

# UMW'S POLICY

## **Coverage:**

- Governs the University response to reported conduct involving discrimination on the basis of *sex or gender*.

## **Applicable Procedures:**

- Violations determined by the “Preponderance of Evidence” standard, meaning that more likely than not a policy violation occurred.

# Title IX Coordinator

- Designated Title IX Coordinator
- Responsible for:
  - Monitoring University Title IX compliance
  - Ensuring appropriate education and training
  - Coordinating University investigation, response, and resolution of all reports under this policy
  - Ensuring appropriate actions to eliminate Prohibited Conduct, prevent its recurrence, and address its affects.

# Prohibited Conduct

- Sexual Assault
- Sexual Exploitation
- Intimate Partner Violence
- Stalking
- Sexual or Gender-Based Harassment
- Retaliation
- Complicity

Reporting

# Ideal World

- 1. Survivor would first seek medical attention and if able complete a PERK exam with a SANE nurse immediately following the assault
- 2. Contact local agency for counseling and support
  - i.e. Rappahannock Council Against Sexual Assault (RCASA – Sexual Violence)  
OR
  - Empowerhouse (Domestic or Dating Violence)
- 3. Seek confidential legal advice
- 4. File a report with the University

Real World = Many routes and timing scenarios for reporting

# Reporting Options

- Remedial Measures
  - Designed to address a Complainant's safety and well-being and continued access to educational opportunities
    - Available regardless of whether a Complainant pursues a complaint or investigation under the policy
- Protective Measures
  - Involve action against a Respondent

All measures may be permanent or temporary, and include:

- No contact orders
- Residence modifications
- Academic modifications and support
- Work schedule modifications
- Interim disciplinary suspension
- Suspension from employment
- Pre-disciplinary leave (with or without pay)

# Reporting Options

- Privacy and Confidentiality

- The University will make reasonable efforts to protect the privacy of investigation participants, while balancing the need to gather information and take steps to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects.
- The University will seek to honor a Complainant's request of confidentiality, that no investigation occur, and/or that no disciplinary action be taken. The Title IX Coordinator may continue to pursue the report without the Complainant's participation (if possible) or if action is required as part of the University Response.

# Reporting Options

- **IMPORTANT:** Options are NOT exclusive. Complainants may simultaneously pursue criminal, civil and administrative/university disciplinary action.
- The University may help with reporting to the Police
- Reports may be made to the University by contacting the Title IX Coordinator by phone, email, in person, or through “Report a Concern” (Online reporting website)
- There is no time limit to reporting

# University Administrative Procedures for Reports Against Students

# Initial Assessment

- Conducted by the Title IX Coordinator upon receipt of a report of Prohibited Conduct committed by a student
  - Title IX Coordinator meets with Complainant to:
    - Assess the Complainant's safety and well-being
    - Assess the nature and circumstances of the report
    - Inform the Complainant of the:
      - Right to seek medical treatment and explain importance of obtaining and preserving forensic evidence
      - Right to contact or decline to contact law enforcement and/or seek a protective order
      - University and community resources
      - Right to resolution under these Procedures

# Threat Assessment

- Review Committee
  - The University will use a Review Committee to conduct a threat assessment.
- Health or Safety Risk
  - The Review Committee will determine whether the report and any other available information presents a rational basis for concluding that there is a risk of serious harm to the Complainant or any member of the University community, based upon the following “Risk Factors”

# “Risk Factors”

- Whether Respondent has prior arrests, reports and/or complaints related to any form of Prohibited Conduct or any history of violence behavior
- Whether Respondent has a history of failing to comply with any University No-Contact Directive, other University protective measures, and/or any judicial protective order
- Whether Respondent has threatened to commit violence or any form of Prohibited Conduct
- Whether the Prohibited Conduct involved multiple Respondents
- Whether the Prohibited Conduct involved Physical force
- Whether the report reveals a pattern of Prohibited Conduct (e.g., by the Respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location)
- Whether the Prohibited Conduct was facilitated through the use of “date-rape” or similar drugs or intoxicants
- Whether the Prohibited Conduct occurred while the Complainant was unconscious, physically helpless or unaware that the Prohibited Conduct was occurring
- Other factors deemed relevant

# Actions Following Threat Assessment

- Upon completion, the Review Committee will determine the appropriate course of action, based on consideration of:
  - The Complainant's preference for pursuing University investigation and the manner in which any subsequent action might impact the Complainant,
  - Whether it is necessary to disclose the identifying information to protect the health or safety of the student or other individuals, and
  - The totality of the known circumstances and the risk factors listed above.

