



Prohibiting Title IX Sexual & Gender-Based Harassment

Title: Policy Prohibiting Title IX Sexual Harassment and Gender-Based Harassment

Effective Date: August 2011

Responsible Office: Compliance & Equity, Student Affairs

Last Updated: August 16, 2021

Table of Contents

- [I. Scope](#)
- [II. Purpose](#)
- [III. Definitions](#)
- [IV. Policy](#)
- [V. Reporting Misconduct](#)
- [VI. Enforcement; Complaint/Investigation Procedures](#)
- [VII. Approval & Amendment](#)
- [VIII. Related Documents, Policies, and Procedures](#)
- [Appendix A: External Reporting Options](#)
- [Appendix B: Initial Assessment of Sexual Misconduct Reports](#)

I. Scope

This policy applies to William & Mary as a whole university, including the Virginia Institute of Marine Science. It applies to all members of the university community, including faculty, staff and students. This policy also applies to contractors, vendors, and other third parties. It is William & Mary policy to prohibit acts of Title IX Sexual Harassment as defined by applicable federal regulations. In addition to this policy, the university's *Policy Prohibiting Discrimination, Discriminatory Harassment, Retaliation and Sexual Misconduct* ("Discrimination Policy")

collectively define conduct expectations relating to all discrimination for faculty, staff and students and for third parties, and the respective complaint procedures [1] provide notice of the applicable university response.

Officially recognized organizations, such as student organizations, are subject to this policy provided that, to the extent permitted by law, social organizations such as fraternities and sororities may restrict membership to members of the same sex, and organizations whose primary purpose is religious or political may restrict their membership to those members of the university community who have similar beliefs or political affiliations. [2].

This policy prohibits Title IX sexual harassment, including gender-based harassment, by faculty, staff and students and by third parties when that conduct occurs in the United States and:

- occurs on campus or property owned or controlled by the university (university property);
- occurs in the context of a university employment or educational program or activity including, but not limited to, university-sponsored research, or internship programs;
- occurs in circumstances in which the university exercised substantial control over both the respondent and the context in which the conduct occurred.

Sexual misconduct not meeting the definition of Title IX sexual harassment and not occurring in the above jurisdictional limitations may be prohibited under the Discrimination Policy.

This policy is not intended, and may not be applied, to abridge free speech or other civil rights of any individual or group. Speech and expressive conduct may, however, violate this policy; for example, offensive speech that creates a hostile environment may be prohibited sexual harassment. This policy is not meant to prohibit academic freedom, including classroom discussion of controversial matters and research activities. [3].

II. Purpose

Our community of trust requires that its members treat one another with respect, dignity, and fairness. This policy is designed to foster a safe environment for the members of the William & Mary community.

The university is committed to maintaining an environment that is free from sex- or gender-based discrimination, sexual harassment or sexual misconduct and in which sexual orientation and gender identity and the freedom to make individual choices regarding sexual behavior is respected by all.

Sexual harassment, gender-based harassment or sexual misconduct by anyone is prohibited. It will be addressed in a prompt, equitable manner in accordance with this policy and the applicable procedure.

This policy helps William & Mary comply with federal law as required under Title IX of the Higher Education Amendments of 1972,[4] which prohibits discrimination on the basis of sex (including sexual violence) in education programs or activities.

III. Definitions

The university defines Title IX sexual harassment and related terms as specified in the Department of Education's Final Rule published in May 2020. Additionally, the university carefully defines definitions of consent, force, incapacitation and mandatory reporter to reflect the values of the community and in compliance with the Code of Virginia.

Complainant means an individual who is alleged to be the victim of conduct that could constitute discrimination, discriminatory harassment, including Title IX sexual harassment, retaliation or sexual misconduct as defined in the Discrimination Policy and the Title IX Policy.

Consent means a mutual agreement between participants to engage in specific types of sexual activity.

Faculty means those persons who have teaching and/or research responsibilities and who hold academic appointments in a department, program, or school of the university, as well as those administrators who hold an academic appointment in a program, school or department.

Force means to make someone do something against their will. Force includes physical violence, threats, intimidation and/or coercion.

1. **Physical violence** includes hitting, punching, slapping, kicking, restraining, strangling, and brandishing or using any weapon.
2. **Threats** are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm oneself or another person

physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.

3. **Intimidation** is an implied threat that causes reasonable fear in another person. A person's size, alone, does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit).

4. **Coercion** is an unreasonable amount of pressure on someone to:

- participate in a particular form of sexual activity,
- change their mind after they asked to stop or have indicated lack of consent previously,
- change their mind about what point of sexual activity they are stopping at.

Coercion is more than an effort to persuade, entice, or attract another person to have sex. In evaluating whether coercion was used, the university will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, (iv) the duration of the pressure, and (v) any power differential between the parties.

