



OLD DOMINION UNIVERSITY

Policy #1008

POLICY ON TITLE IX AND SEXUAL MISCONDUCT

Responsible Oversight Executive: Vice President for Human Resources, Diversity, Equity, and Inclusion

Date of Current Revision or Creation: March 3, 2022

A. PURPOSE

The purpose of this policy is to establish uniform guidelines to promote a work and education environment that is free from sexual misconduct, as defined below, and to affirm the University's commitment to foster an environment that emphasizes the dignity and worth of every member of the Old Dominion University community. This policy also details the process to address complaints or reports of sexual misconduct and prohibits retaliation.

B. AUTHORITY

[Code of Virginia Section 23.1-1301, as amended](#), grants authority to the Board of Visitors to make rules and policies concerning the institution. Section 7.01(a)(6) of the [Board of Visitors Bylaws](#) grants authority to the President to implement the policies and procedures of the Board relating to University operations.

[Title IX of the Education Amendments of 1972](#)

[Title VII of the Civil Rights Act of 1964](#)

[Equal Pay Act of 1963](#)

[Jeanne Clery Act \(Clery Act\)](#)

[Violence Against Women Reauthorization Act of 2013 \(VAWA\)](#)

[Code of Virginia Section 23.1-900](#)

[Executive Order One \(2018\)](#)

[Board of Visitors Policy 1001 – The Mission of the University](#)

C. DEFINITIONS

Actual Knowledge - Actual knowledge means notice of allegations of sexual harassment as defined by Title IX to the University's Title IX Coordinator or other Responsible Employee. Notice includes, but is not limited to, a report of sexual harassment as defined by Title IX to the Title IX Coordinator.

Administrative Leave - Leave granted with the approval of Human Resources to cover periods of investigation of wrongdoing and to provide paid leave during the time management renders a decision on investigative results.

Advisor - A person who gives advice and/or support to a party in the complaint process. Advisors may be, but are not required to be, attorneys; advisors may not be witnesses. While the advisor may provide support and advice, the advisor may not speak on behalf of the party or otherwise directly participate (except as specifically allowed under this policy), or in any manner disrupt any proceeding.

Campus Security Authority - As defined by the Clery Act, it is an official of the institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline and campus judicial proceedings.

Complainant – An individual who files a formal complaint under this policy. For purposes of this policy, the term “victim” may be used interchangeably with Complainant. This definition includes individuals who are alleged to have been subjected to conduct that could constitute sexual misconduct in a third-party report.

Complaint Commencement Date - The date on which the formal complaint is received.

Consensual Relationship - Two or more individuals (including spouses and partners) involved by mutual consent in a romantic, physically intimate, and/or sexual relationship.

Consent - Consent is knowing, voluntary and clear permission, by word or action, which a reasonable person would interpret as a willingness to participate in mutually agreed-upon sexual acts.

Important points regarding consent:

- Past consent to sexual activities, or a current or previous dating relationship, does not imply ongoing or future consent.
- Consent to some sexual activity (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse).
- Consent may be withdrawn at any time.
- The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred.
- Incapacitation of an individual to consent to sexual activity, whether caused by age, disability, use of drugs or alcohol, or any other reason, may result in a determination that the individual was unable to provide necessary consent. The use of alcohol or drugs does not diminish one's responsibility to obtain consent and does not excuse conduct that constitutes a violation of this Policy.

Consent cannot be inferred from:

- Silence, passivity, or lack of resistance alone
- Accepting a meal, a gift, or an invitation for a date
- A person's manner of dress or flirtatious behavior

Dating Violence - Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. A social relationship of a romantic or intimate nature means a relationship that is characterized by the expectation of affection or sexual involvement between the parties. The existence of such a relationship shall be determined based on the reporting party'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 can be a single event or a pattern of behavior that 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.

Day – Monday through Friday, excluding any day when the University is closed, unless otherwise specified.

Deputy Title IX Coordinators - The designated officials within the University who may receive reports of violations of this policy. They generally serve as the first point of contact and assist in initiating discussions about potential Title IX issues with the Office of Institutional Equity and Diversity (OIED) and the Deputy's respective area. They assist with oversight of Title IX compliance requirements, including but not limited to training, data gathering, and reporting.

Duties:

- Facilitate communication between OIED and the person from their respective area who has reported the potential violation.
- Responsible for answering general policy and procedural inquiries and providing awareness about resources.
- Communicate between their respective department and OIED.
- Ensure complaint tracking system (Maxient) reports are made to OIED by the person who receives initial information.
- Assist with training efforts.
- Assist with data gathering and reporting for Title IX compliance.

Domestic Violence – A felony or misdemeanor crime of violence committed: (i) by a current or former spouse or intimate partner of the victim; (ii) by a person with whom the victim shares a child in common; (iii) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; (iv) by a person similarly situated to a spouse of the victim under the law of the Commonwealth of Virginia; or (v) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family laws of the Commonwealth of Virginia including parents or stepparents. Domestic violence can be a single event or a pattern of behavior that includes, but is not limited to, sexual or physical abuse.

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 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.

Formal Complaint - A document filed by a Complainant or signed by the Title IX Coordinator (or designee) alleging sexual misconduct against a Respondent and requesting an investigation of the alleged sexual misconduct. A formal complaint may be filed in person, by mail or email, or via the [online complaint form](#), and must be signed or otherwise indicate that the Complainant is the person filing the formal complaint. If the Title IX Coordinator (or designee) signs a formal complaint, the Title IX Coordinator does not become a Complainant or party during the complaint process.

Incapacitation - When a person lacks the ability to make informed, rational judgments about whether to engage in sexual activity. They are unable, temporarily or permanently, to give consent because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or

other drugs, or due to a temporary or permanent physical or mental health condition.

Intimate Partner - A person who has a close personal or sexual relationship.

Intimidation – An act, course of conduct, or an implied threat directed at a specific person that would cause a reasonable person to fear harm. For example, intimidation can occur when a person uses their real or perceived power, authority, or control to pressure another person to submit to sexual activity or other unwanted conduct that they might not have agreed to engage in otherwise. A person's size, alone, does not constitute intimidation; however, a person can use their size or physical power in a manner that constitutes intimidation (for example, by blocking access to an exit).

Mediation – A confidential, fair, and voluntary process in which neutral, impartial mediators assist parties in exploring potential joint resolutions in a complaint. The mediators aid the parties in making decisions together, based on an understanding of their own views, the other's views, and the situation they face.

Party - A Complainant or Respondent in the complaint process.

Reasonable Person - A person under similar circumstances with an ordinary degree of reason, prudence, care, foresight, or intelligence.

Respondent - An individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct.

Responsible Employee - Includes any employee who has the authority to take action to redress incidents in violation of this policy (including sexual harassment, sexual violence, dating and domestic violence, and stalking); who has been given the duty of reporting such incidents or any other misconduct to the Title IX Coordinator or designee; or whom an employee or student could reasonably believe has this authority or duty. All teaching and research faculty, graduate teaching assistants, graduate research assistants, residential assistants, law enforcement, and campus security authorities are Responsible Employees. Additionally, all employees in a supervisory role are Responsible Employees.

Retaliation - Overt or covert acts of discrimination, interference, penalty, reprisal or restraint against a group or individual who, in good faith, exercise their rights under this policy or participate in an investigation of complaints under this policy, including but not limited to direct and indirect intimidation, threats, and harassment. Charges against an individual for violations that do not involve sex discrimination or sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX and this policy, constitutes retaliation. Complaints of retaliation may be addressed through the Discrimination Policy or Whistleblower Retaliation Policy.

Sex or Gender-Based Discrimination (also termed "Sex Discrimination") - Adverse treatment of an individual based on sex or gender, rather than individual merit. Sex discrimination may include harassment and other abusive behavior, whether verbal or physical, that is based on sex or gender, including actual or perceived gender roles, including seeking sex or sexual favors. Examples of conduct that can constitute discrimination because of sex, sexual orientation, gender identity or gender expression include but are not limited to:

- Singling out or targeting an individual for different or adverse treatment (e.g., more severe discipline, lower salary increase)
- Failing or refusing to hire or allow participation by an individual in a university activity

- Terminating or removing an individual from employment or an educational program
- Verbally harassing, abusing, or demeaning a targeted individual in a manner that is sufficiently severe, pervasive/persistent, and objectively offensive to have the effect of unreasonably interfering with an individual's educational experience, working conditions, or living conditions by creating an intimidating, hostile or offensive environment.

