

# Policy Prohibiting Discrimination, Harassment, Retaliation and Sexual Misconduct

**Title: Policy Prohibiting Discrimination, Discriminatory Harassment, Retaliation and Sexual Misconduct**

**Effective Date: August 22, 2014**

**Revision Date: August 16, 2021**

**Responsible Office: Office of Compliance & Equity**

## I. Scope

This policy applies to William & Mary as a whole university, including the Virginia Institute of Marine Science (the university). It applies to all members of the university community, including faculty, staff, and students. It also applies to contractors, vendors, and other third parties.

This policy applies to discrimination, discriminatory harassment, retaliation and sexual misconduct as defined in the policy by or against members of the university community when the conduct:

- occurs on campus or property owned or controlled by the university (university property),
- occurs in the context of a university employment or educational program or activity,
- uses university resources, such as workplace telephones, video conferencing technology or e-mail, or
- has continuing adverse effects on or creates a hostile environment for members of the university community while on university property or during a university employment or educational program or activity.

Officially recognized organizations, such as student organizations, are subject to this policy, provided that, to the extent permitted by law, social organizations such as fraternities and sororities may restrict membership to members of the same sex, and organizations whose primary purpose is religious or political may restrict their membership to those members of the university community who have similar beliefs or political affiliations. [1]

This policy is not intended, and may not be applied, to abridge free speech or other civil rights of any individual or group. Speech or any other expressive conduct can, however, be discriminatory and violate this policy, for example by creating a hostile environment as defined in Section III of this policy. This policy is not meant to

prohibit academic freedom, including classroom discussion of controversial matter and research activities.

## II. Purpose

The university is committed to maintaining an environment that is free from sexual misconduct and discrimination, discriminatory harassment, or retaliation based on a person's belonging to or perception that a person belongs to a protected group.

Discrimination, discriminatory harassment, retaliatory misconduct or sexual misconduct by anyone is prohibited. It will be addressed in a prompt, equitable manner in accordance with this policy and the applicable procedure.

This policy helps William & Mary comply with federal and state laws, including civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability, and age including:

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., implementing regulation at 34 C.F.R. Part 100 (prohibiting race, color, and national origin discrimination);
- Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.,
- Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., implementing regulation at 34 C.F.R. Part 106 (prohibiting sex discrimination);
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, implementing regulation at 34 C.F.R. Part 104 (prohibiting disability discrimination);
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq., implementing regulation at 28 C.F.R. Part 35 (prohibiting disability discrimination by public entities, regardless of whether or not they receive federal financial assistance);
- Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq., and its implementing regulation at 34 C.F.R. Part 100 (prohibiting age discrimination).

## III. Definitions

**Complainant** means an individual who is alleged to be the victim of conduct that could constitute discrimination, discriminatory harassment, including Title IX sexual harassment, retaliation or sexual misconduct as defined in the Discrimination Policy and the Title IX Policy.

**Consent** means a mutual agreement between participants to engage in specific types of sexual activity.

**Discrimination** means unfair treatment because of a person's belonging to or perception that a person belongs to a protected group and the treatment:

- adversely affects a term or condition of an individual's employment, education, or participation in a university activity, or
- is used as a factor in a decision affecting an individual's employment, education, or participation in a university activity [2] or
- constitutes harassment that creates a hostile environment or quid pro quo sexual harassment, each as defined below.

Discrimination also includes failure to provide reasonable accommodations for a person's disability [3] or religion [4] as required by law, or any other violation of a disabled person's rights under applicable anti-discrimination laws. [5] The university makes modifications and adjustments to its programs and activities for qualified students with disabilities as required by law, under the Student Accommodation Policy and Procedure. The university also makes modifications, changes, or adjustments to jobs, work conditions and work environment for qualified employees with disabilities, or to the job application process for applicants, as required by law, under the Employee Reasonable Accommodation Policy and Procedure.

**Disparate Treatment** means different treatment of members in a protected group from similarly situated people not in a protected group, or in the absence of comparative evidence, other direct evidence of discriminatory intent or indirect evidence that the actions were motivated by discrimination.

**Disparate Impact** means discrimination that occurs when policies, practices, rules or other systems that appear to be neutral result in a disproportionate impact on a protected group.

