



<b>Policy Title: Discrimination and Harassment Policy</b>	<b>Effective Date: 11/21/2014</b>
<b>Policy Number: GEN-PO-1002</b>	<b>Date of Last Review: 6/3/2024</b>
<b>Oversight Department: Office of Institutional Equity</b>	<b>Next Review Date: 7/1/2025</b>

**1. PURPOSE**

- A. Radford University is committed to providing an environment that emphasizes the dignity and worth of every member of its community and that is free from harassment and discrimination based on race, sex, color, national origin, religion, age, veteran status, sexual orientation, gender identity, gender expression, pregnancy, genetic information, against otherwise qualified persons with disabilities, or based on any other status protected by law.
- B. The purpose of the Discrimination and Harassment Policy, hereafter “Policy,” is to establish clearly and unequivocally that Radford University prohibits discrimination harassment and retaliation by individuals subject to its control or supervision and to set forth procedures by which such allegations shall be filed, investigated, and adjudicated.

**2. APPLICABILITY**

- A. This Policy applies to on-campus conduct involving students, employees, faculty and staff, visitors to campus (including, but not limited to, individuals participating in camps and programs, volunteers, non-degree seeking students, exchange students, and other students taking courses or participating in programs at Radford University), and contractors working on campus who are not Radford University employees, as well as to students, visiting students, employees, faculty, and staff participating in Radford University-sponsored activities off campus. This Policy is applicable to any conduct that occurs off campus that has continuing effects that create a hostile environment on campus or that effectively denies a person equal access to Radford University’s education program. This Policy applies to discrimination and harassment occurring against a person in the United States.

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 and Harassment Grievance Procedures (see Section 5). This Policy replaces and supersedes the Radford University Sexual Harassment Policy and Nondiscrimination Statement, as well as any and all references related to discrimination and harassment that may be contained in other Radford University policies, including the Standards of Student Conduct.

**B. Academic Freedom and Free Speech**

This Policy does not allow curtailment or censorship of constitutionally protected expression, which is valued in higher education and by Radford University. In addressing all reports of alleged violations of this Policy, Radford University will take all permissible actions to ensure the safety of students and employees while complying with any and all applicable guidance regarding free speech rights of students and employees. This Policy does not in any way apply to curriculum and curriculum decisions or abridge the use of particular textbooks or curricular materials.

### 3. DEFINITIONS

**Appellant** means an individual who appeals either the final determination of a case or the Title IX Coordinator's dismissal of a Formal Complaint.

**Appellee** means an individual who is the non-appealing party in an appeal.

**Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment, discrimination, harassment, or other possible violation of this Policy.

**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). Consent may be withdrawn at any time. Consent cannot be obtained by force, physical violence, threat, coercion, or intimidation. A person who is impaired or incapacitated is unable 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. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred.

**Dating Violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**Domestic Violence** includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the local jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

**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, gender expression, 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.

**Exculpatory Evidence** means evidence that is favorable to the Respondent in an allegation that supports an unsubstantiated finding.

**Formal Complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment, harassment, or discrimination against a Respondent and requesting that the Office of Institutional Equity investigate the allegation. At the time of filing a Formal Complaint, a Complainant must be participating in, or attempting to participate in, the education program or activity of Radford University. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission through the submission form provided on the Radford University website, official Radford University email that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.

**Formal Investigation** means an investigation conducted by the Title IX Coordinator into allegations that discrimination or harassment occurred.

**Free Expression** is communicative conduct or activity protected by the First Amendment including, but not limited to, public speeches, demonstrations, marches, protests, and picketing, as well as any lawful free expression activity as defined in the Radford University Free Expression Policy. Free expression does not include commercial activity.

**Inculpatory Evidence** is evidence that tends to show involvement in an act or evidence that can establish responsibility for an action and may support a substantiated finding.

**Informal Resolution** means a resolution facilitated by the Title IX Coordinator as an alternative to a Formal Investigation.

**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. 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.

**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 Radford University’s education 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 individual’s 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.

**Preponderance of the Evidence** is a standard that requires that the weight of the evidence, in totality, supports a finding that it is more likely than not that an alleged violation occurred.

**Reasonable Person** is a person similarly situated to the Complainant.

**Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment, discrimination, harassment, or other conduct that may be in violation of this Policy.

**Responsible Employees** must report to the Title IX Coordinator all relevant information received about an incident of conduct that potentially is in violation of this Policy and without delay. If necessary, the report may be made after addressing any immediate needs of the victim.

“Responsible Employee” includes all Radford University employees. A Responsible Employee is considered confidential and is not required to make a report if the Responsible Employee obtained, within the scope of their employment at Radford University, the information through any communication considered privileged under state or federal law, or in the course of providing services as a licensed health care professional, an employee providing administrative support for such health care professionals, a professional counselor, an accredited rape crisis or domestic violence counselor, campus victim support personnel, a member of clergy, or an attorney.

**Retaliation** is intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sexual harassment, discrimination, or harassment, but arise out of the same facts or circumstances as a report or Formal Complaint of discrimination, or harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation. Neither Radford University nor any person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. The exercise of rights protected under the First Amendment does not constitute retaliation. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation, provided that a determination regarding responsibility alone is not sufficient to conclude that any party made a materially false statement in bad faith. Action is generally deemed adverse if it would deter a reasonable person in the same circumstance from opposing practices prohibited by this Policy. Retaliation may result in disciplinary or other action independent of the sanctions, remedies, or supportive measures imposed in response to the underlying allegations of discrimination or harassment. Retaliation prohibited by this Policy includes any discrimination, intimidation, threat, or coercion against the Title IX Coordinator, or staff of the Office of Institutional Equity, for purposes of interfering with their job responsibilities.

**Sexual Assault** means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

**Sexual Harassment** means conduct on the basis of sex that satisfies one or more of the following: 1) An employee of Radford University conditioning the provision of an aid, benefit, or service of Radford University on an individual’s participation in unwelcome sexual conduct; 2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Radford University’s education program or activity; or 3) Sexual assault, dating violence, domestic violence, or stalking.

**Sexual Exploitation** is a form of sexual harassment that includes, but is not limited to: causing the incapacitation of another person for the purpose of compromising that person’s ability to consent to sexual activity; prostituting another person; non-consensual visual or audio recording of sexual activity; non-consensual recording or photographing private sexual activity and/or a person’s intimate body parts, or distribution of photos or other images of an individual's sexual activity or intimate body parts; non-consensual voyeurism or allowing third parties to observe private sexual

activity from a hidden location or through electronic means; knowingly transmitting HIV or an STD/STI to another; or exposing one's genitals to another in non-consensual circumstances.

**Sexual Violence** is a physical sexual act perpetrated against a person's will or where a person is incapable of giving consent.

**Stalking** is engaging in a course of conduct directed at a specific person that would cause a reasonable person to: i) fear for his or her safety or the safety of others; or ii) suffer substantial emotional distress.

**Supportive Measures** are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant and Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to Radford University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Radford University's educational environment, or deter sexual harassment, discrimination, or harassment. Supportive measures may include referral and coordination of counseling and health services, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties (e.g., no-contact orders), changes in work or housing locations, bans from campus or areas of campus, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Radford University must maintain as confidential any supportive measures provided to the Complainant, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

**Sexual Misconduct** includes alleged sexual assault, dating violence, domestic violence, stalking, and sexual harassment incidents not otherwise covered by Title IX.

**Title IX Incidents** include sexual assault, dating violence, domestic violence, stalking and sexual harassment incidents alleged to have occurred on-campus, off-campus as part of Radford University's education program, or at an off-campus location controlled by a recognized student organization.

#### 4. POLICY

##### A. Policy

Any question of discrimination or harassment will be addressed with efficiency and energy and in accordance with this Policy and the Radford University Discrimination and Harassment Grievance Procedures (see Section 5). This Policy and the Discrimination and Harassment Grievance Procedures also address reports of retaliation against those who have opposed practices prohibited by this Policy, those who have filed or reports under this Policy, and those who have testified or otherwise participated in enforcement of this Policy. Further, the Discrimination and Harassment Grievance Procedures address reports that an individual's free expression was violated.

