

VIRGINIA UNION UNIVERSITY



2022-2024 Sexual Misconduct Policy and Procedures

Virginia Union University has prepared this report in Pursuant to Chapter 737 of the 2015 Acts of Assembly, each institution of higher education and the State Board for Community Colleges shall certify to the State Council of Higher Education for Virginia (SCHEV) that it has reviewed its sexual violence policy and updated it as appropriate.

**VIRGINIA UNION UNIVERSITY
SEXUAL MISCONDUCT POLICY AND PROCEDURES**

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VIRGINIA UNION UNIVERSITY
SEXUAL MISCONDUCT POLICY AND PROCEDURES

IF YOU OR SOMEONE YOU KNOW MAY HAVE BEEN A VICTIM OF SEXUAL ASSAULT OR ANY OTHER TYPE OF SEXUAL MISCONDUCT PROHIBITED UNDER THIS POLICY, YOU ARE STRONGLY ENCOURAGED TO SEEK IMMEDIATE ASSISTANCE FROM ONE OR MORE OF THE SOURCES IN EXHIBIT A OF THIS POLICY.

THE UNIVERSITY POLICE DEPARTMENT IS LOCATED IN PICKFORD HALL, G-7 AND IS AVAILABLE BY PHONE AT 804-257-5777. UNIVERSITY SECURITY OFFICERS ARE AVAILABLE 24/7.

ARTICLE I. INTRODUCTION

Section I.1 Prohibition Against Sex Discrimination.

Virginia Union University (the “University”) prohibits Sexual Misconduct. The University provides and is committed to maintaining programs, activities, and an educational and work environment founded on civility and respect, where no one is unlawfully excluded from participation in, denied the benefits of, or subjected to discrimination in any University program or activity on the basis of gender, sex, sexual orientation, sexual identity, gender identity, or gender expression (“sex discrimination”).

Sexual Misconduct¹, as defined by this SEXUAL MISCONDUCT POLICY AND PROCEDURES (this “Policy”) and which includes gender-based and sexual harassment and sexual violence, is a form of sex discrimination that may deny or limit an individual’s ability to participate in or benefit from University programs or activities. Sexual Misconduct is inconsistent with the values and standards of the University community, is incompatible with the safe, healthy environment that the University community expects and deserves, and will not be tolerated. Sexual Misconduct and Retaliation, as defined in this Policy, are prohibited. Violations of this Policy may result in the imposition of sanctions up to and including termination, dismissal, or expulsion.

It is the policy of the University to provide educational, preventive, and training programs regarding Sexual Misconduct; to encourage reporting of incidents of Sexual Misconduct; to take appropriate action to prevent incidents of Sexual Misconduct from denying or limiting an individual’s ability to participate in or benefit from the University’s programs; to make available timely services for those who have been affected by Sexual Misconduct; and to provide prompt

¹ This policy also prohibits sexual violence as defined by Virginia Code which means physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent.

and equitable methods of investigation and resolution to stop discrimination, remedy any harm, and prevent its recurrence.

The University is committed to fostering a community that promotes timely and fair resolution of Sexual Misconduct cases. To that end, the University has defined Sexual Misconduct broadly to include any unwelcome conduct of a sexual nature, and *the University will investigate all allegations of Sexual Misconduct.*

However, not all unwelcome conduct of a sexual nature rises to the level of warranting adjudication and/or discipline according to this Policy. Although the University will investigate all allegations of Sexual Misconduct, this Policy uses the term “Actionable Sexual Misconduct,” as defined in Exhibit B, to identify those acts of Sexual Misconduct that do warrant adjudication under, and discipline pursuant to, this Policy.

Section I.2 Scope and Applicability of This Policy.

(a) Jurisdiction (the people, places, and types of conduct covered by this Policy).

This Policy applies to any allegation of Sexual Misconduct made by or against a student or an employee of the University or a third party, regardless of the sex, sexual orientation, sexual identity, gender, gender expression, or gender identity of any party and wherever the misconduct occurs:

- (i)** On University property, or
- (ii)** Off University property, if the conduct giving rise to the allegation is related to the University’s academic, educational, athletic or extracurricular programs or activities.

Please note that, while the University will investigate and address allegations by and against individuals who are neither students nor employees of the University, third-party complainants and respondents may not be afforded the same procedural rights under this Policy as employees and students, and the University may have limited jurisdiction over third-party respondents.

This Policy was drafted pursuant to and complies with, all applicable federal, state, and local laws and regulations, including but not limited to Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. § 1092(f)), as revised by the implementing regulation 34 C.F.R. Part 668 (effective July 1, 2015) of the Violence Against Women Act (VAWA) (42 U.S.C. § 13926); The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232(g); 34 C.F.R. Part 99); and Virginia Code Ann. §§ 23-9.2:15, 23-9.2:16, 23-9.2-17 (effective July 1, 2015).

In the case of allegations of Sexual Misconduct, unless otherwise stated, this Policy supersedes and applies in lieu of all other procedures and policies regarding, and references to, sexual misconduct set forth in any other document containing University policies and/or procedures.

- (b) Period of Limitations on Reporting Sexual Misconduct.** Sexual Misconduct may be reported at any time, regardless of the length of time between the alleged Sexual Misconduct and the making of the report. However, the University strongly encourages individuals to report Sexual Misconduct promptly in order to preserve evidence for a potential legal or disciplinary proceeding. A delay in filing a Complaint may compromise the subsequent investigation, particularly if neither the alleged victim nor the Respondent is employed by the University or enrolled as a student at the time.

Section I.3 Definitions Applicable to This Policy.

Capitalized terms used in this Policy have the meanings given to them in Exhibit B.

[This policy continues on the next page.]

ARTICLE II. REPORTING POLICIES AND PROTOCOLS²

How and Where to Report Sexual Misconduct

For information regarding seeking medical assistance and emotional support, as well as important contact information for local law enforcement agencies and medical providers, see Exhibit A attached to this Policy.

Because Sexual Misconduct may, in some instances, constitute both a violation of University policy and criminal activity and because the University grievance process is not a substitute for instituting legal action, the University encourages individuals to report alleged Sexual Misconduct promptly to campus officials and to law enforcement authorities, where appropriate.

Individuals have the option not to report alleged Sexual Misconduct to campus officials or law enforcement authorities. The University respects the individual's decision in regards to reporting; however, subject to the Confidentiality provisions outlined in Article III of this Policy, if information about Sexual Misconduct comes to the attention of the University, the University (1) may start an investigation even in the absence of a filed Complaint and/or (2) may notify appropriate law enforcement authorities if required or warranted by the nature of the information of which it becomes aware.

Section II.1 Reporting to Local Law Enforcement.³

Individuals may file a criminal complaint directly with local law enforcement agencies by dialing 911.

Individuals also may contact the University's Title IX Coordinator for assistance in filing a complaint with local law enforcement. See Exhibit A for the Title IX Coordinator's contact information.

Individuals who make a criminal complaint may also choose to pursue a University Complaint simultaneously. Neither the results of a criminal investigation nor the decision of law enforcement

² Note that individuals have an obligation under Virginia law to report certain abuse (known or suspected) of children to Commonwealth authorities. Please be aware that a disclosure pursuant to this Policy does not satisfy your obligation to report to Commonwealth authorities. The mandatory reporting requirement is codified at Va. Ann. Code § 63.2-1509, -1510.

³ Please be aware that generally the University is not responsible for informing local law enforcement agencies of alleged Sexual Misconduct of which it is aware; therefore, a report to the University Department of Campus Safety pursuant to Section 2.02 (i.e., a report to University police) (or any other University office) will not automatically result in a report to local law enforcement. If it is determined, however, that the allegation, if true, may constitute a felony under Virginia law, then the University or the Department of Campus Safety will report the incident to the Commonwealth's Attorney in the relevant jurisdiction, but will not disclose the identity of victim without permission. If, however, the University determines that disclosure of the incident and the victim's name is necessary to protect the health or safety of a student or other individuals, the University shall immediately disclose such information to the law enforcement agency that would be responsible for investigating the alleged act of sexual violence. If this occurs, the University shall notify the victim that such disclosure is being made.

to investigate or decline to investigate the matter is determinative of whether Actionable Sexual Misconduct, for the purposes of this Policy, has occurred.

Section II.2 Reporting to the University | Mandatory Reporters.

If you wish for information regarding Sexual Misconduct to be investigated and addressed pursuant to this Policy, you should disclose such information to one of the individuals listed below (the Title IX Coordinator or a Responsible Employee). **Please note that Responsible Employees are REQUIRED to relay allegations of Sexual Misconduct to the Title IX Coordinator for investigation and resolution.** Individuals who are not listed below are not subject to the same requirement (and in some instances, such as is generally the case with Strictly Confidential Resources, are prohibited from reporting alleged Sexual Misconduct to others absent an express directive from the alleged victim to do so (see Section 3.01(a)). Any individual may report information regarding Sexual Misconduct on his/her behalf (**as an alleged victim**) OR on behalf of the alleged victim (**as a third-party reporter**).

