

**RESOLUTION TO AMEND POLICY 1025 AND STUDENT CODE OF CONDUCT  
AND TO CREATE NEW POLICY 1026  
TO COMPLY WITH NEW TITLE IX REGULATIONS  
ISSUED BY THE U.S. DEPARTMENT OF EDUCATION  
AND EFFECTIVE AUGUST 14, 2020**

**Whereas**, Virginia Tech is subject to federal law under Title IX of the Education Amendments of 1972 (Title IX); and

**Whereas**, Title IX states that, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance”; and

**Whereas**, the U.S. Department of Education’s Office for Civil Rights (OCR) enforces Title IX and on May 6, 2020, issued Title IX regulations that require university policy and procedures to be in compliance with the regulations by August 14, 2020; and

**Whereas**, on May 22, 2020, President Sands charged a working group to make recommendations for the changes needed to university policies and procedures to comply with the regulations for responding to reports, conducting investigations and holding hearings, resulting in the recommended adjustments to the university’s policy on Harassment, Discrimination, and Sexual Assault (Policy 1025 attached); and

**Whereas**, to comply with the regulations, and to complement the adjustments in policy 1025, the work group drafted a policy dedicated exclusively to responding to reports of sexual harassment under the Title IX regulations resulting in the proposed new Policy on Title IX Sexual Harassment and Responsible Employee Reporting (Policy 1026 attached); and

**Whereas**, the workgroup, led by the Office for Equity and Accessibility, provided a report to the president on July 24, 2020, which, in addition to recommending new and revised policies to meet the deadline for regulatory compliance, recommends subsequent additional university-wide review of policies and procedures to include constituent groups and governance bodies; and

**Whereas**, the Bylaws of the Virginia Tech Board of Visitors, Article I, Section 6a, stipulate that the Executive Committee of the Board in the interim between meetings of the Board has full power to take actions on behalf of the Board and that all such actions taken by the Executive Committee are subject to ratification by the full Board at its next meeting;

**Now, therefore, be it resolved** that to comply with the new Title IX regulations issued by the U.S. Department of Education which become effective August 14, 2020, the Executive Committee of the Board of Visitors approves the following new and revised policies, to become effective August 14, 2020:

- Policy 1026: Policy on Title IX Sexual Harassment and Responsible Employee Reporting (new policy)
- Policy 1026, Appendix 1 – Procedures for Adjudication of Formal Complaints Against Students
- Policy 1026, Appendix 2 – Procedures for Adjudication of Formal Complaints Against Employees
- Revised Policy 1025: Policy on Harassment, Discrimination, and Sexual Assault
- Revised Student Code of Conduct

### **RECOMMENDATION**

That the resolution to approve changes to University Policy 1025 and the Student Code of Conduct, and to approve new University Policy 1026 be approved effective August 14, 2020, to comply with the May 6, 2020, Title IX regulations issued by the U.S. Department of Education Office for Civil Rights.

August 13, 2020

# **Policy on Title IX Sexual Harassment and Responsible Employee Reporting (No. 1026)**

## **1.0 Purpose**

The university is committed to providing a safe and non-discriminatory environment for living, learning, and working to all members of our community. To that end, the university does not discriminate, nor tolerate discrimination, on the basis of sex or gender. Pursuant to Title IX of the Education Amendments of 1972, this policy exists to eliminate, address, and prevent the recurrence of the prohibited conduct described herein, and provide for a fair and impartial process for making the determination about whether prohibited conduct occurred.

## **2.0 Policy**

The university prohibits Title IX Sexual Harassment and Retaliation, as defined by federal regulations promulgated by the United States Department of Education. In compliance with the Department of Education's regulations, the university has adopted a grievance procedure for the resolution of formal complaints that includes notice to all parties, prompt and impartial investigations, and live hearings that include an opportunity for cross-examination by advisors. The university also requires those designated as Responsible Employees to promptly report any violation or alleged violation of this policy.

### **2.1 Application of Policy**

This policy applies to all levels and areas of university operations and programs, to undergraduate and graduate students, professional students, administrators, faculty, staff, volunteers, vendors and contractors.

### **2.2 Scope**

This university's jurisdiction includes any conduct that occurs within the context of a university Education Program or Activity within the United States. Education Program or Activity means any on- or off-campus locations, events, or circumstances over which the university 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 officially recognized by the university. Individuals who are currently participating in, or attempting to participate in, an Educational Program or Activity of the university may file a complaint under this policy.

Virginia Tech is also committed to the free and vigorous discussion of ideas and issues. This policy does not allow curtailment or censorship of constitutionally protected expression, nor does it attempt to address behaviors that do not constitute discrimination or harassment. Offensive behavior that does not violate this policy should be addressed by the appropriate supervisor or administrator.

The university recognizes that prohibited conduct under this policy may also be prohibited by other university policies, including the university's Policy on Discrimination and Harassment (Policy 1025). In the event other policies may also apply to conduct prohibited under this policy, the procedures as outlined in this policy shall apply.

## 2.2 Title IX Sexual Harassment

Title IX Sexual Harassment<sup>1</sup> means any of the following conduct on the basis of sex:

- a university employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct (i.e. *quid pro quo* harassment);
- unwelcome conduct that a reasonable person would determine to be so severe, pervasive, and objectively offensive that it would effectively deny a person equal access to a university program or activity; or
- Sexual Assault, Dating Violence, Domestic Violence, or Stalking, as each of those terms are defined below.

## 2.3 Retaliation

This policy incorporates the definition of Retaliation defined in Policy 1025 and prohibits any adverse action taken against a person for making a good faith report of Title IX Sexual Harassment or for participating in an investigation or grievance procedure pursuant to a report of Title IX Sexual Harassment. The prohibition does not prohibit or curtail any constitutionally protected rights.

## 2.4 Responsible Employee Reporting

Responsible employees include all university officials who have authority to institute corrective measures in response to a report of Title IX Sexual Harassment. A responsible employee who receives notice of behavior that might reasonably be construed as constituting Title IX Sexual Harassment must promptly report the alleged behavior to the Title IX Coordinator. A responsible employee who receives notice of an alleged Title IX Sexual Harassment and fails to report it to the Title IX Coordinator may be subject to discipline up to and including termination.

Responsible employees under this section include university administrators, supervisors, employees with instructional responsibilities (for their respective teaching obligation), academic advisors, and other university employees who have significant responsibility for student and campus activities or implementing the university's policies related to employee and student discipline.

Virginia Tech has designated several offices on campus as confidential resources. When performing their responsibilities providing services, these offices are not subject to this policy. Confidential resources include the staff at the University Ombuds Office and Graduate School Office of the Ombudsperson, Schiffert Health Center, Cook Counseling Center, and the Virginia Tech Women's Center. Disclosures made to Athletic Doctors while acting within the scope of his or her license or certification are also confidential.

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<sup>1</sup> This definition is found in 34 CFR 106 In the event of a conflict between the definition provided in this policy and the definition as provided in 34 CFR 106, the 34 CFR 106 definition shall prevail.

### **3.0 Procedures**

Complainants who are participating in, or attempting to participate in, Virginia Tech's programs and activities may file formal complaints alleging conduct prohibited under this policy by undergraduate students, graduate students, professional students, administrators, faculty, staff, volunteers, vendors and contractors. The procedures for investigating and resolving formal complaints depend on the Respondent's relationship to the university, and specifically whether the Respondent is a student or an employee. Both sets of procedures follow the same general guiding principles. At a minimum, the procedures:

- Provide for a prompt and equitable response to reports of Title IX Sexual Harassment;
- Start with a presumption of non-responsibility for the Respondent;
- Allow for and require objective evaluation of all evidence;
- Include an option for an emergency interim suspension of a student Respondent that includes the opportunity for appeal of that decision;
- Prohibit anyone who has a conflict of interest or a bias for or against a particular Complainant or Respondent, or Complainants and Respondents generally, from participating as an investigator, Title IX Coordinator, hearing officer, or appellate officer;
- Describe the range of possible disciplinary sanctions and remedies that the university may implement following a determination of responsibility;
- Describe the circumstances in which the university will convene a live hearing to resolve a Formal Complaint, as well as the circumstance in which the Title IX Coordinator will dismiss a Formal Complaint prior to the live hearing phase;
- Set forth the process for the live hearing, including by describing the roles of advisors and hearing officers, and describe the procedural rules that apply during the live hearing phase, including the opportunity for cross-examination;
- Describe the process for appealing formal decisions; and
- Do not require, allow, rely upon, or otherwise use any questions or evidence that constitute or seek disclosure of information protected by a legally recognized privilege.

The procedures used for any complaint against a university student are described in Appendix 1.

The procedures used for any complaint against a university employee are described in Appendix 2.

#### **3.1 Title IX Coordinator**

The university's Director of Title IX Compliance is designated as the Title IX Coordinator. The Title IX Coordinator is responsible for monitoring institutional compliance with Title IX and with this policy. Questions about Title IX, as well as any concerns or complaints about possible non-compliance with Title IX or with this policy, should be directed to the Title IX Coordinator:

Director of Title IX Compliance and Title IX Coordinator  
Office for Equity and Accessibility  
Virginia Tech  
North End Center  
300 Turner St.  
Blacksburg, VA 24061  
Phone: (540) 231-1824  
[equityandaccess@vt.edu](mailto:equityandaccess@vt.edu)

The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures; ensuring the university's prompt and equitable response to any formal complaint of Title IX Sexual Harassment; coordinating the university's internal Title IX-related training programs, and maintaining records of Title IX-related complaints and reports and any response thereto in accordance with state and federal laws.

### **3.2 Supplemental/Alternative Avenues for Complaints**

In addition to, or in lieu of, the university's procedures, individuals may pursue remedies, as appropriate, through the Office for Civil Rights of the U.S. Department of Education.

We encourage victims of sexual violence, including rape, sexual assault, sexual battery, stalking, and dating and domestic violence, to exercise their right to file a complaint with the Virginia Tech Police Department if the crime occurs on Virginia Tech's property, regardless of the status of the complainant. For crimes occurring away from Virginia Tech's property, victims may contact the local law enforcement in the appropriate jurisdiction.

### **4.0 Definitions**

**Complainant** means an individual who is alleged to be the victim of conduct that could constitute Title IX Sexual Harassment.

**Consent** means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. The existence of consent is based on the totality of circumstances, including the context in which the alleged consent occurred. Silence does not necessarily constitute consent and coercion, force, or threat of either party invalidates consent.

- Consent cannot be given where a person is incapacitated due to drugs or alcohol; or where a person has a disability; or is not of legal age to consent as defined by law.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Consent can be withdrawn at any time.
- Previous relationships or prior consent cannot imply consent to future sexual acts.

**Dating Violence** means violence committed by a person: (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (b) Where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

**Domestic Violence** means felony or misdemeanor crimes of violence committed by: (a) a current or former spouse or intimate partner of the victim; (b) a person with whom the victim shares a child in common; (c) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; (d) a person similarly situated to a spouse of the victim under the domestic or family violence laws of Virginia; or (e) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Virginia.

**Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment.

**Sexual Assault** means misconduct that meets the definition of Rape, Fondling, Incest, or Statutory Rape, as defined below:

- **Rape** means penetration, no matter how slight, of the vagina or anus of a person with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Fondling** means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or temporary or mental incapacity.
- **Incest** means sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by law.
- **Statutory Rape** means sexual intercourse with a person who is under the statutory age of consent.

**Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (a) fear for the person's individual safety or the safety of others; or (b) suffer substantial emotional distress.

## 5.0 References

University Policy 1025: Policy on Harassment, Discrimination, and Sexual Assault  
<https://policies.vt.edu/assets/1025.pdf>

## 6.0 Approval and Revisions

Policy created as a result of new regulations promulgated by the U.S. Department of Education, effective August 14, 2020.

Approved August 13, 2020, by the Executive Committee of the Board of Visitors.

**Policy 1026 – Appendix 1**  
**Adjudication Procedures for Complaints Against Students**

The following procedures apply to the adjudication and potential disciplinary actions related to formal complaints against students for Title IX Sexual Harassment as defined in University Policy 1026 on Title IX Sexual Harassment and Responsible Employee Reporting. These procedures are compliant with the U.S. Department of Education’s regulations found in 34 CFR 106. **Future changes to these adjudication and disciplinary procedures must receive approval from the Virginia Tech Board of Visitors.** These procedures are incorporated into the Student Code of Conduct.

**Formal Title IX Adjudication Process**

When the Title IX Coordinator refers a case for formal adjudication, the Office of Student Conduct will hold a live hearing with cross-examination to determine whether the respondent is responsible for the alleged conduct and to provide appropriate sanctions, as appropriate.

**A. Procedural Guarantees**

In formal conduct hearings for Title IX formal complaints, the complainant and respondent are entitled to the following procedural guarantees and opportunities:

- To receive a copy of the final investigation report, including any attachments and supporting documents from the Title IX Coordinator or designee at least ten (10) days in advance of the hearing.
- To receive written notice of the date, time, location, participants, and policies charged at least five (5) business days in advance of the hearing to allow the parties sufficient time to prepare for the hearing.
- To be accompanied by an advisor of their choice, at their own cost, or to have an advisor provided to them by the Office of Student Conduct without fee or charge.
- To inspect and review, during the hearing, all evidence obtained during the investigation that is directly related to the allegations in the formal complaint.
- To present that evidence that supports or refutes the alleged conduct.\*
- To present witnesses, including fact and expert witnesses.
- To have their advisor conduct live cross-examination on the other party and any witnesses.
- To remain silent or to participate as they see fit, including full, partial, or no participation; however, they should carefully review the section on [cross-examination](#), below, to understand the potential impacts should they choose to limit participation.
- To challenge the objectivity of a hearing officer(s), given reasonable cause to believe they may be biased or have a conflict of interest.
- To appeal, regardless of the outcome, based on the following grounds: 1) Procedural irregularity; 2) Significant and relevant new information that was not available at the time of the hearing; 3) The Title IX Coordinator, Investigator, or hearing officer(s) had a conflict of interest or bias, which affected the outcome; 4) Unduly harsh or arbitrary findings or sanctions.

\*Only evidence and information submitted prior to the final investigation report will be considered during at the hearing.

## **B. Advisors**

At the hearing, each party may be accompanied by an advisor of their choice, at their own cost (e.g., parent, friend, attorney, etc.); if a party does not have an advisor, the university will provide one to them without fee or charge for the purposes of cross-examination. Advisors may not also serve as witnesses.

Advisors will be permitted to cross-examine (i.e., ask relevant questions and follow-up questions) the other party and any witnesses directly, orally, and in real time. The parties must use their advisors in this capacity, as they will not be permitted to ask questions personally.

