

## **Student Sexual Harassment and Misconduct Procedure**

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### **I. Purpose**

The purpose of this procedure is to help the university enforce its Policy on Discrimination, Harassment, and Retaliation and its Sexual Misconduct Policy. It does so by creating a fair and effective investigation and adjudication process.

### **II. Scope**

This procedure applies to the College of William & Mary, including the Virginia Institute of Marine Science (the university).

This is the procedure for investigating any type of sex or gender-based discrimination prohibited by the Policy on Discrimination, Harassment, and Retaliation, as well as any conduct prohibited by the Sexual Misconduct Policy, alleged, reported, or suspected to have been committed by a student or student group, each as defined in the Code of Conduct.

This procedure may also be used, in the discretion of the Dean of Students, for investigation and adjudication of allegations of alleged violations of the Student Code of Conduct that are directly related to the alleged sexual harassment or misconduct and are alleged to have been committed by the same student or student group.

In this procedure, sexual harassment, sexual misconduct, or other alleged violations investigated under this procedure are referred to as “misconduct.”

### **III. Reporting, Retaliation, and Other Initial Matters**

**A. Who May Report an Alleged Violation.** Any person may file a [report](#) of misconduct against a William & Mary student or student organization under this Policy. The person filing a report of misconduct need not be the actual victim of the conduct. See Section I of the Code of Conduct for information about the definition of “student.”

If the report is alleging misconduct by a person who is not a student, the Dean of Students can provide assistance with reporting and addressing the alleged misconduct.<sup>1</sup>

**Reporting Party Not the Person Who Experienced Misconduct.** This procedure assumes that the person reporting the misconduct is the person who was harassed, assaulted, or otherwise personally and directly experienced the misconduct. However, reports also may be made by people who witnessed misconduct or were told about it or who are otherwise aware of misconduct. In those cases, the person who made the report typically will not have the rights and role of the “reporting party” under this procedure; instead, the person who experienced the misconduct will be treated as the reporting party, if he or she is willing to participate in the procedure. See Section VI of the Sexual Misconduct Policy for a discussion of confidentiality, anonymity, and investigations without reporting party involvement.

**Reporting Party Not a Member of the William & Mary Community.** Visitors, guests, and other people who experience misconduct from a William & Mary student may report misconduct under this procedure. Certain parts of the process outlined in this procedure will not apply; for example, many of the interim measures are ones that may only be taken for a William & Mary student, and privacy laws may prevent the university from giving a third party access to information about William & Mary students that would otherwise be shared with the reporting party under this procedure. The university will modify its process in these situations, depending on the specific facts of the situation.

**B. Geographic Jurisdiction.** This policy applies to any allegation of misconduct against a student, regardless of where the alleged misconduct occurred.

**C. Timing of Reports and Availability of Procedures.** As long as the university has jurisdiction over the respondent – the student reported to have engaged in misconduct – there is no time limit to invoking this policy in cases of alleged misconduct. Nevertheless, persons are encouraged to report alleged misconduct as soon as possible in order to maximize the university’s ability to respond promptly and effectively.

Where the respondent is a degree candidate, the reporting party is encouraged to consult with the Office of the Dean of Students concerning the respondent’s intended date of graduation and to file a report in a timely manner to avoid loss of authority over the student due to graduation. In no circumstances will the university permit an impending graduation to compromise its processes for resolution. The conferral of a degree may therefore be held, if necessary, until proper resolution of any misconduct charges, provided that a hearing opportunity will be scheduled for the earliest practicable date that can accommodate the parties and their witnesses.

**D. Retaliation.** Under the Policy on Discrimination, Harassment, and Retaliation, it is a violation to retaliate against any person making a report of misconduct or against any person

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<sup>1</sup> Investigations of alleged misconduct by a faculty member are handled under the procedures set out in the Faculty Handbook. Investigations of alleged misconduct by any other type of employee, contractor, or other non-student third party are handled under the Discrimination Grievance/Complaint Procedure.

cooperating in the investigation (including testifying as a witness). Retaliation (as defined in that Policy) should be reported promptly to the Dean of Students and may result in disciplinary action independent of the sanction or interim measures imposed in response to the underlying allegations of misconduct.

