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I. Purpose

These procedures provide a prompt and equitable resolution for complaints or reports of discrimination based on race, sex, color, national origin, religion, age, veteran status, sexual orientation, gender identity, pregnancy, genetic information, against otherwise qualified persons with disabilities, or based on any other status protected by law, including complaints of harassment, or sexual harassment prohibited by Virginia State University's ("VSU" or "University") *Discrimination, Harassment and Retaliation Prevention Policy*.

All students, faculty, and staff who believe they have been subjected to discrimination or harassment, including sexual harassment, may file a complaint with the University as outlined in these procedures. These procedures also address any complaints or reports of retaliation against individuals who have filed complaints or reports of discrimination, who have opposed discriminatory practices, and those who have testified or otherwise participated in investigations or proceedings arising from complaints or reports of discrimination.

II. Authority, Responsibility, and Duties

These procedures govern the process for addressing complaints or reports of discrimination, harassment and retaliation from University employees (faculty, administrators, and staff) and students when on the campus of Virginia State University, on other University property, or in facilities, owned or controlled by Virginia State University, or being used for a university-related event. Questions regarding the application of these procedures should be directed to the Office of EEO & Title IX Compliance.

III. The Role of the Office of EEO & Title IX Compliance

The Office of EEO & Title IX Compliance (EEO/TIXC) is charged with coordinating the University's compliance with policy and federal and state civil rights laws. It ensures (1) procedures for processing complaints of discrimination are consistent with policy; (2) the investigation and resolution of reported allegations of discrimination, harassment and retaliation are done in a manner that provides prompt, fair and equitable treatment of parties; (3) reasonable steps are taken, as appropriate, to stop the discriminatory conduct and prevent its recurrence; (4) training opportunities are provided for employees and students to enhance their understanding of policies, procedures, and the consequences of misconduct; and (5) posting and dissemination (published online and available in print across campus) of policies and procedures that are accessible to employees and students. The EEO/TIXC's staff does not serve as advocates for either the complainant or the respondent, but will offer to coordinate with other University leadership, when appropriate, to implement supportive measures.

IV. How to Initiate the Grievance Process

- A. The University encourages anyone in the campus community who experiences or becomes aware of an incident of discrimination, harassment, sexual harassment, or retaliation to promptly report the incident to the EEO/TIXC.
- B. Complaints or reports may be made orally or in writing, including by electronic mail. The faxing of written complaints to the Office of EEO & Title IX Compliance is not available at this time. Initially, at a minimum, the complaint should include (1) the complainant's name and contact information; (2) the name of the respondent(s); (3) an explanation of the conduct believed to constitute a policy violation with approximate date(s) of when and where these actions occurred; and (4) a brief description of why the complainant believes that the alleged conduct at issue is based on one or more protected characteristics, i.e. race, sex, color, national origin, religion, age, disability, veteran status, sexual orientation, or gender identity.
- C. The complaint must be filed with the EEO/TIXC within calendar 30 days of the most recent alleged prohibited discriminatory or retaliatory conduct. EEO/TIXC retains discretion to accept complaints filed outside of the 30-day timeframe for good cause. If the complaint involves allegations of employment discrimination, the complainant may also file a formal charge of discrimination, harassment, and/or retaliation with a state or federal agency authorized by law to receive such complaints. Filing a complaint internally with the University does not extend or postpone the deadline for filing with external agencies.
- D. If a reasonable accommodation or other assistance is needed to file a complaint, please contact the EEO/TIXC at (804) 524-5371 or 1007. EEO/TIXC will not accept complaints that are not in writing or have not been reduced to writing with the assistance of an EEO/TIXC employee.
- E. As will be the case with all reports, however made, the reporting individual will be contacted promptly, but in no case more than three (3) business days from the date of the report, for an interview with an EEO/TIXC staff member or other assigned designee.
- F. Individuals receiving reports or complaints of discrimination, sexual harassment, or retaliation should immediately notify EEO/TIXC and should not undertake any independent efforts to determine whether or not the report or complaint has merit before reporting it to EEO/TIXC.

