



Sex-Based Misconduct Policy- Interim

Policy Type: Administrative - Interim

Responsible Office: Title IX Office, Institutional Equity, Effectiveness and Success

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Policy Statement and Purpose

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. Consistent with this commitment, the university does not discriminate on the basis of sex in any of its education programs or activities, including admission and employment, and prohibits such discrimination by members of the university community. To that end, this policy prohibits sexual harassment and conduct that aids facilitates, promotes, or encourages the commission of any act prohibited by this policy. In addition, retaliation against a person for the good faith reporting of violations of this policy or for participating, or refusing to participate, in any investigation or proceeding under this policy is strictly prohibited.

VCU is committed to maintaining a safe and non-discriminatory learning, living, and working environment for all members of the university community. To affirm this commitment, the university has developed two policies that address sexual harassment and sex-based misconduct: (1) this policy and (2) the Title IX Sexual Harassment Policy. These policies are interrelated and must be read together. This policy applies to sex-based misconduct that does not fall under the scope of the Title IX Sexual Harassment Policy, including university sexual harassment and sexual exploitation. This policy also applies to incidents of sexual assault, domestic violence, dating violence, and stalking that do not meet the jurisdictional requirements of the Title IX Sexual Harassment Policy.

All forms of prohibited conduct under this policy and the Title IX Sexual Harassment Policy are regarded as serious offenses that are harmful to the safety and well-being of our university community. Depending on the nature of the violation, employees or students who violate this policy may face disciplinary action up to and including expulsion or termination of employment. Third parties who violate this policy may be permanently barred from VCU, from VCU’s education programs or activities, or may be subject to other restrictions.

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Who Should Know This Policy

All university faculty, staff and students are responsible for knowing this policy and familiarizing themselves with its contents and provisions. A third party may make a report of a violation of this policy and a third party may, in some circumstances, face actions for violations of this policy.

Definitions

Adviser

The person chosen by a party to provide guidance during the investigation and resolution process.

Affirmative Consent

Voluntary expression of willingness, permission or agreement to engage in specific sexual activity. Consent must be clear and communicated by mutually understandable words or actions which a reasonable person would interpret as a willingness to participate in mutually agreed-upon sexual acts. Silence, passivity or lack of resistance do not imply consent, and relying solely on non-verbal communications may result in a violation of the policy. It is important not to make assumptions about whether a sexual partner is consenting. If confusion or ambiguity arises during sexual activity, it is essential that each participant stop and verbally clarify the other's willingness to continue.

Prior consent does not imply consent to future sexual acts; even in the context of a prior or current relationship. Consent to one form of sexual activity does not automatically imply consent to other forms of sexual activity. Consent is often given with certain explicit or implied boundaries, such as agreeing to have sexual intercourse, but only with the use of a condom. Violating boundaries of consent by engaging in behavior beyond that which was agreed is non-consensual conduct.

A person who is in a state of incapacitation or whose agreement was made by force or threat of force cannot consent to sexual activity. The use of alcohol and/or drugs by the person initiating sexual activity is not an excuse for failing to obtain consent.

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

The person who initiates a sexual act is responsible for obtaining consent for that act. Consent may be ratified by word or action at some point during the sexual encounter or thereafter, but clear communication from the outset is strongly encouraged. When there is a dispute as to whether a specific sexual activity was

consensual, the university will assess whether the person initiating the sexual activity, knew, or should have known, that the sexual activity was not consensual. Proof of consent or non-consent is not a burden placed on either party in an investigation and resolution under the policy. Instead, the burden remains on the university to determine whether the policy was violated.

Appellate Officer

The individual responsible for rendering appeal decisions. The Appellate Officer will not be a member of the hearing panel, the investigator, or the Title IX Coordinator.

Business Day

Monday through Friday, excluding any day when the university is closed.

Coercion

An unreasonable amount of pressure to compel a person to take an action, make a choice or allow an act to happen that they would otherwise not choose or to which they would not give consent. 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 activity, 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.

Complainant

The individual who is alleged to have been subjected to conduct prohibited under the policy.

Confidential Employee

An employee designated or permitted by the university or a state licensing board to have privileged communications, which allows them to keep information confidential when it is disclosed in the course of their professional role. When information is shared by an individual with a confidential employee, they cannot reveal the information to any third party unless (1) the individual gives written consent to its disclosure; (2) there is a concern that the individual will likely cause serious physical harm to self or others; (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18; or (4) as otherwise required or permitted by law or court order. Confidential employees at VCU include:

- Health care providers (i.e., licensed physicians, nurses, physicians' assistants, psychologists, psychiatrists, professional counselors and social workers and those performing services under their supervision) who are acting in their professional role in the provision of services to a patient.
- Employees providing administrative, operational and/or related support for health care providers in their performance of such services.
- Accredited rape crisis/domestic violence counselor, campus victim support personnel who conduct individual intake, advocacy and referrals to clinical or counseling services.

These employees are also exempt from the requirement in Va. Code § 23.806(l)(1) to report incidents involving sexual violence to the Title IX Coordinator. Making a disclosure to a confidential employee means that VCU will not be placed on notice or have actual knowledge of the conduct. Without that information, the university will not be able to address the conduct in any manner. However, confidential employees can assist

individuals in receiving support resources and provide information about non-confidential reporting options if the individual chooses to notify the university of the conduct. See [Section 5](#) of this policy for further details on on- and off-campus confidential resources.

Conflict of Interest

Includes, but is not limited to, personal knowledge of facts and circumstances of the allegations in a formal complaint or having a family, personal, faculty/student, or professional relationship with a party or witness.

Dating Violence

Physical or sexual violence (or threats thereof) committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship will be determined based on the complainant's statement and with consideration of the length of the relationship, the type of the relationship, and the frequency of the interaction between the person involved in the relationship. Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence

Physical or sexual violence (or threats thereof) committed by: (i) a current or former spouse or intimate partner of the complainant; (ii) a person with whom the complainant shares a child in common, (iii) a person who is cohabitating with, or who has cohabitated with, the complainant as a spouse or intimate partner; (iv) a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Virginia; or (v) any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family laws of Virginia. Individuals are not covered within the scope of this definition solely by virtue of their status as a roommate or former roommate in university housing or as a co-tenant or former co-tenant in an off-campus residence shared with other students.

Education Program or Activity

Locations, events or circumstances over which the university exercises substantial control over both the respondent and the context in which the conduct occurs. This includes, but is not limited to, any property owned or controlled by a student organization that is officially recognized by the university and activity occurring within computer and internet networks, digital platforms and computer hardware and software owned or operated by, or used in the operations of VCU's programs and activities over which the university has substantial control.

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.

Final Outcome

Written determination containing conclusions by preponderance of the evidence about whether the reported conduct occurred as alleged and whether it violated the policy in addition to any disciplinary sanctions to be imposed and any remedies designed to restore or preserve equal access to the university's education program or activity.

Fondling

The touching of the private body parts of another person for the purpose of sexual gratification, without the complainant's consent, including instances where the complainant is incapable of giving consent because of

age or because of a temporary or permanent mental or physical incapacity. "Private body parts" include genitalia, groin, breast or buttocks, or the clothing covering them.

Force

The use of physical violence, threats, intimidation and/or coercion to cause or make a person engage in an activity that they would not have otherwise agreed to or did not want to engage in. The presence of force during sexual activity can negate indications of consent.

Formal Complaint

A document or electronic submission filed by a complainant alleging conduct that could constitute a violation of the policy against a respondent and requesting that the university investigate the allegation(s). A formal complaint must contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the complaint. Alternatively, the Title IX Coordinator may sign a formal complaint but is not a complainant or otherwise a party to the complaint.

Hearing Officer

The person who presides over and is a voting member of the Hearing Panel.

Hearing Panel

Trained three-member panel that determines whether the preponderance of the evidence standard was appropriately applied by the investigator.

Incapacitation

The state in which a person's perception or judgment is so impaired that they lack the cognitive capacity to make or act on conscious decisions, and, specifically, that a person lacks the ability to make an informed and rational decision 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. A person who is incapacitated cannot give affirmative consent even if they appear to be a willing participant to the sexual activity.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs or intoxication alone are insufficient to establish incapacitation. Incapacitation is a state beyond drunkenness or intoxication. In addition, an alcohol-induced "blackout" is not necessarily indicative of incapacitation. An alcohol-induced blackout is defined as amnesia for the events of any part of a drinking episode without loss of consciousness. It is characterized by memory impairment during intoxication in the relative absence of other skill deficits. It is not to be confused with "passing out." Given that individuals are conscious and can appear unimpaired during an alcohol-induced blackout, an incapacitation analysis requires evaluation of other observed signs of impairment.

The impact of alcohol and other drugs varies from person to person. It is often difficult to tell when someone has moved from being intoxicated to incapacitated. A person who themselves is under the influence of alcohol or other drugs may have difficulty assessing whether someone has progressed from intoxication to incapacitation. If there is any question or doubt as to the level or extent of a potential sexual partner's intoxication or impairment, the best course of action is to forgo or cease any sexual activity.

Although every individual may manifest signs of incapacitation differently, typical signs or indications that a person is incapacitated or may be approaching incapacitation include, but are not limited to:

- Slurred or incomprehensible speech
- Difficulty walking or standing
- Trouble keeping eyes open
- Combativeness or emotional volatility
- Confusion or lack of understanding
- Disorientation to place, time, events and/or location
- Vomiting
- Incontinence
- Intermittent consciousness

When evaluating affirmative consent in cases of alleged incapacitation, incapacitation can only be found when the person initiating the sexual activity knew or reasonably should have known that the other party was incapacitated when viewed from the position of a sober, reasonable person.

Incest

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

Informal Resolution

An option for resolving a formal complaint under the policy where the parties reach a mutually agreed upon resolution without the university conducting or concluding, as applicable, an investigation. Methods of informal resolution may include, but are not limited to, conflict resolution, mediation, restorative justice, facilitated conversations, counseling, training and/or educational conversations or projects.

Intimidation

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). Intimidation can also occur when a person uses their real or perceived power, authority or control to pressure another person to submit to sexual activity or other unwanted conduct that they might not have agreed to engage in otherwise.

Investigator

One or more trained internal and/or external individuals appointed to conduct a prompt, thorough, fair and impartial investigation of a formal complaint. The investigator will gather evidence, assess relevance and credibility and make factual findings, based on a preponderance of the evidence, whether the conduct occurred as alleged and whether the respondent violated the policy.

