



Title IX Reporting and Grievance Procedures

Office for Equity & Accessibility
August 21, 2020



New Title IX Regulations

- *In 2017, the Department of Education rescinded previous guidance on sexual harassment and misconduct. In May, DOE issued final, formal regulations.*
- *The new regulations include a definition of sexual harassment and detailed process that we must use to address reports of harassment and misconduct that fall under Title IX.*
- *Existing VT policies and procedures have changed to comply with these new rules.*
 - *A new definition of sexual harassment and new area of jurisdiction;*
 - *A requirement for live hearings for both student and employee cases; and*
 - *A requirement for cross examination by each party's advisor.*

Some Key Terms...

- **Complainant** means an individual reported to have experienced an incident of sexual harassment.
- **Respondent** refers to an individual accused of sexual harassment in a formal complaint.
- **Reporting** means sharing general information for the purposes of receiving resources, options, and assistance known as supportive measures.
- **Formal Complaint** is an informed, active choice to initiate the Title IX grievance process made by a complainant or by the Title IX Coordinator.
 - Signed document, naming respondent and allegations

Reports of Sexual Harassment and Violence

- *All individuals who report sexual harassment or violence have the right to supportive measures by the Title IX Office.*
 - *All reports should be shared with the Title IX Coordinator to ensure that supportive measures and information is offered promptly.*
 - *Supportive measures are available whether or not a complainant chooses to file a formal complaint.*
 - *Supportive measures cannot impose an undue burden on any other student involved, including an accused student or respondent.*

Supportive Measures

- *Providing access to counseling services and assistance in setting up an initial appointment;*
- *Imposing a university “no-contact order”;*
- *Rescheduling exams and assignments;*
- *Providing alternative course completion options;*
- *Changing class schedules, including the ability to transfer course sections or withdrawal from a course without penalty;*
- *Changing work schedules or job assignments for those with on-campus employment;*
- *Changing a student’s own housing assignment and assisting with a housing relocation (in cooperation with Housing and Residence Life);*
- *Facilitating a voluntary leave of absence;*
- *Providing access to medical services;*
- *Providing academic support services, such as tutoring; and*
- *Providing other remedies that can be tailored to the involved individuals to achieve the goals of these procedures.*

Important things to know...

- *Privacy*

Information will only be shared with other university administrators on a need to know basis, such as when necessary to conduct an investigation or to arrange for supportive measures and resources.

- *Confidentiality*

While many supportive measures may be offered while maintaining confidentiality, the university's ability to respond may be impacted. When the university investigates a formal complaint of sexual harassment or violence, the complainant's identity must be shared with the respondent.

- *Amnesty*

Any student, whether the complainant or a third party, who makes a good-faith report of sexual harassment or violence will be immune from disciplinary action for their personal consumption of alcohol or other drugs occurring at the time of the reported incident.

Formal Title IX Complaints

- *The Title IX Grievance Procedures will be used to address formal complaints of conduct when:*
 - *The alleged conduct meets the definition of Title IX Sexual Harassment.*
 - *The alleged conduct occurred within the geographic jurisdiction of Title IX.*
- *These definitions are set out in University Policy 1026.*
- *Complainant must be participating in, or attempting to participate in, Virginia Tech's programs or activities.*