For more information, including examples of retaliation, please visit the [College's Compliance website](#).

**E. Effect of Criminal Proceedings.** Because misconduct may constitute both a violation of university policy and criminal activity, the university encourages persons to report alleged misconduct promptly to campus or local law enforcement agencies.

The standards for finding a violation of criminal law are different from the standards for finding a violation of the Sexual Misconduct Policy. This means that conduct may violate university policies even if it is not a crime or law enforcement agencies lack sufficient evidence of a crime and therefore decline to prosecute.

This procedure is independent of any criminal investigation or proceeding. The university generally will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation and take interim measures to protect the reporting party and the university community, although the university will consider law enforcement requests to delay temporarily (generally no more than 7 days).

**F. Interim Measures.** The Dean of Students will determine whether any interim steps should be taken in order to prevent retaliation, prevent continuation or recurrence of the alleged misconduct, prevent the creation of (or remedy) a hostile or offensive environment, and ensure that the reporting party is able to participate in the university's educational and other programs and activities. These interim steps may include, but are not limited to:

- Orders barring further contact
- Relocation of classes and/or residence
- Restrictions limiting presence on campus or to certain areas of campus
- Interim suspension.

The Dean may modify interim actions at any time.

**G. Initial Meeting; Notification of Allegations.** Upon receipt of a report of misconduct, the Dean of Students will review the report and, in consultation with the Title IX Coordinator, develop the allegations to be investigated. Generally within five days of receipt of the report, the Dean will meet with the respondent to notify him or her that allegations have been made, which allege misconduct by him or her, and that these allegations will be investigated and resolved through the conduct process. The Dean of Students will provide the student with information about the process and his or her rights and obligations and will provide the student with the name and contact information of the trained university advisor available to assist him/her. The Dean also will warn the student against retaliation, provide him or her with information about retaliation, and may communicate the interim measures affecting him or her.

Interim measures may also be developed at a later date, depending on the circumstances, and may be modified at any time.

If the interim steps include suspension, the Dean of Students will inform the student of his or her right to appeal the suspension.

The Dean of Students will also provide the respondent with information about his or her rights, including the right not to incriminate him- or herself, as defined by the Code of Conduct.

The Dean of Students separately will meet with the reporting party to provide him or her with information about the process, the name and contact information of the trained advisor available to assist him or her, and his or her rights and obligations, explain this procedure, and discuss interim measures.

These two meetings will occur at or near the same time, to the extent feasible.

#### **H. Support for Reporting Party and Respondent.**

**a. Administrative Advisors.** The Dean of Students will assign an administrative advisor to each party. An advisor's role is to help the student to whom he or she is assigned by

- making sure the student is aware of campus resources available to support him or her
- answering questions and providing information about the investigation and conduct process
- assisting the student in preparing for a hearing (if applicable) and attending the hearing with the student, if the student desires.

Administrative advisors are not legal counsel. Their role is not to represent the student or seek a particular outcome. To permit prompt investigation, advisors do not attend interviews.

**b. Personal Advisor; Legal Counsel.** Both parties may elect to have one personal advisor of his or her choice, in addition to the administrative advisor. Personal advisors are not allowed to participate actively in proceedings or to attend interviews. Witnesses may not act as personal advisors. They are bound by the rules of confidentiality. Legal counsel may serve as a student's personal advisor, provided that if the student wants the legal counsel to attend the hearing, the student must inform the Dean of Students in writing at least 72 hours prior to the hearing. Both parties will be notified of the other party's intent to have legal counsel present and will be offered the opportunity to decide whether he or she also wishes to have legal counsel present.

#### **IV. Investigation**

Investigation is conducted by trained investigators, typically university employees including staff of Student Affairs and/or the Office of Compliance & Policy.

Investigations typically consist of interviews of the parties and witnesses and collection and review of evidence such as documents, photographs, text messages, and emails. Investigations generally will take no more than 20 calendar days.

Third parties (advisors, silent supporters) are not permitted to be present during interviews.

