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University Sexual Misconduct Policy

UNIVERSITY OF LYNCHBURG
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TITLE IX OFFICE, UNIVERSITY OF LYNCHBURG | 1501 Lakeside Dr. Lynchburg, VA 24501

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Title IX Sexual Harassment policy & University Sexual Misconduct policy

The Title IX Sexual Harassment policy is based on definitions set forth in regulations promulgated by the U.S. Department of Education under Title IX of the Education Amendments Act of 1972; that policy limits the scope of Title IX Sexual Harassment to conduct that occurs within the United States and conduct that occurs within the University's education program or activity. In order to address incidents of sexual misconduct that do not fall within the definition of Title IX Sexual Harassment, the University has two policies that address sexual misconduct: (1) the Title IX Sexual Harassment policy and (2) the University Sexual Misconduct policy. These policies are inter-related and must be read together.

The University Sexual Misconduct policy applies only to certain conduct, as defined under that policy. Specifically, the University Sexual Misconduct policy applies to forms of sexual misconduct that do not fall under the scope of the Title IX Sexual Harassment policy, including Sexual Exploitation, Improper Conduct related to Sex, and University Sexual Harassment. The University Sexual Misconduct Policy also applies to complaints alleging certain conduct that would otherwise be prohibited under the Title IX Sexual Harassment policy (e.g., Sexual Assault, Domestic Violence, Dating Violence, and Stalking under the Title IX Sexual Harassment policy), but which must be dismissed under the Title IX Sexual Harassment policy because they do not meet the jurisdictional requirements.

Both policies can be accessed through the Title IX website at [add link to the Title IX landing page]. Both policies provide information about types of prohibited conduct, how to access resources and/or make a complaint, and investigative and disciplinary procedures.

University Sexual Misconduct Policy & Subsections

I. The University Title IX Coordinator

The Title IX Coordinator coordinates the University's compliance with Title IX and all University conduct policies related to sexual misconduct.

The University Title IX Coordinator will be informed of all reports or formal complaints of violations of this policy and oversees the University's centralized response to ensure compliance with Title IX and the 2013 Amendments to the Violence Against Women Act

(VAWA). The University Title IX Coordinator's responsibilities include (but are not limited to):

- Communicating with all members of the University community regarding Title IX and VAWA, and providing information about how individuals may access their rights;
- Reviewing applicable University policies to ensure institutional compliance with Title IX and VAWA;
- Monitoring the University's administration of its own applicable policies, including this policy and the Title IX Sexual Harassment policy and all related record keeping, timeframes, and other procedural requirements;
- Conducting training regarding Title IX, VAWA, and prohibited conduct defined in this policy and related policies; and
- Responding to any report or formal complaint regarding conduct that violates this policy. For any report of which the University has actual knowledge (and any formal complaint), the University Title IX Coordinator shall oversee and implement the explanation and provision of any supportive measures. For any formal complaint, the University Title IX Coordinator oversees the investigation and resolution of such alleged misconduct, directs the provision of any additional supportive measures, and monitors the administration of any related appeal.

The University Title IX Coordinator may delegate certain responsibilities under this policy to designated administrators, who will be appropriately trained.

The University Title IX Coordinator's contact information is as follows:

Dr. Liz Frost
Title IX Coordinator
1501 Lakeside Drive
Lynchburg, VA 24501
frost_l@lynchburg.edu
titleix@lynchburg.edu
434.544.8482

The University provides the contact information of the University Title IX Coordinator to students, faculty, staff, applicants for admission, applicants for employment, and all labor unions or professional organizations holding collective bargaining or professional agreements with the University.

II. Terminology

The following definitions clarify key terminology as used in this policy.

Actual Knowledge means that the Title IX Coordinator / Office or an Official with Authority has received notice of sexual harassment or allegations of sexual harassment.

Advisor refers to a person selected by a party¹ or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination during a hearing (if applicable).

Clery Act is a Federal law that requires that all colleges and universities disclose crimes that have occurred on their campus to the federal government.

Complainant refers to the individual(s) who is alleged to be the victim of conduct that could constitute University Sexual Misconduct.

Decision-Maker refers to those who have decision-making authority within the University's Formal Grievance process for Sexual Misconduct cases.

Deliberately indifferent means when the university's response to Title IX Sexual Harassment is "clearly unreasonable in light of the known circumstances" (34 CFR§106.44(a)).

Education program or activity includes locations, events, or circumstances where University of Lynchburg exercises substantial control over both the Respondent and the context in which the sexual harassment occurs and includes any building owned or controlled by a student organization that the University officially recognizes.

Employee: Any University of Lynchburg employee, including full-time, part-time, regular part-time, temporary, exempt or non-exempt employee, as those categories are classified in the University of Lynchburg Employee Handbook of Personnel Policies and Procedures. Employees include both *Staff Employees* and *Faculty Employees*.

FERPA (Family Educational Rights and Privacy Act) is a Federal law that protects the privacy of student education

Formal complaint refers to a document filed by a complainant (meaning a document or electronic submission (such as by electronic mail) that contains the complainant's physical or digital signature or otherwise indicates that the complainant is the individual filing the formal complaint) alleging University Sexual Misconduct against a respondent and requesting that the University investigate the allegation of University Sexual Misconduct. A formal complaint may be filed with the University Title IX Coordinator in

¹ See section on Advisors for exclusions.

person, by mail, or by electronic mail, by using the contact information provided in this policy, and by any additional method identified in this policy. A **Formal complaint** may also refer to a document signed by the University Title IX Coordinator alleging University Sexual Misconduct against a respondent. Where the University Title IX Coordinator signs a formal complaint, the University Title IX Coordinator is not a complainant or otherwise a party.

Formal Grievance Process is a method of formal resolution designated by the University to address conduct that falls under the scope of the University Sexual Misconduct policy or the Title IX Sexual Harassment policy.

Informal Resolution is a process that may encompass a broad range of conflict resolution strategies, including but not limited to, meetings between the parties and Title IX or other designees.

Intake Meeting is a meeting that takes place with the Title IX Coordinator often prior to a person filing a formal complaint. The meeting is prompted by the Title IX Office receiving an incident report, walk-in, email, or phone call about an incident. This meeting allows the Title IX Coordinator to explain options, determine if an incident falls under Title IX Sexual Harassment, University Sexual Misconduct, or should be directed to another department. These meetings are informational to help persons decide on next steps, learn about available resources and supportive measures.

Investigator means the person or persons charged by the University with gathering facts about an alleged violation of this policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.

Official with Authority refers to administrators who have the authority to institute corrective measures on behalf of the University.

Party or parties refer to the complainant(s) and the respondent(s).

Report refers to information brought to the attention of an Official with Authority alleging conduct prohibited under this policy; a report is not considered to be a formal complaint. A party may bring a report and then subsequently file a formal complaint.

Respondent refers to the individual(s) who has been alleged to be the perpetrator of conduct that could constitute University Sexual Misconduct.

Resolution refers to the determination or agreement of an informal or formal grievance process.

Responsible Employee is an employee of the University who may share knowledge, notice, and/or reports of sexual harassment with the permission of the complainant to the Title IX

Coordinator.²

Sanction refers to a consequence imposed by the Hearing Decision-Maker based on a finding of responsibility by the Decision-Maker for formal resolution (with Hearings).

Student: Any student at the University of Lynchburg, regardless of whether such student is enrolled in credit- or non-credit courses or on a full-time or part-time basis. In accepting admission to the University, a student agrees to learn and abide by all University policies and procedures. Upon participation in an activity to begin one's first academic session or semester at the University of Lynchburg (e.g. check-in, Hornet Days, orientation, or class attendance), an admitted applicant is considered a student.

Supportive Measures refers to non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

Third party refers to any individual who is not a university student, a faculty member, or a staff member (e.g., vendors, alumni/ae, or local residents).

Title IX Coordinator refers to an official designated by the University of Lynchburg to ensure compliance with the Title IX Sexual Harassment and University Sexual Misconduct policies.

Witness refers to any individual who shares information relating to an allegation of prohibited conduct under this policy.

III. Prohibited Conduct

This policy addresses University Sexual Misconduct. University Sexual Misconduct encompasses all of the prohibited conduct described below that occurs on the basis of sex that does not fall within the definitional or jurisdictional requirements of the federal regulations underlying the Title IX Sexual Harassment policy.

Examples of prohibited conduct under this University Sexual Misconduct policy may include:

- Conduct that occurs in the local vicinity (e.g., an eating club) but outside of a university program or activity; or

² Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this policy.

- Conduct that occurs outside of the United States when the conduct is associated with a university-sponsored program or activity, such as travel, research, or internship programs; or
- Conduct that involves the use of the University's computing and network resources from a remote location, including but not limited to accessing email accounts.

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

The prohibited behaviors listed below are serious offenses and will result in university discipline. Prohibited conduct involving force, duress, or inducement of incapacitation, or where the perpetrator has deliberately taken advantage of another individual's state of incapacitation, will be deemed especially egregious and may result in expulsion or termination of employment. The respondent's consumption of alcohol or the use of illegal substances does not constitute a mitigating circumstance when it contributes to a violation under this policy.