Formal complaint means a document filed by a complainant who is participating in or attempting to participate in an educational program or activity of the university or signed by the Title IX Coordinator alleging Title IX sexual harassment, Gender-Based harassment, discrimination, discriminatory harassment, retaliation, or sexual misconduct ("misconduct") against a respondent and requesting that the university investigate the allegations.

Incapacitation means the physical and/or mental inability to make informed, rational judgments, including about whether or not to engage in an activity, including sexual activity.

Intimate Body Parts means the genitalia, anus, groin, breast, or buttocks of any person.

Mandatory Reporter means a faculty or staff (including some student staff such as Resident Assistants, Teaching Assistants) of the university who is obligated by federal and state law (which designates such employee as a "Responsible Employee") to share knowledge, notice, and/or reports of sexual harassment, gender-based harassment, and sexual misconduct as defined in the Discrimination Policy or Title IX Policy with the Title IX Coordinator.

Report means information about alleged discrimination, discriminatory harassment, or retaliation, including sexual harassment or sexual misconduct affecting a member of the university community, including a student, that is conveyed to a mandatory reporter of the university and is communicated to the Chief Compliance Officer/Title IX Coordinator.

Respondent means an individual who has been alleged to be in violation of university policy through conduct that could constitute discrimination, discriminatory harassment, or retaliation, including sexual harassment or sexual misconduct.

Retaliation is any adverse action taken by a respondent or allied third party against a person because the person made a good faith report of discrimination, discriminatory harassment, retaliation, or sexual misconduct, or the person is involved in or participated in an investigation or proceeding of such reported allegation under this policy. Retaliation includes, but is not limited to, threatening, intimidating, harassing, coercing or any other conduct that would deter a reasonable person from engaging in activity protected under this policy. Retaliation does not include good faith counter complaints lawfully pursued in response to a report of discrimination or harassment, or non-discriminatory adverse actions taken for legitimate purposes (e.g. employee discipline for tardiness, student honor code charges for separate plagiarism incident)

Staff means employees who are designated by Human Resources as executive, professional, professional faculty, operational, classified and non-student hourly employees and who do not hold an academic appointment in a program, school, or department.

Student means all persons taking courses at the university, either full-time or part-time, persons pursuing undergraduate, graduate, or professional studies, and persons enrolled as a non-degree seeking students.

Title IX Coordinator means an official designated by the university who is responsible for ensuring the university's compliance with Title IX regulations and the person who is responsible for coordination of any process for investigation and adjudication of discrimination, discriminatory harassment, retaliation, sexual harassment, gender-based harassment, or sexual misconduct.

Title IX Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

1. **Quid Pro Quo Sexual Harassment** A faculty or staff member of the recipient conditioning the provision of aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct
2. **Hostile Environment Sexual Harassment** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's education program or activity
3. **Gender-Based Harassment** means hostile environment sexual harassment based on gender, sexual orientation, gender identity, or gender expression
4. Any of the following without regard to if the conduct is severe, pervasive or objectively offensive:
 - **Sexual assault** as defined in 20 U.S.C. 1092(f)(6)(A)(v) is an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program.
 - **a. Rape**— The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - **b. Fondling**—The touching of intimate body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
 - **c. Incest**—Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - **d. Statutory Rape**—Sexual intercourse with a person who is under the statutory age of consent. [5]
 - **Domestic Violence** as defined in 34 U.S.C. 12291(a)(8), means a felony or misdemeanor crime 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 jurisdiction in which the crime of violence occurred, 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 in which the crime of violence occurred.
- **Dating violence** as defined in 34 U.S.C. 12291(a)(10), means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
 - The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - For the purposes of this definition dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse and does not include acts covered under the definition of domestic violence
- **Stalking** as defined in 34 U.S.C. 12291(a)(30) means engaging in a course of conduct directed at a specific person that would cause a reasonable person to
 - Fear for the person's safety or the safety of others; or
 - Suffer substantial emotional distress.

For the purposes of this definition:

- **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling

IV. Policy

A. Misconduct

The following types of conduct as defined in Section III of this policy are prohibited and are a violation of university policy. Persons who violate the policy are subject to sanctions as described in the applicable procedure.

1. Title IX Sexual Harassment

- Quid Pro Quo Sexual Harassment
- Hostile Environment Sexual Harassment
- Sexual Assault (Rape, Fondling, Incest, Statutory Rape)
- Domestic Violence
- Dating Violence
- Stalking

2. **Retaliation.** Separate disciplinary action shall be imposed if there is a finding of responsibility for retaliation. Retaliation may be present even where there is a finding of “no responsibility” on the allegations of sexual or gender-based harassment or sexual misconduct.

