



# **SEXUAL HARASSMENT COMPLAINT PROCEDURES**

Addressing Prohibited Title IX Sexual Harassment by University Employees



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## I. Introduction

Virginia Tech (the University) is committed to providing safe working and learning environments. Consistent with Title IX of the Education Amendments Act of 1972 (Title IX), University policy prohibits sexual harassment as defined in the Title IX implementing regulations (Title IX Sexual Harassment). This document describes the procedures that the University follows when it receives notice of an allegation that a University employee may have engaged in conduct in violation of the University policy that defines and prohibits Title IX Sexual Harassment (the “Title IX Policy”). The University uses these procedures to investigate and adjudicate any such allegations and to impose disciplinary sanctions against employees found responsible for violating the Title IX Policy (<https://policies.vt.edu/assets/1026.pdf>). These procedures are subject to change.

These procedures use certain terms to refer to participants in the University’s Title IX process, as defined below:

- “Complainant” means an individual who is alleged to be the victim of conduct that could constitute Title IX Sexual Harassment, whether they have made a formal complaint or not.
- “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment.
- “Party” (or “parties”) refers generally to a complainant or respondent (or both).

Additionally, the procedures distinguish *reports* of sexual harassment from *formal complaints* as follows:

- “Report” refers to information about or relating to a potential allegation of sexual harassment that is shared generally, without a formal request for the University to initiate an investigation.
- “Formal complaint” is an informed request for the University to initiate an investigation and determine appropriate responsive action.

## II. Role of the Title IX Coordinator

The Title IX Coordinator is responsible for coordinating the University’s response to reports and formal complaints of Title IX Sexual Harassment. Specific responsibilities of the Title IX Coordinator include:

- Providing oversight of the receipt and handling of reports Title IX Sexual Harassment.
- Ensuring that a Complainant has access to information about the University’s Title IX process, including the option to file a formal complaint and/or receive appropriate supportive measures.
- Ensuring compliance with Title IX and its implementing regulation, as well as with these grievance procedures, in any case where a formal complaint is filed.

The University has designated the Director of Title IX Compliance to serve as the Title IX Coordinator.

#### A. Deputy Title IX Coordinator(s)

The University may designate one or more deputy Title IX coordinator(s) to serve any or all of the responsibilities of the Title IX coordinator, as described above. The University has designated the Director of Compliance and Conflict Resolution to serve as Deputy Title IX Coordinator for purposes of responding to allegations of Title IX Sexual Harassment against University employees.

#### B. Office for Equity and Accessibility

Both the Director of Title IX Compliance (the Title IX Coordinator) and the Director of Compliance and Conflict Resolution (a deputy Title IX coordinator) serve in the University's Office for Equity and Accessibility (OEA). Anyone can contact OEA as follows:

##### [Office for Equity and Accessibility](#)

300 Turner St. NW, Suite 2300 (0150)  
Blacksburg, VA 24061  
Telephone: 540-231-2010  
Email: [equityandaccess@vt.edu](mailto:equityandaccess@vt.edu)

Any report or complaint of gender-based discrimination or harassment, including sexual harassment and Title IX Sexual Harassment, in violation of the University's Title IX Policy or the Policy on Harassment, Discrimination, and Sexual Assault ([Policy 1025](#)) made to OEA will put the Title IX Coordinator and any deputy Title IX coordinator on notice of the report. For purposes of these procedures, any reference to an OEA action refers to action coordinated through or on behalf of the Title IX Coordinator or a deputy Title IX coordinator.

#### C. Contact Information

Anyone who wishes to make a report of sexual harassment or has questions or concerns about these procedures, the University's policies prohibiting sexual harassment, or Title IX may contact the Title IX Coordinator or Deputy Title IX Coordinator as follows:

##### Title IX Coordinator

Katie Polidoro  
Director of Title IX Compliance  
300 Turner St. NW, Suite 2300 (0150)  
Blacksburg, VA 24061  
Telephone: 540-231-1824  
Email: [polidoro@vt.edu](mailto:polidoro@vt.edu)

##### Deputy Title IX Coordinator (Employees)

Harrison Blythe  
Director of Compliance and Conflict Resolution  
300 Turner St. NW, Suite 2300 (0150)  
Blacksburg, VA 24061  
Telephone: 540-231-0448  
Email: [hblythe@vt.edu](mailto:hblythe@vt.edu)

### **III. Reporting Sexual Harassment**

A complainant can make a report of sexual harassment to the University in multiple ways, including by contacting the Title IX Coordinator or OEA directly, filing a formal complaint online, or sharing information with a supervisor or a Responsible Employee, as defined by University policy. These reporting options, as well as a few others, and other reporting considerations are described in more detail below.