The following prohibited behaviors fall under the University Sexual Misconduct policy only if they fall outside the jurisdictional requirements of the Title IX Sexual Harassment policy (as described in section III of the Title IX Sexual Harassment policy):

- **Quid Pro Quo Sexual Harassment:** An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.
- **Sexual Assault:** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes and/or genders. This includes the following:
 - **Rape:** Vaginal sexual intercourse, including digital penetration, with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
 - **Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable

of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

- **Sexual Assault with an Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
- **Fondling/Sexual Contact:** The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication.
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.
- **Domestic Violence:** A felony or misdemeanor crime of violence committed: (a) by a current or former spouse or intimate partner of the victim; (b) by an individual with whom the victim shares a child in common; (c) by an individual who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (d) by an individual similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the felony or misdemeanor crime of violence occurred; (e) by any other individual against an adult or youth victim who is protected from that individual's acts under the domestic or family violence laws of the jurisdiction in which the felony or misdemeanor crime of violence occurred. For purposes of this policy, an intimate partner is defined as an individual with whom one has or had a short- or long-term relationship that provides romantic and/or physical intimacy or emotional dependence. Intimate relationships can occur between individuals of the same gender or different genders and may include (but are not limited to) marriages, civil unions, dating relationships, "hook-up" relationships, relationships in which partners are characterized as "girlfriends" or "boyfriends," and relationships between individuals with a child in common.

- **Dating Violence:** Violence committed by an individual who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting individual's statement and consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the individuals involved in the relationship. This includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- **Stalking:** Engaging in a course of conduct directed at a specific individual based on sex that would cause a reasonable person to: (a) fear for the individual's safety or the safety of others; or (b) suffer substantial emotional distress. For the purposes of the Stalking definition: Course of conduct means two or more acts, including acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about an individual, or interferes with an individual's property. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- **University Retaliation.** No individual may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this policy or because an individual has made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

The University retains the right to charge an individual for making a materially false statement in bad faith during the course of an investigation, proceeding, or hearing under this policy, but will not conclude that any individual has made a materially false statement in bad faith solely based on the determination regarding responsibility.

Complaints alleging retaliation under this policy, including for the exercise of rights under this policy, must be filed in accordance with this policy and will be addressed promptly and equitably. Where the individual allegedly retaliating is not affiliated with the University and not otherwise subject to its policies, the University will process the complaint and take appropriate measures.

Notwithstanding the above, the exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this policy; and charging an individual with

a violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

The jurisdictional requirements of the Title IX Sexual Harassment policy do not apply to the following prohibited behaviors, that is, the following prohibited behaviors do not fall under the Title IX Sexual Harassment policy regardless of where or under what circumstances they occur:

- **University Sexual Harassment:** Unwelcome verbal or physical behavior, which is directed at an individual based on sex, when these behaviors are sufficiently severe or pervasive to have the effect of unreasonably interfering with an individual's educational experience, working conditions, or living conditions by creating an intimidating, hostile, or offensive environment. Examples of conduct that can constitute sexual harassment if based on an individual's sex include but are not limited to:
 - Unwelcome jokes or comments (e.g., sexist jokes);
 - Disparaging remarks about sex, gender identity, or gender expression (e.g., negative or offensive remarks or jokes about an individual's self-presentation);
 - Displaying negative or offensive posters or pictures about sex;
 - Electronic communications, such as e-mail, text messaging, and Internet use, that violate this policy.
- **Sexual Exploitation.** Any act whereby one individual violates the sexual privacy of another or takes unjust or abusive sexual advantage of another who has not provided consent, and that does not constitute non-consensual sexual penetration or non-consensual sexual contact. Examples may include recording, photographing, transmitting, viewing, or distributing intimate or sexual images or sexual information without the knowledge and consent of all parties involved; voyeurism (i.e., spying on others who are in intimate or sexual situations).
- **Improper Conduct Related to Sex.** Unprofessional or inappropriate conduct that does not fall under other forms of Title IX Sexual Harassment or University Sexual Misconduct, but that is sexual in nature and has the effect of unreasonably interfering with an individual's educational experience, working conditions, or living conditions.

For purposes of this policy, consent is defined as follows:

- **Consent and Incapacitation.** The University considers consent as a voluntary, informed, un-coerced agreement through words or actions freely given, which could be reasonably interpreted as a willingness to participate in mutually agreed-upon sexual acts. Consensual sexual activity happens when each partner willingly and affirmatively chooses to participate.

Indications that consent is not present include: when physical force is used or there is a reasonable belief of the threat of physical force; when duress is present; when one individual overcomes the physical limitations of another individual; and when an individual is incapable of making an intentional decision to participate in a sexual act, which could include instances in which the individual is in a state of incapacitation.

Important points regarding consent include:

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

For purposes of this policy, incapacitation (or incapacity) is the state in which an individual's perception or judgment is so impaired that the individual lacks the cognitive capacity to make or act on conscious decisions. The use of drugs or alcohol can cause incapacitation. An individual who is incapacitated is unable to consent to a sexual activity. Engaging in sexual activity with an individual who is incapacitated (and therefore unable to

consent), where an individual knows or ought reasonably to have understood that the individual is incapacitated, constitutes University Sexual Misconduct as defined by this policy.

IV. Assessment and Dismissal of Formal Complaints

Upon receipt of a formal complaint, the University Title IX Coordinator will respond to any immediate health or safety concerns raised. The University Title IX Coordinator will then conduct an initial assessment for the sole purpose of determining whether the alleged conduct, if substantiated, would constitute prohibited conduct under this policy. The University will seek to complete the initial assessment within ten (10) business days of receipt of the formal complaint. Following the initial assessment, the University Title IX Coordinator may take any of the following actions:

- If the allegations forming the basis of the formal complaint would, if substantiated, constitute prohibited conduct as defined in this policy, the University Title IX Coordinator shall implement appropriate supportive measures. In addition, the University Title IX Coordinator may initiate an investigation of the allegations under this policy in a formal complaint, as described in section IV. However, if the University Title IX Coordinator deems the formal complaint appropriate for the alternate resolution process, the University Title IX Coordinator may instead refer the matter to the alternate resolution process as described in section IV.
- If the allegations forming the basis of the formal complaint would not, if substantiated, constitute prohibited conduct as defined in this policy, the University Title IX Coordinator may dismiss the formal complaint from the University Sexual Misconduct grievance process. However, if appropriate, the University Title IX Coordinator may refer the matter to the Title IX Sexual Harassment process or to another office for review; or, if the University Title IX Coordinator deems the formal complaint appropriate for the alternate resolution process, the University Title IX Coordinator may instead refer the matter to the alternate resolution process as described in section IV.

In addition, at any time prior to the hearing, the University may dismiss a formal complaint if:

- The complainant notifies the University Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or any allegations therein;
- The Respondent is no longer enrolled or employed by the University; or

- Specific circumstances prevent the University from gathering sufficient evidence to reach a determination as to the formal complaint or the allegations therein.
- Upon dismissal, the University shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties via electronic format; the determination regarding dismissal is deemed final at this time.

Once final, a complainant cannot file a formal complaint under this policy concerning the same alleged conduct.

V. Confidentiality, Privacy, and Related Responsibilities

Issues of privacy and confidentiality play important roles in this policy and may affect individuals differently. Privacy and confidentiality are related but distinct terms that are defined below.

In some circumstances, the reporting responsibilities of university employees, or the University's responsibility to investigate, may conflict with the preferences of the Complainant and/or Respondent with regard to privacy and confidentiality. Therefore, all individuals are encouraged to familiarize themselves with their options and responsibilities, and make use of Confidential Resources, if applicable, in determining their preferred course of action.

Requests for confidentiality or use of anonymous reporting may limit the University's ability to conduct an investigation.

1. Confidentiality and Confidential Resources

The term "confidentiality" refers to the circumstances under which information will or will not be disclosed to others.

Several campus professionals are designated Confidential Resources, to whom confidentiality attaches. Confidential Resources are not obligated to report information that is provided to them. This allows individuals to explore their options in a non-pressured environment while they make informed decisions. There may be exceptions in cases involving child abuse, imminent risk of serious harm, emergency hospitalization, or a court order. In addition, non-identifying information about violations of the University Sexual Misconduct policy may be submitted to the Office of Campus Security and Safety for purposes of the anonymous statistical reporting under the Clery Act.

An individual who is not prepared to make a report or formal complaint, or who may be unsure how to label what happened, but still seeks information and support, is strongly

encouraged to contact a Confidential Resource. See Appendix A for a complete list of Confidential Resources on campus.

Any individual who may have been subjected to a violation of this policy, or who is considering making a report or formal complaint under this policy, may contact the University's Sexual Harassment/Assault Advising, Resources, and Education (SHARE) Team. SHARE is a resource that offers support, and advocacy services and provides information about the roles and reporting obligations of other offices at the University in order to empower individuals to make informed decisions about their options.

In light of the University's obligation to respond promptly and effectively to individuals alleged to be victimized by University Sexual Misconduct, University employees who are not designated Confidential Resources are required to notify the University Title IX Coordinator of suspected violations of this policy and cannot guarantee the confidentiality of a report under this policy. See section VI(1).

2. Confidentiality Rights of Complainants and Respondents

While Complainants, Respondents, and Witnesses involved in the grievance process under this policy are strongly encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation, Complainants and Respondents are not restricted from discussing the allegations under investigation.