Questions regarding discrimination prohibited by the Education Amendment Act of 1972 or other federal law, may be referred to Radford University's Title IX Coordinator, Office of Institutional Equity, 540-831-5307 (Radford), 540-224-4644 (Roanoke), or the U.S. Department of Education, Office of Civil Rights.

Radford University recognizes that there may be circumstances in which an individual may need the services of the Office of Institutional Equity and, if needed, the University will make arrangements to ensure that appropriate accommodations are provided, to the extent necessary and available, to aid in understanding and/or complying with this Policy. Requests for accommodations must be made to the Title IX Coordinator.

## **B. Reporting**

- 1.** Any person may report sexual harassment, discrimination, or harassment, whether or not the person reporting is the person alleged to be the victim of such misconduct. Individuals receiving reports of sexual harassment, discrimination, or harassment should immediately notify the Title IX Coordinator after addressing the immediate needs of the victim. Individuals should not undertake any independent efforts to determine whether or not the report has merit before reporting it to the Title IX Coordinator.
- 2.** A report may be made in person, by mail, by telephone, or by email, using the contact information below. A report may also be made by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. The Title IX Coordinator will also accept, without comment or need for explanation, a sealed envelope addressed to "Title IX Coordinator." The envelope, at a minimum, needs only contain a piece of paper with the name and contact information of the individual wishing to make a report. Such a report may be made at any time (including during non-business hours) by using the telephone number, or email address, or by mailing to the office address listed for the Title IX Coordinator.

Radford University's Title IX Coordinator's contact information is as follows:

**Dr. Andrea Zuschin**  
**Director of Institutional Equity and Title IX Coordinator**  
**[azuschin@radford.edu](mailto:azuschin@radford.edu)**

**Office of Institutional Equity**  
**Radford University (Radford)**  
**615 Fairfax Street**  
**P.O. Box 6988**  
**Radford, VA 24142**  
**(540) 831-5307 (Main)**

**Radford University Carilion (Roanoke)**  
**101 Elm Avenue, SE**  
**Roanoke, VA 24013**  
**(540) 224- 4644**

- 3. Mandatory Employee Reporting:** All employees, other than the confidential employees detailed in the definition of Responsible Employee in Section 3 of this Policy, who receive information regarding a report of discrimination or harassment must report any relevant information about the alleged incident to the Title IX Coordinator without delay after addressing the needs of the victim. No Radford University employee shall undertake any independent efforts to determine whether or not the report has merit or can be

substantiated before reporting it to the Title IX Coordinator. The Radford University Police Department will follow departmental procedures.

4. **Reports Made by Students:** Students should report possible discrimination or harassment to the Title IX Coordinator. Students are not restricted to reporting to student contacts and may report to anyone listed in this Policy or any supervising staff or faculty member. Other than reports made to confidential sources in accordance with the definition of Responsible Employee in Section 3 of this Policy, reports must be forwarded to the Title IX Coordinator.
5. **Reports Made by Visitors or Contractors:** Visitors, including visiting students, and employees of contractors working on campus should report possible discrimination or harassment to the Title IX Coordinator.
6. All members of the Radford University community are expected to provide truthful information in any report or proceeding under this Policy and the Discrimination and Harassment Grievance Procedures (see Section 5). Submitting or providing any false or misleading information in bad faith or with a view toward personal gain or intentional harm to another in connection with any report, investigation, or proceeding under this Policy and the Discrimination and Harassment Grievance Procedures is prohibited and subject to conduct charges for students under the Standards of Student Conduct or discipline for employees under the appropriate policy. This provision does not apply to reports made or information provided in good faith, even if the facts as alleged are not later substantiated by a preponderance of the evidence.
7. Individuals can also submit a report through the Confidential Reporting and Silent Witness link on the Radford University Police Department webpage: <http://www.radford.edu/police/> or by leaving an anonymous message with the Radford University Police Department at 540- 831-STOP (7867). As will be the case with all reports, however made, the Complainant will be contacted promptly for an informational meeting with the Title IX Coordinator.
8. Notwithstanding the forgoing, individuals who believe they have been the subject of conduct in violation of the Discrimination and Harassment Policy are encouraged to make detailed written statements of the facts, including the name(s) of the offending individual(s) and any witness(es), promptly after an incident.
9. There is no time limit for filing a report of discrimination or harassment. However, Complainants should report as soon as possible to maximize Radford University's ability to respond. Failure to report promptly could result in the loss of relevant evidence and impair Radford University's ability to adequately respond to the allegations.

### **C. Criminal Reporting**

If a victim is in immediate danger or needs immediate medical attention, contact 911, the Radford University Police Department (RUPD) at (540) 831-5500 (blue light emergency phones on Radford University's main campus connect directly to RUPD) or, at Radford University Carilion, Carilion Clinic Police at (540) 981-7911. Some conduct in violation of this Policy may also be a crime under Virginia law. Individuals are encouraged to report incidents of discrimination and harassment to law enforcement, even if the reporting individual is not certain if the conduct constitutes a crime. Radford University will provide assistance to victims

in notifying law enforcement if the victim so chooses. Crimes dealing with minors must be reported to law enforcement.

#### **D. Criminal Process and Coordination**

If a victim is physically or mentally incapacitated for at least ten (10) calendar days, and thereby unable to report the incident to law enforcement, the Title IX Coordinator will make such a report. Radford University will comply with all requests by the Radford University Police Department, Carilion Clinic Police, or local law enforcement for cooperation in investigations. Such cooperation may require the Title IX Coordinator to temporarily suspend the fact-finding aspect of an investigation detailed in the procedures below while the Radford University Police Department, Carilion Clinic Police, or the local law enforcement agency gathers evidence. The Title IX Coordinator will promptly resume the investigation as soon as notified by the Radford University Police Department, Carilion Clinic Police, or local law enforcement agency that it has completed the evidence gathering process. Otherwise, the investigation will not be altered or precluded on the grounds that criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

#### **E. Confidentiality and Requests Not to Pursue Title IX Investigation**

1. Radford University will keep confidential the identity of any individual who has made a report, or who has filed a Formal Complaint, any Complainant, any Respondent, and any witness, except as may be permitted by the Family Education Rights and Privacy Act (FERPA) statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.
2. Radford University officials have varying reporting responsibilities under state and federal law. If a victim of conduct in violation of this Policy wishes to keep a report confidential, it must be made to a licensed medical provider, counselor or individual under professional supervision of a licensed counselor, or professional sexual assault advocate. These individuals will encourage victims to make a report to the Radford University Police Department, the Carilion Clinic Police Department, the Title IX Coordinator, or local law enforcement. Students and student organizations cannot keep reports confidential, even if working with officials above who are able to maintain confidentiality of reports. Other Radford University responsible employees receiving reports of conduct in violation of this Policy are mandated reporters but will maintain privacy to every extent possible without compromising Radford University's ability to investigate and respond in accordance with applicable law and regulations. The Title IX Coordinator may be limited in the ability to investigate an anonymous report unless sufficient information is furnished to enable the Title IX Coordinator to conduct a meaningful and fair investigation. If the Complainant requests confidentiality, or that an investigation not be conducted, Radford University may be limited in the actions it is able to take and its ability to respond while respecting the request. The Complainant will be asked to sign a statement stating a desire for confidentiality or that an investigation not be pursued and the Title IX Coordinator will take all reasonable steps to respond to the report consistent with the request.
3. Notwithstanding a Complainant's request that law enforcement not be informed of an incident, Radford University is required pursuant to Virginia Code § 23.1-806 to report information about an incident to local law enforcement if necessary to address an articulable and significant threat posing a health or safety emergency, as defined by the

implementing regulations of FERPA, 34 C.F.R. 99.36, and as detailed in the Sexual Violence Threat Assessment provisions below.