Aside from cross-examination, advisors may not speak on the student's behalf or participate actively in the process. Advisors must follow the guidance of the hearing officers.

## **C. Cross-Examination**

During the hearing, the parties' advisors will be permitted to ask relevant questions and follow-up questions, including those challenging credibility, of the other party and any witnesses. Cross-examination must be conducted directly, orally, and in real time. At no times will the parties directly conduct cross-examination.

### Relevance

Questions asked during cross-examination must be relevant to the behavior and situation in question. Hearing officers will determine whether each question is relevant and, if they choose to exclude a question, explain why it is not relevant. The following topics/questions have been identified as automatic exclusions:

- Questions or information about the complainant's prior sexual behavior, unless they are used to prove someone other than the respondent committed the alleged conduct or if they concern previous sexual activity with the respondent and are used to prove consent.
- Questions or information that discloses or seeks to disclose privileged information, such as medical or psychological records.

For more information about relevant information, please refer to the [Relevant Evidence](#) section in section A, above.

### Declining to Participate in Cross-Examination

If a party or witness declines to be cross-examined during the hearing, the hearing officers will not consider any statements made by that party or witness during the investigation or hearing when determining whether the respondent is responsible for the alleged conduct. However, the hearing officers will also not draw conclusions regarding responsibility based solely on a party's or witness's absence from the hearing or decision to decline to answer questions from the hearing officers or during cross-examination.

## **D. Recording**

The Office of Student Conduct audio records all formal hearings. A copy of the recording is maintained as part of the case file and will be made available to the parties, upon request.

## **E. Hearing Location and Virtual Participation**

At the discretion of the Office of Student Conduct, a hearing may be conducted in a single physical location, with all parties present, or a hearing may be conducted virtually, with participants appearing via videoconference. If the hearing is held in person (i.e., in a single physical location), either party may request to be located in a separate room and to participate via video conference. Regardless of the participation method, the hearing participants will be able to simultaneously see and hear each other.

## **F. Determination of Responsibility**

After the hearing, a determination of whether a respondent is responsible for violating any policy in the Code of Conduct will be made by the hearing officers based on the information presented in the investigation report and at the hearing.

### Standard of Proof

The university uses preponderance of the evidence to determine whether or not the respondent is responsible for the alleged conduct. This determination is made based on the information available to determine if it is more likely than not that a violation occurred.

### Decision Letter

The hearing officer will simultaneously provide the parties the decision in writing. The decision letter will include the following information: allegations and policies charged, procedural steps taken during the grievance procedure, information used to determine the findings and their application to the policies charged, rationales for each finding, any sanctions imposed on the respondent, any remedies provided to the complainant, and information about the appeal process.

#### **G. Range of Possible Sanctions**

If a respondent is found responsible for the alleged conduct, the hearing officers will make a determination regarding appropriate sanctions. One or more of the following sanctions may be imposed:

- Formal warning
- Probation
- Deferred Suspension
- Suspension
- Deferred Dismissal (i.e., deferred expulsion)
- Dismissal (i.e., expulsion)
- Denial of privileges or associations
- Educational, Community, and Wellness Activities

When assigning sanctions, hearing officers consider the type and nature of any policy violation(s), including mitigating or aggravating factors, as well as the student's prior conduct record. Sanctions are generally cumulative in nature.

For definitions and additional information about sanctions in the Student Conduct process, please refer to the [Student Code of Conduct](#).

#### **H. Remedial Action**

Following a hearing, the Director of Student Conduct shall work with the Title IX Coordinator, who will oversee any necessary remedial action to restore or preserve the complainant's equal access to the university's education programs or activities.

### **Appeal Process**

Both parties have the opportunity to appeal the outcome of a formal hearing in a Title IX case regardless of the outcome. Sanctions take effect immediately, pending the appellate officer's decision or the end of the appeal period.

#### **A. Grounds for Appeal**

Appeals are not re-hearings; therefore, appeal requests are limited to the following grounds:

- Procedural irregularity or denial of procedural guarantees
- Significant and relevant new information that was not available at the time of the hearing
- Conflict of interest or bias by the Title IX Coordinator, Investigator, or hearing officer(s), which affected the outcome
- Unduly harsh or arbitrary findings or sanctions.

Appeals submitted that do not have sufficient grounds in one of these areas will be denied.

## **B. Potential Outcomes of an Appeal**

The appellate officer will review the appeal and may:

- Uphold the original decision and sanctions
- Uphold the original decision and either decrease or increase the sanction
- Vacate a finding
- Send the case back to the Title IX Coordinator for further investigation
- Send the case back to Student Conduct for a new partial or full hearing

## **C. Time Frame to Submit an Appeal**

The parties have seven (7) business days from the date of the decision to submit the appeal. The date the decision is given is considered the first day of the appeal period. Appeals submitted after the deadline will not be accepted except in extenuating circumstances, as determined by Student Conduct.

## **D. Format of Appeal**

The appeal is a written request submitted by the student for a review of the original case. The student should include which grounds for appeal they believe apply, and any information the student wants considered should be included in the written document. The burden is on the appealing party to demonstrate why the finding or sanction should be altered.

## **E. Notification to the Other Party**

When one party submits an appeal, the Office of Student Conduct will notify the other party and provide them with an opportunity to review the appeal and submit a written statement in response, which will be included in the appeal documentation.

## **F. Appellate Officers**

An appellate officer will be designated by the Assistant Vice President for Student Affairs, who serves as the university's Chief Appellate Officer. All appellate officers are external to the Office of Student Conduct and Title IX. When they are designated to review a case, the Assistant Vice President will ensure they do not have conflicts of interest or bias and are, therefore, able to review the case objectively.

## **G. Appeal Decision Letter**

The appellate officer will issue a decision on the appeal in writing to both parties simultaneously. This notification will include a rationale for the decision.

**Policy 1026 – Appendix 2**  
**Adjudication Procedures for Complaints Against Employees**

The following procedures apply to the adjudication and potential disciplinary actions related to formal complaints against employees for Title IX Sexual Harassment as defined in University Policy 1026 on Title IX Sexual Harassment and Responsible Employee Reporting. These procedures are compliant with the U.S. Department of Education’s regulations found in 34 CFR 106. **Future changes to these adjudication and disciplinary procedures must receive approval from the Virginia Tech Board of Visitors.**

**Formal Adjudication Process**

Upon referral of a case for formal adjudication, Office for Equity and Accessibility (OEA) will select from a pool of qualified hearing officers/appellate officers one person to serve as the Hearing Chair and a second person to serve as the Appellate Officer for the case. The designated Hearing Chair will convene and administer a live hearing in accordance with these procedures to determine whether the respondent is responsible for the alleged Title IX Sexual Harassment and, if so, to determine appropriate disciplinary sanctions.

**A. Procedural Guarantees**

The complainant and respondent are entitled to the following procedural guarantees prior to and throughout the formal adjudication process to:

- receive a copy of the final investigation report, including any attachments and supporting documents at least ten (10) calendar days in advance of the hearing;
- receive written notice of the date, time, location, participants, and policies charged at least five (5) calendar days in advance of the hearing to allow the parties sufficient time to prepare for the hearing;
- be accompanied by an advisor of their choice, at their own cost, or to have an advisor provided to them by the University without fee or charge;
- inspect and review, during the hearing, all evidence obtained during the investigation that is directly relevant to the allegations in the formal complaint;<sup>4</sup>
- present witnesses, including fact and expert witnesses;
- present evidence that supports or refutes the alleged conduct;
- have their advisor cross-examine the other party and any witnesses;
- remain silent or otherwise not participate;
- challenge the objectivity of a hearing officer, given reasonable cause to believe that they may be biased or have a conflict of interest; and
- appeal, regardless of the outcome, based on the following grounds: (1) Procedural irregularity that affected the outcome; (2) New evidence that was not reasonably available at the time of the live hearing that could have affected the outcome; and (3) Conflict of interest or bias of the Title IX Coordinator or deputy Title IX coordinator, the assigned investigator, or hearing officer(s), that affected the outcome.

**B. Title IX Hearing Officers**

Upon referral of a case for formal adjudication, the Title IX Coordinator or a deputy Title IX coordinator will select a qualified Title IX hearing officer to serve as the Hearing Chair for that case.

The Hearing Chair retains responsibility for, and authority over, the following:

- Convening and administering the live hearing;
- Communicating with participants about the date, time, and location of the hearing;
- Ensuring that the live hearing follows the process set forth in these procedures, and that parties are given the procedural protections and guarantees described above;
- Designating an advisor from the University to be present at the hearing, in case one or both parties do not bring an advisor to the hearing;
- Making determinations about the relevancy of questions posed to witnesses and opposing parties by a party through their advisor;
- Issuing the decision letter to parties; and
- Informing parties of their appeal rights

#### C. Advisors

Parties are encouraged to bring an advisor of their choice to the hearing. The purpose of an advisor is to stand in place of their assigned party to ask questions of witnesses and opposing parties, since parties themselves cannot directly ask questions of witnesses and opposing parties. If a party does not have an advisor, the University will provide one to them without fee or charge.

Except when asking questions of witnesses and opposing parties, advisors may not speak on a party's behalf. Advisors must follow the guidance of the Hearing Chair.

#### D. Hearing Format

Apart from the requirements of these procedures, University policy, and state and federal law, the Hearing Chair retains substantial latitude to control the format and order of the formal adjudication process, including by taking any action necessary to keep or restore decorum during any live hearing. The Hearing Chair will ensure that the chosen format allows parties to present witnesses, including fact and expert witnesses, present evidence that supports or refutes the alleged conduct, and have advisors cross-examine the other party and any witnesses.

#### E. Witness Testimony and Cross-Examination

The Hearing Chair will ensure that both parties have an equal opportunity to present relevant evidence during the live hearing. Additionally, the Hearing Chair will permit each party's advisor to ask relevant questions and follow-up questions, including questions that challenge credibility, of the other party and any witnesses.

Cross-examination must be conducted directly, orally, and in real time. Advisors must allow the Hearing Chair to make a determination about whether a witness may proceed to answer a question before pursuing that question further. Advisors, parties, and witnesses must respect the Hearing Chair's determination with respect to any question that an advisor poses. Parties are prohibited from directly questioning each other or any witness.

#### *Relevance*

Certain types of evidence will be excluded from consideration during a Title IX investigation or hearing. The Hearing Chair may exclude evidence that tends to suggest that the complainant's allegation is part of a pattern of conduct by the respondent, or evidence that is otherwise confidential or protected by some form of privilege. The Hearing Chair will use discretion to determine whether it is appropriate to consider these types of evidence. Determinations will be made based on the following principles:

- Pattern of Conduct by Respondent: evidence of a pattern of conduct similar in nature by the respondent, either prior to or subsequent to the conduct in question, regardless of whether there has been a finding of responsibility, may be relevant if: the previous incident was substantially similar to the present allegation; the information indicates a pattern of behavior and substantial conformity with that pattern; or the respondent was previously found responsible for a policy violation.
- Information protected by legal privilege: All information that is confidential or protected by a legal privilege is inadmissible in the investigation and hearing, and it will not be considered relevant. This includes all federally recognized legal privileges and any additional privileges recognized by the State of Virginia. These include attorney-client communications, medical and counseling records, and clergy-confessor statements.

When individuals offer their own confidential or privileged information, such as medical records, for an investigation, they will be asked to sign a release for that confidential information. Unless an individual has signed that release, the Hearing Chair will not permit witnesses to answer questions about, request, or share information that is confidential or privileged.

The Hearing Chair has authority to decide whether a witness can answer a question posed by an advisor during a hearing. If the Hearing Chair determines that a particular question is not relevant, then the Hearing Chair will tell the witness not to answer the question and provide a brief rationale for that decision to hearing participants.

The Hearing Chair will automatically prohibit a witness from answering the following kinds of questions:

- Questions that solicit information about or relating to a complainant's prior sexual behavior, unless:
  - the questions are intended to and will have the effect of proving that someone other than the respondent committed the alleged conduct; or
  - the questions are reasonably calculated to prove the existence of consent for the alleged misconduct.
- Questions or information that disclose or seek to disclose privileged information, such as questions relating to a witness's medical or psychological records.

If the Hearing Chair determines that a witness cannot answer a question for one of the reasons described above, then the Hearing Chair will instruct the witness not to answer the question and provide a brief rationale for that decision to hearing participants.

#### *Refusal to Participate in Cross-Examination*

Parties and witnesses are not required to answer questions or otherwise participate in hearings. The Hearing Chair will not draw an inference, positive or negative, from the decision of a party or witness not to participate in the formal adjudication process. A party or witness who chooses not to answer a relevant question posed by a party's advisor will be considered an unresponsive party or witness. When deliberating about the outcome of a case, the Hearing Chair will exclude from consideration all statements made by an unresponsive party or witness, regardless of the stage in the process in which the unresponsive party or witness made statements.

#### F. Recording

The University will create an audio or video recording of any formal hearings. A copy of the recording will be made available to the parties for inspection and review upon request.

#### G. Hearing Location and Virtual Participation

At the discretion of the Hearing Chair, a hearing may be conducted in a single physical location, with all parties present, or virtually, with some or all participants appearing via videoconference. If the hearing is held in person (i.e., in a single physical location), either party may request to be located in a separate room and to participate via video conference. Regardless of the participation method, the Hearing Chair will ensure that parties are able to see and hear each other and any witnesses in real time.

#### H. Determination of Responsibility

The Hearing Chair is responsible for making the determination about whether there is sufficient evidence to conclude that a respondent's conduct violated the University's Title IX Sexual Harassment Policy.

#### I. Standard of Proof

The University uses the preponderance of the evidence to determine whether or not the respondent is responsible for the alleged misconduct. In making the determination about whether there is sufficient evidence to conclude that a respondent's conduct violated the University's Title IX Policy, the Hearing Chair will determine whether it is more likely than not that a violation occurred based on the information presented during the live hearing.

#### J. Decision Letter

The Hearing Chair will provide the parties notice of the outcome of the hearing in writing via a decision letter. The decision letter will include the following information: allegations and policies charged, a description of the process and the steps taken during the grievance procedure, information used to determine the findings and the application of the findings to the policies charged, rationales for each finding, any sanctions imposed on the respondent, any remedies provided to the complainant, and information about the appeal process.

#### K. Range of Possible Sanctions

The imposition of sanctions is designed to eliminate sexual harassment and prevent future recurrence while supporting the University's educational mission and legal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved or so deleterious to the educational process that it requires the imposition of severe sanctions, including suspension or termination of employment from the University.

If a respondent is found responsible for the alleged misconduct, one or more of the following sanctions may be imposed:

- Formal warning;
- Probation;
- No contact directives;
- Assignment of alternative worksite;
- Reassignment of position; and
- Recommendation for the imposition of a severe sanction, including demotion, suspension, non-reappointment, and for-cause dismissal.

