

VALLEY FORGE MILITARY  
COLLEGE & FOUNDATION'S  
TITLE IX POLICY

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## THE POLICY

### I. Purpose

Valley Forge Military College and Foundation (VFMC) is committed to providing an educational and employment environment that is free from discrimination, harassment, and/or retaliation based on sex or pregnancy.

VFMC values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the resolution process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of its educational programs, activities, or employment practices, VFMC has developed this Title IX Policy (the “Policy”) that provides for prompt, fair, and impartial investigation and resolution of allegations of sex and pregnancy discrimination..

### II. Notice of Nondiscrimination

VFMC does not discriminate on the basis of sex or pregnancy and prohibits sex and pregnancy discrimination, harassment, and retaliation in any education program or activity that it operates, as required by Title IX, including admission and employment.

Inquiries about Title IX may be referred to VFMC’s Title IX Coordinator, the U.S. Department of Education’s Office for Civil Rights, or both. Any individual who believes they have been subjected sex discrimination, including sexual harassment, can report the incident to the Title IX Coordinator.

VFMC’s Title IX Coordinator is:

Dr. Jesse Phillips,  
Dean of College Services & Title IX Coordinator  
1001 Eagle Road, Medenbach Hall  
Wayne, PA 19087  
[jphillips@vfmac.edu](mailto:jphillips@vfmac.edu)  
(610) 989-1467

For further information, please see VFMC’s “Non-discrimination / Anti-Harassment” Policy and “Anti-Hazing” Policy. These policies can be located at:

<https://vfmccollege.edu/about/college-policies/>

To report information about conduct that may constitute sex discrimination or make a complaint of sex discrimination under Title IX, please refer to:

<https://vfmccollege.edu/about/college-policies/>

This Policy covers nondiscrimination in both employment and access to educational programs and activities. Therefore, any member of the VFMC community whose acts deny, deprive,

unreasonably interfere with, or limit the education or employment, residential, and/or social access, benefits, and/or opportunities of any member of VFMC's community, guest, or visitor on the basis of that person's actual or perceived sex is in violation of this Policy.

VFMC will promptly and effectively address any such discrimination of which it has actual knowledge using the resolution process set forth in VFMC's Title IX Policy.

### **III. Role of the Title IX Coordinator**

VFMC has appointed a designated individual as the Coordinator of Title IX, Section 504, and Equal Opportunity (the "Title IX Coordinator"), whose contact information is provided above, to coordinate VFMC's compliance with federal, state, and local civil rights laws and ordinances, including its obligations under Title IX.

The Title IX Coordinator is responsible for overseeing and resolving all sexual misconduct reports and identifying and addressing any patterns or systemic concerns that arise during the review of such reports. The Title IX Coordinator may identify additional Deputy Coordinators within VFMC.

The Title IX Coordinator is responsible for; and monitoring the effectiveness of this Policy and related procedures to ensure an education and employment environment free from sex discrimination, harassment, and retaliation.

Additional responsibilities of the Title IX Coordinator include, but are not limited to, the following:

- Oversee and coordinate VFMC's prompt, fair, and equitable investigation, and resolution process of all reports of prohibited conduct under this Policy;
- Treat the Complainant and Respondent equitably;
- A formal complaint must be submitted by the Complainant or signed by the Title IX Coordinator in order to initiate a grievance process under Title IX.
- Evaluate trends on campus through the use of information reported and data collected.
- Provide comprehensive nondiscrimination education and training, develop recommendations for campus-wide training and education programs, and other remedial actions designed to eliminate prohibited behavior, prevent its recurrence, and address its effects.
- Disseminate information regarding victim support and other services to any individual reporting prohibited behavior.

VFMC recognizes that allegations under this Policy may include multiple forms of sex discrimination, harassment, and retaliation; may involve various combinations of Students, Employees, and other members of the VFMC community; and may require the simultaneous attention of multiple VFMC departments. Accordingly, all VFMC departments will share

information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable VFMC policies, to provide a uniform, consistent, efficient, and effective response to alleged discrimination, harassment, or retaliation.

#### **IV. External Contact Information**

Concerns about VFMC's application of this Policy and compliance with Title IX and other federal civil rights laws may also be addressed to:

- U.S. Department of Education  
Office for Civil Rights (OCR)  
Lyndon Baines Johnson Department of Education Bldg  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Website: <http://www.ed.gov/ocr>

For complaints involving Employee-on-Employee conduct: Equal Employment Opportunity Commission (EEOC)

- EEOC Regional Office (Philadelphia District Office)  
801 Market Street, Suite 1000  
Philadelphia, PA 19107-3126  
[PDOContact@eeoc.gov](mailto:PDOContact@eeoc.gov)  
1 (800) 669-4000 / (267) 589-9700

#### **V. Mandated Reporting and Confidential Employees**

##### **A. Mandated Reporters**

All VFMC faculty and Employees, other than those deemed Confidential Employees, are Mandated Reporters. Mandated Reporters are expected to promptly report all known details of actual or suspected sex discrimination, sex-based harassment, retaliation, and/or Other Prohibited Conduct to appropriate officials immediately, although there are some limited exceptions. Supportive measures may be offered as the result of such disclosures without formal VFMC action being taken.

All Student Employees who learn of incidents when acting within the scope of their employment are expected to share contact information for the Title IX office with the person disclosing to them but are not otherwise required to report the information to the Title IX office, unless the person reporting asks them to do so. Mandated Reporters are expected to share all details disclosed to them when they make their report to the Coordinator. This includes the date and time of the disclosure, the name of the person making the disclosure, names of any other individuals identified, including the alleged Respondent and any witnesses, as well as the location, date, and nature of the incident if known.



Failure of a Mandated Reporter, as described above in this section, to report an incident of sex discrimination, sex-based harassment, and/or retaliation of which they become aware is a violation of VFMC Policy and faculty and Employees can be subject to disciplinary action for failure to comply/failure to report.

A Mandated Reporter who is themselves a target of sex discrimination, sex-based harassment, and/or retaliation under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or Policy violations, and these Employees will immediately pass Notice to the Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

## **B. Confidential Employees**

There are two categories of Confidential Employees:

1. Those with confidentiality bestowed by law or professional ethics, such as lawyers, medical professionals, clergy, and mental health counselors; and
2. Those whom VFMC has specifically designated as Confidential Resources for purposes of providing support and resources to any community member that has been impacted by sexual misconduct.

For those in category (1) above, to be able to respect confidentiality, they must be in a confidential relationship with the person reporting, such that they are within the scope of their licensure, professional ethics, or confidential role at the time of receiving the Notice. These individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger, or abuse of a minor, elder, or individual with a disability, or when required to disclose by law or court order.

To enable Complainants to access support and resources without filing a Complaint, those individuals that VFMC designates as Confidential Resources are not required to report actual or suspected sex discrimination, sex-based harassment, and/or retaliation in a way that identifies the Complainant or Respondent (collectively, the “Parties”). They will, however, provide the Complainant with the Coordinator’s contact information and offer options and resources without any obligation to inform an outside agency or VFMC official unless a Complainant has requested the information be shared.

If a Complainant or member of the community who is thinking about filing a Complaint would like the details of an incident to be kept confidential, the Complainant may speak with the following Confidential Employees:

- On-campus licensed professional counselors and staff in Counseling Services; or
- On-campus health service providers and staff in Health Services.

In addition, Complainants or members of the community who are thinking about filing a Complaint may speak with individuals unaffiliated with VFMC without concern that Policy will require them to disclose information to the institution without permission. Such unaffiliated individuals may include:

- Licensed professional counselors and other medical providers;
- Local rape crisis counselors;
- Domestic violence resources;
- Local or state assistance agencies;
- Clergy/Chaplains and/or Attorneys.

## **VI. Scope**

This Policy protects all members of VFMC's community, including Faculty, Employees, Students, and other individuals participating in, or attempting to participate in, VFMC's program or activities, including education and employment.

This Policy prohibits all forms of sex discrimination, sex-based harassment, and/or retaliation as recognized under federal, state, or local laws, and may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed in accordance with this Policy.

For further information, please see VFMC's "Non-discrimination / Anti-Harassment" Policy and "Anti-Hazing" Policy. These policies can be located at:

<https://vfmccollege.edu/about/college-policies/>

## **VII. Jurisdiction**

This Policy applies to VFMC's education programs and activities (defined as including locations, events, or circumstances in which VFMC exercises substantial control over both the Respondent and the context in which the conduct occurred), including circumstances where VFMC has disciplinary authority, and to misconduct occurring within any building owned or controlled by a VFMC-recognized Student organization.

This Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to VFMC's education program or activities. VFMC may also extend jurisdiction to off-campus and/or to online conduct when the conduct affects a substantial VFMC interest. Under the 2020 Title IX Regulations, Title IX jurisdiction applies only to conduct occurring within the recipient's education program or activity.

A substantial VFMC interest includes:

- Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- Any situation in which it is determined that the Respondent poses an imminent and serious threat to the health or safety of any Student, Employee, or other individual;

- Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder; or
- Any situation that substantially interferes with VFMC's educational interests or mission.

For disciplinary action to be issued under this Policy, the Respondent must be a VFMC faculty member, Student, or Employee at the time of the alleged incident. If the Respondent is unknown or is not a member of the VFMC community, the Coordinator will offer to assist the Complainant in identifying appropriate institutional and local resources and support options and will implement appropriate supportive measures and/or remedial actions. VFMC can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

All vendors serving VFMC through third-Party contracts are subject to the policies and procedures of their employers and to these policies and procedures to which their employer has agreed to be bound by their contracts.

When a Party is participating in a dual enrollment/early college program, VFMC will coordinate with the Party's home institution to determine jurisdiction and coordinate providing supportive measures and responding to the complaint under the appropriate policy and procedures based on the allegations and identities of the Parties.

When the Respondent is enrolled in or employed by another institution, the Coordinator can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

**VIII. Similarly, the Coordinator may be able to assist and support a Student or Employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to VFMC where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse. If there are effects of that external conduct that impact a Student or Employee's work or educational environment, those effects can often be addressed remedially by the Coordinator if brought to their attention. However, for alleged conduct that did not occur against a person in the United States, VFMC will dismiss a formal complaint for purposes of Title IX, but VFMC will provide supportive measures and may still address the allegations in any manner deemed appropriate under other policies. Supportive Measures**

VFMC will offer and implement appropriate and reasonable supportive measures to the Complainant upon Notice of alleged sex discrimination, sex-based harassment, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. No Complaint needs to be filed for supportive measures to be made available to the Complainant. If the Respondent is made aware of the allegations either by way of a Complaint being filed or a supportive measure for the Complainant that requires notifying the Respondent (e.g., a No Contact Agreement), the Coordinator will also offer and implement appropriate and reasonable supportive measures to the Respondent.

Supportive measures are offered, without fee or charge to the Parties, to restore or preserve access to VFMC's education program or activity, including measures designed to protect the safety of all Parties and/or VFMC's educational environment, and/or to deter sex discrimination, sex-based harassment, and/or retaliation.

The Coordinator promptly makes supportive measures available to the Parties upon receiving Notice/Knowledge or a Complaint. At the time that supportive measures are offered, if a Complaint has not been filed, VFMC will inform the Complainant, in writing, that they may file a Complaint with VFMC either at that time or in the future. The Coordinator will work with a Party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

VFMC will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair VFMC's ability to provide those supportive measures. VFMC will attempt to ensure as minimal an academic/occupational impact on the Parties as possible. VFMC will attempt to implement measures in a way that does not unreasonably burden any Party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services;
- Referral to an Employee Assistance Program;
- Referral to community-based service providers;
- Altering campus housing assignment(s);
- Altering work arrangements for Employees or Student-Employees;
- Implementing contact restrictions (no contact agreements) between the Parties;
- Academic support, extensions of deadlines, or other course/program-related adjustments;
- Class schedule modifications, withdrawals, or leaves of absence; and,
- Any other actions deemed appropriate by the Coordinator.

VFMC also partners with the Delaware County Victim Assistance Center, which is a resource available to Students, staff, and faculty. More information can be found at: <https://www.delcovicthimassistance.org/>

Violations of no contact agreements or other restrictions may be referred to appropriate Student or Employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

The Parties are provided with a timely opportunity to seek modification or reversal of VFMC's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Coordinator. An impartial Employee other than the Employee who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the Title IX regulatory definition of supportive measures<sup>1</sup>

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<sup>1</sup> Supportive measures means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

or this Policy. VFMC will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances materially change. VFMC typically renders decisions on supportive measures within five (5) business days of receiving a request and provides a written determination to the impacted Party(ies) and the Coordinator.

## **IX. Online Harassment and Misconduct**

VFMC policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on VFMC's education program and activities, or when they involve the use of VFMC networks, technology, or equipment.

Although VFMC may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to VFMC, it will engage in a variety of means to address and mitigate the effects. These means may include use of the Resolution Process to address off-campus conduct whose effects contribute to limiting or denying a person access to VFMC's education program or activity. Under the 2020 Title IX Regulations, jurisdiction applies only to conduct occurring within the recipient's education program or activity.