Medical, psychological, and similar treatment records are privileged and confidential documents that cannot be accessed or used for a grievance process under this policy without the relevant party's voluntary, written consent.

3. Privacy

The term "privacy" refers to the discretion that will be exercised by the University in the course of any investigation or grievance processes under this policy.

In all proceedings under this policy, the University will take into consideration the privacy of the parties to the extent possible.

In cases involving students, the University Title IX Coordinator may notify residential life staff, academic staff, and/or other University employees of the existence of the report and/or formal complaint for the purpose of overseeing compliance with this policy and addressing any concerns related to educational and residential life. While not bound by confidentiality, these individuals will be discreet and will respect the privacy of those involved in the process.

In accordance with federal regulations, the University will keep confidential the identity of any individual who has made a report or formal complaint under this policy, including any complainant, any individual who has been reported to be the perpetrator, any respondent, and any witness, except as may be permitted by Family Educational Rights and Privacy Act (FERPA), or as required by law, or to carry out the purposes of conducting any investigation or hearing under this policy.

Any additional disclosure by the University of information related to the report or formal complaint may be made if consistent with FERPA or the Title IX requirements. In addition, governmental agencies, such as the National Science Foundation, may mandate certain reporting-related to prohibited conduct under this policy involving University employees or students.

4. Release of Information

If the Office of Campus Security and Safety becomes aware of a serious and continuing threat to the campus community, the Office of Campus Security and Safety may issue a timely warning in accordance with federal regulation to protect the health or safety of the community. The Office of Campus Security and Safety may also publish a reported incident in the daily crime log or annual security report. In addition, the University may also share non-identifying information, including data about outcomes and sanctions, in aggregate form. The University will not disclose the name or other personally identifiable information of the complainant unless it has received the express consent of the complainant or unless the release of such information is consistent with legal requirements or mandated by law.

VI. Options for Complainants, Respondents, and Other Reporting Individuals

A complainant, respondent, or witness has many options, including counseling and support services. Information regarding contact information for local law enforcement as well as contact information for Confidential Resources that are available to provide support to parties and witnesses are described in further detail in Appendix A.

After consulting a Confidential Resource as appropriate, a complainant may:

- Request supportive measures from the University Title IX Coordinator (see section VII);
- File a formal complaint with the University Title IX Coordinator, thereby invoking the University's internal grievance process (see section II);

- Contact the Office of Campus Security and Safety for assistance in filing a criminal complaint and preserving physical evidence (see Appendix A); and/or
- Contact local law enforcement to file a criminal complaint (see Appendix A). At the Complainant's request, the University will assist the complainant in contacting local law enforcement and will cooperate with law enforcement agencies if a Complainant decides to pursue a criminal process.

An individual may pursue some or all of these steps at the same time. When initiating any of the above, an individual does not need to know whether they wish to request any particular course of action, nor how to label what happened. Before or during this decision-making process, complainants and other reporting individuals are encouraged to consult a Confidential Resource (see Appendix A).

1. Employees' Responsibility to Report

In emergency situations, if there is a suspected crime in progress or imminent or serious threats to the safety of anyone, employees should immediately contact the Office of Campus Security and Safety by dialing 434.544.5555 or 911.

In non-emergency situations, employees (other than those formally designated as Confidential Resources under this policy (see section V(1)), must promptly report suspected violations of this policy to the University Title IX Coordinator. Some students with special responsibilities, including Residential Community Experience Advisors, must promptly report alleged violations of this policy to the Director of Residential Experience or designee, and the University Title IX Coordinator.

Students are encouraged to report any suspected violation of this policy (after consulting a Confidential Resource as appropriate).

2. Anonymous Reporting

If a reporting individual makes an anonymous report, the University Title IX Coordinator will consider how to proceed, taking into account the individual's articulated concerns; the best interests of the University community; fair treatment of all individuals involved; and the University's obligations under Title IX.

A complainant cannot file a formal complaint anonymously.

3. Timeliness of Report

Complainants and other reporting individuals are encouraged to report any violation of this policy as soon as possible in order to maximize the University's ability to respond promptly and effectively. Reports and formal complaints may be made at any time without regard to

how much time has elapsed since the incident(s) in question. If the Respondent is no longer a student or employee at the time of the report or formal complaint, the University may not be in a position to gather sufficient evidence to reach a determination as to the formal complaint and/or the University may not be able to take disciplinary action against the Respondent. However, the University will still seek to provide support for the Complainant and seek to take steps to end the prohibited behavior, prevent its recurrence, and address its effects.

4. Leniency

In order to encourage reports of conduct that is prohibited under this policy, the University may offer leniency with respect to other violations which may come to light as a result of such reports, depending on the circumstances involved. The University typically does not refer students for discipline for low level violations related to alcohol and or drugs.

VII. Supportive Measures for Complainants and Respondents

Upon receipt of a report or formal complaint of a violation of this policy, the University, through the University Title IX Coordinator, will promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the Complainant the process for filing a formal complaint. The University will also consider supportive measures, as appropriate and reasonably available, for the Respondent.

These supportive measures are designed to restore or preserve equal access to the University's educational and working programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties and the broader University community, or deter sexual harassment. While a supportive measure may impose some restrictions on a party, it will not unreasonably burden them. The University may provide supportive measures to the Complainant or Respondent, as appropriate, as reasonably available, and will do so without fee or charge, regardless of whether the Complainant seeks formal disciplinary action. Once supportive measures are approved, the parties or affected individuals will be notified in writing of the supportive measures. The University will maintain any supportive measures provided to the Complainant or Respondent as confidential to the extent possible.

Supportive measures may include:

- counseling;
- extensions of deadlines or other course-related adjustments;

- modifications of work or class schedules;
- campus escort services;
- mutual restrictions on contact between the parties;
- changes in work or housing locations;
- leaves of absence;
- increased security and monitoring of certain areas of the campus; and/or
- any other measure that can be used to achieve the goals of this policy.

Requests for supportive measures may be made by or on behalf of the Complainant or Respondent to any University official, including the University Title IX Coordinator. The University Title IX Coordinator is responsible for ensuring the implementation of supportive measures and coordinating the University's response with the appropriate offices on campus.

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

VIII. Emergency Removal

In connection with this policy, whether or not a grievance process is underway, the University may summarily remove an individual from an education program or activity on an emergency basis, after undertaking an individualized safety and risk analysis, and upon the determination that the individual poses an immediate threat to the physical health or safety of any student or other individual (including themselves, the Respondent, the Complainant, or any other individual). In these situations, the University will provide the individual with notice and an opportunity to challenge the decision immediately following the removal.

IX. Alternate Resolution Process

Subject to the consent of the parties and the approval of the University Title IX Coordinator, the University permits alternate resolution processes in cases in which a formal complaint has been filed under this policy. Subject to approval by the University Title IX Coordinator, the alternate resolution process is available in matters involving a student Complainant and a student Respondent as well as in matters involving a faculty/staff Complainant and a

faculty/staff Respondent; the alternate resolution process is not available in matters involving a student and an employee.

The alternate resolution process is a voluntary, remedies-based process designed to provide parties with an option to resolve disputes with another party in a forum that is separate and distinct from the University's formal grievance processes under the University Sexual Misconduct policy. The purpose of the alternate resolution process is to address the conduct which has been reported by the Complainant and place the parties in a position to pursue their academic and non-academic interests in a safe, respectful, and productive educational and working environment. Under this process, there will be no disciplinary action taken against a Respondent, and the resolution will not appear on the Respondent's disciplinary record.

The University may facilitate the alternate resolution process at any time prior to concluding a hearing. Before the alternate resolution process is used, both parties must provide voluntary, consent to the alternate resolution process and must receive written notice disclosing: the allegations, the requirements of the alternate resolution process (including the circumstances under which it precludes the parties from resuming the investigation/adjudication of a formal complaint arising from the same allegations), and any outcomes resulting from participating in the alternate resolution process (including the records that will be maintained or could be shared). At any time prior to all parties and the Title IX Coordinator signing an alternate resolution agreement, any party has the right to withdraw from the alternate resolution process and resume the University Sexual Misconduct grievance process with respect to the formal complaint. The University Title IX Coordinator may determine at any time that the alternate resolution process is no longer appropriate and therefore may terminate the alternate resolution process.

The University will not require as a condition of enrollment or continuing enrollment, employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of University Sexual Misconduct. Similarly, the University will not require, encourage, or discourage the parties from participating in the alternate resolution process. The University will not offer the alternate resolution process unless a formal complaint is filed.

See Appendix B for additional information regarding the alternate resolution process.

X. Grievance Procedures for University Sexual Misconduct Complaints, In General

The University is committed to providing a prompt and impartial investigation and adjudication of all formal complaints alleging violations of this policy. During the grievance process, both parties (Complainant and Respondent) have equal rights to participate.

