



**Policy on Sexual and Gender-Based Harassment  
and  
Other Forms of Interpersonal Violence  
(Title IX & Non-Title IX)**

**OFFICE FOR DIVERSITY, EQUITY & INCLUSION**

Revised August 24, 2023

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**CAMPUS SECURITY-CLERY ACT:** UVA Wise is committed to helping the campus community provide for their own safety and security. The Annual Security Report and Fire Safety Report containing information on campus security and personal safety, including alerts, fire safety, crime prevention tips, and crime statistics is available at [www.uvawise.edu/ASR](http://www.uvawise.edu/ASR). A copy is available upon request by calling 276-328-0190 or 276-376-3451.

The University of Virginia's College at Wise is accredited by the Southern Association of Colleges and Schools Commission on Colleges to award the baccalaureate degree. Contact the Commission on Colleges at 1866 Southern Lane, Decatur, Georgia 30033-4097 or call 404-679-4500 for questions about the accreditation of The University of Virginia's College at Wise.

## INTRODUCTION

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UVA Wise (the “College”) is committed to maintaining a respectful, professional and nondiscriminatory academic, living and working environment for students, faculty, staff, and visitors. This includes having an environment free from sexual and gender-based harassment, sexual assault, intimate partner violence, stalking, sexual exploitation, complicity and retaliation (“Prohibited Conduct”). The College will take prompt and equitable action to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects.

To foster a climate of respect and security on campus as it relates to preventing and responding to acts of Prohibited Conduct, this policy has been created and serves to demonstrate the College’s commitment to:

- Identifying the forms of Prohibited Conduct that violate this policy;
- Disseminating clear policies and procedures for responding to Prohibited Conduct reported to the College;
- Delivering primary prevention and awareness programs and ongoing training and education campaigns to students and employees so they may identify what behavior constitutes Prohibited Conduct; understand how to report such misconduct; recognize warning signs of potentially abusive behavior and ways to reduce risks; and learn about safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of Prohibited Conduct against a person other than such individual;
- Engaging in investigative inquiry and resolution of reports that are adequate, reliable, impartial, prompt, fair, and equitable;
- Supporting Complainants and Respondents and holding persons accountable for established violations of this policy; and
- Providing a written explanation of the rights and options available to every student or employee that has been the victim of Prohibited Conduct, regardless of when or where the conduct occurred.

In addition, this policy:

1. Identifies the College’s Title IX Coordinator, Deputy Title IX Coordinator, and Title IX Investigators, and describes their roles in compliance with Title IX, the Clery Act and VAWA.
2. Identifies how students and employees can report Prohibited Conduct to the College confidentially and what resources are available both on and off campus to aid them, including employees’ and students’ rights to notify local law enforcement and their right also to decline to notify such authorities.
3. Provides information about how reports are assessed, investigated, and resolved.
4. Provides the College with a means to take all reasonable steps to identify Prohibited Conduct, prevent recurrence, and to correct its discriminatory effects on the Complainant and others, if appropriate

This policy supersedes any conflicting information contained in other College policy with respect to the definitions or procedures relating to conduct prohibited by this policy.

## POLICY APPLICATION

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This policy applies to students, faculty, and staff as defined under this Policy. This Policy also applies to third parties, consisting of contractors, vendors, visitors, applicants, guests, or other third parties (“Third Parties”).

## **TITLE IX PROHIBITED CONDUCT**

The procedures for responding to reports of Title IX Prohibited Conduct are detailed in *Appendix A: Grievance Process for Investigating and Resolving Reports of Title IX Prohibited Conduct*.

## **NON-TITLE IX PROHIBITED CONDUCT**

The procedures for responding to reports of Non-Title IX Prohibited Conduct are detailed in *Appendix B: Procedures for Investigating and Resolving Reports of Non-Title IX Prohibited Conduct*.

## **NOTICE OF NON-DISCRIMINATION & NOTICE OF COORDINATION WITH NON-DISCRIMINATION POLICY**

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The University of Virginia's College at Wise does not discriminate on the basis of age, color, disability, gender identity and/or expression, marital status, national or ethnic origin, political affiliation, race, religion, sex (including pregnancy), sexual orientation, military status (which includes active duty service members, reserve service members, and dependents), veteran status, and family medical or genetic information, in its programs and activities as required by Title IX of the Education Amendments of 1972, the Americans with Disabilities Act of 1990, as amended, Section 504 of the Rehabilitation Act of 1973, Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Governor's Executive Order Number One (2018), and other applicable statutes and University policies. The College prohibits sexual and gender-based harassment, including sexual assault, and other forms of interpersonal violence.

The College recognizes that it is important to coordinate this Policy with other existing policies related to harassment and discrimination knowing that harassment related to an individual's sex, sexual orientation, gender identity or gender expression can occur in conjunction with misconduct and harassment related to a person's race, ethnicity, national origin, religion, age, pregnancy or parenting status, disability, or other protected status. Other acts can also be forms of sex-based discrimination and are prohibited whether sexually-based or not and include dating violence, domestic violence, stalking, and sexual assault. Therefore, when a report is made of harassment or discrimination based on sex as well as harassment or discrimination based on some other protected status, the College's response will be governed by the procedures referenced in this policy. Questions about which policy applies in a specific instance should be directed to the Title IX Coordinator.

Employees should seek further information regarding equal opportunity, disability, harassment, discrimination, and retaliation that **is not based on sex or gender** with:

### **Stephanie Perry, Director of Human Resources**

UVA Wise Resource Center

1 College Avenue, Wise VA 24293

Office: 276-328-0240 | Email: [stephanie.perry@uvawise.edu](mailto:stephanie.perry@uvawise.edu)

### **Equal Opportunity and Civil Rights (EOCR) Main Office**

Washington Hall (Hotel B) - East Range

P.O. Box 400219

Charlottesville, VA 22904

Phone: 434-924-3200 | Email: [uvaecr@virginia.edu](mailto:uvaecr@virginia.edu)

## **TITLE IX COORDINATOR & DEPUTY TITLE IX COORDINATOR / INVESTIGATORS**

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The College has designated a Title IX Coordinator who is responsible for the oversight of this Policy and any procedures related to it. The Title IX Coordinator is responsible for overseeing and resolving all Title IX

reports and identifying and addressing any patterns or systemic concerns that arise during the review of such reports. The Coordinator’s responsibilities include oversight of a prompt, fair, equitable investigation and resolution process for reports of Prohibited Conduct at the College. The Title IX Coordinator also evaluates trends on campus by using reported information and makes recommendations for campus-wide training and education programs and other remedial actions designed to eliminate Prohibited Conduct, prevent its recurrence, and address its effects.

The Deputy Title IX Coordinator serves as designee for the Title IX Coordinator in any case where there is a conflict of interest that would prohibit the Title IX Coordinator from providing fair and impartial oversight.

The Title IX Investigator conducts thorough and impartial investigations into the facts of a case including interviewing the Complainant, Respondent, witnesses or others who may have relevant information, and collecting any other evidence deemed relevant to a case.

**Tabitha Smith, Title IX Coordinator, and Assoc. Vice Chancellor for Advocacy and Opportunity**

Office for Diversity, Equity & Inclusion

Office: 276-328-0131 | Cell: 276-870-5065 | Email: [tabitha.smith@uvawise.edu](mailto:tabitha.smith@uvawise.edu)

**Haley Kiser, Deputy Title IX Coordinator, and Compliance Specialist**

Office for Diversity, Equity & Inclusion

Email: [dei@uvawise.edu](mailto:dei@uvawise.edu)

**Narda Porter, Title IX Investigator and/or Decision Maker**

Office of the Registrar

Office: 276-328-0116 | Email: [narda.porter@uvawise.edu](mailto:narda.porter@uvawise.edu)

**Kendall Rainey, Title IX Investigator**

Office of Athletics

Office: 276-376-4584 | Email: [kendall.rainey@uvawise.edu](mailto:kendall.rainey@uvawise.edu)

**Paul Rollins, Decision Maker**

Chancellor's Office

Office: 276-376-3452 | Email: [pmb6bn@uvawise.edu](mailto:pmb6bn@uvawise.edu)

## PROHIBITED CONDUCT

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Conduct under this Policy for Title IX and Non-Title IX reports is prohibited regardless of the sex, sexual orientation and/or gender identity/expression of the Complainant or Respondent.

