



## FREQUENTLY ASKED QUESTIONS

### THE REVISED POLICY ON SEXUAL AND GENDER-BASED HARASSMENT AND OTHER FORMS OF INTERPERSONAL VIOLENCE

#### ***Why did the University revise the Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence (“Sexual Misconduct Policy”)?***

The University revised the Sexual Misconduct Policy to comply with new regulatory requirements issued by the U.S. Department of Education on May 6, 2020. Pursuant to the regulations, these revisions must be completed and implemented by August 14, 2020.

#### ***Is the University of Virginia required to comply with the new Title IX regulations?***

Yes. UVA is a recipient of federal financial assistance and is required to comply with Title IX and the new Title IX regulations.

#### ***Did the Title IX Office receive community feedback prior to the implementation of the new policies and procedures?***

Yes. Office for Equal Opportunity and Civil Rights (EOCR), Title IX Office sought feedback from the University community during four public listening sessions, 10 internal stakeholder meetings, and through their online feedback submission form. EOCR will continue to receive and review feedback through the form at [titleix.virginia.edu](https://titleix.virginia.edu).

#### ***Why are there two procedures?***

In response to feedback from students, faculty, and staff, the University established two procedures – (1) the Grievance Process for Investigating and Resolving Reports of Title IX Prohibited Conduct (“Grievance Process”) and (2) the Procedures for Investigating and Resolving Reports of Sexual and Gender-Based Misconduct (“Misconduct Procedures”). The Grievance Process meets the Title IX regulatory requirements, including the requirement for cross-examination by a party’s advisor. The Misconduct Procedures closely aligns with the Grievance Process and preserves the University’s ability to review conduct that falls outside of the conduct covered by the new Title IX regulatory requirements; however, parties submit questions to the Decision-Maker during the Misconduct Procedures while parties are cross-examined by a party’s advisor during the Grievance Process.

### **What is “Title IX Prohibited Conduct?”**

Title IX Prohibited Conduct consists of six specifically defined forms of alleged conduct—*Quid Pro Quo* Harassment (Employee-Student), Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Sex-Based Stalking—where the conduct occurred in the United States and in the University’s education program or activity.

- “*United States*” is defined as the physical geography of the United States of America and its territories.
- “*Educational Program or Activity*” is defined as all locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the Title IX Prohibited Conduct occurred and any building owned or controlled by a student organization that is officially recognized by the University.
- The Complainant must have been participating or attempting to participate in the University’s education program or activities at the time a Formal Complaint is filed.

### **What is “Sexual or Gender-Based Prohibited Conduct?”**

Sexual or Gender-Based Prohibited Conduct consists of nine specifically defined forms of conduct—*Quid Pro Quo* Harassment, Sexual or Gender-Based Hostile Environment Harassment, Non-Consensual Sexual Contact, Non-Consensual Sexual Intercourse, Sexual Exploitation, Intimate Partner Violence, Stalking (not on the basis of sex), Retaliation, and Complicity—when such conduct does not meet the definition of Title IX Prohibited Conduct and when:

- The Sexual or Gender-Based Prohibited Conduct occurs on University Grounds or other property owned or controlled by the University;
- The Sexual or Gender-Based Prohibited Conduct occurs in the context of a University employment or education program or activity, including but not limited to University-sponsored study abroad, research, on-line, or internship programs;
- The Sexual or Gender-Based Prohibited Conduct occurs at the permanent or temporary local residence of a University student, faculty member, employee, visitor, or in the City of Charlottesville, Albemarle County, or the city or county of any University campus; or
- The Sexual or Gender-Based Prohibited Conduct occurs off Grounds or outside of a University employment or education program or activity, but has continuing effects on or create a hostile environment for Students, Employees, or Third Parties while on University Grounds or other property owned or controlled by the University or in any University employment or education program or activity.