B. Application of Consent

Members of the university community choosing to engage in any form of sexual activity – from touching or kissing to intercourse – must obtain consent from their partner(s) prior to engaging in such activity. Appendix A provides guidance on obtaining consent and exercising caution when consumption of alcohol or drugs occurs.

- **Consent is *Active, Voluntary, Informed*:**

- Active – through clear words or actions, a person has indicated permission to engage in mutually agreed upon sexual activity. Sex is something you participate in -- not something that happens to you.
- Voluntary – freely given.
- Informed – knowing and aware.

- **Consent is NOT:**

- Merely a lack of protest or lack of resistance. Silence and/or passivity also do not convey consent.
- Something to be assumed. Consent to sexual activity once does not imply consent another time. Nor does consent to one type of sexual activity mean consent to another.
- Valid if any force is used.
- Valid if the person consenting is incapacitated. Someone who is incapacitated cannot consent.
- **A person's belief that another person consented is not valid when:**
 - The belief arose from the person's own intoxication or recklessness; or
 - The person knew the other person was incapacitated (as described below); or
 - A reasonable person, in the circumstances, should have known that the other person was incapacitated.
- **Consent is *specific*.** Consent to one form of sexual activity does not constitute consent to another form of sexual activity. For example:
 - Consent to oral-genital contact does not constitute consent to vaginal or anal penetration;
 - Consent to sexual activity on one occasion does not, by itself, constitute consent to future sexual activity.
- **Consent is *revocable*.**
 - Consent may be withdrawn at any time, for any reason, even after sexual activity has begun.
 - Previously-given consent may be withdrawn by communicating through clear words or actions a decision to stop (or not engage in) the sexual activity.
 - Once consent is withdrawn, the other person must cease sexual activity without delay and may not apply undue pressure on the person who withdrew consent (coercion).
- **Consent obtained by force is *invalid*.**

C. Application of Incapacitation

Someone who is incapacitated cannot give consent and any consent that is given is considered invalid due to incapacitation. An individual's incapacitation may be due to:

- Alcohol or drugs;
- Sleep or unconsciousness; or
- An intellectual or other disability.

Not all changes in emotional or mental state, however, constitute incapacitation. Someone who is upset, tired, or intoxicated (for example) may make different choices than they would when they were in a calm, rested, or sober state, but that does not mean that they lack capacity to give consent. A person is not necessarily incapacitated merely as a result of drinking or using drugs. However, alcohol consumption, particularly rapid consumption or consumption together with other drugs, can prevent the formation of long-term memories ("blackout"); someone who (temporarily) cannot form long-term memories may or may not have the capacity to consent.

In situations where both parties raise concerns regarding consent due to incapacitation, the university evaluates factors such as:

- When and in what context the concerns were raised
- How the sexual activity was initiated
- The degree to which aggression was applied and/or
- The level of a party's control or capacity

If someone is incapacitated, any initiation of sexual activity by this person does not presume consent. Being impaired by alcohol or other drugs is not a defense to any violation of this policy.

In evaluating consent in cases of alleged incapacitation, the university asks two questions: (1) *Did the respondent know that the complainant was incapacitated? **and if not,*** (2) *Would a sober, reasonable person in the same situation have known that the complainant was incapacitated?* If the answer to either of these questions is "YES," consent was invalid and the conduct is likely a violation of this policy.

V. Reporting Misconduct

A. Internal Reports

Reporting Discrimination, Discriminatory Harassment, Retaliation or Sexual Misconduct prohibited under this policy allows William & Mary to take prompt, supportive measures to protect and support individuals in their educational or work environments. Supportive measures may be provided even if the Complainant does not want to initiate a university administrative process or a criminal process. Additional information about supportive measures is provided in the relevant procedures. [8]

Reports of discrimination, discriminatory harassment, retaliation or sexual misconduct may be made to:

Dr. Jenelle M. Job, MEd, PhD, LSSP

Director of Title IX and Civil Rights Compliance

108 James Blair Hall

William & Mary

Williamsburg, VA 23185

757-221-4977

_jmjob@wm.edu

Methods of Reporting

- **Online reports**
 - Employee Online Reporting Form to report any allegations of discrimination, discriminatory harassment or retaliation, including Title IX sexual harassment by a faculty, staff or third-party contractor or guest of the university.
 - Student Title IX Report Form to report allegations of sexual harassment, gender-based harassment or sexual misconduct by a student.
 - Student Incident Report to report allegations of other discrimination, discriminatory harassment or retaliation by a student.
- **In-person or written reports (mail or email)**
 - ***Reports relating to students or employees:***
 - Office of Compliance & Equity
 - James Blair Hall Ste. 110
 - William & Mary