### TITLE IX AND NON-TITLE IX PROHIBITED CONDUCT

**Title IX Prohibited Conduct** includes the following specifically defined forms of alleged conduct where the conduct occurred in the United States and in the College’s education program or activity—

- Quid Pro Quo Harassment (Employee-Student)
- Sexual Harassment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Sex-Based Stalking

**Non-Title IX Prohibited Conduct** includes the following defined forms of alleged conduct where the conduct occurred off campus —

- Quid Pro Quo Harassment (Employee-Student)
- Sexual Harassment
- Sexual Assault
- Sexual Exploitation
- Intimate Partner Violence
- Stalking
- Sexual or Gender-Based Harassment
- Complicity
- Retaliation<sup>1</sup>

**ALL PROHIBITED CONDUCT REPORTS MUST MEET EITHER #1 AND/OR #2 BELOW:**

**1. QUID PRO QUO HARASSMENT (EMPLOYEE-STUDENT)**

*Quid Pro Quo* (e.g., this for that) *Harassment* (Employee-Student) is conduct where an employee of the College conditions the provision of an aid, benefit, or service on a student's participating in unwelcome sexual conduct. It applies whether the condition proposed by the Employee is communicated expressly or impliedly.

Examples of *Quid Pro Quo* Harassment (Employee-Student) include but are not limited to:

- A professor offers a student a higher grade in a class in exchange for having sex with or going on a date with the professor.
- An employee offers a student an employment opportunity in exchange for having sex with or going on a date with the employee.
- A student is offered a research opportunity by an employee in exchange for a sexual relationship.

**2. SEXUAL HARASSMENT**

In evaluating whether the unwelcome conduct is so severe, pervasive, and objectively offensive that it effectively denies a person equal access, the College uses a reasonable person standard that takes into account the totality of known circumstances in a particular situation, including but not limited to:

- The frequency, nature, and severity of the conduct;
- The age, disability status, and other characteristics of the parties;
- Whether the conduct was physically threatening;
- The effect of the conduct on the Complainant's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct; and
- Whether the conduct unreasonably interfered with the Complainant's educational or work performance and/or College programs or activities.

The term "effectively denies" does not require a Complainant to be entirely, physically excluded from educational opportunities and also may be established when the conduct so undermines and detracts from the student's educational experience that access is effectively denied. It is recognized that individuals react to Sexual Harassment in a variety of ways and specific manifestations of trauma or "constructive exclusion" is not required.

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<sup>1</sup> NOTE: The definitions in this policy may differ from those used in the civil or criminal laws of the Commonwealth of Virginia. In some cases, the definitions include behaviors that, while not torts or crimes under Virginia law, still violate the College's standards of conduct for faculty, staff, and students. In addition, certain conduct may be punishable under Virginia or federal criminal statutes, civil law, and College policy. These processes are separate and distinct from one another, however, but can run concurrently. The codification of Criminal Sexual Assault is located in Virginia Code §§ 18.2-61 through -67.10 and can be accessed on the Code of Virginia web site at <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC>.

When the alleged conduct is verbal or contains elements of speech or expression, the above standards are implemented consistent with the First Amendment.

### **SEXUAL HARRASSMENT – TITLE IX**

Sexual Harassment is unwelcome conduct on the basis of sex that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College’s education programs or activities. Such conduct includes unwelcome conduct of a sexual nature and may include unwelcome conduct based on sex or sex stereotyping. This Title IX sexual or gender-based prohibited conduct can occur:

- On On-Campus or other property owned or controlled by the College;
- On the context of a College employment or education program or activity, research, online, or internship programs.

### **SEXUAL HARASSMENT – NON-TITLE IX**

Sexual or Gender-Based Prohibited Conduct includes the following specifically defined forms of conduct—Quid Pro Quo Harassment, Sexual or Gender-Based Hostile Environment Harassment, Non-Consensual Sexual Contact, Non-Consensual Sexual Intercourse, Sexual Exploitation, Intimate Partner Violence, Stalking (not on the basis of sex), Retaliation, and Complicity—when such conduct does not meet the definition of Title IX Prohibited Conduct and when this non-Title IX sexual or gender-based prohibited conduct occurs:

- On-Campus or other property owned or controlled by the College;
- in the context of a College employment or education program or activity, including but not limited to College-sponsored study abroad, research, online, or internship programs;
- at the permanent or temporary local residence of a College student, faculty member, employee, and/or visitor;
- off-campus or outside of a College employment or education program or activity, but has continuing effects on or create a hostile environment for Students, Employees, or Third Parties while on-campus or other property owned or controlled by the College or in any College employment or education program or activity.

Sexual or Gender-Based Hostile Environment Harassment that is not covered under the Definition of Title IX Sexual Harassment exists when conduct on the basis of sex, sexual orientation, gender identity or expression, or pregnancy is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual of participating in or benefitting from the College’s programs and/or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and objective perspective.

### **HOSTILE ENVIRONMENT**

In evaluating whether a hostile environment exists, the College will consider the totality of known circumstances, including, but not limited to:

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

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of Non-Consensual

Sexual Contact or Non-Consensual Sexual Intercourse, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

Examples of behavior that may constitute sexual harassment, if sufficiently severe, persistent or pervasive, include the following:

- Calling someone by a sexually-oriented or demeaning name;
- Giving someone unwanted gifts of a sexual nature;
- Displaying sexually-suggestive materials or sending notes, emails, or jokes to a person that are sexually explicit;
- Touching someone sexually without their consent;
- Massaging someone without permission;
- Brushing up against someone repeatedly;
- Continuing to ask out a person who already has said he or she is not interested; or
- Exposing your private body parts to another person.

#### **ALL PROHIBITED CONDUCT INCLUDES:**

1. **SEXUAL ASSAULT** is defined as the following forcible and nonforcible sex offenses<sup>2</sup>:

**Sexual Intercourse** includes (a) vaginal penetration by a penis, object, tongue, or finger; (b) anal penetration by a penis, object, tongue, or finger; and (c) any contact, no matter how slight, between the mouth of one person and the genitalia of another person.

**Sexual Contact** includes (a) intentional touching of the breasts, buttocks, groin or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts; and (b) making another touch you or themselves with or on any of these body parts.

A. **RAPE** is:

- 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 consent of the Complainant.**

B. **SODOMY** is:

- oral or anal sexual intercourse with another person, forcibly
- and/or against that person's will (non-consensually) or
- not forcibly or against the person's will (non-consensually) in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

C. **SEXUAL ASSAULT WITH AN OBJECT** is:

- the use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly
- and/or against that person's will (non-consensually)
- or not forcibly or against the person's will (non-consensually) in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

D. **FONDLING** is:

- the touching of the private body parts of another person (buttocks, groin, breasts) for the

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<sup>2</sup> The Title IX regulation at 34 C.F.R. § 106.30(a) defines Sexual Assault as the forcible and nonforcible sex offenses in the Clery Act at 20 U.S.C. 1092(f)(6)(A)(v).



- purpose of sexual gratification, forcibly
- and/or against that person’s will (non-consensually)
- or not forcibly or against the person’s will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

E. **INCEST** is:

- nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Virginia law. *See Va. Code Ann. § 18.2-366.*

F. **STATUTORY RAPE** is:

- nonforcible sexual intercourse with a person who is under the statutory age of consent in the Commonwealth of Virginia, which is 17.

2. **DATING VIOLENCE**<sup>3</sup> is conduct defined as violence on the basis of sex committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors (1) length of relationship, (2) type of relationship, and (3) frequency of interaction between the persons involved in the relationship.
3. **DOMESTIC VIOLENCE** is defined as violence on the basis of sex committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or who has cohabitated with the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Virginia, or by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of Virginia.
4. **STALKING**<sup>4</sup> is conduct on the basis of sex defined as engaging in a course of conduct directed at a specific person (e.g., the Complainant) that would cause a reasonable person to (A) fear for their safety or the safety of others or (B) suffer substantial emotional distress.

