

Sexual Misconduct Policy For Students

A. Policy Statement and Jurisdiction:

Randolph College is committed to maintaining a community in which learning and working can be conducted in an environment of human dignity and respect. The College stands opposed to all forms of harassment, including sexual and gender-based harassment, and will work to prevent such behavior within the College community. Sexual misconduct is antithetical to the values and standards of the Randolph community, is incompatible with the safe, healthy environment that the community expects and deserves, and will not be tolerated.

Title IX of the Higher Education Amendments of 1972 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.

20 U.S.C. § 1681

Randolph College does not discriminate on the basis of sex in the education program or activity that it operates; it is required by Title IX and Section 106.8 (b) of the Federal Regulations not to discriminate in such a manner. This requirement not to discriminate in the education program or activity extends to admission and employment, and any inquiries about the application of Title IX and this part to the College may be referred to the Title IX Coordinator, to the Assistant Secretary, or both.

Under certain circumstances, sexual misconduct (as defined below) constitutes sexual discrimination prohibited by Title IX. Any act of sexual misconduct constitutes a violation of College policy. The College is committed to fostering a community that promotes prompt reporting of all alleged acts of sexual misconduct and the timely and fair resolution of sexual misconduct cases. Creating a safe environment is the responsibility of all members of the College community. This policy is intended to define community expectations, to establish a mechanism for determining when those expectations have been violated, and to protect the rights and needs of Complainants and Respondents.

The College prohibits sex discrimination, sexual assault, sexual harassment, dating violence, domestic violence and stalking by anyone on College property. The College also prohibits such conduct committed by students, faculty, staff, volunteers, or vendors off College property, if:

1. The off-campus incident occurs as part of a College or College-recognized program or activity;
2. The College exercised substantial control over the respondent and the context in which the alleged incident occurred off-campus; or
3. The incident occurs at an off-campus building owned or controlled by a student organization officially recognized by the College.

B. Overview

In the case of allegations of sexual misconduct, this policy supersedes all other procedures and policies set forth in other College documents. The College reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect students' rights and personal safety. Such measures include, but are not limited to, modification of living arrangements, interim suspension from campus pending a hearing, and reporting the matter to the local police. Not all forms of sexual misconduct are equally serious offenses, and the College reserves the right to impose different sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense. The College will consider the concerns and rights of both the Complainant and Respondent.

C. Terminology:

The following definitions apply to terms used throughout this Policy:

Sexual misconduct refers to any conduct or act of a sexual nature perpetrated in the United States against an individual without consent. Sexual misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can be committed by men or by women, and it can occur between people of the same or different sex. The College encourages reporting of all sexual misconduct.

Sexual misconduct offenses include, but are not limited to: sex discrimination, sexual assault, sexual harassment; sexual exploitation; stalking; dating violence; and retaliation.

1. Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- a. **Quid Pro Quo**- An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct.
- b. **Hostile environment** - Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the College's education program or activity.
- c. **Violence Against Women Act (VAWA) Crimes** - "sexual assault" as defined in 20 U.S.C.1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C.12291(a)(10),"domestic violence" as defined in 34 U.S.C.12291(a)(8), or "stalking" as defined in 34 U.S.C.12291(a)(30).

2. VAWA offenses include the following:

- a. **Sexual assault** is any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent.
 - **Rape** is the penetration, no matter how slight, of vagina or anus, with any body part or object or oral penetration by a sex organ of another person,

without the consent of victim. This offense includes the rape of both males and females.

- **Fondling** is the touching of the private body parts of another person for sexual gratification without the consent of the victim including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental capacity
- **Incest** is sexual intercourse between persons who are related to each other with the degrees where in marriage is prohibited by law.
- **Statutory rape** is sexual intercourse with a person who is under the statutory age of consent.

Intimate partner violence is often referred to as dating violence, domestic violence or relationship violence. Intimate partner violence includes any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, domestic or other intimate relationship with the Respondent.