No Contact Directive

An official university directive that serves as notice to an individual that they are prohibited from verbal, electronic, written, or third-party communications with another individual. The university may issue a no contact directive as a supportive measure in order to enhance the safety of all parties, the broader university community and/or to protect the integrity of the university's investigation and resolution process. A no contact directive is a non-disciplinary, non-punitive measure; although failure to abide by the terms of a no contact directive could result in disciplinary action under the student code of conduct or employee conduct policies, as applicable.

Parties

Refers to the complainant and respondent, collectively.

Physical Violence

When a person exerts 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.

Preponderance of the Evidence

Standard applied by the university when determining whether a policy violation occurred. "Preponderance of the evidence" means what is more likely than not to be true, based on the totality of the available evidence.

Prohibited Conduct

Conduct that meets the definition of university sexual harassment, sexual exploitation, sexual assault, dating violence, domestic violence, and stalking in this policy. Assisting, facilitating, or encouraging another in the commission of prohibited conduct is also prohibited under the policy. In most cases, the university will treat attempts to commit acts of prohibited conduct as if those attempts had been completed. In determining whether alleged conduct violates the policy, the university considers 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.

Rape

The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person without the complainant's consent or where the complainant is incapable of giving consent because of their temporary or permanent mental or physical incapacity.

Reasonable Person

A comparative standard of one person's assessment of an action, actions or situation compared with how most persons might act or react based on similar circumstances. This standard considers the identities of an individual as well the context of the actions being evaluated.

Respondent

The individual who has been reported to be the perpetrator of conduct that could violate the policy.

Responsible Employee

An employee who has a duty to report alleged policy violations to the Title IX Coordinator. All employees at VCU who are not confidential employees (as defined above) are considered responsible employees and are

required to report alleged policy violations of which they learn or that they witness. Responsible employees include student employees when they are acting in their capacity as a university employee.

Retaliation

Any materially adverse action taken against an individual or group of individuals for reporting an alleged violation of the policy, filing a formal complaint, filing an external complaint, participating or refusing to participate in an investigation or grievance process, opposing in a reasonable manner an action believed to constitute a violation of the policy, or assisting in any manner in an investigation and grievance process. Retaliation includes intimidation, threats, coercion, harassment, discrimination, or any other conduct against any individuals for the purpose of interfering with any right or privilege secured by this policy, meaning activity that would discourage a reasonable person from engaging in activity protected under the policy. For the purposes of this definition, “materially adverse action” entails actions that have an adverse effect on the working, academic or VCU-controlled living environment of an individual or actions that hinder or prevent the individual from effectively carrying out their VCU responsibilities.

An allegation of retaliation will be viewed as a separate offense, meaning that a respondent may be found responsible for retaliation even if not found responsible for the underlying allegation of prohibited conduct.

Retaliation does not include good faith actions lawfully pursued in response to a report of prohibited conduct. In addition, the exercise of rights protected under the First Amendment does not constitute retaliation.

The university retains the discretion to address complaints of retaliation through the Preventing and Responding to Discrimination Policy or through a student conduct process or human resource process. The Title IX Coordinator in consultation with Student Affairs, Human Resources and/or the Office of the Provost will have the discretion to decide what process will be utilized to address incidents of retaliation.

Sex-Based Misconduct

Sex-Based Misconduct includes sexual assault, dating violence, domestic violence, stalking, sexual exploitation, and sexual harassment.

Sexual Assault

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. A forcible sex offense is any sexual act directed against another person, without the consent of the complainant, including instances in which the complainant is incapable of giving consent. Rape and fondling are both forcible sex offenses. A nonforcible sex offense is unlawful, nonforcible sexual intercourse, specifically, incest and statutory rape.

Sexual Exploitation

Taking non-consensual sexual advantage of another person, excluding behavior that constitutes one of the other forms of sex-based misconduct. Examples include, but are not limited to:

- Causing or attempting to cause incapacitation (through alcohol, drugs or any other means) for the purpose of compromising another 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 without the consent of all participants engaging in the sexual activity

(e.g., Skype or live streaming of images);

- Engaging in voyeurism (e.g., watching private sexual activity without the consent of all participants or viewing another person's private body parts in a place where that person would have a reasonable expectation of privacy);
- Recording or photographing private sexual activity and/or a person's private body parts;
- Disseminating or posting images of private sexual activity and/or a person's private body parts;
- Prostituting another person; or,
- Engaging in indecent exposure (e.g., intentionally exposing one's private body parts to someone without their consent or engaging in sexual activity in public and witnessed by a non-consenting person).

Sexual Harassment (University)

Conduct on the basis of sex that satisfies one or more of the following:

- unwelcome verbal or physical conduct that 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 education programs and activities or the individual's employment;
- unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature by an individual not employed by the university in which submission to or rejection of such conduct is either an explicit or implicit term or condition of an individual's employment or advancement in employment, academic work or advancement in an academic program, or basis for participation in any aspect of a VCU program or activity or decisions affecting the individual; and/or
- sexual assault, dating violence, domestic violence or stalking.

Whether conduct is unwelcome is subjective and determined by the complainant's statements. Severity, persistence or pervasiveness and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged conduct occurred and any similar, previous patterns of conduct.

Sexual harassment can occur by or against an individual of any sex, sexual orientation, gender identity, or gender expression. Sexual harassment may include conduct involving jokes, slurs, epithets, name-calling, threats, intimidation, ridicule, mockery, insults, put-downs, unwanted touching, offensive objects or pictures or other offensive conduct.

Stalking

Engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

For the purpose of this definition:

- “course of conduct” means two or more acts, including, but not limited to, acts in which the respondent 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 complainant
- “substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling

Statutory Rape

Nonforcible sexual intercourse with a person who is under the statutory age of consent in Virginia.

Student

All persons taking courses through VCU, either full-time or part-time, on-line or in-person, single or dual enrolled, pursuing undergraduate, graduate or professional studies. Student also includes all persons who withdraw after allegedly violating the policy, persons who are not enrolled officially for a particular term but who have not officially withdrawn from the university, persons who have been notified of their acceptance for admissions, and persons living in VCU residence halls regardless of course enrollment.

Supportive Measures

Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to parties before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to the university’s education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the university’s educational and work environment or deter conduct prohibited under the policy. For further details on supportive measures, including the types of supportive measures available, see Section 6 of this policy.

Third Party

Any individual (i.e., contractors, vendors, ticket holders, invited guests, alumni/ae or local residents) who is not a VCU student or employee.

Threats

Words or actions that would compel a reasonable person to engage in unwanted 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.

Title IX Coordinator

The official designated and authorized by the university to coordinate the university’s efforts to comply with its responsibilities under Title IX of the Education Amendments of 1972. References to the Title IX Coordinator throughout the policy may also encompass a designee of the Title IX Coordinator.

Contacts

VCU's Title IX office officially interprets this policy, oversees its implementation and is responsible for obtaining approval for any revisions as required by the policy *Creating and Maintaining Policies and Procedures* through the appropriate governance structures.

The Title IX Coordinator manages the university's Title IX office and has the primary responsibility for coordinating the university's efforts to comply with the university's responsibilities under the Title IX Final Rule, the intake of reports, communication with the complainant and the respondent on the availability of supportive measures, the implementation of supportive measures, and the investigation or dismissal of formal complaints.

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

Grace Street Center
912 W. Grace Street, 2nd Floor
Box 843022
Richmond, VA 23284
Phone: (804) 828-1347
Email: titleix@vcu.edu

The Title IX Coordinator acts with independence and authority free from bias and conflict of interest. The Title IX office staff are vetted and trained to ensure that they are not biased for or against any party in a specific case, or for or against complainants and/or respondents generally. Concerns involving bias, conflict of interest or misconduct by the Title IX Coordinator can be made to VCU's Integrity and Compliance office at ucompliance@vcu.edu. Concerns of bias, conflict of interest or misconduct by any other member of the Title IX office should be raised with the Title IX Coordinator.

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 (at titleix@vcu.edu); the United States Department of Education, Clery Act Compliance Division (at clery@ed.gov); the United States Department of Education, Office for Civil Rights (at OCR@ed.gov or (800) 421-3481); and/or the Equal Employment Opportunity Commission (at info@eeoc.gov or (800) 669-4000).

Policy Specifics and Procedures

1. **NON-DISCRIMINATION IN APPLICATION**

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression or other protected identities covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of their status as a complainant or respondent.

2. **SCOPE AND JURISDICTION**

This policy applies to all conduct that occurs on or after the effective date of this policy. Where the date of the conduct precedes the effective date of this policy, the definitions of misconduct and the procedures in the

Sexual Misconduct/Violence and Sex/Gender Discrimination Policy, dated August 5, 2015, as revised March 13, 2016 shall be used to address, investigate and/or resolve the matter.

If federal or state regulations change in a way that impacts this policy, this policy will be construed to comply with such law or regulations in the most recent form.

The university reserves the right to take action against any student or employee who commits an act of prohibited conduct outside the scope of this policy under any applicable policies and procedures.

a. Persons Covered

This policy applies to all members of the VCU community, including employees, students, officially recognized student organizations, and third-parties.

i. Unknown and Unaffiliated Respondents

If a respondent to a formal complaint is not enrolled as a student or employed by the university, the university in its discretion may dismiss the formal complaint and resolve the matter administratively while providing the complainant with information on supportive measures and implementation of supportive measures. The university may also provide information on off-campus options that may be available to address the conduct, including referring the matter to law enforcement or another institution. Supportive measures, remedies and resources may be accessible to a complainant by contacting the university's Title IX office. When appropriate, VCU has the discretion to restrict an unaffiliated respondent or third-party's access to campus or other university property and/or events.

ii. Unaffiliated Complainants

When an unaffiliated complainant has experienced conduct which is alleged to have been committed by a VCU student or employee and may or may not have occurred as part of a VCU education program or activity, the university may exercise jurisdiction under the policy. In making this determination, the university will consider, among other factors, what information may be available regarding the facts and circumstances of the alleged conduct and what effect the conduct has on the university community.

b. Locations Covered

This policy also applies to VCU's education programs and activities (as defined above). When the conduct occurs outside of the university's education program and activities, the policy applies if the conduct effectively deprives someone of access to a VCU education program or activity.

The university may extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial university interest. A substantial university interest includes:

- any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeated violations of any local, state, or federal law;
- any situation in which it is determined that the respondent poses an immediate threat to the physical health or safety of any student or other individual;

- any situation that significantly impinges upon the rights of others or significantly breaches the peace and/or causes social disorder; and/or,
- any situation that is detrimental to VCU's education interests or mission.