**Course of conduct** means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any actions, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person’s property.

**Substantial emotional distress** means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Stalking includes “cyber stalking,” a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.

**NON-TITLE IX PROHIBITED CONDUCT, IN ADDITION TO THE ABOVE, ALSO INCLUDES:**

1. **SEXUAL EXPLOITATION** is purposely or knowingly doing any of the following:
  - Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give Affirmative Consent to sexual activity;
  - Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or

<sup>3</sup> The Title IX regulation at 34 C.F.R. § 106.30(a) defines Dating and Domestic Violence as defined in 34 U.S.C. 12291(a)(8) and 34 U.S.C. 12291(a)(10).

<sup>4</sup> The Title IX regulation at 34 C.F.R. § 106.30(a) defines Stalking as defined in 34 U.S.C. 12291(a)(30).

- through electronic means (e.g., Skype or livestreaming of images);
- Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person’s intimate parts (including genitalia, groin, breasts or buttocks) in a place where that person would have a reasonable expectation of privacy);
- Recording or photographing private sexual activity and/or a person’s intimate parts (including genitalia, groin, breasts or buttocks) without consent;
- Disseminating or posting images of private sexual activity and/or a person’s intimate parts (including genitalia, groin, breasts or buttocks) without consent;
- Prostituting another person; or
- Exposing another person to a sexually transmitted infection or virus without the other’s knowledge.

2. **INTIMATE PARTNER VIOLENCE** includes any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship.<sup>5</sup> Intimate Partner Violence may include any form of Prohibited Conduct under this policy, including Sexual Assault, Stalking, and Physical Assault (as defined above).

**Physical Assault** is threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person. Intimate Partner Violence includes the use or threat of physical force or restraint carried out with the intent of causing pain or injury to another. Physical Assault will be addressed under this policy if it involves Sexual or Gender-Based Harassment, Intimate Partner Violence, or is part of a course of conduct under the Stalking definition.

Examples of behavior that may constitute Intimate Partner Violence include the following:

- Taking away a person’s cell phone during an argument so the person cannot call a friend or the police for help.
- Threatening to commit self-harm if another does not do what is asked.
- Threatening to physically assault someone the individual is dating if the person does not do what is asked.
- Hitting, punching, pinching, slapping, or choking someone with whom the person is intimately involved.
- Violating a protective order.
- Harming a person’s animals or children while in an intimate relationship.

3. **RETALIATION** means any adverse action taken against a person for making a good faith report of Prohibited Conduct or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. Retaliation may be present even where there is a finding of “no responsibility” on the allegations of Prohibited Conduct. Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Conduct.
4. **COMPLICITY** is any act taken with the purpose of aiding, facilitating, promoting or encouraging the commission of an act of Prohibited Conduct by another person.

## AFFIRMATIVE CONSENT

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For all forms of Sexual Violence set forth above under this policy, consent is defined as “Affirmative Consent.” Affirmative Consent is:

<sup>5</sup> Intimate Partner Violence includes “dating violence” and “domestic violence,” as defined by VAWA. Consistent with VAWA, the College will evaluate the existence of an intimate relationship based upon the Complainant’s statement and taking into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**Affirmative Consent** is:

- Informed (knowing)
- Voluntary (freely given)
- Active (not passive), meaning that, through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed-upon sexual activity

Affirmative Consent cannot be obtained by Force. Force includes (a) the use of physical violence, (b) threats, (c) intimidation, and/or (d) coercion.

- Physical violence** means that a person is exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.
- Threats** are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.
- Intimidation** is an implied threat that menaces or causes reasonable fear in another person. A person's size, alone, does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit).
- Coercion** is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person makes clear a decision not to participate in a particular form of Sexual Contact or Sexual Intercourse, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion was used, the College will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.

Affirmative Consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated. Incapacitation means that a person lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity.

Affirmative Consent may be withdrawn at any time. An individual who seeks to withdraw Affirmative Consent must communicate, through clear words or actions, a decision to cease the sexual activity. Once Affirmative Consent is withdrawn, the sexual activity must cease immediately.

A person who is incapacitated is unable, temporarily or permanently, to give Affirmative Consent because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness 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.

***The College offers the following guidance on Affirmative Consent and assessing incapacitation:***

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

Affirmative Consent to one form of sexual activity does not, by itself, constitute Affirmative Consent to another form of sexual activity. For example, one should not presume that Affirmative Consent to oral-genital contact

constitutes Affirmative Consent to vaginal or anal penetration. Affirmative Consent to sexual activity on a prior occasion does not, by itself, constitute Affirmative Consent to future sexual activity. In cases of prior relationships, the manner and nature of prior communications between the parties and the context of the relationship may have a bearing on the presence of Affirmative Consent.

In evaluating Affirmative Consent in cases of alleged incapacitation, the College asks two questions: (1) *Did the person initiating sexual activity know that the other party was incapacitated? and if not,* (2) *Should a sober, reasonable person in the same situation have known that the other party was incapacitated?* If the answer to either of these questions is “YES,” Affirmative Consent was absent and the conduct is likely a violation of this policy.

Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking or using drugs. The impact of alcohol and other drugs varies from person to person.

One is not expected to be a medical expert in assessing incapacitation. One must look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may manifest signs of incapacitation differently, typical signs include slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, or incontinence. A person who is incapacitated may not be able to understand some or all of the following questions: “Do you know where you are?” “Do you know how you got here?” “Do you know what is happening?” “Do you know whom you are with?”

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

***Being impaired by alcohol or other drugs is no defense to any violation of this policy.***

Examples of behavior that may constitute sexual assault include the following:

- Engaging in sexual activity with an unconscious or semi-conscious person;
- Engaging in sexual activity with someone who is asleep or passed out;
- Engaging in sexual activity with someone who has said “no”;
- Engaging in sexual activity with someone who is vomiting, unable to stand without assistance, or has to be carried to bed;
- Allowing another person to engage in sexual activity with your partner without his or her consent;
- Requiring any person to perform any sexual activity as a condition of acceptance into a fraternity, sorority, athletic, or any other organization affiliated with the College;
- Telling someone you will “out” them if they don’t engage in sexual activity (e.g., threatening to disclose the person’s sexual orientation without their consent);
- Telling someone you will fail them or give them a grade different from what they deserve if they don’t agree to engage in sexual activity; or
- Facilitating or assisting in a sexual assault including purchasing or providing alcohol or drugs to further a sexual assault.

## CONSENSUAL RELATIONSHIPS

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UVA Wise recognizes that consenting adults associated with the College should generally be free to enter into personal relationships of their choice. At the same time, such relationships must not jeopardize the fundamental right of every member of the College community to participate in College activities free from conflicts of interest, favoritism, bias, and/or exploitation. Further, relationships between individuals in

inherently unequal positions are often less consensual than individuals may perceive. Romantic or sexual relationships between certain categories of individuals affiliated with the College can jeopardize and undermine the integrity and essential educational mission of UVA Wise and disrupt the workplace and academic learning environments.

**The College's Policy Statement:**

The College prohibits certain relationships, especially those of a romantic or sexual nature, between individuals in inherently unequal positions. In cases of a pre-existing relationship, the individual in a position of authority must recuse themselves from all aspects of academic and supervisory responsibility and provide appropriate notification to their supervisor, department chair, dean, or human resources business partner, so that person can put in place adequate alternative supervisory or evaluative arrangements.

Personal relationships can create conflicts of interest and undermine the real or perceived integrity of the supervision or evaluation provided. As a matter of sound judgment and professional ethics, faculty members and staff have a responsibility to avoid any conflict between their professional responsibilities and personal interests in terms of their dealings or relationships with students or trainees. Students and trainees also must avoid conflicts of interest when serving in an instructional or supervisory role. This responsibility includes avoiding engaging in romantic or sexual relationships with or making sexual overtures to students or trainees by those in a position of authority by virtue of their specific teaching, research, or administrative assignments so that supervision and evaluation is conducted fairly and without any perception of favoritism or bias.