If allegations or evidence of retaliation or misconduct relating to the investigation itself (allegation of witnesses collaborating for example) arise during the course of the investigation, the investigator will consult with the Dean of Students to determine whether interim measures are necessary to respond to the alleged retaliation or misconduct, and to decide whether to address the suspected retaliation or misconduct as a separate conduct matter or as part of the current investigation. If they are addressed as part of the current investigation, the investigation may take additional time to conclude.

The investigator(s) will prepare an investigation report. The report typically will:

- describe the allegations investigated including the elements of each alleged policy violation,
- describe the investigation, i.e., the witnesses interviewed and evidence collected
- include a timeline of events, if useful, and
- summarize the relevant evidence discovered and factual findings made, including which elements of each allegation are disputed and the relevant evidence, corroborating or contradicting. As an example, a report may state that sexual contact was not disputed and that the only disputed issue is whether effective consent was given, then proceed to present the evidence found (witness statements, records, etc.) relevant to the existence of effective consent.

The investigation report will not include conclusions as to whether there has been a violation of law or policy.

The investigator(s) will provide a copy of the investigation report, interview notes, any witness statements, and other relevant evidence collected to the Dean of Students for initial review, for procedural compliance, and to identify any issues for additional investigation, which shall take no longer than five 5 calendar days. When the investigation is complete, the Office of Student Conduct will provide each of the parties a redacted copy of the investigation report and supervised access to the complete investigation report.

#### **V. Information Session; Resignation Option**

A. The parties will be directed to appear, separately, for an information session with the Director of Student Conduct or designee. This session will take place between three and five calendar

days after the dissemination of the investigation report. The Director will communicate the charges at this session. This session is also an opportunity for the students to receive information about the process, including options for resolution.

Students may also discuss the investigation report with the Director.

B. If a respondent fails to appear at the information session after proper notification, the Director may place a hold on the student's records (which prevents a student from registering or engaging in other transactions with the university) and/or prepare written charges and notify the respondent that the matter has been scheduled for a hearing.

C. Within 72 hours of notification of charges, a respondent may choose to resign permanently from the university if the Dean of Students approves this option. If approved, the Dean of Students will direct that the student's official records, including the transcript, will carry the following designation "Resigned under suspicion of a serious violation of the Code of Conduct. Ineligible to return." The student must certify, via a notarized letter, that the student understands that he or she will never seek or receive admission into any William & Mary program in the future. The student will not be able to be present on campus property, streets and property adjacent to campus, and/or attend university-sponsored functions or activities. The student will leave the university with the status "not in good standing."

Permanent resignation will result in no other disciplinary process being conducted with respect to the resigning student. The university may, however, investigate the matter as needed to determine whether a hostile environment existed and/or what remedial steps are warranted.<sup>2</sup>

In exceptional circumstances, when definitive proof of a resigned student's non-responsibility exists, he or she may request a waiver of resignation and readmission or a removal of the transcript notation. This request must be made to the Dean of Students.] A not guilty verdict in a criminal court is not, in itself, definitive proof of non-responsibility, as courts apply different standards of proof, follow different evidentiary and procedural rules, and adjudicate legal violations with different elements than university policy. Similarly, a failure to prosecute does not constitute proof of non-responsibility. Examples of definitive proof include video recording or DNA evidence proving that a different person committed the alleged misconduct. The Provost will consider the petition and determine whether to resume the investigation and hearing process under this procedure or conduct an extra-procedural process of evaluating the petition, such as where the reporting party is not available to participate in the hearing process. The reporting party will be given the opportunity to respond and participate in the evaluation process, to the extent feasible.