#### **A. Protection against Retaliation**

The prohibition on retaliation is a key component in the University's system for providing a fair and impartial process for resolving complaints of sexual harassment. The University prohibits retaliation through both the Title IX Policy and [Policy 1025](#).

Complainants, respondents, and anyone involved in or connected to an OEA investigation should refrain from any activity that may be perceived as retaliation. The protection against retaliation applies to both parties and all witnesses. Retaliation can occur at any time prior to, during, or after OEA opens a complaint for investigation.

#### **B. Privacy and Confidentiality**

The University is committed to protecting the privacy and confidentiality of all individuals involved in a report of sexual harassment.

The University designates certain on-campus offices as confidential resources. Examples of confidential resources include Cook Counseling Center, Schiffert Health Center, the Virginia Tech Women's Center, the University Ombuds Office, and the Graduate School's Office of the Ombudsperson.<sup>1</sup> Because confidential resources are specifically excluded from the University's Responsible Employee policy, designated-confidential resources will not share a complainant's report of sexual harassment with OEA without the complainant's express permission. Sharing information with a confidential resource does not put the University on notice of a report of sexual harassment.

The University will make every effort to protect all individuals' privacy, while also conducting a careful assessment of the allegation(s) and taking any steps needed to stop the harassment, prevent its recurrence, and remedy its effects. Reports and formal complaints of sexual harassment involving employees often require OEA to share a limited amount of information

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<sup>1</sup> Some of these resources are only available to students.

with select University administrators and those in the respondent's direct chain of command.

### C. Reporting Options

Virginia Tech encourages anyone who experiences an incident of sexual harassment to seek medical attention when necessary and maintain evidence to preserve the full range of options of resolution through University, civil, and criminal processes.

Some incidents of sexual misconduct may not meet the definition provided below of Title IX Sexual Harassment, but may be violations of other University policies, including the Policy on Harassment, Discrimination, and Sexual Assault ([Policy 1025](#)). This includes reports of sexual harassment that occur off-campus and outside the University's control that cause continuing effects on-campus. OEA will provide information to a complainant about available options for addressing the alleged misconduct.

#### *Reporting to Law Enforcement*

The University encourages individuals to report to law enforcement incidents of sexual violence, stalking, and intimate partner violence that may also be crimes under state criminal statutes. The University will assist a complainant, at the complainant's request, in contacting local law enforcement and will cooperate with law enforcement agencies if a complainant decides to pursue the criminal process, to the extent permitted by law.

Individuals may also contact law enforcement directly. Contact information for the Virginia Tech Police Department (for on campus incidents) and the Blacksburg Police Department (for incidents that occur off campus) is as follows:

#### Virginia Tech Police Department

Public Safety Building (0523)  
330 Sterrett Drive  
Blacksburg, VA 24061  
Emergency Telephone: 911  
Non-emergency Telephone: 540-231-6411

#### Blacksburg Police Department

200 Clay Street SW  
Blacksburg, VA 24060  
Emergency Telephone: 911  
Non-emergency Telephone: 540-443-1400

The University's policy, definitions, and burden of proof may differ from Virginia criminal law. A complainant may seek resolution through the Title IX process in addition to pursuing criminal or civil action, as these processes are not mutually exclusive. Law enforcement's determination whether or not to prosecute or the outcome of any criminal prosecution does not determine the University's response to sexual harassment. In addition, the University may conduct

investigative and disciplinary proceedings prior to, concurrent with, or following civil or criminal proceedings.

