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**TRAINING GUIDE FOR
UNIVERSITY ADVISORS
IN SEXUAL MISCONDUCT CASES**

*Prepared by
The Community Values & Restorative Practices and the Office of Compliance & Equity
Updated October 2019*

This training guide originally was developed drawing heavily upon a model training manual created & compiled by Jean M. Leonard, Ph.D., Sexual Assault Support Services Coordinator, Duke University from training materials from Duke University, Colorado State University, Columbia University & Ithaca Rape Crisis

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Introduction

Thank you for volunteering to serve as a University Advisor for students who are a party to a sexual misconduct investigation. This training guide has been compiled to help you prepare to serve and support students who are involved in this important, but challenging and emotional process. This guide provides resources for advisors regardless of the party they are supporting—reporting party or respondent. If questions or issues arise that are not covered in this manual, please contact the Title IX Coordinator to discuss the situation and collaborate on the best approach to address it.

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Disclaimer

This document in no ways alters the policies and procedures promulgated in the Student Handbook, nor does it limit the authority of the Dean of Students, the Vice President for Student Affairs, the Title IX Coordinator or the President or Provost of the university.

General Notes; Terminology; Important Website Resources

We have made every effort to ensure this training guide is balanced and equitable for all parties involved in the adjudication process. While the majority of sexual misconduct cases on American college campuses involve an allegation by a female that a male has committed some act of misconduct, we use the terms “reporting party” and “respondent” rather than gender-specific pronouns to represent the individual parties. In some places in this manual, we may refer to the “victim” of a crime or statistics related to “survivors”. During the adjudication process, we use the identifiers “reporting party” and “respondent” exclusively.

This guide also assumes a case with one reporting party and one respondent. Investigations with multiple reporting parties and/or multiple respondents are rare, but in instances where we have more than two parties, we assign a separate advisor to each party, and we do not expect that an advisor would be responsible for all reporting parties or all respondents. If a party selects their own advisor, it is preferable that the advisor does not involve multiple parties within the investigation.

This guide frequently references the Policy on Sexual Misconduct, Relationship Violence and Stalking (“Policy”) and the Student Sexual Misconduct Grievance/Complaint Procedure (“Procedure”). You will find these and other related policies and procedures on the Office of Compliance & Equity website at:

http://www.wm.edu/offices/compliance/title_ix_coord/TitleIX_policy_procedure/index.php

The website www.wm.edu/sexualviolence is also an important resource for advisors, students, and others. It has a section dedicated to student parties to an investigation.

Confidentiality

Sexual misconduct cases, like all student conduct matters, are confidential. **No advisor should reveal personally identifiable information regarding participants in sexual misconduct cases, except to (1) university officials with a need-to-know and (2) parents or the student's attorney with the student's express written permission.**

Guiding Principles

Respect for the Rights of the Parties

We design our process to respect the rights of both parties. In fact, the need to respect both parties' rights is the primary reason that we have special processes for handling sexual misconduct cases. Other conduct cases typically do not involve an injured party – typical conduct cases involve the university (as a party on behalf of the community) and a student. Typical conduct cases seek to determine whether a student has violated our policies and, if so, to hold the student responsible. In sexual misconduct cases, however, we are seeking not only to determine whether to hold a student responsible for violating our policies, but also whether another student (reporting party) has had their rights violated so that we may remedy this violation.

We respect both parties' rights equitably by providing them simultaneous notifications, equal opportunity to provide evidence, and to attend meetings with an advisor of their choice. The parties also have the same chance to review and respond to the investigation report, and the right to appeal the determination and/or sanction.

Due Process

Since *Dixon v. Alabama* in 1961 recognized disciplinary measures as state action, public college conduct processes have been expected to be fundamentally fair. While “due process,” is a broad term, courts have made clear that it should always offer the following:

- adequate **notice** of expectations, charges (policy violations being investigated), and incriminating information
- an **opportunity to be heard** (note that this does not require a “hearing” as we typically conceive it—we provide the opportunity to be heard through the student’s participation in the investigation process, by permitting written response to the investigation report, and potentially in a determination conference with the deciding official)
- a fundamentally fair process
 - freedom from arbitrary and capricious actions
 - process that is appropriate for the level of sanctions faced by the student.