- a. **Dating violence** is defined as violence committed by a person who is or has been in a social relationship of a romantic nature with the victim. The existence of such a relationship shall be determined based on the reporting parties' statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction.
- b. **Domestic violence** is defined as a felony or misdemeanor crime of violence committed-
 - By a current or former spouse or intimate partner of the victim;
 - By a person with whom the victim shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
 - By 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 the jurisdiction in which the crime of violence occurred.
- c. **Stalking** refers to a course of physical or verbal conduct directed at another individual that could be reasonably regarded as likely to alarm, harass, or cause fear of harm or injury to that person or to a third party. A course of conduct consists of at least two acts. The feared harm or injury may be physical, emotional, or psychological. Stalking includes cyber-stalking, in which electronic media are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

3. **Sexual exploitation** occurs when a person takes non-consensual or abusive sexual advantage of another person for their own advantage or benefit, or to benefit or advantage

anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses.

4. **Retaliation** refers to acts or attempts to retaliate or seek retribution against the Complainant, Respondent, or any individual or group of individuals involved in the complaint, investigation and/or resolution of an allegation of sexual misconduct. Retaliation can be committed by any individual or group of individuals, not just a Respondent or Complainant. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence or other forms of harm to others.
5. **Complainant** is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
6. **Respondent** is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. The Respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
7. **Title IX Coordinator** has ultimate oversight responsibility for handling Title IX related complaints and identifying and addressing any patterns or systemic patterns involving sexual misconduct. The Title IX Coordinator can answer questions regarding the process for reporting, investigating, and adjudicating complaints of gender discrimination, sexual harassment, sexual assault, or other potential Title IX violations. The Coordinator is available to meet with individuals who are involved with or concerned about issues or College processes, incidents, patterns, or problems related to sexual misconduct on campus or in College programs. The College's Title IX Coordinator is:

Sharon Saunders
Director of Human Resources & Title IX Coordinator
Human Resources, Main Hall
2500 Rivermont Avenue
Lynchburg, VA 24503
Phone: (434) 947-8704
ssaunders@randolph.edu

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed above, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

8. **Deputy Title IX Coordinator(s)** means College employees designed to assist the Title IX Coordinator in responding to reports of sexual misconduct. Deputy Title IX Coordinators can answer questions regarding the process for reporting, investigating, and

adjudicating complaints of gender discrimination, sexual harassment, sexual assault, or other potential Title IX violations. They are available to meet with individuals who are involved with or concerned about issues or College processes, incidents, patterns, or problems related to sexual misconduct on campus or in College programs. The following individuals have been designated as Deputy Title IX Coordinators:

- **Amanda Denny, Assistant Dean for Residence Life and Student Conduct & Deputy Title IX Coordinator**

Located in the Dean of Students Suite in Main Hall from 8:30 am to 5:00 pm. M-F or via email at adenny@randolphcollege.edu or 434-947-8291.

- **Mara Amster, Professor of English & Deputy Title IX Coordinator**

Located in Smith Memorial Building Room 406 or via email at mamster@randolphcollege.edu or 434-947-8514..

9. **Investigator** is a neutral party in charge of handling the investigation of a formal complaint and who provides a detailed unbiased report that fully summarizes relevant evidence.
10. **Campus Security Authorities (CSAs)** function is to report allegations of Clery Act crimes made in good faith.
11. An **advisor** provides support and actively participates during the Title IX hearing in a cross examination role. The advisor may be any person, including an attorney.
12. **Report** is a notification of an alleged incident that occurred either on campus or as part of a College or College-recognized program or activity.
13. **Formal Complaint** is a document filed by a Complainant or signed by the Title IX Coordinator or Deputy Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate the allegation of sexual harassment. At the time of filing a Formal Complaint, a complainant must be participating in or attempting to participate in the education program or activity of the College.
14. **Education program or activity** includes locations, events, or circumstances over which the College exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.
15. **Supportive Measures** are defined as non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge, to the Complainant or Respondent, before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve access to the College's education program or activity, without unreasonably burdening the other

party; protect the safety of all parties and the recipient's educational environment, and deter sexual harassment. Supportive measures may include, but are not limited to, counseling, course related adjustments, modifications of work or class schedules, modifications to living arrangements, campus escort services, increased security and monitoring of certain areas of campus, mutual restrictions on contact between the parties, and other measures as determined on a case-by-case basis. The College must maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

16. **Standard of Evidence** The standard of proof in all sexual misconduct cases will be preponderance of the evidence. This standard requires the Decision-maker(s) to conclude that it is more likely than not that the respondent committed sexual misconduct in order for there to be a finding of responsible. This standard of proof differs from the higher standard used in criminal cases, beyond a reasonable doubt. Therefore, there could be instances when the criminal justice system declines to prosecute a case criminally but a finding of responsible is reached under this Sexual Misconduct Policy.

