

DISCRIMINATION, HARASSMENT, SEXUAL MISCONDUCT AND RETALIATION

Purpose

The purpose of this policy is to establish clearly and unequivocally that Virginia State University prohibits discrimination, sexual assault, harassment, dating violence, domestic violence, stalking and retaliation as well as any other sexual misconduct by individuals subject to its control or supervision.

Authority, Responsibility, and Duties

This policy governs the conduct of all university students and visitors (including, but not limited to, students participating in camp programs, non-degree seeking students, exchange students, when on the campus of Virginia State University, on university property, or in facilities, owned, or controlled by Virginia State University, or being utilized for university-related events. Any exceptions in the application or enforcement of these policies must be approved by the President of Virginia State University or designee. This policy also is applicable to any conduct that occurs off campus that has continuing effects creating a hostile environment on campus. Allegations of on-campus or off-campus violations of this policy should be reported to the Title IX Coordinator in accordance with the guidance below and the Discrimination Grievance Procedures, Policy 1103. The Discrimination Grievance Procedures Policy can be accessed at <http://www.vsu.edu/counseling/sexual-assault/index.php>.

Policy Statements

The University is committed to maintaining an environment that is safe and free from harassment, sexual assault, stalking, dating and domestic violence, and discrimination based on race, sex, color, national origin, religion, age, veteran status, sexual orientation, gender identity, pregnancy, genetic information, against otherwise qualified persons with disabilities, or based on any other status protected by law. The University will not tolerate acts of sexual misconduct against its students, faculty, staff, approved volunteers or visitors.

Prohibited Acts

The following acts are prohibited and therefore are policy violations:

- Engaging in sexual assault, harassment, stalking, or relationship violence or any other act of sexual misconduct;
- Retaliating in any manner against an individual who reports sexual assault, harassment, stalking, or dating violence or any other act of sexual misconduct;
- Interfering with procedures to investigate or redress a complaint of sexual assault, harassment, stalking, or dating violence or any other act of sexual misconduct; and
- Making an intentionally false accusation of sexual assault, harassment, stalking, or dating violence or any other act of sexual misconduct through the University's procedures.

Any member of the University community who engages in one of these prohibited acts against any other member of the University community may be subject to corrective action, inclusive of sanctions, termination, and/or legal prosecution.

- Students who violate policy are afforded Due Process as it relates to Rights and Responsibilities including but not limited to a fair and impartial hearing. Students also have the right to bring witnesses and/or an advisor to hearings called by the Office of Student Conduct.

Definitions

A. Discrimination is inequitable and unlawful treatment based on an individual's protected characteristics or statuses -- race, sex, color, national origin, religion, age, veteran status, sexual orientation, gender identity, pregnancy, genetic information, disability, or any other status protected by law -- that excludes an individual from participation in, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in an educational program or activity. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities.

B. Harassment is a form of discrimination in which unwelcome verbal, written, or physical conduct is directed toward an individual on the basis of their protected characteristics or statuses, by any member of the campus community. Harassment does not have to include intent to harm, be

directed at a specific target, or involve repeated incidents. Harassment violates this policy when it creates a hostile environment, as defined below.

C. Sexual harassment is a form of discrimination based on sex. It 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). Sexual harassment, including sexual assault, can involve persons of the same or different sexes. Sexual harassment may also include sex-based harassment directed toward stereotypical notions of what is female/feminine v. male/masculine or a failure to conform to those gender stereotypes.

This policy prohibits the following types of sexual harassment:

A. Term or condition of employment or education. This type of sexual harassment (often referred to as "quid pro quo" harassment) occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a Virginia State 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 Virginia State University program or activity.

B. Hostile environment. Acts that create a hostile environment may be created by oral, written, graphic or physical conduct that 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 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; (d) the perspective of a "reasonable person" in the same situation as the person subjected to the conduct, and (e) the nature of higher education.