Equally compelling is the interest in avoiding potential harm to students and trainees as well as the liability that could occur, for example, if facts regarding a sexual relationship or sexual overture are demonstrated that support a legal claim of sexual harassment by either party. Sexual harassment and other forms of sexual and gender-based misconduct are addressed in this Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence.

*Faculty and Relationships with Undergraduate Students:*

A romantic or sexual relationship between a faculty member and an undergraduate student enrolled at the University of Virginia's College at Wise and/or participating in a College program is strictly prohibited. In this context, faculty includes full-time and part-time faculty members of all ranks and classifications (academic, administrative or professional, wage, unpaid, and visiting). This prohibition applies regardless of current or future academic or supervisory responsibilities for that student. A faculty-undergraduate student romantic or sexual relationship is problematic under any circumstance. The inherent power differential between a faculty member and an undergraduate student undermines the possibility of meaningful consent. Moreover, such a relationship introduces dynamics that detract from the educational mission of the College.

*Faculty and Relationships with Postgraduate Students or Trainees:*

A romantic or sexual relationship between a faculty member and a postgraduate student or trainee is prohibited whenever the faculty member has had, has, or in the future might reasonably be expected to have, academic or supervisory responsibility over the student or trainee. This prohibition includes, for example, any faculty member who teaches in a graduate student's department or program. Conversely, no faculty member shall exercise academic or supervisory responsibility over a student with whom they have previously had a romantic or sexual relationship.

*Staff Members and Relationships with Students or Trainees:*

Certain staff positions, based on their role in the academic environment, also have authority over students or trainees and influence their experience at UVA Wise. These positions include, but are not limited to, deans and other senior administrators, coaches, supervisors of student employees, student services staff, residence professional staff, and others who mentor or advise students or trainees). Therefore, a romantic or sexual relationship between such a staff member and an undergraduate student is prohibited. In addition, a

relationship between a staff member and a postgraduate student or trainee over whom the staff member has had, has, or is likely in the future to have, such authority over is prohibited.

*Relationships in Other Contexts:*

Consensual romantic or sexual relationships between adult employees, including faculty, are not generally prohibited by this policy. However, relationships between employees in which one has direct or indirect authority over the other are potentially problematic. This includes, for example, not only relationships between supervisors and their staff, but also between senior faculty and junior faculty, and between faculty and both academic and non-academic staff.

**Compliance with Policy:**

When there are relationships pre-existing or develops, the employee must both recuse themselves from any supervisory or academic responsibility over the student or trainee and notify their supervisor, department chair, dean, or human resources business partner about the situation so that person can put in place adequate alternative supervisory or evaluative arrangements. This obligation to recuse and notify is required even if the pre-existing relationship has ended. Failure to disclose the relationship in a timely fashion will itself be considered a violation of this policy. The College understands that romantic or sexual relationships are often private in nature and treats such information sensitively and, to the extent practicable, privately on a need-to-know basis.

In those rare situations where it is programmatically infeasible to provide alternative supervision, academic responsibility, and/or evaluation, the appropriate dean, director, or supervisor must approve any academic responsibility, evaluative, and compensation actions.

For academic faculty, violations of this policy may result in disciplinary action, including but not limited to, mandatory training or counseling, reprimand, probation, loss of privileges, suspension, or termination. In particular, knowingly violating the prohibition with respect to undergraduate students shall be deemed misconduct as described in the Faculty Handbook.

If an individual has any doubt whether a relationship falls within this policy, they should disclose the facts and seek guidance rather than fail to disclose.

## DEFINITIONS

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Additional terms used in this Policy are defined below.

**COMPLAINANT:** The person who is reported to be the subject of conduct that could constitute a violation of this Policy.

**EDUCATION PROGRAM OR ACTIVITY:** All locations, events, or circumstances over which the College exercised substantial control over both the Respondent and the context in which the Title IX Prohibited Conduct occurred and any building owned or controlled by the College and/or a student organization that is officially recognized by the College.

**EMPLOYEE:** Categories of individuals employed at UVA Wise include:

- **Classified Staff:** A salaried non-faculty employee hired before July 1, 2006, and covered by the Virginia Personnel Act and State Human Resource policies.
- **University Staff:** A salaried non-faculty employee, including transfers from other state agencies, hired on or after July 1, 2006, and covered by College and/or University Human Resources policies.

- **Academic Faculty:** Members elected initially in positions whose major emphasis is on teaching and research. In addition, members employed initially in academic administrative positions with some responsibilities for teaching and research and who possess suitable academic qualifications may be designated members of the Academic Faculty, if deemed appropriate by the Chancellor, the Provost, and the Academic Dean.
- **General Faculty:** Members employed, usually before July 1, 2006, in administrative positions with minimal responsibilities for teaching and research.

**FERPA:** The Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g; 34 C.F.R. Part 99.

**FORMAL GRIEVANCE PROCESS:** means “Process A,” a method of formal resolution designated by the recipient to address conduct that falls within this Policy, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).

**GENDER:** Used performed synonymously with sex to denote whether a person anatomically is male or female at birth, e.g., “he’s a boy” or “she’s a girl.”

**GENDER BIAS:** A pre-formed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender, e.g., male or female.

**GENDER IDENTITY:** A person’s internal sense of being male, female, or a combination of both; that internal sense of a person’s gender may be different from the person’s gender at birth. *Note: A transgender person may express their gender identity through gender characteristics, such as clothing, hair, voice, mannerisms, or behaviors that do not conform to the gender-based expectations of society.*

**GENDER IDENTITY BIAS:** A pre-formed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender identity, e.g., bias against transgender or gender non-conforming individuals.

**GENDER NON-CONFORMING:** A person who does not conform to the gender-based expectations of society, e.g., a woman dressed in traditionally male clothing, or a man wearing makeup. Including nonbinary or gender nonspecific.

**PREPONDERANCE OF THE EVIDENCE:** A standard of proof in which the totality of the evidence offered in support of a fact is greater or more convincing than the evidence which is offered in opposition to it; given the totality of information the version of events that is more likely than not. The preponderance of the evidence is understood to require more than 50 percent certainty to determine guilt.

**PROTECTED CHARACTERISTICS/STATUSES:** Age, color, disability, gender identity and/or expression, marital status, national or ethnic origin, political affiliation, race, religion, sex (including pregnancy), sexual orientation, veteran status, and family medical or genetic information.

**PROHIBITED CONDUCT:** A broad term that includes sexual or gender-based harassment, sexual assault, sexual exploitation, intimate partner violence, stalking, complicity, and retaliation.

**PROCESS B:** Apply only when the Formal Grievance Process does not apply to reported conduct, as determined by the Title IX Coordinator.

**RESPONDENT:** The person who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct under this policy.

**REPORTER:** Any person, including students, faculty, staff, and third parties, who discloses an incident of alleged Prohibited Conduct to the Title IX Coordinator, Deputy Title IX Coordinator, or a Responsible Employee. Reporters include any individuals who disclose such information.

**STUDENT:** A new or re-admitted student will be considered enrolled if the following conditions are met:

- 1) The student is pre-registered for courses in any term (fall, spring or summer); and
- 2) The student's attendance in at least one class has been verified.

After classes begin, students need to be attending classes in order to continue their enrollment status. Students are considered continuously enrolled when they are registered for consecutive fall and spring terms. Please note that those who arrive on campus prior to the start of classes for official College functions including, but not limited to student employment, training, athletics, band, and Expedition are considered UVA Wise students.

**UNITED STATES:** The physical geography of the United States of America and its territories.

## PRIVACY AND CONFIDENTIALITY

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The College is committed to protecting the privacy of all individuals involved in the investigation and resolution of a report under this policy. The College also is committed to providing assistance to help students, employees and third parties make informed choices. With respect to any report under this policy, the College will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to assess the report and to take steps to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects.

Privacy and confidentiality have distinct meanings under this policy.

**PRIVACY** means that information related to a report of Prohibited Conduct will be shared with a limited circle of College employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All Employees who are involved in the College's response to reports of Prohibited Conduct receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law.