### **What is the difference between “Title IX Prohibited Conduct” and “Sexual and Gender-Based Prohibited Conduct?”**

“Title IX Prohibited Conduct” is the University’s term to describe conduct that the Title IX regulations at 34 C.F.R. § 106.30 define as “Sexual Harassment,” which is conduct on the basis of sex that satisfies one or more of three specific definitions. Reports of Title IX Prohibited Conduct will be reviewed and resolved through the Grievance Process. The Department of Education has stated that colleges and universities may continue to respond to conduct that falls outside of the scope of this definition. UVA has defined this conduct as “Sexual and Gender-Based Prohibited Conduct” and this reported conduct will be resolved through the Misconduct Procedures.

***Who is responsible for investigating and responding to reports under the Grievance Process and Misconduct Procedures?***

EOCR will be responsible for investigating and responding to reports and Formal Complaints pursuant to the Grievance Process and the Misconduct Procedures. The Title IX Coordinator will oversee both processes and EOCR’s Civil Rights Investigators, previously called Title IX Investigators, will be responsible for informal and formal resolution pursuant to both the Grievance Process and the Misconduct Procedures.

***What is the difference between a report and a Formal Complaint?***

A report is any information received by the University that implicates the Sexual Misconduct Policy.

A Formal Complaint is:

- a document filed in person, by mail, or by email;
- signed by the Complainant or Title IX Coordinator;
- that alleges that a Respondent engaged in Title IX Prohibited Conduct and/or Sexual and Gender-Based Prohibited Conduct; and
- requests that the University investigate the matter.

The Formal Complaint must include a physical or digital signature. Submission of a report through *Just Report It* is not a Formal Complaint unless the Complainant provides a physical or digital signature to the Title IX Coordinator.

In order for a Complainant to file a Formal Complaint of Title IX Prohibited Conduct, the Complainant must be accessing or attempting to access the University’s education program or activity at the time the Formal Complaint is filed.

***Can I still make a report even if I do not want to file a Formal Complaint?***

Yes. Students, employees, and third parties may continue to report sexual and gender-based harassment to the University without filing a formal complaint. Reports may be made to Just Report It, the University’s online reporting tool, and directly to the Title IX

office via email to [titleixcoordinator@virginia.edu](mailto:titleixcoordinator@virginia.edu) or phone at (434) 297-7988. In addition, the Office of the Dean of Students and Human Resources remain options for reporting sexual and gender-based harassment. Please note, however, that the University will not initiate a Formal Investigation under the Grievance Process or Misconduct Procedures unless it receives (1) a Formal Complaint (as defined above) from the Complainant or (2) the Title IX Coordinator initiates a Formal Complaint.

***Did the University change the standard of evidence for investigations?***

No. As the Title IX regulations permitted the University to retain its current standard of evidence, the University has retained the preponderance of evidence standard.

***Will the University investigate and respond to conduct that occurs off Grounds?***

Yes. The Title IX regulations limit the University's ability to address Title IX sexual harassment to that conduct which occurs within the University's "education program or activity," defined as "locations, events, or circumstances over which the [University] exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution." Further, the Department of Education has stated that universities must dismiss matters being investigated under the Grievance Process that fall outside of this definition.

However, as the Department of Education has permitted universities to respond to conduct that falls outside of that covered by the Title IX regulations, UVA has developed the Misconduct Procedures, which will be implemented by EOCCR, and will address Sexual or Gender-Based Prohibited Conduct as defined above.

***What procedures apply for pending investigations?***

The University will apply the policy and procedures in place at the time the Formal Resolution (formal investigation) was initiated through a Notice of Investigation. All investigations initiated on or before August 13, 2020 will be resolved through the policy and procedures that were in place before **August 14, 2020**.

***What policy and procedures will apply for conduct that occurred prior to August 14, 2020 but was reported or the Formal Complaint was filed after August 14, 2020?***

The University will apply the procedures in place at the time the Formal Complaint was filed (e.g., the Grievance Process or Misconduct Procedures for reports after August 14, 2020). However, the investigation will apply the policy definitions in place at the time the alleged conduct occurred.