# Resulting Action

The resulting course of action may include:

- No further action;
- Imposing remedial or protective measures (interim measures);
- Reporting information to any external agency as required or permitted by law; and/or;
- Formal investigation and resolution under the Policy

# University Resolution

## Formal Investigation:

- Commences when:
  - Complainant reports that a Student has engaged in one or more instances of Prohibited Conduct and requests the Title IX Coordinator initiate an investigation and resolution under these Procedures;
  - or
  - At the conclusion of the threat assessment process, the Review Committee has determined that the presence of one or more Risk Factors requires an investigation of the reported conduct, despite Complainant requests that no investigation be pursued or no disciplinary action be taken.

# University Resolution

- Investigation

- The University will designate one or more Investigators to conduct a prompt, thorough, fair and impartial investigation.
- Notice of Investigation will be provided to the Respondent
- Presumption of Non-Responsibility and Participation by the Parties
  - Respondent is presumed not responsible, but may be overcome where the Investigators conclude that, by a **Preponderance of the Evidence**, that there is sufficient evidence to determine that the Respondent violated this Policy.
  - Neither party is required to participate in the Investigation or any form of Resolution
- Timeframe for Completion of Investigation should typically not exceed 60 business days from commencement to resolution
- Overview of Investigation: The parties have an equal opportunity to be heard and submit information and evidence

# University Resolution

- Investigation cont.

- Advisors

- Throughout the investigation and resolution, each party has the right to consult with an Advisor of their choosing
      - Provide support and advice and may accompany parties to any meeting or proceeding
      - Not able to speak on behalf of the parties or otherwise participate in or disrupt proceedings

- Prior or Subsequent Conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake.

- Prior Sexual History of a Complainant or Respondent will never be used to prove character or reputation. Such evidence is generally not relevant to the determination of a Policy violation and will be considered only in limited circumstances.

# University Resolution

- Investigation cont.

- *Preliminary Investigative Report*

- Prepared by the Investigator at the conclusion of the investigation, summarizing the information gathered and outlining the contested and uncontested information.
    - Will not include any recommended findings or, if applicable, sanctions.
    - May be reviewed by the Parties within 5 business days, with ample opportunity to
      - meet with the Investigator; submit additional comments and information to the Investigator; identify any additional witnesses or evidence for the Investigator to pursue; and submit any further questions that they believe should be directed by the Investigator to the other party or to any witness.

# University Resolution

- Investigation cont.
  - Impact and Mitigation Statements
    - May be submitted by both parties to the Investigator for consideration of sanctions *only* if there is a finding or responsibility.
    - The Investigator will ensure that each party has an opportunity to review any statement submitted by the other party, and will provide any statement(s) with the Final Investigation Report and the parties' other written submissions to the Title IX Coordinator.
  - Timing of Investigation will typically be completed within 60 business days, but may be extended for good cause

# University Resolution

- Investigation cont.
  - *Final Investigative Report*
    - Prepared by the Investigator after additional comments, questions, and/or information from the parties (will include additional investigative steps requested by the parties or identified by the Investigator as necessary).
      - Will include a recommendation as to whether there is sufficient information, by a Preponderance of the Evidence, to support a finding of responsibility for a violation of the Policy.
      - If there is a recommendation of responsibility, the report will include a recommendation for sanction(s) and remedies.
      - Prior to the completion of the report, a draft will be given to the Title IX Coordinator for review to ensure integrity, completeness, and compliance with the Policy throughout the investigation.
      - Final Investigative Report and Final Outcome Letter will be provided to the parties simultaneously.

# University Resolution

- Sanctions: one or more of the following may be recommended by the Title IX Investigator and imposed by the Title IX Coordinator and/or Title IX Appeal Board where there is a finding or responsibility:
  - Expulsion
  - Suspension

- Restitution
- Disciplinary Probation
- Warning Notice
- Other sanctions based on the totality of the circumstances

Also, other measures to protect the safety of the complainant may be imposed or extended.

# University Resolution

- Appeal

- Either party may appeal to the Title IX Appeal Board on limited grounds
- Must be made within 5 business days of the notified of the outcome of the Investigation to the VP of Equity, Access, Chief Diversity & AA/EEO Officer.
- If neither party requests an appeal, the findings of the Final Investigative Report become final and are implemented by the Title IX Coordinator
- Review Standard for an Appeal
  - The Investigator exhibited unfair bias which influenced the results of the investigation;
  - The availability of new evidence, unavailable at the time of the investigation, that could substantially impact the Investigator's findings or recommendations;
  - An error in the investigation that is of such magnitude as to deny fundamental fairness; and/or
  - The sanctions recommended by the Investigator are inappropriate for or inconsistent with the violation or with the cumulative conduct record of the Respondent.