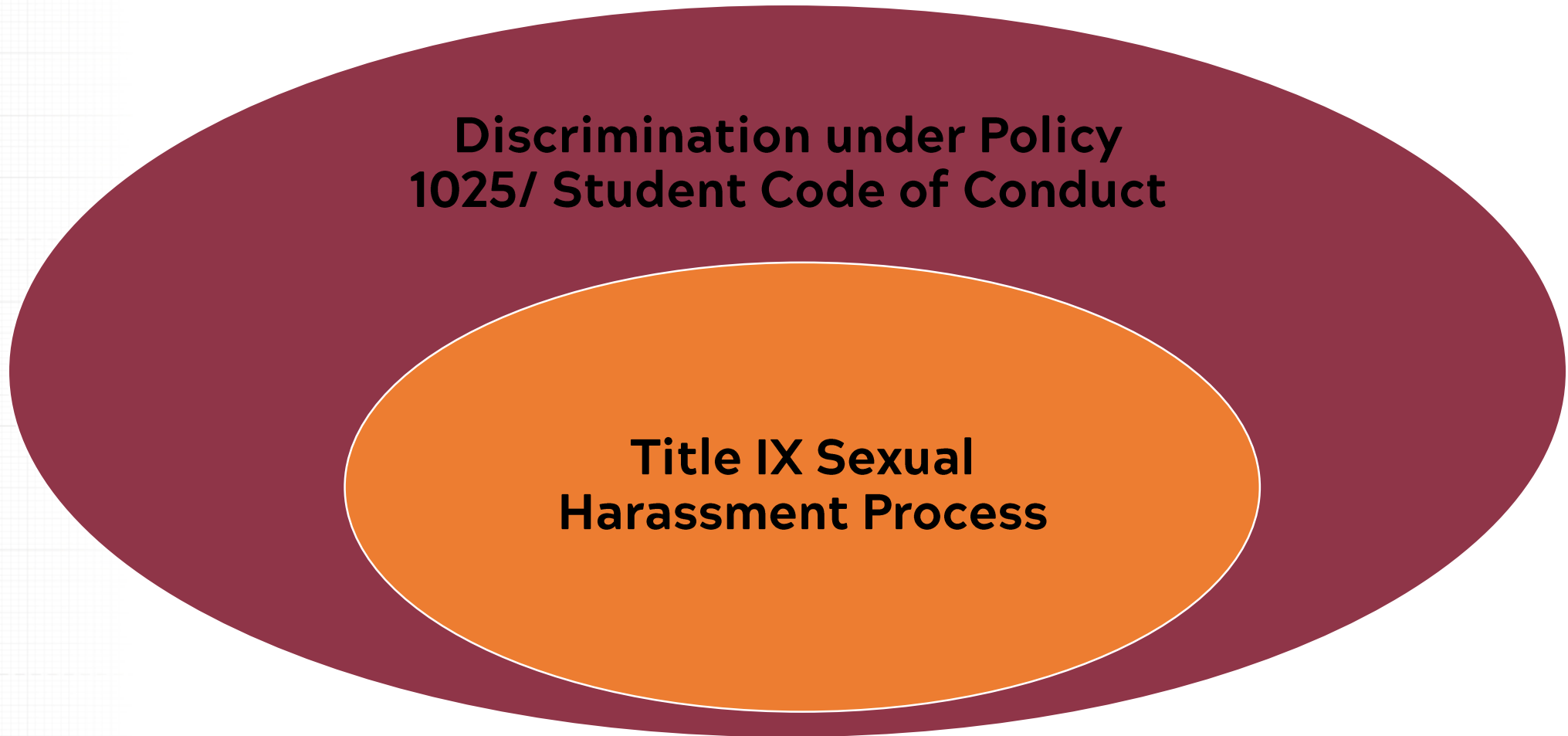
Title IX Jurisdiction

- *Conduct occurring in the United States.*
- *Conduct occurring at any on or off campus location, event, or circumstance over which the university exercises substantial control over both the Respondent and the context in which the sexual harassment occurs.*
- *Conduct occurring at an off campus location owned or controlled by an officially recognized student organization.*

Title IX Sexual Harassment

- *A university employee conditioning an educational benefit or service upon a person's participation in unwelcome sexual conduct (i.e. quid pro quo harassment);*
- *Unwelcome conduct that a reasonable person would determine to be so severe, pervasive, and objectively offensive that it would effectively deny a person equal access to a university program or activity; or*
- *Sexual Assault, including Rape, Fondling, Incest, Statutory Rape, as well as Stalking, Dating Violence and Domestic Violence.*

Relationship between Policy 1025 and Title IX



Non-Title IX Sexual Harassment and Violence

- *The Student Code of Conduct and Policy 1025 will apply to sexual misconduct that does not meet Title IX definitions.*
 - *In cases involving students, Student Conduct may request an investigation by Equity and Accessibility Investigators and will determine proper resolution.*
 - *In cases involving employees, the Director of Compliance may determine proper resolution, including an investigation of harassment and discrimination complaint.*



Sexual Assault Definition

Sexual Assault means misconduct that meets the definition of Rape, Fondling, Incest, or Statutory Rape, as defined below:

- **Rape** means penetration, no matter how slight, of the vagina or anus of a person with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Fondling** means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or temporary or mental incapacity.
- **Incest** means sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by law.
- **Statutory Rape** means sexual intercourse with a person who is under the statutory age of consent.