Sexual Assault – is defined as:

- **Forcible Sex Offenses:** Any sexual act directed against another person without the consent of the Complainant including instances where the Complainant is incapable of giving consent.
 - **Rape:** 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 Complainant.
 - **Sodomy:** Oral or anal sexual intercourse with another person, forcibly and/or against the person's will (non-consensual), or not forcibly or against the person's will in instances of where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - **Sexual Assault with an Object:** The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will (non-consensual) or not forcibly or against that person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - **Fondling:** The touching of the private body parts of another person (buttocks, groin, genitalia, breasts, or the clothing covering those areas) for the purposes of sexual gratification, forcibly and/or against that person's will (non-consensual) or not forcibly or against that person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- **Non-Forcible Sex Offenses:**
 - **Incest:** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by the law of the Commonwealth of Virginia. (See [Va. Code §18.2-366](#)).
 - **Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent in the Commonwealth of Virginia, which is 17.

Sexual Exploitation - 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:

- Causing or attempting to cause another person to be incapacitated in order to gain a sexual advantage over such person;
- Prostituting another person (i.e., personally gaining money, privilege, or power from the sexual activities of another);
- Non-consensual videotaping, photographing, or audiotaping of sexual activity or a person's intimate body parts (e.g., genitalia, breasts, buttocks), and/or non-consensual distribution of these materials via media such as, but not limited to, the Internet, or the threat of such distribution;
- Exceeding the boundaries of consent (e.g., allowing another person to observe consensual sex without the knowledge of or consent from all participants);

- Facilitating a violation of this policy through, for example, the intentional use of drugs or alcohol to incapacitate another person's ability to give consent to sexual activity, or aiding, promoting, encouraging, or being complicit in a violation of this policy by another person.
- Failing to use contraception, or deliberately removing or compromising contraception (Stealth) without the other party's knowledge.
- Voyeurism; and
- Knowingly or recklessly transmitting a sexually transmitted disease to another individual.

Sexual Harassment – As defined by Title IX, it is any of three types of misconduct on the basis of sex which jeopardize equal access to education:

- Quid pro quo - an employee of the University conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct.
- Any unwelcome sex-based conduct that a reasonable person would find so severe, persistent/pervasive, and objectively offensive that it denies a person equal educational access. Unwelcome conduct on the basis of sex should be reviewed from the perspective of a reasonable person in the shoes of the Complainant such that age, abilities, and relative positions of authority of the individuals involved in an incident are taken into account.
- Any instance of sexual assault, dating violence, domestic violence, or stalking.

Non-Title IX sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature including: verbal (e.g., specific demands for sexual favors, sexual innuendoes, sexually suggestive comments, jokes of a sexual nature, sexual propositions, or sexual threats); non-verbal (e.g., sexually suggestive emails, other writings, articles or documents, objects or pictures, graphic commentaries, suggestive or insulting sounds or gestures, leering, whistling, or obscene gestures); or physical (e.g., touching, pinching, brushing the body, any unwelcome or coerced sexual activity, including sexual assault). This conduct is sexual harassment when it constitutes a term or condition of employment and/or hostile environment as described above. Sexual harassment can involve persons of the same or different sexes. Sexual harassment may also include sex-based harassment directed toward stereotypical notions of gender identity or a failure to conform to those gender stereotypes.

The types of non-Title IX sexual harassment prohibited by this policy are (1) Term or Condition of Employment (often referred to as "quid pro quo" harassment), which occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University activity are conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a University program or activity; and (2) Hostile Environment, which occurs when verbal, non-verbal and/or physical conduct is sexual and/or based on sex, gender, gender identity or sexual orientation (actual or perceived), and is sufficiently severe, persistent or pervasive and objectively offensive that it interferes with, limits, or denies the ability of an individual to participate in or benefit from the educational programs, services, opportunities, or activities or the individual's employment access, benefits or opportunities. Mere subjective offensiveness is not enough to create a hostile environment. In determining whether conduct is severe, persistent or pervasive and thus creates a hostile environment, the following factors will be considered: (a) the degree to which the conduct affected one or more individuals' education or employment; (b) the nature, scope, frequency, duration and location of the incident(s); (c) the identity, number and relationships of persons involved; and (d) the perspective of a "reasonable person" in the same situation as the person subjected to the conduct. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of a violation.

Sexual Misconduct – any form of sexual harassment (Title IX and non-Title IX sexual harassment) and sexual exploitation, as defined in this policy.

Sexual Violence – Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent.

Stalking – In the context of intimate partner relationships, it is a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for his or her safety or the safety of others;
- 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. For purposes of this definition, "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.

Supportive Measures – Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, without fee or charge, to the Complainant or Respondent, before or after the filing of a formal complaint or where no formal complaint has been filed. These services are designed to restore or preserve equal access to education, protect the safety of all parties involved as well as the safety of the University community, and deter violations of this policy. Supportive measures may include but are not limited to counseling, academic or housing adjustments, schedule adjustments, no-contact orders, escort services, and increased security or monitoring of certain areas of campus.

Third-Party Report - Any report of conduct that may constitute a violation of this policy submitted by an individual other than the Complainant.

Title IX Coordinator - The position designated by the University to coordinate the institution's compliance with [Title IX of the Education Amendments of 1972 \(20 U.S.C. § 1681 et seq.\)](#), as amended and related sexual harassment laws and regulations. The University's Title IX Coordinator has oversight responsibility for handling Title IX-related reports and complaints and for identifying and addressing any patterns or systemic problems involving sexual misconduct. The Title IX Coordinator or designee is available to meet with individuals who are involved with or concerned about issues or university processes, incidents, patterns, or problems related to sexual harassment or sex discriminated 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 Policy. The name of, and contact information for, the University's Title IX Coordinator are listed in Appendix A to this Policy.

Title IX Liaison - Generally serves as a point of contact and assists in initiating discussions about potential Title IX issues with OIED and their respective area.

Duties:

- Facilitates communication between OIED and the person who has reported the potential violation;
- Responsible for answering general policy and procedural inquiries;
- Communicates between their respective department and OIED; and

- Ensures complaint tracking system (Maxient) reports are made to OIED by the person who receives initial information.

University Program or Activity – Includes locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the alleged conduct occurred. This also includes buildings owned or controlled by recognized student organizations.

Witness - A person other than a party to a complaint who has first-hand knowledge of an event or circumstance that is relevant to the case from personal observation or experience. An expert witness must have special knowledge or proficiency in a particular field that is relevant to the case in order to provide expert witness testimony. Parties are responsible for any costs related to securing expert witnesses.

D. SCOPE

This policy applies to conduct on property owned, leased, or controlled by the University involving students, student organizations/groups, employees, visitors to the institution, contractors working on campus who are not University employees, and students and employees participating in University-sponsored activities. Students include all persons admitted to the University who have not completed a program of study for which they were enrolled; student status continues regardless of whether the University's programs are in session. Employees include all staff, administrators, faculty, full or part-time, classified, or hourly persons who are paid by the University. Visitors include, but are not limited to, vendors and their employees, parents of students, volunteers, guests, uninvited guests, and all other persons located on property owned, leased, or otherwise controlled by the University.

The University must respond to sexual harassment incidents as defined by Title IX that occur in University programs or activities, against a person in the United States, of which the University has actual knowledge.

To the extent that the alleged conduct would satisfy both the definition of Title IX and non-Title IX sexual harassment under this policy, the procedures for resolving concerns of Title IX sexual harassment will supersede. Conduct prohibited by this policy that does not fall within the scope or jurisdiction of Title IX may be addressed by following "Process B."