**F. Sexual Violence Threat Assessment**

1. Upon receipt of any report of sexual violence, defined as a physical sexual act perpetrated against a person's will or where a person is incapable of giving consent, that is alleged to have occurred (i) against any students; or (ii) on campus, in or on a Radford University building or property, or on public property that is on campus or immediately adjacent to and accessible from campus, the Title IX Coordinator shall promptly inform a review committee of the report, including personally identifying information.
  - a. The review committee shall be comprised of, at a minimum, the Title IX Coordinator, a representative of law enforcement, and a student affairs representative. The review committee may consult other Radford University officials depending on whether the accused individual is a student, faculty, or staff member and the circumstances of the report. The review committee shall be advised by the Office of the Attorney General.
  - b. Within 72 hours of receipt of the report, the review committee shall meet to review the information and shall continue to meet as necessary as new information becomes available. If the criteria in Paragraph a. are met, the review committee shall convene regardless of whether or not the victim has notified the Radford University Police Department, Carilion Clinic Police, or local law enforcement or whether or not the victim has requested that Radford University proceed with a Title IX investigation.
  - c. The review committee may obtain law enforcement records and criminal history record information as provided in Virginia Code § 19.2-389 and § 19.2-389.1, health records as provided in Virginia Code § 32.1-127.1:03, available conduct or personnel records, and known facts and circumstances of the reported incident and other evidence known to Radford University, including the Radford University Police Department, Carilion Clinic Police, and local law enforcement. The review committee shall be considered to be a threat assessment team established pursuant to Virginia Code § 23.1-805 for purposes of (i) obtaining criminal history record information and health records and (ii) the Virginia Freedom of Information Act, (Virginia Code § 2.2-3700 et seq.). The review committee shall comply with the Family Educational Rights and Privacy Act in conducting its review.
  - d. In addition to the available information detailed in Paragraph c. above, the review committee shall consider factors that suggest there is an increased risk of the accused individual committing additional acts of sexual misconduct or other violence, including, but not limited to:
    - i. Other sexual misconduct reports about the same individual;
    - ii. Prior arrests or reports of misconduct at another institution or a history of violent behavior;
    - iii. Threats of further sexual misconduct against the reporting individual or others;
    - iv. A history of failing to comply with a no-contact order issued by Radford University officials;
    - v. Allegations of multiple perpetrators in the same incident;

- vi.** Use of physical violence in the reported incident or a prior incident. Examples of physical violence include, but are not limited to, hitting, punching, slapping, kicking, restraining, or choking;
- vii.** Reports or evidence of a pattern of perpetration, including a pattern of the accused individual using alcohol or drugs to facilitate sexual misconduct or harassment;
- viii.** Use of a weapon in the reported incident or a prior incident; and
- ix.** A victim under the age of 18 or who is significantly younger than the accused individual.

The review committee shall also consider whether means exist to obtain evidence other than investigation by law enforcement or the Office of Institutional Equity, such as security camera footage, eyewitness reports from security personnel, or physical evidence.

- e.** If, based on a consideration of all factors, the review committee determines that there is a significant and articulable threat to the health or safety of one or more individuals and that disclosure of the information to law enforcement, including personally identifying information, is necessary to protect the health and safety of one or more individuals, the law enforcement representative shall immediately disclose such information to the law enforcement agency that would be responsible for investigating the incident, for the purpose of investigation and other actions by law enforcement. If the review committee cannot reach a consensus, the law enforcement representative may make the threat determination. Upon any disclosure to law enforcement under this paragraph, the Title IX Coordinator shall notify the victim that such disclosure is being made. The provisions of this paragraph shall not apply if the law enforcement agency responsible for investigating the alleged incident is located outside the United States.
- f.** If information is disclosed to law enforcement under Paragraph e. or if the review committee determines that sufficient factors exist to proceed with a Formal Investigation, despite the stated desires of the victim for confidentiality or not to proceed with a Formal Investigation, the Title IX Coordinator may proceed with a Formal Investigation under these procedures. In those situations, the Title IX Coordinator will notify the victim that Radford University is overriding the victim's request for confidentiality in order to meet its obligations but, other than the disclosure under Paragraph e., if made, the information will only be shared with individuals who are responsible for handling Radford University's response to incidents of sexual violence. Radford University will ensure that any information maintained by Radford University is maintained in a secure manner.
- g.** If the reported incident would constitute a felony violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, as determined by the law enforcement member or any other member of the review committee, the law enforcement member or any other member of the review committee, shall inform other members of the review committee, and shall notify, within 24 hours, the attorney for the Commonwealth or other prosecutor responsible for prosecuting the incident and provide the information received without disclosing personally



2. To the extent possible, Radford University will seek the consent of the Complainant before offering supportive measures to the greatest degree possible.
3. Radford University may remove a Respondent from an educational program or activity on an emergency basis, provided that the University undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment, discrimination, or harassment justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal. Radford University may temporarily reassign or place on administrative leave any employee alleged to have violated this Policy, pending investigation. Leave will be administered in accordance with appropriate employment policies.
4. Radford University will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures.

#### **I. Disciplinary Immunity**

Ensuring the safety of individuals who report violations of this Policy is Radford University's primary concern. In compliance with Virginia Code §23.1-808, and in order to facilitate reporting, Radford University will provide disciplinary immunity to a person who reports to any individual employed by the institution that an act of sexual violence, or any other incident violating this Policy, which occurred on campus, in or on a non-campus building or property, or on public property as such terms are defined in Virginia Code § 23.1-806. Disciplinary immunity means that, if the institution determines, as a result of any investigation relating to such alleged act of sexual violence or other violation of this Policy, the reporting individual committed a separate, unrelated, nonviolent act that violates the Radford University Standards of Student Conduct, that person is immune from disciplinary action for such violation. Disciplinary immunity may also be offered to individuals who intervene to help others before a violation of this Policy occurs and to individuals who receive assistance or intervention.

## **5. PROCEDURES**

### **A. Purpose**

These procedures provide a prompt and equitable resolution for reports of discrimination and harassment prohibited by the Radford University Discrimination and Harassment Policy. Any person who believes he or she has been subjected to discrimination or harassment on any of these bases may file a report with Radford University as outlined in these procedures.

These procedures also address 1) any reports of retaliation against individuals who have filed reports of discrimination and harassment, who have opposed discriminatory practices, and those who have testified or otherwise participated in investigations or proceedings arising from reports of discrimination and harassment; and 2) reports of violation of the Radford University Free Expression Policy. Questions regarding discrimination and harassment prohibited by the Education Amendment Act of 1972 or other federal law, may be referred to Radford University's Title IX Coordinator, Office of Institutional Equity, 540-831-5307 (Radford), 540-224-4644 (Roanoke), or the U.S. Department of Education, Office of Civil Rights.

## **B. Written Explanation of Rights and Options**

- 1.** When the Title IX Coordinator receives a report that a Complainant has been a victim of discrimination or harassment, the Title IX Coordinator will promptly contact the Complainant to share and provide a written explanation of rights and options, which shall include:
  - a.** Notification of resources, including information on contacting the local sexual assault crisis center or other victim support service, both within Radford University and in the local community.
  - b.** Options for, available assistance in, and how to request supportive measures, regardless of whether the Complainant chooses to report the crime to law enforcement, or file a Formal Complaint.
  - c.** The procedures for Title IX, including filing a Formal Complaint, Formal Investigation, and Informal Resolution procedures, dismissal of cases, adjudication, appeals, and disciplinary sanctions and remedies.

Three factors determine the category of the case and, thus, the route by which the case is adjudicated. The determining factors are 1) whether the alleged incident is considered “sexual harassment,” 2) the location where the alleged incident occurred, and 3) the Respondent’s affiliation with Radford University (e.g., student, employee). Parties to a case will be notified simultaneously of the category in which their case falls. The categories are “Title IX Case,” “Student Conduct Referral Case,” and “Non-Title IX/Non-Student Case.” Parties to a case will be informed of the proper category for their case and will be informed if the category changes as investigators learn more information. Cases will be identified and adjudicated as follows:

- i.** The case will be categorized as a “Title IX Case” and will be referred to a Decision Maker for a live hearing, with a document review as appeal, if

**(a)** The allegation is sexual harassment, and

**(b)** The incident(s) alleged occurred either on campus, off campus as part of Radford University’s education program or activity, or at an off-campus location controlled by a recognized student organization.

Refer to “Title IX Case Process” in Section 5.C.b.viii. and Appeal Document Review in Section 5.E.4. below.

