



VCU Title IX & Sex- Based Misconduct Policies

EQUITY AND ACCESS SERVICES

Learning Outcomes & Content Warning

- Participants will review VCU's sexual harassment policies and the distinctions between them.
- Participants will also review the options for resolution of alleged sexual harassment under each policy.
- The content will include definitions of sexual harassment, sexual assault and similar conduct.



Contents

- 01 Definitions
- 02 Jurisdiction
- 03 Resolution Processes
- 04 Determinations
- 05 Sanctioning
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Overview of Prohibited Conduct

Title IX Sexual Harassment Policy



Title IX Definitions



Sexual Harassment

Sexual Assault

Dating Violence

Domestic Violence

Stalking

Retaliation

Sexual Harassment

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- For the purpose of Title IX and this policy, sexual harassment is conduct on the basis of sex that satisfies one or more of the following:
 - an employee conditioning the provision of an aid, benefit, or service of the university 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 programs or activities; and/or,
 - sexual assault, dating violence, domestic violence or stalking.



Sexual Assault

- 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.

Dating Violence

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- 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

- Physical or sexual violence (or threats thereof) committed by:
 - (i) a current or former spouse or intimate partner of the complainant;
 - (ii) a person with whom the complainant shares a child in common;
 - (iii) a person who is cohabitating with, or who has cohabitated with, the complainant as a spouse or intimate partner;
 - (iv) a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Virginia; or
 - (v) 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

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- 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.

Retaliation

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- Any materially adverse action taken against an individual or group of individuals for reporting an alleged violation of the 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 for the purpose of interfering with any right or privilege secured by Title IX, meaning activity that would discourage a reasonable person from engaging in activity protected under the policy.
 - For the purposes of this definition, “materially adverse action” entails actions that have an adverse effect on the working, academic or VCU-controlled living environment of an individual or actions that hinder or prevent the individual from effectively carrying out their VCU responsibilities.



Sex-Based Misconduct Policy Definitions



Sexual Harassment

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- Conduct on the basis of sex that satisfies one or more of the following:
 - unwelcome verbal or physical conduct that is sufficiently severe, persistent or pervasive and objectively offensive that it unreasonably interferes with, denies, or limits an individual's ability to participate in or benefit from the university's education programs and activities or the individual's employment;
 - unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature by an individual not employed by the university in which submission to or rejection of such conduct is either an explicit or implicit term or condition of an individual's employment or advancement in employment, academic work or advancement in an academic program, or basis for participation in any aspect of a VCU program or activity or decisions affecting the individual; and/or
 - sexual assault, dating violence, domestic violence or stalking.

Sexual Exploitation

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- 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)

Jurisdiction



Title IX Jurisdiction

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Location: in the context of a VCU program or activity (i.e. on-campus, VCU owned or controlled property, during an online class, etc.)

Complainants: VCU students, faculty, and staff

Respondents: current affiliates of VCU

Conduct: common prohibited conduct categories per the policies

Location: any, if the conduct effectively denies the Complainant access to VCU's educational program or activity or if the conduct of an affiliated respondent may have an effect on the university community

Complainants: Any

Conduct: includes sexual exploitation and a different definition of sexual harassment

Sex-Based Misconduct Jurisdiction



Formal Complaint

- Formal resolution processes must begin with a formal complaint.
- A formal complaint must:
 - Allege conduct that could constitute a violation of policy
 - Include that the Complainant wishes to proceed with an investigation
 - Include a digital signature from the Complainant

Dismissals

Mandatory Dismissals

The Title IX Coordinator shall dismiss a formal complaint or any allegations therein if, at any time during the grievance process, upon determining that:

- The conduct alleged would not constitute Title IX sexual harassment even if proved true;
- The conduct did not occur in a VCU education program or activity and/or the university did not exercise substantial control of the respondent at the time of the events giving rise to the complaint;
- The conduct did not occur against a person in the United States; and/or,
- At the time of filing a formal complaint, the complainant is not participating in or attempting to participate in a VCU education program or activity.

Discretionary Dismissals

The Title IX Coordinator may dismiss a formal complaint or any allegations therein if, at any time during the grievance process:

- A complainant submits written notification that they would like to withdraw their formal complaint or any allegations therein;
- The respondent is no longer enrolled in or employed by the university; or
- Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Resolutions, Sanctions, & Appeals



Options for Resolution

Supportive Measures

Available regardless of interest in another resolution process. Includes no-contact directives, academic support, housing modifications, etc.

Informal Resolution

Parties may agree upon a resolution to the complaint without a formal investigation. Facilitated by a third party, informal resolution often includes mediation or other restorative practices.

Formal Resolution

A formal investigation into the allegations. Parties may submit evidence and witnesses to be interviewed. Parties can also review a preliminary and final report and give feedback.

Supportive Measures



No Contact Directives

Academic Support

Advocacy Referrals

Assistance with Law Enforcement

Safety Planning

Housing or Work Modifications

Informal Resolution

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- Informal resolution resolves a formal complaint by the parties reaching a mutually agreed upon resolution that does not involve a full investigation and adjudication. Informal resolution is voluntary and the university will not compel a complainant or a respondent to engage in this resolution option.
- Informal Resolutions can include:
 - Conflict Resolution
 - Restorative Justice
 - Mediation
 - Facilitated Conversations
 - Counseling
 - Training
 - Educational Conversations or Projects



Formal Investigation

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- Initiated by a Formal Complaint and includes the following procedural steps:
 - Notice of Investigation
 - Interviews of parties and witnesses
 - Collection of Evidence
 - Preliminary Report
 - Final Report
 - Hearing (depending on the policy and outcome)



Hearings

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	Title IX	Sex-Based Misconduct
What information is included?	The investigator's Final Investigation Report	The investigator's Final Investigation Report
What triggers the hearing?	The investigator's Final Investigation Report	One of more parties contesting the investigator's findings
Who makes a decision on responsibility?	Hearing Panel	Investigator makes a finding
Who talks to parties/witnesses?	Hearing panel or parties' adviser	Hearing panel
Who has advisers?	Both parties are required to have an adviser	Both parties may bring an adviser
Who determines sanctioning?	Hearing panel	Designee
What can be appealed?	Findings or sanctions	Findings

Sanctions

Student Respondents

- Expulsion
- Revocation of degree
- Withholding degree
- Revocation of admission
- Suspension
- Deferred suspension
- Disciplinary probation
- Censure
- Campus ban
- Loss of university privileges
- Restitution

Employee Respondents

- Termination of employment
- Suspension/ administrative leave
- Loss of merit pay increase
- Counseling
- Written notice or warning
- Demotion
- Loss of supervisory title/ responsibilities
- Campus ban

Remedies

Imposition or continuation of a No Contact Directive

Referral to counseling or health services

Referral to Employee Assistance Program

Continuing any supportive measures previously provided

Required training or education for individuals

Broad-based training or educational programming to the university community

Permanent modifications to housing assignments

Permanent modifications to work assignments

Academic support services

Increased monitoring, supervision and/or security at targeted locations where misconduct occurred or is likely to reoccur

Appeals

Grounds for Appeal

- Procedural irregularity that affected the outcome of the matter;
- 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
- The Title IX Coordinator or investigator(s), Hearing Officer or other member of the hearing panel had a conflict of interest or bias against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Appellate Review

The Appellate Officer will review the request for appeal to determine if the appeal is 1) timely and 2) based on one of the limited grounds for appeal.

The Appellate Officer shall render a decision in compliance with Section 19 of the Title IX Sexual Harassment Policy.

Thank you!

WE APPRECIATE YOU!