# University Resolution

- Title IX Appeal Board cont.
  - Timing of Appeal
    - Occurs within 15 business days after referral (unless it is extended for good cause).
  - Hearing Format
    - Consists of 3 administrators and/or faculty members and one Chair.
    - Chair facilitates the hearing and deliberation, but does not make a final decision.
    - Provides an opportunity for the parties to address the Title IX Appeal Board, in person, regarding one or more of the limited grounds above.
      - May include follow-up questions posed by the Board, information presented by the Investigator or witnesses deemed relevant by the Board, with follow-up questions of the Investigator or witnesses by the Board.
    - Each Party has the opportunity to be heard, to identify witnesses for the Review Panel's consideration, and to respond to any questions of the Board.
    - Parties may not directly question one another or any witness, but they may proffer questions for the Board through the Chair, who may choose to pose appropriate and relevant questions of the Investigator, parties, or any witnesses.

# University Resolution

- Title IX Appeal Board cont.

- Participation in Hearing

- Parties – Both the Complainant and Respondent have a right to be present at the Hearing. However, neither party is required to participate in the Hearing in order for it to proceed.
      - Either may request alternative methods for participation that do not require physical proximity to the other party, including participating through electronic means.
    - Investigator or other witnesses – may be requested to be present by the Board. The Parties may also request the presence of any witness they deem relevant, subject to the Board's absolute discretion to determine which are relevant and to decline to hear from those whose information is not necessary for their review.
    - Advisors – may be present as they are allowed to be throughout the Investigation process, but may not speak on behalf of the party or otherwise participate in, or disrupt the Hearing.

# University Resolution

- Title IX Appeal Board cont.

- *Determination by the Title IX Appeal Board*

- Within (5) five business days of the hearing, the Chair of Title IX Appeal Board will provide a written decision to the Complainant, the Respondent, the Investigator, and the Title IX Coordinator.
    - The decision shall include a description of the grounds for requesting the hearing, whether such grounds are accepted or rejected, and the rationale for such determination; and
    - The Title IX Appeal Board's recommendations to uphold or reject the finding(s) and/or the sanction(s) of the Investigator and the rationale for such determination.
    - The Title IX Appeal Board may recommend to uphold any sanctions recommended by the Title IX Investigator, or it may recommend sanctions that are less or more severe.

# University Resolution

- *Review of the Title IX Appeal Board's Findings*

- Concerns about the appeal process may be presented, in writing, to the Title IX Coordinator no later than (3) three business days after the Title IX Appeal Board's written decision.
- Within (7) seven business days of the Title IX Appeal Board's written decision, the Title IX Coordinator shall notify, in writing, the Complainant, the Respondent, the panel members, and the Investigator of the final decision relative to the recommendations and findings of the Title IX Appeal Board.
- The decision of the Title IX Coordinator is final with no further right to appeal.

# HB 1930: Institutions of Higher Education; Reporting Acts of Sexual Violence

Effective July 2015

- Requires any responsible employee of a public or private nonprofit institution of higher education who in the course of his employment obtains information that an act of sexual violence has been committed against a student or on campus property or other property related to the institution to report such information to the Title IX coordinator for the institution as soon as practicable.
- The bill requires the Title IX coordinator to report such information to a review committee, which shall meet within 72 hours of the receipt of information of an alleged act of sexual violence and which shall include the Title IX coordinator, a representative of law enforcement, and a student affairs representative. If the review committee determines that disclosure of the information regarding the alleged act of sexual violence is necessary to protect the health and safety of the victim or other individuals, the representative of law enforcement on the review committee shall disclose the information, including personally identifiable information, to the law-enforcement agency responsible for investigating the alleged act. In cases involving a felony sexual assault, the representative of law enforcement on the review committee, or in certain situations, another committee member, shall consult with the local attorney for the Commonwealth or other prosecutor responsible for prosecuting the alleged act of sexual violence.
- The bill requires the governing board of each public or private nonprofit institution of higher education to (i) establish a written memorandum of understanding with a local sexual assault crisis center or other victim support service and (ii) adopt policies to provide victims with information on contacting such center or service. The bill requires each public or private nonprofit institution of higher education to annually certify to the State Council of Higher Education for Virginia that it has reviewed its sexual violence policy. Finally, the bill requires the Department of Criminal Justice Services to monitor the impact the legislation will have on the workload of local victim witness programs and report its findings to the Chairmen of the House and Senate Committees for Courts of Justice by October 1, 2016. This bill is identical to SB 712.

# Title IX Options: Thoughts and Recommendations

- Understand that University Title IX Administrative proceedings are very different from civil or criminal proceedings
- Administrative Due Process requirements involve a property interest, and thus are very different from Criminal Due Process requirements, which involve a liberty interest.
- In Civil and Criminal proceedings, there is subpoena power for witnesses and documentary evidence.
- In Title IX Administrative Proceedings, no such subpoena power exists.

# Questions? Contact Us!

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This project was supported by Grant No. 2016-WA-AX-0019 awarded by the Office of Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