1. Conflict of Interest

All individuals who have responsibilities in administering the grievance process under this policy must be free of any conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent and will be trained as provided by federal regulations. Parties will be notified at the appropriate junctures of the identities of the individuals serving as investigators, Hearing Panel members, Sanction Officers, and Appeal Panel members. A party who has concerns that one or more of the individuals performing one of the aforementioned roles has conflicting interest or is biased must report those concerns to the University Title IX Coordinator within two (2) business days of being notified of their identities and include a brief explanation of the basis for the conflict or bias concern. The University Title IX Coordinator will assess the allegations of conflict or bias to determine whether or not the identified individual(s) can fulfill their duties in an impartial way. If the University Title IX Coordinator concludes that the facts and circumstances support the claim of conflict or bias, the pertinent individual(s) will not participate in the case.

2. Responsibility to Review Reports and Formal Complaints

In order to protect the safety of the campus community, the University Title IX Coordinator may review reports of violations of this policy even absent the filing of a formal complaint, or under certain circumstances, even if a formal complaint has been withdrawn. The University Title IX Coordinator may need to file a formal complaint and proceed with an investigation even if a Complainant specifically requests that the matter not be pursued. In such circumstances, the University Title IX Coordinator will consider the Complainant's articulated concerns, the best interests of the University community, fair treatment of all individuals involved, and the University's obligations under Title IX.

This policy differs from Virginia criminal law. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. Neither a decision by law enforcement regarding prosecution nor the

outcome of any criminal proceeding will be considered determinative of whether a violation of this policy has occurred.

3. Presumption of Good Faith Reporting

The University presumes that reports of prohibited conduct are made in good faith. A finding that the alleged behavior does not constitute a violation of this policy or that there is insufficient evidence to establish that the alleged conduct occurred as reported does not mean that the report was made in bad faith.

4. Presumption of Non-Responsibility

The Respondent is presumed to be not responsible for the alleged conduct unless and until a determination regarding responsibility is made at the conclusion of the grievance process.

5. Honesty and Cooperation during Grievance Process

The University expects all members of the University community to be honest and cooperative in their official dealings with the University under this policy. In this regard, individuals are expected to acknowledge requests from a university official for information in a timely fashion and to make themselves available for meetings with a university official or any officials acting on behalf of the University; any student or member of the faculty or staff who fails to do so may be subject to discipline. However, parties and witnesses may choose not to attend the hearing or may choose not to participate in cross examination at the hearing (see section XI(3)(b)).

6. Advisors

Throughout the grievance process, each party may have an advisor of their choice; parties may change their advisor at any time during the grievance process. An advisor is an individual chosen by a Complainant or a Respondent to provide guidance during the grievance process. An advisor may be a member or non-member of the University community and may be an attorney. If a party who is a current member of the University community seeks to engage an attorney to serve as an advisor, the University will not provide financial resources to assist in that engagement; however, such resources will only be provided in matters that proceed to an investigation (as described in section X(6)).

The role of the advisor is narrow in scope; the advisor may attend any interview or meeting connected with the grievance process that the party whom they are

advising is invited to attend, but the advisor may not actively participate in interviews and may not serve as a proxy for the party.

Any individual who serves as an advisor is expected to make themselves available for meetings and interviews throughout the investigation process, as well as the hearing (if applicable), as scheduled by the University. The University (including any official acting on behalf of the University such as an investigator or a hearing panelist) always has the right to determine what constitutes appropriate behavior on the part of an advisor and to take appropriate steps to ensure compliance with this policy.

7. Prior Sexual Behavior

The Complainant's predisposition or prior sexual behavior are not relevant and will not be used during the grievance process, unless offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

8. Consolidation

The University Title IX Coordinator has the discretion to consolidate multiple formal complaints as to allegations of University Sexual Misconduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of University Sexual Misconduct arise out of the same facts or circumstances.

9. Investigation of Allegations of Violations of Other University Policies

a. Allegations under the Title IX Sexual Harassment Policy

When an initial assessment or investigation under this policy identifies additional related possible violations of the Title IX Sexual Harassment policy by the same party(ies), the grievance process set forth in the Title IX Sexual Harassment policy and procedures will apply to all allegations. Under such circumstances, the parties will be provided with written notice containing the following information: (a) the alleged prohibited conduct, and (b) the policy(ies) under which alleged prohibited conduct falls.

b. Allegations under Other University Policies

When an initial assessment or investigation under this policy identifies additional related possible violations of University policies (other than the

Title IX Sexual Harassment policy, as described above) by the same party(ies) that would normally be handled by another responsible office (such as the Office of University Experience and Student Success and the Office of Human Resources) the University Title IX Coordinator, with the approval of that responsible office, may direct that the grievance process set forth in the University Sexual Misconduct policy and procedures will apply to all allegations (using the standard of evidence that is applicable to each particular alleged policy violation). Under such circumstances, the parties will be provided with written notice containing the following information: (a) the alleged prohibited conduct, and (b) the policy(ies) under which the alleged prohibited conduct falls. Alternately, the University Title IX Coordinator, with the approval of the responsible office, may direct investigators under the University Sexual Misconduct policy to investigate such other possible violations at the same time that they investigate the allegations covered by this policy, after which the responsible office will adjudicate the matter. Under such circumstances, the records from the investigation of the on-campus University Sexual Misconduct matter shall be provided to the office responsible for adjudicating that non-University Sexual Misconduct matter in accordance with applicable University policies and procedures, the University Title IX Coordinator, with the approval of that responsible office, may direct investigators under this policy to investigate such other possible violations at the same time that they investigate the allegations covered by this policy. Under such circumstances, the records from the investigation of the non-University Sexual Misconduct matter shall be provided to the office responsible for adjudicating the non-University Sexual Misconduct matter in accordance with applicable University policies and procedures.

10. Procedures Where One Party Is a Member of the University Community, and the Other Party Is a Non-Member of the University Community

When a third party, (i.e., a non-member of our University community, which could include, for example, alumni) is a party under this policy, the University will use disciplinary procedures that are generally consistent with the disciplinary procedures described in this policy, appropriately modified based on the particular circumstances of the case and taking into account privacy requirements and the like. In no case will a member of our community (i.e., current student, faculty member, or staff member) be afforded lesser rights or lesser opportunities to

participate in the disciplinary proceeding than the non-member of the University community.

XI. Investigation and Adjudication

1. Timing

The University makes a reasonable effort to ensure that complaints are resolved as expediently and efficiently as possible. Many complaints may require extensive review, and time frames will vary depending on several factors, including the complexity of the investigation and number of witnesses. The University will seek to complete the investigation and adjudication within ninety (90) business days after the investigators' first interview of the complaint. Investigations will proceed according to the aforementioned timeframe during the summer and at other times when the University is not in session. Timeframes for all phases of the grievance process, including the investigation, the hearing, and any related appeal, apply equally to both parties.

There may be circumstances that require the extension of time frames for good cause. Time frames may be extended to ensure the integrity and completeness of the investigation or adjudication, comply with a request by external law enforcement, accommodate the absence of a party, advisor, or witness, or for other reasons, including the number of witnesses and volume of information provided by parties and witnesses. Periodic status updates will be provided to the parties in writing.

To enable prompt and efficient resolution of complaints, it is expected that parties and witnesses will honor deadlines, absent extraordinary circumstances. Requests for deadline extensions will be considered on a case-by-case basis. Repeated failures to meet deadlines may be considered a failure to comply with directions of a University personnel under *Honor Code and Student Conduct Code 10.3*.

In accordance with university policy, the University will review requests for language assistance and accommodation of disabilities throughout the investigation and adjudication process.

2. Investigation

If the University Title IX Coordinator has determined, following an initial assessment, that an investigation is appropriate, the University Title IX Coordinator will refer the matter for investigation to an investigator, but on occasion more than one investigator may be assigned to the matter.

a. Notice of Allegations

Following the receipt and review of the formal complaint by the University Title IX Coordinator, and it being determined that the matter properly falls under this University Sexual Misconduct policy the parties will be provided with a written Notice of Allegations, shall include:

- The identities of the parties, if known.
- A concise summary of the alleged conduct at issue (including when and where it occurred, if known).
- Notice of the allegations potentially constituting University Sexual Misconduct.
- A statement that the Respondent is presumed not responsible and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement informing the parties that they may have an advisor of their choice, who may be, but is not required, to be, an attorney.
- A statement informing the parties that they may request to inspect and review evidence.
- A statement informing the parties that knowingly making false statements or knowingly submitting false information during the grievance process may constitute a violation of university policy.
- Information regarding the applicable grievance procedures, including the alternate resolution process.

If, during the investigation, additional information is disclosed that may also constitute prohibited conduct under this policy, the Respondent and Complainant will be informed in writing that such additional information will be included in the grievance process.

b. Collection of Evidence

The investigator(s) will collect information from each party. While the Complainant and the Respondent are not restricted from gathering and presenting relevant evidence, the investigator(s) are responsible for gathering relevant evidence to the extent reasonably possible. However, each party will be given an equal opportunity to suggest witnesses; provide other relevant information, such as documents, communications, photographs, and other evidence. Parties and witnesses are expected to provide all available relevant evidence to the investigator(s) during the investigation. While parties are not

restricted from submitting expert reports or presenting information attesting to the parties' character, such evidence generally is not considered relevant.

The investigator(s) will provide a party with a written notice of the date, time, location, participants, and purpose of all investigative interviews to which they are invited or expected, with sufficient time (generally no less than three (3) business days, absent exigent circumstances) for the party to prepare to participate.