***Do I have to participate in a Formal Resolution?***

No. The University cannot require the participation of the Complainant, Respondent, or witnesses in a Formal Resolution (formal investigation). Participation is voluntary. However, pursuant to the Grievance Process, if a party or witness elects not to participate in the Hearing, including being cross-examined by a party's advisor, information provided by that party or witness during the investigation cannot be considered by the Decision Maker in resolving the formal complaint.

Pursuant to the Misconduct Procedures, a party or witness' decision not to participate in the hearing will not impact the Decision Maker's ability to rely upon information provided by that party or witness.

***Do I have to be subject to cross-examination by the other party's advisor at the Hearing?***

No. As noted above, the University cannot require the participation of a party or witness in the formal investigation process; however, if a party or witness elects not to be cross-examined by a party's advisor during a Hearing conducted pursuant to the Grievance Process, information provided by that party or witness cannot be considered by the Decision Maker; this includes written statements and documentary evidence (i.e. text messages) submitted by that individual.

Pursuant to the Misconduct Procedures, the parties will submit questions for the other party or witnesses to the Decision Maker, who will ask the questions during the hearing. As noted above, a party or witness' decision not to participate in the hearing will not impact the Decision Maker's ability to rely upon information provided by that party or witness.

***Do I have to be physically present in the same room as the other party during the Hearing?***

No. The University has the discretion to determine the format of the live hearing – in person or virtual. A Hearing may be conducted with all parties physically present in the same geographic location or at the discretion of the Title IX Coordinator, any or all parties, witnesses, or other participants may appear at the Hearing virtually, with technology enabling participants simultaneously to see and hear each other. Either party may make a request for the parties to be located in separate rooms or locations during the Hearing with technology enabling the Decision Maker and parties to simultaneously see and hear the party or witness answering questions. Such a request should be submitted to the Title IX Coordinator at least two (2) business days prior to the Hearing. Nothing in this section requires the parties to appear in person before the Decision Maker and the Hearing may proceed with all parties participating virtually as appropriate and necessary. The format of the hearing (e.g., in person or virtual) is at the discretion of the Decision Maker and/or Title IX Coordinator.

### ***Who is the Decision Maker?***

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

### ***Will there be a Panel under the new Grievance Process and Misconduct Procedures?***

No. The Grievance Process and Misconduct Procedures provide for a determination made by a single Decision Maker.

### ***Can either party appeal the Decision Maker's Written Determination?***

Yes. Both the Complainant and Respondent have the right to appeal the Written Determination. The Appeals Officer and their designees will receive annual training. The appropriate Appeal Officer will be determined based on the status of the Respondent (i.e. student, faculty, staff).

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

***Can the University dismiss a Formal Complaint prior to the conclusion of the investigation?***

Yes. The Grievance Process and Misconduct Procedures provide both mandatory and discretionary dismissals. The dismissal may be appealed to the Associate Vice President for Equal Opportunity and Civil Rights or designee.

For *Title IX Prohibited Conduct*:

1. **Mandatory Dismissal.** The University shall dismiss a Formal Complaint, or any allegations therein, from the Grievance Process at any time in the Formal Resolution, Information Resolution, or Hearing when the alleged conduct, even if proved:
  - a. Would not constitute Title IX Prohibited Conduct as defined in the Policy;
  - b. Did not occur in the University's education program or activity;
  - c. Did not occur against a person in the United States; or
  - d. The Complainant was not participating in or attempting to participate in a University education program or activity at the time the Formal Complaint was filed.
  
2. **Discretionary Dismissal.** The University may dismiss the Formal Complaint, or any allegations therein, from the Title IX Grievance Process if at any time in the Formal Resolution, Information Resolution, or Hearing:
  - a. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
  - b. The Respondent is no longer enrolled or employed by the University; or
  - c. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination to the Formal Complaint or allegations therein.

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

- The Formal Complaint is made several years after the Title IX Prohibited Conduct allegedly occurred;
- A Complainant stops participating in the investigative process or refuses to participate in the process; or
- A Formal Complaint contains allegations that are precisely the same as allegations the University has already investigated and adjudicated.