Nothing in this Policy is intended to infringe upon or limit a person's rights to free speech. Any online posting or other electronic communication by Students, including technology-facilitated bullying, stalking, harassment, etc., occurring completely outside of VFMC's control (e.g., not on VFMC networks, websites, or between VFMC email accounts) will only be subject to this Policy when such online conduct can be shown to cause (or will likely cause) a substantial in-program disruption or infringement on/harm to the rights of others. Supportive measures for Complainants will be provided.

## **X. Inclusion Related to Gender Identity/Expression**

VFMC strives to ensure that all individuals are safe, included, and respected in their education and employment environments, regardless of their [institutionally protected, but not Title IX-governed] gender identity or expression, including intersex, nonbinary, transgender, agender, two-spirit, and gender-diverse Students and Employees.

Discrimination and harassment on the basis of [institutionally protected, but not Title IX-governed] gender identity or expression are not tolerated by VFMC. If a member of the VFMC community believes they have been subjected to discrimination under this Policy, they should follow the appropriate reporting process described herein.

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(1) Restore or preserve that Party's access to the recipient's education program or activity, including measures that are designed to protect the safety of the Parties or the recipient's educational environment; or

(2) Provide support during the recipient's grievance procedures under § 106.45, and if applicable § 106.46, or during the informal resolution process under § 106.44(k).

34 C.F.R. § 106.2

In upholding the principles of equity and inclusion, VFMC supports the full integration and healthy development of those who are gender diverse and seeks to eliminate any stigma related to [institutionally protected, but not Title IX-governed] gender identity and expression.

VFMC is committed to fostering a climate where all identities are valued, contributing to a more vibrant and diverse community. VFMC will administratively address issues that some Students and Employees, including those identifying as intersex, transgender, agender, nonbinary, and gender diverse, may confront as they navigate systems originally designed around the assumption that gender is binary. As our society's understanding of gender evolves, so do VFMC's processes and policies.

Concepts like misgendering and deadnaming may not be familiar to all but understanding them is essential to VFMC's goal of being as welcoming and inclusive a community as possible.

Misgendering or mispronouncing is the intentional or unintentional use of pronouns or identifiers that are different from those used by an individual. Unintentional misgendering is usually resolved with a simple apology if someone clarifies their pronouns for you. Intentional misgendering is inconsistent with the type of community we hold ourselves out to be and may constitute a Policy violation if the effect is greater than de minimis harm. We each have a right to determine our own [institutionally protected, but not Title IX-governed] gender identity and expression, but we don't get to choose or negate someone else's.

Deadnaming, along with misgendering, can be very traumatic to a person who is transgender, transitioning, nonbinary, or gender diverse. Deadnaming means using someone's birth-assigned (cisgender) name, rather than the name they have chosen.

To a person who is transgender, transitioning, nonbinary, or gender diverse, their cis [institutionally protected, but not Title IX-governed] gender identity may be something that is in their past. To then revive their deadname could trigger issues, traumas, and experiences of the past that the individual has moved past, or is moving past, and can interfere with their health and well-being.

Again, unintentional deadnaming can often be addressed by a simple apology and an effort to use the person's chosen name. Intentional deadnaming could be a form of bullying, outing, or otherwise harassing an individual, and thus should be avoided.

This Policy should be interpreted consistent with the goals of maximizing the inclusion of intersex, transgender, transitioning, agender, nonbinary, and gender-diverse Students and Employees, including:

- Maintaining the privacy of all individuals consistent with law
- Ensuring all Students have equal access to educational programming, activities, and facilities, including restrooms and locker rooms
- Ensuring all Employees have equal access to employment opportunities and work, service, or health-related facilities
- Providing professional development for Employees and education for Students on topics related to gender inclusion

- Encouraging all Students and Employees to respect the pronoun usage and identities of all members of the VFMC community

VFMC uses a number of interventions to address concerns that are raised related to gender-based harassment or discrimination, including problem-solving, intervention, confrontation, investigation, and Policy enforcement. When conflicts arise between the right of members of the community to be free from gender-identity discrimination and those exercising their right to religious freedom, VFMC will try to balance rights and interests to find mutually agreeable outcomes or compromises. When that is not possible, VFMC will offer remedial solutions or enforce its Policies while also respecting the rights of all members of its community.

## **XI. Prohibited Conduct**

Students and Employees are entitled to an educational and employment environment that is free of sex discrimination, sex-based harassment, and/or retaliation. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited sex discrimination, sex-based harassment, and/or retaliation that are also prohibited under VFMC Policy. When speech or conduct is protected by academic freedom or other legal principle, it will not be considered a violation of VFMC Policy, though supportive measures will be offered to those impacted.

All offense definitions below encompass actual and/or attempted offenses. Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice-versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance sanctions, accordingly.

Violation of any other VFMC policies may constitute discrimination or harassment when motivated by actual or perceived sex or pregnancy, and the result is a limitation or denial of employment or educational access, benefits, or opportunities.

### **A. Sex Discrimination**

Discrimination is different treatment with respect to a person's employment or participation in an education program or activity based, in whole or in part, upon the person's actual or perceived sex.

Discrimination can take two primary forms:

1. Disparate Treatment Discrimination: Any intentional differential treatment of a person or persons that is based on a person's actual or perceived sex and that:



- Excludes a person from participation in;
  - Denies the person benefits of; or
  - Otherwise adversely affects a term or condition of a person's participation in a VFMC program or activity.
2. Disparate Impact Discrimination: Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a group or person based on their sex that:
- Excludes an individual from participation in;
  - Denies the individual benefits of; or
  - Otherwise adversely affects a term or condition of an individual's participation in a VFMC program or activity.

### **Sex-based Harassment (Applicable under Title IX, Title VII, and the Fair Housing Act)**

Sex-based Harassment is a form of sex discrimination and includes sexual harassment and other unwelcome conduct of a sexual nature, including, but not limited to: sex stereotypes, sex characteristics, pregnancy or related conditions, [institutionally protected, but not Title IX-governed] sexual orientation, [institutionally protected, but not Title IX-governed] gender identity, sexual assault, dating violence, domestic violence, and stalking.

Sex-based Harassment can take two primary forms:

#### **Quid Pro Quo:**

- an Employee agent, or other person authorized by VFMC,
- to provide an aid, benefit, or service under VFMC's education program or activity,
- explicitly or impliedly conditioning the provision of such aid, benefit, or service,
- on a person's participation in unwelcome sexual conduct.

#### **Hostile Environment Harassment:**

- unwelcome sex-based conduct, that
- based on the totality of the circumstances,
- a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal access to a VFMC education program or activity.
- Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
  - o An Employee of the recipient conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (quid pro quo);
  - o Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;



- o Sexual assault, dating violence, domestic violence, or stalking as defined in the Clery Act or VAWA.
- that it limits or denies a person's ability to participate in or benefit from VFMC's education program or activity.

VFMC reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment under this Policy, or (2) that is of a generic nature and not based on a protected characteristic. Addressing such conduct may result in the imposition of discipline under other VFMC Policies, but may also be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.

For assistance with Alternative Resolution and other Informal Resolution techniques and approaches, contact the Coordinator.

Other forms of Sex-based Harassment include:

### **Sexual Assault:**

a. Rape, defined as:

- Penetration, no matter how slight,
- of the vagina or anus of the Complainant,
- with any body part of the Respondent or by Respondent's use of an object, or
- oral penetration of the Complainant by a sex organ of Respondent,
- without the consent of the Complainant.

b. Criminal Sexual Contact, defined as:

- The intentional touching of the clothed or unclothed body parts of the Complainant,
- without the consent of the Complainant,
- for the purpose of sexual degradation, sexual gratification, or sexual humiliation; or
- the forced touching by the Complainant of the Respondent's clothed or unclothed body parts,
- without consent of the Complainant,
- for the purpose of sexual degradation, sexual gratification, or sexual humiliation,
- including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental incapacity.

c. Incest, defined as:

- Sexual intercourse,
- between persons who are related to each other,
- within the degrees wherein marriage is prohibited by Pennsylvania law.

d. Statutory Sexual Assault, defined as:

- Sexual intercourse,
- with a person who is under the statutory age of consent of 18.

**Dating Violence, defined as:**

- violence,
- on the basis of sex,
- committed by a person,
- who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.

The existence of such a relationship shall be determined based on the Complainant'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. Dating violence does not include acts covered under the definition of domestic violence.

**Domestic Violence, defined as:**

- violence,
- on the basis of sex,
- committed by a current or former spouse or intimate partner of the Complainant,
- by a person with whom the Complainant shares a child in common, or
- by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Pennsylvania, or
- by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Pennsylvania.

**Stalking, defined as:**

- engaging in a course of conduct,
- on the basis of sex,
- directed at the Complainant, 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 Respondent 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 Complainant. “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

### **C. Other Prohibited Conduct**

#### **Sexual Exploitation, defined as:**

A person taking non-consensual or abusive sexual advantage of another, that does not constitute Sex-based Harassment as defined above, for their own benefit or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) a person’s [institutionally protected, but not Title IX-governed] sexual orientation, [institutionally protected, but not Title IX-governed] gender identity, or gender expression
- Taking pictures, video, or audio recording of another person in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent), including the making or posting of non-consensual pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person’s identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person’s will by threatening to show, post, or share information, video, audio, or an image that depicts the person’s nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings

- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)

#### **Sex-based Bullying, defined as:**

- repeated and/or severe aggressive behavior,
- that is likely to intimidate or intentionally hurt, control, or physically or mentally diminish the Complainant,
- that is not speech or conduct that is otherwise protected by statute or other legal principles,
- threatening or causing physical harm,
- extreme verbal, emotional, or psychological abuse,
- other conduct which threatens or endangers the health or safety of any person or damages their property.

#### **Retaliation, defined as:**

- Adverse action, including, but not limited to, termination, disparate treatment, intimidation, threats, coercion, or discrimination,
- against any person,
- by VFMC, a Student, Employee, or a person authorized by VFMC to provide aid, benefit, or service under VFMC's education program or activity,
- for the purpose of interfering with any right or privilege secured by law or Policy, or
- because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating, or is a Student refusing to participate in any manner in an investigation or Resolution Process under the Title IX Policy, including an Informal Resolution process, or in any other appropriate steps taken by VFMC to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

The exercise of rights otherwise protected by law does not constitute retaliation. It is also not retaliation for VFMC to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under the Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any Party has made a materially false statement in bad faith.

#### **Unauthorized Disclosure, defined as:**

- Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by VFMC; or

- Publicly disclosing institutional work product that contains personally identifiable information about other Parties or witnesses without authorization or consent.

#### **Failure to Comply/Process Interference, defined as:**

- Failure to comply with the reasonable directives of the Coordinator in the performance of their official duties, including with the terms of a no contact agreement,
- Failure to comply with emergency removal or interim suspension terms,
- Failure to comply with sanctions,
- Failure to adhere to the terms of an Informal Resolution agreement,
- Failure to comply with mandated reporting duties as defined in this Policy,
- Interference with the Resolution Process, including but not limited to:
  - Destruction of or concealing of evidence,
  - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence,
  - Intimidating or bribing a witness or Party.

## **XII. Sanction Ranges**

The following sanction ranges apply for Prohibited Conduct under this Policy. Sanctions can be assigned outside of the specified ranges based on aggravating or mitigating circumstances, or the Respondent's cumulative conduct record.

- Discrimination: warning through expulsion or termination.
- Discriminatory Harassment: warning through expulsion or termination.
- Quid Pro Quo Harassment: warning through expulsion or termination.
- Hostile Environment Harassment: warning through expulsion or termination.
- Rape: suspension through expulsion or termination.
- Fondling: warning through suspension (termination for Employees).
- Incest: warning through probation.
- Statutory Rape: warning through suspension (termination for Employees).
- Stalking: probation through expulsion or termination.
- Dating/Domestic Violence: probation through expulsion or termination.
- Sexual Exploitation: warning through expulsion or termination.
- Sex-based Bullying: warning through expulsion or termination.
- Endangerment: warning through expulsion or termination.
- Retaliation: warning through expulsion or termination.
- Unauthorized Disclosure: warning through expulsion or termination.
- Failure to Comply/Process Interference: warning through expulsion or termination.

## **XIII. Consent, Force, and Incapacitation**

As used in this Policy, the following definitions and understandings apply:

#### **Consent, defined as:**

- knowing,
- voluntary, and with
- clear permission,
- by word or action,
- to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each Party to determine that the other has consented before engaging in sexual acts.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can establish consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to be kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, sexual activity should cease within a reasonably immediate time.

Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. However, while resistance is not required or necessary, it is a clear demonstration of non-consent.

Consent to some sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. If a sexual partner shares the clear expectation for the use of a condom, or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of sexual assault.

Proof of consent or non-consent is not a burden placed on either Party involved in a Complaint. Instead, the burden remains on VFMC to determine whether its Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred, and any similar and previous patterns that may be evidenced.

Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical roughness during otherwise consensual sex, those acts may constitute dating violence or sexual assault.

### **Force, defined as:**

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.

Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me. I’ll do what you want.”).

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person’s consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

### **Incapacitation, defined as:**

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

Incapacitation is determined through consideration of all relevant indicators of a person’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

## **XIV. Standard of Proof**

VFMC uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that VFMC will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is responsible for the alleged Policy violation(s).

## **XV. Reports/Complaints of Sex Discrimination, Sex-Based Harassment, and/or Retaliation**

A Report provides notice to VFMC of an allegation or concern about sex discrimination, sex-based harassment, and/or retaliation, and provides an opportunity for the Title IX Coordinator to provide information, resources, and supportive measures.

A Complaint provides notice to VFMC that the Complainant would like to initiate an investigation or other appropriate resolution procedures.

A Complainant or individual may initially make a report and may decide at a later time to make a Complaint. Reports or Complaints of sex discrimination, sex-based harassment, and/or retaliation may be made using any of the following options:

- File a Complaint with, or give verbal Notice directly to, the Title IX Coordinator. Such a Complaint may be made at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office of the Title IX Coordinator:

Dr. Jesse Phillips  
Dean of College Services & Title IX Coordinator  
1001 Eagle Road, Medenbach Hall  
Wayne, PA 19087  
(610) 989-1467  
jphillips@vfmac.edu

- Submit online Notice at <https://vfmccollege.edu/about/college-policies/>

Although VFMC accepts anonymous reports of prohibited conduct, it encourages Complainants to speak with someone directly. While Anonymous Notice is accepted, it may give rise to a need to try to determine the Parties' identities. Anonymous Notice typically limits VFMC's ability to investigate, respond, and provide remedies, depending on what information is shared. Measures intended to protect the community, or redress or mitigate harm, may not be able to be enacted. It also may not be possible to provide supportive measures to Complainants who are the subject of anonymous Notice.

Reporting carries no obligation to initiate a Complaint, and in most situations, VFMC is able to respect a Complainant's request to not initiate a resolution process. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where VFMC may need to initiate a resolution process. If a Complainant does not wish to file a Complaint, VFMC will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by giving Notice that allows VFMC to discuss and/or provide supportive measures, in most circumstances.

## **XVI. Time Limits on Reporting**

There is no time limitation on providing Notice/Complaints to the Coordinator. However, if the Respondent is no longer subject to VFMC's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.



Acting on Notice/Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy) is at the Coordinator's discretion; they may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

## **XVII. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a determination of a Policy violation.

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate VFMC policies.

## **XVIII. Confidentiality/Privacy**

VFMC makes every effort to preserve the Parties' privacy. Except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law, including any investigation or resolution proceeding arising under these policies and procedures, and subject to the foregoing, VFMC will not share the identity of any individual:

- who has made a Complaint of sex discrimination, sex-based harassment, and/or retaliation;
- any Complainant;
- any individual who has been reported to be the perpetrator of sex discrimination, sex-based harassment, or retaliation;
- any Respondent; or,
- any witness.

Additional information regarding confidentiality and privacy can be found in Appendix C.

## **XIX. Unauthorized Disclosure of Information**

Parties and Advisors are prohibited from disclosing information obtained by VFMC through the Resolution Process, to the extent that information is the work product of VFMC (meaning it has been produced, compiled, or written by VFMC for purposes of its investigation and resolution of a Complaint), without written authorization. It is also a violation of VFMC Policy to publicly disclose institutional work product that contains a Party or witness's personally identifiable information without written authorization or consent. Violation of this Policy is subject to significant sanctions.

## **XX. Emergency Removal/Interim Actions/Leaves**

VFMC may remove a Student Respondent accused of sex discrimination and/or sex-based harassment from its education program or activities, partially or entirely, including issuing no

trespass or no contact orders, on an emergency basis when an individualized safety and risk analysis has determined that an imminent and serious threat to the health or safety of any Student or other individual justifies removal. This risk analysis is performed by the Coordinator and may be done in conjunction with VFMC's risk management team using its standard, objective violence risk assessment procedures. VFMC will provide a Student Respondent with notice and an opportunity to challenge the emergency removal decision immediately following the removal. Employees are subject to interim actions and leaves in consultation with Human Resources.

## **XXI. Federal Timely Warning Obligations**

VFMC must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the VFMC community.

To the extent consistent with the law, VFMC will ensure that a Complainant's name and other identifying information are not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## **XXII. Amnesty**

The VFMC community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to give Notice to VFMC officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the VFMC community that Complainants or witnesses choose to give Notice of misconduct to VFMC officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process.

To encourage reporting and participation in the process, VFMC offers the Parties and witnesses amnesty from minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident.

Granting amnesty is a discretionary decision made by VFMC, and amnesty does not apply to more serious allegations, such as physical abuse of another, or illicit drug distribution.

Sometimes, Employees are hesitant to report sex discrimination, sex-based harassment, and/or retaliation they have experienced for fear of getting in trouble themselves. VFMC may, at its discretion, offer Employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident.

## **XXIII. Preservation of Evidence**

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining/protective orders, and it is particularly time sensitive. VFMC will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

#### **A. Incidents of Sexual Assault:**

- Seek forensic medical assistance at the nearest hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or a secure evidence container (if provided one by law enforcement).
- Seeking medical treatment can be essential, even if it is not for the purposes of collecting forensic evidence.

#### **B. Stalking/Dating Violence/Domestic Violence/Sex-Based Harassment**

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
- Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
- Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of email and social media correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence, including notes, gifts, etc., in place when possible.
- Save copies of any messages, including those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name, if possible.

During the initial meeting between the Complainant and the Coordinator, if timely, the importance of taking these actions will be discussed.

#### **XXIV. Federal Statistical Reporting Obligations**

Certain institutional officials (those deemed Campus Security Authorities) have a duty to report the following for federal statistical reporting purposes (Clery Act):

- All “primary crimes,” which include criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson,
- Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property,
- Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking,
- Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations.

All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on- or off-campus or in the surrounding area, but no addresses are given) must be shared with VFMC's Clery Act Coordinator for publication in the Annual Security Report and daily campus crime log. Campus Security Authorities include Student affairs/Student conduct staff, campus law enforcement/public safety/security, local police, coaches, athletic directors, residence life staff, Student activities staff, human resources staff, advisors to Student organizations, and any other official with significant responsibility for Student and campus activities. Under the 2020 Title IX regulations, jurisdiction applies only to conduct occurring within the recipient's education program or activity.

## **XXV. Independence and Conflicts of Interest**

The Title IX Coordinator acts with independence and authority, free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and these procedures. The members of the Resolution Pool are vetted and trained to ensure they are not biased for or against any Party in a specific Complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact Dr. Robert Smith, Provost, [rsmith@vfmac.edu](mailto:rsmith@vfmac.edu). Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other Resolution Pool member should be raised with the Title IX Coordinator.

## **XXVI. Revision of this Policy**

This Policy succeeds previous policies addressing sex discrimination, sex-based harassment, sexual misconduct, and/or retaliation. The Title IX Coordinator reviews and updates these policies and procedures regularly. VFMC reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If government laws or regulations change or court decisions alter the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws that frame such policies and codes, generally.

## **VPMC'S RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY**

### **The Resolution Procedures**

#### **1. Overview**

VPMC will act on any Notice, Complaint, or Knowledge of a potential violation of the Policy that the Coordinator or any other Mandated Reporter receives by applying the Resolution Process, as described below.

The procedures below apply to all allegations of discrimination and/or harassment on the basis of an individual's actual or perceived sex involving Students, Employees, or third Parties.

A formal complaint must be submitted by the Complainant or signed by the Title IX Coordinator in order to initiate a grievance process under Title IX.

#### **2. Notice/Complaint**

Upon receipt of Notice, a Complaint, or Knowledge of an alleged Policy violation, the Title IX Coordinator will initiate a prompt initial evaluation to determine VPMC's next steps. The Title IX Coordinator will contact the Complainant/source of the Notice to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

#### **3. Initial Evaluation**

The Title IX Coordinator conducts an initial evaluation typically within seven (7) business days of receiving Notice/Knowledge/Complaint of alleged misconduct. The initial evaluation typically includes:

- Assessing whether the reported conduct may reasonably constitute a violation of the Policy.
- If the conduct may not reasonably constitute a violation of the Policy, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. It may then be referred to another process, if applicable.
- Determining whether VPMC has jurisdiction over the reported conduct, as defined in the Policy.
- If the conduct is not within VPMC jurisdiction under this Policy, the matter is typically dismissed from this process, consistent with the dismissal provision in the Policy. If applicable, the conduct will be referred to the appropriate VPMC office for resolution.
- Notifying the Complainant, or the person who reported the allegation(s), of the available resolution options, including a supportive and remedial response, an Informal Resolution option, or the Formal Resolution Process described below.
- Determining whether the Complainant wishes to initiate a Complaint.
- If a Complaint is made, notifying the Respondent and explaining the available resolution options, including the Informal Resolution options or the Formal Resolution Process described below.
- Helping a Complainant (and Respondent, if applicable) to understand resolution options

- Offering and coordinating supportive measures for the Complainant while the Resolution Process moves forward.
- Offering and coordinating supportive measures for the Respondent, as applicable, while the Resolution Process moves forward.

The Title IX Coordinator will work with the Complainant to determine whether the Complainant wishes to receive only supportive measures or make a Complaint and pursue one of the following resolution options:

- Informal Resolution, or
- the Formal Resolution Process described below.

If the Complainant indicates they wish to initiate a Complaint (in a manner that can reasonably be construed as reflecting intent to make a Complaint), the Title IX Coordinator will help to facilitate the Complaint. The Title IX Coordinator will seek to abide by the wishes of the Complainant but may have to take an alternative approach depending on their analysis of the situation.

If the Complainant elects the Formal Resolution Process below, and the Title IX Coordinator has determined the Policy applies and that VFMC has jurisdiction, the Title IX Coordinator will route the matter to the appropriate Investigator and will provide the Parties with a Notice of Investigation and Allegation(s), thereby initiating the Formal Resolution Process.

If any Party indicates (either verbally or in writing) that they want to pursue an Informal Resolution option, the Title IX Coordinator will assess whether the matter is suitable for Informal Resolution and refer the matter to an appropriate Facilitator. The Title IX Coordinator will also provide the Parties with a Notice of Investigation and Allegation(s), thereby initiating the Informal Resolution Process.

If the Complainant indicates (either verbally or in writing) that they do not want any action taken (i.e., they do not make a Complaint), no Resolution Process will be initiated (unless deemed necessary by the Title IX Coordinator), though the Complainant can elect to initiate one later, if desired.

#### **4. Title IX Coordinator Authority to Initiate a Complaint**

If the Complainant does not wish to file a Complaint, the Title IX Coordinator, who has ultimate discretion as to whether a Complaint is initiated, will offer supportive measures and determine whether to initiate a Complaint themselves. To make this determination, the Title IX Coordinator will evaluate the matter to determine if there is a serious and imminent threat to someone's safety or if VFMC cannot ensure equal access without initiating a Complaint. The Title IX Coordinator will consider the following non-exhaustive factors to determine whether to file a Complaint:

- The Complainant's request not to initiate a Complaint.
- The Complainant's reasonable safety concerns regarding initiating a Complaint.
- The risk that additional acts of discrimination would occur if a Complaint is not initiated.

- The severity of the alleged discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.
- The age and relationship of the Parties, including whether the Respondent is a VFMC Employee.
- The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals.
- The availability of evidence to assist a Decision-Maker in determining whether discrimination occurred.
- Whether VFMC could end the alleged discrimination and prevent its recurrence without initiating its Resolution Process.

If deemed necessary, the Title IX Coordinator may consult with appropriate VFMC Employees, and/or conduct a violence risk assessment to aid their determination whether to initiate a Complaint.

When the Title IX Coordinator initiates a Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged conduct that could constitute a violation of this Policy.

## **5. Dismissal of a Complaint**

VFMC must dismiss a Complaint if, at any time during the investigation or Resolution Process, VFMC determines the conduct alleged in the Complaint, even if proven, would not constitute a Policy violation. This includes a determination that the conduct alleged in the formal complaint would not constitute sexual harassment, did not occur in VFMC's education program or activity, or did not occur against a person in the United States. Such a dismissal is for purposes of Title IX only and does not preclude action under another provision of the VFMC's policies.

VFMC may dismiss a Complaint if, at any time during the investigation or Resolution Process, one or more of the following grounds are met:

- a. VFMC is unable to identify the Respondent after taking reasonable steps to do so;
- b. VFMC no longer enrolls or employs the Respondent; or
- c. A Complainant voluntarily withdraws any or all of the allegations in the Complaint, and the Coordinator declines to initiate a Complaint.

A Decision-Maker can recommend dismissal to the Title IX Coordinator if they believe the grounds are met. A Complainant who decides to withdraw a Complaint may later request to reinstate or refile it.