The university’s procedure provides due process consistent with procedures used by many other higher education institutions around the country.

Relevant Policy Definitions

Definitions of the Different Types of Sexual Misconduct covered in the Policy Prohibiting Sexual Harassment, Gender-Based Harassment and Sexual Misconduct.

Sexual Harassment is unwelcome conduct based on sex. It includes unwelcome sexual advance, request for sexual favor, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical or otherwise, when it either creates a hostile environment or constitutes “quid pro quo” harassment.

Gender-Based Harassment includes harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical or other, even if the acts do not involve conduct of a sexual nature when it either creates a hostile environment or constitutes “quid pro quo” harassment.

Hostile Environment exists when the conduct is sufficiently severe, persistent or pervasive such that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the university’s education programs and/or activities¹. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. In evaluating whether a hostile environment exists, the university will consider the totality of known circumstances, including, but not limited to:

- The frequency, nature and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the Complainant’s mental or emotional state;
- Whether conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether the conduct unreasonably interfered with the Complainant’s educational or work performance and/or University programs or activities; and
- Whether the conduct implicates concerns related to academic freedom or protected speech.

Quid Pro Quo Harassment is when submission to or rejection of sexual conduct is a term or condition of a person’s employment, academic standing, or participation in any university education programs and/or activities or is used as the basis for decisions affecting the individual.

Sexual Assault most commonly is non-consensual sexual intercourse or fondling.

¹ University education programs or activities include, but are not limited to, admissions, financial assistance, majors or minors, housing, athletics programs, extracurricular activities, opportunities for employment in a particular field or profession.

Certain sexual acts prohibited by Virginia law -- namely, statutory rape² and incest³ – also are sexual assault.

- a. **Non-Consensual Sexual Intercourse** is anal or vaginal penetration, no matter how slight, by any body part or object, without effective consent; oral penetration by a penis, without effective consent.
- b. **Fondling** is touching, massaging, caressing, stroking or rubbing of a person's intimate body parts (including genitalia, groin, breast or buttocks, or clothing covering any of those areas) for the purpose of sexual gratification, without effective consent.⁴ Using force or threat of force to cause a person to touch that person's own or another person's intimate parts is also fondling.⁵

Relationship violence is physical or sexual violence or the threat of such violence^{6,7} between people who are in or have been in a romantic, intimate, or familial relationship or a pattern of abusive behavior used by an intimate partner to gain or maintain power and control over the other intimate partner. Patterns of behavior can be in the form of psychological, emotional/verbal, financial, academic, and/or technological abuse. **Domestic violence**⁸ and **dating violence**⁹ are the two forms of relationship violence.

² Sexual assault is a VAWA offense. Statutory rape is defined under VAWA as “sexual intercourse with a person who is under the statutory age of consent.” In Virginia, statutory rape is not a legal term. There are several statutes that apply. While the penalties vary depending on the age difference between the parties and the age of the younger party, these laws criminalize sexual intercourse between someone who is 18 years of age or older and someone who is younger than 18.

³ Incest is defined under VAWA as “sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.”

⁴ Contact with an intimate body part or other unwelcome contact that is not done for the purpose of sexual gratification would be considered as sexual harassment or as a violation of the rights of others (Student Code of Conduct). The nature, purpose and context will be considered in determining whether to address such conduct as sexual misconduct or as a violation of the rights of others under the Student Code of Conduct.

⁵ “Force” is defined under Section B.

⁶ Acts of violence and threats are defined in W&M's Policy on Campus Violence and Threat Management. Psychological, emotional, verbal, financial or academic abuse that does not rise to the level of a pattern of abusive behavior to constitute relationship violence may be considered as potential sexual harassment.