17. **Days** means business days when all College offices are open. This does not include weekends, holidays or inclement weather when College offices are closed.

Consent

Consent is clear, knowing, and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity and can be withdrawn at any time. Previous relationships or prior consent cannot imply consent to future sexual acts. Coercion, force, or threat of either invalidates consent.

Consent may never be given by:

- (a) Minors, even if the other participant did not know the minor's age.
- (b) Mentally disabled persons, if their disability was reasonably knowable to a sexual partner who is not mentally disabled.
- (c) Persons who are incapacitated (whether as a result of drugs, alcohol or otherwise), unconscious, asleep, or otherwise physically helpless or mentally or physically unable to make informed, rational judgments. The use of alcohol or other drugs does not diminish one's responsibility to obtain consent and does not excuse conduct that constitutes sexual misconduct under this policy. If at any time during a sexual act any confusion or ambiguity is or should reasonably be apparent on the issue of consent, it is incumbent upon each individual involved in the activity to stop and clarify the other's willingness to continue and capacity to consent. Neither party should make assumptions about the other's willingness to continue.

- (d) Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but clear, knowing and voluntary consent to any sexual activity is equivalent to a “no.”

Force

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent.

Other Misconduct Offenses (will fall under Title IX when gender-based)

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct that threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the college community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity.
5. Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control, or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the 1st Amendment).

D. Required Training

Any individual designated by the College as a Title IX Coordinator, investigator, decision-maker, or any person designated by a College to facilitate an informal resolution process shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The College will ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of the College’s education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

The College will ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. The College will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of sexual harassment.

E. Reporting Sexual Misconduct

Randolph College strongly supports and encourages prompt reporting of sexual misconduct. If you believe you or someone you know has been a victim of sexual misconduct, you should report the incident(s) to the College's Title IX Coordinator or to Campus Safety as soon as possible. Because sexual misconduct may constitute both a violation of College policy and criminal activity, and because the College grievance process is not a substitute for instituting legal action, the College encourages individuals to report alleged sexual misconduct promptly to campus officials and to law enforcement authorities.

Individuals may file a complaint at any time, but the College strongly encourages individuals to file complaints promptly in order to preserve evidence for a potential legal or disciplinary proceeding. The College's investigation and resolution of a complaint (not including an appeal, if applicable) will generally be completed within 80 calendar days of the receipt of the complaint, absent extenuating circumstances. Any party may request an extension of any deadline by providing the Title IX Coordinator with a written request for an extension. The Title IX Coordinator may modify any deadlines contained in this policy as necessary and for good cause.

Any student may file a complaint against other students or employees of the College. In addition, a College employee may file a complaint against other employees or students of the College. Students and employees of the College may also file complaints regarding third parties who are not enrolled at or employed by the College if the conduct giving rise to the complaint is related to the College's academic, educational, or extracurricular programs or activities. The College may not have jurisdiction to discipline third parties, but it can provide a student or employee with support services and, if appropriate, it will conduct an investigation of the incident to ensure that it does not represent a pattern of sexual misconduct occurring at the College or involving its students or employees.

How to Report

Immediate Assistance

Follow the reporting options below if you or someone you know has been a victim of sexual misconduct:

Campus Safety, 24 hours a day, 7 days a week, dial 0 from an on-campus phone or 434.947.8000, or call the Lynchburg Police Department at 911.