The university will assess all reports and formal complaints to determine jurisdiction as described above. The determination of jurisdiction for purposes of investigation and resolution under this policy is an administrative determination and does not bind the university from raising potential defenses related to jurisdiction in litigation or subsequent proceedings.

3. REPORTING OPTIONS

Any person (i.e., a complainant, a bystander, a witness, a friend, or any other person) may report an alleged violation of the policy. There are multiple channels for reporting alleged violations of the policy and it is important to be aware of the options in order to make informed choices when reporting.

a. Law Enforcement

Complainants have the right to notify or decline to notify law enforcement. Because conduct may constitute both a violation of this policy and criminal activity, the university encourages complainants to report misconduct promptly to local law enforcement by contacting:

- 911 (for emergencies)
- VCU Police (804) 828-1234 (emergencies); (804) 828-1196 (non-emergencies); [You Have Options](#) (online). The VCU Police Department has specially trained victim/witness specialists who can explain available options and assist complainant's in navigating the criminal justice system.
- 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. VCU Police are considered responsible employees under this policy and therefore must forward a report to the Title IX Coordinator, regardless of whether the incident constitutes a crime under the law.

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 charges and university administrative action. If a complainant chooses to notify law enforcement, the Title IX office may provide assistance in doing so. The university may temporarily delay its investigation for concurrent law enforcement activity. In these circumstances, the Title IX Coordinator will communicate with the complainant and the respondent (if appropriate) regarding rights and options under the policy, implementation of any supportive measures, and the expected duration of any temporary delay or extension of time frames.

b. The University

The university urges any person with knowledge of an incident that violates this policy to report it immediately to the university through the following reporting options:

- By contacting the university's Title IX Coordinator by telephone ((804) 828-1347), email (titleix@vcu.edu) or in person during regular office hours at Grace Street Center, 912 W. Grace Street, 2nd Floor, Box 843022, Richmond, VA 23284
- Through the [Title IX and Sex-Based Misconduct Reporting Report](#), the university's form for online reporting.
- Through the [VCU Helpline](#), the university's website for online reporting (which also allows for anonymous reporting).

The university can most effectively respond to reports when they are made as promptly as possible after the conduct has occurred. However, there is no time limitation on reporting alleged violations of the policy. If the respondent is no longer enrolled as a student or employed by the university at the time of reporting and/or a significant time has elapsed, the university will still inform the complainant of the availability of supportive measures and consider the complainant's wishes with respect to those measures. In such cases, the Title IX Coordinator may document allegations for future reference and/or engage in informal or formal action under this policy or other university policies as appropriate.

Reporting an incident that may violate this policy is separate and distinct from submitting a formal complaint requesting that the university initiate its investigation and grievance process. Complainants who wish to proceed with the university's investigation and grievance process may submit a formal complaint to the Title IX office as detailed in [Section 11](#) below.

c. Anonymous Reporting

There are two ways to anonymously report conduct that may violate this policy:

- Through the [VCU Helpline](#)
- Through the [Title IX and Sex-Based Misconduct Reporting Form](#). To remain anonymous do not complete the complainant information section of the form.

While the university accepts anonymous reports, a formal complaint may only be filed by an identified complainant. The university seeks to provide supportive measures for all complainants, which is not possible with an anonymous report. Reporting an incident does not require filing a formal complaint that would initiate an investigation. A complainant should not fear a loss of privacy by making a report because it allows the university to discuss the options available to them as well as supportive measures, which are available regardless of whether they file a formal complaint.

Responsible employees cannot use anonymous reporting to fulfill their mandatory reporting obligations.

4. 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 share a report of misconduct with the university’s Title IX Coordinator. The purpose of this requirement is to permit the university to take immediate and corrective action to respond to the allegations and offer supportive measures. 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 respond to the misconduct and offer supportive measures. In addition to the reporting obligations imposed by this policy, responsible employees have a legal obligation pursuant to Virginia Code § 23.1-806 to report to the Title IX Coordinator information about acts of sexual violence occurring against (i) a student anywhere or (ii) any individual on campus, in off-campus buildings or property owned or controlled by the university or a recognized student organization, or in public property immediately adjacent to and accessible from the VCU campus. Once a responsible employee makes a report, the university will undertake the review process in Virginia Code § 23.1806(c) through (l). An employee may face disciplinary consequences up to and including termination of their employment for failure to make the mandated reports described above.

The responsible employee must report all relevant details of the incident (obtained directly or indirectly) to the Title IX Coordinator, including the dates, times, locations and names of parties and witnesses. Responsible employees should make the extent of their reporting obligations clear to the disclosing individual and provide the individual with information on support resources, to the best of their ability.

While a responsible employee cannot offer confidentiality to an individual who discloses an incident that may violate this policy, the responsible employee will maintain the privacy of all individuals involved by sharing the information related to the report with only those who “need to know” as outlined in Section 9 of the policy.

a. Disclosures at Public Awareness Events, IRB-Approved Research and Classroom Writing Assignments and Discussions

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. Supportive measures may result from such disclosures without formal university action. Disclosures at public awareness events and certain human subject 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. Investigation of such reports will not be undertaken unless the complainant or the Title IX Coordinator files a formal complaint as described below.

b. 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.

5. **CONFIDENTIAL RESOURCES**

Individuals who would like the details of an incident to be kept confidential may utilize the following resources:

Student Resources:

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

Employee Resources:

- Employee Assistance Program at 1-855-223-9277
- [Office of the Ombudsperson](#) at (804) 827-4357

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.
- LGBTQ Partner Abuse and Sexual Assault Helpline: 1(866) 356-6998 or text (804) 793-9999
- Virginia Statewide Hotline: 1(800) 838-8238

6. SUPPORTIVE MEASURES

VCU offers reasonable and appropriate supportive measures to a complainant and a respondent, regardless of whether a formal complaint has been filed. The Title IX Coordinator is responsible for coordinating the effective assignment and implementation of supportive measures.

Supportive measures include, but are not limited to:

- no-contact directives
- campus ban
- residence modifications
- academic modification and support, such as an extension of deadlines or other course-related adjustments
- counseling, training and/or other support services
- safety planning
- work schedule and/or location modifications
- campus escort services
- leaves of absence
- increased security and monitoring of certain areas of the campus or workplace
- any other actions deemed appropriate by the Title IX Coordinator

The university will maintain as confidential any supportive measures provided to a complainant or a respondent to the extent that maintaining such confidentiality would not impair the ability of the university to provide the supportive measures. The university will implement supportive measures in a way that does not unreasonably burden the other party.

Upon receipt of a report, the Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain the process of filing a formal complaint. The Title IX Coordinator has the discretion to ensure the appropriateness of any supportive measure based on all available information, and may meet with a complainant or respondent to address any concerns about the provision of support measures. Violations of no contact directives issued under the policy may be referred to the appropriate student or employee conduct processes for enforcement.

The Title IX office will maintain for seven (7) years, records of supportive measures taken in response to a report or a formal complaint of an alleged violation of the policy. The Title IX office will include in such records the basis for its conclusion that the university's response was not deliberately indifferent, and the measures were designed to restore or preserve equal access to the university's education program or activity. If the Title IX Coordinator does not provide the complainant with supportive measures, then such records will include the reason why such a response was not clearly unreasonable in light of known circumstances.

7. INITIAL ASSESSMENT

Upon receipt of a report alleging a violation of the policy, the Title IX Coordinator initiates a prompt initial assessment that includes:

- Offer supportive measures to the complainant;
- Inform the complainant of 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;
- Determine whether the appropriate child protective service agency should be notified pursuant to mandatory child abuse and neglect reporting laws;
- Determine whether the report triggers any Clery Act obligations, including entry of the report into the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations;
- Explain the university's prohibition against retaliation;
- Discuss available options with the complainant for addressing the conduct, including their right to seek resolution under this policy; and
- Ascertain the complainant's wishes to: (a) file a formal complaint or (b) request confidentiality (i.e., that their name or other identifying information not be shared with the respondent, that no investigation be pursued and/or that no disciplinary action be taken).

a. Sexual Violence Review Committee ("SVRC")

In accordance with Va. Code § 23.1-806, the Sexual Violence Review Committee ("SVRC") will review all reports of sexual violence, defined as physical sexual acts perpetrated against a person's will or without consent, against (i) a student on campus or at an off-campus location within the United States or; (ii) any individual on campus or within the university's Clery Act geography as defined by the VCU Police Department. Other reports may be referred to SVRC if deemed appropriate for targeted review. The SVRC will consist of: (1) the Title IX Coordinator; (2) a representative of the VCU Police Department; and (3) a representative from the Division of Student Affairs. In addition, SVRC 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. SVRC shall meet within seventy-two (72) hours of the Title IX Coordinator's receipt of a report involving alleging an act of sexual violence meeting the above criteria.

SVRC has access to certain otherwise confidential information to the same extent as the university's Threat Assessment Team pursuant to Va. Code § 23.1-805, including criminal history record information, as

provided in Va. Code § 19.2-389 and § 19.2-389.1; and health records, as provided in Va. Code § 32.1-127.1:03. SVRC also has access to university disciplinary, academic and/or personnel records; and prior reports of Prohibited Conduct maintained by the Title IX Coordinator.

b. Health or Safety Risk Assessment

SVRC will determine whether, taking into account, the reported incident and the totality of the circumstances, disclosure of the information, including personally identifiable information, to law enforcement is necessary to protect the health or safety of the complainant or any member of the university community due to a specific and articulable threat. SVRC will make this determination based upon the following factors (the “Risk Factors”):

- Whether the respondent has prior arrests, reports and/or complaints related to reported misconduct 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 misconduct in the past;
- Whether the reported misconduct involved multiple complainants and/or respondents;
- Whether the reported misconduct involved physical violence;
- Whether the report reveals a pattern of misconduct (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 reported misconduct was facilitated through the use of drugs or intoxicants;
- Whether the reported misconduct occurred while the complainant was unconscious, physically helpless or unaware of what was occurring;
- Whether the complainant is (or was at the time of the reported misconduct) a minor (under 18); and
- Whether any other aggravating circumstances or signs of predatory behavior are present such as manipulation or intentional isolation of the complainant.

c. Actions Following SVRC Review

Where SVRC determines pursuant to its analysis (under section 2(b)) 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 including the reporting required by Va. Code § 23.1-806. SVRC shall also consider and recommend other appropriate or necessary university actions, which may include: (a) causing the university Registrar to place a “hold” on the respondent’s university registration and transcript; (b) initiating an investigation and resolution process in the absence of a formal complaint by the complainant; (c) providing additional supportive measures beyond any already in place; or (d) referring to the university’s Threat Assessment Team for review pursuant to Va. Code § 23.1-805. The Title IX Coordinator will inform the complainant if

information regarding the incident is reported to law enforcement and of any additional actions taken by the university to address a health or safety risk in accordance with Va. Code § 23.1-806.