When assigning sanctions, the Hearing Chair will consider the type and nature of any policy violation(s), including mitigating or aggravating factors. Sanctions are generally cumulative in nature. Nothing in these procedures abrogates post-adjudication rights as provided by state and federal law (i.e., State Grievance Procedure, under Chapter 30 (§2.2-3000 et. seq.) of Title 2.2 of the Code of Virginia; the [Office for Civil Rights](#); and the [Equal Opportunity Employment Commission](#)). OEA will coordinate with the respondent's supervisor to ensure the timely implementation of any sanction.

#### L. Remedial Action

Following any hearing that results in a finding of responsibility, the Hearing Chair will coordinate with OEA to ensure that the complainant receives any remedial action necessary to restore or preserve the complainant's equal access to the University's education programs or activities. OEA will take any steps necessary to ensure that the complainant's ability to access to the University's education programs or activities is fully restored.

### Appeal Process

Both parties have an equal opportunity to appeal the outcome of a formal hearing in a Title IX case, regardless of the outcome.

#### A. Title IX Appellate Officers

Upon referral of a case for formal adjudication, the Title IX Coordinator or a deputy Title IX coordinator will select a qualified Title IX appellate officer to serve as the Appellate Officer for that case.

The Appellate Officer retains responsibility for, and authority over, the following:

- Administering the appeals process in accordance with this section;
- Communicating with participants about the appeals process;
- Ensuring that parties are given an equal and fair opportunity to appeal in accordance with this section;
- Providing simultaneous notice to parties describing the outcome of an appeal in accordance with this section; and
- In the case of an appeal that merits a new partial or full hearing, coordinating with the Title IX Coordinator or a deputy Title IX coordinator as necessary to ensure that a new or partial hearing is convened and administered in a manner that is fair and impartial to both parties.

#### B. Grounds for Appeal

Appeals are not re-hearings. Appeal requests must be based on one of the following grounds:

- **Procedural Irregularity:** Procedural irregularity that affected the outcome;
- **New Evidence:** New evidence that was not reasonably available at the time of the live hearing that could have affected the outcome; and
- **Conflict of Interest:** Conflict of interest or bias of the Title IX Coordinator or deputy Title IX coordinator, the assigned investigator, or Hearing Chair, that affected the outcome.

The Appellate Officer will deny any appeal that is not sufficiently grounded in one or more of the bases described above.

#### C. Timeframe to Submit an Appeal

Parties have seven (7) calendar days from the date of the decision to submit the appeal. The date that the Hearing Chair sends the decision letter to parties is considered the first day of the appeal period. Appeals submitted after the deadline will not be accepted except in extenuating circumstances, as determined by the Appellate Officer.

#### D. Format of Appeal

To appeal, a party must submit a written request using the [Appeal Form](#). The request must state the grounds on which the party seeks to appeal and include a rationale citing any information the party wants the Appellate Officer to consider and describing why the appeal should be granted. The burden is on the appealing party to demonstrate that the finding or sanction should be altered or a new partial or full hearing should be convened.

#### E. Notification to the Other Party

When one party submits an appeal, the Appellate Officer will notify the other party and provide them with an opportunity to review the appeal and submit a written statement in response, which will be included in the appeal documentation that the Appellate Officer will consider when making the determination about whether to grant or deny the appeal. The other party will have five (5) calendar days to respond to the appeal. Except in extenuating circumstances the Appellate Officer will not accept a late response.

#### F. Potential Outcomes of an Appeal

The Appellate Officer will review all information that parties submit in support of and in opposition to the appeal. The Appellate Officer may:

- Deny the appeal and uphold the original decision and any disciplinary sanctions and remedies;
- Grant the appeal and vacate a finding or findings; or
- Grant the appeal and send the case back to the Title IX Coordinator or deputy Title IX coordinator to identify a Hearing Chair to convene and administer a new partial or full hearing.

The Appellate Officer will issue a decision on the appeal via a letter sent to both parties simultaneously. This notification will include a brief rationale for the decision using the identified appeal basis as the standard for determining the appropriate course of action. Appeals are not *de novo* reviews; instead, the Appellate Officer will rely only on the record and any information that the parties submit in support of or in opposition to the appeal.



# Policy on Harassment, Discrimination, and Sexual Assault

## No. 1025

**Policy Effective Date:**  
3/4/1991

**Last Revision Date:**  
~~10/8/2019~~/13/2020

**Policy Owner:**  
President Sands

**Policy Author:** (Contact Person)  
Kelly Oaks  
Kim O'Rourke

**Affected Parties:**  
Undergraduate  
Graduate  
Faculty  
Staff

- 1.0 Purpose
- 2.0 Policy
- 3.0 Scope
- 4.0 Procedures
- 5.0 Definitions
- 6.0 References
- 7.0 Approval and Revisions

## 1.0 Purpose

The university is subject to Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, as amended, the Age Discrimination in Employment Act, the Equal Pay Act, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, Federal Executive Order 11246, Genetic Information Nondiscrimination Act of 2008 (GINA), Virginia Executive Order(s), and all other rules and regulations that are applicable.

## 2.0 Policy

### 2.1 University Statement on Non-Discrimination

Virginia Tech does not discriminate against employees, students, or applicants on the basis of age, color, disability, sex (including pregnancy), gender, gender identity, gender expression, genetic information, national origin, political affiliation, race, religion, sexual orientation, or veteran status, or otherwise discriminate against employees or applicants who inquire about, discuss, or disclose their compensation or the compensation of other employees or applicants, or on any other basis protected by law.

### 2.2 Applicability of Non-Discrimination Statement

The prohibition against discrimination and harassment applies to all levels and areas of university operations and programs, to undergraduate and graduate students, administrators, faculty, staff, volunteers, vendors and contractors. Such behavior is inconsistent with the university's commitment to excellence and to a community in which mutual respect is a core value as articulated in the Virginia Tech Principles of Community.

### 2.3 Reference to Policy on Title IX Sexual Harassment

Effective August 14, 2020, sexual misconduct that falls under Title IX Sexual Harassment, as defined by federal law, shall be governed by the university's Policy on Title IX Sexual Harassment and Responsible Employee Reporting (Policy No. 1026). If both this policy and Policy No.1026 apply, the procedures as outlined in Policy No. 1026 shall be utilized. For clarification on what sexual misconduct falls under Title IX Sexual Harassment, please see Policy No. 1026.

## 3.0 Scope

The university's jurisdiction includes on-campus incidents and off-campus incidents that cause continuing effects on campus and includes complaints filed by students or employees, or others on their behalf, alleging discrimination or discriminatory harassment



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(including sexual harassment and sexual violence) carried out by faculty, staff, other students, or third parties.

Virginia Tech is also committed to the free and vigorous discussion of ideas and issues. This policy does not allow curtailment or censorship of constitutionally protected expression, nor does it attempt to address behaviors that do not constitute discrimination or harassment. Offensive behavior that does not violate this policy should be addressed by the appropriate supervisor or administrator.

### 3.1 Contact Information

Questions and complaints of discrimination or discriminatory harassment involving faculty, staff, or students should be filed with:

The Assistant Vice President for Equity and Accessibility  
Office of ~~Equity and Access~~Equity and Accessibility  
Virginia Tech  
North End Center  
300 Turner St.  
Blacksburg, VA 24061  
Phone: (540) 231-2010  
equityandaccess@vt.edu

### 4.0 Procedures

The procedures referenced below provide for prompt and equitable response to reports of prohibited conduct. The procedures also provide for thorough and impartial investigations that afford all parties notice and an opportunity to present witnesses and evidence and to view the information that will be used in determining whether a policy violation has occurred. The university applies the preponderance of the evidence standard when determining whether this policy has been violated. "Preponderance of the evidence" means that it is more likely than not that a policy violation occurred.

The appropriate university avenue for resolving a complaint covered under this policy is determined by the status of the person accused.

All **undergraduate, graduate, and professional students** at the university are subject to the university's student code of conduct as outlined in the Hokie Handbook, accessible at <https://www.hokiehandbook.vt.edu/>. ~~Procedures for addressing student violations of this policy are available at [www.stopabuse.vt.edu](http://www.stopabuse.vt.edu).~~

Faculty members at the university are subject to the rules included in the Faculty Handbook, accessible at [https://www.provost.vt.edu/faculty\\_affairs/faculty\\_handbook.html](https://www.provost.vt.edu/faculty_affairs/faculty_handbook.html). Staff members are subject to the rules included in university policies (<https://www.hr.vt.edu/resources/current-employees/policies-handbooks.html>) and the Virginia Department of Human Resource Management Policies (<http://www.dhrm.virginia.gov/hrpolicy/policy.html#probper>), with minor exceptions for University Staff. Procedures for addressing staff and faculty violations of this policy are available from Human Resources.

~~We encourage victims of sexual violence, including rape, sexual assault, sexual battery, stalking, and dating and domestic violence, to exercise their right to file a complaint with the Virginia Tech Police Department if the crime occurs on Virginia Tech's property, regardless of the status of the complainant. For crimes occurring away from Virginia Tech's property, victims may contact the local law enforcement in the appropriate jurisdiction.~~

### 4.1 Responsibilities of Administrators and Supervisors



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University administrators, supervisors, and those performing instructional or academic advising duties have an ~~added~~ responsibility to create and maintain a work and learning environment free of discrimination/harassment.

If an administrator, supervisor or individual with instructional responsibility becomes aware of an incident that might reasonably be construed as constituting discrimination/harassment, he or she must promptly contact the Office for Equity and Accessibility and coordinate with that office to take immediate steps to address the matter. ~~In such cases, the administrator, supervisor or individual with instructional responsibility should promptly contact the Office of Equity and Access in order to coordinate any further action that may be necessary.~~

Administrators, supervisors and those with instructional responsibility should contact the Office for Equity and Accessibility ~~and~~ whenever they learn—either directly or indirectly—about discrimination/ harassment. This obligation exists even if the complainant requests that no action be taken.

Administrators, supervisors and those with instructional responsibility (for their respective teaching obligation) have the legal responsibility to protect a complainant from continued discrimination, harassment or retaliation, including implementing interim measures necessary to protect the complainant. They must also protect persons accused of discrimination/ harassment from potential damage by false allegations. Administrators and supervisors will be held accountable for dealing with and taking necessary steps to prevent discrimination/harassment. It is not the responsibility of the complainant to correct the situation.

Employees are responsible for informing employees and students under their supervision of this policy and the name and contact information of the person responsible for addressing discrimination complaints covered under this policy.

### **4.2 Statement on Responsible Employees for Title IX Reports**

~~For reports that are covered by Title IX (including sex discrimination, sexual harassment, sexual violence, dating and domestic violence, and stalking), responsible employees include all individuals that are employed by Virginia Tech who have the authority—or whom an employee or student could reasonably believe have the authority or duty—to redress sex discrimination and sexual harassment. This includes but is not limited to all faculty members; all classified and university staff; any wage employee in a supervisory role; graduate teaching assistants; graduate research assistants; residential advisors; law enforcement; and security officials. Responsible parties are obligated to report acts of sexual violence or any other sexual misconduct by employees or students to the Title IX coordinator. Once a responsible employee is on notice of the sexual misconduct, including sexual violence, the responsible employee must promptly report all information they have to the appropriate Title IX Coordinator. Notice may be received directly or indirectly and could include a grievance, information from a student, another employee, parent or friend, sources in the local community, social networking sites, the media or an anonymous report.~~

~~Confidential resources include the staff at the University Ombuds Office and Graduate School Office of the Ombudsperson, Schiffert Health Center, Cook Counseling Center, Virginia Tech Mental Health Centers, and the Virginia Tech Women's Center. Disclosures made to Athletic Doctors while acting within the scope of his or her license or certification are also confidential. The employees in this list are not considered responsible employees.~~

### **4.34.2 Supplemental/Alternative Avenues for Formal Complaints**

In addition to, or in lieu of, the procedures set forth above, individuals may pursue those remedies that are available to them, as appropriate, through the following agencies:

**Students and applicants for admission** may file formal complaints with the Office for Civil Rights of the U.S. Department of Education.

**Faculty members or applicants for employment** may file a charge with the federal Equal Employment Opportunity Commission and/or the Virginia Council on Human Rights within 300 days of the incident.



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The following options are available to **staff members or applicants for employment**:

- a) Non-probationary staff may file a grievance within 30 calendar days of the offense as outlined in the Grievance Procedure for State Employees, or
- b) Salaried and wage staff may file a complaint using the Discrimination Complaint Procedure administered by the Office of Equal Employment Services in the state's Department of Human Resource Management.
- c) Salaried and wage staff may file a complaint with the federal Equal Employment Opportunity Commission or the Virginia Council on Human Rights within 300 days of the alleged discrimination/harassment.

Additional information regarding this policy may be obtained from the Department of Human Resources.

Additional assistance and support may be obtained from the Women's Center, the Office of the Provost (faculty), the Department of Human Resources (staff and AP faculty), the Graduate School (graduate students), the Dean of Students Office, Cook Counseling Center, or Student Conduct (students).

We encourage victims of sexual violence, including rape, sexual assault, stalking, and dating and domestic violence, to exercise their right to file a complaint with the Virginia Tech Police Department if the crime occurs on Virginia Tech's property, regardless of the status of the victim. For crimes occurring away from Virginia Tech's property, victims may contact the local law enforcement in the appropriate jurisdiction.

### 5.0 Definitions

Consent means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. The existence of consent is based on the totality of circumstances, including the context in which the alleged consent occurred. Silence does not necessarily constitute consent and coercion, force, or threat of either party invalidates consent.

- Consent cannot be given where a person is incapacitated due to drugs or alcohol; or where a person has a disability; or is not of legal age to consent as defined by law.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Consent can be withdrawn at any time.
- Previous relationships or prior consent cannot imply consent to future sexual acts.

**Discrimination and/or Harassment** ~~-Conduct~~means conduct that conditions any element of a person's employment, enrollment as a student, receipt of student financial aid, or participation in university activities on that person's age, color, disability, sex (including pregnancy), gender ~~(including pregnancy)~~, gender identity, gender expression, genetic information, national origin, political affiliation, race, religion, sexual orientation, or veteran status, unless otherwise permitted or required by applicable law. Virginia Tech does not otherwise discriminate against employees or applicants who inquire about, discuss, or disclose their compensation or the compensation of other employees or applicants nor on any other basis protected by law. Discrimination on the basis of sex in education programs and activities receiving federal financial funding as set forth in Title IX of the Education Amendments of 1972, as amended, is included in this definition of prohibited discrimination;

Conduct of any type (oral, written, graphic, electronic or physical) that is based upon a person's age, color, disability, sex (including pregnancy), gender ~~(including pregnancy)~~, gender identity, gender expression, national origin, political affiliation, race, religion, sexual orientation, or veteran status and unreasonably interferes with the person's work or academic performance or participation in university activities, or creates a working or learning



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environment that a reasonable person would find hostile, threatening or intimidating; **and/or**

Conduct consisting of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when submission to such conduct is made, explicitly or implicitly, a term or condition of an individual's employment or education, or submission to or rejection of such conduct is used as a basis for employment or educational decisions affecting an individual.

