



VCU

RESOURCE AND REPORTING GUIDE FOR EMPLOYEES ACCUSED OF INCIDENTS UNDER THE TITLE IX SEXUAL HARASSMENT POLICY OR THE SEX-BASED MISCONDUCT POLICY

Introduction

VCU is committed to maintaining a safe and non-discriminatory learning, living, and working environment for all members of the university community. To affirm this commitment, the university has developed two policies that address sexual harassment and sex-based misconduct: (1) [Title IX Sexual Harassment Policy - Interim](#); and (2) [Sex-Based Misconduct Policy - Interim](#). These policies are interrelated and must be read together. The Sex-Based Misconduct Policy - Interim applies to sex-based misconduct that does not fall under the scope of the Title IX Sexual Harassment Policy - Interim, including university sexual harassment and sexual exploitation. This policy also applies to incidents of sexual assault, domestic violence, dating violence, and stalking that do not meet the jurisdictional requirements of the Title IX Sexual Harassment Policy - Interim.

All forms of prohibited conduct under these policies are regarded as serious offenses that are harmful to the safety and well-being of our university community. Depending on the nature of the violation, employees who violate these policies may face disciplinary action up to and including termination of employment. Third parties who violate this policy may be permanently barred from VCU, from VCU's education programs or activities, or may be subject to other restrictions.

This document is to supplement the university's Title IX Sexual Harassment Policy - Interim and the Sex-Based Misconduct Policy - Interim and is in compliance with the Violence Against Women Act amendments to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). This information is provided to inform individuals about their rights and options regarding the policies and resources available through both the university and the Richmond community.

The Violence Against Women Act amendments to the Clery Act require colleges and universities to inform individuals of their rights and options regarding incidents of sexual assault, domestic violence, dating violence, and stalking. The information provided about university policies and procedures is not meant to be a substitute for criminal proceedings. Information regarding how to pursue criminal charges can be found in this document, however the University's policies and procedures are not of a criminal nature and there is a fundamental difference between the university's procedures and criminal processes.

Students, faculty, and staff members who are accused of violations of the policies will be given a copy of this document and will be advised of all rights and options available to them. This document and the overarching policies will also be available on the university's website as a reference.

If You Are Accused of Sexual Harassment or Other Sex-Based Misconduct

Common Feelings After Being Named as a Respondent

Emotional responses will vary from individual to individual. Being accused of prohibited conduct can be traumatic and life changing. It is important to remember that your responses are not irrational; they are normal reactions to a difficult situation - being accused of prohibited conduct. Below are some common feelings you may experience.

Shock and Numbness

You may experience feelings of disbelief or denial about what happened. You may feel emotionally detached or drained. Other reactions to the emotional shock may include: crying, anger, laughing nervously, withdrawing, or claiming to feel nothing or be "fine." Often individuals feel overwhelmed to the point of not knowing how to feel or what to do.

Disruption of Daily Life

You may feel preoccupied with thoughts about the incident. It may be difficult to concentrate, participate in daily activities, or focus on work. You may have trouble sleeping, or experience appetite changes, general anxiety, or depression.

Loss of Control

You may feel overwhelmed. You may also feel anxious, scared, or nervous and often have a difficult time concentrating. Decisions that previously were made routinely before now may feel monumental.

Fear

You may fear what may happen and how your life may change. You may be afraid of what other peers or family may say about the situation or if there might be retaliation towards people involved. You may find yourself not knowing who to trust.

Anger

You may have different reasons to feel angry. You may vary in how you express anger. Anger can be vented in safe and healthy ways, or can be internalized, where it may become irritability, anxiety, or depression. Please be careful to avoid unhealthy ways of coping with anger such as alcohol or drug use, cutting, or other self-destructive behavior.

Isolation

You may isolate yourself because you fear rumors or retaliation. You may not want to bother anyone because of embarrassment and fear of others judging you, so you do not talk about the incident or your feelings. Also, you may withdraw or distract yourself from family or friends.

Counseling is available free of charge to VCU employees through Employee Relations and the Employee Assistance Program (804) 828-1510. Anything discussed with a counselor is confidential and will not be shared with anyone without your consent.

A confidential resource, denoted by an asterisk in the chart below, can provide support without the obligation to report information shared to the university or law enforcement (except in order to safeguard your immediate safety). The Title IX Coordinator generally will not disclose your information without your written consent, other than to employees who have a legitimate educational interest in the matter, such as other university staff implementing supportive measures, investigators, or university law enforcement.