- ii.** The case will be categorized as a “Student Conduct Referral Case” and will be dismissed as a Title IX Case. However, the Title IX Coordinator will continue the fact-finding process and will refer the case for adjudication to the Office of Student Standards and Conduct, with appeal through that same process, if

**(a)** The Respondent is a student, and

**(b)** The allegation does not fall within the definition of sexual harassment, or

**(c)** The alleged incident falls within the definition of sexual harassment; however, the alleged incident occurred neither on campus, nor within Radford University’s education program or activity, nor at an off-campus location controlled by a recognized student organization.

Refer to “Student Conduct Referral Case” in Section 5.C.b.vi. below.

- iii. The case will be categorized as a “Non-Title IX/Non-Student Case” and will continue to be processed in the Office of Institutional Equity, with a live appeal option, if
  - (a) The Respondent is a Radford University employee or non-student, and
  - (b) The allegation is violation of this Policy that does not fall within the definitions of sexual harassment, or
  - (c) The alleged incident falls within the definition of sexual harassment; however, the alleged incident occurred neither on campus, nor within Radford University’s education program or activity, nor at an off-campus location controlled by a recognized student organization.

Refer to “Non-Title IX/Non-Student Case” in Section 5.C.b.vii. and Appeal Hearing in Section 5.E.3. below

- d. The right to bring a trusted advisor of their choice with them to the meetings with the Office of Institutional Equity. The advisor may be, but is not required to be, an attorney. The role of such advisors shall be limited to advice and consult, except during a live hearing with a Decision Maker. During a live hearing with a Decision Maker, the advisor’s role is also to conduct cross-examination on behalf of the party. Other than a live hearing with a Decision Maker, neither the advisor for the Complainant nor the advisor for the Respondent shall be permitted to question parties or witnesses, raise objections or make statements or arguments at any meetings or proceedings during an investigation or any hearing.
- e. Procedures Complainants should follow if a crime has occurred, including information about:
  - i. The importance of seeking medical attention and of the collection and preservation of evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protective order;
  - ii. How and to whom the alleged offense should be reported;
  - iii. Options about the involvement of local law enforcement, and the Radford University Police Department, and Carilion Clinic Police, including the Complainant’s option to:
    - (a) Notify proper law enforcement authorities,
    - (b) Have assistance with notifying law enforcement authorities, if the Complainant so chooses; and
    - (c) Decline to notify such authorities.
- f. The Respondent is presumed not responsible for the alleged conduct until the determination at the end of the grievance process.
- g. All members of the Radford University community are expected to provide truthful information in any report or proceeding under this Policy and the Discrimination and Harassment Grievance Procedures. Submitting or providing any false or misleading information in bad faith or with a view toward personal gain or intentional harm to another in connection with any report, investigation, or proceeding under this Policy and the Discrimination Harassment Grievance Procedures is prohibited and subject to

conduct charges for students under the Standards of Student Conduct or discipline for employees under the appropriate policy.

- h.** If an incident contains any actions or allegations that are a violation of the Radford University Standards of Student Conduct, and that do not fall within the scope of this Policy, then the portion of the case where the Standards of Student Conduct applies may be referred to that office for adjudication and resolution.
- i.** If, in the course of an investigation, the Title IX Coordinator decides to investigate allegations about the Complainant or Respondent that were not included in the notice provided to the parties, if known, then the Title IX Coordinator will provide notice of the additional allegation(s) to the parties whose identities are known.
- j.** Both parties may inspect and review evidence relevant to the Formal Investigation and/or Informal Resolution.
- k.** The Complainant's right to decline to participate in a Title IX investigation and the Title IX Coordinator's ability to pursue a Formal Complaint and Formal Investigation.
  - i.** The Title IX Coordinator has discretion to sign a Formal Complaint and initiate an investigation under the following conditions:
    - (a)** The Title IX Coordinator has received multiple reports of potential sexual harassment, harassment, or discrimination against the same Respondent,
    - (b)** The Title IX Coordinator determines that circumstances surrounding an allegation (e.g., violence, use of weapons, threats, serial predation) warrant an investigation.

Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party to the investigation.

- ii.** The Title IX Coordinator may dismiss a Formal Complaint or any allegations therein, if at any time during the investigation, hearing, or resolution the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; the Respondent is no longer enrolled in or employed by Radford University; or specific circumstances prevent the Office of Institutional Equity from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein. The dismissal of a Formal Complaint may be appealed (see Section 5.E.4.).
  - iii.** The University may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of a Formal Complaint of sexual harassment or other discrimination or harassment. The University may not require the parties to participate in an Informal Resolution process and may not offer an Informal Resolution unless a Formal Complaint is filed.
- l.** Information about how Radford University will protect the confidentiality of Complainants and other parties, including how Radford University will:

- i. Complete publicly available recordkeeping, including reporting and disclosures required by the Clery Act, without the inclusion of personally identifying information about the Complainant;
  - ii. Maintain as confidential, any supportive measures provided to the Complainant, to the extent that maintaining such confidentiality would not impair the ability of Radford University to provide the supportive measures; and
  - iii. Ensure confidentiality of investigative files as education records protected by FERPA, including that the process for the Sexual Violence Threat Assessment in accordance with Virginia Code § 23.1-806 could, if the incident poses to members of the Radford University community a health or safety emergency, as defined by the FERPA regulations, lead to disclosure of personally identifying information to the law enforcement agency that would be responsible for investigating the incident and other appropriate parties whose knowledge of the information is necessary to protect the health and safety of the Complainant or other individuals.
- m. Any incidents of retaliation as defined in Section 3 should be reported to the Office of Institutional Equity without delay.
2. On receipt of a Formal Complaint from a Complainant, the Title IX Coordinator will provide written notice and written explanation of rights and options to the Respondent, which shall include:
- a. Notice of the allegations of sexual harassment, discrimination, or harassment potentially constituting a violation of this Policy, including sufficient details known at the time and with notice provided for the Respondent to prepare a response prior to an initial interview. Sufficient details will include the identities of the parties involved in the incident, if known, the conduct allegedly constituting a violation, and the date and location of the alleged incident, if known. The notice will also provide contact information for the Title IX Coordinator and a date by which the Respondent must contact the Title IX Coordinator, so the Respondent may receive additional information.
  - b. Notification of resources, both within Radford University and in the local community.
  - c. The procedures for Title IX, including filing a Formal Complaint, Formal Investigation, and Informal Resolution procedures, dismissal of cases, adjudication, appeals, and disciplinary sanctions and remedies.

Three factors determine the category of the case and, thus, the route by which the case is adjudicated. The determining factors are 1) whether the alleged incident is considered "sexual harassment," 2) the location where the alleged incident occurred, and 3) the Respondent's affiliation with Radford University (e.g., student, employee). Parties to a case will be notified simultaneously of the category in which their case falls. The categories are "Title IX Case," "Student Conduct Referral Case," and "Non-Title IX/Non-Student Case." Parties to a case will be informed of the proper category for their case and will be informed if the category changes as investigators learn information. Cases will be identified and adjudicated as follows.

- i. The case will be categorized as a “Title IX Case” and will be referred to a Decision Maker for a live hearing, with a document review as appeal, if
  - (a) The allegation is sexual harassment, and
  - (b) The incident(s) alleged occurred either on campus, off campus as part of Radford University’s education program or activity, or at an off-campus location controlled by a recognized student organization.

Refer to “Title IX Case Process” in Section 5.C.b.viii. and Appeal Document Review in Section 5.E.4. below.

- ii. The case will be categorized as a “Student Conduct Referral Case” and will be dismissed as a Title IX Case. However, the Title IX Coordinator will continue the fact-finding process and will refer the case for adjudication to the Office of Student Standards and Conduct, with appeal through that same process, if
  - (a) The Respondent is a student, and
  - (b) The allegation does not fall within the definition of sexual harassment, or
  - (c) The alleged incident falls within the definition of sexual harassment; however, the alleged incident occurred neither on campus, nor within Radford University’s education program or activity, nor at an off-campus location controlled by a recognized student organization.

Refer to “Student Conduct Referral Case” in Section 5.C.b.vi. below

- iii. The case will be categorized as a “Non-Title IX/Non-Student Case” and will continue to be processed in the Office of Institutional Equity, with a live appeal option, if
  - (a) The Respondent is a Radford University employee or non-student, and
  - (b) The allegation is violation of this Policy that does not fall within the definitions of sexual harassment, or
  - (c) The alleged incident falls within the definition of sexual harassment; however, the alleged incident occurred neither on campus, nor within Radford University’s education program or activity, nor at an off-campus location controlled by a recognized student organization.