⁷ In evaluating whether conduct constitutes relationship violence, the deciding official may consider whether the conduct is so severe or pervasive as to create a hostile environment, as defined in the Discrimination Policy.

⁸ **Domestic violence** is violence committed by:

- A current or former spouse or intimate partner of the victim or by someone else who has or had an intimate or familial relationship with the victim;
- A person with whom the victim shares a child in common;
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- A parent, child, step-parent or step-child, sibling (full or half), grandparent or grandchild of the victim;
- The victim's mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law, if he or she resides in the same home with the victim; or
- Any other person who cohabits or, within the previous 12 months, cohabitated with the victim. Dep't of Criminal Justice Servs, An Informational Guide for Domestic Violence Victims in Virginia, DCJS. Virginia.Gov, available at <http://vscc.virginia.gov/informational-guide-domestic-violence-victims-virginia-english.pdf> (last visited July 24, 2018).

⁹ **Dating Violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, other than Domestic Violence. The existence of such a relationship is determined based on the reporting party'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.

Sexual Exploitation is taking sexual advantage of another person without effective consent by causing the incapacitation of another person for a sexual purpose; causing the prostitution of another person; electronically recording, photographing, or transmitting intimate or sexual information about a person; allowing third parties to observe sexual acts; engaging in voyeurism; distributing intimate or sexual information about another person; exposing one's genitals; inducing another to expose their genitals; and/or knowingly transmitting a sexually transmitted infection, including HIV, to another person.¹⁰

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- a. Fear for the person's safety or the safety of others; or
- b. Suffer substantial emotional distress. Such distress does not have to be severe enough to require medical or other professional treatment or counseling in order to be substantial emotional distress.

Stalking requires two or more acts, including but not limited to, acts in which the stalker directly, or through third parties, by any action, method, device, or means follows, monitors, surveils, threatens, or communicates, to or about, a person, or interferes with a person's property. Examples of behaviors that may, by themselves or with other behaviors, constitute stalking include:

- following or pursuing
- waiting or showing up uninvited at a person's workplace or home
- surveillance, whether physically or through electronic means
- non-consensual communications including social networking site postings.

Consent

Consent is:

- Active – through clear words or actions, a person has indicated permission to engage in mutually agreed upon sexual activity. Sex is something you participate in -- not something that happens to you.
- Voluntary – freely given.
- Informed – knowing and aware.

Consent is NOT:

- Merely a lack of protest or lack of resistance. Silence and/or passivity also do not convey consent.
- Something to be assumed. Consent to sexual activity once does not imply consent another time. Nor does consent to one type of sexual activity mean consent to another.

¹⁰ In evaluating whether conduct constitutes sexual exploitation, the deciding official may consider whether the conduct is so severe or pervasive as to create a hostile environment, as defined in the Discrimination Policy.

- Forced. If any force is used, consent is invalid.
- Valid if the person consenting is incapacitated. Someone who is incapacitated cannot consent.
- Irrevocable. Consent may be withdrawn at any time and for any reason.

A person's belief that another person consented is not valid where:

- The belief arose from the person's own intoxication or recklessness; or
- The person knew or a reasonable person, in the circumstances, should have known that the other person was incapacitated (as defined below).

Force

Consent cannot be obtained by force. If force is used, consent is invalid. Force includes physical violence, threats, intimidation and/or coercion.

