the sanction(s) (if applicable) imposed against the Respondent; and the rationale for any sanction(s) imposed. The Final Outcome Letter also may identify protective measures implemented with respect to the Respondent or the broader university community. The Final Outcome Letter will not disclose any remedial measures provided to the Complainant.

**f. Release of Documents**

Under FERPA, the Final Investigation Report, statements of one party that are shared with the other party in the process and any documents prepared by the university, including documents by or for the Review Panel in advance of the Hearing, constitute education records which may not be disclosed outside of the proceedings, except as may be required or authorized by law. The university does not, however, impose any restrictions on the parties regarding re-disclosure of the incident, their participation in these Procedures or the outcome.

**13.07 Case Resolution - Cases Involving Respondents Who Are Employees**

**a. Determination by the Review Panel**

Where either of the parties has contested the recommended finding(s) of responsibility, the members of the Review Panel will, at the conclusion of the Hearing, determine by majority vote, whether the Preponderance of the Evidence standard was appropriately applied by the Investigator by making a finding: (1) whether the concern(s) stated by the contesting party raise substantial doubt about the thoroughness, fairness and/or impartiality of the investigation; and, if not, (2) whether there is sufficient evidence to support the Investigator's recommended finding(s) by a Preponderance of the Evidence.

If the Review Panel finds that concerns stated by the contesting party raise substantial doubt about the thoroughness, fairness and/or impartiality of the investigation, it will remand the matter to the Title IX Coordinator with instructions for further investigation or other action. The instructions may include guidance regarding the scope of information to be further investigated and any appropriate stipulations, including the appointment of a new Investigator.

If the Review Panel finds no cause for substantial doubt about the thoroughness, fairness and/or impartiality of the investigation, but determines there is insufficient evidence to support the Investigator's recommended finding, it may remand the matter for further investigation, as specified above, or reject the Investigator's recommended finding(s) and make alternative finding(s), which will be forwarded to the appropriate executive for further review, as described below.

If the Review Panel finds no cause for substantial doubt about the thoroughness, fairness and/or impartiality of the investigation *and* affirms that there is sufficient evidence to support the recommended finding of responsibility by a Preponderance of the Evidence, the Review Panel will also by majority vote, recommend a sanction. The scope of possible sanctions will be dependent upon the employee disciplinary procedures applicable to the Respondent, but will include informal and formal counseling, progressive disciplinary action, no-contact directive, transfer of position, removal of administrative appointment, demotion, suspension and termination of employment.

If the Review Panel finds no cause for substantial doubt about the thoroughness, fairness and/or impartiality of the investigation *and* affirms a recommended finding of no responsibility, the matter will be considered resolved and the Formal Resolution process will be closed. Appropriate remedial measures may, however, remain in effect to support a Complainant. The Hearing Chair will provide notice of the decision to the Title IX Coordinator, who will issue a Final Outcome Letter to the parties.

**b. Notice of Review Panel Determination**

Within five (5) business days of the Review Panel hearing, the Hearing Chair will notify in writing (which may include email) the Complainant, the Respondent, the Title IX Coordinator and the appropriate senior management executive (Vice President or equivalent) in the Respondent's chain of command of the Review Panel's determination of responsibility and the recommended sanction, if applicable. At the time of this notice, the Hearing Chair will also forward to the appropriate senior management executive a confidential copy of the Final Investigation Report and any accompanying supplemental statements.

**c. Executive Review; Sanction; Notice of Outcome:**

Upon receipt of notice from the Review Panel and receipt of case materials, the appropriate management executive will have seven (7) business days to review all the foregoing information, affirm or reject the Review Panel's decision on the finding of responsibility under the Policy and, if applicable, determine sanction in accordance with the disciplinary procedures appropriate for the employee.

- **Sanctions:** Where disciplinary action is recommended, such action may include, as described above, informal and formal counseling, progressive disciplinary action, no-contact directive, transfer of position, removal of administrative appointment, demotion, suspension and termination of employment.

