

## APPENDIX B

### UNIVERSITY OF VIRGINIA

# **PROCEDURES FOR INVESTIGATING AND RESOLVING REPORTS OF SEXUAL AND GENDER-BASED MISCONDUCT UNDER THE POLICY ON SEXUAL AND GENDER-BASED HARASSMENT AND OTHER FORMS OF INTERPERSONAL VIOLENCE (“PROCEDURES”)**

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## I. **INTRODUCTION**

The University of Virginia (the “University”) is committed to providing a safe and non-discriminatory environment for all members of the University community. The University prohibits *Quid Pro Quo* Harassment, Sexual and/or Gender-Based Hostile Environment Harassment, Non-Consensual Sexual Contact, Non-Consensual Sexual Intercourse, Sexual Exploitation, Intimate Partner Violence, Stalking, Retaliation, and Complicity (together, “Sexual and Gender-Based Prohibited Conduct”). These forms of Prohibited Conduct are defined in the University’s Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence (the “Sexual Misconduct Policy”). This Appendix identifies the procedures (the “Misconduct Procedures”) the University follows when it receives a report alleging Sexual and Gender-Based Prohibited Conduct by a Student or Employee.<sup>1</sup> The University uses these Procedures to respond to, investigate, and adjudicate any such allegations and to impose

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<sup>1</sup> The Grievance Process for a report alleging Title IX Prohibited Conduct is outlined in Appendix A:  
<http://eocr.virginia.edu/appendixA>

disciplinary sanctions against Students and Employees found responsible for violating the Sexual Misconduct Policy with regard to Sexual and Gender-Based Prohibited Conduct.<sup>2</sup>

## II. **REPORTING**

A report may be made by any person who believes that Sexual and Gender-Based Prohibited Conduct may have occurred. The University encourages anyone<sup>3</sup> who experiences or becomes aware of an incident of Sexual and Gender-Based Prohibited Conduct involving a Student or Employee to ***immediately*** report the incident to the University through the following reporting options:

- By contacting the University's Title IX Coordinator<sup>4</sup> or a Deputy Title IX Coordinator at any time (including during non-business hours) by telephone, mail, and email, or in person during regular office hours at their respective locations, email addresses, and/or phone numbers below:

Title IX and Sexual Misconduct Coordinator  
O'Neil Hall, Terrace Level, Suite C023  
P.O. Box 400211  
445 Rugby Rd.  
Charlottesville, VA 22903  
[titleixcoordinator@virginia.edu](mailto:titleixcoordinator@virginia.edu)  
(434) 297-7988

Deputy Title IX Coordinator/Director of Investigations  
O'Neil Hall, Terrace Level, Suite C023  
P.O. Box 400211  
445 Rugby Rd.  
Charlottesville, VA 22903  
[titleixcoordinator@virginia.edu](mailto:titleixcoordinator@virginia.edu)  
(434) 297-7988

- Through [\*\*\*Just Report It\*\*\*](#), the University's website for online reporting

If an individual wishes to report an incident anonymously, the individual may [download and print](#)

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<sup>2</sup> These Procedures should be read in conjunction with the Sexual Misconduct Policy. Capitalized terms used and not otherwise defined in these Procedures are defined in the Sexual Misconduct Policy.

<sup>3</sup> Pursuant to University policy, certain University employees, called "Responsible Employees," are *required* to report to the Title IX Coordinator all information disclosed to them about an incident of Prohibited Conduct. *See* HRM-040: Reporting by University Employees of Disclosures Relating to the Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence and the Preventing and Addressing Discrimination, Harassment, and Retaliation Policy (the "Reporting Policy") at <https://uvapolicy.virginia.edu/policy/HRM-040>

<sup>4</sup> The Title IX Coordinator may, in their discretion, designate responsibilities to the Deputy Title IX Coordinator or other Title IX -trained personnel in the University.

[a PDF reporting form](#) and transmit or deliver the completed form to the Title IX Coordinator or Deputy Title IX Coordinator, by mail, email, or phone from a restricted number. Please note that consistent with the Reporting Policy, Responsible Employees may not report anonymously.

A Complainant may choose to make a report to the University to pursue resolution under the Misconduct Procedures and may also choose to make a report to law enforcement. A Complainant may pursue either or both of these options at the same time. As set forth in the Sexual Misconduct Policy, a Complainant who wishes to pursue criminal action in addition to, or instead of, making a report under the Misconduct Procedures is strongly encouraged to contact law enforcement immediately and directly as follows:

- 911 (for emergencies)
- Albemarle County Police ((434) 977-9041) (for non-emergencies)
- City of Charlottesville Police ((434) 970-3280) (for non-emergencies)
- University Police ((434) 924-7166) (for non-emergencies)

The University also offers access to confidential resources for individuals who are unsure about whether to report Sexual and Gender-Based Prohibited Conduct or are seeking counseling or other emotional support in addition to (or without) making a report to the University. The resource guides listed below identify confidential resources, both at the University and in the Charlottesville community, and further explain options for reporting Prohibited Conduct to the University and/or to law enforcement:

- Students may refer to the [Student Resource Guide](#) (Appendix C);
- Employees may refer to the [Employee Resource Guide](#) (Appendix D);
- Third Parties may contact the University's Title IX Coordinator.

Complainants are entitled to receive information, assistance, and a broad range of Supportive Measures regardless of whether they choose to pursue criminal and/or formal University resolution of Sexual and Gender-Based Prohibited Conduct. The Student and Employee Resource Guides outline these resources as well as Supportive Measures and describe how to request them.

### III. DEFINITIONS

The “**Appeals Officer**” is the trained University official responsible for receiving, reviewing, and responding to appeals of the Decision Maker’s Written Determination. The Appeals Officer cannot be the Title IX Coordinator, the Investigator assigned to investigate the Formal Complaint, or the Decision Maker.

A “**Complainant**” is an individual who is reported to be the subject of conduct that could constitute Sexual and Gender-Based Prohibited Conduct regardless of whether such person makes a report or files a complaint.

A “**Confidential Employee**” is (1) any University employee who is a licensed medical, clinical, or mental health, or other healthcare professional (e.g., physicians, nurses, physicians’ assistants,

psychologists, psychiatrists, professional counselors and social workers, and those performing services under their supervision)(collectively, health care providers), when performing the duties of that professional role; (2) any University employee when performing administrative, operational and/or related support for such health care providers; (3) any University employee who is an Athletic Trainer working under the supervision of a licensed medical or healthcare professional when performing the duties of that professional role; and (4) the University Ombuds when performing the duties of that professional role.

The “**Decision Maker**” is a member of a standing pool of trained members of the University community or, at the discretion of the Title IX Coordinator, an external professional with experience adjudicating cases of Sexual and Gender-Based Prohibited Conduct. The Decision Maker will not be the Title IX Coordinator or the Investigator(s) assigned to investigate the Formal Complaint.

The “**Dismissal Appeals Officer**” is the Associate Vice President for the University’s Equal Opportunity and Civil Rights (EOCR) or designee and is responsible for receiving, reviewing, and responding to appeals of dismissals under the Misconduct Procedures.

A “**Formal Complaint**” is a document filed in person, by mail, or by email and signed by the Complainant or Title IX Coordinator alleging Sexual and Gender-Based Prohibited Conduct against a Respondent and requesting that the University investigate the allegation of Sexual and Gender-Based Prohibited Conduct. A Formal Complaint cannot be filed by telephone. The Formal Complaint must include a physical or digital signature. Submission of a report through *Just Report It* is not a Formal Complaint unless the Complainant provides a physical or digital signature (utilizing the appropriate technology) to the Title IX Coordinator. If the Title IX Coordinator signs the Formal Complaint, they are not considered a Complainant or party to the investigation. Rather, as defined above, the subject of the alleged conduct is considered to be the Complainant.

“**Formal Resolution**” is a form of resolution following the filing of a Formal Complaint that includes an investigation conducted by a neutral investigator, a hearing before a Decision Maker, and a remedy and sanction (if applicable) (as described in Section VII.D of the Misconduct Procedures).

An “**Investigator**” is the individual assigned to investigate a Formal Complaint through the Misconduct Procedures. The Investigator may be a member of the EOCR team or an external investigator trained on the requirements of the Misconduct Procedures.

An “**Informal Resolution Facilitator**” is the individual assigned to facilitate the Informal Resolution. The Informal Resolution Facilitator will not be the Investigator assigned to investigate the Formal Complaint. The Informal Resolution Facilitator may be a University employee or external professional who is trained on the requirements of the Misconduct Procedures.

A “**Report**” is notification to the University Title IX Coordinator, Deputy Title IX Coordinator, or any Responsible Employee made by any person who believes that Sexual and Gender-Based Prohibited Conduct may have occurred. A Report is not limited by the form of the notice to the University and does not require a physical or digital signature.

A “**Reporter**” is any individual, including students, faculty, staff, and third parties, who disclose an alleged act of Sexual and Gender-Based Prohibited Conduct to the Title IX Coordinator, Deputy Title IX Coordinator, or a Responsible Employee. A Reporter may be the Complainant or another individual.

A “**Respondent**” is any individual who has been reported to be the perpetrator of conduct that could constitute Sexual and Gender-Based Prohibited Conduct.

A “**Responsible Employee**” is any employee of the University who is not a Confidential Employee. A Responsible Employee is required to report to the University’s Title IX Coordinator all relevant details (obtained directly or indirectly) about an incident of Prohibited Conduct that involves any Student as a Complainant, Respondent, and/or witness, including dates, times, locations, and names of parties and witnesses. See [HRM-040: Reporting by University Employees of Disclosures Relating to the Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence and the Preventing and Addressing Discrimination, Harassment, and Retaliation Policy](#)

“**Sexual and Gender-Based Prohibited Conduct**” includes the following specifically defined forms of conduct as defined in the University’s Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence: *Quid Pro Quo* Harassment, Sexual and Gender-Based Hostile Environment Harassment, Non-Consensual Sexual Contact, Non-Consensual Sexual Intercourse, Sexual Exploitation, Intimate Partner Violence, Stalking, Retaliation, and Complicity not otherwise defined as Title IX Prohibited Conduct.

“**Supportive Measures**” are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the 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.

“**Title IX Prohibited Conduct**” includes the following specifically defined forms of conduct defined in the University’s Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence: *Quid Pro Quo* Harassment, Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking where the alleged conduct occurred in the United States and in the University’s education program or activity.