**Retaliation** means any adverse action taken against a person for making a good faith report of conduct prohibited under this policy or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. The definition of retaliation does not preclude an individual from engaging in good faith actions, lawfully pursued, in response to a report of conduct prohibited under this policy.

**Sex Discrimination and Sexual Harassment** — ~~Conduct of~~ means conduct any type (oral, written, graphic, electronic or physical) that is based upon a person's sex (including pregnancy), and unreasonably interferes with the person's work or academic performance or limits participation in university activities, or creates a working or learning environment that a reasonable person would find hostile, threatening or intimidating.

**Sexual Harassment includes conduct** ~~Conduct~~ of a sexual nature, including conduct consisting of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when submission to such conduct is made, explicitly or implicitly, a term or condition of an individual's employment or education, or submission to or rejection of such conduct is used as a basis for employment or educational decisions affecting an individual. This policy includes sexual violence, gender-based harassment, domestic violence, dating violence and stalking as forms of sexual harassment.

**Retaliation** — ~~It is a violation of this policy to retaliate against any party for participating in a discrimination/harassment investigation ("protected activity"). Retaliation includes any adverse treatment that is reasonably likely to deter the complainant or others from filing a charge of discrimination/harassment or participating in a discrimination/harassment investigation. Retaliation can be verbal, written, graphic, electronic or physical.~~

**Dating violence** — ~~acts of physical or sexual abuse committed by a person 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 party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.~~

~~Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse, but does not include acts covered under the definition of domestic violence.~~

**Domestic violence** — ~~a pattern of abusive behavior that is used by an intimate partner to gain or maintain power and control over the other intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.~~

**Sexual Exploitation** — ~~means~~ an act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. The act or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses.



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**Sexual Violence**—means physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol, or is unable to give consent due to an intellectual or other disability. Sexual violence includes rape, sexual assault, sexual battery, and sexual coercion.

- Rape means penetration, no matter how slight, of the vagina or anus of a person with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- Fondling means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or temporary or mental incapacity.
- Incest means sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by law.
- Statutory Rape means sexual intercourse with a person who is under the statutory age of consent.
- Sexual Assault means actual or attempted sexual contact with another person without that person's consent.
- Sexual Coercion means using physical or verbal aggression or pressure to force or attempt to force a person to touch another person's intimate parts without that person's consent.

**Sexual Assault**—actual or attempted sexual contact with another person without that person's consent.

- ~~Sexual Battery~~—intentional touching of another person's intimate parts without the person's consent; or other intentional sexual contact with another person without that person's consent.
- ~~Sexual Coercion~~—using physical or verbal aggression or pressure to force or attempt to force a person to touch another person's intimate parts without that person's consent.
- ~~Rape~~—penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person's consent.

**Dating violence** means violence committed by a person: (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (b) where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

**Domestic Violence** means felony or misdemeanor crimes of violence committed by: (a) a current or former spouse or intimate partner of the victim; (b) a person with whom the victim shares a child in common; (c) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; (d) a person similarly situated to a spouse of the victim under the domestic or family violence laws of Virginia; or any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Virginia.

**Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (a) fear for the person's individual safety or the safety of others; or (b) suffer substantial emotional distress.

—repeatedly contacting another person when the contact is unwanted. Additionally, the contact may cause the



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~~other person reasonable apprehension of imminent physical harm or cause substantial impairment of the other person's ability to perform the activities of daily life. Contact includes but is not limited to communicating with (either in person, by phone, or by computer) or remaining in the physical presence of the other person.~~

~~**Consent**— knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. The existence of consent is based on the totality of circumstances, including the context in which the alleged consent occurred. Silence does not necessarily constitute consent and coercion, force, or threat of either party invalidates consent.~~

- ~~• Consent cannot be given where a person is incapacitated due to drugs or alcohol; or where a person has a disability; or is not of legal age to consent as defined by law.~~
- ~~• Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Consent can be withdrawn at any time.~~
- ~~• Previous relationships or prior consent cannot imply consent to future sexual acts.~~

## 6.0 References

[Presidential Policy Memorandum No. 112, University Non-Discrimination Statement](https://policies.vt.edu/assets/112-non-discrimination-statement.pdf)

<https://policies.vt.edu/assets/112-non-discrimination-statement.pdf>

[University Policy 1026, Policy on Title IX Sexual Harassment and Responsible Employee Reporting](#)

University Policy 4075, Policy for University Accommodation of Persons with Disabilities

<http://www.policies.vt.edu/4075.pdf>

Virginia Department of Human Resources Management, Policy 1.60 Standards of Conduct

[http://www.dhrm.virginia.gov/docs/default-source/hrpolicy/pol1\\_60.pdf?sfvrsn=2](http://www.dhrm.virginia.gov/docs/default-source/hrpolicy/pol1_60.pdf?sfvrsn=2)

Virginia Department of Human Resource Management, Policy 2.05, Equal Employment Opportunity

[http://www.dhrm.virginia.gov/docs/default-source/hrpolicy/pol2\\_05eeo.pdf?sfvrsn=2](http://www.dhrm.virginia.gov/docs/default-source/hrpolicy/pol2_05eeo.pdf?sfvrsn=2)

Virginia Department of Human Resource Management, Policy 2.30 Workplace Harassment

[http://www.dhrm.virginia.gov/docs/default-source/hrpolicy/pol2\\_30wkplaceharrass.pdf?sfvrsn=2](http://www.dhrm.virginia.gov/docs/default-source/hrpolicy/pol2_30wkplaceharrass.pdf?sfvrsn=2)

Virginia Department of Human Resource Management - Employment Dispute Resolution - Grievance Procedure Manual

<http://www.dhrm.virginia.gov/employmentdisputeresolution>, <http://www.dhrm.virginia.gov/docs/default-source/edrdocuments/GPM-2017.pdf?sfvrsn=8>

Virginia Tech, Classified and University Staff Policies and Handbook

<https://www.hr.vt.edu/resources/current-employees/policies-handbooks.html>

Virginia Tech, Expectations for Graduate Education

[https://graduateschool.vt.edu/content/dam/graduateschool\\_vt\\_edu/expectations-pdfs/expectations-for-graduate-education-may-2017.pdf](https://graduateschool.vt.edu/content/dam/graduateschool_vt_edu/expectations-pdfs/expectations-for-graduate-education-may-2017.pdf)

Virginia Tech, Faculty Handbook

[https://www.provost.vt.edu/faculty\\_affairs/faculty\\_handbook.html](https://www.provost.vt.edu/faculty_affairs/faculty_handbook.html)



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Virginia Tech, ~~Hokie Handbook and University Policies for Student Life~~Student Code of Conduct  
<http://www.hokiehandbook.vt.edu/>

Virginia Tech, Principles of Community  
<http://inclusive.vt.edu/Initiatives/vtpoc0.html>

### 7.0 Approval and Revisions

- Revision 1  
Revised by Commission on Faculty Affairs, December 17, 1990, the Faculty Senate, January 8, 1991, and the EO/AA Committee on January 8, 1991, with further revisions, February 12, 1991.  
Approved March 4, 1991 by University Council.
- Revision 2  
Revised by the EO/AA Committee, March 29, 1994; approved by Commission on Faculty Affairs, May 13, 1994.  
Approved October 3, 1994 by University Council.
- Revision 3  
Revised by the Commission on Equal Opportunity and Diversity, March 28, 2005. Approved by University Council, May 2, 2005.  
Approved by the Board of Visitors, August 29, 2005.
- Revision 4  
Revised by the Commission on Equal Opportunity and Diversity, March 29, 2010.  
Approved by University Council, April 19, 2010.  
Approved by the Board of Visitors, June 7, 2010.
- Revision 5  
Section 4 – “faculty member” replaced with “individual with instructional responsibility.”  
Approved March 16, 2011 by Charles W. Steger, University President.
- Revision 6  
April 24, 2013: Technical updates to:
  - reflect regulations, particularly those that add genetic information to the list of protected statuses;
  - clarify oversight responsibilities for sexual harassment complaints involving any student who is not acting in the capacity of an employee, volunteer, or contractor;
  - clarify that non-probationary employees have 30 “calendar” days to file a grievance; and
  - update references and hyperlinks.Approved June 3, 2013, by Charles W. Steger, University President, and the Board of Visitors.
- Revision 7  
Revised to include the addition of terms “gender identity” and “gender expression” in sections 1. Purpose, first paragraph, and 2.1 Prohibited Acts, first and second paragraphs.



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Approved September 15, 2014 by University President, Timothy D. Sands, and the Board of Visitors.

- **Revision 8**

Revised to include definitions approved by the Board of Visitors on June 1, 2015, and add contact information for the Title IX Coordinator, and language encouraging victims to file a complaint with the appropriate law enforcement agency.

Approved June 1, 2015 by University President, Timothy D. Sands, and the Board of Visitors.

- **Revision 9**

Revised section 2.1 to include the sentence, "Virginia Tech does not otherwise discriminate against employees or applicants who inquire about, discuss, or disclose their compensation or the compensation of other employees or applicants nor on any other basis protected by law." This is added to comply with Federal Executive Order 13665, issued by President Obama.

Approved November 9, 2015 by University President, Timothy D. Sands, and the Board of Visitors.

- **Revision 10**

Significant reorganization of information and to update Procedures section to reflect status of the individual(s) involved in the complaint/potential complaint. Policy name was also changed.

Approved June 30, 2016 by University President, Timothy D. Sands.

- **Revision 11**

- Revised section 2.1 to add "sex" to the non-discrimination statement, in accordance with Governor Northam's Executive Order Number One.
- Revised section 3.1 to have all questions and complaints filed with The Assistant Vice President for Equity and Accessibility, who can further redirect the filing, if appropriate.

Approved February 12, 2018 by University President, Timothy D. Sands.

- **Revision 12**

Revised section 4.2 to include the University Ombuds Office (new office) and Graduate School Office of the Ombudsperson as confidential resources.

Approved October 8, 2019 by University President, Timothy D. Sands.

- **Revision 13**

Revisions throughout document to reflect new Title IX regulations promulgated by the United States Department of Education, effective August 14, 2020, which also resulted in the creation of a new University Policy on Title IX Sexual Harassment and Responsible Employee Reporting (No. 1026). Revision effective August 14, 2020.

Approved August 13, 2020, by the Executive Committee of the Board of Visitors.

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# Proposed Student Code of Conduct for 2020-2021, effective August 14, 2020

## I. INTRODUCTION

The Virginia Tech community is guided by the [university's motto](#), *Ut Prosim* (That I May Serve), and is based on the fundamental values expressed in the [Principles of Community](#): to nurture learning and growth for all community members, to encourage open expression, and to respect our differences and common humanity.

When a student accepts admission to Virginia Tech as an undergraduate, graduate, or professional student, they also accept membership in the university community and responsibility for upholding its shared values and expectations. The *Student Code of Conduct* outlines policies established by the university that set standards for students' behavior, along with procedures for adjudicating and sanctioning violations of these standards. The code applies to all students and student organizations at Virginia Tech, as defined in this document. The university reserves the right to make changes to the code at any time.

Authority to approve policies and procedures for student discipline, as outlined in the *Student Code of Conduct*, lies with Virginia Tech's governing body, the Board of Visitors, as authorized under the [Code of Virginia](#). The Vice President for Student Affairs has responsibility for the university conduct system, with direct supervisory oversight of disciplinary matters assumed by the Office of Student Conduct, under the direction of the Director of Student Conduct. The director serves as the Chief Student Conduct Officer for the university.

The *Student Code of Conduct* does not apply to matters of academic integrity. For information on policies and procedures related to student academic integrity, please refer to the following:

- [Undergraduate Academic Integrity](#)
- [Graduate Honor System](#)
- [Doctor of Veterinary Medicine Honor Code \(Virginia-Maryland School of Veterinary Medicine\)](#)
- [Doctor of Medicine Honor Code \(Virginia Tech Carilion School of Medicine\)](#)

### **The Office of Student Conduct and the University Conduct System**

The *Student Code of Conduct* is overseen by the Office of Student Conduct. The university's conduct system supports the educational mission of the university by educating students about appropriate behavior and fostering a community in which students can flourish academically and personally.

The system assumes that students and student organizations have the capacity to assume responsibility for their own behavior and that the university has the authority to establish an internal structure for the enforcement of its policies and procedures, which students have agreed to accept by enrolling in the university. As part of its authority, Student Conduct may suspend or dismiss students from the university.

Conduct matters are addressed by Student Affairs professionals who have been appointed as hearing

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officers by the Director of Student Conduct. These individuals each have significant education and training on student development, student discipline, and university policies and procedures.

### **Additional Community-Specific Regulations**

As part of their education and life at Virginia Tech, students may also be involved in organizations, programs, or other entities for which additional and separate standards and policies, including potential sanctions for violations, have been established. Students should be aware of additional policies that may apply to their involvement in certain programs, organizations, or communities, including but not limited to students in the [Corps of Cadets](#), [student athletes](#), members of [certain Greek-letter organizations under the Office of Fraternity and Sorority Life](#), and students in certain colleges or programs, such as the [Virginia Tech Carilion School of Medicine](#) or the [Virginia-Maryland College of Veterinary Medicine](#).

These policies and processes do not supersede a student's responsibilities under the *Student Code of Conduct*. In situations involving potential violations of policies in the *Student Code of Conduct* and community-specific policies, the student is accountable first to the university's *Code*. Additional sanctions may be issued by programs/organizations that address a student's participation or membership in those communities, specifically. Student Conduct is responsible for coordinating adjudication processes with these various entities, when appropriate.

## **II. STUDENT RIGHTS AND RESPONSIBILITIES**

As individuals, Virginia Tech students enjoy basic rights. As members of the university community, they also accept certain responsibilities.

### **Rights**

1. Students at Virginia Tech will be treated fairly and with dignity regardless of age, color, disability, sex (including pregnancy), gender, gender identity, gender expression, genetic information, national origin, political affiliation, race, religion, sexual orientation, or veteran status as described in [university policy 1025](#).
2. Students at Virginia Tech enjoy those rights guaranteed by the Constitutions of the United States and the Commonwealth of Virginia. This includes activities protected under the First Amendment. In accordance with the Code of Virginia, incidents of disruption of constitutionally protected speech may be reported via the [Speech on Campus webpage](#).
3. The *Student Code of Conduct* and the policies and procedures it outlines, under the administration of the Office of Student Conduct, provides an administrative process for resolving allegations of misconduct. This process includes certain procedural guarantees to ensure that students receive a fair and equitable resolution.