**Discriminatory Harassment** means unwelcome conduct based on a person's belonging to or a perception that a person belongs to a protected group. Harassment violates this policy when it creates a hostile environment.

**Faculty** means those persons who have teaching and/or research responsibilities and who hold academic appointments in a department, program, or school of the university, as well as those administrators who hold an academic appointment in a program, school or department.

**Force** means to make someone do something against their will. Force includes physical violence, threats, intimidation and/or coercion.

1. **Physical violence** includes hitting, punching, slapping, kicking, restraining, strangling, and brandishing or using any weapon.
2. **Threats** are words or actions that would compel a reasonable person to engage in unwanted activity, including sexual activity. Examples include threats to harm oneself or another person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.
3. **Intimidation** is an implied threat that causes reasonable fear in another person. A

person's size, alone, does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit).

4. **Coercion** is an unreasonable amount of pressure on someone to:

- participate in an activity, including a particular form of sexual activity,
- change their mind after they asked to stop or have indicated lack of consent previously,
- change their mind about when to stop participating in an activity, including sexual activity

In the context of determining whether a party consented to engage in sexual activity, coercion is more than an effort to persuade, entice, or attract another person to have sex. In evaluating whether coercion was used, the university will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, (iv) the duration of the pressure, and (v) any power differential between the parties.

**Formal complaint** means a document filed by a complainant who is participating in or attempting to participate in an educational program or activity of the university or signed by the Title IX Coordinator alleging Title IX sexual harassment, Gender-Based harassment, discrimination, discriminatory harassment, retaliation, or sexual misconduct ("misconduct") against a respondent and requesting that the university investigate the allegations.

**Gender-Based Harassment** means discriminatory harassment based on gender, sexual orientation, gender identity, or gender expression.

**Hostile Environment for an Employee or Employees** means conduct that is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Conduct must be deemed severe or pervasive from both a subjective and an objective perspective. In evaluating whether a hostile environment exists, the university will consider the totality of known circumstances, including, but not limited to:

- The frequency, nature and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the Complainant's mental or emotional state;
- Whether conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether the conduct unreasonably interfered with the Complainant's educational or work performance and/or University programs or activities; and
- Whether the conduct implicates concerns related to academic freedom or protected speech.

**Hostile Environment for a Student or Students** means conduct that occurs between student peers that is sufficiently severe, pervasive, and objectively offensive such that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the university's education programs and/or activities. In evaluating whether a hostile environment exists, the university will consider the totality of known circumstances, including, but not limited to:

- The frequency, nature and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the Complainant's mental or emotional state;
- Whether conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether the conduct unreasonably interfered with the Complainant's educational or work performance and/or University programs or activities; and
- Whether the conduct implicates concerns related to academic freedom or protected speech.

**Incapacitation** means the physical and/or mental inability to make informed, rational judgments about whether or not to engage in an activity, including sexual activity.

**Intimate Body Parts** means the genitalia, anus, groin, breast, or buttocks of any person.

**Mandatory Reporter** means a faculty or staff (including some student staff such as Resident Assistants, Teaching Assistants) of the university who is obligated by federal and state law (which designates such employee as a "Responsible Employee") to share knowledge, notice, and/or reports of sexual harassment, gender-based harassment, and sexual misconduct as defined in the Discrimination Policy or Title IX Policy with the Title IX Coordinator.

**Protected Group** means category of individuals who are protected from discrimination based on race, religion, creed, national origin, color, sex, gender, sexual orientation, gender identity, pregnancy, physical or mental disability (or perceived disability), citizenship status, age, marital status, family responsibilities, Veteran or military status (including disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, and Armed Forces Service Medal veteran), predisposing genetic characteristics.

**Quid Pro Quo Harassment** means the submission to or rejection of sexual conduct as a term or condition of a person's employment, academic standing, or participation in any university education programs and/or activities or is used as the basis for decisions affecting the individual.

**Report** means information about alleged discrimination, discriminatory harassment, or retaliation, including sexual harassment or sexual misconduct affecting a member of the university community, including a student, that is conveyed to a mandatory reporter of the university and is communicated to the Chief Compliance

that is conveyed to a mandatory reporter of the university and is communicated to the Chief Compliance Officer/Title IX Coordinator.