Upon any dismissal, VFMC will promptly send the Complainant written notification of the dismissal and the rationale for doing so. If the dismissal occurs after the Respondent has been made aware of the allegations, VFMC will also notify the Respondent of the dismissal.



This dismissal decision is appealable by any Party.

## **6. Appeal of Dismissal**

The Complainant may appeal a dismissal of their Complaint. The Respondent may also appeal the dismissal of the Complaint if dismissal occurs after the Respondent has been made aware of the allegations. All dismissal appeal requests must be filed within three (3) business days of the notification of the dismissal.

The Title IX Coordinator will notify the Parties of any appeal of the dismissal. If, however, the Complainant appeals, but the Respondent was not notified of the Complaint, the Coordinator must then provide the Respondent with a NOIA and will notify the Respondent of the Complainant's appeal with an opportunity to respond.

Throughout the dismissal appeal process, VFMC will:

- Implement dismissal appeal procedures equally for the Parties.
- Assign a trained Dismissal Appeal Officer who did not take part in an investigation of the allegations or dismissal of the Complaint.
- Provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the dismissal.
- Notify the Parties of the result of the appeal and the rationale for the result.

The grounds for dismissal appeals are limited to:

- a. Procedural irregularity that would change the outcome;
- b. New evidence that would change the outcome and that was not reasonably available when the dismissal was decided; or,
- c. The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome.

The appeal must specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request from one or more Parties, the Title IX Coordinator will share the petition with all other Parties and provide three (3) business days for other Parties and the Title IX Coordinator to respond to the request. At the conclusion of the response period, the Title IX Coordinator will forward the appeal, as well as any response provided by the other Parties and/or the Coordinator to the Dismissal Appeal Officer for consideration.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the Dismissal Appeal Officer will deny the request, and the Parties, their Advisors, and the Coordinator will be notified in writing of the denial and the rationale.

If any of the asserted grounds in the appeal satisfy the grounds described in this Policy, then the Dismissal Appeal Officer will notify all Parties, their Advisors, and the Title IX Coordinator of their decision and rationale in writing. The effect will be to reinstate the Complaint.



In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Officer has four (4) business days to review and decide on the appeal, though extensions can be granted at the discretion of the Title IX Coordinator, and the Parties will be notified of any extension.

Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so.

The Dismissal Appeal Officer may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.

## **7. Investigator Appointment**

Once an investigation is initiated, the Title IX Coordinator appoints an Investigator(s) to conduct it. These Investigators may be members of the Resolution Process Pool, or any other properly trained Investigator, whether internal or external to VFMC's community. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility are on VFMC.

## **8. Resolution Timeline**

VFMC will make a good faith effort to complete both the Informal and Formal Resolution Process within 60-90 business days, including any appeals, which the Title IX Coordinator can extend as necessary for appropriate cause. The Parties will receive regular updates on the progress of the Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

If a Party or witness chooses not to participate in the Resolution Process or becomes unresponsive, VFMC reserves the right to continue it without their participation to ensure a prompt resolution. Non-participatory or unresponsive Parties retain the rights outlined in this Policy and the opportunity to participate in the Resolution Process.

VFMC may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to, a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. VFMC will promptly resume its Resolution Process as soon as feasible. During such a delay, VFMC will implement and maintain supportive measures for the Parties as deemed appropriate.

VFMC action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed, or that criminal charges have been dismissed or reduced.

## **9. Ensuring Impartiality**

Any individual materially involved in the administration of the Resolution Process, including the Coordinator, Facilitator(s), Investigator(s), and Decision-Maker(s), may neither have nor demonstrate a conflict of interest or bias for a Party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Facilitator(s), Investigator(s), Decision-Maker(s), and Appeal Decision-Makers for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the Parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with Dr. Robert Smith, Provost, [rsmith@vfmac.edu](mailto:rsmith@vfmac.edu)

The Resolution Process involves an objective evaluation of all available relevant and not otherwise impermissible evidence, including evidence that supports that the Respondent engaged in a Policy violation and evidence that supports that the Respondent did not engage in a Policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written investigation report that accurately summarizes this evidence.

## **10. Interim Suspension of a Student**

VFMC may enact an interim suspension on a Student accused of sex discrimination, sex-based harassment or retaliation upon receipt of Notice/Knowledge, a Complaint, or at any time during the Resolution Process. Prior to an interim suspension, VFMC will conduct an individualized risk assessment and may remove the Student if that assessment determines that:

- A Student is a threat of serious harm to self, the Complainant(s) or others.
- A Student is facing allegations of serious criminal activity.
- To preserve the integrity of an investigation.
- To preserve VFMC property and/or to prevent disruption of, or interference with, the normal operations of VFMC.
- Health, Safety, Pandemic, Weather, and/or Civil related emergencies.

Interim Suspension can include separation from the institution or restrictions on participation in the community. During an interim suspension, a Student may be denied access to VFMC housing and/or VFMC campus/facilities/events. As determined appropriate by the Title IX Coordinator, this restriction may include classes and/or all other VFMC activities or privileges for which the Student might otherwise be eligible. At the discretion of the Title IX Coordinator, and in collaboration with the Student's faculty, alternative coursework options may be pursued to ensure there is minimal academic impact on the Student.

When an interim suspension is imposed, wholly or partially, the affected Student will be notified of the action, which will include a written rationale, and the option to challenge the interim suspension within three (3) business days of the notification. The written request should be submitted to the Title IX Coordinator within three (3) business days of notice of the interim suspension and demonstrate why the Student believes that an interim suspension is not merited. Upon receipt of a challenge, the Title IX Coordinator will meet with a representative from the Commandant's Department to review the request and will provide the Student with a written decision including a rationale for the decision. Regardless of the outcome of this request, VFMC may still move forward with the Resolution Process.

The Title IX Coordinator's meeting with a representative from the Commandant's Department is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the interim suspension is appropriate, should be modified, or lifted. When the challenge to the interim suspension is not requested in writing within three (3) business days, objections to the interim suspension will be deemed waived. A Student can later request a meeting with the Title IX Coordinator to show why they are no longer an imminent and serious threat because conditions related to imminence or seriousness have changed. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable for them to do so.

The Respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration. When applicable, a Complainant may provide information to the Title IX Coordinator for review.

An interim suspension may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Dean of Students or their designee will communicate the final decision in writing, typically within three (3) business days of the review meeting with a representative from the Commandant's Department.

## **11. Placing an Employee on Leave**

When the Respondent is an Employee accused of misconduct, interim actions will be taken in consultation with Human Resources. When the Respondent is a Student Employee accused of misconduct in the course of their employment, VFMC has discretion to apply the above interim suspension process in consultation with Human Resources.

## **12. Counter-Complaints**

VFMC is obligated to ensure that the Resolution Process is not abused for retaliatory purposes. Although VFMC permits the filing of counter-complaints, the Title IX Coordinator will use an initial evaluation, described above, to assess whether the allegations in the counter-complaint are made in good faith. When counter-complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a violation of the Policy.

Counter-complaints determined to have been reported in good faith will be processed using the Resolution Process below. At the Coordinator's discretion, investigation of such claims may take place concurrently or after resolution of the underlying initial Complaint.

### **13. Collateral Misconduct**

Collateral misconduct is defined to include potential violations of other VFMC policies not incorporated into the Policy that occur in conjunction with alleged violations of the Policy, or that arise through the course of the investigation, and for which it makes sense to provide one resolution for all allegations. Thus, the collateral allegations may be charged along with potential violations of the Policy, to be resolved jointly under these Procedures. In such circumstances, the Coordinator may consult with VFMC officials who typically oversee such conduct (e.g., Human Resources, Community Standards, Academic Affairs, Commandant's Department) to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these Procedures is within the discretion of the Coordinator. All other allegations of misconduct unrelated to incidents covered by the Policy will typically be addressed separately through procedures described in the Student, faculty, and staff handbooks, including, but not limited to, the Regulations for the Corps of Cadets ("Bluebook").

### **14. Advisors in the Resolution Process**

#### **A. Who Can Serve as an Advisor**

The Parties may each have an Advisor (friend, mentor, family member, attorney, or any other individual a Party chooses) present with them for all meetings and interviews within the Resolution Process, including intake. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.

The Title Coordinator will offer to assign a trained Advisor to any Party if the Party chooses. If the Parties choose an Advisor from the pool available from VFMC, VFMC will have trained the Advisor and familiarized them with VFMC's Resolution Process.

VFMC cannot guarantee equal Advisory rights, meaning that if one Party selects an Advisor who is an attorney, but the other Party does not, or cannot afford an attorney, VFMC is not obligated to provide an attorney to advise that Party.

A Party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Parties are expected to provide the Title IX Coordinator with timely notification if they change Advisors. If a Party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.

VFMC may permit Parties to have more than one Advisor, or an Advisor and a support person, upon special request to the Title IX Coordinator. The decision to grant this request is at the Title IX Coordinator's sole discretion and will be granted equitably to all Parties.

VFMC will agree to copy both the Party and their Advisor on all communications if such a request is made by the Party but will not send communication solely to an attorney Advisor.

Advisors appointed by the institution cannot be Confidential Employees, and although they will not be asked to disclose details of their interactions with their advisees to institutional officials or

Decision-Makers absent an emergency, they are still reminded of their Mandated Reporter responsibilities.

## **B. Advisor's Role in the Resolution Process**

Advisors should help the Parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

The Parties are expected to ask and respond to questions on their own behalf throughout the Resolution Process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.

## **C. Records Shared with Advisors**

Advisors are entitled to the same opportunity as their advisee to access relevant evidence, and/or the same written investigation report that accurately summarizes this evidence.

Advisors are expected to maintain the confidentiality of the records VFMC shares with them, per Section XVII of the Policy addressing Confidentiality. Advisors may not disclose any VFMC work product or evidence VFMC obtained solely through the Resolution Process for any purpose not explicitly authorized in writing by VFMC.

Accordingly, Advisors will be asked to sign Non-Disclosure Agreements (NDAs). VFMC may decline to share materials with any Advisor who has not executed the NDA. VFMC may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by VFMC's confidentiality expectations.

## **D. Advisor Expectations**

VFMC generally expects an Advisor to adjust their schedule to allow them to attend VFMC meetings/interviews when planned, but VFMC may change scheduled meetings/interviews to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

VFMC may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview by telephone, video conferencing, or other similar technologies.

All Advisors are subject to the same VFMC policies and procedures, whether they are attorneys or not, and whether they are selected by a Party or appointed by VFMC. Advisors are expected to advise without disrupting proceedings.

## **E. Advisor Policy Violations**

Any Advisor who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with VFMC's established rules of decorum, will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview may be ended, or other appropriate measures implemented, including VFMC requiring the Party to use a different Advisor, or providing a different VFMC-appointed Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

## **15. Resolution Options**

This Resolution Process, begun after a Complaint is made, consists of the Informal Resolution or Formal Resolution, and is VFMC's chosen approach to addressing all forms of sex discrimination and/or sex-based harassment under the Policy. The process considers the Parties' preferences but is ultimately determined at the Title IX Coordinator's discretion.

Resolution proceedings are confidential. All individuals present at any time during the Resolution Process are expected to maintain the confidentiality of the proceedings in accordance with VFMC Policy.

### **A. Informal Resolution**

After a Complaint is made, a Complainant or Respondent may request that an Informal Resolution be pursued at any time prior to a final determination, or the Title IX Coordinator may offer the option to the Parties, in writing. VFMC will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding, and will not pressure the Parties to participate in the Informal Resolution.

Before initiation of an Informal Resolution process, VFMC will provide the Parties with a Notice of Investigation and Allegation(s) (NOIA) that explains:

- A meaningful summary of all allegations;
- The identity of the involved Parties (if known);
- The precise misconduct being alleged;
- The date and location of the alleged incident(s) (if known);
- The specific policies/offenses implicated;
- A description of, link to, or copy of the applicable procedures;
- The requirements of the Informal Resolution process;
- That, prior to agreeing to a resolution, any Party has the right to withdraw from the Informal Resolution process and to initiate or resume VFMC's Formal Resolution Process.
- That the Parties' agreement to a resolution at the conclusion of the Informal Resolution Process will preclude the Parties from initiating or resuming the Formal Resolution Process arising from the same allegations;

- The potential terms that may be requested or offered in an Informal Resolution agreement, including notification that an Informal Resolution agreement is binding only on the Parties.
- What information VFMC will maintain, and whether and how it could disclose such information for use in its Formal Resolution Process;
- The name(s) of the Facilitator(s), along with a process to notify the Coordinator of any conflict of interest that the Facilitator(s) may have in advance of the Informal Resolution Process beginning;
- A statement that VFMC presumes the Respondent is not responsible for the alleged misconduct unless and until the evidence supports a different determination in a Formal Resolution Process;
- A statement that retaliation is prohibited;
- A statement that the Parties may have an Advisor of their choice who may accompany them through all steps of the Resolution Process;
- A statement that the Parties are entitled to an equal opportunity to inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint so that each Party can meaningfully respond to the evidence prior to the conclusion of the investigation.
- Information about the confidentiality of the process, including that the Parties and their Advisors (if applicable) may not share VFMC work product obtained through the Resolution Process;
- A statement informing the Parties that VFMC's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process;
- Detail on how a Party may request disability accommodations or other support assistance during the Resolution Process; and,
- Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address(es) as indicated in official VFMC records, or emailed to the Parties' VFMC-issued email or designated accounts. Once mailed, emailed, and/or received in person, the notification will be presumptively delivered.