Virginia Tech will generally respect a complainant's choice of whether or not to report an incident to local law enforcement, unless the University determines that there is an overriding issue with respect to the safety or welfare of the Virginia Tech community or is otherwise required by law. When a report involves an incident of sexual assault, Virginia Tech is required by state law to make a timely notification to the law enforcement agency where that incident occurred and, in some cases, inform the Commonwealth's attorney. Where a report involves suspected abuse of a minor as defined by law, Virginia Tech is required by state law to notify law enforcement and/or the Child Protective Services in Virginia.

### *Reporting to OEA and the Title IX Coordinator*

The University will promptly review and respond to all reports of sexual harassment. Making a report under these procedures means telling a Responsible Employee what happened—in person, by telephone, in writing, or by email. Individuals are encouraged to report incidents directly to OEA or the Title IX Coordinator, in person, by telephone, in writing, or by email. Upon receipt of a report, OEA will promptly contact the complainant to provide information on their rights, resources, and resolution options—including information about how to file a formal complaint (described in more detail below).

A complainant does not have to immediately decide whether to request any particular course of action. Nor does a complainant need to know how to label what happened. Choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The University provides support that can assist everyone in making these important decisions, and to the extent legally possible, will respect a complainant's autonomy in deciding how to proceed. There may be times when the University needs to take action either to comply with the law or to fulfill its obligation to provide a safe and nondiscriminatory environment for all members of the University community.

#### **D. False Reporting and Information**

The University takes the validity of information very seriously. A charge of sexual harassment can carry severe consequences. A complainant or third party who makes a report that is later found to have been intentionally false or made maliciously, without regard for truth, may be subject to disciplinary action. This provision does not apply to reports made in good faith. A determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Any participant in a Title IX process who is later proven to have intentionally, or maliciously and without regard for truth, given false information during the course of an investigation or during a formal hearing may be subject to disciplinary action.

## E. Supportive Measures

When OEA receives report of sexual harassment, the first priority is to provide support to the complainant, preserve the safety and wellbeing of the complainant and the larger community, and restore the complainant's access to University programs and activities. OEA tries to accomplish these goals through implementation of appropriate supportive measures. Supportive measures are actions that the University may be able to take to improve or restore the complainant's ability to access University programs or activities without burdening or taking punitive or restrictive action against another member of the University community. Supportive measures for employees could include, for example, facilitating a conversation with the complainant's supervisor about changing the complainant's worksite or hours. Supportive measures for students could include, for example, providing access to counseling services; providing academic assistance; changing housing assignment; facilitating a voluntary leave of absence; and others.

Supportive measures are available regardless of whether a complainant chooses to file a formal complaint. They are also confidential; OEA will only share information about Supportive measures to the extent necessary to implement them.

## IV. Filing a Formal Complaint

A complainant can file a formal complaint using the Title IX Sexual Harassment Complaint Form.

Formal complaints that meet the definition of Title IX Sexual Harassment, as defined in Title IX and reflected in the University's Title IX Policy, will be investigated and resolved according to these procedures. Complaints that contain allegations of sexual harassment or sex discrimination that do not meet the definition of Title IX Sexual Harassment are subject to the dismissal sections described below; however, please note that allegations may be dismissed for the purposes of these procedures and Title IX but still subject to another University policy and process, such as [Policy 1025](#) and OEA's Anti-Discrimination Complaint Procedures.<sup>2</sup>

While it is not typical, the Title IX Coordinator has authority to sign a formal complaint to initiate an investigation of Title IX Sexual Harassment without the express permission, consent, or participation of a complainant. This may happen when a complainant's preference to not file a formal complaint comes into conflict with the University's obligation to act to protect the safety of the complainant or others within the community. When making this determination, the Title IX Coordinator considers the following: the severity of the impact of the conduct reported; whether the alleged conduct includes threats of future harm to a person or people; whether the University has received multiple reports of misconduct involving the same respondent suggesting a pattern of predatory behavior; and the availability of independent evidence. In these atypical cases, the Title IX Coordinator is not a party to the complaint and is not taking adverse action against any party. The complainant will continue to receive all the guarantees of these

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<sup>2</sup> OEA reserves the right to apply these procedures or other procedures to investigate allegations of misconduct that falls outside the scope of the Title IX Policy.

procedures, including a prompt and equitable resolution, opportunities to review information, and notification of progress and outcomes.