#### **IV. EXPECTATIONS OF COMPLAINANTS AND RESPONDENTS**

Pursuant to these Misconduct Procedures, Complainants and Respondents can expect:

- A. Prompt and equitable resolution of allegations of Sexual and Gender-Based Prohibited Conduct;
- B. Privacy in accordance with the Sexual Misconduct Policy and any legal requirements;
- C. Reasonably available Supportive Measures to both parties without fee or charge, as described in the Misconduct Procedures and in the applicable Resource Guides;

- D. Freedom from Retaliation for making a good faith report of Sexual and Gender-Based Prohibited Conduct or participating or declining to participate in any proceeding under the Sexual Misconduct Policy;
- E. The responsibility to refrain from Retaliation directed against any person, directly or indirectly, for making a good faith report of Sexual and Gender-Based Prohibited Conduct or participating or declining to participate in any proceeding under the Sexual Misconduct Policy;
- F. The responsibility to provide truthful information in connection with any report, investigation, or resolution of Sexual and Gender-Based Prohibited Conduct under the Sexual Misconduct Policy or the Misconduct Procedures;
- G. The opportunity to request and receive reasonable accommodations for a disability or necessary language translation or interpreter services to ensure meaningful participation in any step of the proceedings under the Sexual Misconduct Policy;
- H. The opportunity to articulate concerns or issues about proceedings or the University's authority to investigate under the Sexual Misconduct Policy and the Misconduct Procedures;
- I. Timely notice of any meeting or proceeding at which the party's presence is contemplated by the Misconduct Procedures;
- J. The opportunity to choose an advisor, including the right to have that advisor attend any meeting or proceeding at which the party's presence is contemplated by the Misconduct Procedures;
- K. The ability to have an advisor of the University's choice appointed at no cost to any party to Formal Resolution, to assist in cross-examination during the Hearing, if a party has not selected an advisor for the Hearing.
- L. Written notice of a Formal Complaint, including notice of potential Sexual Misconduct Policy violations and the nature of the alleged Sexual and Gender-Based Prohibited Conduct;
- M. The opportunity to challenge the Investigator or Decision-Maker for bias or conflict of interest;
- N. The opportunity to offer information, present evidence, and identify witnesses during an investigation;
- O. The opportunity to be heard, orally and/or in writing, as to the determination of a Sexual Misconduct Policy violation and the imposition of any sanction(s);

- P. Timely and equal access to any information that will be used during Formal Resolution pursuant to the Misconduct Procedures and related meetings;
- Q. Reasonable time to prepare any response contemplated by the Misconduct Procedures;
- R. Written notice of any extension of timeframes for good cause;
- S. Written notice of the outcome of any Investigation, including the determination of a Sexual Misconduct Policy violation, imposition of any sanction(s), and the rationale for each; and
- T. An opportunity to appeal a dismissal of a Formal Complaint and the Decision-Maker's determination to the appropriate Appeals Officer based on the Respondent's status (e.g., faculty, staff, student), who does not have a conflict of interest or bias against or for Complainants or Respondents generally or the Complainant or Respondent.

## **V. INITIAL ASSESSMENT AND SUPPORTIVE MEASURES**

### **A. INITIAL ASSESSMENT**

Upon receipt of a report of Sexual and Gender-Based Prohibited Conduct, the Title IX Coordinator will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report. In this initial assessment, the Title IX Coordinator or designee (such as a staff member in the Office of Dean of Students where the Complainant is a student or the Deputy Title IX Coordinator or Employee Relations where the Complainant is an Employee) will immediately contact the Complainant to:

- A. Assess the Complainant's safety and well-being and offer the University's immediate support and assistance;
- B. Inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;
- C. Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
- D. Inform the Complainant about University and community resources, the right to seek appropriate and available Supportive Measures, and how to request those resources and measures;
- E. Inform the Complainant of the right to seek Informal Resolution (where available) or Formal Resolution (e.g., a formal investigation) under the Misconduct Procedures;



- F. Explain the University's prohibition against Retaliation and that the University will take prompt action appropriate to the known circumstances in response to any act of alleged Retaliation;
- G. Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and/or any other third party with knowledge of the reported incident;
- H. Ascertain the ages of the Complainant and the Respondent, if known, and, if either of the parties is a minor (under 18), contact the appropriate child protective service agency; and
- I. Communicate with appropriate University officials to determine whether the report triggers any Clery Act obligations, including entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations.

In addition, the Title IX Coordinator will promptly contact the Complainant to discuss:

- A. The availability of Supportive Measures regardless of whether the Complainant elects to file a Formal Complaint;
- B. The Complainant's wishes with respect to Supportive Measures; and
- C. The process for filing a Formal Complaint and any concerns or barriers to participating in any University investigation and resolution under the Misconduct Procedures;

The Title IX Coordinator will ensure that the Complainant receives a written explanation of available Supportive Measures and resolution options and is offered the opportunity to meet to discuss those Supportive Measures and options with the Title IX Coordinator. When a decision is reached to initiate an investigation or to take any other action under these Procedures that impacts a Respondent (including the imposition of interim protective measures), the Title IX Coordinator will ensure that the Respondent is notified, receives a written explanation of available Supportive Measures and resolution options, and is offered the opportunity to meet to discuss those Supportive Measures and options.

## B. SUPPORTIVE MEASURES

Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainants before or after the 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 and individual's safety and well-being and to preserve or restore equal access to educational opportunities without unreasonably burdening the other party.

The Title IX Coordinator will provide every Complainant with information about the availability of Supportive Measures upon receipt of a report of Sexual and Gender-Based Prohibited Conduct

and seek to understand the Complainant's wishes regarding Supportive Measures. Further, as appropriate and necessary, the Title IX Coordinator will inform the Respondent of the availability of Supportive Measures and seek to understand the Respondent's wishes regarding Supportive Measures. Supportive Measures may be temporary or permanent. Supportive Measures may include, but are not limited to, the following:

- Imposition of a No Contact Directive or Mutual No Contact Directive against an Employee or Student (i.e., a written directive to one or both of the parties to refrain from contacting the other, directly or through proxies);
- Arranging a meeting with law enforcement to discuss or report Sexual and Gender-Based Prohibited Conduct;
- Arranging a meeting with law enforcement to discuss safety planning;
- Arranging access to counseling services and assistance in setting up initial appointments;
- Assistance in seeking academic assistance, including modified class schedules (including transfer to another section), permission to withdraw from and/or retake a class or attend a class via alternative means (e.g., online or independent study), extension of assignment deadlines, and voluntary leaves of absence;
- Assistance in modifying University housing arrangements, including immediate temporary relocation to safe living quarters and/or permanent reassignment of University residence halls;
- Assistance in modifying assigned parking;
- Assistance in arranging for a campus escort services (e.g., Safe Ride);
- Assistance in modifying University employment arrangements, including changes in work schedules, job assignments, work locations, and/or assigned parking;
- Increased security or monitoring of certain areas of Grounds; and
- Any other measures that may be arranged by the University (to the extent reasonably available) to ensure the safety and well-being of a Complainant or Respondent.

The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures and may enlist the assistance of other University officials. For additional information about resources and Supportive Measures, see the Resource and Reporting Guide for Students and the Resource and Reporting Guide for Employees.

## **VI. THREAT ASSESSMENT**

Following the initial assessment, the Title IX Coordinator will promptly forward to an Evaluation Panel all information then known about the reported incident of Sexual and Gender-Based Prohibited Conduct. Such information includes, if known, the names and/or any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident.

#### A. EVALUATION PANEL

An Evaluation Panel will evaluate every report of Sexual and Gender-Based Prohibited Conduct. The Evaluation Panel will convene (in person, by telephone, or by videoconference) within 72 hours after receiving information from the Title IX Coordinator, as described above, and will convene again, as necessary, to review new information as it becomes available. The Evaluation Panel may include any and all members of the University's [Threat Assessment Team](#) and shall include, at a minimum:

(1) the Title IX Coordinator, (2) a representative of the University Police Department (the "UPD Representative"), and (3) a representative from the Division of Student Affairs. In addition, the Evaluation Panel may include a representative from Human Resources or the Office of the Provost, depending on the circumstances of the reported incident and the status of the Complainant and the Respondent.

The Evaluation Panel operates pursuant to [Va. Code §23.1-806](#) (the "Virginia Reporting Statute") and has access, under Virginia law, to certain otherwise confidential information, including law enforcement records, criminal history record information, as provided in Va. Code §19.2-389 and §19.2-389.1; health records, as provided in Va. Code §32.1-127.1:03;<sup>5</sup> University disciplinary, academic and/or personnel records; and any other information or evidence known to the University or to law enforcement. The Evaluation Panel may seek additional information about the reported incident through any other legally permissible means.

#### B. HEALTH AND SAFETY THREAT ASSESSMENT BY EVALUATION PANEL

1. **Risk Factors.** The Evaluation Panel will determine whether the reported information and any other available information provides a rational basis for concluding that there is a threat to the health or safety of the Complainant or to any other member of the University community. The Evaluation Panel will make this determination based upon a review of the totality of the known circumstances, and will be guided by a consideration of the following factors (the "Risk Factors"):

- Whether the Respondent has prior arrests, is the subject of prior reports and/or complaints related to any form of Title IX Prohibited Conduct or Sexual and Gender-Based Prohibited Conduct, or has any history of violent behavior;
- Whether the Respondent has a history of failing to comply with any University

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<sup>5</sup> Health Records reviewed by the Evaluation Panel are not provided to or considered by the Investigator, Decision-Maker, or Appeals Officer for a Formal Complaint without written permission from the individual such records concern.

No-Contact Directive, other University protective measures, and/or any judicial protective order;

- Whether the Respondent has threatened to commit violence or any form of Title IX Prohibited Conduct or Sexual and Gender-Based Prohibited Conduct;
  - Whether the Sexual and Gender-Based Prohibited Conduct involved multiple Respondents;
  - Whether the Sexual and Gender-Based Prohibited Conduct involved physical violence. “Physical violence” means exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, strangling, and brandishing or using any weapon;
  - Whether the report reveals a pattern of Title IX Prohibited Conduct or Sexual and Gender-Based Prohibited Conduct (e.g., by the Respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location);
  - Whether the Sexual and Gender-Based Prohibited Conduct was facilitated through the use of “date-rape” or similar drugs or intoxicants;
  - Whether the Sexual and Gender-Based Prohibited Conduct occurred while the Complainant was unconscious, physically helpless or unaware that the Sexual and Gender-Based Prohibited Conduct was occurring;
  - Whether the Complainant is (or was at the time of the Sexual and Gender-Based Prohibited Conduct) a minor (under 18); and/or
  - Whether any other aggravating circumstances or signs of predatory behavior are present.
2. **Disclosure(s) of Information to Law Enforcement.** Pursuant to the Virginia Reporting Statute, the Evaluation Panel is *required* to disclose information about alleged Sexual and Gender-Based Prohibited Conduct to law enforcement in the following circumstances:
- a) If the Evaluation Panel (or, in the absence of consensus within the Evaluation Panel, the UPD Representative) concludes that there is a significant and articulable threat to the health or safety of the Complainant or to any other member of the University community and that disclosure of available information (including the names and any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident) is necessary to protect the health or safety of the Complainant or other individuals, the UPD

Representative will immediately disclose the information to the law enforcement agency that would be responsible for investigating the alleged act of Sexual and Gender-Based Prohibited Conduct or Title IX Prohibited Conduct.<sup>6</sup> The Evaluation Panel will make this determination based upon a review of the totality of the known circumstances and consideration of the list of Risk Factors, as described in Section VI.B.1 of these Misconduct Procedures. The Title IX Coordinator or designee will promptly notify the Complainant whenever such disclosure has been made.