Refer to “Non-Title IX/Non-Student Case” in Section 5.C.b.vii. and Appeal Hearing in Section 5.E.3. below

- d. The right to bring a trusted advisor of their choice with them to the meetings with the Office of Institutional Equity. The advisor may be, but is not required to be, an attorney. The role of such advisors shall be limited to advice and consult, except during a live hearing with a Decision Maker. During a live hearing with a Decision Maker, the advisor’s role is also to conduct cross-examination on behalf of the party. Other than a live hearing with a Decision Maker, neither the advisor for the Complainant nor the advisor for the Respondent shall be permitted to question parties or witnesses, raise objections or make statements or arguments at any meetings or proceedings during an investigation or any hearing.

- e. The Respondent is presumed not responsible for the alleged conduct until the determination at the end of the grievance process.
- f. All members of the Radford University community are expected to provide truthful information in any report or proceeding under this Policy and the Discrimination and Harassment Grievance Procedures. Submitting or providing any false or misleading information in bad faith or with a view toward personal gain or intentional harm to another in connection with any report, investigation, or proceeding under this Policy and the Discrimination and Harassment Grievance Procedures is prohibited and subject to conduct charges for students under the Standards of Student Conduct or discipline for employees under the appropriate policy.
- g. If an incident contains any actions or allegations that are a violation of the Radford University Standards of Student Conduct, and that do not fall within the scope of this Policy, then the portion of the case where the Standards of Student Conduct applies may be referred to that office for adjudication and resolution.
- h. If, in the course of an investigation, the Title IX Coordinator decides to investigate allegations about the Complainant or Respondent that were not included in the notice provided to the parties, if known, then the Title IX Coordinator will provide notice of the additional allegation(s) to the parties whose identities are known.
- i. Both parties may inspect and review evidence relevant to the Formal Investigation and/or Informal Resolution.
- j. The Complainant's right to decline to participate in a Title IX investigation and the Title IX Coordinator's ability to pursue a Formal Complaint and Formal Investigation.
  - i. The Title IX Coordinator has discretion to sign a Formal Complaint and initiate an investigation under the following conditions:
    - (a) The Title IX Coordinator has received multiple reports of potential sexual harassment, harassment, or discrimination against the same Respondent,
    - (b) The Title IX Coordinator determines that circumstances surrounding an allegation (e.g., violence, use of weapons, threats, serial predation) warrant an investigation.

Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party to the investigation.

- ii. The Title IX Coordinator may dismiss a Formal Complaint or any allegations therein, if at any time during the investigation, hearing, or resolution the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; the Respondent is no longer enrolled in or employed by Radford University; or specific circumstances prevent the Office of Institutional Equity from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein. The dismissal of a Formal Complaint may be appealed (see Section 5.E.4.).
- iii. The University may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal

Complaints of sexual harassment discrimination or other discrimination or harassment. The University may not require the parties to participate in an Informal Resolution process and may not offer an Informal Resolution unless a Formal Complaint is filed.

- k. Information about how Radford University will protect the confidentiality of Complainants and other parties, including how Radford University will:
  - i. Complete publicly available recordkeeping, including reporting and disclosures required by the Clery Act, without the inclusion of personally identifying information about the Complainant;
  - ii. Maintain as confidential, any supportive measures provided to the Complainant, to the extent that maintaining such confidentiality would not impair the ability of Radford University to provide the supportive measures; and
  - iii. Ensure confidentiality of investigative files as education records protected by FERPA, including that the process for the Sexual Violence Threat Assessment in accordance with Virginia Code § 23.1-806 could, if the incident poses to members of the Radford University community a health or safety emergency, as defined by the FERPA regulations, lead to disclosure of personally identifying information to the law enforcement agency that would be responsible for investigating the incident and other appropriate parties whose knowledge of the information is necessary to protect the health and safety of the Complainant or other individuals.
- l. Any incidents of retaliation as defined in Section 3 should be reported to the Office of Institutional Equity without delay.
- 3. Witnesses will be informed of resources on campus and in the community; the investigation and resolution process, including how to file a Formal Complaint; and how their information will be used in any report. As with all members of the Radford University community, witnesses are expected to provide truthful information in any report or proceeding under this Policy and the Discrimination and Harassment Grievance Procedures.

### **C. Investigation and Resolution**

- 1. After being informed of their Written Explanation of Rights and Options, a Complainant may choose to file a Formal Complaint. The Complainant will be asked to indicate what allegation(s) they want to pursue and which route of resolution they wish to take. There are two possible methods for investigation and resolution of a Formal Complaint alleging violations of the Discrimination and Harassment Policy: Informal Resolution and Formal Investigation.
- 2. In all cases, Radford University will ensure that the Title IX Coordinator, investigators, Decision Maker, or any person designated to facilitate any process, not have a conflict of interest or bias for or against complainants or respondents generally, or an individual Complainant or Respondent, in the investigation and resolution of reports and will strive to avoid the appearance of conflict of interest.
- 3. In all investigations and resolutions, there is a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made

at the conclusion of the grievance process. All relevant evidence, both inculpatory and exculpatory, will be objectively evaluated, and determinations of credibility may not be based on a person's status as a Complainant, Respondent, or Witness. In neither the Formal Investigation nor the Informal Resolution may Radford University require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

4. Radford University will treat Complainants and Respondents equitably by offering supportive measures to a Complainant, by providing remedies to a Complainant where a determination of responsibility for sexual harassment, discrimination, or harassment has been made against the Respondent, and by following the grievance process before imposing disciplinary sanctions or other actions that are not supportive measures against a Respondent.
5. Parties will be provided an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Parties will not be restricted from their ability to discuss the allegations under investigation or to gather and present relevant evidence. Parties will be provided with the same opportunities to have others present during any meeting or grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or grievance proceeding. The role of such advisors shall be limited to advice and consult, except during a live hearing with a Decision Maker. During a live hearing with a Decision Maker, the advisor's role is also to conduct cross-examination on behalf of the party. Other than a live hearing with a Decision Maker, neither the advisor for the Complainant nor the advisor for the Respondent shall be permitted to question parties or witnesses, raise objections or make statements or arguments at any meetings or proceedings during an investigation or any hearing. All hearings will be closed to the public.
6. The Title IX Coordinator will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
7. The Title IX Coordinator must investigate the allegations in a Formal Complaint; however, the Title IX Coordinator may also dismiss a Formal Complaint if the conduct alleged in the Formal Complaint 1) would not constitute sexual harassment, discrimination, or harassment, even if proved; 2) did not occur in Radford University's education program or activity; or 3) did not occur against a person in the United States. Such dismissal does not preclude action under another provision of Radford University's code of conduct. If the Title IX Coordinator dismisses the Formal Complaint, the Title IX Coordinator will promptly send written notice of the dismissal and reason(s) to the parties simultaneously.
8. The Title IX Coordinator may consolidate Formal Complaints as to allegations of sexual harassment, discrimination, or harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment, discrimination, or harassment arise out of the same facts or circumstances. Where a grievance process involves more

than one Complainant or more than one Respondent, references in this section to the singular “party,” “complainant,” or “respondent,” include the plural as applicable.

9. If a Formal Investigation is requested, at any time prior to reaching a determination regarding responsibility, the Title IX Coordinator may facilitate an Informal Resolution process that does not involve a full investigation and adjudication, provided that the Title IX Coordinator provides written notice as outlined in Section 5; obtains the parties’ voluntary, written consent to the Informal Resolution process; and the Informal Resolution process is not offered or facilitated to resolve allegations that an employee sexually harassed or otherwise discriminated against a student.