Parties will be interviewed separately; parties will be interviewed by the investigator(s) for the first interview and may, at the discretion of the investigator, delegate follow-up interviews to one investigator. The investigator(s) will interview witnesses as necessary and may, at their discretion, delegate witness interviews to one investigator. The investigator(s) will record all interviews or notes of the interviews will be taken by the investigators. Any other recording of interviews is prohibited, and violations may result in discipline.

c. Case File

After each party has been interviewed and had the opportunity to identify witnesses and other potentially relevant information and evidence, and the investigator(s) has completed any witness interviews and any gathering of evidence, the investigator(s) will prepare a case file. The case file will include all collected evidence that is directly related to the allegations raised in the formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and any inculpatory or exculpatory evidence, whether obtained from a party or other source as part of the investigation. The case file may include, as applicable, transcripts or summaries of party and witness interviews and other collected documents and evidence. The investigator(s) will provide the case file (or, when deemed appropriate, a written summary of relevant information contained in the case file) to each party and their advisor in electronic form or hard copy. In all cases, any information relied on in adjudicating the matter will be provided to the parties and their Advisors. The investigator(s) will also provide an updated Notice of Investigation and Allegations, as appropriate.

Within ten (10) business days of receiving the case file, each party may submit a written response, not to exceed 5000 words (including exhibits, screenshots, etc.). If the investigator(s) believes that new information is

needed that cannot be obtained through cross examination of the parties and witnesses at the hearing, the investigator(s) will pursue any additional investigative steps as needed. The parties and their Advisors will be provided with each party's written responses to the case file, if any, as well as any additional information collected by the investigator(s) (or a written summary of same, as applicable), in electronic format or hard copy.

d. Investigative Report

Following their review of the parties' responses (if any) to the case file (or written summary, as applicable), the investigator(s) will create a written investigative report that summarizes all relevant evidence; the report will not contain irrelevant information.

At least ten (10) business days prior to the hearing, the investigative report (or a written summary of same, as applicable) will be provided to the parties and their Advisors via electronic format.

The parties may choose to provide a written response, not to exceed 2500 words, to the investigative report, to be submitted within five (5) business days of receiving the investigative report. At least two (2) business days prior to the hearing, the parties and their Advisors will be provided with the other party's written response to the investigative report, if any, in electronic format.

3. Hearing

A Hearing Decision-Maker ("Decision-Maker") will hear every case. The Decision-Maker may be external (e.g., a consultant) to the University. While the Decision-Maker will generally conduct a live hearing during which it assembles (in person or virtually) all of the parties together at the same time (generally in different locations), it reserves the right to conduct a hearing without assembling all of the parties together at the same time.

The Decision-Maker will have absolute discretion with respect to administering the hearing. The Decision-Maker will decide whether evidence and witnesses are relevant or irrelevant, with the understanding that the introduction of relevant evidence and witnesses will always be permitted. The Decision-Maker will be responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a party, witness, or advisor.

Prior to the hearing, the Decision-Maker will be provided with the case file (and written summaries, as applicable), investigative report, and any responses to the investigative report. The Decision-Maker shall review the case file (including the parties' responses), ask questions during the hearing as they deem appropriate, and participate in the deliberations leading to the Decision-Maker's adjudication of responsibility (as described in section XI(3)(e)).

At least five (5) business days prior to the hearing, the parties and their Advisors will be notified of the hearing date, time, and location (or relevant electronic information, if the hearing will be conducted remotely).

In advance of the hearing, parties will be given the opportunity to request that certain witnesses be called at the hearing. The Decision-Maker has the discretion to exclude from the hearing evidence/witnesses/questions deemed irrelevant.

At the Decision-Maker's discretion, pre-hearing meetings may be scheduled with each of the parties and their Advisors to explain the hearing protocol.

a. Standard of Proof

The standard of proof under this policy is preponderance of the evidence. A finding of responsibility by a preponderance of the evidence means that it is more likely than not, based on all the relevant evidence and reasonable inferences from the evidence, that the respondent violated this policy.

b. Expectation regarding the Complainant, the Respondent, and the Witnesses regarding the Hearing

In all proceedings under this policy, including at the hearing, the Complainant, the Respondent, and the witnesses and other individuals sharing information are expected to provide truthful information.

If the Complainant, the Respondent, or a witness informs the University that they will not attend the hearing, the hearing will proceed. The full participation of parties and witnesses in the hearing process, including properly executed cross-examination, contributes to the fair and accurate adjudication of complaints, and is particularly important in cases where the Decision-Maker must rely on credibility assessments to determine responsibility for a violation of university policy. In making findings and determinations, the Decision-Maker may, at its discretion, consider and give weight to the statements of individuals who did not fully participate in cross examination (as described in section XI(3)(c) of this policy) at the hearing,

including statements reflected in or corroborated by records such as, for example, transcripts of investigative interviews, Office of Campus Security and Safety and police reports, medical records, court filings and judgments, and relevant communications (e.g., emails, text messages, and social media postings) sent or made at or close to the time of the events or interactions at issue, or during the investigation of those events or interactions. The Decision-Maker will determine how much weight, if any, to afford such statements, considering factors such as their reliability and relevance, and the reasons why the individual did not participate in the hearing or was not available for full cross-examination. If the Decision-Maker decides to afford any weight to the statement of an individual who was absent from the hearing or was not available for full cross-examination at the hearing, the Decision-Maker's written determination must include a detailed explanation of its reasons for giving weight to the statement, including an assessment of its relevance and reliability. Notwithstanding the foregoing, whether a party or witness was absent from the hearing or was not available for full cross examination at the hearing, the Decision-Maker cannot draw an inference about the determination regarding responsibility based solely on such absence or unavailability.

Hearings generally will occur with the parties located in separate locations with technology enabling the Decision-Maker and the parties to simultaneously see and hear the party answering questions. Each party may make requests related to the format or the nature of their participation in the hearing, and the Decision-Maker, in their discretion, may accommodate those requests.

c. Case Presentation

While the hearing is not intended to be a repeat of the investigation, the parties will be provided with an opportunity for their Advisors to conduct a cross-examination of the other party and/or of relevant witnesses, in the format deemed appropriate by the Decision-Maker. A typical hearing may include brief opening remarks by the Decision-Maker; questions posed by the Decision-Maker to one or both of the parties; questions posed by the Decision-Maker to any relevant witnesses; and cross-examination of the parties and relevant witnesses.

The parties will have the opportunity to cross-examine the other party (and relevant witnesses, if any) in a format deemed appropriate by the Decision-

Maker (for example, directly, orally, and in real time by the party's Advisors, or through written cross examination questions submitted to the Decision-Maker). Only relevant cross-examination questions may be asked of a party or witness; the Decision-Maker will determine whether a question is relevant and explain any decision to exclude a question as not relevant.

Other University administrators may attend the hearing at the request of or with the prior approval of the Decision-Maker.

d. Record of Hearing

The University shall create an official record in the form of a recording or transcript of any live (or remote) hearing and make it available to the parties for inspection and review. Any other record of the hearing or any other recording is prohibited, and violations may result in discipline.

e. Written Determination

Following the hearing, the Hearing Decision-Maker will consider all of the relevant evidence and deliberate regarding responsibility. The Hearing Decision-Maker shall make a determination, by preponderance of the evidence, whether the Respondent has violated the policy. A written determination, which will contain: (1) the allegations potentially constituting University Sexual Misconduct; (2) 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 (if any), methods used to gather other information, and the hearing); (3) findings of fact supporting the determination; (4) conclusions regarding the application of this policy to the facts; (5) a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility (i.e., whether a policy violation occurred), any disciplinary sanctions imposed by the Sanction Officer if there has been a finding of responsibility (as described in section XI(4)), and whether any remedies designed to restore or preserve equal access to the University's education program or activity or working environment will be implemented; and (6) relevant appeal information for the parties. Disciplinary sanctions and remedies will be determined in accordance with the procedures listed below, and the information will be provided for inclusion in the written determination.

The parties and their Advisors will simultaneously be provided with written determination (or, when deemed appropriate, a written summary of the written determination) via electronic format within ten (10) business days of the hearing.

4. Disciplinary Sanctions and Remedies (to be included in the Written Determination)

If a party is found to have violated this policy, before finalizing the written determination, the matter will be consulted with the appropriate University official(s) to determine sanctions and remedies. All sanctions being imposed will be included in the written determination.

Sanctions will consider the seriousness of misconduct as compared to similar cases in the past, the Respondent's previous disciplinary history (if any), and institutional principles. Remedies, which may include supportive measures, will be designed to restore or preserve equal access to the University's educational program or activity. Specifically, sanctions will be consulted with the following university officials:

- If a **student** is found responsible for violating the policy, the Decision-Maker will consult with a university official within the University Experience and Student Success department to discuss sanctions and remedies. In the event that a member of the University Experience and Student Success team is unavailable, an appropriately trained University official will serve as the substitute. Any sanctions and remedies will be included in the written determination, and sanctions will be subject to appeal under this policy.
- If an **employee** is found responsible, the Decision-Maker will consult with the Chief People Officer to discuss sanctions and remedies. In the event that the Chief People Officer is unavailable, an appropriately trained University official will serve as the substitute. Any sanctions and remedies will be included in the written determination, and sanctions will be subject to appeal under this policy.