Individuals are strongly encouraged to inform the Lynchburg Police Department about instances of sexual misconduct. Individuals may file reports directly with local law enforcement agencies by dialing 911. Note: Individuals may inform law enforcement authorities about sexual misconduct and discuss the matter with a law enforcement officer without making a formal criminal complaint (or a College complaint). Individuals who make a formal criminal complaint may also choose to pursue a College complaint simultaneously.

Individuals may contact any of the following for assistance in filing a report with local law enforcement:

- **Residence Assistants or Head Resident 24 hours a day, 7 days a week**
- **Title IX Coordinator - Sharon Saunders**
Located in the Human Resources Suite in Main Hall from 8:30 am to 5:00 pm M-F or via email at ssaunders@randolphcollege.edu or 434-947-8704
- **Deputy Title IX Coordinator – Amanda Denny**
Located in the Dean of Students Suite in Main Hall from 8:30 am to 5:00 pm. M-F or via email at adenny@randolphcollege.edu or 434-947-8291

Filing a Report

Anyone wishing to make a report under this policy should contact one of the following individuals or offices:

- **Sharon Saunders, Director of Human Resources & Title IX Coordinator**
Located in the Human Resources Suite in Main Hall from 8:30 am to 5:00 pm M-F or via email at ssaunders@randolphcollege.edu or 434-947-8704
- **Amanda Denny, Assistant Dean for Residence Life and Student Conduct & Deputy Title IX Coordinator**
Located in the Dean of Students Suite in Main Hall from 8:30 am to 5:00 pm. M-F or via email at adenny@randolphcollege.edu or 434-947-8291
- **Mara Amster, Professor of English & Deputy Title IX Coordinator**
Located in Smith Memorial Building Room 406 or via email at mamster@randolphcollege.edu or 434-947-8519
- **Kris Irwin, Director of Campus Safety**
Located in Main Hall from 7:00 am to 4:00 pm M-F or via email at kirwin@randolphcollege.edu or 434-947-8144

Individuals may also file anonymous reports by calling Campus Safety or completing a form online at [silent witness crime reporting form link](#). Individuals who choose to file anonymous reports are advised that it may be very difficult for the College to follow up or take action on anonymous reports, where corroborating information is limited. Anonymous reports may be

used for Clery Act data collection purposes. The Clery Act requires all colleges that participate in federal financial aid programs to keep and disclose information about crime on and near their respective campuses.

Any person (i.e., the alleged victim, a bystander, a witness, a friend, or any other person) may report sexual misconduct to the Title IX Coordinator, thereby triggering the College's obligation to respond. Upon receipt of such a report, the Title IX Coordinator will reach out to the Complainant, if known, to discuss the availability of supportive measures, regardless of whether a formal complaint is filed, consider the complainant's wishes with respect to supportive measures, and explain to the complainant the process for filing a formal complaint. A Formal Complaint, which will trigger the grievance process set forth below, can only be filed by the individual who is the alleged victim of the misconduct or the Title IX Coordinator.

Confidentiality & Anonymity

A Formal Complaint must contain the complainant's physical or digital signature or otherwise indicate that the complainant is the person filing the formal complaint; a formal complaint cannot be filed anonymously. A complainant's identity may remain confidential from the respondent for supportive measures (to the extent possible while implementing the supportive measure), but to implement a grievance process to resolve allegations that a respondent has committed sexual misconduct against a complainant, the complainant's identity must be disclosed to the respondent, if known.

Review Committee

As required under Code of Virginia § 23-9.2:15, in alleged cases involving sexual violence, the Title IX Coordinator will consult with a Review Committee. The Committee will include the Title IX Coordinator (or a designee); the Director or Associate Director of Campus Safety; and a member of the Student Affairs Division. The Title IX Coordinator may also include other members of the college community as deemed appropriate. This Committee shall convene within 72 hours of receiving the report.

The Review Committee will determine if disclosure of information to the law enforcement agency responsible for investigating the alleged act of sexual violence, including personally identifiable information, is necessary to protect the health or safety of the Complainant or other individuals, consistent with FERPA regulations. If the Committee determines this disclosure is necessary, the Title IX Coordinator will notify the Complainant of any disclosure that is made.