V. Promptness

All allegations are acted upon promptly by the University once it has a formal complaint. A complaint typically takes from 15 to 60 business days to resolve. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the University will avoid all undue delays within its control. Continuances and extensions will be allowed for good cause. The University will provide written notice to the parties in case of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

VI. Use of an Advisor

Complainants and respondents may be accompanied and assisted by an advisor at meetings, investigation interviews, and, if applicable, a subsequent administrative review. An advisor is an individual of the complainant's or respondent's choosing, including an attorney, to provide support during the grievance process. The parties are not limited to one advisor throughout the process; however, only one advisor may be present at each meeting or interview or hearing, if applicable. Accommodations, including scheduling of interviews or hearings, will not be made for advisors if the accommodation creates an unduly delay in the process, which is considered to be a delay of three (3) or more business days. During meetings, interviews, and the investigation process, advisors may not speak for or answer questions on behalf of their party, although they may ask to take a break briefly to provide consultation.

VII. Standard of Evidence

The preponderance of the evidence standard will be applied to the investigation of conduct subject to the Discrimination, Harassment and Retaliation Policy. The "preponderance of the evidence" standard requires that the majority of credible evidence, in total, make it more likely than not the allegation is either true or not true.

VIII. Initial Assessment

Upon receipt of a complaint, an assessment of the allegations will be made to determine jurisdiction and whether supportive measures pending resolution of the matter are appropriate. Supportive measures may include, but are not limited to, a safety plan, schedule change, temporary removal of the respondent from the workplace or academic program, if warranted, and other workplace and/or academic adjustments. In making this assessment, EEO/TIXC will consider the totality of the circumstances, the nature and severity of the allegations, and whether the allegations implicate a potential, ongoing safety threat to the complainant or the community. EEO/TIXC will consult with University

administrators, as appropriate. The quality of information provided in support of the allegations will be assessed to determine whether sufficient evidence or facts exist to justify the need for a full investigation and bringing into play further steps of the complaint process.

IX. University Administrative Investigation and Resolution Methods

There are two possible methods for the resolution of a complaint alleging violations of the *Discrimination, Harassment and Retaliation Prevention Policy*: informal and formal resolution. The main differences between the methods are: the informal method is more flexible in terms of possible outcomes, less adversarial as it involves voluntary interactions between the parties, the parties work in a collaborative fashion to try and achieve an outcome that is mutually acceptable, and it does not involve a formal investigation or hearing. An EEO/TIXC staff member will explain the informal and formal procedures to both the complainant and the respondent, if known, during the initial intake process.

A. Informal Resolution

- 1) A complainant may request an informal resolution process following the filing of a formal complaint. The University may not offer an informal resolution process unless a formal complaint is filed.
- 2) A complainant may proceed with the informal resolution option when the alleged violations do not involve sexual harassment or other forms of sexual misconduct, and the respondent is not in a position of authority over the complainant, as determined by EEO/TIXC. The appropriateness of the resolution methods will be guided also by the following:
 - All undergraduate, graduate, and professional students at the University are subject to the University's student code of conduct as outlined in the Student Handbook/Student Code of Conduct.
 - Faculty members at the University are subject to the rules included in the Faculty Handbook and other University and Virginia Department of Human Resource Management policies.
 - Staff (non-faculty) members are subject to the rules included in University and Virginia Department of Human Resource Management policies.
- 3) Both parties must voluntarily agree to participate in an informal resolution process, and if they do, the formal complaint resolution process stops. Either party may

withdraw from the informal process and resume the formal complaint resolution process at any time before an informal resolution is reached.

- 4) A preliminary investigation and resolution process will be conducted to the extent fact-finding (gathering of documentary evidence and interview of any witnesses) is needed to resolve the conflict and to protect the interests of the parties, the University, and the campus community. Typically, a preliminary investigation and resolution will be completed within 10 to 15 business days of receipt of notice.
- 5) At any time after the commencement of the informal resolution process, an EEO/TIXC staff member or other designated official may determine that the informal resolution process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the formal process. This determination is not subject to appeal.
- 6) Options for resolution may include any means that are available and agreeable to the parties: for example one-on-one communication, or use of a trained mediator or third-party neutral facilitator, who may be an EEO/TIXC staff member or a designee. Pursuing the informal resolution method does not preclude subsequent recourse to the formal procedures if the attempts at informal resolution fail to adequately resolve the reported concern.
- 7) All parties will be provided written notification of the resolution of the complaint through the informal procedures, including whether the preliminary investigation substantiated a policy violation by a preponderance of the evidence. The parties will also be afforded the opportunity to get clarification on any aspects of the decision letter. When it is determined there is no reasonable cause to believe a policy violation occurred, the investigation will end.
- 8) If the complaint is successfully resolved informally, the parties will sign a resolution agreement prepared by EEO/TIXC, setting forth the agreed-upon terms and the case will be considered closed. Upon the parties' execution of the agreement, EEO/TIXC will maintain the original complaint and executed agreement in accordance with the University's record retention policies and state and federal laws. Copies of the complaint and the agreement will be provided to the complainant and respondent upon request.
- 9) EEO/TIXC will ensure that any resolution of a complaint through the informal procedure will adequately address the concerns of the complainant, as well as the