Williamsburg, Virginia 23187

reportconcern@wm.edu

- **Anonymous reports**

- Anonymous reports as well as partial disclosure reports of incidents involving students may be made by non-mandatory reporters [online](#).
- Anonymous reports or partial disclosure reports of incidents involving students or employees made by non-mandatory reporters may be **filed physically** using the secure drop box located outside of the Office of Compliance & Equity on the first floor of James Blair Hall.
- William & Mary Police may accept anonymous reports of sexual assault, which will be included in the university's crime statistics if appropriate under the [Clery Act](#). The Police can also assist survivors with the process of having physical evidence collected (PERK), anonymously, and maintained. This gives survivors the option of later deciding whether and how to use such evidence. Please note that if you provide the Police with specific information, such as names, they will be obligated to share that information with the Title IX Coordinator. William & Mary Police dispatch can be contacted at [\(757\) 221-4596](tel:(757)221-4596) or in person at 201 Ukrop Way.

Other internal reporting considerations:

1. Requests Not to Investigate

The university will not begin an internal investigation without a formal complaint signed by the Complainant and submitted to the Title IX Coordinator, or without a formal complainant signed by the Title IX Coordinator when the circumstances and risk factors of the report indicate a safety concern for the university community. The university must consider its obligation to other students or employees and the campus community. In addition, Virginia law requires the university to report sexual violence incidents to law enforcement and/or the relevant prosecutor, in certain circumstances.(9)

The university makes every effort to protect the privacy and confidentiality of people who report or are named in a report of sexual misconduct. Information reported will be shared only on a need-to-know basis. The university also takes steps to protect members of its community against further misconduct, including retaliation. Confidentiality and retaliation protections exist in part to help encourage people who experience misconduct to come forward. For people who remain concerned about personal disclosures or who do not want investigation to occur there are options:

- If you have experienced misconduct yourself, you can make an anonymous report (Section IV.A.3).
- If you are a student who is not a mandatory reporter because of your student employment role (e.g. resident assistant, teaching assistant), you can make a report of misconduct that happened to someone else without disclosing the name of the survivor and/or offender.
- A person may report sexual misconduct with names, but may request that the name of the survivor of the misconduct remain confidential.
- A person may also request that the university not take action in response to a sexual misconduct incident of which it becomes aware. The university will consider this request carefully.

2. Amnesty from Student Discipline

In order to facilitate full and truthful reporting and witness participation, the university generally does not charge parties or material witnesses with Student Code of Conduct violations for drug or alcohol misconduct, such as consuming alcohol underage or consuming illegal drugs, unless such behavior relates directly to the sexual misconduct allegation. An example of a Student Code of Conduct violation that relates directly to a sexual misconduct allegation would be provision of alcohol to an underage reporting party by a respondent, when there is an allegation that the respondent provided the alcohol as a means to facilitate a sexual assault.

B. Confidential Reports

- **For Students:** Students who are not sure whether they want to make a formal complaint are encouraged to contact The Haven. The Haven can provide confidential support, timely health, and safety information, on and off-campus resources, modifications to academics and campus living, and help a survivor understand the rights and options available to them.
 - **The Haven**
Sadler Center 146 (1st floor)
(757) 221-2449
thehaven@wm.edu
- Other confidential resources for students on campus are:

- **William & Mary Counseling Center**
McLeod Tyler Wellness Center, 2nd Floor
[\(757\) 221-3620](tel:7572213620)
- **Student Health Center**
McLeod Tyler Wellness Center, 1st Floor
[\(757\) 221-4386](tel:7572214386)
- **For Employees:**
 - **The University Ombuds**
ombuds@wm.edu
 - **Employee Assistance Program (EAP)**
OVA Care and OVA HDHP
Anthem Blue Cross and Blue Shield
Anthem EAP: [1-855-223-9277](tel:18552239277) www.anthemep.com
Log in: Commonwealth of Virginia
 - **OVA HealthAware/Aetna**
Aetna EAP: [1-888-6232](tel:18886232) www.mylifevalues.com
Username: OVA Password: OVA
 - **Anthem Crisis Line**
[1-855-223-9277](tel:18552239277) Press 1 for Crisis
 - **Community Services Board**
Telehealth services [757-230-3200](tel:7572303200)

C. Mandatory Reports

There are two mandatory reporting situations in which an employee who has information about discrimination or harassment must share that information with the Chief Compliance Officer or Deputy Chief Human Resources Officer.

- **Faculty, supervisors, and managers must report all discrimination and retaliation of an employee who reports to them directly or indirectly.** Faculty and staff with supervisory or managerial responsibilities (including all executive employees) who are told of, become aware of, or witness Title IX Sexual Harassment or Gender-Based Harassment under the Title IX Policy, or any form of discrimination, discriminatory harassment, retaliation or sexual misconduct under this policy of a subordinate employee

in their line of supervision are required to file a report with the Chief Compliance Officer or Deputy Chief Human Resources Officer.