C. Sexual Misconduct includes sexual assault, sexual exploitation, dating violence, domestic violence and stalking.

D. Sexual Assault is non-consensual contact of a sexual nature. It includes any sexual contact when the victim does not or is unable to consent through the use of force, fear, intimidation,

physical helplessness, ruse, impairment or incapacity (including impairment or incapacitation as a result of the use of drugs or alcohol, knowingly or unknowingly) when the victim does not give or is unable to give consent; intentional and non-consensual touching of, or coercing, forcing, or attempting to coerce or force another to touch, a person's genital area, groin, inner thigh, buttock or breast; and non-consensual sexual intercourse, defined as anal, oral, or vaginal penetration with any object. Some types of sexual acts which fall under the category of sexual assault include the following: rape, attempted rape and fondling.

Rape is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling is defined as the unwanted touching of the private parts of another person or forcing an unwilling person to touch another person's intimate parts (e.g. genitalia, groin, breast or buttock, or clothing covering them) for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.

E. Consent is knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Silence does not necessarily constitute consent. Past consent to sexual activities, or a current or previous dating relationship, does not imply ongoing or future consent. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred.

Consent cannot be granted by an individual who:

1. is incapacitated by any drug or intoxicant;
2. has been purposely compelled by force or threat of force;
3. is unaware that the act is being committed;
4. is impaired because of a mental or physical condition;
5. is coerced by supervisory or disciplinary authority; or
6. is less than the statutory age of consent.

F. Coercion is unreasonable pressure for sexual activity. Coercion cannot be used to obtain consent. Coercion includes the use of physical force, threats, and intimidating behavior to get another party to engage in sexual activity. When someone makes it clear that they do not want to be a part of such sexual activity, want to stop, or do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

G. Incapacitation occurs when an individual is unable to give consent because they are mentally and/or physically helpless, unconscious, or unaware, due to drug or alcohol consumption (voluntarily or involuntarily) or for some other reason. Engaging in sexual activity with someone a person knows to be – or should know to be – mentally or physically incapacitated is non-consensual and a violation of this policy. Mental or physical incapacitation can be a result of alcohol or other drug use, unconsciousness, blackout, sleep, involuntary physical restraint, or consuming so-called “date-rape” drugs, Rohypnol, Ketomine, Gamma Hydroxybutyrate(GHB), Burundanga, etc.

H. Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for anyone’s advantage or benefit other than the person being exploited, and that behavior does not meet the definition of sexual assault. Sexual exploitation includes prostituting another person; non-consensual visual or audio recording of sexual activity; non-consensual distribution of photos, or postings (such as audio, video, images, or transcriptions) of an individual’s sexual activity or intimate body parts with an intent to embarrass such individual, non-consensual voyeurism and observation of people engaging in intimate behaviors, performing normal bodily functions, or displaying various states of undress without the person’s consent; knowingly transmitting a sexually transmitted infection (STI); or exposing one’s genitals to another in a non-consensual circumstances, or inducing incapacitation with the intent to engage in sexual misconduct.

I. Stalking is a course of conduct directed at a specific person that would cause a reasonable person to: (i) fear for their or others’ safety, or (ii) suffer substantial emotional distress, meaning significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. A “course of conduct” means two or more acts, including, but not limited to, acts 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.

A "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Examples include, but are not limited to:

1. Following a person;
2. Appearing uninvited and unwanted at their home, place of business, or classroom;
3. Making harassing phone calls;

4. Mailing written messages, or sending electronic messages, including but not limited to e-mail, voice-mail, text messaging, and use of GPS and social networking sites;
5. Leaving messages or objects at a person's home, place of business, vehicle, or classroom;
6. Stealing personal property and identity information
7. Vandalizing personal property; and,
8. Posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth.

J. Dating Violence is 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 which 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 statements and with a 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.

K. Domestic Violence is a pattern of behavior, including acts or threatened acts, that includes asserted violent misdemeanor and felony offenses committed by (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 domestic or family violence laws 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 violence laws of the jurisdiction in which the crime of violence occurred.