- b) If the alleged act of Sexual and Gender-Based Prohibited Conduct or Title IX Prohibited Conduct constitutes a felony violation of the Code of Virginia, the UPD Representative will so inform the other members of the Evaluation Panel and will, within 24 hours, (i) consult with the appropriate Commonwealth's Attorney or other prosecutor who would be responsible for prosecuting the alleged act of Sexual and Gender-Based Prohibited Conduct (the "Prosecuting Authority"), and (ii) disclose to the Prosecuting Authority the information then known to the Evaluation Panel. This disclosure is required by the Virginia Reporting Statute where the alleged act of Sexual and Gender-Based Prohibited Conduct would violate Article 7 (§18.2-61 et seq.) of Chapter 4 of title 18.2 of the Code of Virginia. Such disclosure will exclude the names and any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident (the "Identifying Information"), unless the Identifying Information was disclosed to law enforcement under the health and safety exception described in paragraph (a), above, in which case the Identifying Information also will be disclosed to the Prosecuting Authority. If the UPD Representative declines to so consult with the Prosecuting Authority, any member of the Evaluation Panel who individually concludes that the alleged act of Sexual and Gender-Based Prohibited Conduct would constitute such a felony violation may consult with the Prosecuting Authority and make the required disclosure(s) in the manner and within the timeframe set forth above.

The Evaluation Panel will reconvene as necessary to continue to evaluate whether any new or additional information received triggers any further obligation(s) under the Clery Act or with respect to any child protective service agency, and will direct the Title IX Coordinator to take such further actions, as necessary.

In all cases, the initial report, the health and safety threat assessment, and the determinations of the Evaluation Panel will be documented and retained by the University in accordance with applicable law.

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<sup>6</sup> Where the law enforcement agency that would be responsible for investigating the alleged act of Prohibited Conduct is located outside of the United States, this disclosure is not required by the Virginia Reporting Statute.

### C. COMMENCEMENT OF A FORMAL COMPLAINT BY THE TITLE IX COORDINATOR

Upon completion of the health and safety threat assessment, the Evaluation Panel may provide input to the Title IX Coordinator regarding the course of action under the Misconduct Procedures, which may include, the Title IX Coordinator filing a Formal Complaint as described in Section VI.A; however, the ultimate decision regarding the commencement of a formal complaint initiated by the Title IX Coordinator remains with the Title IX Coordinator.

Upon receipt of a report of Title IX Prohibited Conduct and when the Complainant has not filed a Formal Complaint, the Title IX Coordinator will seek to honor the resolution preferences of the Complainant whenever possible. In assessing whether the Complainant's resolution preferences may be honored, the Title IX Coordinator, in consultation with the Evaluation Panel, will consider the following factors in evaluating such request(s): (1) the totality of the known circumstances; (2) the presence of any Risk Factors, as described in Section VI.B.1 of these Procedures; (3) the potential impact of such action(s) on the Complainant; (4) any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Title IX Prohibited Conduct or Sexual and Gender-Based Prohibited Conduct; (5) the existence of any independent information or evidence regarding the Title IX Prohibited Conduct or Sexual and Gender-Based Prohibited Conduct; and (6) any other available and relevant information.

Determination that a Complainant's Request(s) **Can** be Honored. Where the Title IX Coordinator determines that a Complainant's resolution request(s) (e.g., not to file a Formal Complaint) can be honored, the University may nevertheless take other appropriate steps designed to address an individual's safety and well-being and to preserve or restore equal access to educational opportunities for the Complainant and the University community. These steps may include offering appropriate Supportive Measures to the Complainant or providing targeted training or prevention programs.

At any time, the Complainant may choose to file a Formal Complaint under the Misconduct Procedures and request Informal Resolution (if available) or Formal Resolution under the Misconduct Procedures. A Complainant may not pursue Informal Resolution or Formal Resolution anonymously. The Title IX Coordinator will evaluate the Formal Complaint to determine whether it constitutes Sexual and Gender-Based Prohibited Conduct prior to initiating Informal or Formal resolution. If the Title IX Coordinator determines that the Formal Complaint does not constitute Sexual and Gender-Based Prohibited Conduct, Informal Resolution or Formal Resolution will not be available to the Complainant; however, the Title IX Coordinator will continue to offer appropriate Supportive Measures to the Complainant or engage in targeted training or prevention efforts.

Determination that a Complainant's Request(s) **Cannot** be Honored. Where the Title IX Coordinator has determined that a Complainant's request(s) (e.g. not to file a Formal Complaint) cannot be honored (i.e., because honoring the Complainant's request(s)

would impede the University's ability to ensure the health and safety of the Complainant and/or other members of the University community), the Title IX Coordinator will file a Formal Complaint.

Where the Title IX Coordinator has determined that the University must proceed with Formal Complaint despite a Complainant's request to the contrary, the Title IX Coordinator will make reasonable efforts to protect the privacy of the Complainant. However, actions that may be required as part of the University's investigation will involve speaking with the Respondent and others who may have relevant information, in which case the Complainant's identity will be disclosed. In such cases, the Title IX Coordinator will notify the Complainant that the University intends to proceed with an investigation, but that the Complainant is not required to participate in the investigation or in any other actions undertaken by the University. The Title IX Coordinator will provide information regarding the pending resolution even if the Complainant elects not to participate in the investigation or other actions.

Where a Complainant declines to participate in an investigation, the University's ability to meaningfully investigate and respond to a report may be limited. In such cases, the Title IX Coordinator may pursue the report if it is possible to do so without the Complainant's participation in the investigation or resolution (e.g., where there is other relevant evidence of the Sexual and Gender-Based Prohibited Conduct such as recordings from security cameras, corroborating reports from other witnesses, physical evidence, or any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Sexual and Gender-Based Prohibited Conduct). In the absence of such other evidence, however, the University will only be able to respond to the report in limited and general ways that are non-punitive and non-disciplinary (i.e., through the provision of Supportive Measures, targeted training or prevention programs, or other remedies tailored to the circumstances). Further, if specific circumstances prevent the University from gathering evidence sufficient to reach a determination to the Formal Complaint or allegations therein, the University may dismiss the Formal Complaint from the Misconduct Procedures consistent with Section VII.C.

#### D. NOTICE TO COMPLAINANT AND RESPONDENT OF UNIVERSITY ACTIONS

The Title IX Coordinator will promptly inform the Complainant of any action(s) undertaken by the University to respond to a health or safety threat to the Complainant or the University community. The Title IX Coordinator also will promptly inform the Respondent of any action(s) (including any Supportive Measures or Emergency Removal) that will directly impact the Respondent and provide an opportunity for the Respondent to respond to such action(s). The Title IX Coordinator retains the discretion to impose and/or modify any Supportive Measures based on all available information. Supportive Measures will remain in effect until the resolution of the Formal Complaint, unless new circumstances arise which warrant reconsideration of the Supportive Measures prior to the hearing and determination by the Decision Maker or Appeals Officer. A Complainant or Respondent may challenge Supportive Measures or other actions, or failure to impose



Supportive Measures or take other actions, by contacting the Title IX Coordinator to address any concerns.

E. NOTICE OF POTENTIAL UNIVERSITY ACTIONS AGAINST STUDENT GROUPS OR ORGANIZATIONS.

If, upon completion of the health and safety threat assessment, the Evaluation Panel determines that a report of Sexual and Gender-Based Prohibited Conduct reveals involvement of, or a pattern of behavior by, a particular Student group or organization (e.g., agency group, special status organization, fraternity, sorority, contracted independent organization, club sport, and/or athletic team), the Title IX Coordinator will consult with relevant University officials regarding any appropriate University action directed at the Student group or organization, including, but not limited to, training or prevention programs or modification, suspension, or termination of the Student group's or organization's agreement or status with the University.

F. EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE

1. **Emergency Removal.** The Title IX Coordinator may remove a Respondent from the University community on an emergency basis, in the form of a temporary suspension, for allegations of a student who has engaged or engages in conduct which immediately threatens the health and safety of any student or other individual arising from the allegations of Sexual and Gender-Based Prohibited Conduct. In determining whether to issue an Emergency Removal, the Title IX Coordinator will consider the health and safety risk factors set out in Section VI.B of the Misconduct Procedures and consult with the Evaluation Panel and/or other University officials, as necessary. The Title IX Coordinator will notify the Complainant and Respondent, in writing, simultaneously of the Emergency Removal, the effect of the Emergency Removal, the rationale for the Emergency Removal, and the process to appeal the Emergency Removal. The Title IX Coordinator will issue a No Trespass Warning to the Respondent and notify the Dean of Students and University Police Department.

The Respondent may submit a written appeal of the Emergency Removal to the Vice President for Student Affairs/Chief Student Affairs Officer or designee. The Respondent is entitled to preliminary review within 48 hours of the issuance of the Emergency Removal. If the Respondent is unavailable, such review may be postponed by the Vice President for Student Affairs until the Respondent is able to attend, or for other good reason. The Vice President for Student Affairs or designee will convene a hearing and provide notice to the parties, including the date, time, and location of the hearing. Upon completion of the hearing, the Vice President for Student Affairs or designee will issue a written determination to the parties and the Title IX Coordinator.

2. **Administrative Leave.** A non-student Employee Respondent in a Formal Complaint may be placed on administrative leave during the pendency of the Misconduct Procedures.



## **VI. UNIVERSITY RESOLUTION**

The Misconduct Procedures offer two forms of resolution for reports of Sexual and Gender-Based Prohibited Conduct: (1) Formal Resolution, which involves an investigation, hearing, remedy, and sanction (if applicable) by a Decision Maker (as described in Section VII.D of the Misconduct Procedures), and (2) Informal Resolution (as described in Section VII.E of the Misconduct Procedures), which includes a variety of informal options for resolving Formal Complaints.

### **A. COMMENCEMENT OF THE MISCONDUCT PROCEDURES**

Resolution under the Misconduct Procedures is commenced when:

- A Complainant files a Formal Complaint, as defined. If a Formal Complaint is filed but additional information is necessary to determine whether the alleged conduct would constitute Sexual and Gender-Based Prohibited Conduct, an initial intake interview may be performed by Title IX personnel; or
- The Title IX Coordinator initiates a Formal Complaint, as defined. At the conclusion of the threat assessment process described in Section VI.A of the Misconduct Procedures, the Title IX Coordinator has determined, based upon a review of the totality of the circumstances and guided by a consideration of the Risk Factors, that resolution of the reported conduct through the Misconduct Procedures is necessary to ensure the health and safety of the Complainant and/or other members of the University community, notwithstanding the absence of Complainant filing a Formal Complaint. In such circumstances, the Title IX Coordinator may file a Formal Complaint. The Title IX Coordinator is not considered the Complainant when the Title IX Coordinator files the Formal Complaint.