- For example, if a faculty or staff member complains of or reports discrimination to a supervisor, or if a supervisor witnesses or becomes aware of an incident or situation that a reasonable person would understand to be retaliation, the supervisor is obligated to inform their immediate supervisor or the Office of Compliance & Equity. The faculty member, supervisor or manager should not investigate the matter themselves. If the supervisor knows that the matter has already been brought to the attention of the Office of Compliance & Equity, the supervisor does not need to report it.
- **All faculty and staff, including designated student staff are mandatory reporters and must file a report with the Title IX Coordinator of any sex-based discrimination, sexual harassment, gender-based harassment, or sexual misconduct affecting a member of the university community including faculty, staff or students.**
 - An employee designated as a mandatory reporter (formerly a “responsible employee”) who becomes aware of complaints or reports of sex-based discrimination, including sexual harassment or gender-based harassment as defined in the Title IX Policy, that affects a member of the university’s community must promptly report the Title IX Coordinator via the online form or via email at reportconcern@wm.edu.
 - For example, if a student discloses to an employee that they have been sexually harassed or discriminated against because of gender or if an employee is told about a sexual harassment complaint or report involving a colleague, the employee is obligated to inform the Title IX Coordinator, regardless of the employee’s assessment of the report’s merit. The employee should not attempt to investigate the matter themselves.
 - Student employees of the Student Affairs division, such as Resident Assistants, are included in this reporting obligation, for matters that they become aware of in the course of their university employment. Lawyers or others who obtain information through any communication considered privileged by state or federal law are not obligated to report that information.
 - Exemptions—Certain staff members of the Counseling Center, the Student Health Center, and The Haven who are designated confidential resources for

students are not mandatory reporters and are exempt from the reporting obligations in this section except as otherwise required by law. [9]

D. Reports to the police

Sexual assault and some other forms of sexual misconduct are crimes, and may be reported to law enforcement for investigation. The reports may be made instead of or in addition to reports made to the university administration. **A survivor may choose to pursue one or both options.** William & Mary staff members can help students file a criminal complaint, if desired.

- The William & Mary Police generally have jurisdiction over incidents occurring on W&M's campus.
- The Williamsburg City Police generally have jurisdiction over incidents occurring in the city of Williamsburg.
- The James City County Police generally have jurisdiction over incidents occurring in James City County.

E. Reports to External Agencies

Individuals experiencing harassment or discrimination also have the right to file a formal grievance with government authorities. Information about the different state and federal governmental agencies, which laws they enforce, and what types of complaints they handle is provided in Appendix B.

VI. Enforcement; Complaint/Investigation Procedures

Any person who is found to have violated this policy under the applicable procedure is subject to discipline, up to and including permanent dismissal or termination. Disciplinary action (sanctions) will be taken in accordance with the applicable procedure:

- For students, the Student Discrimination and Title IX Complaint Procedure
- For faculty, staff, and third parties, the Employee Discrimination and Title IX Complaint Procedure and the applicable policy relating to discipline.

Both procedures provide for a thorough investigation with equitable rights for all parties to the process. Both procedures use a preponderance of the evidence (more likely than not) standard.

VII. Approval & Amendment

This policy was approved by the President, who has authorized the Title IX Coordinator to make minor, technical amendments to this policy, such as to update contact information.

The policy was amended:

- effective February 6, 2015, with the primary changes being to separate the policy from the procedure and (2) incorporate new definitions of certain types of sexual misconduct to comply with the Violence Against Women Reauthorization Act of 2013 (VAWA). This policy was amended on an interim basis by the President effective August 17, 2015, with the primary changes being (1) expansion of its application to faculty and staff and certain third parties and (2) modifications to the initial review of reports and employee reporting obligations, to comply with state law effective July 1, 2015. The interim revisions were approved in final policy by the President effective August 19, 2016, in amendments that included revisions to certain definitions and various other minor revisions.
- by the President effective October 20, 2017, to revise to make clarifying revisions to the definitions of relationship violence, sexual harassment, consent, and retaliation, and to update contact information.
- by the Title IX Coordinator April 25, 2018, to update contact information and add hyperlinks.
- by the President effective August 22, 2018, to (1) expand the discussion of intoxication and consent, (2) modify the amnesty provision, (3) modify the description of interim measures, and (4) update contact information.
- by the President effective September 30, 2019 to (1) amend policy definitions of sexual or gender-based harassment, non-consensual sexual intercourse, and relationship violence; (2) clarify the definitions of consent and incapacitation and provide specific guidance in Appendix A.
- by the President effective August 14, 2020 to comply with Department of Education amendments to part 106 of title 34 of the Code of Federal Regulations and to Code of Virginia Amendments to 23.1-900.

- by the President effective August 16, 2021 to narrow the policy to apply to Title IX Sexual Harassment and Gender-Based Harassment as defined in federal regulations.