L. Relationship Violence is a term used to reference conduct associated with dating or domestic violence.

Retaliation Prohibited

Any form of retaliation, including intimidation, threats, harassment, and other adverse action taken or threatened against any complainant or person reporting or filing a complaint alleging discrimination, sexual harassment, or sexual misconduct or any person cooperating in the investigation of allegations of discrimination, sexual harassment, or sexual misconduct to include testifying, assisting or participating in any manner in an investigation pursuant to this policy and the Discrimination Grievance Procedures is strictly prohibited by this policy. Action is generally deemed adverse if it would deter a reasonable person in the same circumstances from opposing

practices prohibited by this policy. Retaliation may result in disciplinary or other action independent of the sanctions or interim measures imposed in response to the underlying allegations of discrimination, sexual harassment or sexual misconduct

Reporting and Filing Complaints

Complaints and reports of discrimination, retaliation, sexual misconduct, and sexual harassment should be made to the Title IX Coordinator. VSU's Title IX Coordinator is responsible for overseeing the investigation of all reports of alleged discrimination, sexual harassment, or sexual misconduct in accordance with the Discrimination Grievance Procedures and to oversee and address any problems that arise during any complaint.

The Virginia State University's Title IX Coordinator is Julia Walker.

Julia Walker
Room 101 Virginia Hall
804-524-1007 or 804-524-5090
jawalker@vsu.edu

Confidential and Anonymous Reporting.

Confidential reporting resources are available on campus in the Counseling Center, Student Health and United Campus Ministries. Licensed mental health providers, medical providers, and the campus minister are the only persons who may guarantee confidentiality on campus. Off campus confidential counseling resources are listed below. VSU officials have varying reporting responsibilities under state and federal law. If a victim of conduct in violation of this policy or another reporting party wishes to make a confidential report, it must be made to physicians and other medical personnel at Student Health Services or Counseling Center staff. These individuals will encourage victims to make a report to VSU police, the Title IX Coordinator, or local law enforcement.

The victim- otherwise called the complainant- and the accused - otherwise called the respondent - should ask about confidentiality before reporting to other offices because other offices are limited in their ability to maintain confidentiality. Students, student organizations and their advisors cannot keep reports confidential, even if working with officials above that are able to maintain confidentiality of reports.

Reporting

The University strongly encourages the reporting of all incidents of sexual misconduct to the Title IX Coordinator or any member of the Title IX team. A report is an account or description of a specific incident. There is no time limit for filing a complaint of sexual misconduct. However, complainants should report as soon as possible to maximize the University's ability to respond. Filing a formal complaint is a written or verbal request for the University to investigate an incident and take appropriate actions. The University will investigate all formal complaints of sexual misconduct and will take appropriate disciplinary or corrective action in each instance. The University will investigate informal and formal complaints of sexual misconduct in a manner that preserves to the greatest extent possible the confidentiality of both parties.

- A. A student, who files a formal complaint of sexual misconduct, will be provided a written explanation of their rights and options found in the Trojan Bill of Rights.
- B. The University encourages individuals who make a report or file a formal complaint of sexual assault, stalking and relationship violence, regardless of where the report is made, to also contact the Sexual Assault Services Coordinator for assistance. The Coordinator will assist the victim in accessing and navigating services, resources, and referrals both on and off campus
- C. Sexual assault, stalking and relationship violence may be reported to the VSU Department of Police and Public Safety, local law enforcement, Sexual Assault Services, Student Conduct Office, Vice President of Student Success and Engagement, Title IX Coordinator, or anonymously to a Campus Security Authority (CSA).

Campus Reporting and Investigation:

Julia Walker, Interim Title IX Coordinator
Virginia Hall
P.O. Box 9412
804-524-1007 or 804-524-5090
Email: jawalker@vsu.edu

Menjiwe Martin, Dean of Students
Foster Hall, Room 307-A
804-524-5645
Email: mwmartin@vsu.edu

Office of Human Resources
(804) 524-5090

Office of the Provost
Virginia Hall
(804) 524-5654

Student Conduct
(804) 524-5866 or (804) 524-5504
Foster Hall, Room 304

VSU Police
(804) 524-5411 or (804) 524-5360
Email: Police@vsu.edu
Memorial Hall, Room 401
(804) 524- 6942 or (804) 524-5939

Sexual Assault Services

(Not for investigations)

Sexual Misconduct Survivor Procedures and Services

Individuals who experience sexual assault or relationship violence are strongly encouraged to seek medical attention and to be examined for physical injury, the presence of sexually transmitted diseases, or pregnancy.