### **B. WRITTEN NOTICE OF THE ALLEGATIONS AND INVESTIGATION**

Upon receipt of a Formal Complaint, the Title IX Coordinator will provide all parties (Complainant(s) and Respondent(s)) written notice of the allegation(s), including sufficient details about the allegation(s) known at the time, and information about both the Formal and Informal Resolution processes. The Written Notice of Allegations will:

1. Identify the Complainant(s) and the Respondent(s);
2. Specify the date, time (if known), location, and nature of the alleged Sexual and Gender-Based Prohibited Conduct and any other relevant conduct (e.g., Title IX Prohibited Conduct, PADHR Conduct, or University Standards of Conduct or other applicable policy);
3. Identify the potential policy violation(s);
4. Identify the assigned Investigator(s);

5. Include information about the parties' respective expectations under the Sexual Misconduct Policy and Misconduct Procedures;
6. Explain the prohibition against Retaliation;
7. Instruct the parties to preserve any potentially relevant evidence in any format;
8. Inform the parties how to challenge participation by the Investigator(s) on the basis of bias or conflict of interest;
9. Provide a copy of the Sexual Misconduct Policy and the Misconduct Procedures;
10. Describe the requirements of the Informal Resolution process, including the circumstances under which it allows or precludes the parties from resuming Formal Resolution after initiating Informal Resolution, and any consequences resulting from participating in the Informal Resolution process, including the records that will be maintained or could be shared;
11. Instruct the parties how to express preferences related to Formal and/or Informal Resolution processes;
12. State that the Respondent is presumed to be not responsible and describe the standard of evidence required to result in a finding of responsibility;
13. Describe both parties' right to an advisor of their choice for the Hearing and describe the process for requesting an advisor be appointed by the University in advance of the Hearing;
14. Inform both parties that if they do not have an advisor of their choice at the time of the Hearing, the University will provide an advisor of the University's choice to assist at the Hearing;
15. Provide notice that the parties may inspect and review all inculpatory and exculpatory evidence that is not protected by a recognized privilege;
16. State that all parties and witnesses are prohibited from making false statements;
17. State that both parties will receive advance, written notice of any meetings associated with the Misconduct Procedures, including the Hearing.

The Formal Complaint will be resolved through Formal Resolution, as described in Section VII.D, unless both parties voluntarily request Informal Resolution and this request is approved by the Title IX Coordinator, as described in Section VII.E, or unless the Formal Complaint is dismissed under Section VII.C

### C. DISMISSALS AND APPEAL OF DISMISSALS

The University does not have the discretion to dismiss a Formal Complaint or its allegations, that initially appear to be unsubstantiated or otherwise appears to fail to meet a threshold of merit. When a Complainant files a Formal Complaint, the University must investigate those allegations; determinations about the merits of the allegations must be reached only by following the process set forth in the Misconduct Procedures.

1. **Mandatory Dismissal.** The University shall dismiss a Formal Complaint, or any allegations therein, from the Misconduct Procedures when the alleged conduct, even if proved would not constitute Sexual and Gender-Based Prohibited Conduct as defined in the Sexual Misconduct Policy.
2. **Discretionary Dismissal.** The University may dismiss the Formal Complaint, or any allegations therein, from the Misconduct Procedures if at any time in the Formal Resolution, Information Resolution, or Hearing:
  - a. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
  - b. The Respondent is no longer enrolled or employed by the University; or
  - c. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination to the Formal Complaint or allegations therein.

“Specific Circumstances” include, but are not limited to, instances where:

- The Formal Complaint is made many years after the Sexual and Gender-Based Prohibited Conduct allegedly occurred;
  - A Complainant stops participating in the investigative process or refuses to participate in the process; or
  - A Formal Complaint contains allegations that are precisely the same as allegations the University has already investigated and adjudicated.
3. **Dismissal Letter.** The Title IX Coordinator is responsible for determining when mandatory and discretionary dismissals are required or appropriate. The Title IX Coordinator may issue a dismissal of the Formal Complaint or any allegations therein at any time during the investigation or hearing. The Title IX Coordinator will promptly send written notice (“Dismissal Letter”) of any dismissal, the reason(s) for the dismissal, and an explanation of the appeal process simultaneously to the parties.
  4. **Effect of Dismissal.** Any dismissal under this section does not preclude the University from taking action under any other applicable policies that may be implicated with respect to the Formal Complaint, or any allegations therein.
  5. **Appeal of Dismissal Decision.** The Associate Vice President for Equal Opportunity and Civil Rights or designee (“Dismissal Appeal Officer”) reviews all appeals of dismissals. Both parties have the right to appeal the dismissal of the Formal Complaint for any of the following reasons.

- a. **Bases for Appeal.** Either party may appeal a dismissal on the following bases:

- i. Procedural irregularity affected the outcome of the Formal Complaint. The appeal must specify the procedural irregularity and how it affected the outcome of the Formal Complaint.
  - ii. New evidence that was not reasonably available at the time the dismissal was made, that could affect the outcome of the Formal Complaint. The appeal must specify the new evidence that was not reasonably available at the time of the dismissal and how the new evidence could affect the outcome of the Formal Complaint.
  - iii. The Title IX Coordinator or Investigator had bias or actual conflict of interest for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the Formal Complaint. The appeal must specify the basis on which the party believes the Title IX Coordinator or Investigator had an actual conflict of interest or bias and how that affected or led to the dismissal.
- b. **Appeal Filing Timeline.** An appeal must be submitted to the Title IX Coordinator within five (5) business days from the date of the Dismissal Letter. All appeals must be in writing and clearly cite the reasons for the appeal and provide the evidence supporting the appeal. The Title IX Coordinator will promptly provide the Formal Complaint, any information gathered during the investigation prior to the Dismissal, Dismissal Letter, and Appeal and any supporting documentation to the Dismissal Appeal Officer. Simultaneously, the Appeal and any supporting documentation will be provided to the non-appealing party with an opportunity to respond. Any response to the Appeal must be submitted to the Dismissal Appeal Officer within five (5) business days of the non-appealing party's receipt of the Appeal.

The Dismissal Appeal Officer may confer with appropriate University employees in order to obtain information necessary to make a fully informed decision. The Dismissal Appeal Officer may request clarifying information from the parties and/or witnesses. Responsive material to the Dismissal Appeal Officer must be submitted in writing within the timeframe specified by the Dismissal Appeal Officer. No hearing or interviews will be conducted during the Appeal Process.

- c. **Appeal Outcome.** The Dismissal Appeal Officer will issue a written determination within ten (10) business days of the expiration of the deadline for the non-appealing party's written submission unless the Dismissal Appeal Officer notifies the parties in writing that additional time is needed for good cause. The written notice of dismissal appeal determination will provide an explanation of the basis of the appeal and the rationale for the decision. The written notice will be provided simultaneously to the parties and the Title IX Coordinator. The appeal determination is final, not subject to further appeal or review, and concludes the Misconduct Procedures.

#### D. FORMAL RESOLUTION

## 1. Advisors.

- a) Right to advisor of choice. Throughout the investigation and resolution process, each party has the right to choose and consult with an advisor. An advisor may be any person, and may be, but is not required to be, an attorney.

Choosing an advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision Maker.

- b) Role of advisor. The parties may be accompanied by their respective advisors at any meeting or proceeding related to the investigation and resolution of a report under the Misconduct Procedures. 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, submit written statements not attributed to the party, or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings. Parties have an affirmative duty to ensure that any statement submitted as part of the Misconduct Procedures to the Investigator, Title IX Coordinator, Decision Maker, Dismissal Appeals Officer, and/or Appeal Officer are signed, or otherwise acknowledged, by the party. The University will not unduly delay the scheduling of meetings or proceedings based on the advisor's unavailability.
- c) University-appointed advisors. If the party does not have an advisor, the party may make a written request to the Title IX Coordinator to be provided an advisor of the University's choice. The University will provide an advisor for the parties at the Hearing but in certain circumstances may, based upon the availability of advisors, provide an advisor prior to the Hearing.

Both the Complainant and the Respondent have the right to be accompanied at the Hearing by an advisor of their choosing. If a party does not have an advisor present at the Hearing, the University will provide, without fee or charge to the party, an advisor of the University's choice. This University-appointed advisor may be, but is not required to be, an attorney.

- d) Communication with advisors. The Investigator(s), Title IX Coordinator, Decision Maker, the Dismissal Appeal Officer, and Appeals Officer will communicate directly with the party through their University-provided email address and copy the advisor on all communications.

## 2. Investigation.

Whenever Formal Resolution is commenced, the Title IX Coordinator will designate one or more Investigators from the University's Office for Equal Opportunity and Civil Rights and/or an experienced external investigator to conduct a prompt, thorough, and impartial investigation. All Investigators will receive annual training on issues related to Title IX Prohibited Conduct and Sexual

and Gender-Based Prohibited Conduct, the scope of the University's education program or activity, relevancy and how to create an investigative report that fairly summarizes relevant evidence, and on how to conduct an investigation and Misconduct Procedures that is fair and impartial, including information regarding hearings, appeals, and informal resolution process, while avoiding prejudgment of the facts at issue, and conflicts of interest and bias.

- a) Other Forms of Discriminatory and/or Harassing Conduct. If a report of Sexual and Gender-Based Prohibited Conduct also implicates the [Preventing and Addressing Discrimination, Harassment, and Retaliation](#) (PADHR) policy, any other violation(s) of the University's [Standards of Conduct](#), and/or any relevant policies (e.g., [Faculty Conflicts of Interest Policy](#) and [PROV-033, Restrictions on Certain Romantic or Sexual Relationships at the University](#)), the Title IX Coordinator will evaluate all reported allegations to determine whether the alleged Sexual and Gender-Based Prohibited Conduct and the alleged PADHR violation(s), and/or alleged Standard of Conduct violation(s) may be appropriately investigated together without unduly delaying the resolution of the Formal Complaint of Sexual and Gender-Based Prohibited Conduct. Where the Title IX Coordinator determines that a single investigation is appropriate, the determination of responsibility for the violation of University policy will be evaluated under the applicable policy (i.e., the PADHR policy, and/or the Standards of Conduct), but the investigation and resolution will be conducted in accordance with the Misconduct Procedures.
- b) Presumption of Non-Responsibility. The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Decision Maker concludes that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding that the Respondent violated the Sexual Misconduct Policy.
- c) Participation by the Parties and Witnesses. No party or witness is required to participate in Formal Resolution, and the Investigator, Decision Maker, and Appeals Officer will not draw any adverse inference from a decision by either of the parties or any witness not to participate; however, if either party or any witness declines to participate or limits the extent of their participation, it may limit the ability of the University to thoroughly investigate and resolve the Formal Complaint.