VFMC offers four categories of Informal Resolution:

### **1. Supportive Resolution**

When a Complaint is made, but the Coordinator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation.

The Title IX Coordinator will meet with the Complainant to determine reasonable supportive measures that are designed to restore or preserve the Complainant's access to VFMC's education program and activity. Such measures can be modified as the Complainant's needs evolve over time or circumstances change. The Title IX Coordinator may also provide reasonable supportive measures for the Respondent as deemed appropriate. This option is available when the Complainant files a Complaint but does not want to engage the other resolution options, and the Title IX Coordinator does not initiate a Complaint.



## **2. Educational Conversation**

When the Coordinator can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and institutional expectations, or can accompany the Complainant in their desire to confront the Respondent about the alleged conduct.

The Complainant(s) may request that the Title IX Coordinator address their allegations by meeting with the Respondent(s) (with or without the Complainant present) to discuss concerning behavior, institutional policies, and expectations. Such a conversation is non-disciplinary and non-punitive. Respondent(s) are not required to attend such meetings, nor are they compelled to provide any information if they attend. The conversation will be documented as the Informal Resolution for the matter, if it takes place. In light of this conversation, or the Respondent's decision not to attend, the Title IX Coordinator may also implement remedial actions to ensure that policies and expectations are clear, and to minimize the risk of the recurrence of any behaviors that may not align with Policy.

## **3. Accepted Responsibility**

When the Respondent is willing to accept responsibility for violating Policy and is willing to agree to actions that will be enforced similarly to sanctions, and the Complainant(s) and VFMC are agreeable to the resolution terms.

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all alleged Policy violations, the ongoing process will be paused, and the Title IX Coordinator will determine whether Informal Resolution is an option.

If Informal Resolution is available, the Title IX Coordinator will determine whether all Parties and VFMC are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of VFMC Policy, implements agreed-upon restrictions and remedies, and determines the appropriate responses in coordination with other appropriate administrator(s), as necessary.

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Formal Resolution Process will either continue or resume.

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the discrimination or harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

## **4. Alternative Resolution**

When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.



The individual facilitating an Informal Resolution must be trained and cannot be the Investigator, Decision-Maker, or Appeal Decision-Maker.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Resolution. Any Party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the Formal Resolution Process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution Process will not be considered in the Formal Resolution, should Informal Resolution not be successful, unless agreed to by all Parties.

If an investigation is already underway, the Title IX Coordinator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution Process.

The institution offers a variety of alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent(s); indirect action by the Title IX Coordinator or other appropriate VFMC officials; and other forms of resolution that can be tailored to the needs of the Parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an alternative resolution process.

The Title IX Coordinator may consider the following factors to assess whether alternative resolution is appropriate, or which form of alternative resolution may be most successful for the Parties:

- The Parties' amenability to alternative resolution;
- Likelihood of potential resolution, considering any power dynamics between the Parties;
- The nature and severity of the alleged misconduct;
- The Parties' motivation to participate;
- Civility of the Parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Respondent's disciplinary history;
- Whether an emergency removal or other interim action is needed;
- Skill of the alternative resolution facilitator with this type of Complaint;
- Complaint complexity;
- Emotional investment/capability of the Parties;
- Rationality of the Parties;
- Goals of the Parties; and,
- Adequate resources to invest in alternative resolution (e.g., time, staff).

The Title IX Coordinator has the authority to determine whether alternative resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept

the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. The Title IX Coordinator will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

The Title IX Coordinator maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). The results of Complaints resolved by alternative resolution are not appealable.

If an Informal Resolution option is not available or selected, VFMC will initiate or continue an investigation and subsequent Formal Resolution Process to determine whether the Policy has been violated.

Informal Resolution does not create a conduct record for Student Respondents. The Parties' agreement to a resolution at the conclusion of the Informal Resolution Process will preclude the Parties from initiating or resuming the Formal Resolution Process arising from the same allegations.

## **B. Formal Resolution Process**

The Formal Resolution Process is used for all Complaints of discrimination and harassment on the basis of sex (as defined in Policy) or when Informal Resolution is either not elected, is not appropriate as determined by the Title IX Coordinator or is unsuccessful.

The Formal Resolution Process consists of interviews and evidence gathered by a trained and unbiased Investigator. After conducting all necessary interviews, asking questions posed by the Parties of each other and the witnesses, and gathering all relevant and not otherwise impermissible evidence, the Investigator provides the Final Investigation Report and all relevant evidence to the Decision-Maker to make a finding and determine sanctions (if applicable). The Final Investigation Report and all relevant evidence are also shared with the Parties and their Advisors. At least one Draft Investigation Report is provided to the Parties, their Advisors, and the Decision-Maker for review, comment, and any necessary follow-up before the Final Investigation Report is completed.

At the discretion of the Title IX Coordinator, the assigned Decision-Maker will be a trained individual either internal or external to the institution. Once the Decision-Maker receives and reviews the file, they can recommend dismissal of the Complaint to the Title IX Coordinator, if they believe the grounds are met.

Prior to the investigation beginning in the Formal Resolution Process, the Coordinator will provide the Parties with a detailed written NOIA. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the

addition or dismissal of various allegations. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated. The contents of the NOIA are set forth in Section 15(A) of this document.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address(es) as indicated in official VFMC records, or emailed to the Parties' VFMC-issued email or designated accounts. Once mailed, emailed, and/or received in person, the notification will be presumptively delivered.

### **The Investigation Phase: Investigator-led Questioning, Meetings, and Interviews**

The Title IX Coordinator will assign a trained, impartial Investigator to conduct the investigation. The Investigator will gather evidence, interview the Complainant, Respondent, and any relevant witnesses, and objectively evaluate all relevant information. Both Parties will have equal opportunity to present witnesses, including fact and expert witnesses, and submit inculpatory and exculpatory evidence.

The Investigator will conduct interviews separately and may request written or verbal statements from all Parties and witnesses. These interviews may be conducted in person or virtually and will be recorded or transcribed. The Parties may review the recordings or transcripts of their own interviews upon request.

Parties will be provided the opportunity to suggest questions for the Investigator to ask the other Party or witnesses. The Investigator may incorporate relevant, non-duplicative questions. All Parties will have the opportunity to verify the accuracy of their interview summaries or transcripts.

At the conclusion of evidence-gathering, the Investigator will prepare a **Draft Investigation Report** that fairly summarizes the relevant evidence. This report and all evidence collected will be shared with the Complainant and Respondent (and their Advisors) at least **ten (10) days** prior to the hearing for their review and written response.

After reviewing any responses, the Investigator will finalize the report and submit it, along with all relevant evidence, to the Title IX Coordinator. The Final Investigation Report will also be shared with the Parties and their Advisors.

### **The Decision-Making Phase:**

Following the investigation, the College will convene a **live hearing** presided over by a neutral and trained **Decision-Maker**, who is not the same person as the Title IX Coordinator or the Investigator. The hearing will be conducted either in person or virtually using technology that allows all Parties, witnesses, and the Decision-Maker to see and hear each other in real time. At the request of either party, VFMC must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Decision-Maker and parties to simultaneously see and hear the party or the witness answering questions.

A **recording or transcript** of the hearing will be made and will be available to the Parties for review.

### **Advisor-Led Cross-Examination**

Each Party's Advisor will have the opportunity to conduct **cross-examination** of the other Party and any witnesses. Cross-examination must be conducted **directly, orally, and in real time** by the Party's Advisor and never by the Party personally.

Only **relevant questions** may be asked. The Decision-Maker will determine the relevance of each question **before** it is answered and will explain any decision to exclude a question as not relevant.

### **Provision of an Advisor**

If a Party does not have an Advisor at the time of the hearing, the College will provide one at no cost to conduct cross-examination on the Party's behalf.

### **Determination Regarding Responsibility**

After the hearing concludes, the Decision-Maker will evaluate the relevant evidence using the **preponderance of the evidence** standard. The Decision-Maker will issue a **written notice of outcome**, which will include:

- Identification of the allegations
- A description of the procedural steps taken
- Findings of fact
- Conclusions regarding policy violations
- The rationale for the result as to each allegation
- Any disciplinary sanctions imposed
- Any remedies provided to the Complainant

This determination will be sent simultaneously to both Parties along with information about the right to appeal.

Both the Complainant and the Respondent have the right to appeal a determination regarding responsibility and/or any dismissal of a formal Complaint or any allegations therein. Appeals must be submitted in writing to the Title IX Coordinator within **five (5) business days** of receiving the written determination or notice of dismissal.

## **16. Resolution Process Pool**

The Resolution Process relies on a pool of administrators or external professionals (“the Pool”) to carry out the process.

### **A. Pool Member Roles**

Members of the Pool are trained annually, and can serve in the following roles, at the discretion of the Coordinator:

- Appropriate intake of and initial guidance pertaining to Complaints
- Advisor to Parties
- Informal Resolution Facilitator
- Perform or assist with initial evaluation
- Investigator
- Decision-Maker for challenges to emergency removal and supportive measures
- Decision-Maker
- Appeal of Dismissal Decision-Maker
- Appeal Decision-Maker

### **B. Pool Member Appointment**

The Coordinator, in consultation with senior administrators as necessary, appoints the Pool, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different Complaints, VFMC can also designate permanent roles for individuals in the Pool. VFMC may also engage external professionals to serve in any role.

## **17. Witness Role and Participation in the Investigation**

Employees (not including Complainant and Respondent) are required to cooperate with and participate in VFMC’s investigation and Resolution Process. Student witnesses and witnesses from outside the VFMC community cannot be required to participate but are encouraged to cooperate with VFMC investigations and to share what they know about a Complaint.

Interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, WebEx), or, in limited circumstances, by telephone. VFMC will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

## **18. Evidentiary Considerations**

The Investigator(s) and the Decision-Maker(s) will only consider evidence that is deemed relevant and not otherwise impermissible.

Relevant Evidence is that which may aid in determining whether the allegation occurred, or whether the behavior constitutes a violation of Policy.

Impermissible evidence is defined as evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless 1) evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct, or 2) is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent. VFMC's grievance process does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent or preclude a determination that sex-based harassment occurred.

Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

Within the limitations stated above, the investigation and determination can consider character evidence, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

## **19. Respondent Admits Responsibility**

At any point in the proceedings, if a Respondent elects to admit to the charged violations and waive further process, the Decision-Maker is authorized to accept that admission, adopt it as their finding/final determination, and administer sanctions. This would waive the Respondent's right to appeal. If the Respondent rejects the finding/final determination/sanctions, or does not admit to all conduct charged, the Resolution Process continues to its conclusion. The Complainant retains their right to appeal a determination when a Respondent admits responsibility.

## **20. Consolidation of Complaints**

VFMC may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

## 21. Investigator Role in the Investigation

The Investigator(s) typically take(s) the following steps, if not already completed and not necessarily in this order:

- Determine the identity and contact information of the Complainant.
- Identify all offenses implicated by the alleged misconduct and notify the Complainant and Respondent of all specific policies implicated.
- Assist the Coordinator, if needed, with conducting a prompt initial evaluation to determine if the allegations indicate a potential Policy violation.
- Work with the Title IX Coordinator, as necessary, to prepare the initial NOIA. The NOIA may be amended with any additional or dismissed allegations.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses.
- When participation of a Party is expected, provide that Party with written notification of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Make good faith efforts to notify each Party of any meeting or interview involving another Party, in advance when possible.
- Interview the Complainant and the Respondent and conduct any necessary follow-up interviews with each.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Provide each interviewed Party and witness an opportunity to review and verify the Investigator's summary notes (or transcript or recording) of the relevant evidence/testimony from their respective interviews and meetings.
- Allow each Party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another Party and/or witnesses. Document which questions were asked with a rationale for any changes or omissions in the investigation report.
- Where possible, complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide the Parties with regular status updates throughout the investigation.
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors with a list of witnesses whose information will be used to render a finding.
- Ask the Parties to provide a list of questions they would like asked of the other Party or any witnesses. The Investigator will ask those questions deemed relevant, and for any question deemed not relevant, will provide a rationale for not asking the question.
- Write a draft investigation report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation, and Party and witness interviews, and provides all relevant evidence.
- Provide the Parties and their respective Advisors an electronic copy of the draft investigation report as well as an opportunity to inspect and review all relevant evidence obtained as part of the investigation for a review and comment period of five (5) business days so that each Party may meaningfully respond to the evidence. The Parties may elect to waive all or part of the review period or request extensions for good cause.
- The Investigator may share the investigation report with the Coordinator and/or legal counsel for their review and feedback.