Further, the College will maintain, any accommodations or supportive measures provided to the Complainant or the Respondent to the extent that maintaining such confidentiality would not impair the College's ability to provide the accommodations or supportive measures.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"). All documentation related to a student's report, investigation, and resolution are protected by FERPA and will not be released, except as required by law. Non-identifying information about a report may be shared with the Campus Police Chief or designee to comply with the Clery Act. A Complainant's name will never be published in connection with the College's obligations under the Clery Act. In addition, the College does not publish identifiable information regarding victims in the College's Daily Crime Log or online. In addition, any person including a victim of Prohibited Conduct or a Respondent, may request that her or his directory information on file be removed from public sources. Complainants or Respondents may request that directory information on file be removed from public sources by contacting the Title IX Coordinator at [tabitha.smith@uvawise.edu](mailto:tabitha.smith@uvawise.edu) or 276-870-5065.

The privacy of an individual's medical and related records generally is protected by the Health Insurance Portability and Accountability Act ("HIPAA"), except 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 may be restricted in accordance with the Virginia Freedom of Information Act, and, where applicable, Department of



Human Resources Management (“DHRM”) Policy 6.05 Personnel Records Disclosure and DHRM Policy 6.10 Records Management.

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

The following classifications of individuals are Confidential Employees under College policy:

**Licensed Professional Counselors** with the Commonwealth of Virginia whose official College responsibilities include providing mental health counseling to members of the campus community are not required by Title IX to report any information regarding an incident of Prohibited Conduct to the Title IX Coordinator or other College officials.

**Registered Nurses/Family Nurse Practitioners** who are registered with the Commonwealth of Virginia and whose official College responsibilities include providing health services to members of the campus community are not required by Title IX to report any information regarding an incident of Prohibited Conduct to the Title IX Coordinator or other College officials.

**Athletic Trainers** with NATABOC certification and who are licensed by the Commonwealth of Virginia and whose official College responsibilities include the evaluation and treatment of student-athletes; determining the appropriate application of emergency procedures; and providing first aid as needed are not required by Title IX to report any information regarding an incident of sexual violence to the Title IX Coordinator or other College official.

**Faculty and Employee Assistance Program** offers quality, professional, and comprehensive services, tailored to your individual needs. For employees and their families, we offer assessment, short-term counseling, referral, and follow-up at no cost to the employee for a wide variety of personal concerns.

**Ombuds** acts as a trusted navigator for current faculty, staff and students seeking guidance, information, insight, and potential options to overcome an existing conflict or concern. The University Ombuds is a transformative and engaging university resource who helps empower individuals to proactively address their conflict and concerns in a positive, constructive method while assisting in an impartial, independent, informal, and confidential manner.

In order to identify patterns or systemic issues related to Prohibited Conduct, the College will collect non-identifying aggregate data on an annual basis about incidents of Prohibited Conduct from the College’s LPCs, athletic trainers, and health care providers, as well as the local advocacy center; personally-identifiable information will remain confidential.

**Employee Reporting Responsibilities:** Title IX uses the concept of notice, and imposes obligations for a “prompt and effective remedy” on colleges and universities when notice of sex/gender discrimination or harassment is given to a “responsible employee.” A school has notice if a reasonable employee knew, or in the exercise of reasonable care should have known, about the harassment. Every faculty, staff, and volunteer

on campus who works with students or minors, and every person identified as a Campus Security Authority (CSA) under the Clery Act must immediately report to the Title IX Coordinator any Prohibited Conduct reported to them or observed by them, including the name of the Complainant and Respondent, if known, and all known details as a “Responsible Employee”. The only College members that are exempt from reporting Prohibited Conduct are licensed counselors, registered nurses/family nurse practitioners, and athletic trainers employed in such capacities (i.e., Confidential Employees). The College requires everyone in the campus community, including Confidential Employees, to report the suspected abuse of children (those under the age of 18).

Public awareness events such as “Take Back the Night,” the Clothesline Project, candlelight vigils, protests, “survivor speak-outs,” or other forums in which students, staff, or faculty members disclose incidents of Prohibited Conduct, are not considered a report of Prohibited Conduct or notice to the College of Prohibited Conduct for purposes of triggering the College’s obligation to investigate any particular incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts, and the College will provide information about Title IX and Clery rights at these events. Similarly, information disclosed during a student’s participation as a subject in an Institutional Review Board-approved human subjects research protocol (“IRB Research”) is not considered a report of Prohibited Conduct or notice to the College of Prohibited Conduct for purposes of triggering the College’s obligation to investigate any particular incident(s). Institutional Review Boards may, in appropriate cases, require researchers to provide such information to all Student subjects of IRB Research.

## REPORTING

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Any person who experiences Prohibited Conduct or who is aware of a member of the College community who has been subject to Prohibited Conduct is strongly encouraged to contact the Title IX Coordinator and the Campus Chief of Police or designee:

**Tabitha Smith, Title IX Coordinator**

Office for Diversity, Equity & Inclusion – Cantrell Hall

1 College Avenue, Wise VA 24293

Office: 276-328-0131 | Cell: 276-870-5065 | Email: [tabitha.smith@uvawise.edu](mailto:tabitha.smith@uvawise.edu)

**Beau Boggs, Chief of Police and Director of Public Safety**

UVA Wise Campus Police Department – Cantrell Hall

1 College Avenue, Wise VA 24293

Office: 276-328-0190 | Afterhours non-emergencies: 276-328-3756 | Emergencies: 911

In addition, an individual does not have to be a member of the College community to file a report under this policy. The College also will take action to respond to allegations of Prohibited Conduct *when the College knows or reasonably should know* based on any available information that Prohibited Conduct has occurred.

Complainants may simultaneously pursue criminal and College disciplinary action. The College will support Complainants in understanding and assessing their reporting options. Upon receipt of a report, the College will inform individuals of their right to file (or decline to file) criminal charges as well as the availability of medical, counseling, and support services, and additional supportive measures to prevent contact between a Complainant and a Respondent, such as housing, academic, transportation and working accommodations, if reasonably available (see Supportive Measures). Making a report to the College does not require participation in any subsequent College proceedings, nor is a report required in order for a Complainant to receive supportive or remedial measures.

Although the College strongly encourages all members of its community to report violations of this policy to law enforcement, it is the Complainant’s choice whether to make such a report and victims have the right to

decline involvement with the police.<sup>6</sup> The College's Chief of Police and Director of Public Safety or designee will assist any victim with notifying local police if they so desire. The Virginia State Police also may be reached directly by calling the Virginia State Police number, which is referenced in the "Off Campus" resources section of this policy.

If the Complainant would like to contact campus police and/or local authorities either of the following processes may be used:

*A Complainant may choose NOT to have law enforcement contacted and no report filed BUT still may have a PERK kit collected. (Note: The Complainant later may file a report and may pursue criminal charges.) Kits from victims who elect not to report are known as "anonymous physical evidence recovery kits" and will be stored at the Division of Consolidated Laboratory Services (the Division) for two years, although the Division, the victim, or the law-enforcement agency may elect for the kits to be retained for a longer period of time. If the victim later elects to report the sexual assault, the victim's kit will be released to law enforcement.*

*A Complainant may file a report and ask that the investigation and charges be pursued immediately. While the prosecuting attorney is still the decision-maker in whether the perpetrator is charged criminally, the Complainant can cooperate and provide as much timely cooperation and information as may be possible.*

**IMPORTANT:** Victims under the age of 18 who file a report with campus police will be deemed a child in need and the appropriate authorities will decide of whether to pursue charges. *Please see Virginia Code § 16.1-278.4 for further information.* **Physical evidence recovery kit examination; minors.** Provides that if a parent or guardian of a minor refuses to consent to a physical evidence recovery kit examination of the minor, the minor may consent.

To the extent of the Complainant's cooperation and consent, College offices, including, but not limited to, The Office for Diversity, Equity & Inclusion, Counseling Center, The UVA Student and Employee Health Wise Clinic and Campus Police will work cooperatively to ensure that the Complainant's health, physical safety, work and academic status are protected, including taking interim measures before the final outcome of an investigation.

The College will provide resources to any person who has been a victim of Prohibited Conduct, and will apply appropriate disciplinary procedures to those who violate this policy. The procedures set forth below afford a prompt and equitable response to reports of Prohibited Conduct, maintain privacy and fairness consistent with applicable legal requirements, and impose appropriate sanctions on violators of this policy. The College will provide due process to both parties involved; however, the College must ensure that steps are taken to afford due process rights to the Respondent and do not restrict or unnecessarily delay the Title IX protections of the Complainant.