Medical Care and Preservation of Evidence. An individual who has been sexually assaulted should seek medical care and a forensic examination as soon as possible after the assault at one of the local hospitals listed below. An individual may request a Sexual Assault Advocate at any hospital, if one is not provided.

It is important for the individual to be examined within 120 hours of the assault to recover physical evidence. The Preliminary Evidence Recovery Kit (PERK) is a free exam that is used to collect evidence. Preserving evidence is often a key step in the successful investigation of alleged sexual misconduct.

Individuals have the right to have evidence collected and retained anonymously by local law enforcement while they consider whether or not to pursue criminal charges.

Individuals who have been assaulted can enhance the preservation of physical evidence if they:

1. Do not wash their hands, bathe, douche, or urinate until after the forensic examination;
2. Do not eat, blow their noses, drink liquids, smoke or brush their teeth if oral contact took place until after the forensic examination;
3. Do not change clothes until after the forensic examination. Individuals who change clothes should place in a paper bag the clothing worn during the assault and take the bag with them to the forensic examination;
4. Do not clean or straighten the location of the crime until law enforcement officials have an opportunity to collect evidence; and
5. Do not erase or destroy text messages, pictures, online postings, video and other documentary or electronic evidence that may corroborate a complaint.

On-campus care For Virginia State University students, medical care/consultation is available at Student Health Services if the complainant chooses not to go to the hospital. Student Health Services provides pregnancy and STI testing, and prophylactic treatment for STIs.

Students may obtain taxi vouchers for transportation to a medical facility for the forensic or PERK exam. A taxi voucher is obtained from Student Health Services, Counseling Services or Residence Life staff. Transportation by ambulance is obtained by dialing 911. The campus police can assist in transporting individuals who choose to report to local law enforcement.

Hospitals:

VCU Health System, Medical College of Virginia
Forensic Nurse Examiner available 24 hours (804) 828-5250
1006 E. Marshall St. Richmond, VA 23298

Bon Secours St. Mary's Hospital
Forensic Nurse Examiner available 24 hours (804) 285-2011
5801 Bremono Rd. Richmond, VA 23226

Southside Regional Medical Center
(804) 765-5000
200 Medical Park Boulevard – Petersburg, VA 23805

Confidential Counseling and Support Resource Numbers:

On campus offices are located in Memorial Hall:

- Sexual Assault Services..... (804) 524-6942 or (804) 524-5939
- Counseling Services..... (804) 524-5939 or (804) 524-5061
- Student Health Services..... (804) 524-5711

Free Off Campus Counseling Resources:

- The James House 24 hr. Hotline/TTY (804) 458-2840
- Chesterfield Domestic and Sexual Violence Resource Center..... (804) 318-8265
- Greater Richmond regional Hotline(804) 612-6126
- LGBTQ Partner Abuse & Sexual Assault Helpline 1-866-356-6998

Criminal Reporting

- A. If a victim is in immediate danger or needs immediate attention, the individual should contact 911 or use the emergency call box (blue emergency lights) to connect directly to the campus police station. Some conduct in violation of this policy may also be a crime under Virginia law. Individuals are encouraged to report incidents of sexual misconduct to law enforcement, even if the reporting individual is not certain if the conduct constitutes a crime. Crimes dealing with minors must be reported to local law enforcement.

Amnesty for Other Violations

The University encourages reporting of incidents of sexual misconduct. Sometimes, complainants are hesitant to make reports because they fear that they may be charged with violations of the Student Code of Conduct, such as underage drinking at the time of the incident. To encourage reporting of sexual misconduct incidents, the University will consider all factors and exercise discretion on a case –by-case basis towards a complainant with respect to taking action for other violations of the Student Code of Conduct.