If the alleged incident would constitute a felony violation under Code of Virginia § 18.2-61, the Director or Associate Director of Campus Safety will consult with the Commonwealth's Attorney within 24 hours of the Review Committee meeting, without disclosing personally identifiable information about the individuals involved.

Emergency Removal:

The College may remove a respondent from the College's education program or activity on an emergency basis, provided the College undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

Individuals with Disabilities

The College will make arrangements to ensure that individuals with disabilities are provided appropriate accommodations, to the extent necessary and available, to participate in the steps and procedures outlined in this policy. Requests for accommodations must be made to the Office of Access Services, 434.947.8132.

Protecting Students Reporting Sexual Misconduct

The Title IX Coordinator or designee will consult with the reporting party or the Complainant regarding protective measures such as changes to campus housing or academic schedules, removing the student's information from the College directory, or issuing a "no contact order."

Retaliation against any person for filing, supporting, or providing information in connection with a complaint of sexual misconduct is strictly prohibited. Violations will be addressed through this policy. Any person who feels they have been subjected to retaliation should make a report to the Title IX Coordinator.

The College considers the reporting and adjudication of sexual misconduct cases on campus to be of paramount importance. The College does not condone underage drinking; however, the College may extend limited immunity from sanctioning in the case of illegal alcohol use to the Complainant, Respondent, witnesses, and those reporting incidents or assisting the Complainant or Respondent, provided that they are acting in good faith in such capacity.

Administrative Leave:

The College may place a non-student employee respondent on administrative leave during the pendency of its grievance process after receipt of a formal complaint, subject to any rights that may be available under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

Provision of Supportive Measures.

As stated above, upon receipt of a report of alleged sexual misconduct, the Title IX Coordinator will reach out to the Complainant, if known, to discuss the availability of supportive measures,

consider the complainant's wishes with respect to supportive measures, and explain to the complainant the process for filing a formal complaint. Supportive measures will be offered as appropriate, as reasonably available, without fee or charge, and regardless of whether a formal complaint has been filed.

Similarly, upon receipt of such a report, and to the extent known and appropriate, the Title IX Coordinator will also reach out to the Respondent to discuss the availability of supportive measures, regardless of whether a formal complaint has been filed against that individual.

F. Grievance Procedure

The grievance procedure will treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to the College's education program or activity. Such remedies may include "supportive measures;" however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. This grievance procedure must not be used to bring malicious or knowingly false complaints. The sexual misconduct grievance procedure will be used when any person is alleged to have filed a knowingly false complaint or knowingly provides false information to College officials. If a claim is not substantiated, the College may, with the agreement of the Respondent, take steps to restore the reputation of the accused individual, including expunging records or notification to persons who participated in the grievance proceeding(s). The Respondent is not responsible for alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

The College's grievance process requires an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provides that credibility determinations may not be based on a person's status as a complainant, respondent, or witness. During the grievance process, the College will provide the parties with the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the College may implement following any determination of responsibility.

The standard of evidence to be used to determine responsibility is the preponderance of the evidence standard, and it will apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment;.

The College's grievance process does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Dismissal of a Formal Complaint:

The College will investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual misconduct as defined in this Policy, even if proved, did not occur in the College's education program or activity, or did not occur against a person in the United States, then the College must dismiss the formal complaint with regard to that conduct for purposes of sexual misconduct under Title IX. Such a dismissal, however, does not preclude action under another provision of the College's Code of Conduct.

Alternatively, the College may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the College; or specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal of a formal complaint, whether required or permitted, the College will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

Consolidation of Formal Complaints.

The College may consolidate formal complaints as to allegations of sexual misconduct against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual misconduct arise out of the same facts or circumstances.

Formal Grievance Process

Written Notice of Investigation.

Upon receipt of a formal complaint, the Title IX Coordinator will provide the following written notice to the parties who are known:

- (A) Notice of the College's grievance process, including any informal resolution process.
- (B) Notice of the allegations of sexual misconduct potentially constituting sexual misconduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual misconduct, and the date and location of the alleged incident, if known.
- (C) A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- (D) Notice that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence presented.