E. POLICY STATEMENT

The University is committed to promoting a work and education environment that is free from sexual misconduct. The University will take steps to prevent recurrence of sexual misconduct when incidents occur, remedy any effects on the Complainant and others (including measures to protect other students, if appropriate), and address complaints or reports of retaliation. It is a violation of this policy for any member of the University community to make an intentionally false accusation of sexual misconduct.

F. PROCEDURES

1. Training

The University shall provide training to all employees likely to witness or receive reports of sexual harassment, including faculty, University law enforcement employees, administrators,

University counselors, general counsels, athletic coaches, health personnel, and resident advisors. Training for employees will include practical information about how to prevent and identify sexual misconduct; the behaviors that may lead to and result in sexual misconduct; the attitudes of bystanders that may allow conduct to continue and bystander intervention methods; the potential for re-victimization by responders and its effect on victims; appropriate methods for responding to a victim who may have experienced sexual misconduct, including the use of nonjudgmental language; the impact of trauma on victims; and, as applicable, the person(s) to whom such misconduct must be reported. Additionally, the training for Responsible Employees will explain the Responsible Employees' reporting obligation, including what should be included in a report and any consequences for the failure to report, the procedure for responding to Complainant's requests for confidentiality, and the process to provide the contact information for the University's Title IX Coordinator. The University will train Responsible Employees to inform Complainants and/or Respondents of the reporting obligations of Responsible Employees; options to request confidentiality and available confidential advocacy, counseling, or other support services; and the right to file a complaint with OIED and to report a crime to campus or local law enforcement.

Individuals who conduct the complaint procedures under this policy will receive annual training on the issues related to dating violence, domestic violence, sexual assault and stalking and on how to conduct an investigation, how to conduct Title IX hearings, and how to conduct an appeal process in a way that protects the safety of individuals involved and promote accountability. Training should also encourage students and employees to report incidents of sexual misconduct. On-going training for all students will be provided in accordance with Federal law.

The University will publish training received by the Title IX Coordinator, Deputy Title IX Coordinators, Title IX Liaisons, investigators, decision-makers, and persons who facilitate informal resolutions on the University's website or make the materials available upon request for inspection by members of the public.

2. Confidentiality, Privacy, Anonymity and Requests Not to Pursue an Investigation

For any third-party report and complaint under this policy, every effort will be made to respect and safeguard the privacy interests of all individuals involved in a manner consistent with the need for a careful assessment of the allegation and any necessary steps to eliminate the conduct, prevent its recurrence, and address its effects. Information related to a report or complaint under this policy will only be shared with those University employees who "need to know" in order to assist in the active review, investigation, or resolution of the matter, consistent with FERPA and other applicable privacy laws. While not bound by confidentiality, individuals must be discreet and respect the privacy of all individuals involved in the process. If a Complainant of conduct in violation of this policy or another reporting party wishes to keep a report confidential, such report must be made to licensed health care providers or licensed counselors and/or their support staff, or an accredited rape crisis or domestic violence counselor. These individuals are designated as confidential officials and are employed with University Counseling Services, Student Health Services, the Women and Gender Equity Center, and the YWCA of Hampton Roads. The Office of Student Engagement and Enrollment Services maintains the current directory of these staff members. A list of resources, including confidential resources, can be found [here](#).

Confidential officials may encourage Complainants to report the incident to the ODU Police Department (ODUPD), the Title IX Coordinator, or local law enforcement agency. Responsible Employees, including student Responsible Employees, who otherwise happen to work with the

confidential officials in the areas listed above, cannot keep reports confidential. Responsible Employees receiving reports of conduct in violation of this policy are mandated to report the incident but will maintain privacy to every extent possible without compromising the University's ability to investigate and respond in accordance with applicable law and regulations. The University may be limited in the ability to investigate an anonymous report unless sufficient information is furnished to conduct a meaningful and fair investigation.

For confidentiality purposes, the University may not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, physiologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless voluntary, written consent to do so is provided by the party.

A Complainant who submits a formal complaint may request confidentiality. A Complainant may also request in writing to withdraw their complaint or that an investigation not be conducted. The University may be limited in the actions it is able to take and its ability to respond while respecting such requests. The Title IX Coordinator will take all reasonable steps to respond to the complaint consistent with the request, including measures that can be taken while honoring the request such as increased monitoring, supervision, or security at locations or activities where the misconduct occurred, or providing training and education materials or sessions to students and employees. The Title IX Coordinator will consider the reasons for the request, including concerns about continued safety of the person reportedly harmed as well as the safety of members of the University community.

In cases in which a Complainant requests confidentiality or that an investigation not be pursued, or in cases where the Complainant requests to withdraw their formal complaint, but the Title IX Coordinator has concerns that not proceeding with a formal complaint may endanger the health or safety of members of the campus community, the Title IX Coordinator will initiate confidential consultation with appropriate individuals who may include, as appropriate, the Vice President for Human Resources and Diversity, Equity and Inclusion, the Vice President for Student Engagement and Enrollment Services, the Provost, the University Chief of Police, the Threat Education Assessment & Management Team (T.E.A.M.), and University Counsel. The Title IX Coordinator will make the ultimate decision on whether to sign a formal complaint to initiate an investigation or informal resolution, or to respond in another manner, including the use of supportive measures.

Factors that will be considered in weighing a request by a Complainant for confidentiality or not to proceed with a formal complaint include, but are not limited to, the seriousness of the alleged violation, the use of weapons or other aggravating circumstances, the respective ages and positions of the Complainant and the Respondent, means of obtaining evidence other than a Title IX investigation such as physical evidence or video footage, and the Respondent's right to receive information.

The University will also consider any circumstances that suggest there is an increased risk of the alleged perpetrator committing additional acts of sexual misconduct or other violence including whether there have been other sexual misconduct complaints about the Respondent, whether the Respondent has a history of arrests or records indicating a history of violence, whether the Respondent threatened further sexual misconduct or other violence against the Complainant or others, and whether the sexual misconduct was committed by multiple persons. Other circumstances that might suggest there is an increased risk of future acts of sexual misconduct

include a pattern of perpetration, such as via use of drugs or alcohol, or a pattern of incidents at a given location or by a particular group.

3. Timely Warnings

The University is required by Federal law to issue timely warnings for reported incidents that pose a substantial threat of bodily harm or danger to members of the University community. The University will ensure [to every extent possible] that a victim's name and other identifying information is not disclosed, while still providing enough information for members of the University community to make decisions to address their own safety in light of the potential danger. For more information on Timely Warning see [University Policy 3012 – Safety and Security Policy](#).

4. Consensual Relationships

Employees, whether faculty or staff, shall not engage in consensual relationships with students when the employee has a “position of authority” with respect to the student in such matters as teaching or otherwise evaluating, supervising, advising, or coaching a student as part of a school program or employment situation. Likewise, a supervisor and an employee shall not engage in a consensual relationship. The University views such relationships as a conflict of interest. Employees have a duty to comply with the University’s Conflicts of Interest policy.

A faculty member who enters into a consensual relationship with a student or supervisor who enters into a consensual relationship with an employee where a “position of authority” exists should be aware that, if a charge of sexual misconduct is subsequently filed, it will be exceedingly difficult to prove a defense on the grounds of mutual consent.

If conduct of a sexual nature has occurred or is occurring in an apparently consensual relationship, and, if a complaint of sexual misconduct regarding such conduct is filed by the student against the faculty member or graduate assistant, or by the employee against the University official, then sexual misconduct shall be presumed in such cases when:

- a. The relationship is between a faculty member or graduate assistant and a student and:
 - i. The faculty member or graduate assistant is in a position to determine the student’s grade or otherwise affect the student’s academic performance or advancement; and
 - ii. The relationship began after the faculty member or teaching assistant was in such a position.
- b. The relationship is between an employee and a supervisor or University official and:
 - i. The supervisor or University official is in a position to supervise the employee or otherwise influence the conditions of the employee’s work; and
 - ii. The relationship began after the supervisor or University Official was in such a position.

5. Reports

Responsible Employees are required to report any potential violation of this policy to the Title IX Coordinator or designee. When receiving information that could constitute a violation of this policy, Responsible Employees should not conduct independent efforts to determine the merit of the information before reporting. Additionally, the University strongly encourages all

individuals who witness or otherwise know of a suspected violation of this policy to report it to the appropriate University official. Reports may be anonymous; however anonymous reports may limit the University's ability to respond and/or investigate the reported matter.