The parties are expected to ask and respond to questions, and provide any verbal and written responses, on their own behalf throughout the investigation. Parties have an affirmative duty to ensure that any statement submitted as part of the Misconduct Procedures to the Investigator, Title IX Coordinator, Decision Maker, Dismissal Appeals Officer, and/or Appeal Officer are signed, or otherwise acknowledged, by the party. The Investigator will not accept statements or responses submitted by a party's advisor which do not indicate that the statement or response is made by or submitted on behalf of the party.

The statements of any witness who could have been reasonably identified to the Investigator prior to the issuance of the Final Report, or who declined to participate in the investigation prior to the issuance of the Final Report may not be considered by the Decision Maker, described in Section VII.D.4 below.

- d) Timeframe for Completion of Investigation; Extension for Good Cause. Typically, the period from commencement of an investigation through resolution (finding and sanction) will not exceed 90 business days. Typically, the investigation phase of a Formal Resolution will not exceed 75 business days. This timeframe may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation; the timing of University breaks; the absence of a party, a party's advisor, and/or a witness; to comply with a request by external law enforcement for temporary delay to gather evidence for a criminal investigation; the need for language assistance or accommodation of disabilities; or to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. The Investigator will notify the parties in writing of any extension of this timeframe and the reason for such extension. This timeframe may also be impacted if a Formal Complainant is resolved through a combination of both Formal and Informal Resolution.
- e) Overview of Investigation. During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to identify topics about which they believe the Investigator should question the other party or any witness. The Investigator will notify and seek to meet separately with the Complainant, the Respondent, and third-party witnesses, and will gather other relevant and available evidence and information, including, without limitation, electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs (including those stored on computers and smartphones), and medical records (subject to the consent of the applicable party).
- f) Prior or Subsequent Conduct. Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of Title IX Prohibited Conduct or Sexual and Gender-Based Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Sexual Misconduct Policy violation, may be deemed relevant to the determination of responsibility for the Sexual and Gender-Based Prohibited Conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Title IX Prohibited Conduct or Sexual and Gender-Based Prohibited Conduct. Such prior or subsequent conduct may also constitute a violation of the PADHR policy, the University's Standards



of Conduct and/or other University policy, in which case it may subject the Respondent to additional sanctions. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.

- g) Prior Sexual History. The sexual history or sexual predisposition of a Complainant or Respondent will never be used to prove character or reputation. Moreover, evidence related to the prior sexual history of Complainant is generally not relevant to the determination of a Sexual Misconduct Policy violation and will be considered only when offered to prove that someone other than the Respondent committed the conduct described in the Formal Complaint, or to prove consent in light of specific incidents of prior sexual history between the parties. For example, if the existence of Affirmative Consent is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether Affirmative Consent was sought and given during the incident in question. However, even in the context of a relationship, Affirmative Consent to one sexual act does not, by itself, constitute Affirmative Consent to another sexual act, and Affirmative Consent on one occasion does not, by itself, constitute Affirmative Consent on a subsequent occasion. In addition, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve another question raised by the report. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant.
- h) Relevance. The Investigator has the discretion to determine the relevance of any proffered evidence and to include or exclude certain types of evidence from the Draft Investigation Report and the Final Investigation Report; however, information that is not deemed relevant by the Investigator must still be shared with the parties and the Decision Maker and may be considered at the hearing. In general, the Investigator will not consider statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any party's general reputation for any character trait.
- i) Privileged Information. Any information used by the Investigator that is protected by a recognized privileged relationship, such as that pertaining to attorney-client communications or medical care, may not be shared or relied upon by the Investigator without written permission of the party about whom the record pertains. Medical Records obtained with the written permission of the party will be maintained in the Title IX office and not be provided directly to the parties. The parties may view Medical Records during normal business hours by arranging a time with the Investigator or Title IX Coordinator.
- j) Site Visit(s). The Investigator may visit relevant sites or locations and record observations through written, photographic, or other means.



- k) University Provided Information. The Investigator may seek relevant information from other University offices, such as course evaluations, course syllabi and schedules, course materials, personnel records, housing records, swipe card data, etc., as appropriate for the investigation.
- l) Expert Consultation(s). The Investigator may consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation. This section does not limit a party's ability to provide expert reports so long as such information is provided to the Investigator prior to the issuance of the Final Report and the party makes the expert available for an interview by the Investigator.
- m) Coordination with Law Enforcement. The Investigator will contact any law enforcement agency that is conducting its own investigation to inform that agency that a University investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation. At the request of law enforcement, the Investigator may delay the University investigation temporarily while an external law enforcement agency is gathering evidence.
- n) Draft Investigation Report and Attached Materials. At the conclusion of the investigation, the Investigator will prepare a Draft Investigation Report summarizing the relevant information gathered and outlining the pertinent contested and uncontested information. The Complainant and the Respondent will have an opportunity to review the Draft Investigation Report and all materials gathered by the Investigator that are not otherwise protected by a privileged relationship; meet with the Investigator; submit additional comments and information to the Investigator; identify any additional witnesses or evidence for the Investigator to pursue; and identify any further topics that they believe the Investigator should address with the other party or to any witness. Any such response by the parties must be submitted to the Investigator within ten (10) business days of transmission of the Draft Investigation Report and accompanying materials. While extensions for good cause may be granted to both parties, upon request, such an extension may cause University resolution to exceed the timeframe specified in these Misconduct Procedures.
- o) Final Investigation Report. Upon receipt of the parties' responses to the Draft Investigation Report, the Investigator will identify additional investigative steps requested by the parties or identified by the Investigator, and determine the extent to which such steps are relevant and the appropriate investigative strategy for addressing such requests. Any information or evidence provided to or collected by the Investigator following the issuance of the Draft Investigation Report will be provided to the parties in the Final Investigation Report and accompanying exhibits.

Following the conclusion of such additional investigative steps, if any, the Investigator will prepare a Final Investigation Report, which will summarize all relevant information gathered in relation to the specific allegations under the Sexual Misconduct Policy (and, where applicable, other relevant policies). The Investigator will deliver the Final Investigation Report and all attached materials to the Title IX Coordinator. The Title IX Coordinator will simultaneously transmit the Final Investigation Report and all attached materials, including all information submitted by the parties in response to the Draft Investigation Report and all information and materials gathered as additional investigative steps, which are not otherwise privileged, to both parties in an electronic format.

The Title IX Coordinator will also include in this transmission information about the Hearing process and may begin the process of scheduling a Hearing Before a Decision Maker to make an independent determination of responsibility, as outlined in Section VII.D.4. The Complainant and Respondent will have an opportunity to review and respond in writing to the Final Investigation Report and all materials gathered by the Investigator that are not otherwise protected by a privileged relationship. Any such response by the parties must be submitted to the Title IX Coordinator within ten (10) business days of transmission of the Final Investigation Report and materials. While extensions for good cause may be granted to both parties, upon request, such an extension may cause University resolution to exceed the timeframe specified in Misconduct Procedures. The Title IX Coordinator will provide any statement(s) with the Final Investigation Report to the Decision Maker.

- p) Impact and Mitigation Statements. Within ten (10) business days of transmission of the Final Investigation Report, both parties may submit a statement to the Title IX Coordinator for consideration by the Decision Maker in determining an appropriate sanction. This statement will be provided to the Decision Maker in the event that a decision of responsibility has been entered following the hearing. The Complainant may submit a written statement describing the impact of the Title IX Prohibited Conduct on the Complainant, expressing a preference about the sanction(s) to be imposed, and describing any other information Complainant believes relevant to the issue of remedies and sanctions. The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed and any other information Respondent believes relevant to the issue of remedies and sanctions. Neither party may present witnesses or witness statements regarding impact or mitigation without prior written approval from the Title IX Coordinator. The Title IX Coordinator will provide the parties' written impact and mitigation submissions to the Decision Maker at the appropriate time.

- q) Timing of Investigation. The investigation (from issuance of the Notice of

Allegations to Final Investigation Report) typically will be completed within seventy-five (75) business days. This period may be extended to account for a previous attempt, if any, at Informal Resolution, or for other good cause, as described Section VII.D.2(d) of the Misconduct Procedures. Any extension, other than for Informal Resolution, and the reason for the extension, will be shared with the parties in writing.

3. **Acceptance of Responsibility.** The Respondent may, at any time, elect to resolve the Formal Resolution process by accepting responsibility for the Sexual and Gender-Based Prohibited Conduct, in which case the Title IX Coordinator will refer the matter to the Decision Maker to conduct a Hearing, or to Informal Resolution at the parties' requests. If the Respondent subsequently retracts this acceptance or Informal Resolution is unsuccessful, Formal Resolution will be resumed.

#### 4. **Hearing.**

- a) Appointment of Decision Maker. The Title IX Coordinator will appoint a standing pool of trained members of the University community or, at the discretion of the Title IX Coordinator, an external professional with experience adjudicating cases of Sexual and Gender-Based Prohibited Conduct. The Title IX Coordinator will select a member from this pool to serve as the Decision Maker for the Hearing.

All persons serving as Decision Maker must be impartial and free from actual bias or conflict of interest. All Decision Makers will receive training on issues related to Title IX Prohibited Conduct and Sexual and Gender-Based Prohibited Conduct; the scope of the University's education program or activity; relevancy; and on how to conduct an investigation and Misconduct Procedures that is fair and impartial, including information regarding hearings, appeals, and informal resolution processes, while avoiding prejudgment of the facts at issue; and conflicts of interest and bias.

- b) Information Provided to Decision Maker. Prior to the Hearing, the Title IX Coordinator will provide the Decision Maker with the Final Investigation Report and all evidence collected by the Investigator, which is not protected by privilege.
- c) Purpose of the Hearing. The Hearing is an opportunity for the parties to address the Decision Maker about issues relevant to the determination of responsibility to be made by the Decision Maker. Each party has the opportunity to be heard (in opening and closing statements and when subject to questioning), to respond to any questions of the Decision Maker, and to submit relevant questions to the Decision Maker to ask of the other party and any witnesses. The Decision Maker will objectively evaluate all relevant evidence necessary to independently reach a determination regarding responsibility and, if applicable, whether remedies are appropriate, and any appropriate sanction(s) under the Misconduct Procedures.
- d) Standard of Review. The Respondent is presumed to be not responsible by the Decision Maker; this presumption may be overcome only where the Decision

Maker concludes that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding that the Respondent violated the Sexual Misconduct Policy.