Supportive Measures

Supportive measures are individualized services that are designed to restore or preserve equal access to the university's education program or activity. Supportive measures cannot unreasonably burden another party. Supportive measures may include:

- counseling,
- modifications of work schedules,

- campus escort services,
- mutual restrictions on contact between the parties,
- changes in work locations,
- leaves of absence,
- increased security and monitoring of certain areas of the campus,
- and/or other similar measures.

The university will work with you in implementing these measures and will take into consideration your preferences when doing so. If you have further questions about the supportive measures that may be offered, please contact Equity and Access Services (EAS) at (804) 828-1347.

Campus and Community Resources

Please refer to the chart below regarding contact information for reporting and supportive resources.

| EMERGENCY, LAW ENFORCEMENT, & MEDICAL RESOURCES | | | |
|---|---|--------------------------------------|---|
| Emergency: (VCU Police Emergency) | | 911 (804) 828 – 1234 | |
| VCU Police Department You Have Options Program | Non-Emergency | (804) 828 – 1196 | 224 E. Broad St. |
| Richmond Police Department (Campus: 4th Precinct) | Non-Emergency | (804) 626 – 5100 | 2219 Chamberlayne Ave. |
| Henrico County Police Department | Non-Emergency | (804) 501 – 5000 | 7721 E. Parham Rd. |
| Chesterfield County Police Department | Non-Emergency | (804) 748 – 1251 | 9901 Lori Rd. |
| * Employee Health | | (804) 828 – 0584 | 1200 East Broad Street |
| * VCU Health (Main Hospital) | Information Line | 1-800-762-6161 | 1250 E. Marshall St. |
| * VCU Health (Critical Care Hospital) | Emergency Department/ Forensic Nursing | (804) 828 – 5250 | 1213 E. Clay St. |
| St. Mary's Hospital | Information Line Emergency Department/ Forensic Nursing | (804) 285 – 2011 (804) 281 – 8184 | 5801 Bremo Rd. |
| UNIVERSITY RESOURCES | | | |
| VCU Police Department | Emergency Non-Emergency | 911 (804) 828 – 1196 | 224 E. Broad St. |
| Employee Relations | Either campus | (804) 828 – 1510 | Email: emprel@vcu.edu |
| Title IX Coordinator | Malorie J. Yeaman | (804) 828 – 1347 | 912 W. Grace St, 2nd Floor |
| * Employee Health | | (804) 828 – 0584 | 1200 East Broad Street |

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|--|--|--|---|
| *Employee Assistance Program | COVA Care and COVA HDHP - Anthem Blue Cross and Blue Shield , COVA HealthAware – Aetna Kaiser Permanente HMO | Member Services: 1-855-223-9277 1-888-238-6232 (866) 517-7042 | http://www.anthemep.com/ http://www.covahealthaware.com/ http://www.achievesolutions.net/kaiser |
| RamStrong | | | 600 West Franklin Street |
| *Advocacy Services | | (804) 828 – 6200 | 907 Floyd St., Suite 238 |
| Visa and Immigration Services | Monroe Park Campus | (804) 828 – 0595 | 912 W. Grace Street Grace St. Center, 4th Floor |
| Campus Security Authority: | See list of Campus Security Authorities and their contact information in the Annual Security & Fire Safety Report at: https://police.vcu.edu/media/police/assets/documents/facts--reports/CampusSafetyReport.pdf | | |
| COMMUNITY RESOURCES | | | |
| *Richmond Regional Hotline (Operated by YWCA, Safe Harbor, and other community partners): | 24-hour Crisis Line (Text or Call) | (804) 612 – 6126 | |
| * Virginia 24/7 Hotline | 24-hour Crisis Line | (804) 793 – 9999 | |
| *YWCA Richmond | Main Office Line (To access services, use Regional Hotline number) | (804) 643 – 6761 | 6 N. 5th St. |
| *Safe Harbor | Main Office Line (To access services, use Regional Hotline number) | (804) 249 – 9470 | 2006 Bremo Rd. Suite 201 |
| Legal Aid | | (804) 648 – 1012 | |
| <i>*Items denoted with an asterisk (*) are considered Confidential Resources.</i> | | | |

Amnesty for Certain Infractions

To encourage both reporting and cooperation in investigations when a formal complaint is filed and in accordance with Virginia Code § 23.1-808, the university will not pursue disciplinary action based on disclosure of personal consumption of drugs or alcohol where such disclosures are made in connection with a good faith report or an individual's cooperation in an investigation under the policy. Because alcohol and drug misuse can negatively impact an individual's physical and emotional wellbeing, the university may still refer an employee for health or medical intervention related to their alcohol or drug use.