## 22. Sanctioning Process

Factors the Decision-Maker may consider when determining sanctions and responsive actions include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s);
- The Respondent's disciplinary history;
- The need for sanctions/responsive actions to bring an end to the sex discrimination, sex-based harassment, and/or retaliation;
- The need for sanctions/responsive actions to prevent the future recurrence of sex discrimination, sex-based harassment, and/or retaliation;
- The need to remedy the effects of sex discrimination, sex-based harassment, and/or retaliation on the Complainant and the community;
- The impact on the Parties;
- The Respondent's acceptance of responsibility; and,
- Any other information deemed relevant by the Decision-Maker(s).

The sanctions will be implemented as soon as it is feasible once a determination is final, either upon the outcome of any appeal or the expiration of the window to appeal, without an appeal being requested.

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

### A. Student Sanctions

In addition to the range of sanctions described in applicable College Regulations, the following are the common sanctions that may be imposed upon Students, singly or in combination:

- **Reprimand:** A formal statement that the conduct was unacceptable, and a warning that further violation of any VFMC policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **Required Counseling:** A mandate to meet with and engage in either VFMC-sponsored or external counseling to better comprehend the misconduct and its effects.
- **Restrictions:** A Student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, study abroad, or holding leadership roles in Student organizations.
- **Probation:** An official sanction for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the Student is found in violation of any institutional policy, procedure, or directive. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from extracurricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- **Suspension:** Separation from the institution, or one or more of its facilities, for a defined period of time, typically not to exceed two (2) years, after which the Student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension, on successfully applying for readmission, or upon a general condition



that the Student is eligible to return if the institution determines it is appropriate to re-enroll/readmit the Student. The Student is typically required to vacate institutional property within 24 hours of notification of the action, though this deadline may be extended at the discretion of the Coordinator or other appropriate official. During an institution-wide suspension, the Student is banned from institutional property, functions, events, and activities unless they receive prior written approval from an appropriate institutional official. This sanction may be enforced with a trespass action, as necessary.

- **Expulsion:** Permanent separation from the institution. The Student is banned from institutional property, and the Student's presence at any institution-sponsored activity or event is prohibited. This action may be enforced with a trespass action, as necessary.
- **Withholding Diploma:** VFMC may withhold a Student's diploma for a specified period of time and/or deny a Student participation in commencement activities as a sanction if the Student is found responsible for violating Policy.
- **Revocation of Degree:** While very rarely exercised, VFMC reserves the right to revoke a degree previously awarded from VFMC for fraud, misrepresentation, and/or other violation of VFMC policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a Student prior to graduation.
- **Other Actions:** In addition to, or in place of, the above sanctions, VFMC may assign any other sanctions as deemed appropriate.

## **B. Student Group and Organization Sanctions**

The following are the common sanctions that may be imposed upon Student groups or organizations, singly or in combination:

- **Warning:** A formal statement that the conduct was unacceptable, and a warning that further violation of any VFMC policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **Probation:** An official sanction for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the group or organization is found in violation of any institutional policy, procedure, or directive. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of VFMC funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- **Suspension:** Termination of Student group or organization recognition and/or institutional support for a defined period of time not to exceed two (2) years and/or until specific criteria are met. During the suspension period, a Student group or organization may not conduct any formal or informal business or participate in VFMC-related activities, whether they occur on- or off-campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from VFMC. Under the 2020 rule, Title IX jurisdiction applies only to conduct occurring within the recipient's education program or activity.
- **Expulsion:** Permanent termination of Student group organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.

- **Loss of Privileges:** Restricted from accessing specific VFMC privileges for a specified period of time.
- **Other Actions:** In addition to, or in place of, the above sanctions, VFMC may assign any other sanctions as deemed appropriate.

### **C. Employee Sanctions/Responsive/Corrective Actions**

Responsive actions for an Employee who has engaged in sex discrimination, sex-based harassment, and/or retaliation include, but are not limited to:

- Verbal or Written Warning
- Performance Improvement Plan
- Enhanced Supervision, Observation, or Review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade
- Loss of Supervisory Responsibility
- Demotion
- Transfer
- Shift or Schedule Adjustments
- Reassignment
- Delay of (or referral for delay of) Tenure Track Progress
- Assignment to a New Supervisor
- Restriction of Stipends, Research, and/or Professional Development Resources
- Suspension/Administrative Leave with Pay
- Termination

(See Section 12 above for sanction ranges corresponding to specific types of Prohibited Conduct under this Policy.)

### **23. Notice of Outcome**

Within ten (10) business days of the conclusion of the decision-making phase, the Title IX Coordinator provides the Parties with a written outcome letter. The outcome letter, written by the Decision-Maker will specify the finding for each alleged Policy violation, all applicable sanctions that VFMC is permitted to share pursuant to state or federal law, and a detailed rationale supporting the findings to the extent VFMC is permitted to share under applicable federal or state law.

The outcome letter will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no Party appeals.

The Title IX Coordinator will provide the Parties with the outcome letter simultaneously, or without significant time delay between notifications. The written outcome letter may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official VFMC records, or emailed to the Parties'

VFMC-issued or designated email account. Once mailed, emailed, and/or received in person, the outcome notification is presumptively delivered.

## **24. Appeal of the Determination**

The Coordinator will designate an Appeal Decision-Maker, a trained internal or external individual, to hear the appeal. No Appeal Decision-Maker(s) will have been previously involved in the Resolution Process for the Complaint, including in any supportive measure challenge or dismissal appeal that may have been decided earlier in the process.

### **A. Appeal Grounds**

Appeals are limited to the following grounds:

1. Procedural or substantive irregularity or error occurred that impacted the outcome of the hearing (e.g., material deviation from established procedures, etc.).
2. To consider new evidence, not reasonably available during the original investigation, that could affect the outcome of the matter. A summary of this new evidence and its potential impact must be included.
3. The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias that affected the outcome of the matter.
3. The sanctions fall outside the range of sanctions designated for this offense, considering the cumulative conduct/disciplinary record of the Respondent (applicable to sanctions of suspension, expulsion, or termination only).

### **B. Request for Appeal**

Any Party may submit a written request for appeal (“Request for Appeal”) to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome.

The Request for Appeal will be forwarded to the Appeal Decision-Maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the request will be denied by the Appeal Decision-Maker, and the Parties and their Advisors will be simultaneously (or without significant delay between them) notified in writing of the denial and the rationale.

If any of the information in the Request for Appeal meets the grounds in this Policy, then the Appeal Decision-Maker will notify all Parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-Maker.

All other Parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the Decision-Maker will be provided a copy of the Request for Appeal with the approved grounds and then be given five (5) business days to submit a response to the

portion of the appeal that was approved and involves them. The Appeal Decision-Maker will forward all responses, if any, to all Parties for review and comment within five (5) business days.

The non-appealing Party (if any) may also choose to appeal at this time. If so, that Request for Appeal will be reviewed by the Appeal Decision-Maker to determine if it meets the grounds in this Policy and will either be approved or denied. If approved, it will be forwarded to the Party who initially requested an appeal, the Coordinator, and the Investigator(s) and/or original Decision-Maker, as necessary, who will submit their responses, if any, within five (5) business days. Any such responses will be circulated for review and comment by all Parties. If denied, the Parties and their Advisors will be notified accordingly, in writing.

No Party may submit any new Requests for Appeal after this time period. The Appeal Decision-Maker will collect any additional information needed and all documentation regarding the approved appeal grounds, and the subsequent responses will be shared with the Appeal Decision-Maker, who will promptly render a decision.

### **C. Appeal Determination Process**

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Decision-Maker will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, making changes to the finding only when there is clear error, and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.

An appeal is not an opportunity for the Appeal Decision-Maker to substitute their judgment for that of the original Decision-Maker merely because they disagree with the finding and/or sanction(s).

The Appeal Decision-Maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.

### **D. Appeal Outcome**

An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-Maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-Maker or the Coordinator (as in cases of bias), the Appeal Decision-Maker may order a new investigation and/or a new determination with new Pool members serving in the Investigator and Decision-Maker roles.

A Notice of Appeal Outcome letter (“Appeal Outcome”) will be sent to all Parties simultaneously, or without significant time delay between notifications. The Appeal Outcome will specify the finding on each appeal ground, any specific instructions for remand or reconsideration, all sanction(s) that may result which VFMC is permitted to share according to

applicable federal or state law, and the rationale supporting the essential findings to the extent VFMC is permitted to share under applicable federal or state law.

Written notification may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official institutional records, or emailed to the Parties' VFMC-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, the Appeal Outcome will be presumptively delivered.

When an appeal results in no change to the original finding or sanction, that decision is final. However, when an appeal directs a remand that results in a different finding or sanction, the new finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

Once that appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted.

#### **E. Sanction Status During the Appeal**

Any sanctions imposed as a result of the determination are stayed (i.e., not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the emergency removal procedures (detailed above) for a "show cause" meeting on the justification for doing so must be permitted within two (2) business days of implementation.

### **25. Withdrawal or Resignation Before Complaint Resolution**

#### **A. Students**

Should a Student Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a Student Respondent withdraws from VFMC, the Resolution Process may continue, or the Title IX Coordinator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, VFMC will still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged sex discrimination, sex-based harassment, and/or retaliation.

Regardless of whether the Complaint is dismissed or pursued to completion of the Resolution Process, VFMC will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sex discrimination, sex-based harassment, and/or retaliation.

When a Student Respondent withdraws or registers for a leave of absence while the process is pending, the Student Respondent may not return to VFMC in any capacity until the Complaint is resolved and any sanctions imposed are satisfied. If the Student Respondent indicates they will not return, the Coordinator has discretion to dismiss the Complaint. The Registrar, Office of Admissions, and HR may be notified, accordingly.

If the Student Respondent takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely. If found in violation, that Student Respondent is not permitted to return to VFMC unless and until all sanctions, if any, have been satisfied.

## **B. Employees**

Should an Employee Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If an Employee Respondent leaves their employment with VFMC with unresolved allegations pending, the Resolution Process may continue, or the Title IX Coordinator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, VFMC may still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged sex discrimination, sex-based harassment, and/or retaliation.

When an Employee resigns and the Complaint is dismissed, the Employee may not return to VFMC in any capacity. The Registrar, Office of Admissions, Alumni Affairs, Campus Safety and HR will be notified, accordingly. A note will be placed in the Employee's file that they resigned with allegations pending and are not eligible for academic admission or rehire with VFMC. The records retained by the Title IX Coordinator will reflect that status.

## **26. Long-Term Remedies/Other Actions**

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented or Informal Resolution terms, in consultation with appropriate VFMC Officials, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the Parties and/or VFMC community that are intended to stop the sex discrimination, sex-based harassment, and/or retaliation, remedy the effects, and prevent recurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health service
- Referral to the Employee Assistance Program
- Course and registration adjustments, such as retroactive withdrawals
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for Employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation assistance
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term supportive measures may also be provided to the Parties even if no Policy violation is found.

When no Policy violation is found, the Title IX Coordinator will address any remedies VFMC owes the Respondent to ensure no effective denial of educational access.

Unless otherwise required by law, VFMC will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair VFMC's ability to provide these services.

### **27. Failure to Comply with Sanctions, Responsive Actions, and/or Informal Resolution Terms**

All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the final Decision-Maker(s), including the Appeal Panel or Decision-Maker or the Informal Resolution agreement.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or for any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from VFMC.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Title IX Coordinator's satisfaction.

### **28. Accommodations and Support During the Resolution Process**

#### **A. Disability Accommodations**

This Policy does not alter VFMC's obligations under federal and state disability laws, including the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. VFMC is committed to providing reasonable accommodations and support to qualified Students, Employees, or others with disabilities to ensure equal access to VFMC's Resolution Process.

Anyone needing such accommodations or support should contact the Title IX Coordinator, who will work with disability support as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation. VFMC will not affirmatively provide disability accommodations that a Party did not specifically request, even where the Party may be receiving accommodations for their disability from other VFMC programs and activities.

#### **B. Other Support**

VFMC will also address reasonable requests for support for the Parties and witnesses, including:

- Language services/Interpreters
- Access and training regarding use of technology throughout the Resolution Process
- Other support as deemed reasonable and necessary by the Title IX Coordinator to facilitate participation in the Resolution Process



## **29. Recordkeeping**

For a period of at least seven (7) years following the conclusion of the Resolution Process, VFMC will maintain records of:

- Each sex discrimination and sex-based harassment resolution process, including any Final Determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation.
- Any disciplinary sanctions imposed on the Respondent.
- Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to VFMC's education program or activity.
- Any appeal and the result therefrom.
- Any Informal Resolution and the result therefrom.
- All materials used to provide training to the Coordinator, the Coordinator and designees, Investigators, Decision-Makers, Appeal Decision-Makers, Informal Resolution Facilitators, and any person who is responsible for implementing VFMC's Resolution Process, or who has the authority to modify or terminate supportive measures. VFMC will make these training materials available for review upon request.
- All materials used to train all Employees consistent with the requirements in the Title IX Regulations.