- e) Notice of Hearing. The Title IX Coordinator will notify the parties in writing of the date, time, and location of the Hearing; the name of the Decision Maker; and how to challenge the participation by the Decision Maker for bias or actual conflict of interest.
- f) Timing of Hearing. The Hearing will usually be scheduled as soon as possible after the date of issuance of the Notice of Hearing, but not less than ten (10) business days after the date of issuance of the Final Investigation Report and typically within ten (10) business days from the date of the Notice of Hearing, subject to extension for good cause at the discretion of the Title IX Coordinator. Good cause for extension may include the unavailability of a party, a party's advisor of choice, or witnesses; the need for language assistance or accommodation of disabilities; the timing of semester breaks or University holidays; or other extenuating circumstances. Any extension, including the reason for the extension, will be shared with the parties in writing. While extensions for good cause may be granted upon request, such an extension may cause University resolution to exceed the timeframe specified in the Misconduct Procedures. Permission to postpone a Hearing may be granted provided that the request to do so is based on a compelling emergency and communicated to the Title IX Coordinator prior to the time of the Hearing.

Hearings that are unable to be resolved prior to the end of the spring semester may be held during the summer, as needed, to meet the resolution timeline followed by the University. In these cases, if the Respondent is a graduating student, a hold will be placed on the Respondent's degree and/or official transcripts until the matter is fully resolved (including any appeal). A student facing allegations under this Sexual Misconduct Policy is not in good standing to graduate; however, absent special circumstances may participate in Final Exercises and graduation ceremonies.

- g) Location of Hearing. A Hearing may be conducted with all parties physically present in the same geographic location or, at the discretion of the Title IX Coordinator, any or all parties, witnesses, or other participants may appear at the Hearing virtually, with technology enabling participants simultaneously to see and hear each other. Either party may make a request for the parties be located in separate rooms or locations during the Hearing with technology enabling the Decision Maker and parties to simultaneously see and hear the party or witness answering questions. Such a request should be submitted to the Title IX Coordinator at least two (2) business days prior to the Hearing. Nothing in this section requires the parties to appear in person before the Decision Maker and the Hearing may proceed with all parties participating virtually as appropriate and necessary. The format of the hearing (e.g., in person or virtual) is at the discretion of the Decision Maker and/or Title IX Coordinator.

- h) Rules of Order and Decorum. The University may adopt Rules of Order and

Decorum for Hearings, which will apply equally to both parties, and to any witnesses, advisors, or other participants. The Rules of Order and Decorum will be maintained in the Title IX office, published on the Title IX website, and provided to the parties with the Notice of Hearing.

- i) Pre-Hearing Conference. The Decision Maker may convene a Pre-Hearing Conference during which preliminary matters related to the Hearing are discussed and/or resolved. The parties will be provided advance written notice of the date, time, and location of the pre-hearing conference.
- j) Participation in Hearing.
  - i. Parties. Both the Complainant and the Respondent have a right to be present at the Hearing. If, despite being notified of the date, time, and location of the Hearing, either party is not in attendance, the Hearing may proceed and applicable remedies sanctions may be imposed. Neither party is required to participate in the Hearing in order for the Hearing to proceed.
  - ii. Advisors. While the advisor may provide support and advice to a party at the Hearing, the advisor may not speak on behalf of the party or otherwise participate in, or in any manner disrupt, the Hearing. The University 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 University. Such a disruption will not be the basis to delay or postpone a hearing.
  - iii. Investigator or other witnesses. The Decision Maker will request the presence of the Investigator or any other witness it deems necessary to its determination. The parties may also request the presence of the Investigator or of any witness they deem relevant to the determination by the Decision Maker. Witnesses and parties are not required to participate in the Misconduct Procedures or appear at the Hearing, and any information submitted to the Investigator during the investigation may be considered by the Decision Maker even if they elect not to participate.
- k) Hearing Format. The Decision Maker has the discretion to determine the specific Hearing format. A typical hearing may include brief opening remarks by the Complainant and/or Respondent; questioning of the parties, the Investigator(s), and any witnesses by the Decision Maker; and brief concluding remarks by the Complainant and/or Respondent.
- l) Questioning of Parties and Witnesses. The Decision Maker may ask questions and elicit information from parties, witnesses, and/or the Investigator(s) to aid the Decision Maker's findings of fact, conclusions regarding the application of the Sexual Misconduct Policy to the facts, and the determination of responsibility or sanctions. The parties and their advisors may not engage in the Direct or Cross Examination of any individual at the Hearing; however, the parties may submit

questions to the Decision Maker to be asked of the other party, any witnesses, and/or the Investigator.

The University may adopt a policy within the Rules of Order and Decorum to equally govern the conduct of the parties and any other individual attending or participating in a Hearing, regarding what questioning will look like, including developing rules and practices to oversee questioning to ensure that questioning is relevant, respectful, and non-abusive.

After the Decision Maker receives questions submitted by the parties, the Decision Maker will determine whether the question is relevant and explain any decision to exclude a question as not relevant. The University may specify a process for making objections to the relevance of questions and evidence in its Rules of Order and Decorum. Where a question is relevant, but concerns a party's character or prior bad acts, the Decision Maker cannot exclude or refuse to consider the relevant evidence, but may proceed to objectively evaluate that relevant evidence by analyzing the weight or credibility that should be ascribed to that statement.

The Decision Maker should apply logic and common sense, rather than legal rules of evidence, when making a determination about a question's relevance. Questions which will be deemed irrelevant by the Decision Maker include, but are not limited to, those which seek the following: information protected by a legally recognized privilege, as described in Section VII.D.2(i) of the Misconduct Procedures; any party's medical, psychological, and similar records unless the party has given voluntary, written consent; information about the Complainant's sexual predisposition or sexual behavior, as described in Section VII.D.2(g) of the Misconduct Procedures.

- m) New Evidence Offered at Hearing. In the absence of good cause, information, including the identification of witnesses, that is discoverable through the exercise of due diligence, that is not provided to the Investigator during the investigation phase, in response to the Draft Investigation Report, or as part of the supplemental statements submitted in response to the Final Investigation Report, will not be considered during the Hearing. Unless the Decision Maker agrees to the admission of new evidence offered at the Hearing, the Decision Maker may delay the Hearing and instruct that the investigation needs to be re-opened to consider any new evidence.

Any party or witness scheduled to submit to questioning at the Hearing must have first been interviewed, or otherwise proffered a statement, to the Investigator. A party who has not previously participated in the investigation process may be limited in the evidence or statements the party may present at the hearing.

- n) Recording of Hearing. An audio or audiovisual recording, or transcript, will be created for each Hearing and made available to the parties for inspection and review upon request.



- o) Determination by the Decision Maker. After the Hearing, the Decision Maker will objectively evaluate all relevant evidence, both inculpatory and exculpatory, and reach a determination regarding whether there is sufficient evidence, by a Preponderance of the Evidence, to support a finding of responsibility on the part of Respondent for each allegation under investigation (i.e., Sexual and Gender-Based Prohibited Conduct, the PADHR Policy, Standards of Conduct, and/or conduct addressed under other University policies). In reaching a determination, the Decision Maker must evaluate all evidence independently and must not give deference to the recommended findings of fact, credibility, relevancy, or responsibility expressed in the Final Investigation Report.
- i. If the Decision Maker finds that additional investigative steps should be conducted, they will remand the matter to the Title IX Coordinator with instructions for further investigation or other action. The instructions may include guidance regarding the scope of information to be further investigated and any appropriate stipulations, including the appointment of a new Investigator.
  - ii. If the Decision Maker finds that there is sufficient evidence to support a finding of Responsibility by a Preponderance of the Evidence, they will then determine the appropriate sanction(s) for the Sexual and Gender-Based Prohibited Conduct, and whether remedies are appropriate.
  - iii. If the Decision Maker finds that there is insufficient evidence to support a finding of responsibility by a Preponderance of the Evidence, the Decision Maker may still determine whether remedies are appropriate. The Title IX Coordinator may nevertheless ensure that Supportive Measures remain in effect for the Complainant and/or Respondent.
- p) Sanctions and Remedies. Where there is a finding of responsibility, the Decision Maker may impose one or more disciplinary sanctions on the Respondent and/or provide remedies to the Complainant designed to restore or preserve equal access to the University's education program or activity.

The Sexual Misconduct Policy prohibits a broad range of conduct, all of which is serious in nature. The propriety of any particular sanction and/or remedy is reviewed on an individual basis based on the unique facts and circumstances as found by the Decision Maker. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the Sexual Misconduct Policy provides the Decision Maker with wide latitude in the imposition of sanctions and/or remedies tailored to the facts and circumstances of the Formal Complaint, the impact of the conduct on the Complainant and University community, and accountability by the Respondent. The imposition of sanctions and/or remedies is designed to eliminate Sexual and Gender-Based Prohibited Conduct, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and legal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the

individuals involved or so deleterious to the educational process that it requires severe sanctions, including suspension or expulsion from the University.

i. Range of Potential Disciplinary Sanctions–Student Respondents. Where disciplinary sanctions are determined appropriate by the Decision Maker, sanctions may include any of the sanctions that are available for violations of the University’s Standards of Conduct, including, but not limited to, one or more of the following:

- Expulsion: Termination of student status for any indefinite period.
- Suspension: Exclusion from classes and other privileges or activities or from the University for a definite period of time.
- Suspension held in abeyance: Exclusion from classes and other privileges or activities or from the University for a definite period of time to be enforced should another violation occur.
- Restitution: Reimbursement for damages or misappropriation of property.
- Disciplinary Probation: Exclusion from participation in privileged or extracurricular activities for a definite period of time.
- Reprimand: A written reprimand for violation of the Sexual Misconduct Policy (and, if applicable, Sexual and Gender-Based Prohibited Conduct, the PADHR Policy, the Standards of Conduct, or other University policy) placed in the Student’s record, including the possibility of more severe disciplinary sanctions should another violation occur within a stated period of time.
- Informal or Formal Coaching: A coaching session conducted by a trained staff member in the Office for Equal Opportunity and Civil Rights (EOCR), the Office of the Dean of Students, or other relevant University office.
- Training: An individualized training session regarding specific topic(s) relevant to the conduct at issued conducted by a trained staff member in the EOCR, the Office of the Dean of Students, and/or other relevant University office.
- Warning Notice: A notice, in writing, that continuation or repetition of conduct found wrongful, within a period of time stated in the warning, may be cause for more severe disciplinary action.
- Withholding Diploma: Withholding a student’s diploma for a specified period of time and/or denying a student participation in commencement activities.
- Revocation of Degree: Recommendation to the General Faculty of revocation of a degree previously awarded for serious violations committed by a student prior to graduation.
- Organizational Sanctions: Deactivation, loss of recognition, loss of some or all privileges for a specified period of time.

ii. Range of Potential Disciplinary Sanctions–Employee Respondents. Where disciplinary sanctions are determined appropriate by the Decision Maker,



sanctions may include, but are not limited to, one or more of the following:

- Termination of Employment: The permanent separation of employment from the University.
- Suspension: The temporary suspension of employment from the University.
- Demotion: The demotion of the Respondent from their current position to another position.
- Removal of Administrative Appointment: The removal of an administrative appointment at the University.
- Transfer of Position: The transfer of a position from one Department, School, etc. to another.
- Progressive Disciplinary Action: The imposition of a sanction consistent with the University's Standards of Conduct for Employees and progressive discipline process. See [https://www.dhrm.virginia.gov/docs/default-source/hrpolicy/pol1\\_60.pdf?sfvrsn=2](https://www.dhrm.virginia.gov/docs/default-source/hrpolicy/pol1_60.pdf?sfvrsn=2).
- Informal or Formal Coaching: A coaching session conducted by a trained staff member in EOCR, Human Resources/Employee Relations, the Office of the Provost, or other relevant University office.
- Training/Education: An individualized training/education session regarding specific topic(s) relevant to the conduct at issue conducted by a trained staff member in the EOCR, Human Resources, the Office of the Provost, or other relevant University office.

iii. Range of Potential Remedies. In addition to disciplinary sanctions, the Decision Maker may recommend remedies designed to restore or preserve the Complainant's equal access to the University's education program or activity. Such remedies may include, but are not limited to, the Supportive Measures, described in Section V.B of the Misconduct Procedures, but may also include remedies that burden the Respondent, including, but not limited to the following:

- Imposition or extension of a No-Contact Directive;
- imposition or extension of academic, extracurricular, University housing, and/or University employment modifications;
- Imposition or extension of increased monitoring, supervision, and/or security at locations or in connection with activities where the Sexual and Gender-Based Prohibited Conduct occurred or is likely to reoccur;
- targeted or broad-based educational programming or training for relevant persons or groups;
- Imposition of one or more restorative remedies to encourage a Respondent to develop insight about the Sexual and Gender-Based Prohibited Conduct, learn about the impact of that Title IX Prohibited Conduct on the Complainant and the University community, and identify how to prevent that Sexual and Gender-Based Prohibited Conduct in the future (including community service and mandatory

participation in training, education and/or prevention programs related to the Sexual and Gender-Based Prohibited Conduct); and/or

- Imposition of any other Supportive Measures that are tailored to achieve the goals of the Sexual Misconduct Policy and to promote a safe, nondiscriminatory environment.

iv. Key considerations. In determining the appropriate disciplinary sanction(s) and/or remedies, the Decision Maker will be guided by several considerations, including, but not limited to:

- The severity, persistence, or pervasiveness of the Sexual and Gender-Based Prohibited Conduct, conduct under the PADHR Policy, the Standards of Conduct, and/or other University Policy;
- The degree of violence (if any) associated with the Sexual and Gender-Based Prohibited Conduct, conduct under the PADHR Policy, the Standards of Conduct, and/or other University Policy;
- The impact of the Sexual and Gender-Based Prohibited Conduct, or conduct under the PADHR policy, the Standards of Conduct, and/or other University Policy on the Complainant;
- The impact or implications of the Sexual and Gender-Based Prohibited Conduct, conduct under the PADHR Policy, the Standards of Conduct, and/or other University Policy within the University community;
- Prior misconduct by the Respondent, including the Respondent's relevant prior disciplinary history, at the University or elsewhere, and any criminal convictions;
- Whether the Respondent has accepted responsibility for the Sexual and Gender-Based Prohibited Conduct, conduct under the PADHR Policy, the Standards of Conduct, and/or other University Policy;
- The maintenance of a safe, nondiscriminatory, and respectful living, learning, and work environment; and
- Any other mitigating, aggravating, or compelling factors.

v. Additional Information Considered. If the Decision Maker concludes there is sufficient evidence, by a preponderance of the evidence, to support a finding of responsibility, the Decision Maker will contact the Title IX Coordinator to obtain copies of information for consideration in determining appropriate disciplinary sanctions and/or remedies, including but not limited to the parties' impact and/or mitigation statements, as described in Section VII.D.2(p) of these Misconduct Procedures and information regarding the Respondent's criminal and/or University disciplinary history (if any). At the Decision Maker's discretion, the Decision Maker may consult with appropriate University officials (including but not limited to the Vice President for Student Affairs/Chief Student Affairs Officer (or designee), Office of the Dean of Students, Chief

Human Resources Officer (or designee), Provost (or designee), Supervisor/Manager, Title IX Coordinator, EOCR Compliance Director, Faculty Employee Assistance Program (FEAP), Student Health, Counseling and Psychological Services, and University Counsel)) regarding the appropriate disciplinary sanction and/or remedies; however, the Decision Maker must independently determine the appropriate disciplinary sanction and/or remedies and will not delegate the determination to any other University officials.

- q) Written Determination. The Decision Maker will simultaneously issue a written decision (the “Written Determination”) to both the Complainant and the Respondent, with a copy to the Title IX Coordinator, within ten (10) businessdays following the Hearing (or such longer time as the Decision Maker may for good cause determine). The Written Determination will include the following:
- identification of the allegations potentially constituting Sexual and Gender-Based Prohibited Conduct, conduct under the PADHR Policy, the Standards of Conduct, and/or other University Policy;
  - a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held;
  - findings of fact supporting the determination;
  - conclusions regarding the application of the Sexual Misconduct Policy (and, if applicable, the PADHR Policy, the Standards of Conduct, and/or other University Policy) to the facts;
  - a description of any impact or mitigation statements, or other information obtained and/or considered in determining the appropriate disciplinary sanctions and/or remedies;
  - a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the University’s education program or activity will be provided by the University to the Complainant; and
  - the University’s procedures and permissible bases for the parties to appeal.
- r) Transcript Notations. If the Decision Maker imposes a sanction of expulsion or suspension, the Title IX Coordinator will notify the University Registrar to place a prominent notation on the Respondent’s transcript, as described in Section VII.G of these Misconduct Procedures.

- s) Effective Date of Disciplinary Sanctions. The determination regarding responsibility becomes final, and any sanctions imposed are effective, on the date that the University provides the parties with written determination of the result of any appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The Title IX Coordinator will notify the parties on this date and coordinate the implementation of any disciplinary sanctions and/or remedies. Any sanction or combination of sanctions imposed upon a Respondent will be documented in the Respondent's personnel file, if an employee, or the Respondent's student records, if a student.
- t) Release of Documents. Under federal privacy laws, the Final Investigation Report, statements of one party that are shared with the other party in the resolution process, and any documents prepared by the University, including documents by or for the Decision Maker in advance of the Hearing, constitute education records which may not be disclosed outside of the proceedings, except as may be required or authorized by law. The University does not, however, impose any restrictions on the parties regarding re-disclosure of the incident, their participation in proceedings under these Misconduct Procedures, or the Written Determination.

## **5. Appeal of Written Determination of Responsibility and Sanctions.**

The appeal is an objective, independent review designed primarily to detect any significant errors in the investigation or determination. The appeal is limited to four bases described below; the appeal is not an opportunity for a party to reexamine each aspect of the Decision Maker's decision or seek a *de novo* (i.e., from the beginning) review. Instead the four bases for appeal focus on specific aspects of the Decision Maker's written determination, such as procedural irregularities, that could have affected the outcome of the matter.

Both parties have the right of appeal. The Appeal Officer(s) review all appeals. Any sanction issued by the Decision Maker will not take effect until the conclusion of the appeal process or the expiration for filing an appeal.

- a. **Appeals Officer(s).** All Appeals Officer(s) and their designees will receive annual training on issues related to Title IX Prohibited Conduct and Sexual and Gender-Based Prohibited Conduct, the scope of the University's education program or activity, relevancy, and on how to conduct a Procedure that is fair and impartial, including information regarding investigations, hearings, appeals, and the Informal Resolution Process, while avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
  - i. Where the Respondent is a Student, the Appeals Officer is the Vice President for Student Affairs and Chief Student Affairs Officer, or their designee.
  - ii. Where the Respondent is an Employee that reports directly to an Executive Vice President, the Appeals Officer is the Executive Vice President, or their designee.

- iii. Where the Respondent is Academic Faculty, the Appeals Officer is the Executive Vice President Provost, or their designee.
- iv. Where the Respondent is an Employee in the Academic Division (who does not report to an Executive Vice President), the Appeals Officer is the Executive Vice President and Chief Operating Officer, or their designee.
- v. Where the Respondent is a staff member in the Medical Center, the Appeals Office is Executive Vice President for Health Affairs, or their designee.

The Title IX Coordinator will maintain and publish a list of Appeals Officers, and their designees. Where the Appeals Officer delegates their responsibility, they must inform the Title IX Coordinator of their designees on an annual basis prior to the start of the academic year to ensure adequate time to provide training.

- b. **Bases for Appeals.** Parties may appeal the Written Determination only on the following four bases:
  - i. Procedural irregularity affected the outcome of the Formal Complaint. The appeal must specify the procedural provision(s) that were violated and how it affected the outcome of the Formal Complaint. Procedural or technical irregularities will not be sufficient to sustain an appeal unless found to have affected the outcome of the Formal Complaint. Examples of procedural irregularity that may be sufficient to sustain an appeal include: (1) the Decision Maker's failure to objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence or (2) any erroneous relevance determinations made by the Decision Maker if the relevance determination affected the outcome of the Formal Complaint.
  - ii. New evidence that was not reasonably available at the time the Written Determination was made that could affect the outcome of the Formal Complaint. An appeal on this basis is limited to new evidence that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the Formal Complaint. The appeal must specify the new evidence that was not reasonably available at the time of the determination, why the evidence was unknown or unavailable, and how the new evidence could affect the outcome of the Formal Complaint. The following **does not** constitute new evidence for purposes of an appeal:
    - Evidence submitted in response to the Draft Investigation Report or Final Investigation Report;
    - Evidence or testimony that was submitted during the investigation but not subject to cross examination at the hearing, and thus not considered by the Decision Maker; and

- A party's statement or testimony that was not provided prior to the issuance of the Written Determination.
- iii. The Title IX Coordinator, Investigator(s), or Decision Maker had bias or actual conflict of interest for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the Formal Complaint. The appeal must specify the basis on which the party believes the Title IX Coordinator, Investigator(s), or Decision Maker had an actual conflict of interest or bias that affected the outcome of the matter and how it affected the outcome of the Formal Complaint.
  - iv. Inappropriate Disciplinary Sanction. A party (Complainant or Respondent) appealing on this basis must identify the reason(s) they believe the Decision Maker's decision related to disciplinary sanctions is inappropriate and/or not commensurate with the finding of responsibility or the underlying facts determined by the Decision Maker, and propose an alternative disciplinary sanction or remedy the appealing party believes should be implemented. The Appeals Officer may utilize all reasonable factors in reviewing an appeal on this basis, including but not limited to the following factors:
    - whether the disciplinary sanction(s) imposed by the Decision Maker are authorized under the Sexual Misconduct Policy;
    - whether the disciplinary sanction(s) identified by the Decision Maker are sufficient to prevent recurrence of similar conduct by the Respondent or others;
    - and whether the disciplinary sanction(s) are commensurate with the conduct that occurred.