(E) Notice of any provision in the College's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

Ongoing notice requirement. If, in the course of an investigation, the College decides to investigate allegations about the complainant or respondent that are not included in the original notice provided, the College will provide notice of the additional allegations to the parties whose identities are known.

Investigation of a Formal Complaint. The Complainant and the Respondent each will be contacted by an investigator. When investigating a formal complaint and throughout the grievance process, the College will:

- Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the College and not on the parties.
- Not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the College obtains that party's voluntary, written consent to do so for a grievance process.
- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the College may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
- Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.
- Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that

each party can meaningfully respond to the evidence prior to conclusion of the investigation.

- Prior to completion of the investigative report, the College will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have 10 business days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- The College also will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
- Create an investigative report that fairly summarizes relevant evidence and, at least 10 business days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

Timeframe. As previously stated, the College's investigation and resolution of a complaint (not including an appeal, if applicable) will generally be completed within 80 calendar days of the receipt of the complaint, absent extenuating circumstances. Any party may request an extension of any deadline by providing the Title IX Coordinator with a written request. The Title IX Coordinator may modify any deadlines contained in this policy as necessary and for good cause, and shall notify both parties accordingly.

Prehearing Conference. The Title IX Coordinator or designee will convene a prehearing conference to plan for the hearing and to discuss the following topics: hearing agenda, procedures and protocols, expectation, confirmation of review of evidence by Complainant and Respondent and advisors. Those present at each such prehearing conference may include Complainant, Respondent, advisor(s), hearing panel chair and investigator.

The Hearing. The College's grievance process provides for a live hearing.

The Hearing Panel. The Title IX Coordinator or designee will randomly select the members of the Hearing Panel, to include three faculty or staff, with one member serving as the Chair of the Hearing Panel. Members of the Hearing Panel must be trained to hear cases of sexual misconduct. The Title IX Coordinator or designee will share the complaint and the investigative report with the Hearing Panel.

Notice of the Composition of the Hearing Panel. Promptly after randomly selecting the members of the Hearing Panel, the Title IX Coordinator or designee will provide concurrent written notice to the Complainant and the Respondent, along with their advisors, setting forth the names of the individuals selected to serve on and chair the Hearing Panel. If only a portion of the alleged misconduct justifies continuing to the hearing process, the Title IX Coordinator or designee will also specify in the notice which part(s) of the alleged misconduct will be the subject of the hearings.

The parties may challenge the participation of any member of the Hearing Panel by submitting a written objection to the Title IX Coordinator or designee within three (3) days of delivery of the notice of the composition of the Hearing Panel. Such objection must state the specific reason(s) for the objection. The Title IX Coordinator or designee will evaluate the objection and determine whether to alter the composition of the Hearing Panel. Failure to submit a timely and proper objection will constitute a waiver of any right of objection to the composition of the Hearing Panel. Any changes in the composition of the Hearing Panel will be provided in writing to both parties prior to the date of the first hearing.

Hearing Policies and Procedures

1. *Submission of Written Materials by the Parties.* Within five days of delivery of the notice of composition of the Hearing Panel, the Complainant and the Respondent may provide the Title IX Coordinator or designee with a list of witnesses, if any, that they propose that the Hearing Panel call and a brief description of each proposed witness's connection to or knowledge of the issues in dispute.

2. *Notice of the Hearings.* Not less than five days, but not more than ten days after delivery of notice of the composition of the Hearing Panel to the parties, the Title IX Coordinator or designee will provide a separate notice to the Complainant, the Respondent, their respective advisors, and any witnesses or other third parties whose testimony the Hearing Panel deems relevant, requesting such individuals to appear before the Hearing Panel. The notice should set forth, as applicable, the date, time, and location of the relevant individual's hearing. In its notices to the Complainant and the Respondent, the names of the witnesses or other third parties that the Hearing Panel plans to call will be provided.

3. *Advisors at the Hearing.* If a party does not have an advisor present at the live hearing, the College will provide without fee or charge to that party, an advisor of the College's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

4. *Testimony and Evidence.* The decisionmaker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the College to otherwise restrict the extent to which advisors may participate in the proceedings.