**Respondent** means an individual who has been alleged to be in violation of university policy through conduct that could constitute discrimination, discriminatory harassment, or retaliation, including sexual harassment or sexual misconduct.

**Retaliation** is any adverse action taken by a respondent or allied third party against a person because the person made a good faith report of discrimination, discriminatory harassment, retaliation or sexual misconduct, or the person is involved in or participated in an investigation or proceeding of such reported allegation under this policy. Retaliation includes, but is not limited to, threatening, intimidating, harassing, coercing or any other conduct that would deter a reasonable person from engaging in activity protected under this policy. Retaliation does not include good faith counter complaints lawfully pursued in response to a report of discrimination or harassment, or non-discriminatory adverse actions taken for legitimate purposes (e.g. employee discipline for tardiness, student honor code charges for separate plagiarism incident).

**Sexual Misconduct** means any of the following conduct that is committed by a member of the university community:

1. **Sexual Abuse**, which means

- The touching of intimate body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity [6], or
- an act of touching, molesting, arousing, or gratifying any person without effective consent and for the purpose of sexual gratification of the Respondent where:
  - The Respondent forces the Complainant to touch the Respondent's, the Complainant's own, or another person's intimate body parts or material directly covering such intimate parts; or
  - The Respondent forces another person to touch the Complainant's intimate parts or material directly covering such intimate body parts.

2. **Relationship Abuse**, which means physical violence, sexual violence or the threat of such violence between people who are in or have been in a romantic, intimate, or familial relationship or a pattern of abusive behavior used by an intimate partner to gain or maintain power and control over the other intimate partner. Patterns of behavior can be in the form of psychological, emotional/verbal, financial, academic, and/or technological abuse.

3. **Non-Consensual Sexual Intercourse** means anal or vaginal penetration, no matter how

slight, by any body part or object, without effective consent or oral penetration by or of a penis, without effective consent.

4. **Sexual Exploitation** means taking sexual advantage of another person without effective consent by causing the incapacitation of another person for a sexual purpose; causing the prostitution of another person; electronically recording, photographing, or transmitting images of a person's intimate parts or sexual information about a person without their knowledge or consent; allowing third parties to observe sexual acts; engaging in voyeurism; distributing intimate or sexual information about another person; exposing one's genitals; inducing another to expose their genitals; and/or knowingly transmitting a sexually transmitted infection, including HIV, to another person.
5. **Stalking** means engaging in a course of conduct when the course of conduct has a continuing impact on the student's education or work environment and causes a reasonable person to:
  - Fear for the person's safety or the safety of others; or
  - Suffer substantial emotional distress.

For the purposes of this definition

- **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**Staff** means employees who are designated by Human Resources as executive, professional, professional faculty, operational, classified and non-student hourly employees and who do not hold an academic appointment in a program, school, or department.

**Student** means all persons taking courses at the university, either full-time or part-time, persons pursuing undergraduate, graduate, or professional studies, and persons enrolled as a non-degree seeking students.

#### IV. Policy

##### A. Misconduct

The following types of conduct as defined in Section III of this policy are prohibited and a violation of university policy subject to sanctions as described in the applicable procedure:

- Disparate Treatment Discrimination
- Disparate Impact Discrimination
- Discriminatory Harassment
- Quid Pro Quo Harassment
- Sexual Misconduct
- Retaliation

**B. Retaliation Separate from Discrimination or Discriminatory Harassment.** Separate disciplinary action shall be imposed if there is a finding of responsibility for retaliation. Retaliation may be present even where there is a finding of “no responsibility” on the allegations of sexual or gender-based harassment or sexual misconduct.