Retaliation Policy

University policies applicable to students and employees prohibit retaliation against individuals who file a complaint. Retaliation is any materially adverse action taken against an individual or group of individuals for reporting an alleged violation of university policy, filing a formal complaint, filing an external complaint, participating or refusing to participate in an investigation or grievance process, opposing in a reasonable manner an action believed to constitute a violation of the policy, or assisting in any manner in an investigation and grievance process. Retaliation includes intimidation, threats, coercion, harassment, discrimination, or any other conduct against any individuals in a manner that

would discourage a reasonable person from engaging in activity protected under the policy.

Resolution Options

Upon initiation of an investigation, EAS will reach out to the Respondent to discuss options and resources. During the meeting, the Respondent will be provided with information about informal resolution and the formal investigation process, as applicable.

Once a Complainant files a formal complaint, the university may move forward with either Informal Resolution or a Formal Investigation. A formal complaint is defined as a document filed by a Complainant (or signed by the Title IX Coordinator) alleging a violation of Prohibited Conduct against a Respondent and requesting the university investigate. Virginia's Department of Human Resources Management (DHRM) dictates that personal information for employees, including records concerning grievances or complaints, may not be disclosed to third parties without the written consent of the subject employee, except as required by subpoena or court order. All student records received or created regarding the complaint, allegations, and investigation or resolution are private and protected from disclosure in accordance with the Family Educational Rights and Privacy Act (FERPA).

Informal Resolution

Informal resolution is an option for resolving a formal complaint under the policy. In an informal resolution, the parties reach a mutual agreement without the university conducting or concluding, as applicable, an investigation and/or hearing. Informal Resolution includes a variety of informal resolution options. Methods of informal resolution may include, but are not limited to:

- conflict resolution, mediation, restorative justice, facilitated conversations, counseling, training and/or educational conversations or projects.

Informal resolution is not appropriate for all matters. The Title IX Coordinator has the discretion to determine whether a matter is appropriate for informal resolution and to determine the method of informal resolution that may be appropriate. Any informal resolution must adequately address the concerns of the complainant and the respondent, as well as the overall interest of the university in stopping, remedying and preventing the misconduct. Informal resolution is not available to resolve allegations that an employee sexually harassed a student.

Any agreement reached during informal resolution must be approved by the Title IX Coordinator. If the parties reach an agreement that is approved by the Title IX Coordinator, the formal complaint is considered resolved. The matter will be closed by the Title IX Coordinator, with both parties receiving simultaneous written notification of the final outcome. Failure to abide by a resolution agreement that is reached by the parties at the conclusion of the informal resolution process may result in the recommencement of the grievance process and/or disciplinary action. If no agreement is reached, the formal complaint will be referred back to the Title IX Coordinator for further action. The outcome of formal complaints resolved by informal resolution is not appealable.

The time frame for completing informal resolution may vary, but the university will seek to complete the process within thirty (30) business days of a party's request for informal resolution. The parties will be notified in writing of any extension to the thirty (30) business day time frame as well as the reason for the extension.

Formal Investigation

VCU offers formal investigations into allegations of applicable policy violations for Prohibited Conduct as defined within the policy and at the end of this document. Formal investigations involve an objective evaluation of all relevant evidence obtained. This includes evidence that supports that the respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation.

During the investigation, the parties will have equal opportunity to:

- be heard,
- to present witnesses - including fact and expert witnesses,
- to gather and present inculpatory and exculpatory evidence, and
- to submit questions that they believe should be directed by the investigator to each other and/or to any witness.

The parties will not be restricted from discussing the allegations under investigation. The investigator will notify and seek to meet separately with the Complainant, the Respondent, and witnesses. The investigator will gather other relevant and available evidence and information, including:

- electronic or other records of communication between the parties and/or witnesses (via voicemail, text, email and social media),
- photographs (including those stored on computers and smartphones)
- and medical records (subject to the consent of the applicable party).