VIII. Related Documents, Policies & Procedures

- [Appendix A: Guidance on Obtaining Consent and Exercising Caution](#)
- [Appendix B: External Reporting Options](#)
- [Policy Prohibiting Discrimination, Discriminatory Harassment, Retaliation and Sexual Misconduct](#)
- [Violence and Threat Management Policy](#)

[1] Employee Discrimination and Title IX Complaint Procedure or Student Discrimination or Title IX Complaint Procedure

[2] This provision reflects the rights granted by Section II of the Statement of Rights and Responsibilities and complies with Section 23.1-400 of the Code of Virginia.

[3] The procedure used to review and respond to reports of discrimination and harassment by faculty includes special protections designed to ensure academic freedom is respected.

[4] Title IX appears in volume 20 of the U.S. Code, beginning at section 1681. Implementing regulations are found in Title 34 of the Code of Federal Regulations, Part 106 and are enforced by the U.S. Department of Education's Office of Civil Rights.

[5] <https://law.lis.virginia.gov/vacode/title18.2/chapter4/section18.2-63/>

Appendix A: External Reporting Options

Agencies that Accept Complaints or Enforce Laws

Department of Human Resource Management

The Virginia Department of Human Resource Management (DHRM) is the central human resource (HR) agency for the Commonwealth of Virginia. DHRM promulgates and provides guidance on important personnel policies, particularly policies applying to classified and operational employees. [DHRM's policy library is available online.](#)

DHRM also has two offices that handle discrimination complaints.

- The **Office of Equal Employment Services (OEES)** enforces the Governor's Executive Order, which prohibits discrimination based on race, gender, color, national origin, religion, sexual orientation, gender identity, age, veteran's status, political affiliation, or disability. OEES's [brochure including information on filing a complaint](#) is available online.
- The **Office of Employment Dispute Resolution (EDR)** processes a wide range of workplace disputes, through mediation and a grievance process. This process may be used instead of the OEES process. [Information about these processes](#) is available on DHRM's website.

The Equal Employment Opportunity Commission

The EEOC enforces

- Titles VI of the Civil Rights Act of 1964, which prohibits race and national origin-based discrimination
- Title VII of the Civil Rights Act of 1964, which prohibits race, color, national original, sex, or religion-based discrimination,
- certain provisions of the Americans with Disabilities Act (ADA), which prohibits discrimination against qualified individuals with disabilities and requires employers to make reasonable accommodations for qualified individuals with disabilities,
- the Equal Pay Act,
- the Age Discrimination in Employment Act, and
- other certain federal discrimination laws applicable to employees.

Employees and applicants for employment may file complaints with the EEOC. The EEOC provides [information about filing a charge with the Norfolk field office](#) online. Information about the [Richmond field office](#) is available online.

The EEOC also provides guidance on the various types of discrimination on [its website](#).

Office of Civil Rights of the U.S. Department of Education

The federal Office of Civil Rights of the Department of Education provides guidance and investigates student complaints regarding certain federal discrimination laws:

- Titles VI of the Civil Rights Act of 1964, which prohibits race and national origin-based discrimination
- Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified students with disabilities and require reasonable accommodation to be made for students or applicants with disabilities,
- [Title IX](#) of the Education Amendments of 1972, which prohibits sex-based discrimination,
- the Age Discrimination Act of 1975, which applies to age discrimination of students (the Age Discrimination in Employment Act is the federal law relating to age discrimination as applicable to employees), and
- certain other federal discrimination laws applicable to students,

Complaints may be filed by anyone who believes that William & Mary has discriminated against someone on the basis of race, color, national origin, sex, disability, or age. [Access the online complaint form](#).

OCR provides guidance on various discrimination topics in its online [reading room](#).

The Office of Federal Contract Compliance Programs

The Office of Federal Contract Compliance Programs (OFCCP) is the federal agency that ensures that all employers who contract with the federal government -- including William & Mary -- follow non-discrimination laws in their employment practices. This Office is a part of the U.S. Department of Labor. Specifically, OFCCP enforces

- Section 503 of the Rehabilitation Act of 1973, which prohibits discrimination against qualified individuals on the basis of disability and also requires affirmative actions steps

to hire, retain, and promote qualified individuals with disabilities.

- VEVRAA, or the Vietnam Era Veterans' Readjustment Act of 1974, as amended, which prohibits discrimination against specified categories of veterans and requires affirmative action steps to hire, retain, and promote covered veterans.
- Executive Order 11246, which prohibits discrimination and requires affirmative action to ensure that all employment actions are made without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. (President Obama amended Executive Order 11246 on July 21, 2014, to prohibit discrimination based on sexual orientation and gender identity.)