- At the request of either party, the College will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

Only relevant cross examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the

decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

5. Logistics. Live hearings may be conducted with all parties physically present in the same geographic location or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

6. Recording. The College will create an audio or audiovisual recording of any live hearing and make it available to the parties for inspection and review.

At any time prior to the date of their designated hearing, the Respondent may elect to acknowledge their actions and take responsibility for the alleged sexual misconduct. In such a situation, the Title IX Coordinator or designee will propose sanction(s). If the Complainant and the Respondent agree to such proposed sanction(s), then the complaint will be resolved without a hearing and without any further rights of appeal by any party. If either the Complainant or Respondent objects to such proposed sanction(s), then the Hearing Panel will convene for the exclusive purpose of determining a sanction. The decision of the Hearing Panel regarding sanctions may be subject to appeal.

Determination Regarding Responsibility.

Following the conclusion of the hearing(s), the decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), will confer and, by majority vote, issue a written determination regarding responsibility. To reach this determination, the College will apply the preponderance of the evidence standard. Sanctions for a finding of responsibility depend upon the nature and gravity of the misconduct, any record of prior discipline for sexual misconduct, or both. In the most serious cases, suspension or expulsion is probable.

The written determination will include:

- (A) Identification of the allegations potentially constituting sexual misconduct;
- (B) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- (C) Findings of fact supporting the determination;
- (D) Conclusions regarding the application of the College's code of conduct to the facts;
- (E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the respondent, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the complainant; and
- (F) The College's procedures and permissible bases for the complainant and respondent to appeal.

The Title IX Coordinator is responsible for effective implementation of any remedies.

Sanctions imposed are not effective until the resolution of any timely appeal. However, if it is advisable in order to protect the welfare of the Complainant, witnesses or members of the College community, the Hearing Panel (or other decision-making body, if applicable) may recommend, and the Title IX Coordinator may determine, that any sanctions be effective immediately and continue in effect until such time as the appeal process is exhausted.

Final Accommodations and Corrective Action. In addition to any sanctions imposed on the Respondent, promptly following the conclusion of the hearings and the Hearing Panel's issuance of a determination of responsibility, the Title IX Coordinator or designee will determine the final accommodations to be provided to the Complainant, if any, and the Title IX Coordinator or designee will communicate such decision to the Complainant and, to the extent that it affects them, to the Respondent.

Final Outcome Letter. Within 6 calendar days following the conclusion of the hearings, the Hearing Panel will issue a written decision letter simultaneously to the Respondent and the Complainant. The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Appeals

Both the complainant and the respondent may appeal from a determination regarding responsibility, and from a College's dismissal of a formal complaint or any allegations therein, on the following bases:

- (A) Procedural irregularity that affected the outcome of the matter.

- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Appeals of the determination must be made in writing to the Title IX Coordinator. Upon timely receipt, the Title IX Coordinator will do the following:

- (A) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- (B) Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- (C) Ensure that the decision-maker(s) for the appeal complies with the standards set forth in this Policy;
- (D) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- (E) Issue a written decision describing the result of the appeal and the rationale for the result; and
- (F) Provide the written decision simultaneously to both parties.

In reviewing an appeal, the Dean of Students will make a determination: (a) that the decision of the Hearing Panel should stand; (b) that the decision of the Hearing Panel should be overturned; or (c) that additional hearings should occur or evidence should be obtained before making an appellate determination.

In the event that the Dean of Students determines that the decision of the Hearing Panel should be overturned or that additional hearings should occur or additional evidence should be obtained, they will specify the appropriate steps to be taken to come to a final resolution of the complaint (which may or may not include an additional hearing or set of hearings before a different hearing panel).

Appeals of the Sanction

Similarly, the sanctions imposed on a Respondent may be appealed on grounds that the severity of the sanction is disproportionate to the gravity of the sexual misconduct for which the Respondent was found responsible. Appeals must be made in writing to the Title IX Coordinator. Upon timely receipt, the Title IX Coordinator will do the following:

- (A) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- (B) Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

- (C) Ensure that the decision-maker(s) for the appeal complies with the standards set forth in this Policy;
- (D) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- (E) Issue a written decision describing the result of the appeal and the rationale for the result; and
- (F) Provide the written decision simultaneously to both parties.