8. EMERGENCY REMOVAL

A respondent may be removed, entirely or partially, from the university's education program or activities, on an emergency basis when it is reasonably believed that they pose a risk to the health or safety of the university community. Such action will be based on an individualized safety and risk analysis and in accordance with university policies governing interim suspension of students and administrative leave policies for employees.

9. VIOLATIONS OF CRIMINAL 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, domestic violence, dating violence, sexual exploitation, stalking and physical assault.

- The criminal laws that may apply in cases of physical assault, dating violence and domestic 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 laws 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 the policy.

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

10. PRIVACY AND CONFIDENTIALITY

The university is committed to providing assistance to complainants to 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 effectively and appropriately respond to the misconduct.

Privacy and confidentiality have distinct meanings under this policy.

a. Privacy

Privacy means that information related to a report under the policy 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. The university will maintain the privacy of the identity of an individual who has made a report of conduct allegedly in violation of the policy, a complainant, a respondent, and any witness except as may be required by the Family Educational Rights and Privacy Act (“FERPA”) or FERPA regulations, 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”), other than health records protected by FERPA, and by Virginia’s Health Records Privacy act, 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, Va Code § 2.2-3700, 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, advocates and ordained clergy, all of whom may engage in confidential communications under Virginia law. Information shared with designated confidential employees and confidential resources listed in Section 5 of the policy will not be revealed to any other person without expressed permission of the individual, or as otherwise permitted or required by law. Further, the university will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

c. Recordkeeping

The Title IX office maintains for a period of seven (7) years records of (i) each investigation under the policy including any determination regarding responsibility and any hearing, audio or audiovisual recording, or transcript; (ii) any disciplinary sanctions imposed on the respondent; (iii) any remedies provided to the complainant designed to restore or preserve equal access to the university’s education program or activity; (iv) any appeal and the appeal result; (v) any informal resolution and the result; and (vi) all materials used to train the Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process. The university will make such training materials publicly available on the university’s website. Affirmative findings of responsibility in matters or disciplinary sanctions, including sanctions agreed to as part of an administrative or informal resolution process become part of a student’s conduct record and an employee’s personnel record. Student conduct records are maintained in Student Affairs in accordance with the university’s document retention schedule. Personnel records are maintained in Human Resources in accordance with the university’s document retention schedule.

11. FILING A FORMAL COMPLAINT

If a complainant wishes to proceed with an investigation of an alleged violation of policy, they must submit a formal complaint to the university’s Title IX office using any of the following options:

- In-person during normal business hours or by surface mail to the university's Title IX office located in Grace Street Center, 912 W. Grace Street, 2nd Floor, Box 843022, Richmond, VA 23284.
- Complainants can email titleix@vcu.edu or call (804) 828-1347 to schedule an appointment.
- Online using the [Online Complaint Form](#)
- Email to titleix@vcu.edu

When filing a formal complaint, whenever possible, complainants should use the [Online Complaint Form](#). If not using the form, complaints should include:

- the complainant's name and contact information;
- the name(s) of the respondent(s);
- a description of the conduct believed to be in violation of this policy with approximate date(s) of when conduct occurred; and
- the complainant's physical or digital signature.

If a formal complaint is submitted that does not include the above information, the Title IX Coordinator will contact the complainant to ensure that it is filed in complete form. If a reasonable accommodation or other assistance is needed to file a formal complaint, complainants may contact the Title IX office directly at (804) 828-1347.

a. Timeframe for Filing Formal Complaints

There is no time limitation on filing a formal complaint; however, the Title IX Coordinator has the discretion to dismiss a formal complaint as described in [Section 12](#) below.

b. When a Complainant Does Not Want to File a Formal Complaint

If a complainant does not wish for their name to be shared with the respondent or to file a formal complaint, they may make such request to the Title IX Coordinator, who will evaluate that request in light of the university's obligation to provide a safe and nondiscriminatory learning and work environment and to comply with state and federal law and regulations.

The Title IX Coordinator has the ultimate discretion over whether the university proceeds with an investigation when a complainant does not wish to do so. The Title IX Coordinator may, in some circumstances, sign a formal complaint to initiate the investigation and grievance process. The Title IX Coordinator's decision will be based upon a determination of whether there is a risk to health and/or safety that requires the university to pursue formal action to protect the university community.

In signing a formal complaint, the Title IX Coordinator does not become the complainant or otherwise a party in the matter. The complainant is the individual who allegedly experienced the misconduct and retains the option to participate or not to participate in the investigation and grievance process.

c. Consolidation of Complaints and Other Forms of Discriminatory/Harassing Conduct

The Title IX Coordinator has the discretion to consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, where the allegations of violation of this policy arise out of the same facts and circumstances.

In addition, if a formal complaint 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 all allegations can be consolidated into a single investigation or proceeding without unduly delaying the resolution of the formal complaint. Where the Title IX Coordinator determines that consolidation is appropriate, the determination of whether the respondent violated university policy will be evaluated under the definitions afforded under the appropriate policy, but the grievance process will be conducted solely in accordance with this policy.

d. Effect on Other Disciplinary Actions

The filing of a formal complaint will not stop, delay or affect pending personnel or disciplinary actions. This includes, but is not limited to, performance evaluations or disciplinary actions related to an employee or student who is not performing at acceptable levels or standards or who has violated other university policies.

e. Presumption of Good Faith Reporting

The university presumes that formal complaints are filed in good faith. A finding that the behavior at issue does not constitute a violation of the policy or that there is insufficient evidence to conclude that the incident occurred as alleged, does not mean that the complaint was made in bad faith.

f. Presumption of Non-Responsibility

A respondent identified in a formal complaint is presumed to be not responsible for the alleged misconduct unless and until the respondent is determined, by a preponderance of the evidence, to have violated the policy.

12. DISMISSAL OF FORMAL COMPLAINT

A formal complaint that is dismissed under the Title IX Sexual Harassment Policy may be referred for investigation and further action under this policy. A formal complaint or any allegations therein may be dismissed under this policy, in discretion of the Title IX Coordinator if, at any time following the formal complaint, it is determined that:

- a. The conduct alleged would not constitute a violation of this policy even if proved true;

- b. The conduct did not occur in a VCU education program or activity and/or the university did not exercise substantial control of the respondent at the time of the events giving rise to the complaint;
- c. At the time of filing a formal complaint, the complainant is not participating in or attempting to participate in a VCU education program or activity.
- d. A complainant submits written notification that they would like to withdraw their formal complaint or any allegations therein;¹
- e. The respondent is no longer enrolled in or employed by the university; or
- f. Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Dismissal of a formal complaint does not preclude the university from taking further action under other university codes of conduct or policies.

Upon any dismissal, the Title IX Coordinator will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. Any party may appeal the dismissal decision or decision not to dismiss under Section 19 of this policy.

13. ADVISERS

The parties may have an adviser of their choice to accompany them to all meetings, interviews, and hearings held in connection with the grievance process. An adviser of choice may include a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. An adviser may not be another party in the matter, a participating witness or otherwise have any role in the process that would create a conflict of interest.

The Title IX office keeps a list of advisers who are trained by the university and familiar with the university's grievance process. Parties may (but are not required to) select a trained adviser from the list. The university cannot and does not guarantee equal advisory rights, meaning that if one party selects an adviser who is an attorney, but the other party does not or cannot afford an attorney, the university is not obligated to provide an attorney.

A party may have more than one adviser upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

Within two (2) business days prior to any meeting or proceeding, a party must provide the Title IX office with the identity and contact information of the adviser who will be accompanying them to that meeting or proceeding. Parties must also inform the Title IX office if they change their adviser during any stage of the process.

¹ A complainant who decides to withdraw a complaint may later request to reinstate it or refile it; however, until such time that a formal complaint is refiled, the grievance process will be suspended. A complainant who withdraws their formal complaint is still entitled to supportive measures.

Any person who serves as an adviser should plan to make themselves available for meetings throughout the process. While the university will make reasonable efforts to accommodate the schedule of a party's adviser in scheduling meetings and proceedings, an adviser's inability to attend a meeting does not constitute good cause that would necessitate rescheduling.

An adviser can assist a party by taking notes, providing emotional support and reassurance, organizing documentation, or consulting directly with a party in a way that does not disrupt or delay the process. The adviser may not speak on behalf of a party or directly participate in a meeting, interview or proceeding.

An adviser whose presence is deemed at the sole discretion of the university official conducting the meeting or proceeding to be abusive, disruptive or improperly interfering with the meeting or proceeding will be required to leave and may be prohibited from participating in future meetings/proceedings.

14. INFORMAL RESOLUTION

Informal resolution resolves a formal complaint by the parties reaching a mutually agreed upon resolution that does not involve a full investigation and adjudication. Informal resolution is voluntary and the university will not compel a complainant or a respondent to engage in this resolution option. Methods of informal resolution may include, but are not limited to, conflict resolution, mediation, restorative justice, facilitated conversations, counseling, training and/or educational conversations or projects.

a. Eligibility

Informal resolution is not appropriate in all cases and the Title IX Coordinator has the discretion to determine whether a matter is appropriate for informal resolution and to determine the method of informal resolution that may be appropriate in a specific case. Any informal resolution must adequately address the concerns of the complainant and the respondent, as well as the overall interest of the university in stopping, remedying and preventing the misconduct. Informal resolution is not available to resolve allegations that an employee sexually harassed a student.

b. Initiation of Informal Resolution

To initiate the informal resolution process, a complainant needs to submit a formal complaint and communicate their preference to resolve the matter informally to the Title IX Coordinator. A respondent who wishes to initiate the informal resolution process should contact the Title IX Coordinator.

Following a request by a party for informal resolution, the Title IX Coordinator will provide the parties a written notice disclosing: (i) the allegations in the formal complaint; (ii) the requirements of the process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; (iii) the rights of the parties to withdraw from the informal resolution process and proceed to and/or resume the grievance process, and (iv) any consequences resulting from participating in the informal resolution process, including the records that will be maintained and shared.