For *Sexual and Gender-Based Prohibited Conduct*:

1. **Mandatory Dismissal.** The University shall dismiss a Formal Complaint, or any allegations therein, from the Misconduct Procedures at any time in the Formal Resolution, Information Resolution, or Hearing the alleged conduct, even if proved

would not constitute Sexual and Gender-Based Prohibited Conduct as defined in the Policy.

2. **Discretionary Dismissal.** The University may dismiss the Formal Complaint, or any allegations therein, from the Misconduct Procedures if at any time in the Formal Resolution, Information Resolution, or Hearing:
  - a. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
  - b. The Respondent is no longer enrolled or employed by the University; or
  - c. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination to the Formal Complaint or allegations therein.

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

- The Formal Complaint is made several years after the Sexual and Gender-Based Prohibited Conduct allegedly occurred;
- A Complainant stops participating in the investigative process or refuses to participate in the process; or
- A Formal Complaint contains allegations that are precisely the same as allegations the University has already investigated and adjudicated.

### ***Can I access support resources even if I choose not to file a Formal Complaint?***

Yes. The University is required by the Title IX regulations to provide Supportive Measures, which are defined as “non-disciplinary, non-punitive services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent before or after filing a formal complaint or where no formal complaint has been filed.”

### ***What are Supportive Measures?***

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

Supportive Measures may be temporary or permanent. Supportive Measures may include, but are not limited to, the following:

- Imposition of a No Contact Directive or Mutual No Contact Directive against an Employee or Student (i.e., a written directive to one or both of the parties to refrain from contacting the other, directly or through proxies);



- Arranging a meeting with law enforcement to discuss or report Sexual and Gender-Based Prohibited Conduct;
- Arranging a meeting with law enforcement to discuss safety planning;
- Arranging access to counseling services and assistance in setting up initial appointments;
- Assistance in seeking academic assistance, including modified class schedules (including transfer to another section), permission to withdraw from and/or retake a class or attend a class via alternative means (e.g., online or independent study), extension of assignment deadlines, and voluntary leaves of absence;
- Assistance in modifying University housing arrangements, including immediate temporary relocation to safe living quarters and/or permanent reassignment of University residence halls;
- Assistance in modifying assigned parking;
- Assistance in arranging for a campus escort services (e.g., Safe Ride);
- Assistance in modifying University employment arrangements, including changes in work schedules, job assignments, work locations, and/or assigned parking;
- Increased security or monitoring of certain areas of Grounds; and
- Any other measures that may be arranged by the University (to the extent reasonably available) to ensure the safety and well-being of a Complainant or Respondent.

***Do the new policy and procedures permit Informal Resolution?***

Yes. Both the Grievance Process and Misconduct Procedures allow resolution of a Formal Complaint through Informal Resolution and the parties may voluntarily choose to proceed from Formal Resolution to Informal Resolution at any time during the process (prior to a Hearing/Meeting). However, the University has discretion to determine whether Informal Resolution is appropriate in light of the nature of the conducted alleged in the specific Formal Complaint.

Informal Resolution may not be available where an employee is alleged to have engaged in Prohibited Conduct directed at a student. Further, forms of Informal Resolution that involve face-to-face or virtual meetings between the parties, such as mediation, may not

be available in cases involving Non-Consensual Sexual Contact, Non-Consensual Sexual Intercourse, or Intimate Partner Violence. The University will not compel a party to engage in Informal Resolution and either party as well as the University maintains the right to terminate an ongoing Informal Resolution process at any time. Where the Complainant or the Respondent withdraws from Informal Resolution or Informal Resolution is otherwise terminated for any reason, the Investigator will resume the Formal Resolution and any statements or disclosures made by the parties during the course of the Informal Resolution that are not independently revealed during the course of the Formal Resolution investigation may not be considered by the Decision Maker.

Pursuing Informal Resolution does not preclude later use of Formal Resolution if the Informal Resolution fails to achieve a resolution acceptable to the parties and the University.