The Policy prohibits a broad range of conduct, all of which is serious in nature. The appropriateness of any particular sanction is reviewed on an individual basis based on the unique facts and circumstances outlined in the Decision Packet. In keeping with the university's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the Policy provides the appropriate executive with wide latitude in the imposition of sanctions tailored to the facts and circumstances of each report, the impact of the conduct on the Complainant and surrounding community and accountability for the Respondent. The imposition of sanctions is designed to eliminate Prohibited Conduct, prevent its recurrence and remedy its effects, while supporting the university's educational mission and federal obligations. Sanctions may include educational, restorative, rehabilitative and punitive components. Some conduct is so egregious in nature, harmful to the individuals involved or so deleterious to the educational process

that it requires severe sanctions, including suspension or termination of employment from the university. In determining the appropriate sanction(s), the appropriate executive will be guided by a number of considerations, including:

- The severity, persistence or pervasiveness of the Prohibited Conduct
- The nature or violence of the Prohibited Conduct
- The impact of the Prohibited Conduct on the Complainant
- The impact or implications of the Prohibited Conduct within the university community
- Prior misconduct by the Respondent, including the Respondent's relevant prior discipline history, at the university or elsewhere, and any relevant criminal convictions
- Whether, for less severe Prohibited Conduct, the Respondent has accepted responsibility for the Prohibited Conduct
- The maintenance of a safe, nondiscriminatory and respectful environment
- Any other mitigating, aggravating or compelling factors

The senior management executive will consult with other administrators as needed, including university Human Resources and the Title IX Coordinator, to ensure that any disciplinary action is appropriate for the violation and consistent with the disciplinary procedures for the employee type and prior university action for similar policy violations. The senior management executive will also determine any other appropriate actions, which may include individually or in combination: (1) imposing or extending a no-contact directive; (2) imposing or extending employment modifications; (3) other restorative remedies required of the Respondent, such as referral to employee assistance programs and education and training that encourage the Respondent to develop insight about the Prohibited Conduct, learn about the impact of the Prohibited Conduct on the Complainant and the university community and identify how to prevent that Prohibited Conduct in the future (including community service and mandatory participation in training, education and/or prevention programs related to the Prohibited Conduct); (4) imposing or extending increased monitoring, supervision and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur; (5) arranging for conducting targeted or broad-based educational programming or training for relevant persons or groups; and/or (6) imposing any other remedial or protective measures that are tailored to achieve the goals of the Policy.

Nothing in these Procedures prevents the senior management executive from imposing disciplinary action against a Respondent where the Final Investigation Report demonstrates that the Respondent engaged in other conduct prohibited by the university, regardless of whether the Respondent has been found responsible for violating the Policy.

- **Notice to the Title IX Coordinator:** The senior management executive will notify the Title IX Coordinator and Human Resources in writing (which may include email) of his or her decision, outlining his or her acceptance or rejection of the Review Panel decision, the rationale for the decision, any sanction against the Respondent, the rationale for such sanction (including why the executive did or did not accept the sanction recommended by the Review Panel) and any other remedial actions for the Complainant, the Respondent and/or community to be implemented as a result of the finding.
- **Notice of Final Outcome to Parties:** Within two (2) business days of receipt of either the Review Panel or the management executive's decision, the Title IX Coordinator shall notify the Complainant and the Respondent, simultaneously, in writing (which may include email) of the final outcome of the investigation and the rationale for the outcome (the "Final Outcome Letter"). The Final Outcome Letter shall include the name of the Respondent; the Policy violations (if any) for which the Respondent was found responsible or not responsible, as supported by the rationale set forth in the Final Investigation Report and/or modified by the Review Panel or executive; the sanction(s) imposed against the Respondent (if any); the rationale for such sanction(s); and any protective measures implemented with respect to the Respondent and/or the university community. Any additional remedial measures provided to the Complainant will not be included in this notice, but will shortly thereafter be shared with the Complainant by separate communication. The university does not impose any restrictions on the parties regarding re-disclosure of the incident, their participation in these Procedures or the outcome.

The decision outlined in this notice is final under this policy and is not subject to further university appeal or grievance. However, nothing in this policy abrogates post-adjudication rights as provided by state and federal law (i.e., State Grievance Procedure, under Chapter 30 (§ 2.2-3000 et. seq.) of Title 2.2 of the Code of Virginia; the Office for Civil Rights; and/or the Equal Opportunity Employment Commission).

#### 14. Prevention, Training and Awareness Programs

The university is committed to the prevention of Prohibited Conduct through regular and ongoing education and awareness programs. Incoming students and new employees receive primary prevention and awareness programming as part of their orientation, and returning students and current employees receive ongoing training and related programs.

#### 15. Annual Review

This policy is maintained by Equity and Access Services. The VCU Title IX Coordinator will review this policy on an annual basis. This review will address changes in legal requirements, evaluate existing university resources and assess the university's resolution of cases from the preceding year (including, but not limited to, timeframes for completion and sanctions and remedies imposed).