### **Responsibilities**

1. Students are responsible for understanding and following university policies and procedures, including the *Student Code of Conduct*, and for abiding by all applicable state, federal, and local laws.

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2. University email is the primary means by which the university communicates with students; therefore, students are responsible for reading all official communications delivered to their university email address.
3. Students who are offered admission to Virginia Tech and choose to matriculate [have a continuing duty to report](#) to the Office of Student Conduct any arrests or convictions, other than minor traffic violations, as well as any protective orders issued against them. This duty applies regardless of where the arrest occurred and regardless of whether the university is in session at the time of the arrest or conviction. Students must notify Student Conduct in writing, [using the Arrest Disclosure and Conviction Form](#), within 10 business days of the incident that led to their arrest or within five business days of the incident that led to their conviction. Failure to comply with this continuing duty may result in disciplinary action under the *Student Code of Conduct*.

### III. JURISDICTION

#### Enrollment Status

For the purposes of disciplinary action, a “student” is defined as any individual who has accepted an offer of admission as an undergraduate, graduate, or professional student and who has not yet graduated or officially transferred to another institution.

If a student’s enrollment lapses for more than one calendar year, based on a student’s voluntary decision not to enroll, that student will no longer be subject to disciplinary action. However, students who are separated from the university for academic or disciplinary reasons are still considered students for disciplinary purposes, regardless of the duration of the separation.

#### Student Organizations

A student organization, as defined in this document (below), may be considered for disciplinary action if an incident(s) is determined to be an organizational activity, based on at least two of the criteria listed below. Student Conduct will consider the entirety of the information to determine whether to charge an organization.

- Any student serving as an executive officer of the organization who is aware of the incident sufficiently in advance of its occurrence to prohibit its taking place and takes no action to prohibit it.
- The incident involves the expenditure of any organizational funds.
- The incident involves or is actively or passively endorsed by a majority of the members of the organization.
- The incident occurs in property owned, rented, reserved, or used by the organization.
- Members and/or non-members of the organization learned about the event where the incident occurred through members or communication associated with the organization.
- The incident occurred as a result of individual members of the organization acting in the capacity as members of the organization.

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Student leaders and members of organizations who are complicit in any violation of the *Student Code of Conduct* or who permit or condone behavior that violates the code may also be held accountable as individuals in addition to the organization.

### Location of Incidents

Students and student organizations that violate the *Student Code of Conduct* may be considered for disciplinary action whether the conduct occurs on or off university property.

The *Student Code of Conduct* may also apply to behavior conducted online or through an electronic medium. Students should also be aware that online postings such as blogs, web postings, chats and social networking sites are in the public sphere and are not private. The university does not regularly search for this information but may take action if and when such information is brought to the attention of university officials.

### Alleged Violations of Criminal Law

When conduct violates both criminal law and the *Student Code of Conduct*, disciplinary action may be taken by the university, irrespective and separate from criminal action. At the university's discretion, the Office of Student Conduct may proceed with disciplinary action prior to a criminal trial or postpone action until after trial.

## IV. DEFINITIONS

~~The following terms as used throughout the *Student Code of Conduct* are defined below. In the context of the *Student Code of Conduct*, the terms below are defined as follows listed below.~~ [For definitions related to cases referred for formal adjudication under Title IX, refer to Appendix II.](#)

Term	Definition
Advisor	An advisor is one person of a student's choosing and cost who may accompany a student throughout the conduct process. They may consult with the student but not speak on the student's behalf or participate actively in the process.
Aggravating Factors	An aggravating factor is information, used during sanctioning (i.e., after a violation has been determined to have occurred), that may increase the sanction. Some factors may include but are not limited to a student's past conduct record and the nature and severity of the behavior and its impact.
Appeal	An appeal is a written request for review of a hearing and findings, based on specific grounds.
Appellate Officer	An appellate officer is an employee of Virginia Tech, external to the Office of Student Conduct staff, designated by the Vice President of Student Affairs to review and respond to appeals.
Charge(s)	A potential violation of the <i>Student Code of Conduct</i> .
Complainant	Any individual who has reported a potential violation of the <i>Student Code of Conduct</i> . <a href="#">In cases involving gender-based violence that are referred by Title IX, "complainant" means an individual who reports experiencing gender-based harassment or violence.</a>

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Term	Definition
Conduct Officer or Hearing Officer	A conduct or hearing officer is an individual designated by the Director of Student Conduct to adjudicate cases involving allegations of conduct violations.
Conduct Referral	A report or complaint that alleges violations of the <i>Student Code of Conduct</i> by a student(s) or student organization(s).
Consent (general)*	Consent is generally defined as knowing, voluntary, and clear permission for something to occur. *For a more specific definition of consent in the context of sexual activity, please see the definition below.
Consent (in the context of sexual activity, <del>as defined in Policy 1025</del> )	<p>Consent is defined as knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. The existence of consent is based on the totality of circumstances, including the context in which the alleged consent occurred. Silence does not necessarily constitute consent and coercion, force, or threat of either party invalidates consent.</p> <ul style="list-style-type: none"> <li>• Consent cannot be given where a person is incapacitated; or where a person has a disability; or is not of legal age to consent as defined by law.</li> <li>• Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Consent can be withdrawn at any time.</li> <li>• Previous relationships or prior consent cannot imply consent to future sexual acts.</li> </ul>
Incapacitation	Incapacitation includes but is not limited to being asleep, drugged, intoxicated, or unconscious.
Mitigating Factors	A mitigating factor is information, used during sanctioning (i.e., <i>after</i> a violation has been determined to have occurred), that may decrease the sanction. Some factors may include but are not limited to a student's past conduct record and steps taken to remedy their behavior.
Notice	Written notice of the alleged violations of the Code. Notice will be presumed to have been furnished when the notice is sent to the student's Virginia Tech email address or, when appropriate, provided at a prehearing meeting.
Preponderance of the evidence	The Office of Student Conduct uses preponderance of the evidence to determine whether or not a student has violated a policy in the <i>Student Code of Conduct</i> . This determination is made based on the information available to determine if it is more likely than not that a violation occurred.
Respondent	Any student or student organization alleged to have violated the <i>Student Code of Conduct</i> . <del>In cases involving gender-based violence that are referred by Title IX, "respondent" means a Virginia Tech student who is alleged to have participated in gender-based harassment or violence.</del>
Student	For the purposes of disciplinary action, a "student" is defined as any individual who has accepted an offer of admission as an undergraduate, graduate, or professional student and who has not yet graduated or officially transferred to another institution.
Student Organization	For the purposes of disciplinary action, a "student organization" includes Registered Student Organizations (RSO), Extended Campus Student Organizations (ECSO), and University Chartered Organizations (UCSO), as defined in <a href="#">university policy 8010</a> .
University Official	A university official is any person given authority by the University to perform

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Term	Definition
	administrative or professional responsibilities, including, but not limited to university police officers, resident advisors, graduate/teaching assistants, administrative support staff, faculty, etc.
University Property or University Facilities	University property or university facilities are any location, either permanent or temporary, owned or leased by Virginia Tech, and includes satellite campuses and offices. This includes, but is not limited to, the buildings, grounds, and the surrounding perimeters, including the parking lots, field locations, classrooms, alternate work or class locations, and university owned or leased vehicles.
Witness	A witness is a person who provides relevant information about an incident in a hearing or through a written statement. Character witnesses are not generally considered relevant.

### V. PROHIBITED CONDUCT

#### Alcohol and Other Drug Offenses

- **Alcoholic Beverage:** Improper use of alcohol as defined by the regulations of the Commonwealth of Virginia and the university, including but not limited to underage possession/consumption, public intoxication (regardless of age), providing alcohol to any underage person, or any violation of university alcohol regulations, [as outlined in Appendix I](#).
- **Illegal Drugs:** Possessing, using, manufacturing, selling, or misusing any substance and/or possession of drug paraphernalia in violation of state or federal law.
- **Driving Under the Influence:** Operating or attempting to operate a motor vehicle, bicycle, or other personal transportation device while intoxicated or impaired by alcohol or other drugs.

#### Offenses Against People

- **Abusive Conduct:** The use of physical force against an individual or any acts that cause physical harm; threats, including words or actions, that may cause a person reasonable apprehension of imminent physical harm.
- **Endangerment:** Actions that intentionally or recklessly endanger the health, safety, or well-being of oneself or another person or group.
- **Harassment:** Unwelcome conduct not of a sexual nature that is sufficiently severe, pervasive, or persistent that it could reasonably be expected to create an intimidating, threatening, or hostile environment that limits the ability of an individual to work, study, or participate in the activities of the university. *Note: the Code also includes a Gender-Based Harassment policy.*
- **Hazing:** Any mental or physical requirement, request, or obligation placed upon any person for the purpose of admission, initiation, or continued association with a group or organization that could cause discomfort, pain, fright, disgrace, or injury; that is personally degrading; or that violates any federal, state, local statute, or university policy, the willingness of an individual to participate in such activity notwithstanding. [Additional information is available in Appendix III](#).
- **Stalking:** Repeated contact of another person not based on gender when the contact is unwanted and may cause the other person reasonable apprehension of imminent physical harm or cause substantial impairment of the other person's ability to perform the activities of daily life. *Note: the Code also includes a Gender-Based Stalking policy.*

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- Recording and/or Distribution of Audio/Visual Material Without Consent: Making, attempting to make, sharing, or distributing an audio and/or visual recording of any person(s) without the knowledge and consent of all participants subject to such recordings, in locations where there is a reasonable expectation of privacy, and when the action is likely to cause injury, distress, or damage to one's reputation.
- Gender-Based Violence ([these policies apply in cases outside of the jurisdiction of Title IX; for Title IX policy definitions, refer to Appendix II for additional information](#)):
  - Sexual Violence: Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Sexual violence includes rape, sexual assault, sexual battery, and sexual coercion.
    - Sexual Assault: Actual or attempted sexual contact with another person without that person's consent.
    - Sexual Battery: Intentional touching of another person's intimate parts without the person's consent; or other intentional sexual contact with another person without that person's consent.
    - Sexual Coercion: Using physical or verbal aggression or pressure to force or attempt to force a person to touch another person's intimate parts without that person's consent.
    - Rape: Penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person's consent.
  - Gender-based Harassment: Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.
  - Sexual Exploitation: An act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. The act or acts of sexual exploitation are prohibited even if the behavior does not constitute one of the other sexual misconduct offenses.
  - Domestic Violence: A pattern of abusive behavior that is used by an intimate partner to gain or maintain power and control over the other intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.
  - Dating Violence: Acts of physical or sexual abuse committed by a person 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 party's statement and with consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.
    - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse, but does not include acts covered under the definition of domestic violence.

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- Gender-Based Stalking: Repeatedly contacting another person when the contact is unwanted. Additionally, the contact may cause the other person reasonable apprehension of imminent physical harm or cause substantial impairment of the other person's ability to perform the activities of daily life. Contact includes but is not limited to communicating with (either in person, by phone, or by computer) or remaining in the physical presence of the other person.

### Offenses Against Property

- Damage or Destruction: Intentional, reckless, and/or unauthorized damage to, destruction of, tampering with, or vandalism of property.
- Fire Safety: The misuse of or tampering with firefighting equipment, unauthorized burning, disregarding fire alarm signals, deliberately initiating a false alarm or, tampering with fire detection or suppression equipment.
- Theft: Theft, attempted theft, or possession of stolen property.
- Unauthorized Entry: Entering, attempting to enter, or being present in buildings, residences, public or private property, and/or facilities or other areas without proper authority.

### Offenses Against the Community

- Disorderly or Disruptive Conduct: Engaging in disorderly or disruptive conduct that interferes with university, community, or individual activities, including but not limited to studying, teaching, research, and university administration.
- Public Exposure: Any act or attempted act of public nudity or urinating/defecating in public.
- Hazardous Materials: Unauthorized possession or use of fireworks, explosives, or hazardous and potentially hazardous materials.
- Weapons: Unauthorized possession, use, or storage of firearms, ammunition, or weapons on university property at any location, either permanent or temporary, owned or leased by Virginia Tech. Refer to Virginia Polytechnic Institute and State University Policy and Procedures [No. 5616](#) for additional information.

### Offenses Against the University

- Failure to Comply: Failure to comply with a request and directives of university officials acting within the scope of their authority, including but not limited to the following: failure of a student to present their university identification card, failure to keep or attend a required meeting, and failure to leave an area when requested by an authorized university official. Upon the request of the student questioned, university officials must identify themselves and state the source of their authority.
- Furnishing False Information: Knowingly giving false information to a university official who is performing their official duties, including but not limited to perjury in a conduct hearing.
- Interference with University Complaint Processes: Attempting or actively influencing, impeding, intimidating, interfering, coercing, or retaliating against any person involved in a potential, actual, or past student complaint in a formal university complaint process.
- Involvement in a University Violation: Presence during any violation of the *Student Code of Conduct* and/or other university policies in such a way as to condone, support, or encourage that violation. Students who anticipate or observe a violation of university policy are expected to remove themselves from participation and are encouraged to report the violation.

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- Visitation/Guest Policies: Students or student organizations will be held responsible for the conduct of their guests and are expected to inform them of all university regulations, including but not limited to [Housing and Residence Life policies](#).

### Other Prohibited Conduct

- Actions Leading to the Conviction of Criminal Offenses: Any student convicted of a criminal offense is subject to university disciplinary action.
- Failure to Observe Rules and Regulations: Failure to observe rules and regulations issued by the university that are not listed specifically as “Prohibited Conduct” in the document, including but not limited to regulations linked above in the “[Additional University Policies for which Students are Responsible](#)” and “[Additional Community Specific Regulations](#)” sections.
- Forgery or Fraud: Forgery or fraud, including attempts to obtain any item of value under false pretenses, falsification of official university documents, or possession of forged or altered identification or another person’s identification.
- Gambling: Participation in any form of illegal gambling.

### Statement on Sanction Enhancements for Policy Violations Motivated by Bias

Any violation of the Virginia Tech *Student Code of Conduct* found to be motivated by an individual’s age, color, disability, sex (including pregnancy), gender, gender identity, gender expression, genetic information, national origin, political affiliation, race, religion, sexual orientation, or veteran status (as stated in Virginia Polytechnic Institute and State University Policy and Procedures No. 1025) will be deemed an aggravating factor and will subject the student to a sanction more severe than would be imposed in the absence of such motivation. This sanction enhancement will not apply in cases in which protected classes are specifically addressed within the language of the policy, such as gender-based violence or gender-based stalking.