rights of the respondent and the responsibility of the University to prevent, address, and remedy alleged violations of the *Discrimination, Harassment and Retaliation Prevention Policy*.

B. Formal Resolution

1) Formal Resolution is commenced when:

- a. A written complaint or report is submitted to EEO/TIXC that a student or an employee has engaged in one or more instances of conduct in violation of the *Discrimination, Harassment and Retaliation Prevention Policy* and requests, at any time, an investigation and disciplinary action; or
- b. An informal resolution does not adequately resolve a reported incident of misconduct and preliminary investigation results indicate that reasonable cause exists; or
- c. There is a potential threat to the health and safety of the complainant and/or other members of the University community, notwithstanding the complainant's request that personally-identifying information not be shared with the respondent, that no investigation be pursued, and/or that no disciplinary action be taken.

2) Notice of Allegations

Upon receipt of a Formal Complaint, an EEO/TIXC staff member or a designee will provide to the parties a written notice that includes:

- a. Information about the University's Formal Complaint Resolution Process; and
- b. Notice of the allegations shall include (a) the identities of the parties involved in the incident, if known; (b) the conduct allegedly constituting a policy violation; and (c) the date and location of the alleged incident, if known.
- c. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- d. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect, review evidence, and be present at meetings.

- e. The written notice must warn the parties that they are prohibited from knowingly making false statements or knowingly submitting false information during the investigation and resolution process.
- f. The notice must be given as soon as practicable and allow the parties sufficient time to prepare responses before any initial investigation interview.

3) Investigation Procedures

- a. The EEO/TIXC staff member or designee will discuss the complaint with the complainant and the respondent as appropriate, including providing information about the formal investigation procedure and other resources.
- b. The EEO/TIXC staff member or designee also will confirm that the matter involves an alleged violation of the Discrimination, Harassment and Retaliation Prevention Policy and, offer to assist the complainant and, as appropriate, the respondent, in finding appropriate on-campus and off-campus resources.
- c. The EEO/TIXC will designate an investigator to conduct a prompt, adequate, reliable, and impartial investigation of the complaint. All investigations covered by these procedures will be overseen by EEO/TIXC.
- d. If, at any point during the course of the investigation, the Investigator decides to investigate allegations that are not included in the original notice, it will provide notice of the additional allegations to the parties.
- e. The EEO/TIXC or designee will provide written notice of the commencement of an investigation to the complainant and the respondent. Such notice will (1) identify the complainant and the respondent; (2) specify the date, time (if known), location, and nature of the alleged conduct; (3) identify potential policy violation(s); (4) identify the Investigator; (5) include information about the parties' respective expectations under the policy and these procedures; (6) explain the prohibition against retaliation; (7) instruct the parties to preserve any potentially relevant evidence in any format; (8) inform the parties how to challenge participation by the Investigator on the basis of bias or a conflict of interest; and (9) provide a copy of the policy and these procedures or web link to access the policy online.

- f. Both complainant and respondent will have the same opportunity to review and respond to evidence obtained during an investigation and will be afforded the same opportunity to review and provide comment to the investigator about the written investigation report before it is finalized.
- g. The respondent is presumed to be not responsible; this presumption may be overcome only where the Investigator or EEO/TIXC concludes that there is sufficient evidence to support a finding that the respondent violated the *Discrimination, Harassment and Retaliation Prevention Policy*.
- h. In determining whether alleged conduct created a hostile environment, the Investigator or EEO/TIXC shall consider not only whether the conduct was unwelcomed by the complainant, but also whether the conduct was severe or pervasive and whether a reasonable person similarly situated to the complainant would have perceived the conduct to be objectively offensive.