**a. Informal Resolution**

- i. For alleged violations of the Discrimination and Harassment Policy, the Complainant and the Respondent have the option to proceed under an informal procedure, when deemed permissible by the Title IX Coordinator and when the allegations are not that an employee sexually harassed or otherwise discriminated against a student.
- ii. If the Complainant, the Respondent, and the Title IX Coordinator all agree that an Informal Resolution should be pursued, the Title IX Coordinator shall attempt to facilitate a resolution that is agreeable to all parties. Prior to beginning the Informal Resolution process, the Title IX Coordinator must obtain the parties’ voluntary, written consent to the process.
- iii. Upon initiating an Informal Resolution, the Title IX Coordinator will provide the parties written notice of the following:
  - (a) the allegations;
  - (b) either party has the right to withdraw from the Informal Resolution process at any time prior to agreeing to a resolution and may resume a Formal Investigation process with respect to the Formal Complaint;
  - (c) if an Informal Resolution is pursued and a resolution is reached, parties may not request a Formal Investigation arising from the same allegations;
  - (d) any agreement between parties as part of the Informal Resolution will be provided to the parties in writing. Any violation of the agreement should be reported by the parties to the Title IX Coordinator; and
  - (e) the record of the Informal Resolution will be maintained per the Policy.
- iv. Under this procedure, the Title IX Coordinator will gather information and evidence only to the extent fact-finding is needed to resolve the conflict and to protect the interests of all parties, Radford University, and the campus community. Typically, an Informal Resolution will be completed within 30 business days of confirmed delivery of the Formal Complaint. If an extension is necessary, all parties will be notified of the expected resolution time frame and the reason for the extension. If at any point during the Informal Resolution process, the Complainant, the Respondent, or the Title IX Coordinator wish to suspend the Informal Resolution and proceed through the Formal Investigation, such request will be granted.

- v. Any resolution of a Formal Complaint through an Informal Resolution must adequately address the concerns of the Complainant, as well as the rights of the Respondent and the responsibility of Radford University to prevent, address, and remedy alleged violations of the Discrimination and Harassment Policy. Informal Resolution remedies may include providing training; providing counseling to an individual whose conduct, if not ceased, could rise to the level of discrimination or harassment; confidential briefing of the Respondent's work supervisor; or use of processes and sanctions set forth in Radford University's code of conduct. There shall be no right of appeal afforded to the complainant or the respondent following Informal Resolution.

**b. Formal Investigation**

- i. If a Complainant asks for a Formal Investigation, the Title IX Coordinator will conduct a prompt, adequate, reliable, and impartial investigation of the Formal Complaint. The Complainant is not required to submit a written report to the Title IX Coordinator to commence a Formal Investigation. The Complainant may provide additional supporting documents, evidence, or recommendations of witnesses to be interviewed during the course of the Formal Investigation. The Complainant must also disclose if a Formal Complaint has been filed with another Radford University office, or a state or federal entity for the same offense.
- ii. Typically, a Formal Investigation, not including the time necessary for potential appeals, will be completed within 45 business days of receipt of notice. If extension is necessary, all parties will be notified of the expected time frame and the reason for the extension. Only the Title IX Coordinator, or a trained investigator designated by the Title IX Coordinator, shall conduct the investigation.
- iii. Both Complainants and Respondents will be provided an equal opportunity to inspect and review any evidence obtained as part of an investigation, that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. The Title IX Coordinator will send to each party and the party's advisor, if any, the Draft Investigative Report and the evidence subject to inspection and review in an electronic format or hard copy. The parties will have ten (10) business days to submit a written response to the Draft Investigative Report, which the investigator will consider prior to completion of the Final Investigative Report. Radford University will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, and for purposes of cross-examination.
- iv. The investigator will create a Final Investigative Report that fairly summarizes relevant evidence. At least ten (10) business days prior to a hearing, the Title IX Coordinator will send the Final Investigative Report to each party and the party's advisor, if any, in an electronic format or a hard copy.

- v. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Radford University and not on the parties provided that the University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, 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 the University obtains that party's voluntary, written consent to do so for a grievance process.

**vi. Student Conduct Referral Case**

If the criteria for a "Student Conduct Referral Case" are met, the case will be dismissed as a Title IX Case. However, the Title IX Coordinator will continue the fact-finding process and will refer the case for adjudication to the Office of Student Standards and Conduct for adjudication and appeal. On receiving notice of the referral, the Office of Student Standards and Conduct will contact the parties in the case to notify them of the policies and procedures that will be followed for adjudication, appeal, and implementation of sanctions (if any).

**vii. Non-Title IX/Non-Student Case**

- (a) Using information learned from interviews and gathered as evidence during the Formal Investigation, the Title IX Coordinator will determine whether there is a preponderance of the evidence to substantiate the alleged violation of the Policy. A Respondent will not be found in violation of the Policy absent a finding of preponderance of evidence that the violation occurred.
- (b) If the Title IX Coordinator finds, by a preponderance of the evidence that violation of the Policy did occur, the Title IX Coordinator's written report will contain recommendations for steps that should be taken to prevent recurrence of any such violation and, as appropriate, remedies for the Complainant and the community. The written report also will contain the Title IX Coordinator's recommendation on sanctions. If supportive measures have been taken, the Title IX Coordinator shall include a recommendation regarding continuation, suspension or modification of any such supportive measures. The Title IX Coordinator shall provide the written report to both the Complainant and Respondent. Notwithstanding any other provision of these procedures, the Respondent shall not be provided information about the individual remedies offered or provided to the Complainant, but such information may be provided to the Complainant. The Complainant and Respondent will be advised of their right to appeal any finding or recommended remedy or sanction to the Appeal Committee. The appeal procedure outlined in Section 5.E.3. will also be explained. The completed investigation and recommended sanctions will be provided to the Department of Human Resources and other appropriate department heads to determine and impose appropriate sanctions, as described below.

### **viii. Title IX Case**

Following the Formal Investigation, the Title IX Coordinator will schedule a live hearing with a Decision Maker.

- (a)** The Title IX Coordinator will notify both parties of the time, date, and location of the live hearing.
- (b)** The hearing will occur within ten (10) business days from the date the Final Investigative Report is distributed to the parties. If an extension is necessary, all parties will be notified of the expected time frame and the reason for the extension.
- (c)** The Decision Maker will facilitate the hearing.
- (d)** The Decision Maker will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including questions challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
  - (i)** Only relevant cross examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
  - (ii)** If a party or witness does not submit to cross examination at the live hearing, the Decision Maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility; however, the Decision Maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- (e)** Live hearings may be conducted with all parties physically present in the same geographic location or, at Radford University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants to simultaneously see and hear each other. At the request of either party, Radford University will provide for the live hearing to occur with the parties located in separate rooms with the technology enabling the Decision Maker and parties to simultaneously see and hear the other party or the witness answering questions.
- (f)** If a party does not have an advisor present at the live hearing, Radford University must provide, without fee or charge to that party, an advisor of the University's choice, who may be, but is not required to be, an attorney, to conduct cross examination on behalf of that party.
- (g)** 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.

- (h) Radford University will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.
- (i) Following the hearing, the Decision Maker, who is not the Title IX Coordinator or investigator, will issue to both parties simultaneously a written determination regarding responsibility using the preponderance of the evidence standard. The written determination will include:
  - (i) Identification of the allegations potentially constituting sexual harassment, discrimination or harassment;
  - (ii) A description of the procedural steps taken from the receipt of the Formal Complaint through the written determination of responsibility, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - (iii) Findings of fact supporting the determination of responsibility;
  - (iv) Conclusions regarding the application of the Policy to the facts;
  - (v) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions Radford University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to Radford University's education program or activity will be provided by the University to the Complainant;
  - (vi) The procedures and permissible bases for the Complainant and Respondent to appeal.
- (j) The written determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or the date on which an appeal would no longer be considered timely, if an appeal is not filed.

#### **D. Sanctions and Remedies**

1. If it is determined that conduct in violation of this Policy has occurred, sanctions and remedies will depend on the facts and circumstances of each particular situation, the frequency and severity of the offense, institutional precedence, and any history of past conduct.
2. Remedies will be designed to restore or preserve equal access to Radford University's education program or activity. The Title IX Coordinator will consult with the Complainant to determine those remedies in order to restore or preserve equal access. Sanctions and remedies will be reasonable and will fall within the bounds of law and Radford University Policy. Sanctions and remedies may affect one's access to and/or affiliation with Radford

University's physical campus and/or any portion of Radford University's education program or activity.