### Statement on Self-Reporting and Bystander Intervention

Virginia Tech recognizes that the health and safety of students is of utmost importance. Therefore, if someone requires assistance for themselves or others because of alcohol or drug use, we want them to call for help. If medical assistance is sought, Student Conduct will not pursue conduct charges against the individual or organization who sought assistance, or the individual in need of assistance. However, Student Conduct will still require students to attend a meeting with a hearing officer to discuss the incident and will assign substance-related and other educational assignments to the involved parties.

Violations having a significant individual or community impact and students with prior violations that demonstrate an actual, potential, or perceived pattern of behavior are not likely to have outcomes that are mitigated and are not likely to be protected under this policy.

### Statement on Reports of [Sexual Harassment and](#) Gender-Based Violence and Immunity for Use of Alcohol or Other Drugs

Virginia Tech seeks to remove any barriers to reporting incidents of [sexual harassment and](#) gender-based violence. Therefore, any student, whether the complainant or a third party, who makes a good-

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faith report of [sexual harassment or](#) gender-based violence will be immune from disciplinary action for their personal consumption of alcohol or other drugs occurring at the time of the reported incident.

### VI. ADDITIONAL UNIVERSITY POLICIES FOR WHICH STUDENTS ARE RESPONSIBLE

The *Student Code of Conduct* is intended to include other rules, regulations, and policies issued by the university that pertain to students and student organizations. Violations of these policies are actionable under the *Student Code of Conduct* when the violation warrants a process or sanction beyond what is available in these policies. Additional policies include but are not limited to the following:

- [Dining policies](#)
- [Housing and Residence Life Policies](#)
- [Housing and Dining Contract](#)
- [Mail Services Procedures for Receipt of Parcel Packages and Mailings](#)
- [Parking and traffic regulations](#)
- [Student ID Cards](#)
- [University-level policies](#) (see the university's policy library at <https://policies.vt.edu/policy-library.html> for a full list of policies relevant to students; the following policies are those most frequently referenced):
  - [Acceptable Use and Administration of Computer and Communications Systems](#)
  - [Arrest, Conviction, and Protective Order Disclosures](#)
  - [Bicycles and Personal Transportation Devices](#)
  - [Campus and Workplace Violence Prevention](#)
  - [Facilities Usage and Events](#)
  - [Harassment, Discrimination, and Sexual Assault](#)
  - [Operation of Unmanned Aircraft Systems](#)
  - [Sales, Solicitation, and Advertising on Campus](#)
  - [Serving Alcohol](#)
  - [Smoking](#)
  - [Social Media](#)
- [University Names and Trademarks](#)

### VII. STUDENT CONDUCT PROCESS

The Office of Student Conduct uses the following procedures to address behavior that is alleged to have violated university policy. It should be noted that not all situations are of the same severity or complexity. Thus, these procedures are flexible and are not exactly the same in every situation, though consistency in similar situations is a priority. The procedures used in particular cases are determined at the sole discretion of the Office of Student Conduct.

The university conduct process is an administrative function and differs from civil or criminal legal proceedings. In some situations, students may be involved in both legal and university systems.

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### Step 1: Submitting a Conduct Referral/Complaint

Any student, faculty member, staff member, administrator, community member, or concerned party may submit a complaint, known as a “conduct referral,” to the Office of Student Conduct. While there is no time limit for referrals, Student Conduct encourages people who plan to bring a complaint against a Virginia Tech student to do so as quickly and prudently as possible.

Student Conduct will review the conduct referral to determine if there is information regarding behavior that may violate the *Student Code of Conduct* and thus warrants resolution within the conduct system. This review may include a meeting with the person(s) who submitted the complaint and/or an investigation to gather additional information.

Potential outcomes of the review include the following:

- A determination that interim measures or administrative actions should be imposed in order to maintain safety or order.
- A determination that an investigation is needed to gather additional information to identify an appropriate avenue for resolution.
- A determination that the matter should be referred to another office or process.
- A determination that there may be a potential violation of the *Student Code of Conduct* and that an agreed resolution is the appropriate avenue for resolution.
- A determination that there may be a potential violation of the *Student Code of Conduct* and that a formal hearing is the appropriate avenue for resolution.
- A determination that the complaint may not involve a potential policy violation but is related to a conflict; in this case, Student Conduct may offer voluntary mediation, facilitated dialogue, or conflict coaching.
- In some cases, at Student Conduct’s discretion, students will be invited to participate in and educational conversation about the concerns raised in the complaint, even when Student Conduct determines that adjudication is not appropriate.
- A determination that there is insufficient information to pursue the complaint.
- A determination that the behavior alleged, even if proven, would not violate the *Student Code of Conduct*.

### [Formal Complaints of Sexual Harassment and Gender-Based Violence](#)

[Formal complaints of sexual harassment and/or gender-based violence should be reported to the university’s Title IX Coordinator. They will follow the steps detailed in Virginia Tech’s Title IX Reporting and Grievance Procedures for Sexual Harassment and Violence \(INSERT LINK\) to offer supportive measures and to determine whether a complaint falls within the scope of Title IX, as defined by the federal Department of Education, or under the policies in Virginia Tech’s Student Code of Conduct.](#)

[Complaints that have been determined to fall under the policies in the Student Code of Conduct will be referred to the Director of Student Conduct. Per the process outlined above, the Director will review](#)

[the complaint and, if appropriate, may request the Office for Equity and Accessibility conduct a thorough, impartial investigation into the complaint. Upon completion of an investigation, the Director will determine how the matter should be resolved.](#)

## **Step 2: Resolution**

After reviewing a conduct referral, Student Conduct will determine an appropriate resolution process from among the following:

Agreed Resolution: An agreed resolution is an informal resolution option in which the respondent meets with a hearing officer to discuss an incident and collaborates with the hearing officer to determine whether they violated a policy and, if so, what sanctions may be appropriate. If the respondent agrees to the resolution, they waive the right to a formal hearing, and the resolution is final. If an agreement cannot be reached, the respondent has the option to move forward to a formal hearing with a new hearing officer.

Formal Hearing: In a formal hearing, the hearing officer(s) determines whether the respondent violated policies in the *Student Code of Conduct*, along with appropriate sanctions, if necessary. In formal conduct hearings, the respondent is entitled to the following procedural guarantees and opportunities:

- To receive written notice of charges at least five (5) business days in advance of the hearing and in reasonable detail to allow the respondent to prepare for the hearing.
- To share their version of events and refute any information presented.
- To present witnesses/witness statements and question any witnesses present.
- To remain silent or not participate.
- To be accompanied by an advisor.
- To challenge the objectivity of a hearing officer(s), given reasonable cause to believe that they may be biased or have a conflict of interest.
- To appeal if there is a loss of privilege (i.e., suspension, dismissal, denial of housing, etc.), provided there are appropriate grounds as found in the [Student Conduct Formal Hearing Appeals section](#).

In addition to witnesses who may be called by respondents participating in formal hearings, hearing officers may also call witnesses whom they believe are relevant for determining outcomes in a given case. The outcome of a formal hearing is final unless it qualifies for appeal, as outlined in the [Formal Hearing Appeals](#) section. If a respondent or complainant fails to attend a formal hearing after receiving proper notice, the case may be heard in their absence.

Formal Title IX Adjudication and Gender-Based Violence Hearings: ~~Gender-based violence complaints are generally reviewed, and/or investigated, and referred to Student Conduct by the Title IX Coordinator in the Office of Equity and Accessibility. The Title IX Coordinator, Katie Polidoro, can be reached at 540-231-1824 or polidoro@vt.edu. The information referred by Title IX serves as the basis of the conduct referral. Cases referred for adjudication by the Title IX Coordinator for a formal Title IX hearing are~~

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[conducted in accordance with the policies and procedures outlined in Appendix II, as required by the U.S. Department of Education.](#)

Gender-based violence cases [that fall outside of the jurisdiction of Title IX](#) are adjudicated through [the gender-based violence policies and formal hearing process outlined by the \*Student Code of Conduct\*, as described above](#). These formal hearings [are conducted](#) by a team of two hearing officers. In these hearings, both the complainant and respondent receive the [same procedural guarantees outlined above](#); ~~and both parties may appeal, regardless of the outcome.~~ ~~however, the opportunity to appeal is expanded in cases involving allegations of gender-based violence: both parties may appeal, regardless of whether there is a loss of privilege.~~ Appeals must ~~still~~ be based on [appropriate grounds](#).

Adaptable Conflict Resolution (ACR): When complaints/referrals to Student Conduct are based in conflict between individuals or groups, Student Conduct may offer adaptable conflict resolution (ACR) options to students, including mediation, facilitated dialogue, or conflict coaching. Participation in ACR is optional, and in the case of mediation or facilitated dialogue, all parties must agree to participate. ACR options may result in a mutually satisfactory agreement between the parties, but it is not required.

Educational Conversation: An educational conversation is a discussion between a student and hearing officer in Student Conduct regarding behavior that does not rise to the level of a policy violation but is, nevertheless, inappropriate or having a negative impact on the student or others or, if it continues, may become a policy violation. These conversations are educational and supportive in nature and are intended to help the student reflect and to connect them with resources, when needed.

### Additional Information

#### Standard of Proof

The preponderance of the evidence standard will be used to determine responsibility for violations of policies in the *Student Code of Conduct*. Preponderance of the evidence means that based on the information available to determine if it is “more likely than not” that a violation occurred.

## VIII. SANCTIONS

Student Conduct sanctions are designed to promote safety, individual accountability, and reflection. Whenever possible, Student Conduct makes efforts to educate students and to foster personal and academic success. When assigning sanctions, hearing officers consider the type and nature of any policy violation(s), including mitigating or aggravating factors, as well as the student’s prior conduct record. Sanctions are generally cumulative in nature. One or more of the following sanctions may be imposed when a student or student organization is found responsible for violating the *Student Code of Conduct*:

Sanction	Description
Formal Warning	A formal written notice that the student or student organization has violated a policy in the <i>Student Code of Conduct</i> and that further violations

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Sanction	Description
	may result in more serious conduct action. Students or student organizations who receive a formal warning are still considered in good conduct standing with the university.
Probation	A specified period of time during which the student or student organization is considered not in good conduct standing with the university. Further violations during that time period may result in more serious conduct action, including a potential separation from the university.
Deferred Suspension	A specified period of time during which the student or student organization is considered not in good conduct standing with the university. Violations for which deferred suspension is assigned are those that are serious enough to warrant suspension from the university, but due to mitigating factors, the student or student organization is given the opportunity to remain enrolled at the university, provided they do not violate further policies. The suspension may take effect if they violate additional policies during the period of deferred suspension.
Suspension	A specified period of time during which the student or student organization is separated from the university. During the suspension period, the student does not have the rights and access to privileges associated with being a student, which includes eligibility to be academically enrolled at Virginia Tech or transfer credits earned at other institutions during the period of disciplinary suspension. For student organizations, the university will withdraw recognition for the duration of the suspension. A student or student organization must complete all assigned sanctions and receive permission from Student Conduct to be eligible to re-enroll. For a student who has completed their academic work but whose degree has not yet been conferred, their degree may be withheld for the duration of the suspension period.
Deferred Dismissal	A specified period of time during which the student or student organization is considered not in good conduct standing with the university. Violations for which deferred dismissal is assigned are those that may warrant permanent dismissal, or expulsion, from the university, but due to mitigating factors, the student is given the opportunity to maintain student status with the university, provided they do not violate further policies. The dismissal may take effect if the student violates additional policies during the period of deferred dismissal. A deferred dismissal is often accompanied by a suspension or other conduct sanctions.
Dismissal	A formal notice that the student or student organization is permanently dismissed, or expelled, from the university, with no opportunity to re-enroll. For student organizations, the university permanently withdraws recognition.
Denial of Privileges or Associations	A specified period of time during which the student is denied certain privileges or associations, including but not limited to termination of the housing contract, removal from athletic events, loss of recreational-sports

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Sanction	Description
	privileges, network access, or access to certain university facilities. Student organizations may also have their social-function privileges revoked.
Restitution	Requirement for the student to make restitution for damage to university property, which, at the discretion of Student Conduct and the associated university department, may be in the form of monetary payment or community service.
Educational, Community, and Wellness Activities	Assignments or activities designed to provide opportunities for reflection, learning, and growth as well as to connect the student with resources to support their well-being and personal and academic success.

### Failure to complete sanctions

Students are expected to complete their conduct sanctions, including educational sanctions, within the timeframe and guidelines specified by their hearing officer. Failure to complete sanctions may result in additional conduct action and sanctions.

## IX. FORMAL HEARING APPEALS

The respondent has the opportunity to appeal the outcome of a formal hearing if it results in a loss of privilege, including suspension, dismissal, or denial of certain university privileges, including but not limited to housing, network access, or athletic privileges. For gender-based violence hearings, both the complainant and respondent have the opportunity to appeal, regardless of the outcome of the hearing and whether or not there is a loss of privilege. Sanctions take effect immediately, pending the appellate officer's decision or the end of the appeal period.

[The appeal process for formal Title IX hearings is outlined in Appendix II.](#)

### Grounds for appeal

Appeals are not re-hearings; therefore, appeal requests are limited to the following grounds:

- a. Denial of procedural guarantees
- b. Significant and relevant new information that was not available at the time of the hearing
- c. Unduly harsh or arbitrary findings or sanctions.

Appeals submitted that do not have sufficient grounds in one of these areas will be denied.

### Potential Outcomes of an Appeal

The appellate officer will review the appeal and may:

- a. Uphold the original decision and sanctions
- b. Uphold the original decision and either decrease or increase the sanction
- c. Vacate a finding
- d. Send the case back to Student Conduct for a new partial or full hearing.

### Timeframe to submit an appeal

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The respondents (and complainants, in the case of gender-based violence hearings) has seven (7) business days from the date of the decision to submit the appeal. The date the decision is given is considered the first day of the appeal period. Appeals submitted after the deadline will not be accepted except in extenuating circumstances, as determined by Student Conduct.

### Format of appeal

The appeal is a written request submitted by the student for a review of the original case. The student should include which grounds for appeal they believe apply and any information the student wants considered should be included in the written document. The burden is on the appealing student or student organization to demonstrate why the finding or sanction should be altered.

### Appellate Officers

An appellate officer will be designated by the Assistant Vice President for Student Affairs, who serves as the university's Chief Appellate Officer. All appellate officers are external to the Office of Student Conduct.