The University will typically resolve formal complaints of Title IX Sexual Harassment, from receipt of the formal complaint through the Formal Adjudication Process and the Appeals Process, within ninety (90) days, but this timeline may be extended for good cause. The University will provide regular updates to the parties about the status of an investigation and will provide a rationale if good cause exists to extend the process beyond ninety (90) days.

#### A. Presumption of Non-responsibility

When OEA receives a complaint of sexual harassment, the respondent is presumed not responsible for the alleged misconduct. This presumption is only overcome by a final determination, by a preponderance of the evidence, that the respondent's conduct violated the Title IX Policy.

#### B. Complaint Evaluation

Upon receiving a formal complaint, OEA will assign an investigator to evaluate the complaint to determine whether OEA needs additional information before deciding how to proceed. During complaint evaluation, the assigned investigator will make contact with the complainant to confirm that the complainant wants to proceed with formal resolution, provide information about the process and resources, and clarify allegations as necessary. Complainants are encouraged to share details of alleged misconduct in a manner that is comfortable for them, whether through an in-person meeting, a phone call, or in writing. If OEA cannot make contact with the complainant to confirm or clarify the allegations in a formal complaint and the complaint lacks sufficient detail for OEA to infer an alleged incident of sexual harassment, OEA will dismiss the complaint before issuing a notice to the respondent.

OEA retains discretion to consolidate multiple formal complaints by the same complainant against a single respondent, or by separate complainants against a single respondent, into one investigation if the evidence related to each incident would be relevant in reaching a determination on another incident and the allegations arise out of the same general set of facts or circumstances.

#### C. Notice of Investigation

Once OEA has sufficient information about the allegations in a formal complaint to infer that the complaint includes one or more allegations of sexual harassment, OEA will provide prompt notice to both the complainant and respondent of the complaint and pending investigation via a written Notice of Investigation. OEA will send the Notice of Investigation to the complainant and respondent at the same time. The Notice of Investigation will contain, at a minimum, the following information:

- The complainant's name;
- The date and location of any alleged incident of misconduct, if known;

- A brief description of the conduct that forms the basis of any allegation of sexual harassment;
- A statement that the respondent is presumed not responsible prior to the outcome of the process;
- Notice that the University prohibits knowingly providing false information during an investigation and adjudication;
- Notice of each party's right to be accompanied by an Advisor of their choice; and
- Notice of each party's right to review the evidence collected prior to any final investigation report or hearing.

The Notice of Investigation may also include notice of allegations relating to alleged misconduct that falls under other University policies, such as [Policy 1025](#).

In the event that information is learned during an investigation that constitutes a new allegation, OEA will send another written notice to each party describing the previously unraised allegation in accordance with this section.

#### D. Complaint Dismissal and Appeal of Dismissal

Under Title IX, the University is required to formally dismiss allegations of sexual harassment that do not meet the definitions set forth in the Title IX regulations. However, some allegations of sexual misconduct may violate University policy, such as [Policy 1025](#), while not meeting the definition of sexual harassment as defined in the Title IX regulation (and as reflected in the University's Title IX Policy). In other special situations, the University retains discretion to dismiss complaints of sexual harassment, such as when if a complainant were to request to withdraw a formal complaint of Title IX Sexual Harassment. This section describes the process for mandatory and discretionary complaint dismissals, as well as the opportunity that both parties have to appeal the dismissal determination.

##### *Mandatory Dismissal of Complaint for Title IX Purposes*

As required by the Title IX implementing regulations, OEA will dismiss any allegation of sexual harassment—for purposes of Title IX—when the conduct alleged does not meet the definition of Title IX Sexual Harassment as set forth in the University's Title IX Policy ([Policy on Title IX Sexual Harassment and Responsible Employee Reporting](#)). When this happens, OEA will send a written Notice of Dismissal to both parties at the same time. The Notice of Dismissal will state that OEA is dismissing the complaint and include the rationale supporting the determination; the notice will also state whether OEA will continue to process the complaint allegations under Policy 1025.