- 3.** In addition to sanctions that may be imposed on an individual found in violation of this Policy, Radford University will take steps to prevent recurrence of any discrimination or harassment and to remedy discriminatory effects on the Complainant and others, if appropriate.
- 4.** Not every violation of the Discrimination and Harassment Policy will result in an identical sanction. Radford University reserves the right to impose different sanctions depending on the severity of the incident as well as any previous proven violations by the respondent.
  - a.** Sanctions and remedies for students may include education, disciplinary probation, deferred suspension, suspension, and penalties up to and including dismissal. Such sanctions and remedies will be recommended by either the Title IX Coordinator or by the Decision Maker in consultation with the Director of the Office of Student Standards and Conduct and in accordance with the Standards of Conduct.
  - b.** Sanctions and remedies for employees may include education, probationary status, reassignment and termination from employment. Such sanctions and remedies will be recommended by either the Title IX Coordinator or by the Decision Maker in consultation with the Department of Human Resources and the Respondent's supervisor(s) or division leader(s).
    - i.** Sanctions and remedies for Teaching and Research Faculty will be determined by the Provost, in consultation with the Deans and/or the President and in accordance with the Teaching and Research Faculty Handbook and any other applicable Radford University policies and regulations.
    - ii.** Sanctions and remedies for Administrative and Professional Faculty will be determined by the employee's supervisor and Division Head, in consultation with the Assistant Vice President for Human Resources and in accordance with the Administrative and Professional Faculty Handbook and any other applicable Radford University policies and regulations.
    - iii.** Sanctions and remedies for Classified or Wage employees will be determined by the employee's supervisor in consultation with the Assistant Vice President for Human Resources in accordance with the Commonwealth's Standards of Conduct Policy.
  - c.** Contractors shall assign for duty only employees acceptable to Radford University. Radford University reserves the right to require the Contractor to remove from campus any employee who violates the Discrimination and Harassment Policy.
  - d.** Visitors, including, but not limited to, students participating in camps or other programs at Radford University, who violate the Discrimination and Harassment Policy will be directed to immediately leave campus and may be subject to a permanent ban from campus.
- 5.** If neither the Complainant nor the Respondent requests an appeal, then a determination regarding the imposition of sanctions shall be made within ten (10) business days of the date of either the Title IX Coordinator's Final Investigative Report for a case adjudicated

through the Non-Title IX/Non-Student Case process, or the Decision Maker's written determination for a case adjudicated through the Title IX Case process. If an appeal is requested, sanctions, if any, shall be imposed within ten (10) business days of the final decision of the President after consideration of the written decision of the Appeal Committee. If extension of the time frame for sanctions to be imposed beyond ten (10) business days is necessary, all parties will be notified by the appropriate office of the expected time for imposing the sanctions. The Respondent shall be informed in writing of any sanctions imposed for violation of the Discrimination and Harassment Policy, by the individual imposing the sanctions, within five (5) business days of the determination of an appropriate sanction. The Title IX Coordinator shall be provided a copy of such written notification. The Title IX Coordinator will disclose to the Complainant, as simultaneously as possible to the notification provided to the Respondent, information about the sanctions that directly relate to the Complainant as is permitted by state and federal law including FERPA and the Virginia Freedom of Information Act.

## **E. Appeals**

### **1. Composition of the Appeal Committee**

- a.** The Appeal Committee shall be comprised of trained individuals selected by the Title IX Coordinator from a pool of faculty and staff appointed by the President. Teaching and Research Faculty members are nominated to the President by the Provost, Administrative and Professional Faculty members are nominated to the President by the Vice President for Finance and Administration, and Classified Employee members are nominated to the President by the Assistant Vice President for Human Resources. Each Appeal Committee shall include one member from each of the three representative areas. The President shall select individuals within the pool who are identified as Appeal Committee Chairs. Committee members shall serve indefinitely at the pleasure of the President. The President may appoint one or more persons to serve on the Committee temporarily to fill a vacancy due to recusal or otherwise to ensure a full three-member Committee. The President has sole discretion to permanently remove members from the pool.
- b.** The Appeal Committee will not include the same person who served as the Decision Maker who reached the determination regarding responsibility, the investigator(s), or the Title IX Coordinator. Further, Radford University requires that individuals serving on the Appeal Committee not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent

### **2. The grounds for appeal are as follows:**

- a.** The Title IX Coordinator, investigator, or Decision Maker had a conflict of interest or bias for or against complainants or respondents generally, or the individual Complainant or Respondent, that affected the outcome of the matter;
- b.** New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- c.** Procedural irregularity that affected the outcome of the matter;
- d.** The recommended sanctions or remedies are substantially outside the parameters or guidelines set by Radford University for this type of offense, as outlined in Section 5.D.

### **3. Appeal Procedure for a “Non-Title IX/Non-Student Case”**

- a. A Complainant or Respondent desiring to appeal the investigative findings shall file a written request for appeal with the Title IX Coordinator within five (5) business days of delivery of the Final Investigative Report.
- b. The Title IX Coordinator will notify the other party in writing when an appeal is filed.
- c. Within five (5) business days of receipt of the written request for appeal, the Title IX Coordinator will notify the parties of the names of the individuals serving on the Appeal Committee. The parties must raise, within five (5) business days of such notification, objections to members of the Committee on the basis of conflict of interest or bias for or against the appellant or appellee. The objection shall be made to the Title IX Coordinator, who will present the objection to the President. The President shall rule on any such objections within five (5) business days.
  - i. Within five (5) business days following the deadline to raise objections, or within five (5) business days following the resolution of the objection, the Title IX Coordinator will notify the parties of the time, date, and location of the appeal hearing. Such appeal hearings typically will be scheduled within fifteen (15) business days of receipt of the request for appeal. If extension beyond fifteen (15) business days is necessary, both parties will be notified by the Appeals Committee of the revised time frame.
- d. Within five (5) business days following the deadline for appeal, the appealing party (appellant) must submit a written statement in support of, or challenging, the outcome; identify the names and addresses of witnesses that are requested to be called at the hearing; identify and include copies of any documents that will be used as evidence at the hearing; describe with specificity the grounds for appeal and request a specific remedy. The non-appealing party (appellee) also may submit, within five (5) business days of the deadline for appeal, such information for the Committee's consideration. The Title IX Coordinator will provide to the Committee within five (5) business days prior to the hearing, a copy of the Final Investigative Report and copies of any documents used in the investigation.
- e. Both the appellant and the appellee may retain legal counsel at their own expense or designate a non-attorney advisor to accompany him or her at any meeting or proceeding in the appeal process. If either party has retained legal counsel or a non-attorney advisor, the party must immediately notify the Committee Chair of such representation. The role of counsel or the non-attorney advisor for the parties shall be limited to advice and consultation with the attorney's client and the client's witnesses. Neither counsel/advisor for the appellant nor counsel/advisor for the appellee shall be permitted to question witnesses, raise objections, or make statements or arguments to the Committee at the hearing. If either party is represented by legal counsel, Radford University may be represented at the hearing by assigned legal counsel from the Office of the Attorney General, who will ensure that the rights of Radford University and the parties are respected.
- f. The Chair of the Committee shall preside over the hearing. The hearing will be a non-adversarial proceeding and rules of evidence shall not be strictly applied. However, the Chair of the Committee may limit evidence or testimony that is not relevant to a determination of whether a violation of the Policy occurred and whether the grounds

for appeal are met by a preponderance of evidence. The hearing will be conducted in a fair and impartial manner. Both the appellant and appellee, or the Title IX Coordinator if the appellee does not participate, will address the Chair of the Committee and not each other. The Chair will make the final decision on all matters of procedure during the hearing.

- g.** The past sexual history or sexual character of a party to the Formal Complaint, Complainant or Respondent, with anyone other than each other, will not be admissible. Notwithstanding the above, demonstration of pattern, repeated, and/or predatory behavior by the Respondent, in the form of previous findings in any Radford University or judicial proceeding will be admissible. The parties will be notified in advance by the Appeal Committee Chair of the hearing if any information addressed by this paragraph is deemed admissible.
- h.** The Appeal Committee will review all provided documents and, within ten (10) business days following the hearing, the Committee will submit a written recommendation simultaneously to both parties, the Title IX Coordinator, and the President. The recommendation shall include: (i) a description of the appellant's grounds for appeal; (ii) whether such grounds are accepted or rejected and the rationale for such determination; (iii) the Committee's decision to uphold or reject the findings of the Title IX Coordinator and/or the recommended sanction and the rationale for such determination; (iv) if the Title IX Coordinator's findings and/or recommended sanction are rejected, the findings of the Committee and recommendations for resolution, and (v) the materials the Committee members were provided by the Title IX Coordinator and by the appellant and appellee.
- i.** Within three (3) business days of the Committee's recommendation, the President shall notify the Committee, the Title IX Coordinator, and the parties, in writing, of his decision relative to the findings and recommendations of the Committee. The decision of the President is final with no further right to appeal.