## REPORTING TIMEFRAMES

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The College encourages prompt reporting of All Prohibited Conduct so that the College can respond promptly and equitably; however, the College does not limit the timeframe for reporting. If the Respondent is no longer affiliated with the College at the time the report is made, the College will provide reasonably appropriate remedial measures, assist the Complainant in identifying external reporting options, and take other reasonable steps to respond under Title IX. The College may continue to investigate for purposes of complying with Title IX and take steps to prevent the recurrence of such conduct and remedy the effects, if appropriate.

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<sup>6</sup> The Title IX Coordinator is a "Responsible Employee" under Title IX and also a "Campus Security Authority" under the Clery Act. Statistical information not including the victim's identifying information will be provided to the College official responsible for compiling the College's crime statistics for the annual security report, even if the victim chooses not to report the incident to campus public safety.

A Student or Employee determined by the College to have committed an act of Prohibited Conduct is subject to disciplinary action, up to and including separation from the College through expulsion or termination of employment. Third Parties who commit Prohibited Conduct may have their relationships with the College terminated and/or their privileges of being on College premises withdrawn.

The Formal Grievance Process and the Sexual Misconduct Procedures referenced below provide for prompt and equitable response to reports of Prohibited Conduct. The procedures designate specific timeframes for major stages of the process and provide for thorough and impartial investigations that afford all parties notice and an opportunity to present witnesses and evidence and to view the information that will be used in determining whether a policy violation has occurred. The College applies the preponderance of the evidence standard when determining whether this policy has been violated. Preponderance of the evidence means that it is more likely than not that a policy violation occurred.

## PRESERVATION OF EVIDENCE & MEDICAL ATTENTION

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After an incident of Prohibited Conduct, the victim should consider seeking medical attention as soon as possible. Victims who agree to have forensic evidence collection conducted as part of their care can locate hospitals with such emergency rooms in the *Resources* section of this policy or by calling Campus Police, available 24 hours a day, at 276-328-COPS or 911. Norton Community Hospital has the ability to complete a Physical Evidence Recovery Kit (PERK) to preserve evidence in case the Complainant decides to file a police report.

### **What is a Physical Evidence Recovery Kit (PERK)?**

A PERK is a special medical exam performed by a Sexual Assault Nurse Examiner (SANE) to collect evidence that may be helpful in a criminal prosecution or investigation of a sexual assault. The PERK gathers forensic evidence and initial testing and treatment for pregnancy and sexually transmitted infections. SANEs have received special training in the identification, collection and documentation of forensic evidence that may be found on a victim's body or clothing, and they have received specialized education in the care of patients who have experienced sexual assault or abuse.

In Virginia, a victim may request the collection of evidence even if the victim chooses not to make a report to law enforcement. If the victim discloses that she or he was assaulted on campus, Campus Police will be contacted by health care provider and will retrieve and retain the PERK Kit in the Campus Police evidence area until any criminal case is concluded and a destruction order is issued by a circuit court. A victim does not have to make a criminal complaint or decide whether to file criminal charges to have a PERK kit collected. If a victim does want to report the crime, the police will take custody of the PERK and send it to the forensic lab within 60 days for testing. The victim has the right to request the status and results of the testing. Victims should make sure to keep their contact information up to date with the investigator and/or Commonwealth's Attorney assigned to their case.

It is important that a victim of sexual assault not bathe, douche, smoke, change clothes or clean the bed/linen/area where the victim was assaulted if the offense occurred within the past 96 hours, so that evidence may be preserved. In circumstances of sexual assault, if victims do not opt for forensic evidence collection, healthcare providers still can treat injuries and take steps to address concerns of pregnancy and/or sexually transmitted infections. Victims of Prohibited Conduct also are encouraged to preserve evidence including saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs or other copies of documents, if they have any that may be useful to College investigators or Campus or local police.

As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or obtaining protection from abuse orders related to the incident more

difficult. If a victim chooses not to make a report regarding an incident, he or she nevertheless should consider speaking with the Director of Public Safety/Chief of Police or local law enforcement to preserve evidence in the event that she or he changes her/his mind at a later time.

## COLLEGE ALCOHOL & DRUGS AMNESTY

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Alcohol and other drugs amnesty is intended to encourage students to seek assistance for themselves or someone else by reducing fear of facing the College's Student Code of Conduct for other misconduct. It is an attempt to remove barriers that prevent students from seeking the medical attention or other assistance that they need when Prohibited Conduct has occurred.

This Policy does not necessarily grant amnesty for criminal, civil or legal consequences for violations of federal, state or local laws. Campus Police are sworn police officers with full arrest authority and, in some circumstances, they have discretion to exercise that authority as circumstances dictate according to their training and professional experience.

However, the health and safety of the College community is a primary concern and this Policy may provide amnesty for students from violations of the College's Student Code of Conduct where alcohol and/or other drug use is evidenced if granted by the Vice Chancellor of Student Affairs or designee.

## PROTECTION ORDERS & NO CONTACT ORDERS

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### **What are Protective Orders?**

Protective Orders are judicial orders issued by a judge or magistrate to protect the health and safety of a person who reports being the victim of any act involving violence, force or threat that results in bodily injury or places that person in fear of death, sexual assault or other bodily injury.

In Virginia, there are three kinds of Protective Orders that can protect you and others in your family or home:

1. Emergency Protective Order (expires at the end of the third day following issuance or the next day court is in session, whichever is later). These may be obtained by a Complainant or by the police when they respond to a call where violence has occurred or may imminently occur.
2. Preliminary Protective Order (lasts 15 days or until a full hearing).
3. Protective Order (may last up to 2 years).

### **How will I know when the Emergency Protective Order ends?**

You should look on the Protective Order for the date and time it expires. If you need protection for a longer period of time, you must ask the court for a Preliminary Protective Order.

### **Where do I go to request a Preliminary Protective Order?**

If the person from whom you want protection is a family or household member or a juvenile, or if you are a juvenile, you should go to the juvenile and domestic relations district court. Otherwise, you should go to the general district court in the jurisdiction in which you reside.

### **How do I get a Preliminary Protective Order?**

An Emergency Protection Order may be available through a law enforcement officer or the victim may request one from the Wise County Magistrate's Office located at the Wise County Justice Center, 5617 Patriot Drive, Wise, Va. 24293 (Phone: 276-328-8947). The College cannot apply for a legal order of protection, no contact order, or restraining order for a Complainant or on their behalf. The victim is required to apply directly for these orders and may be assisted by Campus Police or local law enforcement.

The victim must fill out court forms. If this matter will be in the juvenile and domestic relations district court, you file the forms with the Court Services Unit. If it will be in the general district court, you file the forms in the general district court clerk's office. You then may go into a courtroom where a judge may ask you questions to decide whether to issue a Preliminary Protective Order.

For assistance filling out protective order petition forms online, you can go to [www.courts.state.va.us](http://www.courts.state.va.us) and select "Online Services" then "Assistance with Protective Orders (I-CAN!)" or you may go directly to: <http://www.ican.courts.state.va.us>.

### **How much does it cost to file for a Protective Order?**

There is no cost.

### **What should I bring with me?**

You should bring the name, address and identifying information of the person from whom you are seeking protection and a full description of the event(s) that led you to seek a protective order. The address should be the place where the person lives and not a P.O. Box. You also should bring your copy of the Emergency Protective Order and information about the warrant or petition alleging an act of violence, force or threat, if either was issued.

### **How can the Campus Police assist me?**

The Campus Police Chief or designee is available to assist individuals seeking a protective order and will coordinate safety plans in collaboration with Student Life or Human Resources, when appropriate. The College complies with Virginia's law in recognizing orders of protection and encourages any person who obtains an order of protection from Virginia or any other state to provide a copy to Campus Police and the Title IX Coordinator. A Complainant may then meet with Campus Police to develop a Safety Action Plan, which is a plan for Campus Police and the victim to reduce risk of harm while on campus or coming and going from campus. This plan may include, but is not limited to: escorts, special parking arrangements, changing classroom location, etc.