##### *Discretionary Dismissal of Complaint*

OEA may dismiss complaints prior to adjudication when either the complainant requests to withdraw the formal complaint, or when the unique circumstances of a case prevent the investigator from gathering sufficient evidence to proceed further, such as when a complainant becomes unresponsive or actively chooses not to participate further or when the respondent is no

longer employed by the University. In these circumstances, OEA will send a written Notice of Dismissal to both parties at the same time. The Notice of Dismissal will state that OEA is dismissing the complaint and include the rationale supporting the determination.

### *Appealing Determination of Complaint Dismissal*

Both parties have an equal opportunity to appeal OEA's decision to dismiss an allegation of Title IX Sexual Harassment. Appeal requests must be based on one of the following grounds:

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

The parties have five (5) calendar days from the date of that OEA issues the Notice of Dismissal to submit the appeal. To appeal, a party must submit a written request using the [Appeal Form](#). The request must state the grounds on which the party seeks to appeal and include a rationale citing any information the party wants considered and describing why the appeal should be granted.

## **V. Investigation Process**

The goal of the investigation is to gather all evidence relevant to making the determination as to whether there is sufficient information to refer the formal complaint for adjudication through the Formal Adjudication Process, which oversees the university's disciplinary process.

OEA will designate an investigator who has specific training and experience responding to and investigating reports and complaints of sexual harassment.

### **A. Advisors and Attorneys**

During the investigation process, the complainant and respondent have the right to be assisted by an advisor. The advisor may accompany the complainant or respondent to any meeting. A witness may not serve as an advisor. An advisor can be any person of a party's choosing, including a parent, employee, counselor, advocate, or attorney. Any person who serves as an advisor can attend any meeting but may not speak on behalf of the party. The advisor may or may not be the same person that the party chooses to use for purposes of the Formal Adjudication Process (see below).

The University will not recognize or enforce agreements between the parties reached outside of these procedures.

## B. Evidence Gathering

The investigator will gather information from the complainant, the respondent, and any other individuals who may have information relevant to the investigation. As part of the investigation, participants will have equal opportunity to present statements, witnesses, and other information, including documents, communication between the parties, electronic records, and medical records, as appropriate.

### *Identification of Witnesses*

The University provides both parties an opportunity to identify witnesses, including expert witnesses. The OEA investigator may exclude statements made by a witness from consideration for reasons including relevance and confidentiality of the parties.

If a party identifies an expert witness, OEA will only consider statements from the expert witness that relate to their area of expertise.

OEA cannot require an individual, whether a party or a witness, to participate in an investigation. If a party identifies a witness who then refuses to participate in an investigation, OEA will move forward with gathering evidence without that witness's participation.

### *Relevance Standard for Evidence*

Evidence gathered in an investigation will be considered relevant if the evidence makes an alleged fact more or less probable to have occurred, and the fact is of consequence to determining whether a policy violation may have occurred. OEA and the OEA-assigned investigator retain discretion to omit evidence that is not relevant from the investigation report. Similarly, the investigator may choose not to interview a witness that a party identifies if the witness is not alleged to be in position to offer relevant information or evidence.<sup>3</sup>

## C. Opportunity to Respond to Evidence

A copy of all evidence collected during an investigation will be shared with each party at least ten (10) calendar days prior to the issuance of a final report. This includes evidence that was submitted or collected that the investigator does not intend to include in a final report. Each party may submit a written response within that ten (10) day period.

The investigator will prepare a written report that summarizes the information gathered and synthesizes the areas of agreement and disagreement between the parties and any supporting information or accounts. In preparing the report, the investigator will review all information gathered to determine whether it is relevant given the nature of the allegation. In general, the investigator may redact information that is irrelevant, more prejudicial than probative, or immaterial. The investigator may also redact statements of personal opinion, rather than direct observations or reasonable inferences from the facts.

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<sup>3</sup> See the Formal Adjudication Process section (specifically section VI.E) for more information about relevance. OEA investigators will use the same standards described in that section during investigations.

## D. Final Investigation Report and Opportunity to Review Evidence

The investigator will prepare a written report that summarizes the information gathered and synthesizes the areas of agreement and disagreement between the parties and any supporting information or accounts.