- (a) **Title IX Coordinator.** Virginia Union University’s Title IX Coordinator may be contacted by email at titleix@vuu.edu.
- (b) **Responsible Employees.** A “Responsible Employee” is an employee of the University who has an obligation to report to the Title IX Coordinator as soon as reasonably possible any reports or allegations or firsthand observations of Sexual Misconduct of which he or she becomes aware while he or she is serving in one of the capacities listed below.

The following individuals are the University’s Responsible Employees:

- (i) All non-student University employees not designated as Strictly Confidential Resources in Section 3.01 of this Policy and
- (ii) The University’s Resident Assistants.

No member of the University community may discourage an individual from reporting alleged incidents of Sexual Misconduct. No employee is authorized to investigate or resolve suspected incidents of Sexual Misconduct without the involvement of the University’s Title IX Coordinator.

Reporting to the University:
WHAT HAPPENS AFTER I REPORT?

<p>If you report directly to the Title IX Coordinator:</p>	<p>After receiving a complaint or otherwise becoming aware of an incident of Actionable Sexual Misconduct, the Title IX Coordinator will review the allegations. The Title IX Coordinator, may initiate the investigation and resolution process (unless you request confidentiality pursuant to Section 3.02, in which case the information will be held in confidence by the Title IX Coordinator unless the Title IX Coordinator determines that, due to the University’s commitment to providing a reasonably safe and non-discriminatory environment, the request cannot be granted).</p>
<p>If you report to a Responsible Employee:</p>	<p>The Responsible Employee will forward the information to the Title IX Coordinator, who will initiate the investigation and resolution process. The Title IX Coordinator may initiate the investigation and resolution process (unless you request confidentiality pursuant to Section 3.02, in which case the information will be held in confidence by the Title IX Coordinator unless the Title IX Coordinator determines that, due to the University’s commitment to providing a reasonably safe and non-discriminatory environment, the request cannot be granted).</p>
<p>If you confide in the University Counselor, Office of Health Services, or University Pastor:</p>	<p>The information you provided will remain strictly confidential and will not* be reported to the Title IX Coordinator (or anyone else) for investigation and resolution.</p> <p><i>*Remember that in unusual circumstances, the information you share with these individuals (such as situations involving imminent harm to a member of the community or situations involving abuse of a minor) may be disclosed.</i></p>
<p>If you report to someone else (i.e., someone other than the Title IX Coordinator, a Responsible Employee, the University Counselor, the Office of Health Services, or the University Pastor) – such as a student-employee other than an RA:</p>	<p>The individual may or may not report details regarding the information you provided to the Title IX Coordinator. This is because the individual to whom you reported is not <i>obligated</i> to relay allegations of Sexual Misconduct to the Title IX Coordinator (and, conversely, is likely not <i>obligated</i> to maintain the information you shared in confidence).</p> <p><i>For this reason, if you would like the information you share to be addressed by the University, direct it to the Title IX Coordinator or a Responsible Employee. Conversely, if you would like the information you share to be maintained in strict confidence, direct it to the University Counselor, Office of Health Services, or University Pastor.</i></p>

[This policy continues on the next page.]

ARTICLE III. CONFIDENTIALITY

Section III.1 Confidentiality in Reporting and Disclosure.

The University encourages victims of Sexual Misconduct to talk to someone about what happened so that they can get the support they need and the University can respond appropriately. The University wants individuals to be aware of the various reporting and confidential disclosure options available to them so that they can make informed choices about where to turn should they be subjected to Sexual Misconduct.

- (a) Counselors and Medical Staff.** Individuals may discuss alleged Sexual Misconduct in strict confidence with the following University employees (“Strictly Confidential Resources”), regardless of whether such employees are “on duty” in their professional capacities at the time that the discussion takes place:

Personally Identifiable Information shared with Strictly Confidential Resources is not part of students’ or employees’ University records and will not be reported to other University personnel (including the Title IX Coordinator), to the Respondent, or to others (unless the disclosing individual gives his or her consent to the disclosure or the law requires it (as may be the case with alleged Sexual Misconduct involving a minor or under conditions involving imminent harm to one or more members of the University community, for example)). Therefore, disclosures to these employees generally will not trigger a University investigation into an incident against the victim’s wishes.

Strictly Confidential Resources are not Responsible Employees and therefore are not required to (and will not, absent direction from the disclosing individual to do so) report incidents of alleged Sexual Misconduct to the Title IX Coordinator. For purposes of clarity, please understand that many of the University employees who are not Strictly Confidential Resources are Responsible Employees. Communications made to Responsible Employees (and others) are not entitled to the same confidentiality protections as those made to Strictly Confidential Resources.

- (b) Title IX Coordinator & Responsible Employees.** A disclosure to the Title IX Coordinator or a Responsible Employee (defined in Section 2.02(b) above) constitutes a report to the University and obligates the University to investigate the incident and take appropriate steps to address the allegations.

Section III.2 Confidentiality in the Investigation and Resolution Processes.

- (a) Sharing of Information (Applicable to All Reports and Complaints).** The University will respect and will make every feasible effort to avoid the inappropriate disclosure of the information shared by and the identities of the parties involved in Sexual Misconduct matters.

Information regarding alleged Sexual Misconduct will generally be disclosed by University personnel only as follows:

- (i)** The University's Responsible Employees will (and are obligated to) report information regarding alleged Sexual Misconduct to the Title IX Coordinator (see Sections 2.02(b) and 3.02(b) for additional information on reporting to Responsible Employees).
 - (ii)** Upon receipt, the Title IX Coordinator will promptly review the information.
 - (iii)** University personnel will (and are obligated to) handle information regarding alleged Sexual Misconduct in accordance with applicable local, state, and federal laws.
 - (iv)** University personnel may report alleged Sexual Misconduct to local law enforcement if warranted by the nature of the allegations at issue.
 - (v)** University administrators will share information regarding alleged Sexual Misconduct, as appropriate and necessary, in order to address and resolve the allegation(s) at issue, prevent the recurrence of similar Sexual Misconduct, and address the effects of the Sexual Misconduct.
- (b) Requests for Confidentiality.** If information regarding alleged Sexual Misconduct is shared with the Title IX Coordinator or a Responsible Employee and the victim desires that the information not be shared with other Responsible Employees, with the Respondent, or with others, even as appropriate and necessary to address the allegations; that the University not investigate the information; or that no disciplinary action be taken, the victim must request that the University treat such information as confidential. This request must be made to the Assigned Title IX Coordinator who will evaluate the request.

- (i) Evaluation of the Request.** The University takes requests for confidentiality seriously. The Assigned Title IX Coordinator will evaluate the request for confidentiality in the context of the University's commitment to provide a reasonably safe and non-discriminatory environment and will determine whether such request will be granted. In order to make such a determination, the Assigned Title IX Coordinator may conduct a preliminary investigation into the alleged Sexual Misconduct and may weigh requests for confidentiality against the following factors, among others:

- 1) the seriousness of the alleged Sexual Misconduct (including, but not limited to, whether the Sexual Misconduct was perpetrated with a weapon);
- 2) the increased risk that the alleged perpetrator will commit additional acts of Sexual Misconduct, such as (a) whether there have been other reports or complaints against the alleged perpetrator, (b) whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of Sexual Misconduct or a history of violence, (c) whether the alleged perpetrator threatened further Sexual Misconduct or threatened violence against the victim or others (d) whether the Sexual Misconduct was committed by multiple perpetrators, or (e) whether there is a transcript notation on the perpetrator's transcript ;
- 3) whether the information reveals a pattern of perpetration (*e.g.*, via illicit use of drugs or alcohol, at a given location, and/or by a particular group or person);
- 4) whether the victim is a minor; and
- 5) whether the University possesses other means to obtain relevant evidence of the Sexual Misconduct (*e.g.*, security cameras or security personnel, physical evidence).

(ii) Determination as to Whether Request Can Be Granted. The presence of one or more of the above factors may lead the University to investigate and, if appropriate, pursue disciplinary action. The Assigned Title IX Coordinator will inform the person requesting confidentiality whether the University intends to honor the request or whether the University intends to pursue an investigation and/or resolution in spite of the request.

If the University determines that it cannot maintain confidentiality, it will inform the victim prior to starting an investigation and will, to the extent possible, only share information with people responsible for addressing the allegations. The University will also take ongoing steps to protect the victim from retaliation or harm and work with the victim to create a safety plan if warranted, and assist the victim in accessing other services and interim measures (see Section 5.02).

If the University honors the request for confidentiality, the University's ability to investigate and take action in response to an allegation of Sexual Misconduct may be limited. A Respondent is entitled to know the name of the accuser and information regarding the nature of the allegations in order to defend against the allegations; thus, the University may not be able both to adjudicate the Complaint and to maintain confidentiality during that process.