Reports of conduct in violation of this policy should be made without undue delay after the incident and may be made in person, by mail, by telephone, electronic mail, or through the [online reporting form](#) to any of the individuals identified in Appendix A, or by any other means that results in the Title IX Coordinator, or designee, receiving the person's verbal or written report.

Notwithstanding the forgoing, individuals making reports under this policy are encouraged to make detailed written statements of the facts, including the name(s) of the Complainant(s) and Respondent(s) and any witness(es), promptly after an incident.

Promptly after the date of the report, the Complainant will be contacted to discuss the availability of supportive measures with or without filing of a formal complaint, consider the Complainant's wishes with respect to supportive measures and filing a formal complaint, and explain to the Complainant the process for filing a formal complaint.

The Title IX Coordinator or designee will make all Complainants aware of the right to also file a report with the Old Dominion University Police Department (ODUPD) or local law enforcement agency in instances involving a possible criminal violation. Complainants are encouraged to report matters to the ODU Police Department or local law enforcement in such instances and will not be dissuaded by the University from doing so at any time. If the Complainant is unable to file a report themselves, the University encourages reporting of the incident to the police by a third party.

6. Coordination with Criminal Reporting

The University will comply, to the fullest extent legally permissible, with all requests by the ODU Police Department (ODUPD) or local law enforcement for cooperation in investigations. Such cooperation may require the Title IX Coordinator to briefly suspend the fact-finding aspect of an investigation detailed in the procedures below while the ODUPD or the local law enforcement agency gathers evidence. OIED will promptly resume its investigation once the University is informed that the ODUPD or local law enforcement has completed the evidence-gathering phase of the criminal investigation. Otherwise, OIED's investigation will not be altered or precluded on the grounds that criminal or other charges involving the same incident have been filed or that charges have been dismissed or reduced.

7. Supportive Measures

Supportive measures are individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual misconduct.

The University offers a wide range of resources for students and employees, whether as Complainants or Respondents, to provide support and guidance throughout the initial investigation, and resolution of a formal complaint of sexual misconduct. The University will offer reasonable and appropriate measures to protect and facilitate continued access to university employment or education programs and activities. These measures may be both remedial (designed to address safety and well-being and continued access to educational

opportunities) or protective. Supportive measures, which may be temporary or permanent, may include no-contact orders, residence modifications, academic modifications and support, referral and coordination of counseling and health services, escorts on campus work schedule modifications, interim suspensions, suspension from employment, and pre-disciplinary leave (with or without pay), where applicable. Supportive measures are available regardless of whether a Complainant pursues a complaint or investigation under this policy. The University will, to the extent allowed by law, maintain the privacy of any supportive measures provided under this policy and will promptly address any violation of the protective measures. The Title IX Coordinator has the responsibility for coordinating the implementation of supportive measure based on all available information and is available to meet with a Complainant or Respondent to address any concerns about the provision of supportive measures.

In instances involving a Respondent's emergency removal under Title IX, such as through an interim suspension, suspension from employment, or pre-disciplinary leave from employment, an individualized safety and risk analysis must determine that an immediate threat to the physical health or safety of an individual arising from the allegations of sexual misconduct justifies removal. The individualized safety and risk analysis should be conducted by the Title IX Emergency Removal Team. The student or employee subject to such suspension or leave will be given the opportunity to meet with the Title IX Coordinator to show cause why the suspension or leave should not be implemented. The Title IX Coordinator may consult with University officials and units such as the Office of Student Conduct & Academic Integrity, Academic Affairs, Human Resources, and the Threat Education, Assessment and Management team to make a final determination. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

The University may provide reasonable supportive measures to third parties as appropriate and available, taking into account the role of the third party and the nature of any relationship with the University.

8. 72-Hour Meeting

In accordance with [Va. Code §23.1-806](#), the University will review all reports of sexual violence against (i) a student on campus or at an off-campus location within the United States or; (ii) any individual on campus or within the University's Clery Act geography as defined by the University's Police Department. The individuals conducting the review include: (1) the Title IX Coordinator, or designee; (2) a representative of the University Police Department; and (3) a representative from Student Engagement and Enrollment Services. In addition, others may be included in the review as necessary. These individuals shall meet within seventy-two (72) hours of the Title IX Coordinator's receipt of a report involving an act of sexual violence meeting the above criteria.

The review may determine that the disclosure of the information, including personally identifiable information, is necessary to protect the health or safety of the student or other individuals as set forth in [34 C.F.R. § 99.36](#). If so, the representative of law enforcement on the review team shall immediately disclose such information to the law-enforcement agency that would be responsible for investigating the alleged act of sexual violence. Such disclosure shall be for the purposes of investigation and other actions by law enforcement. Upon such disclosure, the Title IX coordinator or designee shall notify the victim that such disclosure is being made. These provisions shall not apply if the law-enforcement agency responsible for investigating the alleged act of sexual violence is located outside the United States.

In cases in which the alleged act of sexual violence would constitute a felony violation under Virginia law ([Article 7 of Chapter 4 of Title 18.2](#)), the representative of the University Police Department shall inform the other members and shall within twenty-four (24) hours consult with the appropriate Commonwealth Attorney and provide to him or her the information received by the review team without disclosing personally identifiable information, unless such information was disclosed to a law enforcement agency pursuant to the paragraph above. If such consultation does not occur and any other member of the review team individually concludes that the alleged act of sexual violence would constitute a felony violation under Virginia law, that member shall within twenty-four (24) hours consult the appropriate Commonwealth Attorney and provide to him or her the information received by the Review Committee without disclosing personally identifiable information, unless disclosing personally identifiable information, unless such information was already disclosed to the University Police as allowed above. The Review Committee shall also consider and recommend other appropriate or necessary actions including supportive measures beyond any already in place.

The review team has access to certain otherwise confidential information to the same extent as the University's Threat Assessment Team pursuant to [Va. Code §23.1-805](#), including criminal history record information, as provided in [Va. Code §19.2-389](#) and [§19.2-389.1](#); and health records, as provided in [Va. Code §32.1-127.1:03](#). The review team also has access to university disciplinary, academic and/or personnel records; and prior reports of Prohibited Conduct maintained by the Title IX Coordinator.

9. Filing Formal Complaints – Procedure A (for Title IX Incidents)

A formal complaint alleging sexual harassment as defined by Title IX and requesting that the University investigate must be filed with the Office of Institutional Equity and Diversity.

Complainants are encouraged to file formal complaints as soon as possible, as the passage of time may impact the University's ability to respond or take appropriate action. There is no time restriction for filing a complaint. However, the Complainant must, at the time of filing a formal complaint, be participating in, or attempting to participate in a University program or activity. A formal complaint may be filed with the Title IX Coordinator in person, by mail, fax, or by electronic mail at the contact information listed in Appendix A, or by submitting the [online complaint form](#). It is a violation of this policy for a student or an employee to interfere with an individual's right to file a complaint under this policy.

Considerations when filing a formal complaint:

- a. Only formal complaints will be processed under this policy.
- b. Nothing herein prohibits referral to supportive measures when a formal complaint is not an option, or a person chooses not to go forward with a formal complaint.
- c. Once a formal complaint is filed, the Title IX Coordinator will review the formal complaint to determine the following factors:
 - i. The person submitting the formal complaint qualifies as a Complainant as defined in this policy and as required by Title IX, including the requirement that they be participating in or attempting to participate in a University program or activity.
 - ii. The conduct alleged, if proven, would constitute sexual harassment as defined by Title IX.

- iii. The conduct alleged occurred against a person in the United States.
- iv. The conduct alleged occurred within a University program or activity.