VFMC will also maintain any and all records in accordance with applicable federal and state laws.

## **30. Revision of these Procedures**

The Title IX Coordinator will regularly review and update these procedures. VFMC reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If governing laws or regulations change, or court decisions alter the requirements in a way that impacts this document, this document will be construed to comply with the most recent governing laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the background federal and state laws that frame such policies and codes, generally.



## APPENDIX A: DEFINITIONS

The following additional definitions apply to the Title IX Policies and Procedures:

- Advisor. Any person chosen by a Party, or appointed by the institution, who may accompany the Party to all meetings related to the Resolution Process and advise the Party on that process.
- The Title IX Coordinator. At least one official is designated by VFMC to ensure ultimate oversight of compliance with Title IX and VFMC's Title IX program. The Coordinator is the person with primary responsibility for overseeing and enforcing the nondiscrimination Policies and Procedures. As used in these Policies and Procedures, "the Title IX Coordinator" also includes their designee(s).
- Appeal Decision-Maker. The person who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met, and directs responsive action(s), accordingly.
- Complainant. A Student or Employee who is alleged to have been subjected to conduct that could constitute sex discrimination, sex-based harassment, and/or retaliation, or Other Prohibited Conduct under the Policy; or a person other than a Student or Employee who is alleged to have been subjected to conduct that could constitute sex discrimination or sex-based harassment under the Policy and who was participating or attempting to participate in VFMC's Education Program or Activity at the time of the alleged sex discrimination, sex-based harassment, and/or retaliation, or Other Prohibited Conduct.
- Complaint. An oral or written request to VFMC that can objectively be understood as a request for VFMC to investigate and make a determination about the alleged Policy violation(s). A Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the VFMC investigate the allegation of sexual harassment.
- Confidential Employee.
  - An Employee whose communications are privileged or confidential under applicable federal or state law. The Employee's confidential status, for purposes of this definition, is only with respect to information received while the Employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
  - An Employee whom VFMC has designated as confidential under this Policy for the purpose of providing services to persons related to sex discrimination, sex-based harassment, and/or retaliation, or Other Prohibited Conduct. If the Employee also has a duty not associated with providing those services, the Employee's confidential status only applies with respect to information received about sex discrimination, sex-based harassment, and/or retaliation, or Other Prohibited Conduct in connection with providing those services; or
  - An Employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination, sex-based harassment, and/or retaliation, or Other Prohibited Conduct. The Employee's confidential status only applies with respect to information received while conducting the study.

- Day. A Business day when VFMC is in normal operation. All references in the Policy to days refer to Business days unless specifically noted as calendar days.
- Decision-Maker. The person who reviews evidence, determines relevance, and makes the Final Determination of whether the Policy has been violated and/or assigns sanctions.
- Education Program or Activity. Locations, events, or circumstances where VFMC exercises substantial control over both the Respondent and the context in which the sex discrimination, sex-based harassment, and/or retaliation, and/or Other Prohibited Conduct occurs and also includes any building owned or controlled by a Student organization that VFMC officially recognizes.
- Employee. A person employed by VFMC either full- or part-time, including Student Employees when acting within the scope of their employment.
- Final Determination. A conclusion by the standard of proof that the alleged conduct did or did not violate the Policy.
- Finding. A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).
- Informal Resolution. A resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a Final Determination in the Resolution Process.
- Investigation Report. The Investigator’s summary of all relevant evidence gathered during the investigation. Variations include the Draft Investigation Report and the Final Investigation Report.
- Investigator. The person(s) authorized by VFMC to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report.
- Knowledge. When VFMC receives Notice of conduct that reasonably may constitute sex-based harassment, sex discrimination, retaliation, or Other Prohibited Conduct in its Education Program or Activity. Actual Knowledge means notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any VFMC Official who has the authority to institute corrective measures on behalf of the VFMC.
- Mandated Reporter. A VFMC Employee who is obligated by this Policy to share Knowledge, Notice, and/or reports of sex discrimination, sex-based harassment, retaliation, and/or Other Prohibited Conduct with the Coordinator.
- Notice. When an Employee, Student, or third Party informs the Coordinator of the alleged occurrence of sex discrimination, sex-based harassment, retaliation, or Other Prohibited Conduct.
- Parties. The Complainant(s) and Respondent(s), collectively.
- Pregnancy or Related Conditions. Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.
- Relevant Evidence. Evidence that may aid a Decision-Maker in determining whether the alleged sex discrimination, sex-based harassment, retaliation, or Other Prohibited Conduct occurred, or in determining the credibility of the Parties or witnesses.
- Remedies. Typically, post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to VFMC’s Education Program or Activity.
- Resolution Process. The investigation and resolution of allegations of prohibited conduct under this Policy, including Informal Resolution and Formal Resolution.

- Respondent. A person who is alleged to have engaged in conduct that could constitute sex discrimination, sex-based harassment, retaliation, or Other Prohibited Conduct under this Policy.
- Sanction. A consequence imposed on a Respondent who is found to have violated this Policy.
- Sex. Sex assigned at birth, sex stereotypes, sex characteristics, pregnancy or related conditions, [institutionally protected, but not Title IX-governed], sexual orientation, and [institutionally protected, but not Title IX-governed], gender identity.
- Student. Any person who has gained admission to VFMC.

## APPENDIX B: STATEMENT OF THE PARTIES' RIGHTS

Under this Policy and corresponding Procedures, the Parties have the right to:

- An equitable investigation and resolution of all credible allegations of prohibited sex discrimination, sex-based harassment, retaliation, and Other Prohibited Conduct, when reported in good faith to VFMC officials.
- Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the specific misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated Policies and Procedures, and possible sanctions.
- Timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations.
- Be informed in advance of any VFMC public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- Have all personally identifiable information protected from VFMC's release to the public without consent, except to the extent permitted by law.
- Be treated with respect by VFMC officials.
- Have VFMC Policy and these Procedures followed without material deviation.
- Voluntarily agree to resolve allegations under this Policy through Informal Resolution without VFMC pressure, if Informal Resolution is approved by the Coordinator.
- Not be discouraged by VFMC officials from reporting sex discrimination, sex-based harassment, retaliation, and Other Prohibited Conduct to both on-campus and off-campus authorities. Under the 2020 rule, Title IX jurisdiction applies only to conduct occurring within the recipient's education program or activity.
- Be informed of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by VFMC in notifying such authorities, if the Party chooses to do so.
- Have allegations of violations of this Policy responded to promptly and with sensitivity by VFMC law enforcement, security, and/or other VFMC officials.
- Be informed of available supportive measures, such as counseling, advocacy, health care, and/or other services, both on-campus and in the community.
- A VFMC-implemented no-contact agreement or a no-trespass order against a non-affiliated third Party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct. Be informed of available assistance in changing academic, living, and/or employment situations after an alleged incident of sex discrimination, sex-based harassment, retaliation, and/or Other Prohibited Conduct if such changes are reasonably available. No formal report, or investigation, either institutional or criminal, needs to occur for this option to be available. Such actions may include, but are not limited to:
  - Referral to counseling, medical, and/or other healthcare services
  - Referral to an Employee Assistance Program
  - Referral to community-based service providers
  - Altering campus housing assignment(s)

- Altering work arrangements for Employees or Student-Employees
- Implementing contact restrictions (no contact orders) between the Parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Class schedule modifications, withdrawals, or leaves of absence
- Any other actions deemed appropriate by the Coordinator
- Have VFMC maintain supportive measures for as long as necessary, ensuring they remain confidential to the extent consistent with applicable law, provided confidentiality does not impair VFMC's ability to provide the supportive measures.
- Receive sufficiently advanced written notice of any VFMC meetings or interviews involving another Party, when possible.
- Identify and have the Investigator(s) and/or Decision-Maker question relevant available witnesses, including expert witnesses.
- Provide the Investigator(s)/Decision-Maker with a list of questions that, if deemed relevant and permissible by the Investigator(s)/Decision-Maker, may be asked of any Party or witness.
- Have Complainant's inadmissible sexual interests/prior sexual history or any Party's irrelevant character evidence excluded by the Decision-Maker.
- Access the relevant evidence obtained and respond to that evidence.
- A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- Receive a copy of all relevant and permissible evidence obtained during the investigation, subject to privacy limitations imposed by applicable federal and state law and be given five (5) business days to review and comment on the evidence.
- The right to receive a copy of the Final Investigation Report, including all factual, Policy, and/or credibility analyses performed, [and to have at least five (5) business days to review the report prior to the determination.
- Be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- Regular status updates on the investigation and/or Resolution Process.
- Have reports of alleged Policy violations addressed by Resolution Process Pool members who have received relevant annual training as required by law.
- Preservation of confidentiality/privacy, to the extent possible and permitted by law.
- Meetings, interviews, and/or hearings that are closed to the public.
- Petition that any VFMC representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- Be able to select an Advisor of their choice to accompany and assist the Party in all meetings and/or interviews associated with the Resolution Process.
- Apply the appropriate standard of proof, Preponderance of the Evidence, to make a Finding and Final Determination after an objective evaluation of all relevant and permissible evidence.
- Have an impact and/or mitigation statement considered by the Decision-Maker following a determination of responsibility for any allegation, but prior to sanctioning.
- Be promptly informed of the Resolution Process finding(s) and sanction(s) (if any), and be given a detailed rationale of the decision (including an explanation of how credibility

was assessed) in a written outcome letter delivered to the Parties simultaneously (without undue delay).

- Be informed in writing of when a VFMC decision is considered final and any changes to the Final Determination or sanction(s) that occur post outcome letter delivery.
- Be informed of the opportunity to appeal the Resolution Process finding(s) and sanction(s), and the procedures for doing so in accordance with VFMC's grounds for appeal.
- A fundamentally fair resolution as defined in these Procedures.

## APPENDIX C: PRIVACY, PRIVILEGE, AND CONFIDENTIALITY

For the purpose of this Policy, the terms Privacy, Confidentiality, and Privilege have distinct meanings.

- Privacy. Means that information related to a complaint will be shared with a limited number of VFMC Employees who “need to know” in order to assist in providing supportive measures or evaluating, investigating, or resolving the Complaint. All Employees who are involved in VFMC’s response to Notice under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with federal and applicable state law.
- Confidentiality. Exists in the context of laws or professional ethics (including Title IX) that protect certain relationships, including clinical care, mental health providers, and counselors. Confidentiality also applies to those designated by VFMC as Confidential Employees for purposes of reports under this Policy, regardless of legal or ethical protections. When a Complainant shares information with a Confidential Employee, the Confidential Employee does not need to disclose that information to the Coordinator. The Confidential Resource will, however, provide the Complainant with the Coordinator’s contact information, assist the Complainant in reporting, if desired, and provide them with information on how the Title IX and Equity Office can assist them. With respect to Confidential Employees, information may be disclosed when: (1) the reporting person gives written consent for its disclosure; (2) there is a concern that the person will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or persons with disabilities. Non-identifiable information may be shared by Confidential Employees for statistical tracking purposes as required by the Clery Act/Violence Against Women Act (VAWA). Other information may be shared as required by law.
- Privilege. Exists in the context of laws that protect certain relationships, including attorneys, spouses, and clergy. Privilege is maintained by a provider unless a court orders release or the holder of the Privilege (e.g., a client, spouse, parishioner) waives the protections of the Privilege. VFMC treats Employees who have the ability to have privileged communications as Confidential Employees.
- VFMC reserves the right to determine which VFMC officials have a legitimate educational interest in being informed about Student-related incidents that fall under this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).
- Only a small group of officials who need to know will typically be told about the Complaint. Information will be shared as necessary with Investigators, Decision-Makers, Appeal Decision-Makers, witnesses, the Parties, and the Parties’ Advisors. The circle of people with this knowledge will be kept as tight as possible to preserve the Parties’ rights and Privacy, and release is governed by the institution’s unauthorized disclosure provisions in this Policy.
- VFMC may contact Students’ parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the Student prior to doing so.

## **APPENDIX D:**

### **VIOLENCE RISK ASSESSMENT (VRA)**

Threat assessment is the process of assessing the actionability of violence by a person against another person or group following the issuance of a direct or conditional threat. A Violence Risk Assessment (VRA) is a broader term used to describe assessment of any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

Implementing a VRA requires specific training. It is typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, Student conduct professionals, and/or other risk management team members.

A VRA occurs in collaboration with VFMC's risk management team and must be understood as an ongoing process, rather than as a single evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations. It is supported by research from law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use(s) an evidence-based process consisting of:

- An appraisal of risk factors that escalate the potential for violence.
- A determination of stabilizing influences, or protective factors, that reduce the risk of violence.
- A contextual analysis of violence risk by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of the threat; fixation and focus on target; grievance collection; and action and time imperative for violence.
- The application of intervention and management approaches to reduce the risk of violence.

To assess a person's level of violence risk, the Coordinator will initiate the VRA process through VFMC's risk assessment team. This team will assign a trained person(s) to perform the assessment, according to the specific nature of the complaint.