4) Investigation Report

- a. The Investigator shall prepare a written draft of the investigation report, which shall be provided to both the complainant and the respondent concurrently by the Investigator or EEO/TIXC for review and comments. The parties will have ten (10) business days to provide written comments to EEO/TIXC or designee.
- b. If the Investigator or EEO/TIXC finds by a preponderance of the evidence that a violation of the *Discrimination, Harassment and Retaliation Prevention Policy* did not occur, the matter will be documented as closed. The respondent and the complainant will be advised of their right to appeal the investigation report based on one or more of the grounds for appeal.
- c. If the Investigator or EEO/TIXC finds by a preponderance of the evidence that violation of the *Discrimination, Harassment and Retaliation Prevention Policy* did occur, the written report will contain recommendations for steps that should be taken to prevent recurrence of any such violation and, as appropriate, remedies for the complainant and the community. The written report also will contain the recommendation on sanctions.
- d. The Investigator or EEO/TIXC shall provide the written report to both the complainant and respondent. The respondent and the complainant will be advised of their right to appeal any finding or recommended sanction. If the

respondent does not contest the finding or recommended sanction, the respondent shall sign a statement acknowledging no contest to the finding and the recommended sanction.

- e. The completed investigation report will be provided to the appropriate office administrator to determine and impose appropriate sanctions, as described in the section below, for conduct found in violation of the *Discrimination, Harassment and Retaliation Prevention Policy*.

X. Sanctions

- A. Sanctions for students will be determined and administered by the Office of Student Conduct in accordance with the student code of conduct policies and other University policies, and where necessary or appropriate, in consultation with other administrators. Sanctions shall be as provided for in the student code of conduct and/or student handbook.
- B. Sanctions for teaching and research faculty, including non-teaching faculty and other non-classified staff, will be determined by the College Dean and Department Chair, as appropriate, with assistance from EEO/TIXC to ensure the consistent application of these procedures and other appropriate policies. Sanctions include, but are not limited to, counseling, training, reassignment, suspension, or termination of employment.
- C. Sanctions for classified employees will be determined by the Director of Human Resources along with the appropriate supervising manager or designee. Sanctions may include, but are not limited to, verbal counseling, additional training, issuance of a Written Notice, or suspension or termination of employment in accordance with the *Standards of Conduct Policy, 1.60*.
- D. Contractors shall assign for duty only employees acceptable to the University. The University reserves the right to require the Contractor to remove from the campus any employee who violates the University's *Discrimination, Harassment and Retaliation Prevention Policy*.
- E. Visitors (including, but not limited to, students participating in camp programs, non-degree seeking students, exchange students, and other students taking courses or participating in programs at VSU), who violate the University's *Discrimination, Harassment and Retaliation Prevention Policy* will be directed to immediately leave the campus and may be subject to a permanent ban from campus.

- F. A determination regarding the imposition of sanctions shall be made within fifteen (15) calendar days of the date of the Investigator's or EEO/TIXC's final investigative report, if neither the complainant nor the respondent requests an appeal. If an appeal is requested, sanctions, if any, shall be imposed within fifteen (15) business days of the final decision of the appellate officer. If extension of the time frame for sanctions to be imposed beyond 15 days is necessary, all parties will be notified of the expected time for imposition of sanctions. Respondent shall be informed in writing of any sanctions imposed for violation of *Discrimination, Harassment and Retaliation Prevention Policy* by the individual imposing the sanctions within five (5) business days of the determination.
- G. The EEO/TIXC or designee shall be provided a copy of such written notification. The EEO/TIXC or designee will disclose to the complainant the notification provided to the respondent of the sanctions that directly relate to the complainant.

XI. Appeal Procedures

- A. A complainant or respondent desiring to appeal the final investigation report and/or the sanction decision shall file a written request for appeal with the EEO/TIXC within ten (10) business days of receipt of the final investigation report. The following are the only authorized grounds for appeal:
 - i. A material procedural irregularity that affected the outcome;
 - ii. New evidence that was not reasonably available to the appealing party at the time of the investigation, that could affect the outcome;
 - iii. The EEO/TIXC, Investigator, or Administrative decision maker had a conflict of interest or was biased for or against complainants or respondents generally, or the individual complainant or respondent in particular, that affected the outcome of the matter. The notice of appeal must describe with specificity the conflict of interest or bias and how it allegedly affected the outcome;
 - iv. The determination cannot reasonably be supported by the evidence; and
 - v. The severity of the sanction.
- B. The burden rests with the appealing party to provide information the party wants the Appellate Officer to consider for granting the appeal and for demonstrating why the finding or sanction decision should be altered or repealed.