The Title IX Coordinator will obtain voluntary, written confirmation from the parties that they wish to resolve the formal complaint through informal resolution before proceeding.

c. Informal Resolution Facilitator

Once the parties have provided written consent to engage in informal resolution and the Title IX Coordinator has determined that informal resolution is appropriate, the Title IX Coordinator will appoint a trained person to facilitate the informal formal resolution process, who may be from inside or outside the university. Any facilitator appointed to informally resolve a formal complaint will be free from bias and any actual conflict of interest. A party who wishes to object to the appointment of an informal resolution facilitator on the grounds of bias or conflict of interest should contact the Title IX Coordinator.

d. Disclosure of Information

Where the complainant or respondent withdraws from informal resolution, informal resolution is otherwise terminated for any reason or an informal resolution agreement is breached by either party, any statements or disclosures made by the parties during the course of informal resolution cannot be used in the grievance process without written consent of the parties. Likewise, the informal resolution facilitator may not serve as a witness in a hearing unless the parties provide written consent to such participation.

e. Acceptance of Responsibility

A respondent may accept responsibility for all or part of the alleged policy violations at any point during the grievance process. If the respondent indicates an intent to accept responsibility for all of the alleged misconduct, the Title IX Coordinator will determine whether all parties, the Senior Vice Provost for Student Affairs or the responsible senior management executive (in the case of employees) are able to agree upon an appropriate sanction and/or remedy. When a resolution is accomplished, the appropriate sanction and/or remedies are promptly implemented in order to effectively stop the misconduct, prevent its recurrence, and remedy its effects, both on the complainant and the university community.

f. Outcome

Any agreement reached during informal resolution must be approved by the Title IX Coordinator. If the parties reach an agreement that is approved by the Title IX Coordinator, the formal complaint is considered resolved and the matter will be closed by the Title IX Coordinator, with both parties receiving simultaneous written notification of the final outcome. Failure to abide by a resolution agreement that is reached by the parties at the conclusion of the informal resolution process may result in recommencement of the grievance process and/or disciplinary action. If no agreement is reached, the formal complaint will be referred back to the Title IX Coordinator for further action. The outcome of formal complaints resolved by informal resolution is not appealable.

g. Time Frame

The time frame for completing informal resolution may vary, but the university will seek to complete the process within thirty (30) business days of a party's request for informal resolution. The parties will be notified in writing of any extension to the thirty (30) business day time frame as well as the reason for the extension.

15. GRIEVANCE PROCESS FOR FORMAL COMPLAINTS

The grievance process is initiated when one of the following occurs:

- A complainant signs a formal complaint requesting that the university investigate allegations of a violation of the policy;
- The parties do not reach an agreement following the informal resolution process; or
- The Title IX Coordinator signs a formal complaint to initiate the investigation and grievance process based upon a determination that there is a risk to health and/or safety that requires the university to pursue formal action to protect the university community.

The university's grievance process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the respondent engaged in a policy violation and evidence that supports that the respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a complainant, respondent, or witness.

a. Notice of Investigation

Following receipt of a formal complaint that is not subject to dismissal, as described in Section 12 of the policy, the Title IX Coordinator will notify the complainant and the respondent, in writing, of the commencement of an investigation. Such notice will:

- Identify the parties involved in the incident (if known);
- Specify the date, time and location of the alleged misconduct (if known);
- Summarize the allegations and conduct being investigated;
- Identify the specific policies implicated;
- Identify the applicable procedures;
- Describe the range of potential sanctions;
- Identify the individual(s) appointed to conduct the investigation and the process for raising an objection of the appointment based on bias or conflict of interest;
- Inform the parties of their right to be accompanied by an adviser of their choosing at all meetings, interviews and proceedings;
- State that the respondent is presumed not responsible for the alleged misconduct unless and until the evidence supports a different determination;
- Explain that the investigation is a neutral fact-gathering process with a conclusion dependent on the preponderance of the evidence;

- Notify the parties of the opportunity to inspect and review the evidence and information obtained during the investigation;
- State the university's policy on prohibiting retaliation;
- Instruct the parties to preserve any potentially relevant evidence;
- Describe privacy and confidentiality of information;
- Notify the parties of their obligation to provide truthful information;
- Include any no contact directive issued by the university; and
- Explain how to request reasonable accommodations.

The Title IX Coordinator may amend and/or supplement the Notice of Investigation as the investigation progresses and additional information becomes available.

b. Resolution Timeline

The university will make a good faith effort to complete the grievance process within a ninety to one hundred twenty (90-120) business day time period, including appeal. This timeframe may be temporarily delayed or extended for good cause, with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include, but is not limited to, the absence of a party, a party's adviser, or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of a disability, initiation of the informal resolution process; to account for university breaks or closings; illness or scheduled absences of university personnel involved in the process; to ensure the integrity and completeness of the process; or the complexities of a case (including the number of witnesses and volume of information provided by the parties).

c. Overview of Investigation

During the investigation, the parties will have equal opportunity to be heard, to present witnesses - including fact and expert witnesses, to gather and present inculpatory and exculpatory evidence, and to submit questions that they believe should be directed by the investigator to each other and/or to any witness. The parties will not be restricted from discussing the allegations under investigation. The investigator will notify and seek to meet separately with the complainant, the respondent and witnesses and will gather other relevant and available evidence and information, including electronic or other records of communication between the parties and/or witnesses (via voicemail, text, email and social media), photographs (including those stored on computers and smartphones) and medical records (subject to the consent of the applicable party). The university bears the burden of proof and the burden of gathering evidence sufficient to make a determination regarding responsibility.

Investigations are completed promptly, normally within forty-five (45) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. The university will make a good faith effort to

complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

d. Appointment of Investigator(s)

The Title IX Coordinator will designate one or more investigators to conduct a prompt, thorough, fair and impartial investigation. The investigator(s) will typically be a member of the Title IX office, although the investigator may be a trained individual from inside or outside the university, as designated by the Title IX Coordinator. Any investigator used by the university will be impartial, free from any actual conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and trained in accordance with Section 21 of the policy.

A party who has concerns that the appointed investigator cannot conduct a fair and impartial investigation may report those concerns to the Title IX Coordinator.

e. Stages of the Investigation

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

The investigation will be conducted in stages as follows:

i. Preliminary Investigation

During the preliminary investigation stage, the investigator will:

- Interview all parties and conduct follow-up interviews as necessary²
- Interview any relevant fact act expert witnesses identified by the parties, witnesses or investigator and conduct follow-up interviews as necessary
- Collect any available physical or documentary evidence, including prior statements by the parties or witnesses, any communication between the parties, email messages, social media, text messages, and other records as appropriate and available
- Visit relevant sites or locations as necessary and record observations through written, photographic or others means
- Consult medical, forensic, technological or other experts when expertise on a topic is needed to achieve a fuller understanding of the issues under investigation
- Contact any law enforcement agency known to be conducting its own investigation to ascertain the extent to which any evidence collected by law enforcement may be available to the university in its investigation

² The investigator will provide written notice of the date, time, location, participants, and purpose of the interview or meeting, with sufficient time for the party to prepare to participate.

- Allow each party the opportunity to submit written or oral questions they wish the investigator to ask the other party and witnesses³

Interviews with parties and witnesses will be audio-recorded and interviewees will be provided the opportunity to review and correct the transcript of their interview. The interviewee will have five (5) business days from the date they receive their interview transcript to review the transcript for accuracy and to provide any corrections. The deadline may be extended for good cause, upon request to the investigator. If the interviewee has no corrections to the interview transcript, the interviewee will sign an acknowledgment that they have reviewed the transcript and agree that it is accurate. If the interviewee has corrections to the interview transcript, the interviewee may submit any corrections that the interviewee believes are necessary to ensure the accuracy of the transcript within the five (5) business day time frame. If no response is received from the interviewee by the deadline, their interview transcript will be considered complete and accurate for the purposes of the grievance process.

ii. Inspection and Review of Evidence and the Preliminary Investigation Report

Prior to the completion of the investigation, the investigator will prepare a preliminary investigation report summarizing all of the evidence gathered. The parties will have the opportunity to review the preliminary investigation report and to inspect and review all evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint. The purpose of this state of the grievance process is to provide the parties with equal opportunity to review and respond to the evidence prior to the conclusion of the investigation.

Evidence that will be available for inspection and review will include:

- All evidence obtained by the investigator that is directly related to the alleged misconduct and that will be relied upon in reaching a determination of whether a policy violation occurred. This evidence will be attached as exhibits to the preliminary investigation report and will include both inculpatory and exculpatory evidence (i.e., evidence that tends to prove or disprove the allegations); and
- All evidence obtained by the investigator that is directly related to the alleged misconduct and that will not be relied upon in reaching a determination of whether a policy violation occurred.

The investigator will provide the parties access to the preliminary investigation report and evidence described above in a secure manner. Neither the complainant nor the respondent (or their advisers) may print, copy, take photos or video of the screen, audio or video record a reading of the material, or otherwise use analog or technological methods - known or unknown - to capture the content of evidence provided for inspection and review. The parties and their advisers will be asked to execute an evidence sharing agreement that includes these restrictions. Any party who fails to abide by the

³ The opportunity to submit written questions may not be used to harass or intimidate a party or witness. The investigator has the discretion to rephrase a question while preserving the substance of the question or declining to ask a question that is harassing or abusive.

terms of the evidence sharing agreement may be subject to disciplinary action, if available, and/or excluded from further participation in the process.

The parties will have ten (10) business days from the date of the preliminary investigation report to review and respond to the report and the evidence collected. This deadline may be extended for good cause, upon request to the investigator. During the inspection and review period, the parties may meet with the investigator; submit comments on the preliminary investigation report or the evidence to the investigator; submit additional evidence or identify additional witnesses for the investigator to pursue; submit further questions that they believe should be directed by the investigator to a party or to any witness; and, object to evidence that has been included or excluded as an exhibit to the preliminary investigation report.