### **What is a No Contact from the College?**

A No Contact Order from the College can serve as a supportive measure from the College's Title IX Coordinator or designee. This prohibition of contact is between a Respondent and a Complainant including, but not limited to, in person and/or via third party, phone, text, or any form of social media.

Regardless of whether a Complainant elects to pursue a criminal report, the College will assist a Complainant and will provide each Complainant with a written explanation of his/her rights. If a No Contact Order is placed the Title IX Coordinator also will assess any other supportive measures with both parties that may include, but is not limited to: escorts, special parking arrangements, changing classroom location, etc.

## **ONLINE HARASSMENT AND MISCONDUCT**

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This Policy is written and interpreted broadly to include online and cyber manifestations of any of the Prohibited Conduct described above, when the Prohibited Conduct occurs in or has an effect on the College's education program and activities or use the College's networks, technology, or equipment. While the College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects.

Any online postings or other electronic communication by students occurring completely outside of the College's control (e.g., not on College networks, websites, or between College email accounts) will only be subject to this Policy when such online conduct can be shown to cause a substantial in-program disruption. Off-campus harassing speech by employees, whether online or in person, may be regulated by the College

only when such speech is made in an employee's official or work-related capacity.

## OBLIGATION TO PROVIDE TRUTHFUL INFORMATION

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The College adopted an Honor System in 1956 under which all students pledge to cooperate in acting honestly and honorably. The primary focus of the Honor System is to address instances of dishonorable conduct within the academic setting. Lying, cheating, and stealing relative to academic work are issues to which the Honor System applies. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions under the College's Honor Code and disciplinary action under the appropriate Employee disciplinary policy. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

## RECORDKEEPING

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The College will retain all records related to reports of Prohibited Conduct under this policy in a locked storage area in the Office for Diversity, Equity & Inclusion. The College will destroy all case records after the applicable Commonwealth retention period.

## NON-RETALIATION

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It is unlawful under Title IX and a violation of College policy to retaliate against any individual who has brought a good-faith report of Prohibited Conduct, who has assisted in the investigation of a report of Prohibited Conduct, or who has otherwise participated in proceedings under this policy. Retaliation, whether actual or threatened, destroys the sense of community and trust that is critical to a learning and work environment. The College considers acts or threats of retaliation in response to such disclosures or participation to constitute a serious violation of College policy, which may result in disciplinary action, up to and including dismissal, against the individual responsible for retaliation.

For purposes of this policy and procedures, retaliation means any adverse action taken against a person for making a good faith report of Prohibited Conduct or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. Retaliation may be present even where there is a finding of "no responsibility" on the allegations of prohibited conduct. Retaliation does not include good faith actions lawfully pursued in response to a report of prohibited conduct.

Retaliation may include the following forms of behavior:

- employment actions such as termination, refusal to hire, or denial of promotion;
- other actions affecting a person's employment or academic or school-related activities such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance; and
- any other action such as an assault or unfounded civil or criminal charges that are likely to deter a reasonable person from pursuing their rights.

*NOTE: Adverse actions do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing" a colleague, not talking to a student, or negative comments that are justified by a student or employee's poor academic or work performance or history.*

If you believe that you are being retaliated against because of making a report or participating in an

investigation in violation of this policy, you should promptly report your concerns to the Title IX Coordinator or Campus Safety.

*Any other allegation of retaliation **not related to this policy** should be reported immediately to Human Resources at 276-328-0240.*

## RISK REDUCTION

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Experiencing Prohibited Conduct is never the victim's fault. Only abusers are responsible for the abuse they perpetrate. However, the following are some strategies to reduce risk of victimization. The [Rape, Abuse, & Incest National Network](#) (RAINN) encourage individuals to:

- **Be aware** of your surroundings. Knowing where you are and who is around you may help you to find a way to get out of a bad situation.
- **Avoid isolated areas.** It is more difficult to get help if no one is around.
- **Walk with purpose.** Even if you don't know where you are going, act like you do.
- **Try not to load yourself down** with packages or bags as this can make you appear more vulnerable.
- **Make sure your cell phone is with you** and charged.
- **Avoid putting music headphones in both ears** so that you can be more aware of your surroundings, especially if you are walking alone.
- **When you go to a social gathering, go with a group of friends.** Arrive together, check in with each other throughout the evening, and leave together. Knowing where you are and who is around you may help you to find a way out of a bad situation.
- **Trust your instincts.** If you feel unsafe in any situation, go with your gut. If you see something suspicious, contact law enforcement immediately (local authorities can be reached by calling 911 in most areas of the U.S.).
- **Don't leave your drink unattended** while talking, dancing, using the restroom, or making a phone call. If you've left your drink alone, just get a new one.
- **Don't accept drinks from people you don't know or trust.** If you choose to accept a drink, go with the person to the bar to order it, watch it being poured, and carry it yourself. At parties, don't drink from the punch bowls or other large, common open containers.
- **Watch out for your friends, and vice versa.** If a friend seems out of it, is too intoxicated for the amount of alcohol they've had, or is acting out of character, get him or her to a safe place immediately.
- **If you suspect you or a friend has been drugged, contact law enforcement immediately (local authorities can be reached by calling 911 in most areas of the U.S.).** Be explicit with doctors so they can give you the correct tests (you will need a urine test and possibly others).
- If you need to get out of an uncomfortable or scary situation here are some things that you can try:
  - **Remember that being in this situation is not your fault.** You did not do anything wrong, it is the person who is making you uncomfortable that is to blame.
  - **Be true to yourself.** Don't feel obligated to do anything you don't want to do. "I don't want to" is always a good enough reason. Do what feels right to you and what you are comfortable with.
  - **Have a code word with your friends or family** so that if you don't feel comfortable you can call them and communicate your discomfort without the person you are with knowing. Your friends or family can then come to get you or make up an excuse for you to leave.
  - **Lie.** If you don't want to hurt the person's feelings it is better to lie and make up a reason to leave than to stay and be uncomfortable, scared, or worse. Some excuses you could use are: needing to take care of a friend or family member, not feeling well, having somewhere else that you need to be, etc.
- **Try to think of an escape route.** How would you try to get out of the room? Where are the doors?



Windows? Are there people around who might be able to help you? Is there an emergency phone nearby?

- **If you and/or the other person have been drinking**, you can say that you would rather wait until you both have your full judgment before doing anything you may regret later.

## PREVENTION AND EDUCATION

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The College engages in comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to reduce and eliminate Prohibited Conduct which:

- Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research, or assessed for value, effectiveness, or outcome; and
- Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community and societal levels.

Educational programming consists of primary prevention and awareness programs for all incoming students and new employees and ongoing awareness and prevention campaigns for students and employees that:

- a. Identifies domestic violence, dating violence, sexual assault and stalking as Prohibited Conduct;
- b. Defines using definitions provided both by the Department of Education as well as state law what behavior constitutes domestic violence, dating violence, sexual assault, and stalking;
- c. Defines what behavior and actions constitute consent to sexual activity in Virginia and/or using the definition of consent found in this policy;
- d. Provides a description of safe and positive options for bystander intervention. Bystander intervention means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene;
- e. Delivers information on risk reduction. Risk reduction means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and help individuals and communities address conditions that facilitate violence; and
- f. Provides an overview of the information contained in the Annual Security Report in compliance with the Clery Act.

### **FACULTY, STAFF AND STUDENT TRAINING**

In addition to the Title IX Coordinator's core responsibilities, additional services to the College community will include, working with campus resources to provide ongoing training to new/current students, faculty, and staff on Title IX issues and procedures. The College will ensure that Responsible Employees with the authority to address sexual violence, including sexual harassment, know how to respond appropriately to reports of prohibited conduct, that they are obligated to report prohibited conduct to the Title IX Coordinator, and that all employees understand how to respond to such reports. Employees are required to receive training each academic year on their responsibilities as a Responsible Employee. Additionally, the Office for Diversity, Equity & Inclusion is responsible for overall annual training to Campus Security Authorities per the Clery Act and Responsible Employees per Title IX.