## **X. INTERIM MEASURES AND ADMINISTRATIVE ACTIONS**

Based on the nature and circumstances of the referral, the university may authorize interim measures or take administrative action to maintain safety and order and to ensure compliance with university processes and directives, including the following:

Holds on Student Account: Student Conduct may apply a hold on a student's account, which will prevent course registration, graduation, and access to transcripts. Situations in which holds may be applied include but are not limited to the following:

1. The student fails to complete sanctions by assigned deadlines
2. The student has been issued an interim suspension
3. The student is suspended and has a pending re-enrollment meeting
4. The student has a pending conduct matter that must be resolved

Interim Suspension: The university retains the authority to impose an interim (immediate) suspension from the university and/or selected campus facilities with proper notice if such action is necessary to preserve the safety of persons or property. During an interim suspension, a student may not participate in academic, extracurricular, or other activities of the university except as may be authorized by the Assistant Vice President for Student Affairs or their designee. In this instance, the students will be afforded an interim suspension meeting and the opportunity to show why their continued presence on campus does not constitute a threat to themselves, others, or property. The interim suspension meeting is separate from the student- conduct process. The student will have five (5) business days within which to request an interim-suspension meeting. An opportunity to meet with Student Conduct for a final resolution will be provided as soon as possible.

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- **Procedures:** The following steps explain the procedure for imposing an interim suspension:
  - **Initiating an interim suspension:** When a situation, as defined above, occurs, the responding university official contacts the Threat Assessment Team or the Assistant Vice President for Student Affairs or their designee to assess the situation and determine if an interim suspension is appropriate.
  - **Notification of an interim suspension:** The student will be sent an interim suspension letter immediately, which states that the student is either suspended from the university and/or suspended from all or selected campus residential facilities until a final resolution is determined through the Student Conduct process.
  - **Interim-Suspension Meeting:** The student can immediately request an interim suspension meeting to be conducted by the Assistant Vice President for Student Affairs or his/her designee. The interim suspension letter will contain instructions on how to request a review. Those present at the meeting may include the responding university official and other witnesses as deemed appropriate by the Assistant Vice President for Student Affairs. During the review, the student will be given an opportunity to demonstrate why his or her continued presence on campus does not constitute a threat to themselves, others, or property. As part of the review, the student may be required to submit to an immediate medical/psychological evaluation. The student will be evaluated by the director of the Cook Counseling Center or his/her designee.
  - **Timeframe to Request Interim-Suspension Review:** A student must request a meeting within five (5) business days; after that time frame, the interim suspension and/or suspension from campus residential facilities and all student activities will remain in effect until the matter is resolved through the student conduct process.
  - **Decision:** The decision made after the interim suspension meeting will be final. There will be no additional appeal.
  - **Student Conduct Process/Resolution:** Interim suspension information will be shared with Student Conduct and others who need to know. Student Conduct will determine and schedule, as soon as possible, the appropriate resolution process to determine whether the student is responsible for violating university policy and, if so, appropriate sanctions.

No Contact Order: In certain situations, Student Conduct may issue no contact orders to students for a period of time to prevent communication between two or more students if it is determined that contact between the parties may perpetuate or escalate behavior that may interfere with a person's rightful actions, including but not limited to their safety and security. No contact orders prevent students from face-to-face, electronic, or third-party contact. If a no contact order is issued, all parties involved will receive the order. A student who violates a no-contact order may be subject to conduct action; if a violation of the order threatens the safety of persons or property, an [interim suspension](#) may be imposed.

The process for no contact orders includes the following:

1. No contact orders may be requested by students, or Student Conduct may issue them independently of a request.

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2. Before issuing an order, Student Conduct may request additional information to determine whether it is warranted.
3. Student Conduct may decline to issue an order.
4. A student who has requested an order be issued may subsequently request that it be lifted.
5. Student Conduct has the discretion to lift a no contact order at any time if it is determined that the circumstances under which it was issued are no longer present.

Cease Operations Order: In certain situations involving allegations of policy violations by student organizations that may involve potential impacts on the safety of persons or property or significant disruption to the community, Student Conduct may issue a cease operations order, which places restrictions on the organization while the matter is resolved. Examples of situations in which cease operations are issued include but are not limited to the following: hazing; alcohol distributed to underage members or guests; and disorderly or disruptive behavior, such as serious or ongoing violations of noise regulations in the Town of Blacksburg. The cease operations will remain in place until the matter is resolved by Student Conduct. Cease operations restrictions may include but are not limited to the following:

1. The organization is to stop operating in full, including meetings, communication, events, etc.
2. The organization is to stop hosting events with alcohol present.
3. The organization is to stop recruitment or holding meetings, events, or activities with new or prospective members.

### XI. STUDENT CONDUCT RECORDS

Violations of the *Student Code of Conduct* are maintained in a student's conduct record for a period of five years from the date of the incident. This record is maintained electronically by the Office of Student Conduct and is separate from a student's academic transcript, though it is considered part of a student's educational record. [Records of formal Title IX hearings will also be maintained by the Office for Equity and Accessibility for a period of seven years, as described in the Title IX Reporting and Grievance Procedures for Sexual Harassment and Violence \(INSERT LINK\).](#)

Student conduct cases involving student organizations are not private. Accordingly, hearing notification and sanction letters are sent to organizational advisors and (inter)national headquarters.

#### **Information Sharing within the University**

Notification of student conduct outcomes or decisions is given to individuals in the university with a need to know. Other university agencies or organizations may be required to obtain a written release from students before they can receive notification.

#### **Notification to Victims of Crimes of Violence**

Victims of crimes of violence (including abusive conduct and gender-based violence) involving student respondents will be notified of the outcome and sanction(s). In Title IX matters, complainants will also

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be notified of the outcome and relevant sanctions for non-violent violations of gender-based violence policies.

### **Parental Notification**

Parents/guardians of students under age 21 will be notified if their student is found responsible for a violation of the alcoholic beverage or illegal drug policies.

### **Student Conduct Transcript Notations in Cases of Suspension and Dismissal**

When a student is suspended or permanently dismissed from Virginia Tech, a notation will be included on the student's academic transcript stating, "suspended [or dismissed] for a violation of the Student Code of Conduct." Suspension notations will be removed once the student completes the term and conditions of the suspension, including all assigned sanctions. In cases involving allegations of gender-based violence, a notation will also be placed on the transcript of a student who withdraws from Virginia Tech while under investigation. This notation will be removed if the student is subsequently found not responsible for violating policies in the *Student Code of Conduct*. Students may also petition to have transcript notations expunged, as outlined in the following section.

Lesser sanctions, such as warnings and probation, do not affect a student's academic standing and do not appear on the official transcript.

### **Petitions for Expungement**

The university offers two opportunities for students to petition for expungement of documentation related to their disciplinary record:

1. In cases involving low-level violations of the *Student Code of Conduct*, such as cases in which a student received probation, the student may petition the Office of Student Conduct to have the record of that case expunged prior to the end of the five-year period (early record expungement).
2. In cases involving sanctions of suspension or permanent dismissal resulting in a notation on the academic transcript, the student may petition the Office of Student Conduct to have the notation on their academic transcript expunged. Expungement of the notation is not the same as expungement of the entire case record.

The process and timeline for each opportunity is outlined below.

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1. **Early Record Expungement for Low-Level Policy Violations:** Students or graduates may petition Student Conduct to have the documentation of their cases involving low-level policy violations, such as those resulting in probation, “expunged” from their conduct record prior to the end of the five-year period. “Expungement” in this situation means that while the record is maintained by Student Conduct, per state and federal law, the record will not be shared with third parties, except as required by law. For example, a student applying to transfer to another institution may need to obtain a certified copy of their disciplinary record as part of an admissions application; if a record has been expunged, the documentation provided for the application will not include information about that incident.

The opportunity to request expungement reflects the student-centered and learning-focused values on which the Student Conduct process is based. Namely, we believe that students can learn and grow by reflecting on their decisions and examining their values.

Cases involving more serious violations of policy and more significant sanctions may not be considered for early record expungement, including but not limited to the following cases: those resulting in suspension or dismissal, gender-based violence and gender-based stalking, drug distribution, or other offenses against people.

An early record expungement applies only to records maintained by the Office of Student Conduct; records maintained by other offices or units, such as law enforcement and other university departments are not subject to expungement under this process.

Eligibility: A student may petition to have cases expunged from their conduct record in the following circumstances:

- a. An undergraduate student is classified as a senior, is not on an active status sanction (e.g., probation), and has completed all assigned educational sanctions.
  - b. An undergraduate student is classified as a freshman, sophomore, or junior, has been off of an active sanction (e.g., probation) for at least one full semester (i.e., fall or spring), and has completed all assigned educational sanctions.
  - c. A graduate or professional student is not on an active status sanction (e.g., probation) and has completed all assigned educational sanctions.
2. **Transcript Notation Expungement for Cases Involving Suspension or Dismissal:**  
A student or former student may petition for a transcript notation to be expunged—or removed—from the academic transcript after a period of three years from the final resolution of the case if the student can show good cause. In cases involving suspension, the student must have completed the term of the suspension and all educational sanctions prior to submitting their petition. The Office of Student Conduct will work with former students who have outstanding educational sanctions to determine options, which could include alternate sanctions that are mutually agreed upon, for fulfilling sanction requirements so that the individual may petition to have the transcript notation expunged.

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Expungement of the transcript notation is not the same as expungement of the entire case record.

### Evaluation of Expungement Petitions

The Director of Student Conduct or their designee will review petitions for early record expungements as well as transcript notation expungements based on the criteria above and will submit a recommendation to the Assistant Vice President for Student Affairs or their designee for final approval. The decision will be based upon the following criteria, as outlined in the petition application available on the Student Conduct website:

1. The nature of the violation(s) and the resulting impacts
2. The student's behavior after the violation(s) and their present demeanor
3. The student's demonstrated level of reflection and growth

After a petition is evaluated, the student will receive written notification of the decision. That decision will be final.

It is important to note that a student with an expunged record or transcript notation may still need to disclose information about their disciplinary history to third parties, including potential employers, other universities' admissions offices, a professional board, etc.

## XII. APPENDICES

### **Appendix 1: Additional Policies and Procedures Governing the Use of Alcoholic Beverages**

Virginia Tech recognizes that the misuse and abuse of alcohol is a persistent social and health problem in our society and that it interferes with the goals and objectives of any educational institution. The university fully complies with the alcohol regulations of the Commonwealth of Virginia, and all state laws apply to Virginia Tech students and student organizations. Students or student organizations who violate the Alcoholic Beverage Policy in the *Student Code of Conduct* and any associated policies or guidelines will face disciplinary action. Sanctions will likely include substance-related education.

In compliance with the laws of the Commonwealth, and to maintain conditions conducive to learning, possession or consumption of alcoholic beverages on campus is only permitted according to the following provisions:

<b>Location</b>	<b>Description</b>
Residence hall room	In the privacy of a student room, alcoholic beverages are permitted for those persons 21 years of age or older in accordance with state law, provided that at least one of the 21-year-old residents of the room is present.
Other locations in residence halls	Aside from the privacy of a student's room, possession or consumption of alcoholic beverages in any area of residence halls, including suite living rooms, is forbidden.

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Oak Lane	The Director of Fraternity and Sorority Life, in conjunction with the Director of Housing and Residence Life, <a href="#">determines regulations concerning the use of alcoholic beverages in the “Oak Lane Community”</a> (also known as Special Purpose Housing) during events.
Corps of Cadets	The Commandant of Cadets establishes and publishes regulations to be observed by cadets regarding the possession and consumption of alcoholic beverages. This information is published in the Cadet Regulations Manual.
All residential locations	Kegs of any description in student rooms or residence halls, including Oak Lane, are prohibited.
All other university property	The possession and use of alcoholic beverages is prohibited on all other university property except in certain facilities that are fully registered with the Virginia Alcoholic Beverage Control Board (ABC).

Alcoholic beverages are further governed by Virginia Polytechnic Institute and State University Policy and Procedures [No. 1015](#).

For more information related to federal and state laws and regulations regarding alcohol or illegal drugs or prevention and substance-use programs available at Virginia Tech, please consult the university’s [Drug and Alcohol Prevention Program document](#).

### **Appendix 2: [Title IX Definitions and Formal Title IX Adjudication Process](#)~~Additional Information Regarding Gender-Based Violence~~**

[The process for formal Title IX complaints, including definitions of terms and policies, reporting, investigations, and adjudication, is outlined fully in the university’s Title IX Reporting and Grievance Procedures for Sexual Harassment and Violence \(INSERT LINK\). The following excerpts include the policy definitions under Title IX, as well as the formal Title IX adjudication process for students, which is conducted by the Office of Student Conduct.](#)

#### [Title IX Definitions](#)

[Complainant](#) means an individual who is alleged to be the victim of conduct that could constitute Title IX Sexual Harassment.

[Consent](#) means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. The existence of consent is based on the totality of circumstances, including the context in which the alleged consent occurred. Silence does not necessarily constitute consent and coercion, force, or threat of either party invalidates consent.

- [Consent cannot be given where a person is incapacitated due to drugs or alcohol; or where a person has a disability; or is not of legal age to consent as defined by law.](#)
- [Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Consent can be withdrawn at any time.](#)
- [Previous relationships or prior consent cannot imply consent to future sexual acts.](#)

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**Dating Violence** means violence committed by a person: (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (b) Where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

**Domestic Violence** means felony or misdemeanor crimes of violence committed by: (a) a current or former spouse or intimate partner of the victim; (b) a person with whom the victim shares a child in common; (c) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; (d) a person similarly situated to a spouse of the victim under the domestic or family violence laws of Virginia; or any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Virginia.

**Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment.

**Sexual Assault** means misconduct that meets the definition of Rape, Fondling, Incest, or Statutory Rape, as defined below:

- **Rape** means penetration, no matter how slight, of the vagina or anus of a person with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Fondling** means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or temporary or mental incapacity.
- **Incest** means sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by law.
- **Statutory Rape** means sexual intercourse with a person who is under the statutory age of consent.

**Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (a) fear for the person's individual safety or the safety of others; or (b) suffer substantial emotional distress.

### Formal Title IX Adjudication Process

When the Title IX Coordinator refers a case for formal adjudication, the Office of Student Conduct will hold a live hearing with cross examination to determine whether the respondent is responsible for the alleged conduct and to provide appropriate sanctions, as appropriate.