Consent

Consent means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. The existence of consent is based on the totality of circumstances, including the context in which the alleged consent occurred. Silence does not necessarily constitute consent and coercion, force, or threat of either party invalidates consent.

- Consent cannot be given where a person is incapacitated due to drugs or alcohol; or where a person has a disability; or is not of legal age to consent as defined by law.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Consent can be withdrawn at any time.
- Previous relationships or prior consent cannot imply consent to future sexual acts.

Dating and Domestic Violence

- **Dating Violence** means violence committed by a person: (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (b) Where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship; (2). the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.
- **Domestic Violence** means felony or misdemeanor crimes of violence committed by: (a) a current or former spouse or intimate partner of the victim; (b) a person with whom the victim shares a child in common; (c) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; (d) a person similarly situated to a spouse of the victim under the domestic or family violence laws of Virginia; or € any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Virginia.

Stalking

- **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (a) fear for the person's individual safety or the safety of others; or (b) suffer substantial emotional distress.

Filing of Complaints

A signed complaint form alleging harassment by a respondent and requesting an investigation must be filed by the complainant to the Title IX Coordinator.

OR

The Title IX Coordinator may sign a complaint form to initiate and investigation when the university has an obligation to act to protect the safety of the complainant or of others within the community based on:

- The severity of the impact of the conduct reported;*
- A report of conduct that includes threats of future harm to a person or people;*
- Multiple reports of conduct involving the same respondent suggesting a pattern of predatory behavior; and*
- The availability of independent evidence.*

Notice of Investigation

When a formal complaint is filed, a written Notice of Investigation must be issued both parties. It must include:

- The identity of the complainant and respondent;*
- The date and location of incident, if known;*
- A description of behavior that constitutes harassment;*
- A statement that the responding party is presumed not responsible prior to the outcome the process;*
- A reminder about the university's policies regarding knowingly providing false information during an investigation and adjudication process;*
- Notice of each party's right to be accompanied by an advisor of their choice; and*
- Notice of each party's right to review the evidence collected prior to any final investigation report or hearing.*

Dismissal of Complaints

- The Title IX Coordinator is **required** to dismiss complaints when the alleged conduct does not meet the jurisdiction or definition of Title IX Sexual Harassment.
 - This dismissal occurs **after** the Notice of Investigation is issued.
 - This dismissal must be in writing and sent to both parties.
 - Future Title IX complaint not possible, BUT complaint may be addressed under other policy.
- The Title IX Coordinator **may** dismiss complaint upon complainants request or if the collection of sufficient evidence is not possible.
 - This dismissal occurs **after** the Notice of Investigation is issued.
 - This dismissal must provide a written explanation to both parties.
 - Future Title IX complaint is not prohibited.
- Dismissal may be appealed.

Interim Suspensions?

- *Interim suspensions may still occur during the investigation of a complaint when, after an individualized risk assessment, the student is determined to pose a risk to a person or the community.*
 - *Title IX Coordinator will consult with Threat Assessment Team*
 - *Title IX Coordinator will make recommendation to Assistance Vice President for Student Affairs, who will follow existing policy on Interim Suspensions.*

Investigations

- *The Title IX Coordinator will designate an investigator who has specific training and experience investigating complaints of sexual harassment, sexual violence, stalking, and intimate partner violence. Any investigator chosen to conduct the investigation is expected to be impartial and free of any bias and conflict of interest.*
- *During the investigation process, the complainant and respondent have the right to be assisted by an advisor. An advisor can be any person of a party's choosing, including, but not limited to a parent, faculty member, counselor, advocate, or attorney. A witness may not serve as an advisor.*
- *The investigator will gather information from the complainant, the respondent, and any other individuals who may have information relevant to the investigation.*

What is Relevant Evidence?