Even when the University determines to abide by a request for confidentiality (and even if such request limits the University's ability to take disciplinary action against the Respondent):

- 1) To the extent practicable and appropriate, the University will take prompt action to limit the effects of the alleged Sexual Misconduct and to prevent its recurrence. For instance, the University may take appropriate interim measures to ensure an individual's safety even in the absence of a University proceeding. The University may also consider broader remedial action (such as increased monitoring, supervision, or security at locations where reported sexual violence occurred, increased education and prevention efforts, including to targeted population groups, and climate assessments).
- 2) Information regarding the alleged Sexual Misconduct may be included in University records, as necessary and appropriate.
- 3) University personnel will (and are obligated to) handle information regarding alleged Sexual Misconduct in accordance with applicable local, state, and federal laws.

[This policy continues on the next page.]

ARTICLE IV. GENERAL PROVISIONS APPLICABLE TO ALL ALLEGATIONS OF SEXUAL MISCONDUCT

Section IV.1 Oversight.

The Assigned Title IX Coordinator, in consultation with the Review Committee, will be responsible for overseeing the prompt, fair, and impartial investigation and resolution of Complaints and other reports of Sexual Misconduct that are filed with or disclosed to the University.

Section IV.2 Conflicts.

If any administrator designated by this Policy to participate in the investigation or resolution of a report or Complaint is the Respondent or has a conflict (including, but not limited to, the Title IX Coordinator), then the President will appoint another University administrator to perform such person's duties under this Policy. (If the President is the Respondent, then the Title IX Coordinator will appoint another University administrator to perform his or her other duties under this Policy.)

Section IV.3 Support Persons / Advisors.

Both the Complainant and the Respondent may have one support person/advisor present to support and assist them during any meeting or interview held under this Policy (including during related meetings, during investigative interviews, and the interview or other proceedings). Support persons/advisors may be friends, victim advocates, or others. Absent accommodation for disability, the Complainant and the Respondent may not be accompanied by more than one support person/advisor or by other individuals during meetings, interviews, and/or other proceedings. Neither the Complainant nor the Respondent may be represented by legal counsel at investigatory interviews, informal resolution processes, or University administrative hearing.

The Complainant and the Respondent may consult privately with their respective support persons/advisors during meetings, interviews, or other proceedings, provided that such consultation is not disruptive. Support persons/advisors may not, however, directly participate in or have a speaking role during any meeting, interview, or other proceeding (including but not limited to asking or answering questions of anyone other than the party he or she is there to support; examining witnesses; or making statements to the person(s) conducting the meeting or proceeding, the interviewer(s), or the members of the Sexual Misconduct Panel). A support person/advisor may be required to leave a meeting, interview, or other proceedings if his or her presence or conduct is disruptive or otherwise warrants his or her removal. A support person/advisor must maintain confidentiality regarding any, and all communications exchanged pursuant to this Policy.

Section IV.4 Timing.

The University will make every reasonable effort to ensure that the investigation and resolution of a report or Complaint occur in a timely and efficient manner as possible. The University's investigation and resolution of a Complaint (not including an appeal, if applicable) generally will be completed within 60 calendar days of the receipt of the Complaint, absent extenuating circumstances.

Any party may request an extension of any deadline by providing the Assigned Title IX Coordinator with a written request for an extension that includes a reference to the duration of the proposed extension and the basis for the request.

The Assigned Title IX Coordinator may modify any deadline contained in this Policy as necessary and for good cause. The Assigned Title IX Coordinator will concurrently inform the Complainant and the Respondent of any deadline that has been extended and the reason(s) therefor.

Section IV.5 Documentation.

The University will retain certain documentation (including but not limited to the written Complaint, the Investigative Report, petitions for appeal, notifications of decisions, transcripts, and recordings), for at least seven years. Documentation pertaining to expulsions, degree revocations, or termination of employment will be retained indefinitely or in accordance with University policy.

Section IV.6 Prohibition on Retaliation.

Retaliation against any person for filing, supporting, or providing information in connection with an allegation of Sexual Misconduct is strictly prohibited. Any person who feels that he or she has been subjected to Retaliation should make a report to the University's Title IX Coordinator. Alleged violations of this prohibition will be addressed pursuant to the University disciplinary procedure deemed appropriate by the Title IX Coordinator.

Section IV.7 Prohibition on Providing False Information.

Any individual who knowingly files a false report or Complaint under this Policy, who knowingly provides false information to University officials, or who intentionally misleads University officials who are involved in the investigation or resolution of a Complaint may be subject to disciplinary action.

Section IV.8 Related Misconduct.

The University may adjudicate, pursuant to this Policy, alleged misconduct that is related to the Sexual Misconduct at issue, even if such related misconduct is not when standing alone, governed by this Policy.

Section IV.9 Immunity for Alcohol and Drug Use.

The University considers the reporting and adjudication of Sexual Misconduct cases on campus to be of paramount importance. The University does not condone underage drinking or illegal drug use; however, the University may extend immunity from punitive sanctioning in the case of illegal alcohol or drug use to alleged victims, witnesses, and those reporting incidents and/or assisting the alleged victims of Sexual Misconduct and also may extend such immunity to a Respondent.

Section IV.10 Disability Accommodations.

The University 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 Coordinator of Services for Students with Disabilities (located in the second floor of the L. Douglas Wilder Library and available by phone at 804-342-3885).

Section IV.11 Confidentiality and Disclosure.

In order to comply with FERPA, Title IX, and other applicable laws and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, resolution processes pursuant to this Policy are not open to the general public. Accordingly, documents prepared in anticipation of the informal and/or the formal resolution processes (including the Complaint, the Investigative Report, and notices and communications to or from the Complainant or the Respondent) and/or documents, statements, or other information introduced in the meetings and proceedings may not be disclosed outside of those processes except as may be required or authorized by law.

For the avoidance of doubt, if it is determined that the Respondent committed Sexual Assault, University policy does not prohibit the further disclosure of notice of outcome letters by either the Complainant or the Respondent.

[This policy continues on the next page.]

**ARTICLE V. THE PROCESS APPLICABLE
TO ALL COMPLAINTS OF SEXUAL MISCONDUCT**

Section V.1 STEP 1: A Report of Sexual Misconduct Becomes a Complaint.

A Complaint may be initiated in one of the following ways:

- (a) An alleged victim may file a written Complaint with the University, or a third party may submit a written Complaint on behalf of the alleged victim. An alleged victim may complete a Complaint form provided by the University on the website or on a paper form (see Exhibit C attached to this Policy) or may submit a written statement in his or her own words providing sufficient information for the University to investigate the allegations contained therein (including but not limited to the name of the alleged victim, the name of the alleged perpetrator, and the date, location, and nature of the alleged Sexual Misconduct).
- (b) An alleged victim may meet in person with the Title IX Coordinator to report alleged Sexual Misconduct.
- (c) The University can determine, based on the information of which it becomes aware, that it is necessary and/or appropriate for it to investigate the information available to it. (The University may become aware of potential Sexual Misconduct as a result of allegations of Sexual Misconduct reported to the University's Responsible Employees, among other ways.)
- (d) An alleged victim may file a complaint online at the Virginia Union University website.

Once a Complaint is initiated, an alleged victim will be referred to as a "Complainant" and an alleged perpetrator will be referred to as a "Respondent."

Section V.2 STEP 2: Evaluation of Interim Protective Measures and Interim Disciplinary Sanctions.

Following the initiation of a Complaint (and at any point during the Complaint, investigative, or disciplinary processes, if the Assigned Title IX Coordinator deems it necessary for the protection or well-being of any member of the University community), the Assigned Title IX Coordinator will determine which, if any, of the following measures and/or actions, should be taken:

- (a) **Interim Protective Measures for Complainants.** When warranted to ensure the safety and wellbeing of the Complainant, the Assigned Title IX Coordinator may implement one or more interim protective measures, if appropriate and/or reasonably available, including but not limited to the following:
 - (i) Issuing no-contact orders to prevent any contact between the Complainant, the Respondent, witnesses, and/or third parties;

- (ii) Providing the Complainant an escort to ensure that he or she can move safely between classes, work, and/or activities;
 - (iii) Changing a Complainant's or a Respondent's on-campus housing, if any, to a different on-campus location and providing assistance from University personnel in completing the relocation;
 - (iv) Changing a Complainant's or a Respondent's assigned dining facilities;
 - (v) Changing work arrangements or schedules; and
 - (vi) Changing academic schedules (such as moving the Complainant or the Respondent from one class section to another).
- (b) **Interim Disciplinary Measures for Respondents.** When necessary for the protection or well-being of the Complainant, students, and/or the University community, the Assigned Title IX Coordinator may impose interim disciplinary measures prior to the adjudication of the Complaint pursuant to this Policy. The Assigned Title IX Coordinator will notify the Respondent of the interim measure(s) in writing. The Assigned Title IX Coordinator's decision is final as to the interim disciplinary measures, pending the final results of the adjudication of the Complaint pursuant to this Policy.
- (i) **Student Respondents.** Possible interim measures for student Respondents include but are not limited to (a) prohibiting the student from being on University property and/or using University facilities (including residence halls and all other areas controlled, leased, or used by the University) (b) prohibiting the student from attending classes or limiting class attendance, (c) prohibiting the student from participating in and/or attending student programs and activities, (d) suspension, (e) prohibiting the student from representing the University on athletic teams or in leadership positions, and (f) prohibiting the student from having contact with specified persons.
 - (ii) **Faculty and Staff Respondents.** When the Respondent is a member of the faculty or the staff, the Assigned Title IX Coordinator may (a) take such steps as are reasonable, appropriate, and necessary to restrict the Respondent's movement on campus; or (b) take such steps as are reasonable, appropriate, and necessary to re-assign or place on administrative leave such staff or faculty Respondent.

