

Appendix B

Initial Assessment of Sexual Misconduct Reports

This appendix describes the process used by the Review Team to assess reports (including complaints, allegations, grievances, incident information) of sexual harassment, gender-based harassment and/or sexual misconduct, as defined in the *Policy Prohibiting Sexual Harassment, Gender-Based Harassment and Sexual Misconduct* (the Policy). The exact process used to address alleged misconduct depends on the identity of the people reported to have engaged in the misconduct, and may be documented in a formal procedure (See Appendix C). If there are any differences between this process description and a specific governing procedure, the procedure governs.

I. Summary of Review Team Initial Assessment.

Upon receipt of a report of sexual harassment, gender-based harassment or sexual misconduct alleged to have occurred either on the university's Clery Act geography or against a member of the campus community, the Title IX Coordinator processes the report through the database and completes the preliminary assessment questionnaire. This assessment considers a) the overall risk to the reporter and/or greater campus community based on the alleged conduct and any prior reports by the offender, b) required reports to external law enforcement entities and disclosures in campus Daily Crime Log, and c) appropriate next steps to remedy the situation and stop a hostile environment from developing or continuing. The Title IX Coordinator shares the questionnaire with the other members of the Review Team for independent assessment and input. Review Team members complete the assessment typically within 48 hours of receipt of the report.

II. The Review Team.

The Review Team consists of the Title IX Coordinator, a representative of the W&M Police Department, and, depending on the identity of the people impacted and/or suspected to be involved in the misconduct, the Dean of Students, Chief Human Resources Officer and/or the Dean of Arts & Sciences.¹

III. Initial Independent Assessment and Mandated Reports.

The Review Team reviews the report and any other available relevant information to assess the threat posed by the reported misconduct², to determine whether external reports are required by law.³, and to recommend the course of action to remedy the misconduct and prevent a hostile environment from

¹ Each member of the Team has at least one designee, who may act in the Team member's stead.

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 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.

developing or continuing. The Review Team will make this determination based upon the following factors⁴:

- Any known preference or request of the reporting party⁵;
- 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.

IV. Course of Action.

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.

⁴ 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.

⁵ 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.

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).

V. Requests for No Investigation

Per the procedure, if the reporting party requests that there be no investigation or to remain anonymous, or the reporting party chooses not to participate in the process, the Review Team determines if an internal investigation under this procedure is necessary to either a) protect the health and safety of the campus community or individuals, or b) fulfill the university's obligations to provide a campus environment free from discrimination, harassment, and retaliation. In making this determination, the Review Team considers 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 to investigate or not investigate based on additional information, at any time.

VI. Interim Measures.

The Review Team can implement interim measures, subject to receiving any necessary approvals from other university officials or entities (e.g. residence hall relocation), in order to minimize the impact of the process on either or both parties, 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, third party, or unaffiliated individual), 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. Interim measures are not disciplinary and are implemented in the least restrictive manner possible that still ensures the safety of all members of the community.