In the absence of good cause, evidence that is reasonably available to the parties that is not provided to the investigator at this juncture will not be considered in any appeal.

iii. Additional Investigation

The investigator may conduct further investigation based on the information by the parties during the inspection and review period and the parties' responses to the preliminary investigation report. If the parties do not provide any response to the preliminary investigation report and/or additional evidence, the investigator will conclude the investigation and prepare the final investigation report.

iv. Final Investigation Report

The investigator will prepare a final investigation report that fairly summarizes the relevant evidence, including relevant elements of the parties' responses to the preliminary investigation report and evidence inspection and review. The final investigation report will include the investigator's findings as to whether the conduct occurred as alleged and whether a policy violation occurred. The investigator will use the preponderance of the evidence standard in reaching its determination regarding responsibility.

v. Notice of Investigative Finding

Following the investigator's submission of the final investigation report to the Title IX Coordinator, the Title IX Coordinator will issue a Notice of Investigative Finding simultaneously to the parties. The notice will identify the allegations and the policy violations for which the respondent was found responsible or not responsible; explain the procedures and permissible bases for contesting the investigator's findings; and, attach a copy of the final investigation report and exhibits.

f. Resolution Options Following Notice of Investigative Finding

i. Finding(s) of Responsibility

When the investigator determines there is sufficient evidence, by a preponderance of the evidence, to support a finding of responsibility for one or more of the allegations, the respondent may accept or contest the investigator's finding(s). The respondent must communicate their decision, in writing,

to the Title IX Coordinator, within five (5) business days of receipt of the Notice of Investigative Finding.

If the respondent accepts the investigator's finding(s) or does not submit a response within five (5) business days of receipt of the Notice of Investigative Finding, the Title IX Coordinator will refer the case for an administrative resolution on sanctions. In an administrative resolution on sanctions, the complainant, respondent, the Title IX Coordinator, the Senior Vice Provost for Student Affairs or the responsible senior management executive (in the case of employees) will attempt to agree upon an appropriate sanction. If an agreement on sanctions is not reached, the Title IX Coordinator will refer the case for a hearing solely on the issue of sanctions.

If the respondent contests one or more of the investigator's finding(s), the respondent shall submit a written statement explaining the reasons for contesting and how the grounds to contest as detailed in Section 15(l)(i) below are met. 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 refer the case to the Hearing Officer for further proceedings as outlined below, notifying the parties of the action taken.

ii. Finding(s) of No Responsibility

When the investigator has found that there is insufficient evidence, by a preponderance of the evidence, to support a finding of responsibility for one or more of the allegations, the complainant may accept or contest the investigator's finding(s). The complainant must communicate their decision, in writing, to the Title IX Coordinator, within five (5) business days of receipt of the Notice of Investigative Finding.

If the complainant accepts the investigator's finding(s) or does not submit a response within five (5) business days of receipt of the Notice of Investigative Finding, the formal complaint will be considered resolved and the case closed and documented in accordance with applicable university policies. If the complainant contests one or more of the investigator's finding(s), the complainant shall submit a written statement explaining the reasons for contesting and how the grounds to contest as detailed in Section 15(l)(i) below are met. 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 refer the case to the Hearing Officer for further proceedings as outlined below, notifying the parties of the action taken.

g. Participation by Parties and Witnesses

Parties and witnesses whose participation in a meeting or other proceeding is invited or expected, will receive written notice of the date, time, location, participants, and purpose of the interview or meeting, with sufficient time to prepare to participate. Interviews, meetings and proceedings may be conducted in-person or remotely (e.g., Skype, Zoom, FaceTime, WebEX or similar technology). The procedural protections under this policy remain in place for any interview, meeting, or proceeding that is conducted remotely. The university will also take appropriate steps to reasonably ensure the security and privacy of remote interviews, meetings and proceedings.

Parties and witnesses may not indefinitely delay the grievance process by refusing to cooperate. While the university will attempt to accommodate the schedules of parties and witnesses, the grievance process can proceed to conclusion even in the absence of a party or witness.

i. Parties

Neither a complainant nor a respondent is required to participate in the grievance process; however, the process may proceed, and a finding of responsibility and imposition of any sanction(s) may occur without the participation of a party. Recognizing that a respondent may face parallel criminal charges, no adverse inference will be drawn from a decision by a respondent not to participate in the grievance process.

If a student-respondent withdraws or takes a leave for a specified period of time, the grievance process may continue and the respondent is not permitted to return to university unless and until all sanctions have been satisfied. If an employee-respondent resigns with unresolved allegations pending, they may not be eligible for rehire with the university.

ii. Witnesses

Witnesses must have observed the acts in question or have information relevant to the formal complaint. Witnesses may not be intimidated, threatened, or improperly influenced in any way by the parties or through others (e.g., friends, advisers, etc.). Any attempt to threaten, intimidate, or otherwise improperly influence the testimony of a witness may result in a separate disciplinary action by the university.

h. Prior or Subsequent Conduct

Prior or subsequent behavior of either party will never be used to prove character, but may be considered for other limited purposes, such as determining pattern, knowledge, intent, motive or absence of mistake. The 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 similar pattern of conduct. Both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.

i. Prior Sexual Behavior

The sexual history of a complainant or a respondent will never be used to prove character or reputation. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. 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. The investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual behavior is deemed relevant.

j. Amnesty for Certain Infractions

To encourage both reporting and cooperation in investigations when a formal complaint is filed and in accordance with Virginia Code § 23.1-808, 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 or an individual's cooperation in an investigation under the policy. Because alcohol and drug misuse can negatively impact an individual's physical and emotional wellbeing, the university may still refer a student or employee for health or medical intervention related to their alcohol or drug use.

k. Obligation to Provide Truthful Information

All university community members are expected to provide truthful information in any report or proceeding under this policy. An individual who makes a materially false statement in bad faith in connection with any report or proceeding under the policy or tampers with or destroys evidence may be subject to disciplinary action, including expulsion or termination of employment. A determination regarding responsibility, alone, is insufficient to conclude that any party made a materially false statement in bad faith.

l. The Hearing

The Title IX Coordinator will refer a case for a hearing when a party contests one or more of the investigator's findings regarding responsibility or when a respondent accepts all of the findings of responsibility and the parties and the university are unable to come to an agreement as to the appropriate sanctions. The hearing will be held no less than ten (10) business days following receipt of a party's response to a contesting statement or the expiration of the time frame for providing such response.

i. Review Standard

When a party contests the investigator's findings regarding responsibility for an alleged violation of the policy, a hearing will be held to determine whether the preponderance of the evidence standard was appropriately applied by the investigator. In determining whether the standard was appropriately applied, the hearing 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 finding(s) by a preponderance of the evidence.

ii. Hearing Panel Composition

The Title IX Coordinator will appoint a standing pool of individuals who can serve as hearing panel members. The pool shall include trained members of the university community and also may include external professionals with appropriate experience and training at the Title IX Coordinator's discretion. All individuals appointed to the hearing panel pool shall receive training in accordance with Section 21 of the policy.

The Title IX Coordinator will select from this pool: (a) two members to serve on the hearing panel, and (b) an individual to serve as the Hearing Officer. The Hearing Officer presides over and is a voting member of the hearing panel. All persons serving on the hearing panel, including the Hearing Officer, will be impartial and free from bias of conflict of interest. Any member of the hearing panel

who has a personal bias or conflict of interest shall immediately recuse themselves. Parties who believe a member selected for a hearing panel cannot render a fair and impartial result due to bias or conflict of interest must notify the Title IX Coordinator in writing no later than five (5) business days prior to the hearing, including the specific concerns with bias or conflict of interest of a hearing panel member. Under no circumstances will a hearing panel member be excluded on a basis that would violate VCU's policy on Preventing and Responding to Discrimination.

iii. Notice of Hearing

No less than ten (10) business days prior to the hearing, the Hearing Officer will send written notice of the hearing to the parties, which will include:

- The time, date, and location of the hearing;
- The names of the individuals who will serve on the hearing panel and as Hearing Officer;
- Information on how to object to a hearing panel member on the basis of bias or conflict of interest;
- Any technology that will be used to facilitate the hearing;
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing;
- A reminder that if any party does not appear at the scheduled hearing, the hearing may be held in their absence;
- A reminder that a party may have an adviser accompany them at the hearing;
- Information on how each party may submit an impact or mitigation statement to the Title IX Coordinator for the hearing panel to consider if there is any determination of sanctions.
- Information on how to arrange any reasonable accommodations based on disability, language assistance, and/or interpretation services that may be needed at the hearing.

iv. Access to Evidence

All evidence that was the subject of the parties' inspection and review as described in Section 14(e)(ii) above, will be available at the hearing to give each party equal opportunity to refer to such evidence during the hearing. The hearing panel will have access to the final investigation report, including exhibits and the evidence that was subject to the parties' inspection and review. Such access to the evidence will be given at least ten (10) business days prior to the hearing, but will not include access of any notes by the investigator and/or Title IX Coordinator or any information obtained that is not relevant to the allegations in the formal complaint.

v. Pre-Hearing Meeting

Prior to the hearing, the Hearing Officer may conduct a pre-hearing meeting with the parties and their advisers. The purpose of the pre-hearing meeting is to:

- Review the date, time, and location for the hearing;

- Verify no bias or conflict of interest exist for or against complainants or respondents generally or an individual complainant or respondent;
- Determine the order of proceeding and procedures to be followed at the hearing;
- Review the evidence and/or exhibits that will be presented at the hearing;
- Identify any witnesses the parties request appear at the hearing. The hearing panel has the sole discretion to determine witnesses whose presence will be requested by the hearing panel, and will provide sufficient notice to those requested to be present.
- Identify any requests for accommodation and safety concerns; and,
- Resolve special considerations, answer other questions, or share information prior to the hearing.

Counsel for the university will attend the pre-hearing meeting to provide legal advice to the Hearing Officer. The pre-hearing meeting will be recorded and the Hearing Officer will issue a report summarizing the results of the meeting, which may include any agreements reached, the Hearing Officer's rulings, and other matters decided.

vi. Hearing Format

The hearing is not a re-investigation of a formal complaint. Rather, the hearing is an opportunity for the parties to address the hearing 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 findings regarding responsibility by a preponderance of the evidence. The parties may address any information in the final investigation report, including exhibits; the evidence that was subject to the parties' inspection and review; and, the contesting statement and response thereto.

The Hearing Officer is responsible for maintaining an orderly, fair, and respectful hearing; and for determining the sequence of events during the hearing. The Hearing Officer may direct any person who fails to comply with procedures during the hearing or who disrupts or obstructs the hearing to leave the hearing. All evidentiary and procedural questions will be addressed to and ruled upon by the Hearing Officer, who may consult with the hearing panel and/or legal counsel before making a determination.

Hearings are closed to the public. The individuals who may attend the hearing are:

- The complainant
- The respondent
- Advisers to the parties
- The investigator
- Any witnesses

The parties and their advisers may be present throughout the entire hearing, excluding deliberations. Witnesses, including the investigator, are present only when responding to questions and providing information to the hearing panel. Counsel for the university will attend the hearing to provide legal

advice to the hearing officer and the hearing panel. A university employee may also be present to assist with the administration of the hearing.