### **BEING AN ACTIVE BYSTANDER**

Bystanders play a critical role in the prevention of sexual and relationship violence. Bystanders are "individuals who observe violence or witness the conditions that perpetuate violence. These individuals are not directly involved but have the choice to intervene, speak up, or do something about it."<sup>7</sup> The College promotes a culture of community accountability where bystanders are actively engaged in the prevention of violence without causing further harm. Individuals may not always know what to do even if they want to

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<sup>7</sup> Burn, S.M. A situational model of sexual assault prevention through bystander intervention. *Sex Roles*, 60, 779-792.

help. Below is a list<sup>8</sup> of some ways to be an active bystander. If you or someone else is in immediate danger, if a person is yelling at or being physically abusive towards another and it is not safe for you to interrupt, dial 911.

- Watch out for your friends and fellow students/employees. If you see someone who looks like he or she could be in trouble or need help, ask if he or she is ok.
- Confront people who seclude, hit on, attempt to make out with, or have sex with people who are incapacitated.
- Speak up when someone discusses plans to take sexual advantage of another person.
- Believe someone who discloses sexual assault, abusive behavior, or experience with stalking.
- Refer people to on or off campus resources listed in this policy for support in health, counseling, or with legal assistance.

## ANNUAL REVIEW

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This policy is maintained by the Office for Diversity, Equity & Inclusion. The College will review and update this policy, as appropriate, by October 31 of each year. The College will evaluate, among other things, any changes in legal requirements, existing College resources, and the resolution of cases from the preceding year (including, but not limited to, timeframes for completion and sanctions and remedies imposed). The Title IX Coordinator shall certify to the State Council of Higher Education for Virginia that this policy has been reviewed and updated, as appropriate, in accordance with Virginia law.

## COMPLIANCE WITH POLICY

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- Failure to comply with the requirements of this policy by faculty, staff and/or students may result in disciplinary action up to and including termination/suspension in accordance with relevant College policies.
- Failure to comply with this policy by unpaid volunteers, interns, and visiting faculty/scholars may result in an end of the assignment.
- Failure to comply with this policy by third party covered program staff may result in disciplinary action that requires immediate removal from campus community members, and/or College property and facilities.

## RESOURCES

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### **SUPPORTIVE MEASURES**

“Supportive Measures” are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to Complainants before or after filing of a Formal Complaint or where no Formal Complaint has been filed and to Respondents after a Formal Complaint has been filed. These measures may be both designed to address an individual’s safety and well-being and to preserve or restore equal access to educational opportunities without unreasonably burdening the other party.

Supportive Measures, which may be temporary or permanent, may include no-contact directives, residence modifications, academic modifications and support, and work schedule modifications. The College will maintain the privacy of any Supportive Measures provided under this policy to the extent practicable and will promptly address any violation of the Supportive Measures. The Title IX Coordinator has the discretion to impose and/or modify any Supportive Measure based on all available information and is available to meet with a Complainant or Respondent to address any concerns about the provision of Supportive Measures.

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<sup>8</sup> Bystander intervention strategies adapted from Stanford University’s Office of Sexual Assault & Relationship Abuse.2013

The College will provide reasonable supportive measures to Third Parties who either are Complainants or Respondents, as appropriate and available, considering the role of the Third Party and the nature of any contractual relationship with the University.

### **EMERGENCY REMOVAL**

Pursuant to this Policy, the College may impose an “Emergency Removal,” such as an interim suspension or suspension from employment. Prior to the imposition of an Emergency Removal, the College will: (1) undertake an individualized safety and risk analysis to determine whether an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Prohibited Conduct justifies removal, and (2) provide the Respondent with notice and an opportunity to challenge the removal decision within 48 hours following the removal decision.

This provision does not prohibit the College from imposing pre-disciplinary administrative leave (with or without pay), as appropriate, for Employees.

### **FEDERAL TIMELY WARNING OBLIGATIONS**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the College must issue timely warnings for incidents reported that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The College will ensure that a Complainant’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### **RESOURCE DIRECTORY**

The College provides any Complainant with a copy of the Notice of Complainant’s Rights and the College will also provide the Complainant and Respondent with a copy of this Policy.

#### **On-Campus**

- Title IX Coordinator | Cantrell Hall | 276-870-5065
- Campus Police | Cantrell Hall | 276-328-COPS (2677) or 911
- Counseling | Cantrell Hall | 276-376-1005
- Disability Services | Zehmer Hall | 276-328-0265
- Office of Financial Aid | Crockett Hall | 276-328-0139
- UVA Employee & Student Health Wise Clinic at 376-3475 | Cantrell Hall | 276-376-3475
- Housing | Cantrell Hall | 276-376-4517

#### **Off-Campus**

- Norton Community Hospital | 100 15<sup>th</sup> Street NW, Norton VA 24273 | 276-679-9600
- Town of Wise Police Department | 501 W Main Street, Wise VA 24293 | 276-328-9369
- Wise County Sheriff’s Department | Wise County Justice Center 5605 Patriot Drive, Wise, VA 24293  
276- 328-9647 or 276- 328-3566
- Family Crisis Support Services | 701 Kentucky Avenue SE, Norton VA 24273 | 276-679-7240 or  
1-877-348-3416 (Sexual Assault 24-hour Crisis Hotline)
- Virginia State Police | 1207 Norton Road, Wise, Virginia 24293 | 276-328-0198
- Victim Witness Program | 206 E Main Street #245, Wise VA 24293 | 276-328-4421
- Wise County Magistrate | 5617 Patriot Drive, Wise, Va. 24293 | 276-328-8947
- Wise County Behavioral Health Services | 3169 2<sup>nd</sup> Ave, Big Stone Gap VA 24219 | 276-523-8300
- Legal Aid Society | 16932 W Hills Drive, Castlewood VA 24224 | 276-762-9354
- U.S. Department of State – Bureau of Consular Affairs | Nonimmigrant Visa inquiries: 202-485-7600  
or Immigrant Visa inquiries: 603-334-0700

**Advisor(s)**

With any form of Informal or Formal Resolution, each party has the right to choose and consult with an advisor. The advisor may be any person, who is not a witness, and each party may be accompanied by their respective advisors at any meeting or proceeding held by the College. While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings. The College reserves the right to remove any individual whose actions are disruptive to the proceedings or otherwise inconsistent with any Rules of Order and Decorum for Hearings adopted by the College. The College also can provide Advisors at request.

**Nicole Honeysett**

Student Affairs

Office: 276-376-4502 | Email: [ema4qc@uvawise.edu](mailto:ema4qc@uvawise.edu)

**Southwest Virginia Legal Aid Society, Inc.**

227 West Cherry Street Marion, VA 24354

Phone: 276-783-8300 | toll-free 1-800-277-6754

**State and National**

- The Virginia Sexual & Domestic Violence Action Alliance | [www.vsdvalliance.org](http://www.vsdvalliance.org)
- Rape, Abuse and Incest National Network | [www.rainn.org](http://www.rainn.org)
- Department of Justice | [www.justice.gov/ovw/sexual-assault](http://www.justice.gov/ovw/sexual-assault)

**Department of Education Office for Civil Rights**

U.S. Department of Education Office for Civil Rights

Lyndon Baines Johnson Department of Education Building

400 Maryland Avenue, SW

Washington, DC 20202-1100

Telephone: 800-421-3481 | FAX: 202-453-6012 | TDD: 800-877-8339 | Email: [OCR@ed.gov](mailto:OCR@ed.gov)

**Sex Offender Registration**

The Federal Campus Sex Crimes Prevention Act, enacted on October 28, 2000, requires institutions of higher education to issue a statement advising the campus community where law enforcement agency information provided by a State concerning registered sex offenders may be obtained. It also requires sex offenders already required to register in a State to provide notice, as required under State law, of each institution of higher education in that State at which the person is employed, carries on a vocation, volunteers' services or is a student.

In Virginia, convicted sex offenders must register with the Virginia State Police. This information can be assessed at <http://sex-offender.vsp.virginia.gov/sor>.

# **OFFICE FOR DIVERSITY, EQUITY & INCLUSION**

1 College Avenue, Wise VA 24293  
Cantrell Hall