## **VI. Adjudication/Resolution**

Charges will be resolved through one of the following two methods:

- a. ***Administrative Resolution:*** If the respondent, reporting party, and the Director all agree to a written summary of facts, and sign a written waiver of a hearing, the Director

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<sup>2</sup> This investigation would be conducted when, for example, remedying the hostile environment requires institutional action requiring an adjudicated finding.

may resolve the matter via administrative resolution. An administrative resolution consists of a statement of facts agreed to by the respondent, and sanctions imposed by the Director in consultation with the Title IX Coordinator. An administrative resolution may be appealed only on the basis of inappropriate sanction. See Section IX for appeal process.

b. ***Sexual Misconduct Hearing Board:*** Either party or the Director may elect to resolve the case through a formal hearing. Hearings are held before a Sexual Misconduct Hearing Panel, a three-person group selected from the Sexual Misconduct Hearing Board. The Board is comprised of four students appointed to two-year terms by the Vice President for Student Affairs, four faculty members appointed to three-year renewable terms by the Provost, and four administrators appointed to three-year renewable terms by the President upon recommendation of the Vice President for Student Affairs. The Board members receive specialized training related to Title IX, relevant policy and procedures, and matters relevant to adjudication including assessing credibility.

The decision of which adjudication method to pursue will be made within two calendar days of the information session.

**Notification of Hearing.** The Director will schedule a hearing with the Sexual Misconduct Hearing Panel for a date no more than 7 calendar days after the adjudication method is chosen and inform both parties in writing of the date, time, and place of the hearing at the time the adjudication method is selected. The Director will also provide the parties and the Panel with a copy of the investigation report and any other information to be considered by the Panel at least three days prior to the hearing.

## **H. General Procedural Considerations**

1. **Timeline.** The investigation and adjudication, including notification of outcome but not including any appeal(s), will be completed within 60 calendar days of a report being filed with the Dean of Students, unless the Vice President for Student Affairs grants an extension for good cause or interrupted by a scheduled or unscheduled break in university operations (including winter break) of more than three working days.

2. **Rules of Evidence and "Second Hand" Information.** University proceedings do not follow the rules of evidence employed by courts of law. Information that does not come from a first-hand source (hearsay) may be considered if the chair or administrator handling the case determines that the information is reliable, although a finding of responsibility may not be premised solely on such information. Lie detector/polygraph evidence is not permissible.

3. **Roles.** The individuals specified in this process may recuse themselves, delegate their roles to others (with the exception of Hearing Panel members, who may be substituted only by the Dean of Students) as necessary to ensure impartiality or to accommodate leave or professional or personal conflicts. A party may request recusal or substitution of Hearing Panel members through the Dean of Students by specifying the nature of the conflict. The Dean will consider

the request, the alleged conflict, and determine the appropriate steps for managing any conflict that exists.

### **VIII. Hearing**

The purpose of the hearing is to determine whether a violation of university policy occurred.

**A. Hearing Panel.** The Sexual Misconduct Hearing Panel is comprised of one student, one faculty member, and one administrator selected from the Hearing Board. The administrative member will act as the Hearing Panel Chair.

**C. Presence of Parties at the Hearing.** The parties are permitted, but not required, to be present throughout the hearing. The parties will be separated physically from one another during the hearing proceedings by a screen or other means of separation.

**D. Witnesses.** The Chair may elect to call witnesses to the hearing as necessary to provide testimony not provided in the investigation report or to resolve conflicts in statements or issues of credibility. Both parties may request that the Chair call certain witnesses to hearing at least 72 hours in advance of the hearing, indicating in writing the reasons they wish the witness to be called and why they contend the witness is necessary to be present at the hearing. The Chair's decision as to whether to call the witnesses is final, although the decision not to call a particular witness can be the basis for appeal.

The Director will notify required witnesses of the date, time, and place of the hearing.

**E. Separation of Witnesses.** During the course of a hearing, the Chair may separate witnesses to preserve the independence of their testimony. If separated, no witness who has already provided testimony may have contact with any witness due to testify.

**F. Past Sexual Histories.** Both parties have a right not to have their unrelated past sexual histories discussed in the hearing. If either party wishes to introduce information about the past sexual history of the other, he or she must submit a written request to the Chair at least 72 hours prior to the hearing specifying the information to be introduced and its intended purpose. The Chair will decide whether to grant the request, and the Chair's decision on the matter will be final. The Chair will determine whether the proposed information regarding past sexual history *between* the parties is related to the case at issue and may be introduced during the hearing. Either party may introduce information about his or her own past sexual history, and if he or she does so, the panel may ask questions related to the offered information.