The parties will not be located in the same room for the hearing. Hearings are conducted through videoconference or similar technology where the parties and the hearing panel can see and hear one another in real time. At the university's discretion, any and all parties, witnesses, and other participants - including the Hearing Officer and the hearing panel - may appear at the live hearing virtually, with technology enabling the participants to simultaneously see and hear each other.

Anyone appearing at the hearing to provide information will respond to questions on their own behalf. Each party has the opportunity to be heard and to respond to any questions of the hearing panel. The parties may not directly question one another, the investigator, or any witnesses appearing before the hearing panel. A party may proffer questions to the Hearing Officer although they may proffer questions to the Hearing Officer who will determine whether the question will be permitted, disallowed, or rephrased. The Hearing Officer has the authority to limit or disallow questions that are abusive, irrelevant or duplicative. The Hearing Officer also has the authority to pause questioning at any time for the purpose of asking their own follow-up questions or to enforce established rules of decorum. The Hearing Officer may consult with legal counsel on any questions of admissibility.

The hearing (but not the deliberations of the hearing panel) will be recorded. This is the sole official recording of the hearing and all other recording is prohibited. The recording or transcript of the hearing will be made available to the parties for inspection and review in a secure manner and subject an agreement not to copy or disseminate any of the testimony heard or evidence obtained in the hearing.

The Hearing Officer has the authority and discretion to determine the order of proceedings, including the start, end and duration of the proceedings. Typically a hearing may include:

- The Hearing Officer calls the hearing to order.
- The Hearing Officer will introduce all individuals present and provide an opportunity for the parties to ask procedural questions.
- The Hearing Officer will read the alleged violations. To each alleged violation, the respondent will answer, "responsible" or "not responsible." The hearing officer will consider any lack of response by respondent as a denial of responsibility. If the respondent admits responsibility to all of the alleged violations, the Hearing Officer will abbreviate the hearing and the hearing panel will only consider evidence relevant to sanctioning. If the Respondent admits responsibility to some but not all of the alleged violations, the Hearing Chair may abbreviate the hearing, considering evidence relevant both to responsibility and sanctioning on the disputed violations and relevant only to sanctioning on the violations admitted.
- The investigator will present a summary of the final investigation report, including the findings of fact supporting their determination regarding responsibility and the conclusions regarding the application of the policy to the facts.
- The hearing panel may question the investigator followed by the parties proffering questions for the investigator to be asked by the Hearing Officer.

- The complainant may present information, including an opening statement, and will respond to questions by the hearing panel followed by the respondent proffering questions for the complainant to be asked by the Hearing Officer.
- The respondent may present information, including an opening statement, and will respond to questions by the hearing panel followed by the complainant proffering questions for the respondent to be asked by the Hearing Officer.
- Any witnesses will appear and will respond to questions by the hearing panel followed by the parties' proffering questions for the witness to be asked by the Hearing Officer.
- The complainant may make a brief closing statement.
- The respondent may make a brief closing statement.
- The Hearing Officer concludes the hearing and dismisses the parties so the hearing panel can begin deliberations.

vii. Determination Regarding Responsibility

The hearing panel will deliberate in private to determine whether the preponderance of the evidence standard was appropriately applied by the investigator by making a finding: (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 findings regarding responsibility by a preponderance of the evidence. The hearing panel shall reach its decision by majority. The vote of each hearing panel member will not be shared with the parties.

viii. Determination of Sanction

When a hearing 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, it will then determine the appropriate sanctions, in accordance with Section 16 of the policy. As part of its deliberations, the panel shall receive the respondent's prior conduct record/personnel actions (if any) and the parties' impact and mitigation statements. The appropriateness of any particular sanction is reviewed on an individual basis based on the unique facts and circumstances of the case. The panel will determine sanctions by a majority vote. The vote of each hearing panel member will not be shared with the parties.

ix. Hearing Determination

The Hearing Officer will issue a written determination as to whether the preponderance of the evidence standard was appropriately applied by the investigator and, specifically, the hearing panel's determination on (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 finding(s) by a preponderance of the evidence,

along with the rationale for such determinations. The hearing panel's determination shall also include any sanctions imposed on the respondent and/or remedies provided to the complainant as well as the permissible bases and procedures to appeal.

The Hearing Officer will provide the panel's written determination to the parties simultaneously within ten (10) business days of the hearing. In the event of delay or extension of this time frame, the Hearing Officer will provide written notice to the parties of the delay or extension and the reason(s). The Title IX Coordinator is responsible for effective implementation of any remedies and will be provided the written decision by the Hearing Officer for such purpose.

The determination regarding responsibility becomes final either on the date the Appellate Officer provides the parties with the written determination of the results of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

16. SANCTIONS

The policy prohibits a broad range of conduct, all of which is serious in nature. Where there is a finding of responsibility or a respondent accepts responsibility, the hearing panel may impose one or more sanctions. In keeping with the university's commitment to foster an environment that is safe, inclusive and free from discrimination and harassment, the hearing panel shall have wide latitude in the imposition of sanctions tailored to the facts and circumstances of each complaint, the impact of the conduct on the complainant and university community and accountability for the respondent.

Sanctions may include educational, restorative, rehabilitative and punitive components. In determining the appropriate sanction(s), the hearing panel will be guided by a number of considerations, including:

- The nature and severity of the policy violation
- The impact of the misconduct on the complainant
- The impact or implications of the misconduct 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 the respondent has accepted responsibility for the misconduct
- The maintenance of a safe, nondiscriminatory and respectful university environment
- Any other mitigating, aggravating or compelling factors

When present, the following aggravating factors may lead to more severe sanctions:

- Respondent is in a position of authority or influence
- Use of force or violence related to the violation of the policy or a pattern of violent behavior
- Use or display of a weapon
- Deliberately taking advantage of another person's state of incapacitation

- Victim under the statutory age of consent

a. Sanctions for Students

Sanctions are effective immediately, unless otherwise specified by the university. They may include any of the sanctions below, individually or in combination:

- **Expulsion:** Permanent dismissal from the university, administrative withdrawal from classes and loss of all university privileges.
- **Revocation of Degree:** Rescinding a university degree that has been awarded.
- **Withholding Degree:** Delay awarding a degree otherwise earned until completion of all sanctions imposed.
- **Revocation of Admission:** Rescinding an offer of university admission.
- **Suspension:** Removal of a respondent from the university for a defined period of time, for a maximum of six (6) consecutive semesters, during which a student loses all university privileges, which generally includes access to facilities, programs, classes, and premises.
- **Deferred Suspension:** Designated period of time during which a student is given the opportunity to demonstrate the ability to abide by university policy. Subsequent violations of university policy during the term of a deferred suspension will result in a full suspension.
- **Disciplinary Probation:** A specified period of time, a minimum of one semester, requiring a respondent to avoid a recurrence of any conduct that violates the Student Code of Conduct and/or any university policy that may result in additional university sanctions, including but not limited to, suspension or expulsion.
- **Censure:** Written notice warning a respondent to avoid recurrence of any conduct that violates the policy and/or any university policy. Subsequent violations of the policy or any university policy may result in more severe disciplinary action.
- **Campus Ban:** Prohibits access to all or a portion of the VCU campus.
- **Loss of University-Related Privileges:** Denial of services, privileges, and benefits which may impact participation in extracurricular activities, residence in university housing, university employment, Honors College, leadership within student organizations, academic activities, and study abroad.
- **Restitution:** Monetary reimbursement to the university and/or member of the university community or others to cover costs of damage, injury, or loss of community or personal property as a result of misconduct.

b. Sanctions for Employees

Sanctions are effective immediately, unless otherwise specified by the university. They may include any of the sanctions below, individually or in combination:

- **Termination of Employment:** Permanent separation of the employment relationship between the university and the respondent.
- **Suspension/Administrative Leave (employee-respondents):** Loss of work for a defined period of time, with or without pay, during which respondent will not be allowed on university premises or permitted to participate in, or supervise, any university education program or activity.
- **Loss of Merit Pay Increase:** Ineligibility for a merit pay increase for a defined period of time.
- **Counseling:** Verbal or written communication which conveys that an employee's conduct was improper and must be corrected.
- **Written Notice or Warning:** Formal disciplinary action which has been taken in response to misconduct. Formal disciplinary actions are placed in an employee's personnel record.
- **Demotion:** Change in position with lower qualifications and pay.
- **Loss of Supervisory Titles and/or Responsibilities:** Loss title and/or the ability to supervise other employees or students, which may have an effect of changing an employee's job classification status.
- **Campus Ban:** Prohibits access to all or a portion of the VCU campus.

Nothing in this policy prevents the university from imposing disciplinary action against a respondent for misconduct which does not constitute a violation of the policy, but may violate other university policies. The university reserves its right to take such action as it deems appropriate to further its educational mission and to protect the safety and security of the university community.

c. **Executive Review of Sanction(s)**

The ultimate determination and imposition of sanctions is made by the appropriate senior management executive (Vice President or equivalent) as determined by the respondent's university affiliation. For example, in cases involving student-respondents, the appropriate senior management executive would be the Senior Vice Provost for Student Affairs. The appropriate senior management executive will base their decision on the recommendations made by the panel and the factors detailed above.

When there is no appeal of a hearing panel's determination, the appropriate senior management executive will have three (3) business days from the last date on which the parties may submit a Request for Appeal to review all information and affirm, reject or modify the panel's recommendation on sanctions. The appropriate senior management executive will consult with other university officials as needed, including university Human Resources and the Title IX Coordinator, to ensure that any sanction is appropriate for the violation and consistent with prior university action for similar policy violations. The decision of the senior management executive is final without further recourse or appeal by the parties.

17. **ACCOUNT HOLDS AND TRANSCRIPT NOTATION**

The university shall place an administrative hold on a respondent's student account when there is an allegation pending for a violation of the policy. The hold is a registration lock and prohibits class registration, transcripts and graduation. The hold will remain in effect until pending allegations are resolved. The hold

may be temporarily lifted during the course of the investigation for certain actions such as class registration or to obtain a transcript (with notation as described below) by contacting the Title IX Coordinator.

As required by § 23.1-900 of the Code of Virginia, the university shall include a prominent notation on the transcript of any student who is suspended, expelled, or withdraws while under investigation for sexual assault as defined in the policy. In the event of a conflict between Virginia law and applicable federal regulations, the federal regulations will prevail. Under the procedures adopted by Student Records and Registration, a student may seek removal or expungement of the notation if the student (i) is subsequently found not to have committed sexual assault, or (ii) three (3) years have elapsed since entry of the notation and the student demonstrates good cause for expungement. The university shall remove a transcript notation from a student's transcript due to the student's suspension for the offense of sexual assault if the student (i) has completed the term and any conditions of the suspension, and (ii) has been determined by the university to be in good standing.