The Appeals Officer's determination will be specific to the individual circumstances of each matter and need not be identical to a disciplinary sanction applied in prior, similar Formal Complaints involving different Respondents.

- c. **Appeal Timeline.** An appeal must be submitted in writing to the Title IX Coordinator within five (5) business days of receipt of the Written Determination from the Decision Maker. The Title IX Coordinator will identify the appropriate Appeals Officer.
- d. **Appeal Process.** All appeals must be in writing and clearly cite the base(s) for the appeal and the evidence supporting the appeal. Except for the basis of New Evidence, an appealing party is prohibited from submitting evidence that was not previously submitted to the Investigator or Decision Maker. If the party files an appeal, the Title IX Coordinator will promptly notify the other party and the Appeals Officer in writing and provide the party with a copy of the appeal. The non-appealing party has five (5) business days to provide a written response to the appeal; the non-appealing party is not required to submit a response to the appeal.

Upon expiration of the deadline for the non-appealing party's written submission, the Title IX Coordinator will provide the Appeals Officer: (1) the appeal; (2) the non-appealing party's response, if provided; (3) the Final Investigation Report; (4) the Decision Maker's Written Determination; (5) any information reviewed and considered by the Investigator or Decision Maker; (6) all inculpatory and exculpatory evidence submitted to the Investigator or Decision Maker; and (7) a transcript of the Hearing (collectively, the "Appeal Packet").

The Appeals Officer may confer with appropriate University employees in order to obtain information necessary to make a fully informed decision. The Appeals Officer may request clarifying information from the parties, the Investigator, and/or the Decision Maker. No hearing or interviews are permitted during the Appeal Process.

- e. **Appeal Outcome and Final Outcome Letter.** The Appeals Officer will issue a determination within ten (10) business days of receiving the Appeal Packet unless an extension of the timeline for good cause is identified. If additional time is needed for good cause, the Appeals Officers will provide the parties and the Title IX Coordinator with an updated response time. The Appeals Officer will provide the written notice of the appeal determination (Final Outcome Letter), which will explain the result of the appeal and the rationale for the decision, simultaneously to both parties and provide a copy to the Title IX Coordinator.

The University does not impose any restrictions on the parties regarding re-disclosure of the incident, their participation in proceedings under the Misconduct Procedures, or the Final Outcome Letter.

- f. **Final Decision.** The Final Outcome Letter is final under the Sexual Misconduct Policy and is not subject to further University appeal or grievance. Nothing in the Misconduct Procedures abrogates post-adjudication rights as provided by state and federal law (i.e., State Grievance Procedure, under Chapter 30 (§ 2.2-3000 et. seq.) of Title 2.2 of the Code of Virginia; the [Office for Civil Rights](#); and the [Equal Opportunity Employment Commission](#))

#### D. INFORMAL RESOLUTION

- 1. **Initiation.** At any point following receipt of the Written Notice of Allegations and Investigation, as described in Section VII.B, and before a Hearing, as described in Section VII.D.4, the parties may submit written requests to engage in Informal Resolution in place of an investigation and Formal Resolution. The University, however, has the discretion to determine whether Informal Resolution is appropriate in light of the nature of the conduct alleged in the specific Formal Complaint, the type of Informal Resolution that may be appropriate in a specific Formal Complaint, and, pursuant to Section VII.D of the Misconduct Procedures, to refer a Formal Complaint for Formal Resolution at any time. Prior to the initiation of Informal Resolution, the Title IX Coordinator or Informal Resolution Facilitator will obtain written consent from both parties to proceed with Informal Resolution. **However, Informal Resolution may not be available where an employee is alleged to have**



**engaged in Sexual and Gender-Based Prohibited Conduct directed at a student. Forms of Informal Resolution that involve face-to-face or virtual meetings between the Complainant and the Respondent, such as mediation, may not be available in cases involving Non-Consensual Sexual Contact, Non-Consensual Sexual Intercourse, or Intimate Partner Violence. The Title IX Coordinator or Informal Resolution Facilitator hold ultimate authority to determine the appropriateness of Informal Resolution based upon the specific circumstances of the Formal Complaint.**

- 2. Voluntary.** Participation in Informal Resolution (including any specific form of Informal Resolution) is voluntary. Participation in Informal Resolution will not be a condition of enrollment, continued enrollment, employment, or continued employment, or require the waiver of the right to an investigation and adjudication of a Formal Complaint consistent with the Misconduct Procedures. The University will not compel a Complainant or Respondent to engage in Informal Resolution, will not compel a Complainant to directly confront the Respondent, and will allow a Complainant or Respondent to withdraw from Informal Resolution at any time prior to resolution. The University may decline the request for Informal Resolution in any particular Formal Complaint and may terminate an ongoing Informal Resolution process at any time. Pursuing Informal Resolution does not preclude later use of Formal Resolution if the Informal Resolution fails to achieve a resolution acceptable to the parties and the University. Where the Complainant or the Respondent withdraws from Informal Resolution or Informal Resolution is otherwise terminated for any reason, the Investigator will resume the Formal Resolution and any statements or disclosures made by the parties during the course of the Informal Resolution that are not independently revealed during the course of the Formal Resolution investigation may not be considered by the Decision Maker.
- 3. Informal Resolution Facilitators and Training.** All individuals who facilitate Informal Resolution will receive training on issues related to Title IX Prohibited Conduct and Sexual and Gender-Based Prohibited Conduct, the scope of the University's education program or activity, relevancy, and on how to conduct a Grievance Process and/or Misconduct Procedures that are fair and impartial, including information regarding investigations, hearings, appeals, and the Informal Resolution Process, while avoiding prejudgment of the facts at issue, and free from conflicts of interest and bias. The Informal Resolution Facilitator will not be the Investigator assigned to investigate the Formal Complaint.
- 4. Advisors.** With any form of Informal Resolution, each party has the right to choose and consult with an advisor, or request that one be provided to them by the University, if available. The advisor may be any person, including an attorney, who is not otherwise a party or witness to the reported incident(s). The parties may be accompanied by their respective advisors at any meeting or proceeding held as part of Informal Resolution. 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 and/or proceedings.



**5. Methods and Resolution.** Any form of Informal Resolution and any combination of interventions and remedies may be utilized. If an agreement acceptable to the University, the Complainant, and the Respondent is reached through Informal Resolution, the terms of the agreement are implemented and the matter is resolved and closed. The Title IX Coordinator or designee will monitor the implementation of the agreement as appropriate. If an agreement between the parties and subject to the Title IX Coordinator's approval is not reached or if a Respondent fails to comply with the terms of the Informal Resolution, the Formal Complaint may be referred for an investigation and Formal Resolution under the Misconduct Procedures. Informal Resolution may include, but is not limited to:

- Resolution with the Assistance of a Third Party: The Title IX Coordinator can arrange to have a trained Informal Resolution Facilitator facilitate a meeting or meetings between the parties, including through the use of mediation. The availability of this form of Informal Resolution, and any resolution reached through such form of Informal Resolution, is subject to the agreement of the Title IX Coordinator, Complainant, and Respondent.
- Interventions and Remedies: Informal Resolution agreements may involve a host of interventions and remedies, such as actions designed to maximize the Complainant's access to educational, extracurricular, and/or University employment activities; increased monitoring, supervision, and/or security at locations or activities where the Sexual and Gender-Based Prohibited Conduct occurred or is likely to recur; targeted or broad-based educational programming or training for relevant individuals or groups; academic and/or University housing modifications for Student Complainants; workplace modifications for Employee Complainants; one or more of the restorative remedies or other sanctions described in the Misconduct Procedures; and/or any other supportive or protective measures that can be tailored to the involved individuals to achieve the goals of the Sexual Misconduct Policy.

**6. Recordkeeping and Timeframe.** The Title IX Coordinator will maintain records of all reports and conduct referred for Informal Resolution, which typically will be completed within thirty (30) business days. This period may be extended to account for attempt(s), if any, at Formal Resolution, or for other good cause. Any extension and the reason for the extension will be timely shared with the parties in writing.

#### E. INTERSECTION OF FORMAL RESOLUTION AND INFORMAL RESOLUTION

At any point after the Written Notice of Allegations and Investigation is received by the parties and before the commencement of a Hearing, the parties may request to voluntarily engage in Informal Resolution, as described in Section VII.E., subject to the Title IX Coordinator's approval. At any point prior to the resolution of the Informal Resolution, either party may withdraw from the Informal Resolution or the Title IX Coordinator may terminate the Informal Resolution, at which point Formal Resolution will resume, as described in Sections VII.D and VII.E. Any

information gathered during the Informal Resolution that is not independently discovered during Formal Resolution may not be considered by the Decision Maker.

#### F. ACADEMIC TRANSCRIPT NOTATIONS

Pursuant to [Va. Code §23.1-900](#), the Title IX Coordinator will direct the University Registrar to include a prominent notation on the academic transcript of any Student who has been (1) suspended, (2) expelled (i.e., permanently dismissed), or (3) who has withdrawn from the University while under investigation, for Title IX Prohibited Conduct pursuant to the Sexual Misconduct Policy. Such notation will reflect, as appropriate, the following language: “[Suspended, Expelled, or Withdrew While Under Investigation] for a Violation of the University’s Policy on Title IX Harassment and Sexual and Gender-Based Misconduct.” The Title IX Coordinator will direct the University Registrar to remove any such notation where (a) a Student is subsequently found not to have committed an act of Sexual and Gender-Based Prohibited Conduct pursuant to the Sexual Misconduct Policy, and/or (b) a Student who has been suspended for Sexual and Gender-Based Prohibited Conduct pursuant to the Sexual Misconduct Policy, has (i) completed the term of such suspension and any conditions thereof, and (ii) has been determined by the University to be in good standing pursuant to all applicable University academic and non-academic standards.

Any Student who has had a transcript notation placed pursuant to the above provision, may, after a period of three years, submit a written request to the Title IX Coordinator to expunge the transcript notation. The written request must explain the basis upon which the petitioning student believes good cause exists to remove the transcript notation. The Title IX Coordinator will consult with appropriate University officials, which may include but is not limited to the University Registrar, the Vice President and Chief Student Affairs Officer (or designee), Threat Assessment Director, and University Counsel, and within 14 business days of receiving the written request provide a written response either granting or denying the request. If the transcript notation is removed, the Complainant that was the subject of the underlying Formal Complaint will be notified in writing.

#### G. RECORDS RETENTION

1. **Student Respondents.** The University shall retain all records relating to a report of Title IX Prohibited Conduct for a period of ten (10) years after the date the report was received, and the University shall retain all such records for a period of twenty (20) years in cases in which the Respondent was found responsible for Title IX Prohibited Conduct.
2. **Employee Respondents.** The University shall retain all records relating to a report of Title IX Prohibited Conduct, including investigation files and personnel record documentation of disciplinary or other personnel actions, in accordance with the [University's Record Retention and Disposition Schedule](#).