Section V.3 STEP 3: Initial Meetings with the Assigned Title IX Coordinator.

- (a) **Complainant's Initial Meeting with the Assigned Title IX Coordinator.** As soon as is reasonably practicable following the filing of a Complaint, the Assigned Title IX Coordinator will contact the Complainant to schedule an initial meeting to discuss the Complaint and avenues for its resolution. (If a third party reported the alleged Sexual Misconduct on behalf of the Complainant, the Assigned Title IX

Coordinator will attempt to meet with such person and gather information from him or her before speaking with the Complainant.) The Complainant may, within seven calendar days of the interview with the Assigned Title IX Coordinator, submit a written statement of position regarding the alleged Sexual Misconduct to the Assigned Title IX Coordinator.

Following the initial meeting with the Complainant, the Assigned Title IX Coordinator will, if applicable, promptly determine the interim measures to be provided during the pendency of the investigative and resolution processes. (If protective measures have already been implemented pursuant to Section 5.02(a), the Assigned Title IX Coordinator will evaluate whether they should continue to be provided and whether other interim measures should also be implemented.) These interim measures may include the protective measures listed in Section 5.02(a) and/or other appropriate interim measures, such as

- Rescheduling class work, assignments, and examinations;
- Arranging for the Complainant to withdraw from or take an incomplete in a class without penalty;
- Permitting a temporary withdrawal from the University;
- Providing academic support services (e.g., tutoring);
- Providing alternative course completion options;
- Providing counseling services; and
- Providing schedule adjustments to employees.

Such determination will promptly be communicated to the Complainant (no later than it is communicated to the Respondent) and, to the extent that it affects him or her, the Respondent.

(b) Respondent's Initial Meeting with the Assigned Title IX Coordinator. If the Complainant wishes to pursue a formal or informal resolution through the University or if the University otherwise deems that a further investigation is warranted, then as soon as is reasonably practicable following the Assigned Title IX Coordinator's initial meeting with the Complainant, the Assigned Title IX Coordinator will schedule an initial meeting with the Respondent to discuss the Complaint and to inform the Respondent of any interim measures already determined and being provided to the Complainant that directly affect the Respondent. The Respondent may, within seven calendar days of the interview with the Assigned Title IX Coordinator, submit a written statement of position regarding the alleged Sexual Misconduct to the Assigned Title IX Coordinator.

Following the initial meeting with the Respondent, the Assigned Title IX Coordinator will if applicable, promptly determine the interim measures to be provided to the Respondent during the pendency of the investigative and resolution processes (such as those listed in Section 5.03(a)). Such determination will

promptly be communicated to the Respondent (no later than it is communicated to the Complainant) and, to the extent that it affects him or her, the Complainant.

Section V.4 STEP 4: The Investigation.

(a) The Determination as to Whether to Appoint Investigator.

(i) The Complaint Is Forwarded to an Investigator. The Assigned Title IX Coordinator will promptly appoint an Investigator, will share his or her name and contact information with the Complainant and the Respondent, and will forward the Complaint to the Investigator unless it is clear on its face that *no reasonable grounds* exist for believing that the Respondent engaged in Actionable Sexual Misconduct.

Within three business days of such appointment, the Investigator, the Complainant, or the Respondent may identify to the Assigned Title IX Coordinator in writing alleged conflicts of interest posed by assigning such Investigator to the matter. The Assigned Title IX Coordinator will carefully consider such statements and will assign a different individual as Investigator if it is determined that a material conflict of interest exists. Failure to submit a timely and proper objection to the Investigator will constitute a waiver of any right of such objection.

(ii) The Complaint Is Not Forwarded to an Investigator. In the event that the Assigned Title IX Coordinator does not forward the Complainant's Complaint to an Investigator (because he or she has determined that *no reasonable grounds* exist for believing that the Respondent engaged in Actionable Sexual Misconduct), the Assigned Title IX Coordinator will close the Complaint, document the closure, and promptly notify the Complainant and the Respondent of the closure and the rationale for the closure.

(b) The Investigator's Activities. Upon receipt of the Complaint, the Investigator will promptly begin his or her investigation, taking steps such as:

(i) conducting interviews with the Complainant, the Respondent, and third-party witnesses (including expert witnesses, where applicable) and summarizing such interviews in written form;

(ii) visiting, inspecting, and taking photographs at relevant sites; and

(iii) where applicable, collecting and preserving relevant evidence (in cases of corresponding criminal complaints, this step may be coordinated with law enforcement agencies and governed by those memoranda of understanding, if any, existing between the University and local law enforcement agencies).

Throughout the investigation, the Investigator will remain impartial.

- (c) **The Investigator's Report.** The Investigator will complete a written investigative report of the events in question (the "Investigative Report"). The Investigative Report will include items such as the written Complaint, any written statements of position, summaries of all interviews conducted, copies of relevant photographs, descriptions of relevant evidence, summaries of relevant electronic records, and a comprehensive, detailed report of the events in question. The Investigator will share the Investigative Report with the Assigned Title IX Coordinator, who will make it (concurrently) available to the Complainant and the Respondent to review, after redacting from it information that would not be admissible at an interview on the matter pursuant to Section 6.02(c)(iii) of this Policy. The Complainant and the Respondent may not make copies of the Investigative Report.
- (d) **Effect of Corollary Criminal Investigation.** In the event that a criminal investigation is ongoing concurrently with the University's investigation, the University's investigation may be delayed temporarily while criminal investigators are gathering evidence. (The University's investigation and adjudication of a Complaint are otherwise independent of a criminal investigation; the University's investigation and adjudication of a Complaint does not depend on whether law enforcement agencies investigate the matter, bring corresponding charges, or close their case.)

Section V.5 STEP 5: The Evaluation of the Investigative Report and Determination as to Whether the Complaint Will Proceed to Adjudication.

The Assigned Title IX Coordinator will evaluate the Investigative Report and will direct that the Complaint will proceed to adjudication according to the procedures outlined in Article VI and/or Article VII below unless it is clear from the Investigative Report that *no reasonable grounds* exist for believing that the Respondent engaged in Actionable Sexual Misconduct. The Assigned Title IX Coordinator will promptly inform the Complainant and the Respondent that the Complaint will proceed to adjudication. (The Complaint will proceed to formal adjudication unless the Complainant elects informal resolution and informal resolution is permissible pursuant to Article VII.)

If the Assigned Title IX Coordinator finds that it is clear from the Investigative Report that *no reasonable grounds* exist for believing that the Respondent engaged in Actionable Sexual Misconduct, then the Assigned Title IX Coordinator will close the Complaint, document the closure, and promptly notify the Complainant and the Respondent of the closure and the rationale for the closure.

[This policy continues on the next page.]

ARTICLE VI. FORMAL ADJUDICATION PROCEDURES

Section VI.1 Respondent's Acknowledgement of Responsibility.

At any time prior to the imposition of sanctions, the Respondent may elect to acknowledge his or her actions and take responsibility for the alleged Sexual Misconduct. In such a situation, the Assigned Title IX Coordinator will propose (a) sanction(s) for the Respondent. If both the Complainant and the Respondent agree to such proposed sanction(s), then the resolution of the Complaint will be final, and neither party will have any rights of appeal.

If either the Complainant or the Respondent objects to such proposed sanction(s), then a Sexual Misconduct Panel will convene for the exclusive purpose of determining sanctions, which determination may be subject to appeal pursuant to Article VIII of this Policy.

Section VI.2 The Adjudication Process (the Interviews and the Determination of Responsibility).

If the Assigned Title IX Coordinator directs the Complaint to proceed to a formal adjudication, the Sexual Misconduct Panel may determine whether the Respondent engaged in Actionable Sexual Misconduct and which sanctions, if any, are appropriate. To do so, the Sexual Misconduct Panel will review the Complaint, the Investigative Report, and other available evidence and will interview the Complainant, the Respondent, and the witnesses that the Sexual Misconduct Panel deems appropriate.