If the formal complaint (or any allegation therein) does not meet one or more of the factors listed above, the formal complaint (or any allegation therein) will be dismissed for purposes of Title IX and a referral will be made to other applicable policies and procedures as appropriate. Referral to Procedure B under this policy may be applicable. The Title IX Coordinator will send prompt written notice of the dismissal, including the reasons for the dismissal, to the parties (or to the Complainant only if the Respondent was never notified of the complaint). A Complainant may appeal this dismissal to the Vice President for Human Resources and Diversity, Equity, and Inclusion. The Respondent may raise the defense that one or more of the factors listed above were not met once the Respondent is provided notice of the formal complaint.

- d. A formal complaint (or any allegation therein) may also be dismissed if the Complainant wishes to withdraw their formal complaint, the Respondent is no longer enrolled or employed by the University or if specific circumstances prevent the gathering of sufficient evidence to reach a determination/resolution as to the formal complaint or allegations therein. Upon such dismissal, the Title IX Coordinator will send prompt written notice of the dismissal, including the reasons for the dismissal, to the parties (or to the Complainant only if the Respondent was never notified of the complaint). A Complainant may appeal this dismissal to the Vice President for Human Resources and Diversity, Equity, and Inclusion.
- e. Following the Title IX Coordinator's review of a formal complaint, but no more than three days after the complaint commencement date, the Complainant will receive acknowledgment of the formal complaint by issuance of the "Title IX Letter." Following a reasonable time to gather sufficient information from the Complainant, the Respondent will also receive acknowledgment of the formal complaint by issuance of the Title IX Letter. The Title IX Letter will include:
 - i. A description of the allegations potentially constituting a violation of this policy.
 - ii. Sufficient details about the incident known at the time, including: the names of the parties involved, and the date and location of the incident.
 - iii. A description of the available informal resolution procedures.
 - iv. A statement that the Respondent is presumed not responsible for the alleged conduct until a determination of responsibility is made following the hearing process.
 - v. A statement informing the parties that they may have an advisor of their choice who may be, but is not required to be, an attorney.
 - vi. A statement informing the parties that making false statements or knowingly submitting false information during the complaint process is prohibited.
 - vii. A statement informing parties of their right to inspect and review evidence gathered during the investigation, as well as their ability to suggest witnesses to be interviewed during the course of the investigation.
 - viii. A description of available resources.
 - ix. An attached copy of this policy.

If during an investigation, new allegations are identified for investigation, a new Title IX Letter will be provided to the parties whose identities are known.

- f. A Complainant may withdraw their formal complaint, or any allegations therein, at any time during an investigation or hearing by submitting a written request to the Title IX Coordinator.

The Title IX Coordinator will process this request consistent with the procedures in section F.2. The Title IX Coordinator will send prompt written notification of the outcome of the request to the parties.

- g. In cases where the Complainant cannot or is unwilling to file a formal complaint or participate in an investigation, the Title IX Coordinator, or designee, has discretion to file a formal complaint by submitting a written and signed complaint form. In such cases, the Title IX Coordinator does not become a party to the complaint. The Respondent will receive prompt acknowledgement of the formal complaint by issuance of the Title IX Letter.
- h. Multiple formal complaints may be consolidated for investigation and hearing purposes where the allegations of sexual misconduct arise out of the same facts or circumstances.

10. Investigation of Formal Complaints – Procedure A (for Title IX Incidents)

OIED will investigate the allegations in any formal complaint, unless both parties provide voluntary informed and written consent to informally resolve the formal complaint.

Parties have the right to have an advisor present during investigation proceedings. However, advisors will not be permitted to speak to participants other than quietly to the advisee to avoid disruptions. Advisors violating this requirement may be asked to leave or abstain from participation. If a Complainant or Respondent does not have an advisor, the University shall offer one free of charge. The University will take all reasonable efforts to ensure equitable advisement of the parties. Complainants and Respondents needing a University-provided advisor are encouraged to make their request as soon as possible in the process. Requests for University-provided advisors may not be applied retroactively.

- a. A team of two investigators from the Office of Institutional Equity and Diversity will conduct a prompt, adequate, reliable, and impartial investigation of the formal complaint.
- b. Written notice of the time, location, participants, and purpose of investigation proceedings will be provided to the parties with sufficient time to prepare.
- c. Typically, an investigation, not including the time necessary for a hearing and potential appeals, will be completed within 75 days of the complaint commencement date. If extension of the investigation beyond 75 days is necessary, all parties will be notified of the expected timeframe.
- d. The Respondent shall be presumed not responsible for the alleged conduct until a determination of responsibility has been made at the conclusion of the hearing and any subsequent appeals. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University.
- e. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

- f. Character witnesses and character statements are considered not relevant for purposes of the investigation.
- g. Recording of investigation interviews is not permissible.
- h. The University shall strive to make the process transparent and fair to all parties. Prior to the conclusion of the investigation report, the Complainant and Respondent and their respective advisors, if any, shall receive for review all evidence obtained as part of the investigation that is directly related to the allegations raised. The parties will have 10 days to submit a written response to the evidence, which the investigators will consider prior to completion of the investigation report.
- i. At the conclusion of the investigation, and at least 10 days prior to the hearing, an investigation report that fairly summarizes the relevant evidence shall be provided to the complainant and the Respondent concurrently as well as their respective advisors, if any. A notice containing information about hearing and appeal procedures shall accompany the investigation report.
- j. The investigation report and the evidence obtained during the investigation shall be provided to the hearing officer(s). The evidence shall be made available to the parties during the hearing so that they may refer to the evidence, including for cross-examination.
- k. Within 10 days of issuance of the investigation report, the parties may submit a written response. The written response(s) to the investigation report will be provided to the hearing officer(s) for review, and the opposing party shall simultaneously be provided a copy of the written response(s).
- l. No additional documentation or evidence will be allowed to be introduced prior to or during the hearing.

11. Hearings and Determinations of Responsibility - Procedure A (for Title IX Incidents)

General Considerations:

A live hearing will determine responsibility for allegations of conduct in violation of this policy. The hearing procedures referenced below are guided by the same principles of fairness and respect for Complainants and Respondents. The hearing shall not constitute a re-investigation. The University applies the “preponderance of the evidence” standard when determining whether this policy has been violated. “Preponderance of the evidence” means that it is more likely than not that a policy violation occurred.

The University shall not require the participation of parties or witnesses. Inferences cannot be drawn about responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination questions.

Live hearings will be conducted in person or via video conference, at the discretion of the hearing officer(s). All parties and witnesses shall be afforded the opportunity to participate orally, and in real time. Audio or audiovisual recording, or transcript, of any live hearing will be created.

The hearing will allow cross-examination by each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the advisor and never by a party personally. Only relevant cross-examination and follow-up questions may be asked of a party or witness. Before a party or witness answers a cross-examination or other question, the hearing officer(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are presumed not relevant. Such questions and evidence may only be permitted if they are offered to prove that someone other than the Respondent committed the conduct alleged to be in violation of this policy, or if they concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

If a party does not have an advisor present at the hearing, the University will provide an advisor of its choice, without fee, to conduct cross-examination on behalf of that party. However, advisors will not be permitted to speak to participants other than to conduct cross-examination and for the purpose of providing advice to the advisee. Advisors must participate in a non-disruptive manner and may be asked to leave or abstain from participation by the hearing officer(s) if in violation of this requirement.

A written notice of the outcome of a hearing will be provided to the parties simultaneously and will include:

- a. The allegations of conduct in violation of this policy;
- b. A description of procedural steps taken in the formal complaint process;
- c. An analysis of the application of this policy to the facts of the case;
- d. A statement of the determination of responsibility for each allegation, including a rationale and findings of fact supporting the determination(s);
- e. The availability of appeal procedures.

The Title IX Coordinator will also be notified of the outcome of the hearing. Following a determination made in the hearing and at the conclusion of any appeal, a party may have further rights should sanctions be imposed.

General Considerations for the Hearing Panel:

For each hearing, a panel of three hearing officers will be selected from a pool of representatives from across the University. The representation in the pool will include, but is not limited to, Academic Affairs, Human Resources, Student Engagement and Enrollment Services, Athletics, and the University Police Department. In cases involving teaching & research faculty respondents, the panel will consist of three teaching & research faculty members. The Title IX Coordinator will ensure that hearing officers have no conflicts of interest and are appropriately trained.