**G. Postponement.** Either party may request one postponement of the hearing, citing the reasons for the request in a written statement to the Director at least 72 hours in advance of the hearing, except in the case of emergency. The party may be requested to provide supporting documentation. The Director, in her or her discretion, may grant a postponement for good cause.

**H. Conduct of the Hearing.** The Chair is responsible for the conduct of the hearing, will follow the conduct procedures, and will make determinations regarding relevance and permissibility of information offered by both parties. The Chair's decisions on these matters are final, but the decisions can be the basis for appeal.

Students who appear before the Sexual Misconduct Hearing Panel, whether as parties to the proceedings or as witnesses, are expected to provide truthful testimony in accordance with the Honor Code.

In advance of the hearing, the Director will offer the respondent the opportunity to address any previous disciplinary record in writing to the Panel, in the event that the Panel finds the student responsible. The student's response will remain in a sealed envelope and will be provided to the Panel for consideration if it finds the student responsible.

Legal counsel will not actively participate in the proceedings unless the Chair determines, when requested by the respondent, that the hearing exposes him/her to potential criminal action outside the university's conduct process. The determination regarding the participation of legal counsel is final, and legal counsel will participate only to the extent permitted. Under no circumstances will the attorney be permitted to question witnesses or other parties to the proceedings, or to serve as a witness. The university may have its own legal counsel or advisor present if a student opts to have legal counsel present.

**I. Determination of Responsibility.** The Panel will meet in closed session to determine whether the respondent has violated the Code as charged.<sup>3</sup> The Director or designee will advise the panel regarding relevant policy, precedent, and process for evaluating the evidence presented. The Panel shall have up to two (2) calendar days after the hearing to make this determination.

In order to find the respondent responsible for misconduct, at least two of the three Panel members must conclude that a "preponderance of the evidence" exists. A preponderance of the evidence exists when a reasonable person, after a careful balancing of available information, would conclude a violation has occurred and the student charged is responsible for the violation.

**J. Determination of Sanctions.** Sanctions are determined by the Dean of Students, upon recommendation of at least two of three members of the Panel.

The primary sanctions for Sexual Harassment, Non-Consensual Sexual Contact, Stalking, Dating and Domestic Violence, and Sexual Exploitation range from Disciplinary Probation to Permanent Dismissal. The primary sanctions for Non-Consensual Sexual Intercourse range from Disciplinary Suspension of at least one full semester to Permanent Dismissal. See Section VII of the Code of Conduct for further general information regarding sanctions.

If the Panel finds the student responsible for one or more violations, the Director will brief the Panel regarding any previous violations of the Conduct or Honor Code by the respondent, any precedent for similar situations, and any additional relevant information. After

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<sup>3</sup> The parties will be excused, and the hearing will be deemed closed.

hearing all information regarding sanctions, the Panel will make a sanction recommendation to the Dean of Students within two calendar days.

See Section IX(F) of this procedure for the effect of an appeal on sanctions and interim actions.

**K. Hearing Records.** The recorder and the Chair will summarize the hearing, the evidence presented, the Panel's determination and the reasoning for the determination and any sanctions recommendations. The non-closed portion of the hearing will be recorded via digital media. This record shall be assembled and sent to the Dean the same day that determinations of responsibility and recommendations of sanctions are made by the Panel.

**L. Case Review and Notification; Further Remedial Steps.** Within three calendar days of receipt of the information above, the Dean of Students or designee will review the case documents and decision and will return for reconsideration or rehearing to the Panel any finding that is inconsistent with university policy or practice.

The Dean of Students also will determine, in consultation with the Title IX Coordinator, the sanctions to be imposed and any other remedial steps needed to remedy a hostile environment, prevent misconduct, or help remedy the harm done to the reporting party.