The university bears the burden of proof and the burden of gathering evidence sufficient to make a determination regarding responsibility. The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process will receive training on the definition of sexual harassment and sex-based misconduct, the scope of the university's educational program and activities, 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. All hearing panel members will receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions about the complainant's sexual predisposition or prior sexual behavior are not relevant. Investigators will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Parties involved in the formal investigation will receive a Notice of Investigation, the opportunity to review the evidence and the preliminary investigative report, and the opportunity to submit requests for witnesses to be interviewed and evidence to the assigned investigator.

Under the [Title IX Sexual Harassment Policy - Interim](#), the investigator will prepare a final investigation report that fairly summarizes the relevant evidence, including relevant elements of the parties' responses to the preliminary investigation report and evidence inspection and review. The final investigation report will not include findings of whether the conduct occurred as alleged or whether a policy violation occurred. These determinations will be made at a hearing. The investigator will share the final investigation report with the Title IX Coordinator who will send the final investigation report and exhibits to the parties and their advisers, if any, in an electronic format or hard copy, at least ten (10) business days prior to the hearing. The parties will have five (5) business days from the issuance of the final investigation report to provide a written response to the Title IX Coordinator. Any responses received will be shared by the Title IX Coordinator with the other party.

Under the [Sex-Based Misconduct Policy - Interim](#), the investigator will prepare a final investigation report that fairly summarizes the relevant evidence, including relevant elements of the parties' responses to the preliminary investigation report and evidence inspection and review. The final investigation report will include the investigator's findings as to whether the conduct occurred as alleged and whether a policy violation occurred. The investigator will use the preponderance of the evidence standard in reaching a determination regarding responsibility. The investigator will submit the final investigation report to the Title IX Coordinator, who will issue a Notice of Investigative Finding simultaneously to the parties. The notice will:

1. identify the allegations and the policy violations for which the respondent was found responsible or not responsible;

2. explain the procedures and permissible bases for contesting the investigator's findings;
3. and, attach a copy of the final investigation report and exhibits.

Hearing Process

Per the [Title IX Sexual Harassment Policy - Interim](#), once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing. The hearing will be held no less than ten (10) business days from the date the final investigation report is transmitted to the parties. In limited circumstances, the parties and the Hearing Officer may agree to an expedited time frame.

The hearing is an opportunity for the parties to:

- address the hearing panel,
- address the other party and/or witnesses through indirect cross-examination by their adviser, and
- provide information to the hearing panel that is necessary to determine whether the conduct occurred as alleged in the formal complaint and whether the respondent violated the policy.

The hearing panel is composed of two members who serve and a panel Chair. All persons serving on the hearing panel, including the Hearing Officer, will be impartial and free from bias or conflict of interest. At the conclusion of the hearing, the Hearing Officer will issue a written determination regarding responsibility to both parties simultaneously within ten (10) days of the hearing.

Under the [Sex-Based Misconduct Policy - Interim](#), the Title IX Coordinator will refer a case for a hearing when:

1. a party contests one or more of the investigator's findings regarding responsibility or
2. when a Respondent accepts all of the findings of responsibility and the parties and the university are unable to come to an agreement as to the appropriate sanctions.

If the respondent contests one or more of the investigator's finding(s), the respondent shall submit a written statement explaining the reasons for contesting consistent with the appropriate grounds to contest in Section 15(l)(i) of the policy. The Title IX Coordinator will ensure that the complainant has an opportunity to review and respond in writing to any such statement within five (5) business days.

The hearing will be held no less than ten (10) business days following receipt of a party's response to a contesting statement or the expiration of the time frame for providing such a response.

When a party contests the investigator's findings regarding responsibility for an alleged violation of the policy, a hearing panel will convene to determine whether the preponderance of the evidence standard was appropriately applied by the investigator. In determining whether the standard was appropriately applied, the hearing panel will consider:

1. whether the concerns stated by the contesting party raise substantial doubt about the thoroughness, fairness and/or impartiality of the investigation; and, if not,
2. whether there is sufficient evidence to support the investigator's finding(s) by a preponderance of the evidence.

The panel will be composed of three members, including one member who serves as the Hearing Officer. This hearing is not a re-investigation of a formal complaint. Rather, the hearing is an opportunity for the parties to address the hearing panel about the investigator's decision. This can include consideration of:

- whether the preponderance of the evidence standard was appropriately applied by the investigator,
- whether the investigation was thorough, fair and impartial, and

- whether there is sufficient evidence to support the investigator’s findings regarding responsibility by a preponderance of the evidence.

The parties may address any information in the final investigation report, including: exhibits, the evidence that was subject to the parties’ inspection and review, and the contesting statement and any responses submitted.