12. Filing Formal Complaints – Procedure B (for Non-Title IX Incidents)

A formal complaint alleging sexual misconduct and requesting that the University investigate must be filed with the Office of Institutional Equity and Diversity to the attention of the Title IX Coordinator. Formal complaints under this procedure (B) may include prohibited conduct and circumstances that fall outside of the scope and jurisdiction of Title IX.

Complainants are encouraged to file formal complaints as soon as possible, as the passage of time may impact the University's ability to respond or take appropriate action. There is no time

restriction for filing a complaint. Complainants are not required to be participating in or attempting to participate in a University program or activity; however, the Title IX Coordinator may dismiss the complaint if the Complainant has no affiliation with the University and/or the University cannot provide redress. A formal complaint may be filed with the Title IX Coordinator in person, by mail, fax, or by electronic mail at the contact information listed in Appendix A, or by submitting the [online complaint form](#). It is a violation of this policy for a student or an employee to interfere with an individual's right to file a complaint under this policy.

Considerations when filing a formal complaint:

- a. Only formal complaints will be processed under this policy.
- b. Nothing herein prohibits referral to supportive measures when a formal complaint is not an option, or a person chooses not to go forward with a formal complaint.
- c. Once a formal complaint is filed, the Title IX Coordinator will review the formal complaint to determine the following factors:
 - i. The conduct alleged, if proven, would constitute sexual misconduct as defined by this policy.
 - ii. The conduct alleged occurred within a University program or activity or has continuing effects that create a hostile environment on campus. This includes off-campus conduct by University employees that has a sufficient nexus to the workplace or the University's operations, services, or reputation.

If the formal complaint does not meet one or more of the factors listed above, the Title IX Coordinator may dismiss the complaint and a referral will be made to other applicable policies and procedures as appropriate. The Title IX Coordinator will send prompt written notice of the dismissal, including the reasons for the dismissal, to the Complainant. A Complainant may appeal this dismissal to the Vice President for Human Resources and Diversity, Equity, and Inclusion.

- d. A formal complaint may also be dismissed if the Respondent is no longer enrolled or employed by the University or if specific circumstances prevent the gathering of sufficient evidence to reach a determination as to the formal complaint or allegations therein. Upon such dismissal, the Title IX Coordinator will send prompt written notice of the dismissal, including the reasons for the dismissal, to the Complainant. A Complainant may appeal this dismissal to the Vice President for Human Resources and Diversity, Equity, and Inclusion.
- e. Following the Title IX Coordinator's review of a formal complaint, but no more than three days after the complaint commencement date, the Complainant will receive acknowledgement of the formal complaint in the form of a letter. Following a reasonable time to gather sufficient information from the Complainant, the Respondent will also receive acknowledgement of the formal complaint by issuance of a letter. The acknowledgement letter will include:
 - i. A description of the allegations potentially constituting a violation of this policy.
 - ii. Sufficient details about the incident known at the time, including: the names of the parties involved and the date and location of the incident.
 - iii. A description of the available informal resolution procedures.

- iv. A statement informing the parties that they may have an advisor of their choice present during the complaint proceedings.
 - v. A description of available resources.
 - vi. An attached copy of this policy.
- f. A Complainant may withdraw their formal complaint, or any allegations therein, at any time during an investigation or hearing by submitting a written request to the Title IX Coordinator. The Title IX Coordinator will process this request consistent with the procedures in section F.2. The Title IX Coordinator will send prompt written notification of the outcome of the request to the parties.
- g. In cases where the Complainant cannot or is unwilling to file a formal complaint or participate in an investigation, the Title IX Coordinator, or designee, has discretion to file a formal complaint. In such cases, the Title IX Coordinator does not become a party to the complaint. The Respondent will receive prompt acknowledgement of the formal complaint by issuance of the acknowledgement letter.
- h. Multiple formal complaints may be consolidated for investigation and hearing purposes where the allegations of sexual misconduct arise out of the same facts or circumstances.

13. Investigation of Formal Complaints - Procedure B (for Non-Title IX Incidents)

OIED will investigate the allegations in any formal complaint unless informal resolution is requested.

Parties have the right to have an advisor, who may or may not be an attorney, present during investigation proceedings. However, advisors will not be permitted to speak to participants other than quietly to the advisee to avoid disruptions. Advisors violating this requirement may be asked to leave or abstain from participation. If a Complainant or Respondent does not have an advisor, the University may offer one free of charge. The University will take all reasonable efforts to ensure equitable advisement of the parties. Complainants and Respondents needing a University-provided advisor are encouraged to make their request as soon as possible in the process. Requests for University-provided advisors may not be applied retroactively.

- a. A team of two investigators from the Office of Institutional Equity and Diversity will conduct a prompt, adequate, reliable, and impartial investigation of the formal complaint.
- b. Written notice of the time, location, participants, and purpose of investigation proceedings will be provided to the parties with sufficient time to prepare.
- c. Typically, an investigation, not including the time necessary for a hearing and potential appeals, will be completed within 75 days of the complaint commencement date. If extension of the investigation beyond 75 days is necessary, all parties will be notified of the expected timeframe.
- d. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University.
- e. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed

the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

- f. Character witnesses and character statements are considered not relevant for purposes of the investigation.
- g. Both the Complainant and Respondent will have the same opportunity to inspect and review evidence obtained during an investigation. The University shall strive to make the process transparent and fair to all parties.
- h. Recording of investigation interviews is not permissible.
- i. At the conclusion of the investigation, and at least 10 days prior to the hearing, an investigation report that fairly summarizes the relevant evidence shall be provided to the Complainant and the Respondent concurrently as well as their respective advisors, if any. A notice containing information about hearing and appeal procedures shall accompany the investigation report.
- j. The investigation report and the relevant evidence obtained during the investigation shall be provided to the hearing officer(s). The evidence shall be made available to the parties during the hearing so that they may make reference to the evidence.
- k. Within 10 days of issuance of the investigation report, the parties may submit a written response. The written response(s) to the investigation report will be provided to the hearing officer(s) for review, and the opposing party shall simultaneously be provided a copy of the written response(s).
- l. No additional documentation or evidence will be allowed to be introduced prior to or during the hearing.

14. Hearings and Determinations of Responsibility - Procedure B (for Non-Title IX Incidents)

General Considerations:

A live hearing will determine responsibility for allegations of conduct in violation of this policy. The hearing procedures referenced below are guided by the same principles of fairness and respect for Complainants and Respondents. The hearing shall not constitute a re-investigation. The University applies the "preponderance of the evidence" standard when determining whether this policy has been violated. "Preponderance of the evidence" means that it is more likely than not that a policy violation occurred.

Live hearings will be conducted in person or via video conference, at the discretion of the hearing officer(s). All parties and witnesses shall be afforded the opportunity to participate orally, and in real time. Audio or audiovisual recording, or transcript, of any live hearing will be created.

Advisors will not be permitted to speak to participants other than to provide advice to the advisee. Advisors must participate in a non-disruptive manner and may be asked to leave or abstain from participation by the hearing officer(s) if in violation of this requirement.

A written notice of the outcome of a hearing will be provided to the parties simultaneously and will include:

- a. The allegations of conduct in violation of this policy;
- b. A description of procedural steps taken in the formal complaint process;
- c. An analysis of the application of this policy to the facts of the case;
- d. A statement of the determination of responsibility for each allegation, including a rationale and findings of fact supporting the determination(s);
- e. The availability of appeal procedures;
- f. For cases involving student Respondents only: a description of the sanctions imposed, if any.

The Title IX Coordinator will also be notified of the outcome of the hearing. Following a determination made in the hearing and at the conclusion of any appeal, a party may have further rights should sanctions be imposed.

General Considerations for the Hearing Panel:

For each hearing, a panel of three hearing officers will be selected from a pool of representatives from across the University. The representation in the pool will include, but is not limited to, Academic Affairs, Human Resources, Student Engagement and Enrollment Services, Athletics, and the University Police Department. In cases involving teaching & research faculty respondents, the panel will consist of three teaching & research faculty members. The Title IX Coordinator will ensure that hearing officers have no conflicts of interest and are appropriately trained.