- (a) **No Contact.** The Complainant and the Respondent may not contact each other outside of the interviews, even to discuss the interviews.
- (b) **Preparation (What Happens Before the Interviews).**
 - (i) **The Sexual Misconduct Panel Is Composed, and the Parties Are Given Notice of Its Composition and an Opportunity to Object to It.**
 - 1) **Composition of the Sexual Misconduct Panel.** The Assigned Title IX Coordinator will appoint the members of the "Sexual Misconduct Panel." The Assigned Title IX Coordinator will share the Complaint and the Investigative Report (redacted to remove inadmissible information pursuant to Section 6.02(c) (iii) below) with the Sexual Misconduct Panel. The Assigned Title IX Coordinator will notify the Sexual Misconduct Panel of the charges to be adjudicated (including, if only a portion of the misconduct alleged in the Complaint justifies continuing to the formal adjudication process, the part(s) of the alleged misconduct that will be the subject of the interviews).
 - 2) **Notice of the Interviews.** The Sexual Misconduct Panel will notify the Assigned Title IX Coordinator, who will provide concurrent written notice to the Complainant and the Respondent, of the interviews that the Sexual Misconduct Panel intends to conduct with

the Complainant and the Respondent, including (a) the charges to be adjudicated (including, if only a portion of the misconduct alleged in the Complaint justifies continuing to the formal adjudication process, the part(s) of the alleged misconduct that will be the subject of the interviews), (b) the time, date, and location of each interview, and (c) the names and titles of the members of the Sexual Misconduct Panel.

- 3) **Objections to the Composition of the Sexual Misconduct Panel.** Either party may challenge the participation of any member of the Sexual Misconduct Panel by submitting a written objection to the Assigned Title IX Coordinator within three business days of receipt of the applicable notice of the interview. Such objection must state the specific reason(s) for the objection. The Assigned Title IX Coordinator will evaluate the objection and determine whether to alter the composition of the Sexual Misconduct Panel. Failure to submit a timely and proper objection will constitute a waiver of any right of objection to the composition of the Sexual Misconduct Panel. Any changes in the composition of the Sexual Misconduct Panel will be provided in writing to both parties.

(ii) The Parties May Make Certain Requests and Provide Certain Information.

- 1) **Requests for Special Arrangements and/or Accommodations.** In addition to disability-related accommodations (see Section 4.10); the parties may request special arrangements and/or accommodations (for example, the ability to participate remotely or in a separate room by closed-circuit technology) in connection with the interviews. Any such requests must be submitted in writing to the Assigned Title IX Coordinator no later than five business days before the applicable interview. The Assigned Title IX Coordinator will determine, in his or her sole discretion, whether to grant such requests, and his or her decision will be final. Additionally, even in the absence of a specific request from a party, the Assigned Title IX Coordinator may make special arrangements related to the interview or other accommodations as he or she deems necessary.
- 2) **Provision of Information.**
 - a) **By the Sexual Misconduct Panel.** No fewer than five business days prior to the first interview date, the Sexual Misconduct Panel will provide concurrent written notice to the Complainant and the Respondent of the witnesses that

the Sexual Misconduct Panel plans to call.⁴ (At or before such time the Sexual Misconduct Panel will also provide notice to each witness or other third party whose testimony the Sexual Misconduct Panel deems relevant, requesting such individuals to appear before the Sexual Misconduct Panel. The notice should set forth the date, time, and location of the interview.)

- b) By the Parties.** No fewer than five business days prior to the first interview date, the Complainant and the Respondent must provide the Sexual Misconduct Panel with
- i)** a list of witnesses, if any, that they propose that the Sexual Misconduct Panel call, a brief description of each proposed witness's connection to and/or knowledge of the issues in dispute, and a list of questions, if any, for the Sexual Misconduct Panel to ask such witnesses,⁵
 - ii)** copies of relevant documents they propose to present, and
 - iii)** the name of the advisor / support person, if any, who will accompany them to the interview, as well as a brief explanation of the relationship between them.

In the absence of good cause, which shall be determined by the Sexual Misconduct Panel in its sole discretion, neither the Complainant nor the Respondent may introduce in an interview witnesses or documents of which the Sexual Misconduct Panel was not properly made aware.

- c) By the Assigned Title IX Coordinator.** No fewer than three business days prior to the first interview date, the Assigned Title IX Coordinator will provide each party with a packet containing copies of the Investigative Report (which will include copies of the Complaint and the other party's written statement of position (if any)), the other party's list of witnesses, the name of the other party's advisor/support person, and any other documents or other information to be presented at the other party's interview. If

⁴ In the event that the Sexual Misconduct Panel later determines to conduct interviews with additional witnesses or other individuals, such as may be the case after it has reviewed the materials provided to it pursuant to Section 6.02(b) (ii) (2) (b), for example, the Assigned Title IX Coordinator will provide a status update to the Complainant and the Respondent accordingly.

⁵ The Sexual Misconduct Panel's, the Complainant's, and the Respondent's lists of witnesses may, but are not required to, overlap.

applicable, the Assigned Title IX Coordinator will also inform each party of special arrangements and/or accommodations that have been granted to the other party in each case if and to the extent that such arrangements and/or accommodations affect the nonrequesting party.

(c) The Interviews.

(i) Manner of Conducting the Interviews. Both parties will have the opportunity to appear separately before the Sexual Misconduct Panel, and the Sexual Misconduct Panel may separately interview witnesses or other individuals as it deems advisable. The Sexual Misconduct Panel will be responsible for asking questions of the parties and the witnesses and developing evidence through testimony and the presentation of relevant documents. The Sexual Misconduct Panel will resolve any questions concerning procedure or the admission of evidence or testimony.

(ii) Participation. Members of the University community participating in the formal adjudication process are expected to provide truthful testimony and may be subject to disciplinary action for failing to provide truthful testimony.

1) **Of the Complainant.** The Complainant may choose not to participate in the interview or answer some or all questions posed by the Sexual Misconduct Panel; however, his or her exercise of that option will not preclude the Sexual Misconduct Panel from making a determination regarding the Complaint filed against the Respondent.

2) **Of the Respondent.** The Respondent may choose not to participate in the interview or answer some or all questions posed by the Sexual Misconduct Panel; however, his or her exercise of that option will not preclude the Sexual Misconduct Panel from making a determination regarding the Complaint filed against the Respondent.

3) **Of Witnesses.** The Chair of the Sexual Misconduct Panel will determine the order of the witness interviews. Each party is responsible for the attendance of those witnesses whom such party seeks to present, and who have not been identified by the Sexual Misconduct Panel on the Sexual Misconduct Panel's witness list.

(iii) Evidentiary Matters.

1) **Presentation of Evidence.** The Complainant and the Respondent will have an equal opportunity to present evidence, including signed written statements from witnesses and other documentary evidence. Formal rules of evidence will not be observed during the interviews.

2) **Specific Types of Evidence.**

- a) **Written Witness Statements.** Live witness testimony is not required; however, the Sexual Misconduct Panel has the discretion to give lesser weight to written witness statements than to live witness testimony. The Assigned Title IX Coordinator will provide a form for written witness statements that will include an attestation that the information provided is true to the best of the witness's knowledge.
- b) **Evidence Regarding Past Sexual Histories.** Evidence of the past sexual histories of the Complainant and the Respondent will not be permitted at the interviews, with the following exceptions:
- i) evidence is permitted to show that the Complainant has in the past been formally disciplined by the University for falsely filing Complaints alleging Sexual Misconduct,
 - ii) evidence is permitted to show the existence of a relationship (including a sexual relationship) between the Complainant and the Respondent,
 - iii) evidence is permitted to show that the Respondent has in the past been either convicted in a criminal proceeding or formally disciplined by the University for Sexual Misconduct, and
 - iv) evidence regarding the past sexual activity of the Respondent (regardless of whether the Respondent was formally charged with a violation of the Policy with respect to such conduct and regardless of whether a report has been filed with the University with respect to such conduct) may be permitted to show that the Respondent has engaged in a pattern of behavior similar to the alleged Sexual Misconduct at issue before the Sexual Misconduct Panel, provided that (1) the Respondent has not been found "not responsible" by the University in a proceeding related to such sexual activity and (2) the Chair of the Sexual Misconduct Panel has made written findings both that the evidence is reliable and trustworthy and that the conduct is sufficiently and substantially similar to the conduct at issue before the Sexual Misconduct Panel to suggest a pattern of behavior.

(iv) Failure to Appear. If the Complainant and/or the Respondent fails to appear at the scheduled interview, and such party was provided proper notice of the interview as set forth above, then absent extenuating circumstances, the Sexual Misconduct Panel will proceed with the formal adjudication process and determine the resolution of the Complaint.

(d) Outcome.

(i) Responsibility. Following the conclusion of the interviews, the Sexual Misconduct Panel will determine (using a preponderance of the evidence standard) whether the evidence establishes that it is more likely than not that the Respondent committed Actionable Sexual Misconduct. The Sexual Misconduct Panel will prepare written findings of fact in support of its decision and will render a finding of “Responsible” or “Not Responsible.” In order to render a finding of “Responsible,” the Panel must reach a unanimous decision. If the Respondent is found “Responsible,” the Sexual Misconduct Panel will also specify whether the Respondent is found “Responsible” for Sexual Assault.

(ii) Sanctions.