The Hearing Officer will provide the panel’s written determination to the parties simultaneously within ten (10) business days of the hearing. The determination regarding responsibility becomes final after appeal on the date the Appellate Officer provides the parties with the written determination of the results of the appeal. If an appeal is not filed, the determination is final on the date by which an appeal would no longer be considered timely.

Appeals

A party may appeal:

1. the dismissal of a formal complaint and/or
2. a determination regarding responsibility

Appeals are initiated by submitting a written appeal request (“Request for Appeal”) to the Title IX Coordinator within five (5) business days of the date of the Notice of Dismissal or Hearing Determination. The party who submits a Request for Appeal is considered the “Appellant” and the responding party is considered the “Appellee.” If a Request for Appeal is not received within five (5) business days, the outcome will be considered final and the grievance process will be permanently closed.

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Appeals are limited to the following grounds:

- i. Procedural irregularity that affected the outcome of the matter;
- ii. New evidence that was not reasonably available at the time of the determination, that could affect the outcome of the matter; or
- iii. The Title IX Coordinator or investigator(s), Hearing Officer or other member of the hearing panel had a conflict of interest of bias against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Although a party may disagree with a decision, that alone is not a basis for appeal. Instead, the Request for Appeal must specifically explain the reasons for appealing and how the grounds to appeal are met.

Sanctions

The policy prohibits a broad range of conduct, all of which is serious in nature. Where there is a finding of responsibility, the hearing panel may impose one or more sanctions. In keeping with the university’s commitment to foster an environment that is safe, inclusive and free from discrimination and harassment, the hearing panel shall have wide latitude in the imposition of sanctions tailored to the facts and circumstances of each complaint, the impact of the conduct on the Complainant and university community and accountability for the Respondent.

Sanctions are effective immediately unless otherwise specified by the university. They may include any of the sanctions below, individually or in combination:

- **Termination of Employment:** Permanent separation of the employment relationship between the university and the respondent.
- **Suspension/Administrative Leave:** Loss of work for a defined period of time, with or without

pay, during which respondent will not be allowed on university premises or permitted to participate in, or supervise, any university educational program or activity.

- **Loss of Merit Pay Increase:** Ineligibility for a merit pay increase for a defined period of time.
- **Counseling:** Verbal or written communication that conveys that an employee's conduct was improper and must be corrected.
- **Written Notice or Warning:** Formal disciplinary action that has been taken in response to misconduct. Formal disciplinary actions are placed in an employee's personnel record.
- **Demotion:** Change in position with lower qualifications and pay.
- **Loss of Supervisory Titles and/or Responsibilities:** Loss of title and/or the ability to supervise other employees or students, which may have an effect of changing an employee's job classification status.
- **Campus Ban:** Prohibits access to all or a portion of the VCU campus.

Resolution Timeframe

The university will make a good faith effort to complete the grievance process within a ninety to one hundred twenty (90-120) business day time period, including appeal. This timeframe may be temporarily delayed or extended for good cause, with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include, but is not limited to:

- the absence of a party, a party's adviser, or a witness;
- concurrent law enforcement activity;
- the need for language assistance or accommodation of a disability;
- initiation of the informal resolution process;
- or the complexities of a case (including the number of witnesses and volume of information provided by the parties).

Advisers

The parties may have an adviser of their choice to accompany them to all meetings, interviews, and hearings held in connection with the grievance process under both the Title IX Sexual Harassment and the Sex-Based Misconduct Policies. An adviser of choice may include a friend, mentor, family member, attorney, or any other individual a party chooses. The role of the adviser is to advise, support, and/or consult with them throughout the resolution process. An adviser may not be another party in the matter, a participating witness or otherwise have any role that would create a conflict of interest.

The university will not limit the choice or presence of an adviser for either the Complainant or the Respondent for any meeting or proceeding in the grievance process. Advisers for the parties may not speak on behalf of the party, participate in, or disrupt, any proceeding during the grievance process. The sole exception is that for matters under the Title IX Sexual Harassment Policy - Interim, the advisor for a party will conduct cross-examination in accordance with this policy.

An adviser can assist a party by:

- taking notes,
- providing emotional support and reassurance,
- organizing documentation, or
- consulting directly with a party in a way that does not disrupt or delay the process.