### **C. Discriminatory Harassment Standards**

The university’s harassment policy is not meant to inhibit or prohibit educational content or the open exchange of ideas inside or outside of the classroom that include relevant or useful concepts and personal beliefs or opinions. Controversial or sensitive subject matters are protected by academic freedom and freedom of speech. Mere words or expression of a belief or opinion that some person finds offensive, standing alone, is not a sufficient basis to establish a hostile environment under the statutes enforced by this policy. [7]

Conduct that substantially interferes with a student, staff or faculty member’s access to education or employment, causes physical or mental harm, or threatens physical or mental harm is considered discriminatory harassment under university policy. In order to find someone in violation of discriminatory harassment, the harassment must create a hostile environment as defined above. A hostile work environment is established if the harassment is determined to be sufficiently serious (i.e., severe, persistent or pervasive) as to be considered intimidating, hostile, or abusive. A hostile environment between student peers is established when the harassment has the effect of limiting or denying a person's ability to participate in or benefit from an educational program or activity. Conduct alleged to substantially interfere, cause physical or mental harm or threatens physical or mental harm will be evaluated from the perspective of a reasonable person in the alleged victim’s position, considering all the circumstances. Conduct that does not yet rise to the level of a hostile environment can be addressed without imposing punishment to inform the individual that if the conduct continues, it may create a hostile environment.

### **D. Application of Consent**

Members of the university community choosing to engage in any form of sexual activity - from touching or kissing to intercourse - must obtain consent from their partner(s) prior to engaging in such activity. Appendix A provides guidance on obtaining consent and exercising caution when consumption of alcohol or drugs occurs.

**Consent is *Active, Voluntary, Informed*:**

- Active - through clear words or actions, a person has indicated permission to engage in mutually agreed upon sexual activity. Sex is something you participate in -- not something that happens to you.
- Voluntary - freely given.
- Informed - knowing and aware.

**Consent is **NOT**:**

- Merely a lack of protest or lack of resistance. Silence and/or passivity also do not convey consent.
- Something to be assumed. Consent to sexual activity once does not imply consent another time. Nor does consent to one type of sexual activity mean consent to another.
- Valid if any force is used.
- Valid if the person consenting is incapacitated. Someone who is incapacitated cannot consent.

A person's belief that another person consented is not valid when:

- The belief arose from the person's own intoxication or recklessness; or
- The person knew the other person was incapacitated (as described below); or
- A reasonable person, in the circumstances, should have known that the other person was incapacitated.

**Consent is *specific*.** Consent to one form of sexual activity does not constitute consent to another form of sexual activity. For example:

- Consent to oral-genital contact does not constitute consent to vaginal or anal penetration;
- Consent to sexual activity on one occasion does not, by itself, constitute consent to future sexual activity.

**Consent is *revocable*.**

- Consent may be withdrawn at any time, for any reason, even after sexual activity has begun.
- Previously-given consent may be withdrawn by communicating through clear words or actions a decision to stop (or not engage in) the sexual activity.
- Once consent is withdrawn, the other person must cease sexual activity without delay and may not apply undue pressure on the person who withdrew consent (coercion).

**Consent obtained by force is *invalid*.**

### **E. Application of Incapacitation**

Someone who is incapacitated cannot give consent and any consent that is given is considered invalid due to incapacitation. An individual's incapacitation may be due to:

- Alcohol or drugs;
- Sleep or unconsciousness; or
- An intellectual or other disability.

Not all changes in emotional or mental state, however, constitute incapacitation. Someone who is upset, tired, or intoxicated (for example) may make different choices than they would when they were in a calm, rested, or sober state, but that does not mean that they lack capacity to give consent. A person is not necessarily incapacitated merely as a result of drinking or using drugs. However, alcohol consumption, particularly rapid consumption or consumption together with other drugs, can prevent the formation of long-term memories ("blackout"); someone who (temporarily) cannot form long-term memories may or may not have the capacity to consent.

In situations where both parties raise concerns regarding consent due to incapacitation, the university evaluates factors such as:

- When and in what context the concerns were raised
- How the sexual activity was initiated
- The degree to which aggression was applied and/or
- The level of a party's control or capacity

If someone is incapacitated, any initiation of sexual activity by this person does not presume consent. Being impaired by alcohol or other drugs is not a defense to any violation of this policy.