18. REMEDIES AND OTHER ACTIONS

In addition to any sanctions imposed by the hearing panel, the university may provide remedies designed to restore and preserve equal access to the university's education program or activity to the complainant. The Title IX Coordinator is responsible for effective implementation of any remedies provided. Such remedies and actions may include, but are not limited to:

- Imposition or continuation of a no contact directive
- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Continuing any supportive measures previously provided
- Required training or education for individuals
- Broad-based training or educational programming to the university community
- Permanent modifications to housing assignments
- Permanent modifications to work arrangements
- Academic support services
- Increased monitoring, supervision and/or security at targeted locations where the misconduct occurred or is likely to reoccur

19. APPEALS

A party may appeal (1) the dismissal of a formal complaint and/or (2) a determination regarding responsibility by submitting a written appeal request ("Request for Appeal") to the Title IX Coordinator within five (5) business days of the date of the Notice of Dismissal or Hearing Determination. The party who submits a Request for Appeal is considered the "Appellant" and the responding party is considered the "Appellee." If a Request for Appeal is not received within the five (5) business day time frame, the

outcome (i.e, dismissal or determination of responsibility) will be considered final and the grievance process will be permanently closed.

Any sanctions imposed as a result of the hearing are stayed during the appeal process.

a. Grounds for Appeal

Appeals are limited to the following grounds:

- i. Procedural irregularity that affected the outcome of the matter;
- ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- iii. The Title IX Coordinator or investigator(s), Hearing Officer or other member of the hearing panel had a conflict of interest or bias against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Although a party may disagree with a decision, that alone is not a basis for appeal. Instead, the Request for Appeal must specifically explain the reasons for appealing and how the grounds to appeal are met.

b. Appellate Officer

The Appellate Officer will be the following individuals:

- For appeals involving a student-respondent, the Senior Vice Provost for Student Affairs
- For appeals involving a faculty-respondent, the Senior Vice Provost for Faculty Affairs
- For appeals involving a non-faculty employee-employee respondent, the Assistant Vice President for Human Resources

If the stated Appellate Officer is unavailable, for example because the position is vacant, there is a conflict of interest, or the respondent is not a student or employee of the university, then the Title IX Coordinator will appoint an alternative Appellate Officer. The parties must notify the Title IX Coordinator within three (3) business days of filing the Request for Appeal of any objection to the Appellate Officer based on bias or conflict of interest.

c. Review of Appeal Request

The Appellate Officer will review the Request for Appeal and determine if the request meets the grounds for appeal. The Appellate Officer's review is not a review of the merits of appeal, but rather whether the Appeal Request is: (1) timely, and (2) based on at least one of the limited grounds for appeal listed above. The Appellate Officer shall deny the request if both conditions are not met and will notify the parties, their advisers, and the Title IX Coordinator, in writing of the denial and the rationale. The decision of the Appellate Officer is final.

If both conditions are met then the Appellate Officer will notify the parties, their advisers, the Title IX Coordinator, and, when appropriate, the investigator and/or Hearing Officer, in writing that the request has been approved.

If the appeal request is timely and specifies one or more of the grounds for appeal above, the parties will have ten (10) business days from the date they received notice that the appeal has been accepted to submit a written statement in support of, or challenging, the appeal. The Title IX Coordinator, the investigator and/or Hearing Officer will also be provided an opportunity to respond to any portion of the appeal that was approved and that involves them. Copies of written responses will be shared with the other parties. Additional rebuttal statements will not be accepted.

d. Appellate Review

As deemed relevant to the appeal by the Appellate Officer, the documents and information reviewed may include the final investigation report and exhibits, any evidence provided to the parties for inspection and review, the recording or transcript of the hearing, the hearing panel's written determination, the request for appeal, and any written responses to the appeal. For an appeal of a dismissal of a complaint, the documents and information reviewed by the Appellate Officer will include documentation related to the complaint, as deemed relevant by the Appellate Officer.

Typically, the appeal will be confined to a review of the written documentation and record of the investigation and/or hearing, and pertinent documentation regarding the grounds for appeal. The Appellate Officer, however, may choose to meet with a party if they deem it necessary for their review of the appeal. If the opportunity to meet is provided to one party, it will be provided automatically to the other party.

e. Appeal Outcome

The Appellate Officer shall render a decision applying the following principles:

- The burden of proof lies with the appellant;
- The review shall be prompt and narrowly tailored to the specific grounds approved for appeal;
- The appeal is not intended to be a new investigation or a full re-hearing of the formal complaint; and
- The original decision is presumed reasonable and appropriate unless a preponderance of the evidence demonstrates that one or more of the grounds of the appeal are met, and that either or both parties were deprived of a fair process.

Within ten (10) business days of receipt of the written statements in support of or challenging the appeal, the Appellate Officer will issue the outcome of the appeal and the rationale for the result to the parties and Title IX Coordinator. This time frame may be extended for good cause, with written notice to the parties and Title IX Coordinator of the extension and the reason for the extension. The Appellate Officer's decision is final and not subject to any further appeal.

20. ACADEMIC FREEDOM AND FIRST AMENDMENT PROTECTION

This policy shall not be interpreted to infringe on First Amendment rights, academic freedom or freedom of expression. The fact that speech or a particular expression is offensive is not, standing alone, a sufficient basis to establish a violation of this policy. In order to violate this policy, the conduct must be sufficiently serious to deny equal access or limit an individual's ability to participate in or benefit from a VCU education program or activity from both a subjective and objective perspective. The offenses defined in this policy are neither legally protected expression nor the proper exercise of academic freedom.

21. PREVENTION, TRAINING AND AWARENESS PROGRAMS

The university conducts regular and ongoing prevention, awareness and training programs for employees and students to achieve the goals of this policy. 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.

The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process will receive training on the definition of sexual harassment, the scope of the university's education program and activities, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias. All hearing panel members will receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions about the complainant's sexual predisposition or prior sexual behavior are not relevant. Investigators will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Training materials will not rely on sex stereotypes and will promote impartial investigations and adjudications of alleged policy violations.

22. ANNUAL REVIEW

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

Forms

1. [Title IX and Sex-Based Misconduct Reporting Form](#)

Related Documents

1. [Equal Pay Act of 1963, as amended](#)
2. [Executive Order 11246, as amended](#)
3. [Executive Order 13672](#)
4. [Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act](#)
5. [Title VII of the Civil Rights Act of 1964, as amended](#)
6. [Title IX of the Education Amendments of 1972, as amended](#)

7. [Final Rule under Title IX of the Education Amendments](#)
8. [VCU Policy: VCU Notice of Nondiscrimination](#)
9. [Violence Against Women Act](#)
10. [Virginia Human Rights Act](#)
11. [Virginia Code § 23.1-806](#)
12. [Virginia Code § 23.1-808](#)
13. [Virginia Code § 23.1-412](#)

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

Revision History

This policy supersedes the following archived policies:

03/13/2016	<i>Sexual Misconduct/Violence and Sex/Gender Discrimination (01/15/2020 - minor revision to update Title IX Coordinator contact information)</i>
03/13/2016	<i>Sexual Misconduct/Violence and Sex/Gender Discrimination (01/19/2018 -minor revision to update reference to Executive Order Number One (2018) in Related Documents section)</i>
03/13/2016	<i>Sexual Misconduct/Violence and Sex/Gender Discrimination (07/03/2017 - minor revision to update citations to Virginia Code sections on page 21)</i>
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

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

Yes. This policy governs the conduct of all VCU students including medical residents and interns (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).

2. Are advocates in University Counseling considered “confidential employees” under this policy?

Yes. Advocates are considered confidential employees that provide services and support through the University Counseling Services. As confidential employees, advocates will not disclose information obtained from patients, clients, or persons otherwise counseled or treated, to the Title IX office or others without the individual’s permission except as provided for or required by law.

3. Are consensual sexual or romantic relationships between faculty and students or a supervisor and supervisee covered under this policy?

A consensual sexual or romantic relationship involving individuals in a faculty-student relationship or in the context of employment supervision or evaluation does not, in and of itself, constitute a violation of the 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 the policy. Moreover, such interactions or relationships will typically constitute a violation of the Employee-Student Consensual Relationship policy 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 VCU’s Expectations of Ethical Conduct.

4. Is interpersonal violence outside the context of dating or domestic relationships included in this policy? Are there any resources and support measures available?

Interpersonal violence outside of the context of a dating or domestic 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). Employees may obtain counseling through the Employee Assistance Program at 1-855-223-9277.

5. What happens if I do not want to file a formal complaint?

If a complainant does not wish for their name to be shared with the respondent or to file a formal complaint, they may make such request to the Title IX Coordinator, who will evaluate that request in light of the university's obligation to provide a safe and nondiscriminatory learning and work environment and to comply with state and federal law and regulations. The Title IX Coordinator may, in some circumstances, sign a formal complaint to initiate the investigation and grievance process. In signing a formal complaint, the Title IX Coordinator does not become the complainant or otherwise a party in the matter. The complainant is the individual who allegedly experienced the misconduct and retains the option to participate or not to participate in the investigation and grievance process.

6. Is support available outside of the grievance process?

VCU offers reasonable and appropriate supportive measures to a complainant and a respondent, regardless of whether a formal complaint has been filed. The Title IX Coordinator is responsible for coordinating the effective assignment and implementation of supportive measures. More information regarding supportive measures may be found under Section 6 of the policy.

7. What procedures apply when a respondent is both a student and an employee?

In situations in which 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 Title IX Coordinator will determine the procedures to apply based on the facts and circumstances (such as which role predominates in the context of the alleged misconduct). Student-employee respondents may be subject to any of the sanctions applicable to students or employees.

8. What if I am a respondent in a case and want to file a counter-complaint?

The university is obligated to ensure that the grievance process is not abused for retaliatory purposes. The university permits the filing of a counter-complaint, but uses an initial assessment as described in Section 7 above, to assess whether the counter-complaint was made in good faith. Counter-complaints made with retaliatory intent will not be permitted. Counter-complaints filed in good faith will be processed using the grievance procedures described in Section 15 above. The Title IX Coordinator has the discretion to determine if an investigation of a counter-complaint may take place after resolution of the underlying complaint or be resolved through the same investigation as the underlying complaint.