An adviser whose presence is deemed to be abusive, disruptive or improperly interfering with the meeting or proceeding will be required to leave. This determination is at the sole discretion of the university official conducting the meeting or proceeding. Advisers asked to leave a meeting or proceeding may be prohibited from participating in future meetings/proceedings.

Definitions

The following definitions can be found in the University's [Title IX Sexual Harassment Policy - Interim](#) or the [Sex-Based Misconduct Policy - Interim](#).

Complainant is defined as the individual who is alleged to have been subjected to conduct prohibited under the policy.

Respondent is defined as the individual who has been reported to be the perpetrator of conduct that could violate the policy.

Sexual Assault is defined as an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. A forcible sex offense is any sexual act directed against another person, without the consent of the complainant, including instances in which the complainant is incapable of giving consent. Rape and fondling are both forcible sex offenses. A nonforcible sex offense is unlawful, nonforcible sexual intercourse, specifically, incest and statutory rape. Sexual assault includes the following offenses:

Rape is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person without the complainant's consent or where the complainant is incapable of giving consent because of their temporary or permanent mental or physical incapacity.

Incest is defined as Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited under Virginia law.

Fondling is defined as the touching of the private body parts of another person for the purpose of sexual gratification, without the complainant's consent, including instances where the complainant is incapable of giving consent because of age or because of a temporary or permanent mental or physical incapacity. "Private body parts" include genitalia, groin, breast or buttocks, or the clothing covering them.

Statutory Rape is defined as Non Forcible sexual intercourse with a person who is under the statutory age of consent in Virginia.

Affirmative Consent Voluntary expression of willingness, permission or agreement to engage in specific sexual activity. Consent must be clear and communicated by mutually understandable words or actions which a reasonable person would interpret as a willingness to participate in mutually agreed-upon sexual acts. Silence, passivity or lack of resistance do not imply consent, and relying solely on non-verbal communications may result in a violation of the policy. It is important not to make assumptions about whether a sexual partner is consenting. If confusion or ambiguity arises during sexual activity, it is essential that each participant stop and verbally clarify the other's willingness to continue.

Prior consent does not imply consent to future sexual acts; even in the context of a prior or current relationship. Consent to one form of sexual activity does not automatically imply consent to other forms of sexual activity. Consent is often given with certain explicit or implied boundaries, such as agreeing to have sexual intercourse, but only with the use of a condom. Violating boundaries of consent by engaging in behavior beyond that which was agreed is non-consensual conduct.

A person who is in a state of incapacitation or whose agreement was made by force or threat of force cannot consent to sexual activity. The use of alcohol and/or drugs by the person initiating sexual

activity is not an excuse for failing to obtain consent.

Consent can be withdrawn at any time during a sexual encounter. An individual who seeks to withdraw consent must communicate, through clear words or actions, that they no longer wish to engage in sexual activity. Once consent is withdrawn, the sexual activity must stop immediately.

The person who initiates a sexual act is responsible for obtaining consent for that act. Consent may be ratified by word or action at some point during the sexual encounter or thereafter, but clear communication from the outset is strongly encouraged.

When there is a dispute as to whether a specific sexual activity was consensual, the university will assess whether the person initiating the sexual activity, knew, or should have known, that the sexual activity was not consensual. Proof of consent or non-consent is not a burden placed on either party in an investigation and resolution under the policy. Instead, the burden remains on the university to determine whether the policy was violated.

Force is defined as the use of physical violence, threats, intimidation and/or coercion to cause or make a person engage in an activity that they would not have otherwise agreed to or did not want to engage in. The presence of force during sexual activity can negate indications of consent.

- **Physical Violence** is defined as when a person exerts control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, strangulation and brandishing or using any weapon.
- **Threats** are defined as words or actions that would compel a reasonable person to engage in unwanted activity. Examples include threats to harm a person physically, to reveal private information to harm a person's reputation or to cause a person academic or economic harm.
- **Intimidation** is an implied threat that causes reasonable fear in another person. Examples of intimidation include, but are not limited to: destroying property, brandishing a weapon, blocking an exit to cause fear. A person's physical size, alone, may not constitute intimidation; however if the person's size is used in a method to instill fear, it may constitute intimidation.
- **Coercion** is defined as an unreasonable amount of pressure to compel a person to take an action, make a choice or allow an act to happen that they would otherwise not choose or to which they would not give consent. Coercion is more than an effort to persuade, entice or attract another person to have sex. When a person makes clear that they do not want to participate in a particular form of sexual activity, that they want to stop, or that they do not want to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion was used, the frequency of the application of the pressure, the intensity of the pressure, the degree of isolation of the person being pressured, and the duration of the pressure are all relevant factors.