In evaluating consent in cases of alleged incapacitation, the university asks two questions: (1) *Did the respondent know that the complainant was incapacitated? **and if not***, (2) *Would a sober, reasonable person in the same situation have known that the complainant was incapacitated?* If the answer to either of these questions is "YES," consent was invalid and the conduct is likely a violation of this policy

## **V. Reporting Misconduct**

### **A. Internal Reports**

Reporting Discrimination, Discriminatory Harassment, Retaliation or Sexual Misconduct prohibited under this policy allows William & Mary to take prompt, supportive measures to protect and support individuals in their educational or work environments. Supportive measures may be provided even if the Complainant does not want to initiate a university administrative process or a criminal process. Additional information about supportive measures is provided in the relevant procedures. [8]

Reports of discrimination, discriminatory harassment, retaliation or sexual misconduct may be made to:

Pamela Mason, J.D., CCEP  
Chief Compliance Officer/Title IX Coordinator  
109 James Blair Hall  
William & Mary  
Williamsburg, VA 23185  
[757-221-2743](tel:757-221-2743)  
[reportconcern@wm.edu](mailto:reportconcern@wm.edu)

#### **Methods of reporting include:**

##### **Online reports**

- [Employee Online Reporting Form](#) to report any allegations of discrimination, discriminatory harassment or retaliation, including Title IX sexual harassment by a faculty, staff or third-party contractor or guest of the university.
- [Student Title IX Report Form](#) to report allegations of sexual harassment, gender-based harassment or sexual misconduct by a student.
- [Student Incident Report](#) to report allegations of other discrimination, discriminatory harassment or retaliation by a student.

##### **2. In-person or written reports (mail or email)**

- **Reports relating to students:**  
Dean of Students

Campus Center, Room 109  
William & Mary  
P.O. Box 8795  
Williamsburg, Virginia 23187  
[deanofstudents@wm.edu](mailto:deanofstudents@wm.edu)

- **Reports relating to students or employees:**

Office of Compliance & Equity  
James Blair Hall Ste. 110  
William & Mary  
Williamsburg, Virginia 23187  
[reportconcern@wm.edu](mailto:reportconcern@wm.edu)

### 3. **Anonymous reports**

Anonymous reports as well as partial disclosure reports of incidents involving students may be made by non-mandatory reporters [online](#).

Anonymous reports or partial disclosure reports of incidents involving students or employees made by non-mandatory reporters may be **filed physically** using the secure drop box located outside of the Office of Compliance & Equity on the first floor of James Blair Hall.

William & Mary Police may accept anonymous reports of sexual assault, which will be included in the university's crime statistics if appropriate under the [Clery Act](#). The Police can also assist survivors with the process of having physical evidence collected (PERK), anonymously, and maintained. This gives survivors the option of later deciding whether and how to use such evidence. Please note that if you provide the Police with specific information, such as names, they will be obligated to share that information with the Title IX Coordinator. William & Mary Police dispatch can be contacted at [\(757\)221-4596](tel:(757)221-4596) or in person at 201 Ukrop Way.

#### **Other internal reporting considerations:**

##### **1. Requests Not to Investigate**

The university will not begin an internal investigation without a formal complaint signed by the Complainant and submitted to the Title IX Coordinator, or without a formal complainant signed by the Title IX Coordinator when the circumstances and risk factors of the report indicate a safety concern for the university community. The university must consider its obligation to other students or employees and the campus community. In addition, Virginia law requires the university to report sexual violence incidents to law enforcement and/or the relevant prosecutor, in certain circumstances.(9)

The university makes every effort to protect the privacy and confidentiality of people who report or are named in a report of sexual misconduct. Information reported will be shared only on a need-to-know basis. The university also takes steps to protect members of its community against further misconduct, including

retaliation. Confidentiality and retaliation protections exist in part to help encourage people who experience misconduct to come forward. For people who remain concerned about personal disclosures or who do not want investigation to occur there are options:

- If you have experienced misconduct yourself, you can make an anonymous report (Section IV.A.3)
- If you are a student who is not a mandatory reporter because of your student employment role (e.g. resident assistant, teaching assistant), you can make a report of misconduct that happened to someone else without disclosing the name of the survivor and/or offender.
- A person may report sexual misconduct with names, but may request that the name of the survivor of the misconduct remain confidential.
- A person may also request that the university not take action in response to a sexual misconduct incident of which it becomes aware. The university will consider this request carefully.