- C. Upon receipt of an appeal, the EEO/TIXC or designee will:
- 1) Notify the other party in writing when the appeal is filed and implement appeal procedures equally for both parties;
 - 2) Ensure that the decision-maker for the appeal is not the same person as the decision-maker that reached the original determination regarding responsibility or dismissal, the investigator(s), or the EEO/TIXC.
 - 3) Ensure that the decision-maker for the appeal does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and that the decision-maker for the appeal has received the appropriate and necessary training; and
 - 4) Give both parties a reasonable equal opportunity to submit a written statement in support of, or challenging, the outcome.
- D. The EEO/TIXC or designee will provide a copy of the appeal to the non-appealing party. The non-appealing party may submit a written statement within ten (10) business days which may seek to affirm the initial decision and/or respond to the appeal statement.
- E. The EEO/TIXC or designee will provide a copy of the appeal to the appropriate appeal authority or their designee.
- Where the complainant or respondent is a student, the Appellate Officers are the Vice President and Associate Vice President for Student Affairs or their designee.
 - Where the complainant or respondent is an employee, including classified, administrative and other non-teaching professional faculty, the Appellate Officers may be the Vice President for Administration/Chief of Staff, the Provost/Vice President for Academic Affairs, an Administrator in Human Resources or their designee.
 - Where the complainant or respondent is academic faculty, the Appellate Officers are the Provost/Vice President for Academic Affairs or their designee.
- F. The EEO/TIXC will maintain and publish a list of Appeals Officers and their designees. Where the Appeals Officers delegate their responsibility, they must

inform the EEO/TIXC of their designees on an annual basis prior to the start of the academic year to ensure adequate time to provide training.

- G. The Appellate Officer will issue a written decision that includes the rationale for the result within a reasonably prompt time frame, typically within 15 calendar days following receipt of all appellate materials. The appeal will determine whether an error was made on the grounds alleged in the appeal statement. The written appeal decision shall include: (i) a description of the appellant's grounds for appeal; (ii) whether such grounds are accepted or rejected and the rationale for such determination; (iii) a determination based on the record whether the investigation findings and recommended actions established by a preponderance of the evidence are both warranted and appropriate under all the facts and circumstances, (iv) the decision to uphold or reject the established findings and/or the recommended sanction(s) and the rationale for such determination. The written appeal decision will be given simultaneously to both parties within five (5) business days. The written decision of the Appellate Officer will conclude the appeal.
- H. The Appellate Officer will do the following when a relevant ground for an appeal is determined and supported by appellate materials:
- 1) In cases where there has been a material procedural error sufficient to affect the determination decision posed, the Appellate Officer will remand the case to the EEO/TIXC with instructions, as appropriate.
 - 2) In cases where the Appellate Officer deems there is new evidence that was not reasonably available to the appealing party at the time of the investigation or the determination decision that could affect the outcome of the matter, the Appellate Officer will remand the case to EEO/TIXC with instructions, as appropriate.
 - 3) In cases where the Appellate Officer deems the EEO/TIXC or Investigator had a conflict of interest or bias for or against the complainant or respondent that affected the outcome of the matter, the Appellate Officer will refer the case to the University President or designee to assure the University provides a resolution process without conflict of interest or bias.
 - 4) In cases where the Appellate Officer deems the determination, including sanctions, cannot reasonably be supported by the evidence, the Appellate Officer will reverse the determination decision.

- I. An employee receiving the sanction of suspension or dismissal may, at the discretion of the appropriate supervising administrator, continue working while the case is on appeal.
- J. A no-contact order may be in effect during the appeal process. The complainant or the respondent violating the no-contact order may be subject to additional disciplinary action.

XII. Retaliation


No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the University's discrimination, harassment and retaliation policy, this Formal Complaint Resolution Process, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

XIII. Documentation and Record-keeping

The EEO/TIXC shall maintain the records of grievances relating to these procedures for three (3) years.

These procedures will be reviewed annually and may be revised by University Legal Counsel.

APPROVED BY: _____



PRESIDENT

DATE: _____

4/12/2021