People who believe that they have been discriminated against in hiring or employment, by William & Mary, may file a complaint with OFCCP. According to [OFCCP's website](#), "OFCCP keeps for investigation discrimination complaints that involve groups of people or indicate that the employer engaged in a pattern of discrimination. If your complaint of discrimination is based on race, sex, color, religion, national original, and you are the only victim, OFCCP will normally refer your complaint to the Equal Employment Opportunity Commission (EEOC)."

The Civil Rights Division of the Department of Justice (DOJ)

The Civil Rights Division of DOJ enforces:

- laws providing equal opportunity for people with disabilities, specifically the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and Executive Order 12250.
- Title VI of the Civil Rights Act of 1964, which protects **students** from discrimination on the basis of race, color, national origin, sex, and religion in public universities (such as William & Mary), and Title IX of the Education Amendments of 1972, prohibiting sex-based discrimination. These activities are performed by the Educational Opportunities Section of DOJ's Civil Rights Division.

DOJ provides online information about [how to file a complaint regarding a potential civil rights violation](#). According to this website, employees who believe they have been discriminated against on the basis of their race, sex, color, religion or national origin "should contact the Equal Employment Opportunity Commission." Similarly, people who believe they have been denied employment on one of these bases are also directed to contact the EEOC.

Organizations that Provide Information About or Advocate for Discrimination Compliance Issues

The EEOC, OCR, and OFCCP, all listed above, provide online resources available to the public regarding various discrimination laws. The organizations described below are some non-governmental associations or other entities that may provide helpful information or services.

These organizations are not affiliated with William & Mary and William & Mary does not make any representations about these organizations. They are listed in alphabetical order.

In addition to the resources listed here, William & Mary's Center for Student Diversity has collected information about many other organizations and web-based resources.

- [American Association for Access, Equity and Diversity \(AAED\)](#) is an association of equal opportunity, diversity and affirmative action professionals.
- [American Association of University Professors \(AAUP\)](#) performs advocacy and research work, particularly related to people engaged in teaching and research in higher education. It provides information about specific issues including diversity and affirmative action and discrimination.
- [American Civil Liberties Union \(ACLU\)](#) is an organization that engages in legislative advocacy and legal work related to the defense of individual rights and liberties, including [disability rights, women's rights, and racial justice](#).
- [American Council on Education \(ACE\)](#). ACE is a membership organization that conducts public policy advocacy. It provides information on various topics including campus diversity and military students and veterans.
- [Association on Higher Education and Disability \(AHEAD\)](#). AHEAD provides resources for students, parents, and the general public.
- [Job Accommodation Network \(JAN\)](#) provides information about workplace accommodations, the ADA and related issues.
- [National Industry Liaison Group \(NILG\)](#) is an association focusing on affirmative action. The organization focuses on work with the OFCCP but also partners with other federal agencies such as the EEOC.
- [Society for Human Resource Management](#) is a membership association serving HR professionals and interests. Its website provides information on employment law topics including employee relations.

Appendix B: Initial Assessment of Sexual Misconduct Reports

This appendix describes the process used by the Title IX Review Team to assess reports (including complaints, allegations, grievances, incident information) of sexual misconduct, as defined in the Policy on Sexual Misconduct, Relationship Violence, and Stalking (the Policy). The exact process used depends on the identity of the people reported to have engaged in the misconduct, and may be documented in a formal procedure. If there are any differences between this process description and a specific governing procedure, the procedure governs.

Summary of Title IX Review Team Initial Assessment. Upon receipt of a report of sexual misconduct alleged to have occurred on the university's Clery Act geography or against a member of the campus community, the Title IX Coordinator will convene the Title IX Review Team to conduct an initial assessment and provide any information received, including personally identifiable information, to the Team. The Team typically meets within 72 hours of a report being received by the Title IX Coordinator.[1] The Team determines whether reports to external law enforcement entities are required by law and makes an initial assessment whether there is one or more allegations of misconduct that should be investigated under university procedure.[2] The Team also considers interim measures.

The Title IX Review Team. The Review Team consists of the Title IX Coordinator, a representative of the W&M Police, and, depending on the identity of the people reported or suspected to be involved in the sexual misconduct, a representative from Student Affairs leadership team, Chief Human Resources Officer and/or the Dean of Arts & Sciences.[3]

Initial Assessment and Mandated Reports. The Review Team will review the report and any other available relevant information to assess the threat posed by the reported misconduct and to determine whether external reports are required by law.[4] The Review Team will make this determination based upon the following factors[5] (the "Risk Factors"):

- Any known preference or request of the reporting party[6];
- Whether the respondent (person named, accused, suspected, or reported as having engaged in the alleged misconduct) has prior arrests, reports and/or complaints of related misconduct or has any history of violent behavior;
- Whether the respondent has a history of failing to comply with any related university protective or disciplinary measures, and/or any judicial protective order;
- Whether the respondent has threatened to commit violence or any form of sexual misconduct;