Relevant information for an investigation means any evidence collected in an investigation which tends to prove or disprove the matter at issue. Evidence gathered in an investigation will be considered relevant if the evidence makes a fact more or less probable to have occurred, and the fact is of consequence to determining whether a policy violation may have occurred.

What isn't Relevant Evidence

- *Prior sexual history is not relevant unless:*
 - *The information is offered to prove that someone other than the respondent committed the offense; or*
 - *The parties had a current or ongoing relationship at the time of the event in question, and the information is offered to prove consent.*
- *Prior bad behavior is not relevant unless:*
 - *The previous incident was substantially similar to the present allegation;*
 - *The information indicates a pattern of behavior and substantial conformity with that pattern by the respondent; or*
 - *The respondent was subject to a previous credible allegation and/or was previously found responsible for a policy violation.*

Privileged Information

A release for any information protected by a legal privilege must be provided if that information is being offered as evidence. An investigator may not ask about or solicit protected information without a release.

- *Attorney/Client Communications*
- *Medical and Counseling Records*
- *Clergy Communications*

Opportunity to Review Evidence

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

Final Investigation Report

- *The investigator will prepare a written final investigation report that summarizes the information gathered and synthesizes the areas of agreement and disagreement between the parties and any supporting information or accounts.*
- *Each party will receive a copy of the final investigation report, including any attachments and supporting documents at least 10 (ten) days prior to any hearing in which a determination of responsibility will be made.*

Referral for Hearing

- *Upon review of an investigation report of alleged Title IX Sexual Harassment, if the Title IX Coordinator determines that the conduct alleged would meet the definition of Title IX Sexual Harassment if proved, the Title IX Coordinator or designee will notify the complainant and the respondent and refer the complaint for a live hearing.*
- *If the Title IX Coordinator determines that the conduct would not constitute Title IX Sexual Harassment, even if proved, the Title IX Coordinator may decide to dismiss the complaint.*
 - *Dismissal may be appealed.*

Live Hearings

- *When the Title IX Coordinator refers a case, a live hearing with cross examination to determine whether the respondent is responsible for the alleged conduct and to provide appropriate sanctions, as appropriate.*
 - *Student Conduct will hold hearings when students are respondents*
 - *The Office for Equity and Accessibility will hold hearings when employees are respondents*

Hearing Procedural Guarantees

- *To receive a copy of the final investigation report, including any attachments and supporting documents from the Title IX Coordinator or designee at least ten (10) days in advance of the hearing.*
- *To receive written notice of the date, time, location, participants, and policies charged at least five (5) business days in advance of the hearing to allow the parties sufficient time to prepare for the hearing.*
- *To be accompanied by an advisor of their choice, at their own cost, or to have an advisor provided to them by the Office of Student Conduct without fee or charge.*
- *To inspect and review, during the hearing, all evidence obtained during the investigation that is directly related to the allegations in the formal complaint.*
- *To present that evidence that supports or refutes the alleged conduct.*

Hearing Procedural Guarantees

- *To present witnesses, including fact and expert witnesses.*
- *To have their advisor conduct live cross-examination on the other party and any witnesses.*
- *To remain silent or to participate as they see fit, including full, partial, or no participation.*
- *To challenge the objectivity of a hearing officer(s), given reasonable cause to believe they may be biased or have a conflict of interest.*
- *To appeal the outcome based on the provided grounds.*

Hearing Advisors

- *At the hearing, each party may be accompanied by an advisor of their choice, at their own cost (e.g., parent, friend, attorney, etc.); if a party does not have an advisor, the university will provide one to them without fee or charge for the purposes of cross-examination. Advisors may not also serve as witnesses.*
- *Advisors will be permitted to cross-examine (i.e., ask relevant questions and follow-up questions) the other party and any witnesses directly, orally, and in real time. The parties must use their advisors in this capacity, as they will not be permitted to ask questions personally.*
- *Aside from cross-examination, advisors may not speak on the student's behalf or participate actively in the process. Advisors must follow the guidance of the hearing officers.*