## **2. Amnesty from Student Discipline**

In order to facilitate full and truthful reporting and witness participation, the Dean of Students generally does not charge parties or material witnesses with Student Code of Conduct violations for drug or alcohol misconduct, such as consuming alcohol underage or consuming illegal drugs, unless such behavior relates directly to the sexual misconduct allegation. An example of a Student Code of Conduct violation that relates directly to a sexual misconduct allegation would be provision of alcohol to an underage reporting party by a respondent, when there is an allegation that the respondent provided the alcohol as a means to facilitate a sexual assault.

### **B. Confidential Reports**

#### ***For Students:***

Students who are not sure whether they want to make a formal complaint are encouraged to contact The Haven. The Haven can provide confidential support, timely health and safety information, on and off campus resources, modifications to academics and campus living, and help a survivor understand the rights and options available to them.

#### **The Haven**

Campus Center 166

(757) 221-2449

[thehaven@wm.edu](mailto:thehaven@wm.edu)

**Liz Cascone, Director, The Haven**

Campus Center 167

(757) 221-7478

lizcascone@wm.edu

Other confidential resources for students on campus are:

**William & Mary Counseling Center**

McLeod Tyler Wellness Center, 2nd Floor

(757) 221-3620

**Student Health Center**

McLeod Tyler Wellness Center, 1st Floor

(757) 221-4386

**For Employees:**

**The University Ombuds**

ombuds@wm.edu

**Employee Assistance Program (EAP)**

COVA Care and COVA HDHP

Anthem Blue Cross and Blue Shield

Anthem EAP: 1-855-223-9277 www.anthemaep.com

Log in: Commonwealth of Virginia

COVA HealthAware

Aetna

Aetna EAP: 1-888-6232 www.mylifevalues.com

Username: COVA Password: COVA

Anthem Crisis Line - 1-855-223-9277 Press 1 for Crisis

**Community Services Board**

Telehealth services 757-230-3200

**C. Mandatory Reports**

There are two mandatory reporting situations in which an employee who has information about discrimination or harassment must share that information with the Chief Compliance Officer or Deputy Chief Human Resources Officer.

- **Faculty, supervisors, and managers must report all discrimination and retaliation of an employee who reports to them directly or indirectly.** Faculty and staff with supervisory

or managerial responsibilities (including all executive employees) who are told of, become aware of, or witness Title IX Sexual Harassment or Gender-Based Harassment under the Title IX Policy, or any form of discrimination, discriminatory harassment, retaliation or sexual misconduct under this policy of a subordinate employee in their line of supervision are required to file a report with the Chief Compliance Officer or Deputy Chief Human Resources Officer.

- For example, if a faculty or staff member complains of or reports discrimination to a supervisor, or if a supervisor witnesses or becomes aware of an incident or situation that a reasonable person would understand to be retaliation, the supervisor is obligated to inform their immediate supervisor or the Office of Compliance & Equity. The faculty member, supervisor or manager should not investigate the matter themselves. If the supervisor knows that the matter has already been brought to the attention of the Office of Compliance & Equity, the supervisor does not need to report it.
- **All faculty and staff, including designated student staff are mandatory reporters and must file a report with the Title IX Coordinator of any sex-based discrimination, sexual harassment, gender-based harassment, or sexual misconduct affecting a member of the university community including faculty, staff or students.**
  - An employee designated as a mandatory reporter (formerly a “responsible employee”) who becomes aware of complaints or reports of sex-based discrimination, including sexual harassment or gender-based harassment as defined in the Title IX Policy, that affects a member of the university’s community must promptly report the Title IX Coordinator via the online form or via email at [reportconcern@wm.edu](mailto:reportconcern@wm.edu).
  - For example, if a student discloses to an employee that they have been sexually harassed or discriminated against because of gender or if an employee is told about a sexual harassment complaint or report involving a colleague, the employee is obligated to inform the Title IX Coordinator, regardless of the employee’s assessment of the report’s merit. The employee should not attempt to investigate the matter themselves.
  - Student employees of the Student Affairs division, such as Resident Assistants, are included in this reporting obligation, for matters that they become aware of in the course of their university employment. Lawyers or others who obtain information through any communication considered privileged by state or federal law are not obligated to report that information.