- Whether the reported misconduct involved multiple respondents;
- Whether the reported misconduct involved physical violence. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking and brandishing or using any weapon;
- Whether the report reveals a pattern of misconduct (e.g., by the respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location);
- Whether the misconduct was facilitated through the use of drugs or intoxicants;
- Whether the misconduct occurred while the reporting party was unconscious, physically helpless or unaware that the misconduct was occurring;
- Whether the reporting party is (or was at the time of the reported incident) a minor (under 18);
- Whether any other aggravating circumstances or signs of predatory behavior are present;
- Applicable law, policy and procedure; and
- Any evidence that a report was made in bad faith or is baseless.

Upon completion of the initial assessment, the Review Team will determine the appropriate course of action:

1. **No further action under university administrative procedure:** No action may be appropriate for reports that do not allege conduct that violates applicable university policy, do not include sufficient information to initiate an investigation, where the person reported to have experienced the misconduct has requested no action and the Review Team's assessment concludes that this request may be honored (see below), or of matters for which the university does not have jurisdiction. No action may also be appropriate when there is evidence that a report is baseless or made in bad faith, although more typically some investigation is required to make such a determination.
2. **Remedial but not disciplinary action:** Remedial actions may include remedies offered to the reporting party as well as actions designed to address possible areas of concern such as educational or awareness activities, targeted training, or increased oversight of specific departments or activities. This course of action may be appropriate for reports that do not have sufficient information to initiate an investigation, reports where the person reported to have experienced the misconduct has requested no investigation and the Team's assessment concludes that this request may be honored, or reports that do not

allege conduct that violates applicable university policy but do allege conduct not consistent with university expectations, such as harassing conduct that has not become severe or pervasive enough to create a hostile environment.

3. Further action under this procedure (or the procedure used for reports of misconduct by students, staff or third parties, as applicable).

If the reporting party has requested that there be no investigation or requested to remain anonymous or is not participating in the process, the Review Team will determine whether an internal investigation under this procedure is necessary to protect the health and safety of the campus community or individual faculty members or to fulfill the university's obligations to provide a campus environment free from discrimination, harassment, and retaliation. In making this determination, the Review Team will consider the Risk Factors and any evidence showing that the respondent made statements of admission or otherwise accepted responsibility for the misconduct, the existence of any independent information or evidence regarding the misconduct, and any other available and relevant evidence other than the reporting party's testimony. If a determination is made to proceed with an investigation against the request of the reporting party, the Title IX Coordinator will notify the reporting party promptly.

If a reporting party has requested an investigation or disciplinary measures and the Review Team has determined that the information available does not provide a reasonable basis for such action, the Title IX Coordinator will notify the reporting party promptly. The Review Team may change its determination based on additional information, at any time.

C. Interim Measures: The Title IX Coordinator, in consultation with the Review Team and/or subject to receiving necessary approvals from other university officials or entities, will take or cause to be taken interim steps to minimize the impact of the process on the reporting party, protect the safety and well-being of members of the university community, protect the integrity of the investigation (if any), and avoid retaliation. The nature of interim measures depends on nature of the reported misconduct, the identity of the respondent (that is, whether he or she is a student, employee, or third party), and other facts and circumstances. Interim measures may be taken upon initial receipt of report, after the Review Team's initial assessment, or at a later point in the process. Interim measures may be adjusted in response to new or additional information, an updated risk assessment, or other developments.

[1] For reports of sexual violence, the meeting will occur within 72 hours.

[2] The Review Team operates pursuant to Va. Code 23.1-806(C) and 23.1-806(D), with respect to reports of sexual violence as defined in Va. Code 23.1-400. The team will have access to all available facts and circumstances and may seek additional information about the reported incident through any other legally permissible means.

[3] Each member of the Team has at least one designee, who may act in the Team member's stead.

[4] In cases involving alleged act of sexual violence would constitute a felony violation of Section 18.2-61 of the Virginia Code, the W&M Police representative on the Review Team must consult with the Commonwealth's Attorney and/or the prosecutor with jurisdiction within 24 hours and provide the information received by the Review Team, withholding any personally identifiable information about the parties.

[5] If the Review Team cannot reach consensus, the W&M Police representative on the team shall make the determination with respect to the report to law enforcement, and the Title IX Coordinator shall make the determination with respect to an internal investigation. In all cases, the W&M Police representative makes the notification to law enforcement. In some instances, the notification would be in the form of an incident report to W&M Police.

[6] The reporting party refers to the person alleged, reported, or suspected as having experienced the misconduct. Reports may be made by a third party, in which case the references in this Appendix B to "reporting party" shall be understood to refer to the person who experienced the misconduct.