See Appendix C for the range of sanctions under this policy.

XII. Appeal

Appeals under this policy will be heard by a single Appeal Decision-Maker. The Appeal Decision-Maker may be internal or external.

Both parties have equal rights to an impartial appeal at the following junctures:

- Upon the dismissal of a formal complaint or any allegations therein.
- Upon receiving the Hearing Decision-Maker's written determination regarding responsibility and, when applicable, sanctions and remedies.

Appeals may be submitted on the following bases:

- Procedural irregularity that affected the outcome of the matter.
- New evidence that was not reasonably available at the time the determination regarding non-responsibility, responsibility or dismissal was made, which could affect the outcome of the matter.
- The Title IX Coordinator or their staff, investigator(s), or Hearing Decision-Maker, had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

To appeal, a party must electronically submit a written appeal statement to the University Title IX Coordinator within five (5) business days of receipt of the written determination or dismissal. The Appeal Decision-Maker may deem a late submission reasonable only under extenuating circumstances, and the Appeal Decision-Maker may decide in their sole discretion what constitutes valid extenuating circumstances. The appeal shall consist of a written statement not to exceed 2500 words, outlining the basis for appeal and the relevant information to substantiate the appeal. The non-appealing party will be provided with a copy of the appealing party's written statement and may submit a written response, not to exceed 2500 words, to the University Title IX Coordinator within five (5) business days of receipt of the appealing party's written statement. The non-appealing party's statement will be provided to the appealing party. No further appeal submissions from the parties shall be permitted.

An appeal is limited in scope. The purpose of an appeal is not to initiate a review of substantive issues of fact or a new determination of whether a violation of University rules has occurred.

In deciding an appeal, the Appeal Decision-Maker may consider the case file and any responses, investigative report and any responses, the hearing record, the written determination, and any written appeal(s) or statements by the parties. The Appeal Hearing Decision-Maker also may consider any other materials the University deems relevant and that have been shared with the parties.

The parties and their Advisors will simultaneously be provided (via electronic format) with the written decision describing the result of the appeal and the rationale for the result.

- If the Appeal Decision-Maker finds that the earlier decision should stand, the parties will be informed, and the Title IX process is concluded.
- If the Appeal Decision-Maker finds that there was procedural irregularity that affected the outcome of the matter, the matter will be remanded to the Hearing Decision-Maker to determine appropriate further action.

- If the Appeal Decision-Maker finds that new evidence is available which was not reasonably available at the time of the determination regarding responsibility or dismissal, and such evidence could alter the outcome of the matter, the matter will be remanded to the Hearing Decision-Maker for appropriate further action.
- If the Appeal Decision-Maker finds that the University Title IX Coordinator or their staff, investigator(s), or the Hearing Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter, the Appeal Decision-Maker will take appropriate measures to address and remediate the impact of the bias or conflict consistent with the general procedures of this policy.

The Appeal Decision-Maker will seek to complete the appeal review within ten (10) business days of receipt of the non-appealing party's written statement.

Unless further proceedings are necessary (as set forth in the **Faculty Handbook** and **Staff Handbook**, the determination regarding responsibility becomes final either on the date that the parties are provided with the written determination of the result of an appeal if an appeal is filed (at which point the University Sexual Misconduct grievance process is concluded), or if an appeal is not filed, the date on which an appeal would no longer be considered timely (at which point the University Sexual Misconduct grievance process is concluded).

XIII. Training

The University will provide appropriate training and education to University officials with responsibilities under this policy, including the University Title IX Coordinator, investigators, Hearing Decision-Makers, Appeal Decision-Makers, and any individual who facilitates the alternate resolution process.

XIV. Record Retention

The University will maintain for a period of seven years records of the following:

- Each University Sexual Misconduct grievance process conducted under this policy, including any determination regarding responsibility and any audio or audiovisual recording or transcript from a hearing, any disciplinary sanction imposed on the respondent, and remedies provided to the complainant designed to restore or preserve access to the University's education program or activity;
- Any appeal and the result therefrom;
- Any alternate resolution and the result therefrom; and

- Records of any actions, including any supportive measures, taken in response to a report or formal complaint of University Sexual Misconduct. In each instance, the University will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's educational and working program or activity. If the University does not provide a complainant with supportive measures, then the University will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

XV. Modification and Review of Policy

University of Lynchburg reserves the right to modify this policy to take into account applicable legal requirements or extraordinary circumstances.

At regular intervals, the University will review this policy to determine whether modifications should be made.

Appendix A: Law Enforcement and Confidential Resources

Emergency Resources and Law Enforcement

Emergency medical assistance and campus safety/law enforcement assistance are available both on and off campus. Individuals are encouraged (but not required) to contact law enforcement and seek medical treatment as soon as possible following an incident that poses a threat to safety or physical well-being or following a potential criminal offense. For more information about filing a criminal complaint with law enforcement, please contact:

- **Lynchburg Police Department**
911 (emergency)
434.847.1605 (non-emergency)
- **University of Lynchburg Office of Campus Security and Safety**
434.544.5555 or 911 (emergency)
434.544.8102 (non-emergency)
866.943.5787 (Campus Conduct Hotline)

Confidential Resources

Information shared with Confidential Resources (including information about whether an individual has received services) will be disclosed to the University Title IX Coordinator or any other individual only with the individual's express written permission, unless there is an imminent threat of serious harm to the individual or to others, or a legal obligation to reveal such information (e.g., if there is suspected abuse or neglect of a minor). For more information about confidentiality and Confidential Resources, see section V.

Campus Confidential Resources include:

- **University of Lynchburg SHARE Team:** information TBD
- **University of Lynchburg Counseling Center:** Terrace level of Hundley Hall; 434.544.8616 (students only)
- **University of Lynchburg Health Center:** Terrace level of Hundley Hall; 434.544.8357 (students only)
- **University of Lynchburg Center for Spiritual Life** 500 Brevard Street; 434.544.8348 (students and employees)

- **Employee Assistance Program (EAP)**, Virginia Private Colleges Benefits Consortium. Free confidential support services are available to Employees through an off-campus EAP that is operated through a contract with a third-party vendor. The EAP does not share personally identifying information with the University of Lynchburg. 800.346.5484 or go to www.anthemEAP.com and enter code: VPCBC (employees only)

Other Available Resources

Any individual may also access resources located in the local community. These organizations can provide crisis intervention services, counseling, medical attention and assistance in dealing with the criminal justice system. If accessing these resources, individuals are encouraged to clarify whether the resources are confidential.

- **Central Piedmont Psychiatric Center**
3300 Rivermont Avenue
Lynchburg, VA 24503
434.200.5999
888.528.5900
- **Horizon Behavioral Health:** Multiple locations in the Lynchburg area
Horizon Wellness Center
620 Court Street
Lynchburg, VA 24504
434.847.8035
434.522.8191 (after-hours emergency)
www.horizonbh.org
- **Free Clinic of Central Virginia**
1016 Main Street
Lynchburg, VA, 24504
434.847.5866
www.freeclinicva.org
- **Virginia Health Department:** www.vdh.virginia.gov
- **Lynchburg Health Department**
307 Alleghany Avenue
Lynchburg, VA 24501
434.477-5900

- **Community Access Network**
5th Street Community Health Center
800 5th St.
Martin Luther King, Jr. Blvd.
Lynchburg, VA 24504
434.200.3366
- **Park View**
2420 Memorial Ave.
Lynchburg, VA 24501
(located inside Park View Community Mission)
434.200.3366
- **CENTRA Virginia Baptist Hospital**
3300 Rivermont Ave.
Lynchburg, VA 24503
434.200.4000 (Switchboard)
- **Sexual Assault Response Program (SARP)**
YWCA Lynchburg Office
1900 Tate Springs Rd., Suite B
Lynchburg, VA 24501
434.947.7422 (Office)
888.947.7273 (24-Hour Confidential Hotline)

Or going to an emergency room:

- **Lynchburg General Hospital Emergency Department**
1901 Tate Springs Road
Lynchburg, VA 24501
434.200.5000
- **CENTRA Lynchburg General Hospital**
1901 Tate Springs Rd.
Lynchburg, VA 24501
434.200.3000 (Switchboard)

Appendix B: Alternate Resolution Process

The alternate resolution process is a voluntary, remedies-based process designed to provide members of the University of Lynchburg community with an option to resolve certain disputes with other members of the University of Lynchburg community in a forum that is separate and distinct from the University's formal grievance processes under the Title IX Sexual Harassment Policy or the University Sexual Misconduct Policy. Subject to approval by the University Title IX Coordinator (see below), the alternate resolution process is available in matters involving a student complainant and a student respondent as well as in matters involving a faculty/staff complainant and a faculty/staff respondent; the alternate resolution process typically is **not** available in matters involving a student and an employee. The purpose of the alternate resolution process is to eliminate the conduct which has been reported by the Complainant (and prevent its recurrence), and place both individuals in a position to pursue their academic, working, and non-academic interests in a safe, respectful, and productive educational and working environment. Under this process, there will be no disciplinary action taken against a Respondent, and the resolution will not appear on the Respondent's disciplinary record.

Prior to participating in the alternate resolution process, parties will be notified in writing of the information contained in this Appendix B.