1) Generally. If the Sexual Misconduct Panel renders a finding of “Responsible,” it will determine appropriate sanctions to be imposed on the Respondent. Sanctions for a finding of “Responsible” depends upon the nature and gravity of the Sexual Misconduct, any record of prior discipline for Sexual Misconduct, or both. Sanctions include mandated counseling, written reprimand, withholding of a promotion or pay increase, reassigning employment, terminating employment, temporary suspension without pay, compensation adjustments, or other employment-related sanctions; expulsion or suspension from the University, disciplinary probation, dismissal from an academic program, expulsion from campus housing, and/or other educational sanctions – in each case as are deemed appropriate by the Sexual Misconduct Panel. The Sexual Misconduct Panel will determine sanctions, giving consideration to whether a given sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation.

2) Implementation of Sanctions. Sanctions imposed generally are not effective until the resolution of any timely appeal of the decision of the Sexual Misconduct Panel pursuant to Article VIII. However, if it is advisable in order to protect the welfare of the Complainant or the University community, the Sexual Misconduct Panel may recommend, and the Assigned Title IX Coordinator may determine that any sanctions be effective immediately and continue in effect until such time as the appeal process is exhausted. The Sexual

Misconduct Panel will forward its sanctions determination (and, if applicable, its recommendation regarding their immediate implementation) to the Assigned Title IX Coordinator.

(iii) Notice of Outcome Letter. Within 60 calendar days following the filing of the Complaint, the University will issue a written decision letter concurrently to the Respondent and the Complainant.

- 1) For **employee and third-party Respondents**, the letter will set forth (a) the name of the Respondent, (b) the violation(s) of this Policy for which the Respondent was found responsible or a statement that the Respondent was found not to have violated this Policy, (c) the sanctions imposed on the Respondent, if any, and (d) the rationale for the findings and the sanctions.
- 2) For **student Respondents alleged to have committed Sexual Assault**, the letter will set forth (a) the name of the Respondent, (b) the violation(s) of this Policy for which the Respondent was found responsible or a statement that the Respondent was found not to have violated this Policy, (c) the rationale for the finding, and (d) the sanctions imposed on the Respondent, if any (setting forth only a description of the disciplinary action taken, the date of its imposition, its duration, and the rationale for such action).
- 3) For **student Respondents alleged to have committed any other form of Sexual Misconduct**, the letter will set forth (a) the name of the Respondent, (b) the violation(s) of this Policy for which the Respondent was found responsible or a statement that the Respondent was found not to have violated this Policy, (c) the rationale for the finding, and (d) the sanctions imposed on the Respondent, if any (setting forth only a description of the disciplinary action taken, the date of its imposition, its duration, and the rationale for such action). To the extent that the sanctions imposed on the Respondent do not constitute part of the Complainant's Education Record, then such information will be redacted from the version of the notice of outcome letter that is provided to the Complainant.

(iv) Final Accommodations and Prevention of Retaliation. In addition to any sanctions imposed on the Respondent, promptly following the conclusion of the interviews and the Sexual Misconduct Panel's issuance of the notice of outcome letters, the Assigned Title IX Coordinator will determine the final accommodations to be provided to the Complainant, if any, and the Assigned Title IX Coordinator will communicate such decision to the Complainant and, to the extent that it affects him or her, to the Respondent. Such accommodations may include, but are not limited to, those listed in Sections 5.02(a) and 5.03(a) above.

The Assigned Title IX Coordinator will also take steps, where necessary, to prevent the harassment of or Retaliation against the Complainant or third parties, such as informing them about how to report subsequent problems, following up with them to ensure that there are no subsequent problems, providing trainings for the school community, and providing Sexual Misconduct or other counseling for the Respondent. The Assigned Title IX Coordinator will also, where appropriate, take steps to prevent the harassment of the Respondent.

Furthermore, the Assigned Title IX Coordinator will take prompt corrective action if the Complainant experiences Retaliation or is subjected to further Sexual Misconduct or if the original sanctions imposed on the Respondent are ineffective to protect the safety and well-being of the Complainant or other members of the University community. In taking the above-outlined steps, the Assigned Title IX Coordinator will make every reasonable effort to minimize the burden on the Complainant.

[This policy continues on the next page.]

ARTICLE VII. INFORMAL RESOLUTION

Section VII.1 General Procedures and Policies.

The following procedures apply if the Complainant elects the informal resolution of his or her Complaint.

- (a) **Applicability of the Informal Resolution Process.** The Complainant may elect informal resolution of his or her Complaint if (i) the Respondent agrees to such resolution, (ii) the Complainant and the Respondent are both students of the University or both employees of the University, (iii) the Assigned Title IX Coordinator determines that informal resolution is an appropriate mechanism for resolving the Complaint, and (iv) the Complaint does not involve Sexual Assault. Informal resolution may not be selected for less than all of the misconduct alleged in the Complaint (for example, the parties may not choose to resolve a claim of Sexual Assault according to the formal resolution process but mediate all other allegations).
- (b) **Termination of the Informal Resolution Process.** Either the Complainant or the Respondent may terminate the informal resolution process at any time and proceed with formal resolution. Furthermore, the Assigned Title IX Coordinator may terminate informal resolution at any time and order that the parties proceed with a formal resolution instead. In such cases, statements or disclosures made by the parties in the course of the informal resolution process may be considered in the subsequent formal resolution proceedings.
- (c) **The Respondent's Disciplinary Record.** The informal resolution process will not result in a disciplinary record for the Respondent. However, the fact and details of the allegation(s) and the outcome of the informal resolution may be considered in connection with the evaluation of any subsequent Sexual Misconduct allegations against, and discipline-related decisions involving, the Respondent.
- (d) **Final Accommodations.** Following the closure of the Complaint, the Assigned Title IX Coordinator will promptly determine the final accommodations to be provided to the Complainant, and the Assigned Title IX Coordinator will communicate such decision to the Complainant, respectively, and, to the extent that the accommodations affect him or her, to the Respondent. Such accommodations may include but are not limited to, those set forth above in Sections 5.02 and 5.03.

The Assigned Title IX Coordinator will also take steps, where necessary, to prevent the harassment of or Retaliation against the Complainant or third parties, such as informing them about how to report subsequent problems, following up with them to ensure that there are no subsequent problems, providing trainings for the school community, and providing Sexual Misconduct or other counseling for the Respondent. The Assigned Title IX Coordinator will also, where appropriate, take steps to prevent the harassment of the Respondent.

Furthermore, the Assigned Title IX Coordinator will take prompt corrective action if the Complainant experiences Retaliation or is subjected to further Sexual Misconduct or if the original sanctions imposed on the Respondent are ineffective to protect the safety and well-being of the Complainant or other members of the University community. In taking the above-outlined steps, the Assigned Title IX Coordinator will make every reasonable effort to minimize the burden on the Complainant.

[This policy continues on the next page.]

ARTICLE VIII. APPEALS

The Complainant and/or the Respondent may appeal the decision of the Sexual Misconduct Panel regarding responsibility and/or the sanction imposed on the Respondent. The decision of the Sexual Misconduct Panel and the sanction imposed on the Respondent may, if desired, be appealed simultaneously.

Section VIII.1 Grounds.

- (a) **Appealing a Finding of “Responsible” or “Not Responsible.”** The Sexual Misconduct Panel’s finding of responsibility (i.e., whether the Respondent was found “Responsible” or “Not Responsible”) may be appealed on the following grounds:
- (i) Procedural errors during the formal adjudication process substantially affected the outcome of the process.
 - (ii) There was demonstrated prejudice against any party by any member of the Sexual Misconduct Panel. Such prejudice must be evidenced by a conflict of interest, bias, pressure, or influence that precluded a fair and impartial decision.
 - (iii) There is newly discovered, relevant information that was not reasonably available at the time of the applicable interview and that would have substantially affected the outcome of the formal adjudication process.
- (b) **Appealing Sanctions Imposed on the Respondent.** The sanctions imposed on the Respondent may be appealed on grounds that the severity of the sanction imposed is extraordinarily disproportionate to the gravity of the Sexual Misconduct for which the Respondent was found responsible.

Section VIII.2 Process.

- (a) **The First Appeal | Responsibility or Sanctions.**
- (i) **Filing an Appeal.** Appeals must be made in writing to the Vice President of Student Development and Success (if the Respondent is a student); the Executive Vice President/Chief Operating Officer (if the Respondent is an employee); within five business days from the date of receipt of the Sexual Misconduct Panel’s notice of outcome letter. The applicable appellate authority will inform the Assigned Title IX Coordinator of the appeal. The appeal must state the reason(s) for the appeal (from among those listed above), the facts supporting the appeal, and the recommended way to correct the error. The Assigned Title IX Coordinator will promptly inform the other party (i.e., the Complainant or the Respondent) of the filing of the appeal.

- (ii) File Review.** The appellate officer will review the Complaint file (which includes but is not limited to the Complaint, the Investigative Report, the parties' written statements and the recordings of the interviews) and will make an official decision based on this review.
- (iii) Decision.**

 - 1) Regarding Responsibility.** The appellate officer will determine whether the Sexual Misconduct Panel's determination regarding responsibility should be affirmed or reversed.
 - 2) Regarding Sanctions.** The appellate officer may recommend that the Sexual Misconduct Panel's determination regarding sanctions be affirmed or overturned. If he or she determines that the sanctioning decision of the Sexual Misconduct Panel should be overturned, he or she will determine either the final sanctions to be imposed on the Respondent, which will not be subject to further appeal, or will direct that another interview will be convened before the Sexual Misconduct Panel for the sole purpose of considering sanctions, in which case the final sanctions set by the Sexual Misconduct Panel and approved by the Assigned Title IX Coordinator will not be subject to further appeal.
- (iv) Notification.** Within 15 business days of receipt of the appeal, the appellate officer will communicate his or her final decision regarding the appeal to the Complainant and the Respondent concurrently and in writing.