Incapacitation is defined as the state in which a person's perception or judgment is so impaired that they lack the cognitive capacity to make or act on conscious decisions, and, specifically, that a person lacks the ability to make an informed and rational decision about whether or not to engage in sexual activity. A person who is incapacitated is unable, temporarily or permanently, to give affirmative consent because they are mentally or physically helpless, asleep, unconscious, or unaware that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition. A person who is incapacitated cannot give affirmative consent even if they appear to be a willing participant to the sexual activity.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs or intoxication alone is insufficient to establish incapacitation. Incapacitation is a state

beyond drunkenness or intoxication. In addition, an alcohol-induced “blackout” is not necessarily indicative of incapacitation. An alcohol-induced blackout is defined as amnesia for the events of any part of a drinking episode without loss of consciousness. It is characterized by memory impairment during intoxication in the relative absence of other skill deficits. It is not to be confused with “passing out.” Given that individuals are conscious and can appear unimpaired during an alcohol-induced blackout, an incapacitation analysis requires evaluation of other observed signs of impairment.

The impact of alcohol and other drugs varies from person to person. It is often difficult to tell when someone has moved from being intoxicated to incapacitated. A person who themselves is under the influence of alcohol or other drugs may have difficulty assessing whether someone has progressed from intoxication to incapacitation. If there is any question or doubt as to the level or extent of a potential sexual partner’s intoxication or impairment, the best course of action is to forgo or cease any sexual activity.

Although every individual may manifest signs of incapacitation differently, typical signs or indications that a person is incapacitated or maybe approaching incapacitation include, but are not limited to:

- Slurred or incomprehensible speech
- Difficulty walking or standing
- Trouble keeping eyes open
- Combativeness or emotional volatility
- Confusion or lack of understanding
- Disorientation to place, time, events, and/or location
- Vomiting
- Incontinence
- Intermittent consciousness

When evaluating affirmative consent in cases of alleged incapacitation, incapacitation can only be found when the person initiating the sexual activity knew or reasonably should have known that the other party was incapacitated when viewed from the position of a sober, reasonable person.

Dating Violence is defined as physical or sexual violence (or threats thereof) committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship will be determined based on the complainant’s statement and with consideration of the length of the relationship, the type of the relationship, and the frequency of the interaction between the person involved in the relationship. Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence is defined as physical or sexual violence (or threats thereof) committed by:

- a current or former spouse or intimate partner of the complainant;
- a person with whom the complainant shares a child in common;
- a person who is cohabitating with, or who has cohabitated with, the complainant as a spouse or intimate partner;
- a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Virginia; or
- any other person against an adult or youth complainant who is protected from that person’s acts under the domestic or family laws of Virginia. Individuals are not covered within the scope of this definition solely by virtue of their status as a roommate or former roommate in university housing or as a co-tenant or former co-tenant in an off-campus residence shared with other students.

Stalking is defined as engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

For the purpose of this definition:

- “course of conduct” means two or more acts, including, but not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property
- “reasonable person” means a reasonable person under similar circumstances and with similar identities to the complainant
- “substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling

Sexual Harassment is defined as conduct on the basis of sex that satisfies one or more of the following:

- An employee of the University conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;
- 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 University’s education program or activity; or
- Sexual assault, Dating violence, Domestic violence, or Stalking, as defined by this Regulation.

Sexual Exploitation is defined as taking non-consensual sexual advantage of another person, excluding behavior that constitutes one of the other forms of sex-based misconduct. Examples include, but are not limited to:

- Causing or attempting to cause incapacitation (through alcohol, drugs or any other means) for the purpose of compromising another person’s ability to give affirmative consent to sexual activity;
- Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means without the consent of all participants engaging in the sexual activity (e.g., Skype or live streaming of images);
- Engaging in voyeurism (e.g., watching private sexual activity without the consent of all participants or viewing another person’s private body parts in a place where that person would have a reasonable expectation of privacy);
- Recording or photographing private sexual activity and/or a person’s private body parts;
- Disseminating or posting images of private sexual activity and/or a person’s private body parts;
- Prostituting another person; or,
- Engaging in indecent exposure (e.g., intentionally exposing one’s private body parts to someone without their consent or engaging in sexual activity in public and witnessed by a non-consenting person).