The following are features of the alternate resolution process:

- Participation in the alternate resolution process is completely voluntary.
 - No party will be required to participate in the alternate resolution process and the University will not require, encourage, or discourage the parties from participating in the alternate resolution process.
 - All parties must consent to participation in the alternate resolution process.
- The University may offer the alternate resolution process only under the following circumstances:
 - A formal complaint has been filed by the Complainant;
 - The University Title IX Coordinator has determined, through an initial assessment (see section IV), that the alleged conduct, if substantiated, would constitute Title IX Sexual Harassment or University Sexual Misconduct;
 - The University Title IX Coordinator has determined that the alternate resolution process is appropriate for this matter.

- All parties will be provided with a written notice disclosing the allegations, the requirements of the alternate resolution process, and any outcomes resulting from participating in the alternate resolution process.
- At any time prior to both parties having signed an alternate resolution agreement, any party has the right to withdraw from the alternate resolution process and resume the formal grievance process.
- Under the alternate resolution process, there will be no disciplinary action taken against a Respondent, and the resolution will not appear on the Respondent's disciplinary record. If a formal complaint is filed against the Respondent in a subsequent matter under the Title IX Sexual Harassment policy or the University Sexual Misconduct policy, the Respondent's participation in a prior alternate resolution process will not be considered relevant and will not be taken into account in the resolution of the subsequent complaint.
- Parties may be accompanied by a member of the University community (other than a confidential resource) who will serve as a support person to any meeting related to the alternate resolution process. The University support person may not serve as a proxy for the party. Any individual who serves as a University support person is expected to make themselves available for meetings as scheduled by the University. The University (including any official acting on behalf of the University) has the right at all times to determine what constitutes appropriate behavior on the part of a University support person and to take appropriate steps to ensure compliance with this policy.
- Any agreements reached as part of the alternate resolution process must be approved by the University Title IX Coordinator to ensure consistency with the University's federal obligations.
- The time frame for completion of the alternate resolution process may vary, but the University will seek to complete the alternate resolution process within thirty (30) business days of the University Title IX Coordinator notifying both parties that the alternate resolution process is appropriate for that matter. Should the time period extend beyond this time frame, the parties will be notified. It is expected that each party will respond to the other party's proposed terms for the alternate resolution agreement within five (5) business days absent extenuating circumstances.
- The University Title IX Coordinator may determine at any time prior to the signing of the alternate resolution agreement that the alternate resolution process is no longer appropriate and may terminate the process. Examples of when the University Title IX

Coordinator may determine that the alternate resolution process is no longer appropriate include when one or more parties do not comply with the expectation to provide a response to the other party within five business days absent extenuating circumstances; or the University Title IX Coordinator determines that the parties are not likely to reach agreement.

- Upon signing the alternate resolution agreement, the parties are bound by the agreements terms and cannot opt for a formal grievance process based on the conduct alleged in the formal complaint.
- Failure to comply with the signed agreement may result in disciplinary action for either party.
- If the parties' circumstances change significantly, they may request a supplemental agreement; the University Title IX Coordinator will determine whether it is appropriate to proceed. For example, if both parties joined the same eating club subsequent to signing the agreement or participated in the same study abroad program, either party could request a supplemental agreement to address the changed circumstances, provided that both parties agreed to any such revisions. Under such circumstances, the above conditions would apply.

Initiation of the Alternate Resolution Process

If the Complainant files a formal complaint and requests to engage in the alternate resolution process, the University Title IX Coordinator will consider whether the alternate resolution process is appropriate in the particular matter. In making this determination, the University Title IX Coordinator may consider the following factors:

- The disciplinary record (or past conduct) of the Respondent relating to sexual misconduct, physical violence, failure to comply with a No Contact Order/Directive, and/or other relevant conduct;
- The nature of the alleged conduct, whether allegations involve multiple victims and/or a pattern of conduct, or other evidence-informed factors indicative of increased risk to campus safety;
- Whether the circumstances warrant the University Title IX Coordinator filing a formal complaint (e.g., if there is sufficient evidence to proceed with an investigation/adjudication even absent participation by the Complainant);

- Whether proceeding with the alternate resolution process is in accordance with the principles and objectives of the University's Title IX Sexual Harassment policy/University Sexual Misconduct policy; and/or
- Whether proceeding with the alternate resolution process in matters involving faculty and staff members is in accordance with University employment practices.

If the University Title IX Coordinator determines that a case is not appropriate for the alternate resolution process, the University Title IX Coordinator will inform the Complainant that the alternate resolution process is unavailable.

Even if the formal grievance process has already begun, either party may seek to initiate the alternate resolution process. If both parties agree to participate in the alternate resolution process and the University Title IX Coordinator approves of the alternate resolution process, the formal grievance process may (at the discretion of the University Title IX Coordinator) be adjourned while the alternate resolution process is pending; if so, if an agreement is not reached, the formal grievance process will be resumed. Should parties proceed to the formal grievance process and subsequently seek to initiate the alternate resolution process, the University Title IX Coordinator may reconsider a prior decision not to permit the alternate resolution process.

Upon initiation of the alternate resolution process, the University Title IX Coordinator will refer the matter to a trained alternate resolution facilitator ("facilitator"). The facilitator will consult (separately) with each party in an effort to reach a resolution that best meets the interests and needs of the parties. Unless they mutually choose to do so as part of an agreement, the parties will not meet together in person as part of the process.

Potential Outcomes of the Alternate Resolution Process

Depending on the nature and circumstances of the particular situation, parties may agree to outcomes such as:

- Long-term extension of a mutual No Contact Order/Directive or No Communication Order;
- Imposition of a "skewed" No Contact Order/Directive, placing the burden on the Respondent to limit the Respondent's physical proximity to the Complainant;
- Restrictions on the Respondent participating in particular organizations or events;
- Restrictions on the Respondent holding leadership positions on campus;
- Changes to on-campus housing, subject to availability;

- Participation by the Respondent in an individualized psychoeducational curriculum administered by a licensed clinician that serves to assist individuals in exploring harmful attitudes and behaviors, with an aim to empower individuals to actively contribute to a healthier and safer campus community.
- Participation by the Respondent in the University-provided education programs designed to reduce the harmful problems associated with alcohol and/or drug misuse; and/or
- Other measures deemed appropriate by the University Title IX Coordinator.

Failure to Comply with the Alternate Resolution Agreement

Failure to comply with the signed agreement may result in disciplinary action for either party, consistent with the disciplinary procedures described:

- Students: Honor Code and Student Handbook
 - A10.2 Failure to comply with outcomes
 - A10.3 Failure to comply with directions of University personnel or officials acting in performance of their duties.
- Employee: Employee Handbook – Personal Conduct Section
 - Insubordination - failing to carry out instructions of supervisor.

Records Relating to the Alternate Resolution Process

The records relating to the alternate resolution process will be maintained in accordance with section XIV.

Prior to participating in the alternate resolution process, parties will be notified that any information related to the allegations gathered in the alternate resolution process may be used in the Title IX Sexual Harassment or University Sexual Misconduct formal grievance processes described in section IX. If the alternate resolution process ends prior to a written agreement being signed by the parties, the terms proposed by the parties to be included in the alternate resolution agreement may not be used in the Title IX Sexual Harassment or University Sexual Misconduct formal grievance process. The University will not draw any adverse inference based on a Respondent's participation in the alternate resolution process, nor will such participation be considered an admission by the Respondent.

Even if the parties enter into a written alternate resolution agreement, if information related to the violation of other University policies (i.e., policies other than the Title IX Sexual Harassment policy or the University Sexual Misconduct policy) comes to light through the

alternate resolution process, such information may be used in other University disciplinary processes, subject to the Leniency policy described in section VI(4).

Retaliation

The protections against Retaliation described in section III apply to individuals participating in the alternate resolution process. Disciplinary consequences may result for those found responsible for Retaliation.

Appendix C: Range of Sanctions under this Policy

Members of the University community may be subject to disciplinary sanctions for violating this policy.

Sanctions Applicable to Students

The sanctions for students are listed below.

- **Educational Advisement.** This means that the student has successfully completed a meeting or other approved communication with the Title IX Coordinator or designated university official to (a) Discuss how the student's minor policy infraction(s) have impacted the student and/or the campus community, and (b) Ensure that the student clearly understands the policy and rules for the future.
- The outcome of an Educational Advisement is considered a proactive, administrative courtesy and is therefore not entered into the student's official conduct record nor is it eligible for appeal.
- **Reprimand.** A formal statement that the conduct was unacceptable and a warning that further violation of any University of Lynchburg's policy, procedure, or directive will result in more severe sanctions/responsive actions.

Both an Educational Advisement and a reprimand may be taken into account in judging the seriousness of any future violation.

More serious violations may be met with the following formal responses which are recorded on the student's permanent record.

- **Disciplinary Probation.** A written reprimand for violation of university policy, providing for more severe disciplinary sanctions if the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period. Terms of probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- **Suspension.** Termination of student status for a definite period not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on disciplinary probation through the remainder of their enrollment as a student at the University.
 - A suspension may be recorded on a student's transcript. Relevant information remains on the student's permanent record at the University and

may be disclosed by a University Administrator or the Title IX Office in response to requests for which the student has given permission or as otherwise legally required.