Cross Examination

- *During the hearing, the parties' advisors will be permitted to ask relevant questions and follow-up questions, including those challenging credibility, of the other party and any witnesses. Cross-examination must be conducted directly, orally, and in real time. At no times will the parties directly conduct cross-examination.*
- *Questions asked during cross-examination must be relevant to the behavior and situation in question. Hearing officers will determine whether each question is relevant and, if they choose to exclude a question, explain why it is not relevant.*

Cross Examination

- *If a party or witness declines to be cross-examined during the hearing, the hearing officers will not consider any statements made by that party or witness during the investigation or hearing when determining whether the respondent is responsible for the alleged conduct.*
- *However, the hearing officers will also not draw conclusions regarding responsibility based solely on a party's or witness's absence from the hearing or decision to decline to answer questions from the hearing officers or during cross-examination.*

Determination of Outcome

After the hearing, a determination of whether a respondent is responsible for violating Policy 1025 or any policy in the Code of Conduct will be made by the hearing officers based on the information presented in the investigation report and at the hearing.

- **Standard of Proof:** *The university uses preponderance of the evidence to determine whether or not the respondent is responsible for the alleged conduct. This determination is made based on the information available to determine if it is more likely than not that a violation occurred.*

Decision Letters

The hearing officer will simultaneously provide the parties the decision in writing. The decision letter will include the following information:

- allegations and policies charged,*
- procedural steps taken during the grievance procedure,*
- information used to determine the findings and their application to the policies charged,*
- rationales for each finding,*
- any sanctions imposed on the respondent,*
- any remedies provided to the complainant,*
- and information about the appeal process.*

Appeals

- *Both parties have the opportunity to appeal the outcome of a formal hearing in a Title IX case regardless of the outcome. Sanctions take effect immediately, pending the appellate officer's decision or the end of the appeal period.*
- *The parties have seven (7) business days from the date of the decision to submit the appeal. The date the decision is given is considered the first day of the appeal period.*
- *The appeal is a written request submitted by the student for a review of the original case. The student should include which grounds for appeal they believe apply, and any information the student wants considered should be included in the written document. The burden is on the appealing party to demonstrate why the finding or sanction should be altered.*
- *When one party submits an appeal the other party will be notified and provided an opportunity to review the appeal and submit a written statement in response, which will be included in the appeal documentation.*

Grounds for Appeal

Appeals are not re-hearings; therefore, appeal requests are limited to the following grounds:

- *Procedural irregularity or denial of procedural guarantees*
- *Significant and relevant new information that was not available at the time of the hearing*
- *Conflict of interest or bias by the Title IX Coordinator, Investigator, or hearing officer(s), which affected the outcome*
- *Unduly harsh or arbitrary findings or sanctions.*

Appeals submitted that do not have sufficient grounds in one of these areas will be denied.

Outcome of Appeal

The appellate officer will review the appeal and may:

- *Uphold the original decision and sanctions*
- *Uphold the original decision and either decrease or increase the sanction*
- *Vacate a finding*
- *Send the case back to the Title IX Coordinator for further investigation*
- *Send the case back for a new partial or full hearing*

Time Frames

- Generally an investigation will be completed within forty five (45) days after it has commenced. This includes:
 - A formal, written Notification of the Investigation no more than five (5) days after a formal complaint is made.
 - When a complaint is dismissed and the complainant appeals that decision, to be provided a written response to that appeal no more than ten (10) days after requesting an appeal.
- Parties may review and submit a written response to all investigation materials at least ten (10) days before a final investigation report is submitted to the Title IX Coordinator.
- If referred to a live hearing, the complaint will be promptly adjudicated with 30 days after the referral is made. This includes:
 - Receiving a copy of the final investigation report from the Title IX Coordinator at least ten (10) days prior to any hearing.
 - Receiving written notice of the date, time, location, participants, and policies charged at least 5 business days in advance of the hearing to allow the parties sufficient time to prepare for the hearing.
 - Participating in a live hearing within thirty (30) calendar days of the referral for hearing.
 - Submitting an appeal of the outcome within seven (7) business days after receiving the outcome.
- Receiving a decision on that appeal within fourteen (14) calendar days from submission