The Dean of Students will make a determination (a) that the decision of the Hearing Panel should stand, (b) that the decision of the Hearing Panel should be overturned, or (c) that additional hearings should occur or evidence should be obtained before making an appellate determination.

In the event that the Dean of Students determines that the decision of the Hearing Panel should be overturned or that additional hearings should occur or additional evidence should be obtained, they will specify either (a) the final sanctions to be imposed on the Respondent, which will not be subject to further appeal or (b) that another hearing will be convened before the Hearing Panel for the sole purpose of considering sanctions, in which case the final sanctions set by the Hearing Panel will not be subject to further appeal.

Informal Process

Any member of the College community who believes they have been the victim of sexual misconduct and who is interested in an informal remedy to the situation may contact the Title IX Coordinator. The objective of the informal process is to respond immediately to a formal complaint with actions designed to eliminate misconduct. The goals of the informal process are to gather information, identify sources of conflict, analyze problems, and offer ways for resolving the complaint. The Title IX Coordinator or designee will discuss with the Complainant the individual's concerns, clarify the College's policy and grievance procedure and, when appropriate, remind them of the availability of counseling services.

The College may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual misconduct. Similarly, the College may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility, the College may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, so long as the College:

- (i) Provides to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, if any, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint,

- and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- (ii) Obtains the parties' voluntary, written consent to the informal resolution process; and
 - (iii) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Assuming the above requirements are met, and both the complainant and respondent have consented to informal resolution, the Dean of Students or designee will attempt to work with the parties involved to resolve the matter informally. The resolution process might involve any number of strategies, including (1) individual meeting(s) between the Dean of Students or designee and the Respondent; (2) written communication between the Complainant and the Respondent; and/or (3) mediated meeting(s) between the Complainant and the Respondent, facilitated by the Dean of Students or designee.

Based on information gathered from the Complainant and the Respondent, the Dean of Students or designee shall prepare a written resolution agreement they believe will fulfill the goals of the informal process and is acceptable to all parties. If the parties agree to an informal resolution of the complaint, the Dean of Students or designee shall have the resolution agreement signed by both parties, provide each party with a copy of the signed agreement, and maintain the original of the signed agreement in the Title IX Coordinator's confidential file.

If a mutually agreeable resolution cannot be reached, the Dean of Students or designee shall send each party written notification of that fact and then resume the grievance process with respect to the formal complaint, and shall maintain a copy of the written notification in the Title IX Coordinator's confidential file.

Academic Transcript Notations

As required by the Code of Virginia, the Title IX Coordinator will notify the Registrar to include a notation on the academic transcript of each student who has been (1) suspended for, (2) has been expelled (permanently dismissed) for, or (3) withdraws from the College during an investigation for an offense involving Title IX.

Retaliation

Neither the College or any of its personnel shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing in accordance with this process. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitute retaliation.

The exercise of rights protected under the First Amendment do not constitute retaliation, however, for purposes of this Policy. And, charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

The College must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination.

Educational Program.

The College offers online and in-person educational opportunities to students, staff, and faculty - they include presentations, workshops, seminars, and trainings to help maintain an environment free from discrimination, harassment, and retaliation. First-year students participate in awareness and prevention programming during orientation, examples of those programs include healthy relationships, recognition and reporting of sexual violence to include dating violence, domestic violence, stalking, sexual assault, and other forms of sexual harassment, etc. In addition there is specialized training for student leaders such as by-stander intervention and mandated reporting.

The Title IX Coordinator, Deputy Coordinators, Dean of Students, Provost, and the Director of Athletics shall be responsible for implementing and providing the training for the College community

Annual Review.

The Title IX coordinator, the Deputy Title IX Coordinators, and the Director and the Associate Director of Campus Safety, will review the Policy on at least an annual basis. The review will include evolving legal requirements, evaluating the resources available to parties, checking contact information, and assessing the effectiveness for the policy as written. The Title IX Coordinator shall submit changes to the President and the Board or email the President with an acknowledgement that the policy was reviewed and no changes were needed.

Rev. August 11, 2020