**4. Appeal Procedure (Document Review) for a "Title IX Case" and a "Dismissal of Formal Complaint"**

- a.** A Complainant or Respondent may appeal the Decision Maker's written determination, or the Title IX Coordinator's dismissal of a Formal Complaint. In order to request appeal, the Appellant shall file a written request for appeal with the Title IX Coordinator within five (5) business days of delivery of Decision Maker's findings or the Title IX Coordinator's Written Notice of Dismissal of Formal Complaint.
- b.** The Title IX Coordinator will notify the other party in writing when an appeal is filed.
- c.** Within five (5) business days of receipt of the written request for appeal, the Title IX Coordinator will notify the parties of the names of the individuals serving on the Appeal Committee. The parties must raise within five (5) business days of such notification, objections to members of the Committee on the basis of conflict of interest or bias for or against the appellant or appellee. The objection shall be made to the Title IX Coordinator, who will present the objection to the President. The President shall rule on any such objections within five (5) business days.

- d. Within five (5) business days following the deadline for appeal, the appealing party (appellant) must submit a written statement in support of, or challenging, the outcome; describing the specificity the grounds for appeal; and including copies of any pertinent documents. The non-appealing party (appellee) also may submit, within five (5) business days of the deadline for appeal, such information for the Committee's consideration. The Title IX Coordinator will provide to the Committee, within five (5) business days of the deadline for appeal, copies of any documents used in the investigation.
- e. The Appeal Committee will review all provided documents and, within ten (10) business days of receipt of the documents, the Committee will submit a written recommendation simultaneously to both parties, the Title IX Coordinator, and the President. The recommendation shall include: (i) a description of the appellant's grounds for appeal; (ii) whether such grounds are accepted or rejected and the rationale for such determination; (iii) the Committee's decision to uphold or reject the Decision Maker's finding regarding responsibility and/or the recommended sanction and the rationale for such determination; or the Title IX Coordinator's dismissal of a Formal Complaint (iv) if the Decision Maker's findings and/or recommended sanction are rejected, the findings of the Committee and recommendations for resolution, and (v) the materials the Committee members were provided by the Title IX Coordinator and by the appellant and appellee.
- f. Within three (3) business days of the Committee's recommendation, the President shall notify the Committee, the Title IX Coordinator, and the parties, in writing, of his decision relative to the findings and recommendations of the Committee. The decision of the President is final with no further right to appeal.

**F. Documentation and Record-keeping**

1. The Title IX Coordinator shall maintain, in a confidential manner, for at least ten (10) years, paper or electronic files of all reports, witness statements, documentary evidence, written investigation reports, audio or audiovisual recordings or transcripts, Formal Investigation findings, Informal Resolution processes and the result therein, appeals and appeal results, disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to Radford University's education program or activity, and associated documents. The Title IX Coordinator will collect and maintain information received and created by investigators, Decision Makers, and Appeal Committee members.
2. The Title IX Coordinator will maintain, for at least (10) years, records of any actions, including supportive measures taken in response to a report or Formal Complaint of sexual harassment, discrimination, or harassment. In each instance, the Title IX Coordinator will document the basis for the conclusion that the response was not deliberately indifferent and document that the measures were designed to restore or preserve equal access to Radford University's education program or activity. If the Title IX Coordinator did not provide the Complainant with supportive measures, then the Title IX Coordinator will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit Radford University from providing additional explanations or detailing additional measures taken.

3. The Title IX Coordinator will prepare a monthly summary of pending reports, present the summary to the President, and retain the summary for at least ten (10) years. Such summary will contain sufficient information to permit the Title IX Coordinator and the President to assess Radford University compliance with the requirements of Title IX.

#### **G. Training**

1. The Title IX Coordinator, investigators, Decision Makers, and any person who facilitates an Informal Resolution process, will receive training on the definition of sexual harassment; the scope of Radford University's education program or activity; how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable; and how to serve impartially, including how to avoid prejudgment of the facts at issue, conflicts of interest, and bias. Decision Makers will receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including questions and evidence about the Complainant's sexual predisposition or prior sexual behavior. Investigators will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
2. Materials used to train the Title IX Coordinator, investigators, Decision Makers, and any person who facilitates an informal resolution process will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of sexual harassment, discrimination, and harassment. The Title IX Coordinator shall maintain, for at least ten (10) years, all materials used to train the Title IX Coordinator, investigators, Decision Makers, and persons who facilitate Informal Resolution processes. These materials are available on the Office of Institutional Equity's website.

#### **6. EXCLUSIONS**

None

#### **7. APPENDICES**

None

#### **8. REFERENCES**

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

[Title IX of the Educational Amendment Acts of 1972](#)

[U.S. Equal Opportunity Commission - Laws, Regulations, Guidance & MOUs](#)

[Campus Sexual Violence Elimination Act of 2013](#)

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

[U.S. Department of Education - Family Educational Rights and Privacy Act \(FERPA\)](#)

[34 C.F.R. 99.36](#), Disclosure of information in health and safety emergencies

[34.C.F.R. 106](#), Nondiscrimination on the basis of sex in education programs or activities receiving federal assistance

[Code of Virginia § 2.2-3700 et seq. \(Chapter 37\)](#), "Virginia Freedom of Information Act"

[Code of Virginia § 18.2-61 et seq. \(Article 7\)](#), “Criminal Sexual Assault.”

[Code of Virginia § 19.2-389](#), “Dissemination of criminal history record information.”

[Code of Virginia § 19.2-389.1](#), “Dissemination of juvenile record information.”

[Code of Virginia § 23.1-805](#), “Violence prevention committee; threat assessment team.”

[Code of Virginia § 23.1-806](#), “Reporting of acts of sexual violence.”

[Code of Virginia § 23.1-808](#), “Sexual violence; policy review; disciplinary immunity for certain individuals who make reports.”

[Code of Virginia § 23.1-900](#), “Academic transcripts; suspension, permanent dismissal, or withdrawal from institution.”

[Code of Virginia § 32.1-127.1:03](#), “Health records privacy.”

## 9. INTERPRETATION

The authority to interpret this policy rests with the President of the University and is generally delegated to the Title IX Coordinator.

## 10. APPROVAL AND REVISIONS

The *Discrimination, Harassment, Sexual Misconduct, and Retaliation Policy* was adopted by the Radford University Board of Visitors on November 21, 2014.

The *Discrimination, Harassment, Sexual Misconduct, and Retaliation Policy* was amended by the Radford University Board of Visitors on September 18, 2015.

The *Discrimination, Harassment, Sexual Misconduct, and Retaliation Policy* was amended by the Radford University Board of Visitors on September 15, 2017.

The *Discrimination, Harassment, Sexual Misconduct, and Retaliation Policy* was amended by the Radford University Board of Visitors on May 10, 2019.

On August 5, 2020, the Radford University Board of Visitors approved a revision to the *Discrimination and Harassment Policy* (previously titled *Discrimination, Harassment, Sexual Misconduct, and Retaliation Policy*) effective August 14, 2020.

**Note: This policy was reviewed in February 2024, but was not revised at the time pending issuance of revised Title IX regulations by the Department of Education. New Title IX regulations were released in April 2024 and the policy was reviewed. In June 2024 the U.S. District Court for the Eastern District of Kentucky issued an injunction pending the outcome of litigation in which the Commonwealth of Virginia is a plaintiff. The policy was not revised in 2024 in order to comply with the injunction. Accordingly, the next review date for this policy is being moved forward to March 1, 2025.**

For general information concerning University policies, contact the [Office of Policy and Tax Compliance](#) – (540) 831-5794. For questions or guidance on a specific policy, contact the Oversight Department referenced in the policy.