[Exhibits to this Policy follow.]

EXHIBIT A

Important Contact Information **University Resources**

Virginia Union University's **Title IX Coordinator** is Kristie White, whose office is located in Room 200-1 of C.D. King Hall. Ms. White may be contacted by email at titleix@vu.edu.

The **University Police Department** is located in Pickford Hall, G-7 and is available by phone at 804-257-5777. University Police Officers are available 24/7.

The **Office of Human Resources** is located in Room 200 of C.D. King Hall and is available by phone at 804-257-5841. The office is staffed from 8:30 a.m. until 4:30 p.m. Monday through Friday.

Community Resources

Local Law Enforcement Agencies can be reached by calling 911.

VCU Medical Center Hospital is located at 1250 East Marshall Street, Richmond, VA 23298. The Emergency Department can be reached at 804-828-5250.

The **YWCA of Richmond** is a nonprofit organization offering free, confidential services including a 24-hour hotline, for Sexual Assault, Domestic/Intimate Partner Violence Support therapeutic services, medical and legal advocacy. It is located at 6 North 5th Street, Richmond, VA 23219. Its non-emergency number is 804-643-6761 and its **24-hour hotline is 804-612-6126**. Its website is <http://ywcarichmond.org>.

The **Virginia Sexual & Domestic Violence** Action Alliance offers resources for survivors and legal advocacy. It is located at 118 W. Main Street, Richmond, VA 23220. Its non-emergency number is 804-377-0335.

Mental health referrals through the use of **Crisis Intervention Services Hotline** by calling 804-819-4100. Crisis Intervention Services is a part of Richmond Behavioral Health Authority. The organization provides 24-hour emergency services, information, referral, and triage for outpatient services for the City of Richmond, such as Richmond's 24-hour hotline at 804-612-6126.

TO THE VIRGINIA UNION UNIVERSITY SEXUAL MISCONDUCT POLICY AND PROCEDURES AND PROCEDURES

Suggested Actions for Victims of Sexual Assault

While all types of Sexual Misconduct are inappropriate and taken seriously by the University, actions involving Sexual Assault (as defined in Exhibit B) are particularly concerning. Thus, if you are the victim of a Sexual Assault, the University's first priority is to help you take steps to address your safety, medical needs, and emotional well-being. You are encouraged to take the following actions, as applicable, regardless of whether you have made a decision about whether to pursue criminal or University disciplinary charges.

1. Ensure Your Physical Safety.

You may seek help from **local law enforcement agencies** or by contacting the **University Police Department**. The University Police Department can assist you with contacting local law enforcement and can help you obtain transportation to the local law enforcement officials. Security personnel is on duty at the University Police Department 24 hours a day, seven days a week.

2. Seek Medical Assistance and Treatment.

Local options for medical care include the **University Office of Total Wellness and Life Services** and **VCU Medical Center Hospital**. It is crucial that you obtain medical attention as soon as possible after a Sexual Assault to determine the possibilities of physical injury and to prevent or treat sexually transmitted diseases (such as HIV). Medical facilities can also screen for the presence of sedative drugs such as Rohypnol or GHB (date-rape drugs). Employees at the University Office of Total Wellness and Life Services can help you contact a support person, such as a family member, a friend, or a roommate.

If you choose to have an evidence collection kit (or "rape kit") completed, it is essential to do so within 72 hours. Even if you have not decided to file charges, it is advisable to have the evidence collection kit completed so that you can preserve the options of obtaining a protective order and/or filing criminal charges at a later date. **VCU Medical Center Hospital** administers evidence collection kits. Individuals may go directly to **VCU Medical Center Hospital** or may be referred to the hospital by the University Office of Student Health Services.

In order to best preserve evidence for an evidence collection kit, it may be advisable to avoid showering, bathing, going to the bathroom, or brushing your teeth before the kit is completed. You should also wear (or take with you in a paper – not plastic – bag) to the hospital the same clothing that you were wearing during the assault. An evidence collection kit can still be completed even if you have showered or bathed.

3. Obtain Emotional Support

The Virginia Union University Office of Total Wellness and Life Services can help victims sort through their feelings and begin the recovery process. The Office of Total Wellness and Life Services can also provide referral services for outside providers and law enforcement. In some instances, the law may require the disclosure of information shared by students with counselors. However, absent a legal mandate to the contrary, counseling services are strictly confidential, are not part of students' University records, and will not be reported to other University personnel.

4. Obtain Information / Report Misconduct

You are encouraged to report incidents of Sexual Assault to the University's Title IX Coordinator or other designated University individuals or offices as outlined in the **SEXUAL MISCONDUCT POLICY AND PROCEDURES** (even if you have filed a report directly with law enforcement). Further information about how to report Sexual Assault is provided in the body of the Virginia Union University **SEXUAL MISCONDUCT POLICY AND PROCEDURES**. University personnel can help you access resources and can provide you with support and information, including information on the University's procedures for investigating and addressing instances of Sexual Assault.

EXHIBIT B
to the
VIRGINIA UNION UNIVERSITY
SEXUAL MISCONDUCT POLICY AND PROCEDURES

DEFINITIONS

- (a) **Actionable Sexual Misconduct.** “Actionable Sexual Misconduct” is Sexual Misconduct that, taking into account the totality of the circumstances, is sufficiently serious and significant to warrant adjudication under, and discipline pursuant to, this Policy. Specifically, to determine whether Sexual Misconduct rises to the level of Actionable Sexual Misconduct, consideration will be given to the following criteria: (1) the type, frequency and duration of the conduct (the more severe the conduct, the less the need to show a repetitive series of incidents, particularly if the conduct is physical), (2) the identity of and relationship between the alleged harasser and the alleged victim, (3) the number of individuals involved, (4) the age and sex of the alleged harasser and the alleged victim, (5) the location of the incidents and the context in which they occurred, and (6) whether there have been similar incidents.
- (b) **Assigned Title IX Coordinator.** The “Assigned Title IX Coordinator” means either the Title IX Coordinator or his or her designee—whichever individual is overseeing the investigation and resolution of the particular Complaint in question.
- (c) **Complainant.** A “Complainant” is an alleged victim of Sexual Misconduct who files a Complaint or on whose behalf a Complaint is filed.
- (d) **Complaint.** A “Complaint” is an allegation of Sexual Misconduct asserted against another party and initiated pursuant to this Policy.
- (e) **Consent.** “Consent” is informed, freely, and actively given, and mutually understandable words or actions that indicate a willingness to participate in mutually agreed-upon sexual activity.

Consent is *mutually understandable* when a reasonable person would consider the words or actions of the parties to have manifested a clear and unambiguous agreement between them to engage in certain conduct with each other.

Consent is not *freely given* (and therefore not effective) if it is obtained through the use of physical force, violence, duress, deception, intimidation, coercion, or the threat, expressed or implied, of bodily injury. Whether a party used one of these methods to obtain Consent will be determined by reference to the perception of a reasonable person found in the same or similar circumstances.

Consent cannot be gained by ignoring or acting in spite of the objections of another.

Consent cannot be inferred from:

- (i) Silence, passivity, or lack of resistance alone;
- (ii) A current or previous dating or sexual relationship alone (or the existence of such a relationship with anyone else);
- (iii) Attire;
- (iv) The buying of dinner or the spending of money on a date; or
- (v) Consent is previously given (to the same sexual act or another).

Consent may never be given by:

- 1) Minors, even if the other participant did not know the minor's age;
- 2) Mentally disabled persons, if their disability was reasonably knowable to a sexual partner who is not mentally disabled; or
- 3) Persons who are incapacitated.

The use of alcohol or 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.

- (f) **Dating Violence.** "Dating Violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.
- (g) **Day.** A "day" is a business day or calendar day, as specified in each instance by this Policy. In the case of a calendar day specified by this Policy that falls on a Saturday, Sunday, or other days on which the University is closed, then the calendar day specified will be interpreted to mean the immediately preceding business day (whether or not classes are in session).
- (h) **Domestic Violence.** "Domestic Violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited 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 Commonwealth of Virginia, or 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 Commonwealth of Virginia.