OEA will send a copy of the final investigation report, including any attachments and supporting documents, to both parties at least ten (10) calendar days prior to a hearing in which a determination of responsibility will be made. If OEA determines that there is sufficient evidence to suggest that a violation of the University's Title IX Policy may have occurred, OEA will notify the parties that a live hearing will be convened in accordance with the Formal Adjudication Process and identify the individuals selected to serve as the Hearing Coordinator, who helps coordinate and organize the live hearing, the Hearing Chair, who serves as the decision-maker for the case, and the Appellate Officer, who receives and decides any appeals.

If OEA determines that there is insufficient information to suggest that the alleged misconduct meets the definition of Title IX Sexual Harassment, OEA will issue a Notice of Dismissal in accordance with the Complaint Dismissal and Appeal of Dismissal section above. Parties may appeal any determination to issue a Notice of Dismissal using the [Appeal Form](#).

## VI. Formal Adjudication Process

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

### A. Procedural Guarantees

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

- receive a copy of the final investigation report, including any attachments and supporting documents at least ten (10) calendar days in advance of the hearing;
- receive written notice of the date, time, location, participants, and policies charged at least five (5) calendar days in advance of the hearing to allow the parties sufficient time to prepare for the hearing;
- be accompanied by an advisor of their choice, at their own cost, or to have an advisor provided to them by the University without fee or charge;
- inspect and review, during the hearing, all evidence obtained during the investigation that is directly relevant to the allegations in the formal complaint;<sup>4</sup>

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<sup>4</sup> If either party furnishes new evidence or documentation during the hearing that the other party has not been afforded an opportunity to review, the Hearing Chair may consult with the Title IX

- present witnesses, including fact and expert witnesses;
- present evidence that supports or refutes the alleged conduct;
- have their advisor cross-examine the other party and any witnesses;
- remain silent or otherwise not participate;
- challenge the objectivity of a hearing officer, given reasonable cause to believe that they may be biased or have a conflict of interest; and
- appeal, regardless of the outcome, based on the following grounds: (1) Procedural irregularity that affected the outcome; (2) New evidence that was not reasonably available at the time of the live hearing that could have affected the outcome; and (3) Conflict of interest or bias of the Title IX Coordinator or deputy Title IX coordinator, the assigned investigator, or hearing officer(s), that affected the outcome.

## B. Title IX Hearing Officers

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

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

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

## C. Advisors

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

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

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Coordinator or a deputy Title IX coordinator and may elect to send the information back to the OEA/Title IX for further investigation and review.

## D. Hearing Format

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

## E. Witness Testimony and Cross-Examination

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

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

### *Relevance*

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

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

When individuals offer their own confidential or privileged information, such as medical records, for an investigation, they will be asked to sign a release for that confidential information. Unless

an individual has signed that release, the Hearing Chair will not permit witnesses to answer questions about, request, or share information that is confidential or privileged.

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

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

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

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

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

Parties and witnesses are not required to answer questions or otherwise participate in hearings. The Hearing Chair will not draw an inference, positive or negative, from the decision of a party or witness not to participate in the formal adjudication process.

#### F. Recording

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

#### G. Hearing Location and Virtual Participation

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

## H. Determination of Responsibility

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

## I. Standard of Proof

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

## J. Decision Letter

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

## K. Range of Possible Sanctions

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

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

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

When assigning sanctions, the Hearing Chair will consider the type and nature of any policy violation(s), including mitigating or aggravating factors. Sanctions are generally cumulative in nature. Nothing in these procedures abrogates post-adjudication rights as provided by state and

federal law (i.e., State Grievance Procedure, under Chapter 30 (§2.2-3000 et. seq.) of Title 2.2 of the Code of Virginia; the [Office for Civil Rights](#); and the [Equal Opportunity Employment Commission](#)). OEA will coordinate with the respondent's supervisor to ensure the timely implementation of any sanction.

#### L. Remedial Action

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

### VII. Appeal Process

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

#### A. Title IX Appellate Officers

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

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

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

#### B. Grounds for Appeal

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

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

outcome.

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

### C. Timeframe to Submit an Appeal

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

### D. Format of Appeal

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

### E. Notification to the Other Party

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

### F. Potential Outcomes of an Appeal

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

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

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

information that the parties submit in support of or in opposition to the appeal.