#### **A. Procedural Guarantees**

In formal conduct hearings for Title IX formal complaints, the complainant and respondent are entitled to the following procedural guarantees and opportunities:

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- To receive a copy of the final investigation report, including any attachments and supporting documents from the Title IX Coordinator or designee at least ten (10) days in advance of the hearing.
- To receive written notice of the date, time, location, participants, and policies charged at least five (5) business days in advance of the hearing to allow the parties sufficient time to prepare for the hearing.
- To be accompanied by an advisor of their choice, at their own cost, or to have an advisor provided to them by the Office of Student Conduct without fee or charge.
- To inspect and review, during the hearing, all evidence obtained during the investigation that is directly related to the allegations in the formal complaint.
- To present that evidence that supports or refutes the alleged conduct.\*
- To present witnesses, including fact and expert witnesses.
- To have their advisor conduct live cross-examination on the other party and any witnesses.
- To remain silent or to participate as they see fit, including full, partial, or no participation; however, they should carefully review the section on cross-examination, below, to understand the potential impacts should they choose to limit participation.
- To challenge the objectivity of a hearing officer(s), given reasonable cause to believe they may be biased or have a conflict of interest.
- To appeal, regardless of the outcome, based on the following grounds: 1) Procedural irregularity; 2) Significant and relevant new information that was not available at the time of the hearing; 3) The Title IX Coordinator, Investigator, or hearing officer(s) had a conflict of interest or bias, which affected the outcome; 4) Unduly harsh or arbitrary findings or sanctions.

\*Only evidence and information submitted prior to the final investigation report will be considered during at the hearing.

### **B. Advisors**

At the hearing, each party may be accompanied by an advisor of their choice, at their own cost (e.g., parent, friend, attorney, etc.); if a party does not have an advisor, the university will provide one to them without fee or charge for the purposes of cross-examination. Advisors may not also serve as witnesses.

Advisors will be permitted to cross-examine (i.e., ask relevant questions and follow-up questions) the other party and any witnesses directly, orally, and in real time. The parties must use their advisors in this capacity, as they will not be permitted to ask questions personally.

Aside from cross-examination, advisors may not speak on the student's behalf or participate actively in the process. Advisors must follow the guidance of the hearing officers.

### **C. Cross-Examination**

During the hearing, the parties' advisors will be permitted to ask relevant questions and follow-up questions, including those challenging credibility, of the other party and any witnesses. Cross-examination must be conducted directly, orally, and in real time. At no times will the parties directly conduct cross-examination.

#### Relevance

Questions asked during cross-examination must be relevant to the behavior and situation in question. Hearing officers will determine whether each question is relevant and, if they choose to exclude a question, explain why it is not relevant. The following topics/questions have been identified as automatic exclusions:

- Questions or information about the complainant's prior sexual behavior, unless they are used to prove someone other than the respondent committed the alleged conduct or if they concern previous sexual activity with the respondent and are used to prove consent.
- Questions or information that disclose or seeks to disclose privileged information, such as medical or psychological records.

For more information about relevant information, please refer to the Relevant Evidence section in the Title IX Reporting and Grievance Procedures for Sexual Harassment and Violence (INSERT LINK).

#### Declining to Participate in Cross-Examination

If a party or witness declines to be cross-examined during the hearing, the hearing officers will not consider any statements made by that party or witness during the investigation or hearing when determining whether the respondent is responsible for the alleged conduct. However, the hearing officers will also not draw conclusions regarding responsibility based solely on a party's or witness's absence from the hearing or decision to decline to answer questions from the hearing officers or during cross-examination.

### **D. Recording**

The Office of Student Conduct audio records all formal hearings. A copy of the recording is maintained as part of the case file and will be made available to the parties, upon request.

### **E. Hearing Location and Virtual Participation**

At the discretion of the Office of Student Conduct, a hearing may be conducted in a single physical location, with all parties present, or a hearing may be conducted virtually, with participants appearing via videoconference. If the hearing is held in person (i.e., in a single physical location), either party may request to be located in a separate room and to participate via video conference. Regardless of the participation method, the hearing participants will be able to simultaneously see and hear each other.

### **F. Determination of Responsibility**

After the hearing, a determination of whether a respondent is responsible for violating any policy in the *Student Code of Conduct* will be made by the hearing officers based on the information presented in the

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investigation report and at the hearing.

### Standard of Proof

The university uses preponderance of the evidence to determine whether or not the respondent is responsible for the alleged conduct. This determination is made based on the information available to determine if it is more likely than not that a violation occurred.

### Decision Letter

The hearing officer will simultaneously provide the parties the decision in writing. The decision letter will include the following information: allegations and policies charged, procedural steps taken during the grievance procedure, information used to determine the findings and their application to the policies charged, rationales for each finding, any sanctions imposed on the respondent, any remedies provided to the complainant, and information about the appeal process.

### Range of Possible Sanctions

If a respondent is found responsible for the alleged conduct, the hearing officers will make a determination regarding appropriate sanctions. One or more of the following sanctions may be imposed:

- Formal warning
- Probation
- Deferred Suspension
- Suspension
- Deferred Dismissal (i.e., deferred expulsion)
- Dismissal (i.e., expulsion)
- Denial of privileges or associations
- Educational, Community, and Wellness Activities

When assigning sanctions, hearing officers consider the type and nature of any policy violation(s), including mitigating or aggravating factors, as well as the student's prior conduct record. Sanctions are generally cumulative in nature.

For definitions and additional information about sanctions in the Student Conduct process, please refer to the *Student Code of Conduct*.

### Remedial Action

Following a hearing, the Director of Student Conduct shall work with the Title IX Coordinator, who will oversee any necessary remedial action to restore or preserve the complainant's equal access to the university's education programs or activities.

### **Appeal Process**

Both parties have the opportunity to appeal the outcome of a formal hearing in a Title IX case regardless of the outcome. Sanctions take effect immediately, pending the appellate officer's decision or the end of the appeal period.

#### **A. Grounds for Appeal**

Appeals are not re-hearings; therefore, appeal requests are limited to the following grounds:

- Procedural irregularity or denial of procedural guarantees
- Significant and relevant new information that was not available at the time of the hearing
- Conflict of interest or bias by the Title IX Coordinator, Investigator, or hearing officer(s), which affected the outcome
- Unduly harsh or arbitrary findings or sanctions.

Appeals submitted that do not have sufficient grounds in one of these areas will be denied.

#### **B. Potential Outcomes of an Appeal**

The appellate officer will review the appeal and may:

- Uphold the original decision and sanctions
- Uphold the original decision and either decrease or increase the sanction
- Vacate a finding
- Send the case back to the Title IX Coordinator for further investigation
- Send the case back to Student Conduct for a new partial or full hearing

#### **C. Time Frame to Submit an Appeal**

The parties have seven (7) business days from the date of the decision to submit the appeal. The date the decision is given is considered the first day of the appeal period. Appeals submitted after the deadline will not be accepted except in extenuating circumstances, as determined by Student Conduct.

#### **D. Format of Appeal**

The appeal is a written request submitted by the student for a review of the original case. The student should include which grounds for appeal they believe apply, and any information the student wants considered should be included in the written document. The burden is on the appealing party to demonstrate why the finding or sanction should be altered.

#### **E. Notification to the Other Party**

When one party submits an appeal, the Office of Student Conduct will notify the other party and provide them with an opportunity to review the appeal and submit a written statement in response, which will be included in the appeal documentation.

**F. Appellate Officers**

An appellate officer will be designated by the Assistant Vice President for Student Affairs, who serves as the university's Chief Appellate Officer. All appellate officers are external to the Office of Student Conduct and Title IX. When they are designated to review a case, the Assistant Vice President will ensure they do not have conflicts of interest or bias and are, therefore, able to review the case objectively.

**G. Appeal Decision Letter**

The appellate officer will issue a decision on the appeal in writing to both parties simultaneously. This notification will include a rationale for the decision.

~~Gender-based violence includes the following prohibited acts: sexual violence—assault, sexual violence—battery, sexual violence—sexual coercion, sexual violence—rape, gender-based harassment, sexual exploitation, dating and domestic violence, and stalking.~~

~~Complaints of gender-based violence should be reported to the Office of Equity and Accessibility:~~

~~Katie Polidoro, Title IX Coordinator  
North End Center, 300 Turner Street  
Blacksburg, VA 24016  
540-231-2010 and~~

~~Virginia Tech encourages victims of sexual violence, including rape, sexual assault, sexual battery, stalking, and dating and domestic violence, to exercise their right to file a complaint with the Virginia Tech Police Department if the crime occurs on Virginia Tech's property, regardless of the status of the complainant. For crimes occurring away from Virginia Tech's property, victims may contact the local law enforcement in the appropriate jurisdiction.~~

~~Discrimination and harassment are further governed by University.~~

**Appendix 3: Additional Information Regarding the Hazing Policy**

Hazing is a criminal offense in the Commonwealth of Virginia, as defined in [§ 18.2-56 in the Code of Virginia](#), and is prohibited at Virginia Tech in all forms. This policy is based on the proposition that students are entitled to be treated with consideration and respect at all times. It applies to all student organizations and individuals.

The *Student Code of Conduct* defines hazing as follows:

*Any mental or physical requirement, request, or obligation placed upon any person that could cause discomfort, pain, fright, disgrace, or injury; that is personally degrading; or that violates any federal, state, or local statute or university policy, the willingness of an individual to participate in such activity notwithstanding.*

## Proposed Student Code of Conduct for 2020-2021, effective August 14, 2020

Hazing shall include, but not be limited to, forcing, compelling, requiring, encouraging, or expecting, whether direct or implied, any individual to participate in any of the following actions or activities. Hazing also includes soliciting, directing, aiding, or otherwise participating actively or passively in these acts:

- Physical Acts
  - Encouraging or requiring persons to consume alcohol or other substances regardless of the age of the participant.
  - Encouraging or requiring that a person do or submit to any act that will alter his or her physical appearance in any significant degree for any substantial period of time (e.g. burning, branding, tattooing, using makeup, paint or markers on a person, or shaving the head or body).
  - Encouraging or requiring activities that disrupt a person's normal schedule. A normal schedule includes three reasonably spaced meals per day, the opportunity for sufficient rest at night (at least six full hours) and reasonable time for personal hygiene.
  - Encouraging or requiring a person to engage in physical activity of unusual kind or duration, such as: calisthenics, overly difficult work assignments, activities that may be excessive for a person, activities that require a person to remain in a fixed position for an extended period of time, binding or restricting an individual in any way that would prohibit them from moving on their own, confining a person or exposing participants to uncomfortable elements like in environments that are too hot, cold, noisy, small, or threatening/intimidating.
  - Hitting, pretending, or misleading a prospective member into believing that they will be hit, hurt, or physically altered.
  - Encouraging or requiring acts that are or seem to be dangerous.
  
- Psychological Acts
  - Encouraging or requiring a person to pretend to or actually violate a law.
  - Encouraging or requiring an individual to obtain or possess items or complete tasks in an unlawful manner (i.e. for a scavenger hunt).
  - Verbally abusing prospective members. Examples include but are not limited to yelling or screaming, calling individuals demeaning names, booing, hissing, or demeaning individuals when they make mistakes.
  - Encouraging or requiring a person to perform acts of servitude, perform personal errands for others, or engage in activities that are demeaning.
  - Misleading prospective members in an effort to convince them that they will not become members unless they complete tasks, follow instructions, or act in a certain way.
  - Misleading prospective members into believing that they will be hurt during induction or initiation.

## Proposed Student Code of Conduct for 2020-2021, effective August 14, 2020

- Encouraging or requiring a person to publicly carry objects or wear apparel that is abnormal, not normally in good taste, conspicuous and/or indecent.
- Encouraging or requiring a person to appear nude or reveal body parts.
- Encouraging or requiring an individual or group to remain in a certain place or transporting them to a location without their knowledge (e.g. taking a person on a road trip or excursion to an unknown destination or kidnapping).
- Parading individuals in public areas, transporting individuals in a motor vehicle while blindfolded, or privately conducting blindfolding activities that serve no constructive purpose.
- Requiring an individual to “pledge” or “associate” for a period of unusual length (more than 10-12 weeks) for reasons other than achieving academic requirements or extraordinary circumstances.

As it is impossible to anticipate every situation that could involve hazing, this list does not, and cannot, encompass every circumstance that will cause the institution to discipline for hazing. This policy is not intended to prohibit the following conduct:

- a. Customary athletic events, contests, or competitions that are sponsored by the institution or the organized and supervised practices associated with such events.
- b. Any activity or conduct that furthers the goals of a legitimate educational curriculum, extracurricular program or military training program, as approved by the institution.

**Note: An individual may not consent to being hazed, and their voluntary or willful participation in hazing activities will not be considered as a defense against a violation of the institution’s hazing policy by an individual or organization.**

University Reporting, Investigation, and Adjudication: The university encourages individuals who report any potential hazing activities. The initial report of a suspected violation may be reported in person, by phone or by electronic communication, and may be done anonymously. Alleged violations of this policy can be reported through [an online reporting system](#) or to the following offices:

- [Student Conduct](#)
- [Student Engagement and Campus Life](#)
- [Fraternity and Sorority Life](#) (for Greek organizations)
- [Recreational Sports](#) (for club sports)
- [Virginia Tech Police Department](#)

Credible and sufficiently detailed reports of hazing will be referred to Student Conduct for further investigation and potential adjudication. Both individuals and organizations may be held responsible for their actions and participation in incidents of hazing. If an investigation concludes that an individual or individuals directed, engaged in, aided or otherwise participated in, actively or passively, an incident of hazing, disciplinary action may be imposed against the individual(s). If the investigation concludes that an organization knowingly permitted, authorized, or condoned hazing, disciplinary action may be imposed against the entire organization.

**Proposed Student Code of Conduct for 2020-2021, effective August 14, 2020**

Reporting to the Commonwealth's Attorney: Per [§ 18.2-56 in the Code of Virginia](#), the university must report incidents of hazing that cause bodily injury to the Commonwealth's Attorney, who may take separate action.



# TITLE IX

## EFFECTIVE DATE AUGUST 14, 2020

Kay Heidbreder

University Legal Counsel



## DEFINITION OF SEXUAL HARASSMENT:

1. "Unwelcome contact" that is "severe, pervasive, and offensive"
2. Geographic Jurisdiction:  
Conduct occurring within the United States and on campus or off campus on property on which the University or a recognized student organization has substantial control (ex. Fraternity house)



3. University has obligation to take action when University personnel with authority to take corrective action receives report of sexual harassment
4. Supportive measures, must be given whether or not a formal complaint is made, but cannot burden respondent
5. Grievance Procedure which applies to both students and employees



6. Live hearing with right of appeal
7. Advisors must be appointed if a party does not have one
8. Advisors to perform cross examination of other party and witnesses



# Virginia Tech Response:

1. Stand Alone Title IX Policy
2. Amended non-discrimination policy  
(Policy 1025)
3. Title IX grievance procedures
  - a. Students - appendix to Code of Student Conduct
  - b. Employees
4. Appointment of Advisors



# Resolution for Approval

1. Policy 1025
2. Title IX Policy
3. Grievance Procedures
  - a. Code of Student Conduct Appendix
  - b. Employees



# FOR THE FUTURE

1. Informal Resolution
2. Review through Grievance Process for Employees

Questions?