15. Sanctions

- a. Possible sanctions or protective measures that may be imposed for students following the final determination of responsibility include the following:
 - i. Reprimand. A reprimand is an official written notice that the respondent is in violation of the Code. Subsequent violations of the Code will normally be met with more severe sanctions, including conduct probation.
 - ii. Conduct Probation. Conduct probation is a period of fixed duration during which the fitness of a respondent to continue at the University is evaluated. A student or student organization placed on probation is not considered to be in good conduct standing.
 - iii. Educational or Restorative Measures. Educational or restorative measures may include, but are not limited to, the following:
 - a) Active or passive sanctions, such as research or reflection papers, projects, meetings, or attending or organizing appropriate educational activities;
 - b) A specific number of community restitution hours in which a student or student organization must perform service to a designated community;
 - c) Participation in classes, assessments, counseling, program, modules, or workshops.
 - iv. Loss of Privileges. Loss of privileges includes denial or restriction of privileges for a designated period of time. Loss of privileges may include, but are not limited to, the following:
 - a) Restriction or exclusion from University premises or University activities, or from hosting visitors or guests on University premises;

- b) Withdrawal or transfer from a course in which the student is currently enrolled (tuition refunds will be evaluated in accordance with the Tuition Refund Policy as outlined in the Old Dominion University Catalog).
 - v. Restitution to the University. Restitution may include reasonable compensation for loss or damage to University property, funds, or premises.
 - vi. Termination of the Housing Agreement. Termination of the Housing Agreement occurs when the student's current (and/or future) Housing Agreement is cancelled or revoked for violating this Code. When a Housing Agreement is terminated, the student will remain financially responsible for the entire cost of the agreement period for the assigned building.
 - vii. Suspension of Student Organization Status. Student organizations may have their status as a student organization suspended on a temporary or permanent basis. An organization whose status is suspended is no longer eligible to receive benefits normally afforded to student organizations including, but not limited to the ability to utilize University facilities or funds to support any student organization related activity. A deferment of suspension may be granted if the organization complies with certain conditions. A suspended organization must comply with any conditions imposed as well as any reactivation or recognition privileges in effect at the time the suspension is set to expire.
 - viii. Conduct Suspension. Conduct suspension is the separation of a student from the University for a pre-determined period of time, normally no less than one semester and not more than two years. Suspension may include satisfaction of conditions for re-enrollment in the University as established by the Conduct Officer or panel. Re-enrollment in a specific College or academic degree program is subject to that College or program's approval. During a suspension, the suspended student is not permitted on University premises or at University activities without express permission from the Director. A registration hold is placed on the student during the suspension. In cases of suspension, tuition refunds will be evaluated in accordance with the Tuition Refund Policy as outlined in the Old Dominion University Catalog. A deferment of suspension may be appropriate if the student complies with certain conditions set forth by the Conduct Officer.
 - ix. Conduct Expulsion. Conduct expulsion is the permanent separation of a student from the University with no opportunity for re-enrollment. The expelled student is not permitted on University premises or at University activities and may also be subject to trespass orders. In cases of expulsion, tuition refunds will be evaluated in accordance with the Tuition Refund Policy as outlined in the Old Dominion University Catalog.
 - x. Revocation of Admission and/or degree. Admission to or a degree awarded from the University may be revoked for fraud, misrepresentation, or other violations of institutional standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- b. Sanctions for teaching and research faculty will be determined in accordance with the [Teaching and Research Faculty Handbook](#). Possible sanctions include, but are not limited to, mandatory counseling, training, reassignment, suspension, with or without pay, removal from administrative positions, or proceedings to dismiss.
- c. Sanctions for Administrative/Professional faculty shall be determined in accordance with the [Administrative & Professional Faculty Guidebook](#). Possible sanctions include, but are not limited to, counseling, training, reassignment, suspension, with or without pay, or proceedings to dismiss.

- d. Sanctions for classified employees will be determined in accordance with [University Policy 6600, Standards of Conduct for Classified Employees](#). Possible sanctions include, but are not limited to, verbal counseling, training, reassignment, issuance of a Written Notice, suspension, with or without pay, or termination of employment.
- e. Where a Respondent is both a student and an employee, the Respondent may be subject to any of the sanctions applicable to students or employees.
- f. The University reserves the right to require a Contractor to remove from campus any employee who violates this policy. Contractors shall assign for duty only employees acceptable to the University.
- g. Visitors who violate this policy will be directed to leave campus immediately and may be subject to a permanent ban from campus.
- h. A determination regarding the imposition of sanctions against an employee shall be made following the outcome of the hearing determining responsibility, unless either party files an appeal. A determination regarding the imposition of sanctions against students shall be made as part of the hearing to determine responsibility. The parties shall be informed in writing simultaneously by the individual imposing any applicable sanctions. Included in this notification will be the rationale for any applicable sanctions. The Title IX Coordinator shall be provided a copy of such written notification. The Title IX Coordinator also will disclose in writing to the Complainant the final results of a disciplinary proceeding involving the Respondent with regard to an alleged forcible or non-forcible sex offense, act of stalking, domestic violence, or dating violence on the Complainant, as permitted by State and Federal law including FERPA and the Virginia Freedom of Information Act.

16. Appeals

- a. Decisions regarding appeals shall be based on the written record (the investigation report, the notice of hearing outcome, and the written appeal) and any new evidence. Appeals shall not constitute a reinvestigation of the matter in question.
- b. Either party may appeal a determination regarding responsibility on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.

All appeals must be in writing and must be filed within 15 calendar days from the date of issuance of the written notice of the outcome of the hearing. All documents or evidence to be considered must be included with the written appeal. The written appeal should include the basis for the appeal as described in the paragraph above.

General Considerations: As with the hearing process, the parties must have an equal opportunity to present relevant information in the appeals. The University will permit the parties' lawyers or other advisors to participate in the appeal process. Parties and witnesses shall be afforded the opportunity to participate remotely (tele-conference) from another location. Both parties must be notified, in writing, of the outcome of the appeal.

- i. A complaint involving a student Respondent may be appealed by either party (complainant or respondent) to the Vice President for Student Engagement &

Enrollment Services, or designee, within 15 calendar days from the date on which the hearing decision letter was sent. The decision of the Vice President for Student Engagement & Enrollment Services or designee is final.

- ii. A complaint involving faculty, administrators or staff as Respondent may be appealed by either party to the respective Vice President/Provost or designee within 15 calendar days of the notice of the outcome of the hearing. The decision of the Vice President/Provost or designee is final.
- c. Either party may appeal a dismissal of a formal complaint or any allegation therein, on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter. The appeal must be submitted within 15 calendar days of the dismissal of the complaint and must be submitted in writing to the Vice President for Human Resources and Diversity, Equity, and Inclusion.

The decision on an appeal is final under this policy and is not subject to further university appeal or grievance. However, nothing in this policy invalidates 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/or the Equal Opportunity Employment Commission).

17. Informal Resolution - Procedure A (for Title IX Incidents)

The informal resolution process may be offered to all students, faculty, administrators, and staff. This process offers an opportunity to facilitate informal resolution options, such as mediation, so long as both parties give voluntary, informed, written consent to attempt informal resolution of a formal complaint. This process will be facilitated by a trained professional.

Parties are not required to participate in an informal resolution process and may only elect to participate in an informal resolution process once a formal complaint is filed.

Any party has the right to withdraw from the informal resolution process and resume the formal complaint process at any time prior to agreeing to an informal agreement.

The informal resolution process is not applicable to facilitate resolution of allegations that an employee (whether faculty, administrator, or staff) sexually harassed a student.

Confidentiality

All writings and communications made during, or in connection with, the informal resolution process that relate to the substance of the complaint shall be regarded as confidential by all mediators, parties, and OIED staff. Confidentiality surrounding informal resolutions must be kept pursuant to [Virginia Code §8.01-581.22](#). No informal resolution-related documents are to be kept as part of a student educational record or personnel file. Recording of the informal resolution process, secretly or otherwise, is strictly prohibited. Disclosing the fact that informal resolution took place is not a breach of confidentiality. A violation of the confidentiality requirement of this section may constitute a separate violation of this policy. If a resolution cannot be reached, then the Office of Institutional Equity and Diversity will determine further guidance.