Interim Measures

During the investigation and resolution of complaints, the University may take interim measures to protect the complainant and other members of the VSU community from any harassment, discrimination, retaliation, and/or further violation perpetrated by the respondent. If in the judgment of the Vice President of Student Success and Engagement, the Title IX Coordinator or other VSU administrative leader, the respondent jeopardizes the safety and well-being of any member of the VSU community, the University may provide interim remedies to address the situation. To the degree feasible, VSU will seek the consent of the complainant before taking interim measures. Interim measures may include, but are not necessarily limited to, changing class schedules and housing, enforcing no-contact orders, barring access to campus, utilizing escorts on campus, requiring referral and coordination of counseling and health services, and modifying work, academic or training requirements.

Rights of the Complainant and the Respondent

Regardless of whether or not a complainant elects to pursue a hearing or whether or not the incident is alleged to have occurred on or off campus, the University will assist complainants of sexual assault, domestic violence, dating violence, and stalking and will provide each complainant with a written explanation of their rights and options (see Trojan Bill of Rights in the appendix).

1. Confidentiality of the names of both parties and personally-identifiable information will be protected and excluded from timely warning, emergency notifications and record-keeping such as Campus Security Authority reports. Personally-identifiable information will be safeguarded in disciplinary proceedings and criminal investigations.

2. Both parties are entitled to the same opportunities to attend any pre-hearing and to review each other's written statements, and have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice. During the formal hearing the complainant may choose to testify in person before the respondent or in an area separated from the respondent.
3. Both parties have the right to change university housing and academic arrangements if requested and such changes are reasonably available.
4. Both parties have the right to have access to existing campus mental health and support services.
5. A complainant who obtains an Order of Protection from the Commonwealth of Virginia should provide a copy to campus police and the Title IX Coordinator. A complainant may then meet with campus police to develop a Safety Action Plan, which is a plan for campus police and the complainant to reduce risk of harm while on campus or coming and going from campus. This plan may include, but is not limited to, escorts, special parking arrangements, or independent study arrangements.

Corrective Actions and Disciplinary Procedures

1. If the respondent is a student, the University utilizes the process outlined in the Code of Student Conduct. Mediation or informal, cooperative resolution is not appropriate in cases of sexual misconduct.
2. The Dean of Students or Vice President of Student Success and Engagement or the Title IX Coordinator in the Office of Human Resources and/or the Office of University Counsel, can advise a complainant of the procedures applicable in a given case.
3. **Standard of Evidence.** In accordance with the Office on Civil Rights (OCR), a "preponderance of the evidence" is the standard for investigating and conducting student discipline proceedings in domestic violence, dating violence, sexual assault, sexual misconduct and stalking cases. The "preponderance of the evidence" standard requires that the weight of the evidence, in totality, supports a finding that it is more likely than not that the alleged misconduct occurred. Decisions based on a preponderance of the evidence standard may not meet other evidentiary standards required for a finding of guilt in criminal proceedings.
4. Sanctions that may be imposed for students resulting from the University disciplinary process to include the following: verbal warning, written reprimand, denial of specified

university privileges, fines, restitution, removal of the student from the course in progress, community service, probation, mandatory assessment or education program, suspension, and expulsion.

5. Both the complainant and the respondent shall be informed simultaneously and in writing of the outcome of any institutional disciplinary proceeding; appeal procedures; and/or any change to the result before it becomes final; and when the result becomes final.

Education and Prevention Programs

The University engages in comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end discrimination, sexual harassment, dating violence, domestic violence, sexual assault and stalking.

Educational programming consists of primary prevention and awareness programs for all incoming students and new employees and ongoing awareness and prevention campaigns for students and employees that:

1. identify domestic violence, dating violence, sexual assault and stalking;
2. define sexual misconduct, coercion, and consent,
3. provide a description of safe and positive options for bystander intervention.
4. include information on risk reduction.
5. explain statistics and risk factors for sexual assault; explain the role of alcohol and drugs in sexual assault; identify the rights of victims and accused; explain confidentiality and reporting options;
6. include disciplinary procedures and sanctions; resources available on campus and in the community which include advocacy, counseling, medical attention, and law enforcement regulations and web-based resources.

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

Policy Statement Concerning the Confidentiality of Student Records

Students attending, or who have attended, Virginia State University are afforded certain rights concerning their education records under the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. 1232g), and regulations of the United States Department of Education (34 C.F.R. Part 99).