The assessor(s) will follow the process for conducting a VRA as outlined in the TAT manual, and will rely on a consistent, research-based, reliable system that allows for the evaluation of the risk levels.

Some examples of formalized approaches to the VRA process include the NABITA Risk Rubric, the Structured Interview for Violence Risk Assessment (SIVRA-35), Violence Risk Assessment of the Written Word (VRAWW), Workplace Assessment of Violence Risk (WAVR-21), Historical Clinical Risk Management (HCR-20), and MOSAIC.



The VRA is conducted independently from the Resolution Process, informed by it, but free from outcome pressure. The person(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The risk assessment team member(s) conduct(s) a VRA process and makes a recommendation to the Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or imminent and serious threat to the health and/or safety of a person or the community.

In some circumstances, the Coordinator may determine that a VRA should be conducted by the risk assessment team as part of initial evaluation of a Complaint under this Policy. A VRA can aid in critical and/or required determinations, including:

- Whether to remove the Respondent on an emergency basis because of an immediate threat to a person or the community's health/safety (Emergency Removal),
- Whether the Coordinator should pursue/initiate a Complaint absent a willing/able Complainant,
- Whether the scope of an investigation should include an incident, and/or pattern of misconduct, and/or climate of discrimination or harassment,
- To help identify potential predatory conduct,
- To help assess/identify grooming behaviors,
- Whether it is reasonable to try to resolve a Complaint through Informal Resolution, and, if so, what approach may be most successful,
- Whether to impose transcript notation or communicate with a transfer institution about a Respondent,
- Assessment of appropriate sanctions/remedies (to be applied post-determination),
- Whether a Clery Act Timely Warning/Trespass order/Campus Barring is needed.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Institutions may be compelled to act on alleged Employee misconduct irrespective of a Complainant's wishes.

## APPENDIX E: TITLE IX POLICY STATEMENT

VFMC adheres to all applicable federal, state, and local civil rights laws prohibiting discrimination and harassment in employment and education. VFMC does not discriminate in its admissions practices, employment practices, or educational programs or activities on the basis of sex, except as may be permitted by law. As a recipient of federal financial assistance for education activities, VFMC is required by Title IX of the Education Amendments of 1972 (Title IX) to ensure that all of its education programs and activities do not discriminate on the basis of sex.

Sex includes sex assigned at birth, sex stereotypes, sex characteristics, [institutionally protected, but not Title IX-governed] gender identity, [institutionally protected, but not Title IX-governed] sexual orientation, and pregnancy or related conditions. Sex discrimination is prohibited under Title IX and by VFMC Policy, and it includes sex-based harassment, sexual assault, dating and domestic violence, stalking, quid pro quo harassment, hostile environment harassment, disparate treatment, and disparate impact.

VFMC also prohibits retaliation against any person opposing discrimination or harassment or participating in any internal or external investigation or complaint process related to allegations of sex discrimination.

Any VFMC faculty member, Employee, or Student who acts to deny, deprive, or limit the educational, employment, residential, or social access, opportunities, and/or benefits of any member of the VFMC community on the basis of sex is in violation of the Title IX Policy.

Any person may report sex discrimination (whether or not the person reporting is alleged to have experienced the conduct) in person, by mail, by telephone, by video, or by email, using the contact information listed for the Coordinator (below). A report may be made at any time (including during non-business hours) by contacting the Title IX and Equity Office.

Questions regarding Title IX, including its application and/or concerns about noncompliance, should be directed to the Coordinator of Title IX, Section 504, and Equal Opportunity. For a complete copy of the Policy or more information, please visit <https://vfmccollege.edu/about/college-policies/> or contact the Coordinator of Title IX, Section 504, and Equal Opportunity.

- Dr. Jesse Phillips  
Dean of College Services & Title IX Coordinator  
1001 Eagle Road, Medenbach Hall  
Wayne, PA 19087  
(610) 989-1467  
[jphillips@vfmac.edu](mailto:jphillips@vfmac.edu)

A person may also file a complaint with the appropriate federal, state, or local agency within the time frame required by law. Depending upon the nature of the complaint, the appropriate agency may be the U.S. Department of Education Office for Civil Rights (OCR), the Department of

Justice, the Equal Employment Opportunity Commission (EEOC), and/or another appropriate federal or state agency.

- Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
Email: [ocr@ed.gov](mailto:ocr@ed.gov)  
TDD#: (877) 521-2172

For complaints involving Employee-on-Employee conduct: Equal Employment Opportunity Commission (EEOC)

- EEOC Regional Office (Philadelphia District Office)  
801 Market Street, Suite 1000  
Philadelphia, PA 19107-3126  
[PDOContact@eeoc.gov](mailto:PDOContact@eeoc.gov)  
1 (800) 669-4000 / (267) 589-9700

Within any Resolution Process related to this Policy, VFMC provides reasonable accommodations to persons with disabilities and religious accommodations when that accommodation is consistent with federal and applicable state law.

## **APPENDIX F: RECORD MAINTENANCE AND ACCESS POLICY**

### **Policy Scope**

This Policy covers records maintained in any medium that are created pursuant to VFMC's Title IX Policy and/or the regular business of VFMC's Title IX and Equity Office. All such records are considered private or confidential by the Title IX and Equity Office, in accordance with FERPA and the directive from the Department of Education to maintain the confidentiality of records related to sex discrimination, sex-based harassment, and retaliation. These records may be shared internally with those who have a legitimate educational interest and will be shared with the Parties to a Complaint under applicable federal and/or state law. The Title IX and Equity Office controls the dissemination and sharing of any records under its control.

### **Types of Records Covered Under this Policy**

Records pertaining to the Title IX Policy include, but are not limited to:

- The Complaint
- NOIAs
- Documentation of notice to the institution, including incident reports
- Anonymous reports later linked to a specific incident involving known Parties
- Any documentation supporting the initial evaluation
- Investigation-related evidence (e.g., physical and documentary evidence collected and interview transcripts)
- Dismissal-related documentation and appeals
- Documentation related to Emergency Removals, leaves, and interim actions and challenges
- Documentation related to the Resolution Process
- The Final Investigation Report and file
- Remedy-related documentation
- Supportive measures-related documentation
- Appeal-related documentation
- Informal Resolution records
- Outcome Notices
- Any other records typically maintained by VFMC as part of the Complaint file

### **Drafts and Working Files**

Preliminary drafts and “working files” are not considered records that VFMC must maintain, and these are typically destroyed during the course of an investigation or at the conclusion of the Resolution Process. They are preliminary versions of records and other documents that do not state a final position on the subject matter reviewed or are not considered to be in final form by their author and/or the Coordinator. An example of a “working file” would be the Investigator's notes made during an interview on topics that they want to revisit in subsequent interviews. Sole possession records maintained as such in accordance with FERPA are also included in this category. All drafts of investigation reports shared with the Parties are maintained.

### **Attorney Work-Product**

Communications from the Title IX and Equity Office or its designees with VFMC's legal counsel may be work product protected by attorney-client privilege. These privileged communications are not considered records to be maintained by the Title IX and Equity Office or accessible under this Policy unless the Coordinator, in consultation with legal counsel as necessary, determines that these communications should be included as accessible records.

### **Record Storage**

Records may be created and maintained in different media formats; this Policy applies to all records, irrespective of format. All records created pursuant to the Policy, as defined above, must be stored in digital format and maintained by the Title IX and Equity Office. The complete file must be transferred to the Title IX and Equity Office, typically within ten (10) business days of the complaint resolution (including any appeal), if the file is not already maintained within the Title IX and Equity Office. Security protocols must be in place to preserve the integrity and privacy of any parts of any record that are maintained in the Title IX and Equity Office during the pendency of an investigation.

The Title IX and Equity Office will store all records created pursuant to the Policy, regardless of the identities of the Parties. Any extra (non-essential) copies of the records (both digital and paper) must be destroyed.

A copy of records showing compliance with any applicable Clery Act/Violence Against Women Act (VAWA) requirements will be maintained along with the Complaint file by the Title IX and Equity Office.

### **Title IX Training Materials**

VFMC will also maintain copies of the slides or other materials from all Title IX training for the Resolution Process Pool members, the Coordinator, and Employees. Trainings are posted online.

### **Record Retention**

All records created and maintained pursuant to the Policy will be retained by the Title IX and Equity Office for a minimum of seven (7) years in database, digital, and/or paper form. Except for records pertaining to Title IX and the Clery Act/VAWA, the Coordinator may authorize destruction or expungement acting under their own discretion, or in accordance with a duly executed and binding claim settlement and/or by court or government order.

### **Record Access**

Access to records created pursuant to the Policy or housed in the Title IX and Equity Office is strictly limited to the Coordinator and any person they authorize in writing, at their discretion, or via permission levels within the database. Those who are granted broad access to the Title IX and Equity Office records are expected to access only those pertinent to their scope, work, or specific assignment. Anyone who accesses such records without proper authorization may be subject to an investigation and possible discipline/sanction. The discipline/sanction for unauthorized access

of records covered by this Policy will be at the discretion of the appropriate disciplinary authority, consistent with other relevant VFMC policies and procedures.

Student Parties may request access to their complaint file. VFMC will provide access or a copy within 45 calendar days of the request. Appropriate redactions of personally identifiable information may be made before inspection, or any copy is shared.

During the investigation, materials may be shared with the Parties using secure file transmission software. The Title IX and Equity Office will watermark any such file with the watermark identifying the role of the person in the process (e.g., Complainant, Respondent, Decision-Maker, Complainant's Advisor) before sharing.

VFMC will maintain an access log of each case file, showing when and by whom it was accessed and for what purpose.

### **Record Expungement**

All Student conduct records and those that fall under this Policy are maintained by VFMC for seven (7) years from the time of their creation, except those that result in separation from VFMC (suspension or expulsion), which are maintained indefinitely.

The Student or alumni requesting record expungement should make this request to the Coordinator in writing including a statement reflecting on the incident(s), its impact on the Student and the community, and an explanation as to why the record should be expunged. Recommendation letters may be included if desired.

The Coordinator will review relevant case details and determine if the case(s) meets the requirements below. The Coordinator will submit the request to the Dean of Students, who will determine if the request is approved or denied. The Dean of Students or their designee will issue a decision letter to the requester regarding the request. All decisions are final and not eligible for appeal or to be submitted for a second review.

Based on the conditions and procedures below, Parties may request to have an individual case sealed from third Parties within the seven (7) year window. Note: this Policy does not apply to records held by other departments or programs (i.e., Campus Safety, Academic Honor Council, Human Resources, Academic Affairs).

### **Eligibility for Expungement of Records**

A Student or alumni must meet the following criteria in order for a case to be considered:

- Be officially enrolled in their final semester (a fall semester request will be considered when the case under consideration is the sole case in the Student's record) or already graduated;
- Have no outstanding or incomplete sanctions (including probation)

### Case Requirements

Each case must meet the following requirements in order to be considered:

- Adjudication is complete;
- Sanctions did not result in suspension, expulsion or termination from VFMC or Housing;
- All sanctions associated with the case were completed on time.

### **Record Security**

The Coordinator is expected to maintain appropriate security practices for all records, including password protection, lock and key, and other barriers to access as appropriate. Record security should include protection from floods, fire, and other potential emergencies. Clothing, forensic, and other physical evidence should be securely stored in the Title IX and Equity Office or another appropriate secure location. All physical evidence will be maintained in a facility that is reasonably protected from flood and fire. A catalog of all physical evidence will be retained with the Complaint file.

**APPENDIX G:**  
**INVESTIGATION AND DECISION-MAKING PROCESS IN THE FORMAL RESOLUTION PROCEDURES**

The Title IX grievance process includes a live hearing. During this hearing, each Party's Advisor is permitted to cross-examine the other Party and any witnesses. Cross-examination must be conducted directly, orally, and in real time by the Party's Advisor and never by the Party personally. If a Party does not have an Advisor present at the live hearing, the institution will provide one at no cost to conduct cross-examination on behalf of that Party. The Decision-Maker(s) cannot draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the live hearing or refusal to answer cross-examination questions.



**APPENDIX H:**  
**OFF-CAMPUS RESOURCES**

<b><u>Law Enforcement</u></b>	<b><u>Phone Contact</u></b>
Emergency Services	911
Radnor Township	(610) 688-5600 ext. 109
Lower Merion Township	(610) 649-1000
Upper Merion Township	(610) 265-3232
Tredyffrin Township	(610) 644-3221
Easttown Township	(610) 647-1440
Delaware County District Attorney	(610) 891-4161
Chester County District Attorney	(610) 344-6801
<b><u>Community Resources</u></b>	<b><u>Phone Contact</u></b>
Delaware County Victim Assistance Center	(610) 566-4342
Philadelphia Sexual Assault Response Center	(215) 800-1589
Domestic Abuse Project of Delaware County	(610) 565-4590
Legal Aid of Southeastern Pennsylvania	(877) 429-5994
Delaware County Bar Association	(610) 566-6625
Chester County Bar Association	(610) 692-1889