- (i) **Education Record.** “Education Record” has the meaning assigned to it under FERPA.
- (j) **FERPA.** The Family Educational Rights and Privacy Act (“FERPA”) is a federal statute codified at 20 U.S.C. § 1232g, with implementing regulations at 34 C.F.R. Part 99. FERPA protects the privacy of student Education Records. FERPA grants to eligible students the right to access, inspect, and review Education Records, the right to challenge the content of Education Records, and the right to consent to the disclosure of Education Records.
- (k) **Incapacitated.** “Incapacitated” means lacking the physical and/or mental ability to make informed, rational judgments. A person may be incapacitated for a variety of reasons, including but not limited to being asleep or unconscious, having consumed alcohol or taken drugs, or experiencing blackouts or flashbacks.
- (l) **Investigative Report.** “Investigative Report” is defined in Section 5.04(c).
- (m) **Investigator.** The “Investigator” is the person designated by the Assigned Title IX Coordinator to investigate a Complaint pursuant to Section 5.04. The Investigator will be trained annually on (1) reasonable and appropriate investigative techniques, (2) issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking, and (3) how to conduct an investigation that protects the safety of victims and promotes accountability.
- (n) **Personally Identifiable Information.** “Personally Identifiable Information” (as that term is defined by FERPA) includes, but is not limited to:
 - (i) a student's name;
 - (ii) the name of a student's parent(s) or other family members;
 - (iii) the address of a student or a student's family;
 - (iv) a personal identifier, such as a student's social security number, student number, or biometric record;
 - (v) other indirect identifiers, such as a student's date of birth, place of birth, or mother's maiden name;
 - (vi) other information that, alone or in combination, is linked or linkable to a specific student and that would allow a reasonable person in the University community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
 - (vii) Information requested by a person whom the University reasonably believes knows the identity of the student to whom the Education Record relates.
- (o) **Rape.** “Rape” is 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 Consent of the victim.
- (p) **Respondent.** A “Respondent” is an individual who has been accused in a Complaint of committing Sexual Misconduct.

- (q) **Responsible Employee.** “Responsible Employee” is defined in Section 2.02(b).
- (r) **Retaliation.** “Retaliation” means any adverse action threatened or taken against a person because he or she has filed, supported, or provided information in connection with a Complaint of Sexual Misconduct, including but not limited to direct and indirect intimidation, threats, and harassment.
- (s) **Review Committee.** "Review Committee" means a committee established by the University to review and obtain information related to reports of Sexual Misconduct. The Review Committee is comprised of at least three members, including but not limited to the Title IX Coordinator, a representative from the Division of Student Affairs, and a representative from Campus Police. The Title IX Coordinator will promptly inform the Review Committee of all allegations of Sexual Misconduct, and the Review Committee will meet, no later than 72 hours after receiving notice from the Title IX Coordinator, to review the allegations. The Assigned Title IX Coordinator also will consult with the members of the Review Committee as outlined in the Policy.
- (t) **Sexual Assault.** “Sexual Assault” means any actual, attempted or threatened sexual act with another person without that person’s Consent. By way of example and not limitation, Sexual Assault includes:
- (i) Fondling (the touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the victim, including instances in which the victim is incapable of giving Consent because of his or her age or because he or she is temporarily or permanently Incapacitated),
 - (ii) Incest (sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by Virginia law),
 - (iii) Statutory Rape (sexual intercourse with an individual under the statutory age of consent, as defined by Virginia law), and
 - (iv) Rape.
- (u) **Sexual Exploitation.** “Sexual Exploitation” means any act of taking non-Consensual, unjust or abusive sexual advantage of another person for one’s own advantage or benefit or to benefit or advantage anyone other than the person being exploited. Sexual Exploitation includes, but is not limited to:
- (i) Causing or attempting to cause another person to be Incapacitated in order to gain a sexual advantage over such person;
 - (ii) Prostituting another person (i.e., personally gaining money, privilege or power from the sexual activities of another);
 - (iii) Non-Consensual videotaping, photographing, or audio-taping of sexual activity and/or distribution of these materials via media such as, but not limited to, the Internet;
 - (iv) Exceeding the boundaries of Consent (e.g., allowing another person to observe Consensual sex without the knowledge of or Consent from all participants);

- (v) Voyeurism; and
 - (vi) Knowingly or recklessly transmitting a sexually transmitted disease (including HIV) to another individual.
- (v) **Sexual Harassment.** “Sexual Harassment” is any unwelcome verbal, nonverbal, written, electronic, or physical conduct of a sexual nature. Examples of Sexual Harassment include instances in which:
- (i) Submission or consent to the behavior is reasonably believed to carry consequences for the individual’s education, employment, on-campus living environment, or participation in a University activity. Examples of this type of sexual harassment include:
 - 1) pressuring an individual to engage in sexual behavior for some educational or employment benefit, or
 - 2) making a real or perceived threat that rejecting sexual behavior will carry a negative educational or employment consequence for the individual.
 - (ii) The behavior is so severe or pervasive that it has the effect of substantially interfering with the individual’s work or educational performance by creating an intimidating, hostile, or demeaning environment for employment, education, on-campus living, or participation in a University activity. Examples of this type of sexual harassment include:
 - 1) one or more instances of Sexual Assault;
 - 2) persistent unwelcome efforts to develop a romantic or sexual relationship;
 - 3) unwelcome sexual advances or requests for sexual favors;
 - 4) unwelcome commentary about an individual's body or sexual activities;
 - 5) repeated and unwelcome sexually-oriented teasing, joking, or flirting; and
 - 6) verbal abuse of a sexual nature.

Sexual Harassment also includes acts of intimidation, bullying, aggression, or hostility based on gender or gender-stereotyping, even if the acts do not involve conduct of a sexual nature.

- (w) **Sexual Intimidation.** “Sexual Intimidation” includes but is not limited to:
- (i) Threatening, expressly or impliedly, to commit a sexual act upon another person without his or her Consent; and
 - (ii) Engaging in indecent exposure (i.e., intentionally exposing one’s sexual organs in public) with the intention of alarming, distressing, and/or offending others.
- (x) **Sexual Misconduct.** “Sexual Misconduct” means any unwelcome conduct of a sexual nature, including any conduct or act of a sexual nature perpetrated 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 University encourages reporting of all Sexual Misconduct. Sexual Misconduct includes but is not limited to:

- (i) Dating Violence;
 - (ii) Domestic Violence;
 - (iii) Sexual Assault;
 - (iv) Sexual Exploitation;
 - (v) Sexual Harassment;
 - (vi) Sexual Intimidation; and
 - (vii) Stalking.
- (y) **Sexual Misconduct Panel.** “Sexual Misconduct Panel” is defined in Section 6.02(b) (i) (1). The Sexual Misconduct Panel will receive annual training on (1) issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking, and (2) how to conduct a hearing process that protects the safety of victims and promotes accountability.
- (z) **Stalking.** “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- (i) Fear for his or her safety or the safety of others;
 - (ii) Suffer substantial emotional distress;

For purposes of this definition, “course of conduct” means two or more acts, including, but not limited to, acts in which the stalker 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; “substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling; and “reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim.

- (aa) **Title IX Coordinator.** The name of, and contact information for, the University’s “Title IX Coordinator” are listed in Exhibit A to this Policy.

The University’s Title IX Coordinator has ultimate oversight responsibility for handling Title IX–related complaints and for identifying and addressing any patterns or systemic problems involving Sexual Misconduct. The Title IX Coordinator is available to meet with individuals who are involved with or concerned about issues or University processes, incidents, patterns, or problems related to Sexual Misconduct on campus or in University programs. All allegations involving Sexual Misconduct should be directed to the Title IX Coordinator or other designated University individuals or offices as outlined in this SEXUAL MISCONDUCT POLICY AND PROCEDURES.

The Title IX Coordinator will receive regular professional training in resolution practices and procedures. More specifically, the Title IX Coordinator will receive annual training

on (1) issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking, and (2) how to conduct a resolution process that protects the safety of victims and promotes accountability.

EXHIBIT C

VIRGINIA UNION UNIVERSITY SEXUAL MISCONDUCT POLICY AND PROCEDURES

SEXUAL MISCONDUCT COMPLAINT FORM

Today's date: _____

Information Regarding the Complainant:

Name of the Complainant: _____

Complainant's Phone Number: _____

The Complainant is (please check one): a faculty member a student
 a staff member not affiliated with the
University for faculty, staff, & students, indicate whether current or former

Information Regarding the Respondent:

Name of the Respondent: _____

The Respondent is (please check one): a faculty member a student
 a staff member not affiliated with the
University for faculty, staff, & students, indicate whether current or former

Information Regarding the Alleged Sexual Misconduct:

Time and date of the alleged Sexual Misconduct: _____

Location of the alleged Sexual Misconduct:

on campus: _____

off campus: _____

Witnesses or third parties who may have information regarding the alleged Sexual Misconduct:

Please provide a brief description of the alleged Sexual Misconduct:

You may wish to consider including, among other things, some or all of the following information in your description: the gender of the parties, the relationship between the parties, whether one or more of the parties were under the influence of alcohol or drugs at the time of the alleged Sexual Misconduct, whether the Respondent used pressure or force (physical or otherwise) in the course of the alleged Sexual Misconduct, and the frequency (if applicable) of the alleged Sexual Misconduct.

Please feel free to use the reverse side of this form or separate pages to continue your description, if desired.

Signature of the Complainant: _____