- Exemptions—Certain staff members of the Counseling Center, the Student Health Center, and The Haven who are designated confidential resources for students are not mandatory reporters and are exempt from the reporting obligations in this section except as otherwise required by law. [9]

#### **D. Reports to the police**

Sexual assault and some other forms of sexual misconduct are crimes, and may be reported to law enforcement for investigation. The reports may be made instead of or in addition to reports made to the university administration. **A survivor may choose to pursue one or both options.** William & Mary staff members can help students file a criminal complaint, if desired.

- The William & Mary Police generally have jurisdiction over incidents occurring on W&M's campus.
- The Williamsburg City Police generally have jurisdiction over incidents occurring in the city of Williamsburg.
- The James City County Police generally have jurisdiction over incidents occurring in James City County.

#### **E. Reports to External Agencies**

Individuals experiencing harassment or discrimination also have the right to file a formal grievance with government authorities. Information about the different state and federal governmental agencies, which laws they enforce, and what types of complaints they handle is provided in Appendix B.

#### **VI. Enforcement**

Any member of the campus community who violates this policy is subject to discipline, up to and including termination of employment or permanent dismissal from the university. Disciplinary action against an employee or student will be taken in accordance with the applicable state or university procedure and policy:

- For students, the Student Discrimination and Title IX Complaint Procedure.
- For faculty and staff, the Employee Discrimination and Title IX Complaint Procedure.

For third parties, the response will depend on the nature of the individual's relationship to the university and the nature of the conduct. The Employee Complaint Procedure may be used.

#### **VII. Approval and Amendment**

This policy was approved by the President. Minor, technical revisions, such as to update contact information, may be made by the Chief Compliance Officer. Revisions or amendments to the definitions in Section III require the approval of the Faculty Assembly, provided that the Board of Visitors retains the ultimate authority over institutional policies.

This policy was amended by the President effective July 1, 2015, to (1) comply with Virginia Code 23-9.2:15 by revising the reporting provisions to require reporting of sexual violence occurring on university's Clery Act geography and by eliminating the provision permitting initial reporting of incidents without identifying details, (2) make changes conforming to amendments to other policies and (3) make grammatical corrections and formatting improvements.

This policy was amended by the President effective May 1, 2016, to (1) clarify the scope of the policy, (2) clarify the relationship of the policy to speech, particularly provisions relating to harassing conduct that has not risen to the level of a policy violation, (3) update office names, and (4) update appendices and cross-references including to reflect amendments to other policies, and (5) add the Faculty Assembly approval right.

The policy was amended by the President effective August 14, 2020 to (1) establish the purpose of the policy (2) define types of discriminatory conduct and protected groups (3) clarify when a faculty or staff member is required to make a mandatory report of discrimination, harassment or retaliation.

The policy was amended by the President effective August 16, 2021 to (1) include sexual harassment and sexual misconduct that is not included in the Policy Prohibiting Title IX Sexual Harassment and Gender-Based Harassment (2) more closely align the definition of protected groups with categories under federal regulations.

## **VIII. Related Documents, Policies, and Procedures**

Policy Prohibiting Title IX Sexual Harassment and Gender-Based Harassment

Employee Discrimination and Title IX Complaint Procedure

Student Discrimination and Title IX Complaint Procedure

Disability and Religious Accommodation Procedures

Employee Reasonable Accommodation Policy and Procedure

Student Accommodation Policy and Procedure

Guidelines for Accommodation of Religious Holidays

Student ADA/Rehabilitation Act Grievance and Appeal Procedure

Crime Reporting Policy

[1] This provision reflects the rights granted by Section II of the Statement of Rights and Responsibilities and complies with Section 23-9.2:12 of the Code of Virginia.

[2] In limited situations, state or federal law requires or permits William & Mary to take “affirmative action” for people with disabilities, veterans, racial minorities, and women. These actions are exempted from this policy. See university [Affirmative Action Plans](#).

[3] A disability can arise from either a mental or physical impairment. For a full definition, see the [Employee Reasonable Accommodation Policy and Procedure](#).

[4] For more information regarding reasonable accommodations based on religion, see [Guidelines for Religious Accommodations](#).

[5] Specifically, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

[6] See Section IV.C. of the Title IX Policy.

[7] <https://www2.ed.gov/about/offices/list/ocr/firstamend.html>

[8] Student Discrimination and Title IX Procedure or Employee Discrimination and Title IX Procedure

[9] Virginia Code Section 23-9.2:15(A).