- **Withholding of Degree.** In cases involving seniors or graduate students in their final semester, the University may withhold a student's degree for a specified period of time. This sanction is imposed instead of suspension at the end of a student's senior year or final year of graduate study when all other degree requirements have been met. A withheld degree may be recorded on a student's transcript. Relevant information remains on the student's permanent record at the University and may be disclosed by a University Administrator or the Title IX Office in response to requests for which the student has given permission or as otherwise legally required.
- **Expulsion.** Permanent removal from membership in the University, without any opportunity for readmission to the community.
 - Expulsion is recorded on a student's transcript. Relevant information remains on the student's permanent record at the University and may be disclosed by a University Administrator or the Title IX Office in response to requests for which the student has given permission or as otherwise legally required.
- **Revocation of Degree:** University of Lynchburg reserves the right to hold pending degrees from the University for fraud, misrepresentation, and/or other violations of University of Lynchburg policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Organizational Sanctions:** Deactivation, loss of recognition, loss of some or all privileges (including University of Lynchburg registration as a recognized organization) for a specified period.
- **Other Actions:** In addition to or in place of the above sanctions, University of Lynchburg may assign any other sanctions as deemed appropriate.

The following may accompany the preceding sanctions, as appropriate:

- **Campus Service.** Campus service up to 10 hours per week may be added to a reprimand or disciplinary probation. This sanction may be particularly appropriate in cases involving vandalism, disorderly conduct, and alcohol-related infractions.
- **Required Counseling:** A mandate to meet with and engage in either University-

sponsored or external counseling to better comprehend the misconduct and its effects.

- **University Housing.** When appropriate to the infraction, particularly in instances involving antisocial behavior having a serious impact on the residential community, removal from university housing or relocation within university housing may be added to any of the other sanctions listed above, except warning and reprimand.
- **Educational Refresher Programs.** In addition to any of the sanctions listed above, a student may be required to participate in educational refresher programs appropriate to the infraction.
- **Restriction of Access to Space, Resources, and Activities.** When appropriate in cases involving behavioral misconduct between members of the community, restrictions may be placed on access to space and/or resources or on participation in activities to limit opportunities for contact among the parties.
- **Restitution.** The sanction for willful or reckless damage or vandalism will ordinarily include restitution for replacement or repair.
- **Educational Refresher Programs.** In addition to any of the sanctions listed above, a student may be required to participate in educational refresher programs appropriate to the infraction.

Sanctions Applicable to Faculty and Staff Members

For violations of this policy by faculty or staff members, disciplinary sanctions may include (in accordance with the employment policies governing the employee in question) including:

- verbal reprimand
- counseling
- transfer or reassignment
- demotion
- removal of administrative position
- suspension
- termination of employment

The University may place a faculty or staff member on administrative leave with or without pay during the pendency of a grievance process, provided that such action shall not modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

Sanctions for Employee Respondents will be determined based on the facts and circumstances of each case. A range of one or more potential sanctions may be imposed, including verbal reprimand, counseling, transfer or reassignment, demotion, removal of

administrative position, suspension, and termination of employment. When an Employee Respondent is found responsible for sexual assault, dismissal is the standard sanction.

To the extent possible, the designated official(s) charged with determining final sanctions for Employee Respondents shall render a decision within three (3) calendar days after receiving the recommended sanction from the Hearing Officer. When this is not feasible because of the need to coordinate compliance with other University of Lynchburg policies and procedures (e.g., a faculty “for cause” determination), the Title IX Coordinator and the appropriate official may need to discuss additional or alternative interim measures and how to coordinate all applicable procedures to ensure that the rights of the Complainant and Respondent are equally protected and the goals of this policy are fulfilled.

Once a final decision regarding sanctions has been made, the designated University of Lynchburg official will notify the Title IX Coordinator in writing of the final sanctions decision, including a brief rationale in support of the sanction, if it is different from the recommendation made by the Hearing Officer. Within two calendar (2) days of receipt of the written sanctions determination, the Title IX Coordinator shall concurrently transmit to the Complainant and the Respondent a Notice of Final Outcome.

Sanctions Applicable to Non-Members of the University Community

For violations of this policy by non-members of the University community, including alumni, disciplinary sanctions may include being temporarily or permanently barred from the University or subject to other restrictions.

Appendix D: The Violence Against Women's Act (VAWA)

Purpose of This Regulatory Action

On March 7th, 2013, President Obama signed the [Violence Against Women Reauthorization Act of 2013 \(VAWA\)](#) (Pub. L. 113-4), which, among other provisions, amended section 485(f) of the HEA, otherwise known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). The Clery Act requires institutions of higher education to comply with certain campus safety- and security-related requirements as a condition of their participation in the Title IV, HEA programs. Notably, VAWA amended the Clery Act to require institutions to compile statistics for incidents of dating violence, domestic violence, sexual assault and stalking, and to include certain policies, procedures and programs pertaining to these incidents in their annual security reports. We are amending [§ 668.46 of title 34 of the Code of Federal Regulations \(CFR\)](#) to implement these statutory changes.

Summary of the Major Provisions of This Regulatory Action

The final regulations will:

- Require institutions to maintain statistics about the number of incidents of dating violence, domestic violence, sexual assault and stalking that meet the definitions of those terms.
- Clarify the very limited circumstances in which an institution may remove reports of crimes that have been “unfounded” and require institutions to report to the Department and disclose in the annual security report the number of “unfounded” crime reports.
- Revise the definition of “rape” to reflect the Federal Bureau of Investigation's (FBI) updated definition in the UCR Summary Reporting System, which encompasses the categories of rape, sodomy and sexual assault with an object that are used in the UCR National Incident-Based Reporting System.
- Revise the categories of bias for the purposes of Clery Act hate crime reporting to add gender identity and to separate ethnicity and national origin into separate categories.
- Require institutions to provide to incoming students and new employees, and describe in their annual security reports, primary prevention and awareness programs. These programs must include: a statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault and stalking, as

those terms are defined in these final regulations; the definitions of these terms in the applicable jurisdiction; the definition of “consent,” in reference to sexual activity, in the applicable jurisdiction; a description of safe and positive options for bystander intervention; information on risk reduction; and information on the institution's policies and procedures after a sex offense occurs.

- Require institutions to provide, and describe in their annual security reports, ongoing prevention and awareness campaigns for students and employees. These campaigns must include the same information as the institution's primary prevention and awareness program.
- Define the terms “awareness programs,” “bystander intervention,” “ongoing prevention and awareness campaigns,” “primary prevention programs” and “risk reduction.”
- Require institutions to describe each type of disciplinary proceeding used by the institution; the steps, anticipated timelines and decision-making process for each type of disciplinary proceeding; how to file a disciplinary complaint; and how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault or stalking.
- Require institutions to list all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceedings for an allegation of dating violence, domestic violence, sexual assault or stalking.
- Require institutions to describe the range of protective measures that the institution may offer following an allegation of dating violence, domestic violence, sexual assault or stalking.
- Require institutions to provide for a prompt, fair and impartial disciplinary proceeding in which: (1) officials are appropriately trained and do not have a conflict of interest or bias for or against the accuser or the accused; (2) the accuser and the accused have equal opportunities to have others present, including an advisor of their choice; (3) the accuser and the accused receive simultaneous notification, in writing, of the result of the proceeding and any available appeal procedures; (4) the proceeding is completed in a reasonably prompt timeframe; (5) the accuser and accused are given timely notice of meetings at which one or the other or both may be present; and (6) the accuser, the accused and appropriate officials are given timely and equal access to information that will be used during informal and formal disciplinary meetings and hearings;
- Define the terms “proceeding” and “result.”

- Specify that compliance with these provisions does not constitute a violation of section 444 of the General Education Provisions Act (20 U.S.C. 1232g), commonly known as the Family Educational Rights and Privacy Act of 1974 (FERPA).

VAWA Definitions as of October 1, 2022

Effective October 1, 2022, [relevant definitions](#) are listed below:

Dating Partner

A person who is or has been in a social relationship of a romantic or intimate nature with the abuser, and where the existence of such a relationship shall be determined based on a consideration of:

- The length of the relationship.
- The type of relationship.
- The frequency of interaction between the persons involved in the relationship.

Dating Violence

Violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim.
- Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship.
 - The type of relationship.
 - The frequency of interaction between the persons involved in the relationship.

Domestic Violence

Felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic or technological abuse that may or may not constitute criminal behavior, by a person who:

- Is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim.
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner.
- Shares a child in common with the victim.
- Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

Economic Abuse

In the context of domestic violence (and) dating violence, behavior that is coercive, deceptive or unreasonably controls or restrains a person's ability to acquire, use or maintain economic resources to which they are entitled, including using coercion, fraud or manipulation to:

- Restrict a person's access to money, assets, credit or financial information.
- Unfairly use a person's personal economic resources, including money, assets and credit, for one's own advantage.
- Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

Technological Abuse

An act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort or monitor, except as otherwise permitted by law, another person that occurs using any form of technology, including but not limited to internet enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, communication technologies or any other emerging technologies.

Abuse in Later Life

Neglect, abandonment, economic abuse or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or domestic violence, dating violence, sexual assault or stalking of an adult aged 50 or older by any individual. It does not include self-neglect.