The Dean of Students or designee will notify both parties in writing of the decision in the case, the findings on which it was based, and any sanction(s) imposed. If there are sanctions that do not directly relate to the reporting party, the reporting party will be informed of these sanctions to the extent permitted by federal law.<sup>4</sup>

## **IX. Appeals**

**A. Right of Appeal.** Both parties have the right of appeal. The Provost or designee reviews all appeals. In preparation for a possible appeal, either party will have supervised access to the hearing records.

**B. Timeline and Form of Appeal.** Appeals must be submitted to the Dean of Students within five working days following written notification of the decision. All appeals must be in writing and clearly cite the grounds for the appeal and the evidence supporting it.

**C. Grounds for Appeal.** Parties may appeal on the following grounds:

- i. Procedural irregularity. Procedural or technical deviations will not be sufficient to sustain an appeal unless found to have denied the appealing party a fair process.
- ii. Discrimination (as defined by the Policy on Discrimination, Harassment, and Retaliation), which caused an unfair process.

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<sup>4</sup> The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, the Family and Educational Rights and Privacy Act, and the Violence Against Women Reauthorization Act of 2013 each have provisions relating to disclosure of sanctions for sexual misconduct.

iii. The decision is inconsistent with the weight of the evidence. In reviewing an appeal based on this ground, the Provost does not replace the judgment of the Hearing Panel with his or her own; he or she reviews the matter to determine whether the evidence presented appears sufficient to support a determination based on the preponderance of the evidence standard.

iv. New material evidence which is not merely corroborative or repetitive, which was unknown or unavailable to the party at the time of the hearing and pertinent to the case.

v. Inappropriate sanction.

**D. Appeal Process.** If a student files an appeal, the Dean of Students or designee will promptly notify the other party of the date the appeal was submitted and grounds for the appeal. The other party will be provided an opportunity (typically 72 hours) to respond to the appeal in writing to the Provost. The Provost retains the option of conferring with appropriate parties, in order to obtain information necessary to make a fully-informed decision.

The Provost's determination is final and not subject to further appeal.

**E. Appellate Outcomes.** The possible outcomes of the Provost's review of the appeal are:

a. There is insufficient basis to grant the appeal. The Provost will dismiss the appeal, and the original decision will stand.

b. The Panel's determination was not supported by the evidence. [The Provost typically will modify the determination; he or she can order a new hearing.

c. The sanction administered is inappropriate. The Provost, in consultation with the Title IX Coordinator, will determine a sanction that is appropriate given the facts and circumstances of the case and precedent.

d. Substantial procedural error has occurred that can be remedied by a new hearing; the Provost may order that a new hearing take place.

**F. Respondent Status During Appeal.** If the sanction being appealed includes suspension or dismissal, the student will not take part in any university function (academic, social activities, student activities, etc.) except scheduled classes while the appeal is pending without the written permission of the Dean of Students.

Interim measures will continue pending appeal, unless modified or lifted by the Dean of Students.

In those cases where the Dean determines that the continued presence of the student constitutes a risk to the educational process, to him/herself, or to the safety of others, the Dean may prohibit the student from attending classes until the appeal is complete.

**G. Notification of Appeal Decision.** Both students, the Hearing Panel, and the Dean of Students will receive written notification of the decision regarding the appeal, including the reasons for the decision if appropriate. This written notice will be provided contemporaneously, except in unusual circumstances when a party's lack of availability or other circumstance would result in undue delay in notification.

**X. Approval, Amendment and Interpretation.**

This procedure was approved by the President. It was amended effective September 2014 to (1) separate the procedure for the Sexual Misconduct Policy, (2) provide student parties with administrative advisors, (3) reflect university practice of conducting investigation prior to information sessions, (4) make adjudicative option selection (that is, the choice of administrative or hearing resolution) equitable, (5) refine the hearing process, (6) modify the composition of the hearing board, (7) modify the process of determining sanctions, (8) streamline the appeal process and provide fully equitable appeal rights, (9) provide a process for resigned students to seek readmission; and (10) make other important modifications and improvements to ensure compliance with applicable law and regulatory guidance.

The Vice President for Student Affairs, in consultation with the Title IX Coordinator and with notification to the President, may make minor or technical revisions to this procedure.

The Dean of Students is responsible for interpreting this procedure.