18. Informal Resolution-Procedure B (for Non-Title IX Incidents)

A Complainant may elect to resolve their complaint through informal means such as mediation, facilitated discussions, request to put the Respondent on notice of problematic behavior, or other means. Fact-finding may still be conducted as part of the informal resolution. Informal resolution is not applicable to allegations that an employee (whether faculty, administrator, or staff) sexually harassed a student.

Parties are not required to participate in an informal resolution process and may only elect to participate in an informal resolution process once a formal complaint is filed.

Confidentiality

All writings and communications made during, or in connection with, the informal resolution process that relate to the substance of the complaint shall be regarded as confidential by all mediators, parties, and OIED staff. Confidentiality surrounding informal resolutions must be kept pursuant to [Virginia Code §8.01-581.22](#). No informal resolution-related documents are to be kept as part of a student educational record or personnel file. Recording of the informal resolution process, secretly or otherwise, is strictly prohibited. Disclosing the fact that informal resolution took place is not a breach of confidentiality. A violation of the confidentiality requirement of this section may constitute a separate violation of this policy. If a resolution cannot be reached, then the Office of Institutional Equity and Diversity will determine further guidance.

19. Transcript Notation Requirement

Pursuant to the [Code of Virginia §23.1-900, as amended](#):

A prominent notation will be placed on the academic transcript of each student who has been suspended for, permanently dismissed for, or who withdraws from the University while under investigation for an offense involving sexual violence under this Policy, stating that such student was suspended for, permanently dismissed for, or withdrew from the University while under investigation for an offense involving sexual violence under the Policy. Such notation shall be substantially in the following form: "[Suspended, Dismissed, or Withdrew while under investigation] for a violation of the Title IX Sexual Misconduct Policy."

The Title IX Coordinator shall notify each student that any such suspension, permanent dismissal, or withdrawal will be documented on the student's academic transcript. The Title IX Coordinator will also ensure prompt removal of such notation from the academic transcript of any student who is subsequently found not to have committed an offense involving sexual violence under this Policy.

A student whose transcript has been notated as described in this section may request expungement of the notation for good cause shown. Requests for expungement must be submitted in writing to the Title IX Coordinator. After a period of three years, a student may also request expungement of the transcript notation and must submit their request in writing to the Title IX Coordinator. A notation of suspension pursuant to this section shall be removed from a student's transcript if the student (a) completes the term and any conditions of the suspension and (b) is determined to be in good standing according to the University's code, rules, or set of standards governing such a determination.

20. Amnesty for Certain Infractions

To encourage reporting, the University's primary focus shall be on addressing any alleged sexual misconduct and not on alcohol and drug violations that may be discovered or disclosed. Therefore, alcohol and/or drug violations should not be a deterrent to reporting or cooperating during the complaint process. The University generally does not charge parties or material witnesses with violations for drug or alcohol misconduct, such as consuming alcohol underage or consuming illegal drugs, unless such behavior relates directly to the sexual misconduct allegation or gives rise to a safety concern. An example of a violation that a party may be charged with would be intentional provision of alcohol to an underage complainant as a means to facilitate a sexual assault.

21. Issuance of No-Contact Directives

No Contact Directives are issued to enhance safety, prevent retaliation and/or avoid an ongoing hostile environment. A No-Contact Directive is a document issued to a student or faculty/staff, directing the student or faculty/staff not to contact a specific student or faculty/staff. A No-Contact Directive may be issued by OIED or the Office of Student Accountability & Academic Integrity.

a. General Information about No-Contact Directives

A No-Contact Directive informs the people involved of the restrictions and responsibilities regarding their contact both on campus and off campus with the person(s) named in the No-Contact Directive. Generally, contact refers to any intentional words or actions, whether on or off campus, including:

- Telephone calls, text messages, instant messages, emails, or communication through any form of social media;
- Non-verbal contact including making gestures, giving/sending gifts, pictures, videos, music, or other items of monetary or sentimental value;
- Entering the person's private space (residence hall room, office)
- Destruction or vandalism of personal property;
- Encouraging others to make contact with the other party on their behalf.

A No-Contact Directive is issued bi-laterally (both parties must refrain from direct or indirect contact). The duration of the No-Contact Directive is determined by the issuing office. Both parties will receive written notice of the No-Contact Directive.

No-Contact Directives are designed primarily to prevent intentional contact. Incidental contact is not considered a violation; individual No-Contact Directives may include rules regarding interactions in specific, public locations.

22. Deferral of Action

Should a complaint of sexual harassment or sex discrimination be raised in another internal procedure, the other internal procedure shall be deferred until the conclusion of review and investigation, if applicable, under this policy.

Any complaint filed by an employee or student with the Commonwealth of Virginia Department of Human Resource Management, the U.S. Equal Employment Opportunity Commission or the

Office for Civil Rights will result in the dismissal of the internal complaint upon notice to the University that a complaint has been filed.

23. Documentation and Recordkeeping

The Title IX Coordinator will maintain, in a confidential manner, all complaints, witness statements, documentary evidence, written investigation reports, resolutions, and appeal hearings and associated documents for a period consistent with Federal and State record retention policies for paper or electronic files.

G. RECORDS RETENTION

Applicable records must be retained and then destroyed in accordance with the [Commonwealth's Records Retention Schedules](#).

H. RESPONSIBLE OFFICER

Associate Vice President for Equity and Inclusive Excellence

I. RELATED INFORMATION

[Title IX of the Education Amendments of 1972](#)
[University Policy 6220 – Conflicts of Interests](#)
[University Policy 6600 - Standards of Conduct for Classified Employees](#)
[University Policy 6602 - Classified Employees Grievance Procedure](#)

APPENDIX A

The Title IX coordinator's primary responsibility is to coordinate the University's compliance with Title IX and related laws and guidance, including the procedures for resolving Title IX complaints. This responsibility includes monitoring outcomes, identifying, and addressing any patterns, and assessing effects on the campus climate.

The University's designated Title IX Coordinator is listed below with their contact information:

Kate Couch
4111 Monarch Way Ste. 106
Norfolk, VA 23529
757.683.3141
titleixcoordinator@odu.edu

The University's designated Deputy Title IX Coordinators are listed below with their contact information:

For Student-Athletes:

Carolyn Crutchfield
Executive Senior Associate Athletic Director, Senior Woman Administrator
757.683.4265
cacooper@odu.edu

For Other Old Dominion University Students:

Dr. Vicki Williams
Associate Vice President for SEES, Dean of Students
757-683-3442
vswillia@odu.edu

For Old Dominion University Faculty:

Dr. Shanda Jenkins
Director of Faculty Diversity and Retention
757.683.4564
sjenkins@odu.edu

For Brock Virginia Health Sciences Students:

Melissa Scott
Assistant Dean of Student Affairs
757.446.8927
scottmf@odu.edu

For Brock Virginia Health Sciences Employees:

Matthew Schenk
Associate Vice President of Human Resources
757.446.6043
mschenk@odu.edu

POLICY HISTORY

Policy Formulation Committee (PFC) & Responsible Officer Approval to Proceed:

<u>/s/ Ariana Wright</u>	<u>February 28, 2022</u>
Responsible Officer	Date

Policy Review Committee (PRC) Approval to Proceed:

<u>/s/ Donna W. Meeks</u>	<u>January 25, 2022</u>
Chair, Policy Review Committee (PRC)	Date

Executive Policy Review Committee (EPRC) Approval to Proceed:

<u>/s/ September Sanderlin</u>	<u>March 1, 2022</u>
Responsible Oversight Executive	Date

University Counsel Approval to Proceed:

<u>/s/ Allen T. Wilson</u>	<u>March 2, 2022</u>
University Counsel	Date

Presidential Approval:

<u>/s/ Brian O. Hemphill, Ph.D.</u>	<u>March 3, 2022</u>
President	Date

Policy Revision Dates: September 24, 2020 (Interim); March 2, 2022

Scheduled Review Date: March 3, 2027