#### Forms

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1. [Sexual Misconduct/Violence and Sex/Gender Discrimination Incident Reporting Form](#)

## Related Documents

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1. [Equal Pay Act of 1963, as amended](#)
2. [Executive Order 11246, as amended](#)
3. [Executive Order 13672](#)
4. [Executive Order Number One \(2014\)](#)
5. [Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act](#)
6. [Title VII of the Civil Rights Act of 1964, as amended](#)
7. [Title IX of the Education Amendments of 1972, as amended](#)
8. [VCU Notice of Nondiscrimination](#)
9. [Violence Against Women Act](#)
10. [Virginia Human Rights Act](#)

Additional laws and policies are cited in the Policy, with hyperlinks provided.

## Revision History

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**NOTE:** This policy replaces the *Title IX Student Sexual Harassment and Sexual Misconduct Anti-Discrimination Policy Student Sexual Misconduct Policy* and the *Prohibition Against Sexual Harassment*.

This policy supersedes the following archived policies:

08/05/2015	<i>Sexual Misconduct/Violence and Sex/Gender Discrimination – Interim Approval</i>
03/18/2014	<i>Title IX Student Sexual Harassment and Sexual Misconduct Anti-Discrimination Policy (Student Sexual Misconduct Policy)</i>
11/15/2013	<i>Prohibition Against Sexual Harassment</i>
05/10/2013	<i>Student Sexual Misconduct Policy</i>
03/26/2009	<i>Prohibition of Sexual Harassment Initial</i>
01/22/1998	<i>Student Sexual Misconduct Policy</i>

## FAQs

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### 1. **Are medical residents and interns covered under this policy?**

Yes. This policy governs the conduct of VCU students (regardless of enrollment status), faculty, staff and third parties (i.e., non-members of the VCU community, such as vendors, alumni/ae, visitors, university affiliates, or local residents). A third party is also protected by and subject to this policy.

**2. Are Wellness advocates considered “Confidential Employees” under this policy?**

Yes. Advocates are considered Confidential Employees that provide services and support through the university’s Wellness Resource Center. As Confidential Employees, Wellness advocates will not disclose information obtained from patients, clients, or persons otherwise counseled or treated, to the university’s Title IX Coordinator or others without the individual’s permission except as provided for or required by law.

**3. Do “Responsible Employees” need to report harassment not related to sexual violence?**

Under this policy, supervisors, management and human resources professionals are required to report incidents regarding Sex or Gender-Based Discrimination, including harassment, to the university’s Title IX Coordinator. Reporting is required when such supervisors, management and human resource professionals know (by reason of a direct or indirect disclosure) or reasonably should know, of such incidents or conduct. For academic faculty, supervisors include department chairs, deans and other unit administrators. All persons are encouraged to report harassment or other misconduct.

**4. Why are sexual misconduct, violence and sex/gender discrimination all included under this one policy?**

A unified policy permits all Title IX related discrimination complaints to be resolved using one institution-wide policy, and one stand-alone resolution process, applied to all complaints involving faculty, students and staff. Such a policy supports centralized reporting and helps to prevent confusion. A unified process also enables better tracking of patterns of misconduct.

**5. Is interpersonal violence outside the context of an intimate partner relationship included in this policy? Are there any resources and support measures available?**

Interpersonal violence outside of the context of an intimate partner relationship is generally not covered under this policy. However, the Title IX Coordinator will make an initial determination whether a violation of this policy may have occurred and respond to any immediate health or safety concerns raised by the report. Regardless of whether the reported conduct is determined to be covered by this policy, a referral will be made to any appropriate resources available through the university or the community, including the police. Student resources include: University Counseling Services (Monroe Park Campus (804) 828-6200 or MCV Campus (804) 828-3964), as well as the Wellness Resource Center (Monroe Park Campus (804) 828-9355). Employees may obtain counseling through the Employee Assistance Program at 1-855-223-9277.

**6. I am concerned that actions undertaken pursuant to this policy might violate someone’s freedom of religion and/or freedom of speech. What steps are taken to ensure this doesn’t occur?**



This policy defines offenses to focus on conduct that constitute assault, violence or harassment as defined in state or federal laws and is therefore not protected speech. In determining whether alleged conduct violates this policy, the university will always consider the totality of the facts and circumstances involved in the incident, including the nature of the alleged conduct and the context in which it occurred, in order to equally protect the rights of each affected party.

**7. What happens when the university determines that it must move forward with an investigation despite a Complainant's request that no investigation occur or requested confidentiality?**

The university will step in as the Complainant in instances where the university determines that it must proceed with an investigation despite a Complainant's request that no investigation occur or where a Complainant has requested confidentiality. The university carefully considers a Complainant's wishes and takes actions needed to protect the Complainant and the community and to comply with applicable laws.