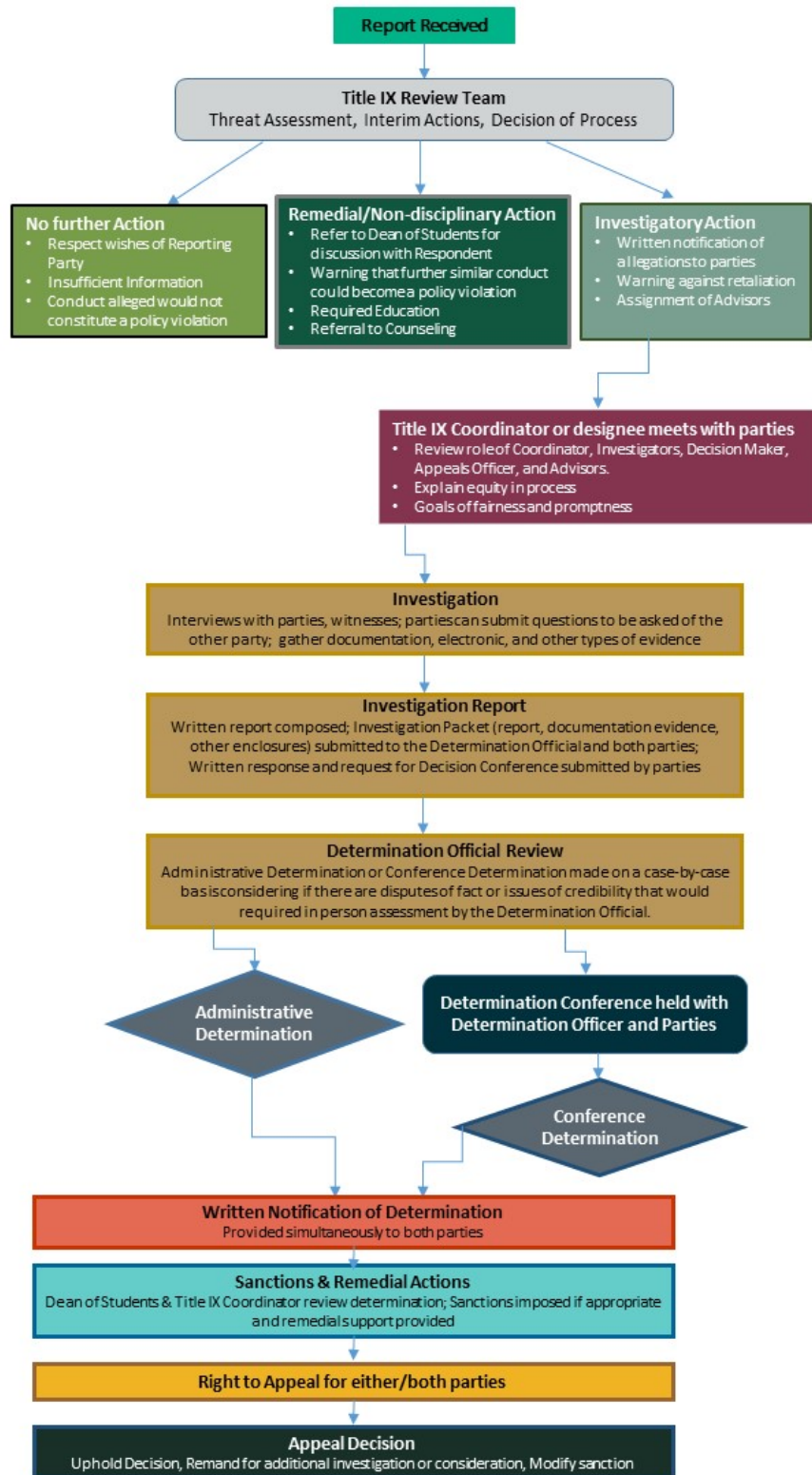
- Physical violence includes hitting, punching, slapping, kicking, restraining, strangling, and brandishing or using any weapon.
- Threats are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm oneself or another person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.
- Intimidation is an implied threat that causes reasonable fear in another person. A person's size, alone, does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit).
- Coercion is an unreasonable amount of pressure on someone to:
 - participate in a particular form of sexual activity,
 - change their mind after they asked to stop or have indicated lack of consent previously
 - change their mind about what point of sexual activity they are stopping at.

Incapacitation. Incapacitation is the physical and/or mental inability to make informed, rational judgments about whether or not to engage in sexual activity. Someone who is incapacitated cannot give consent and any consent that is given is considered invalid due to incapacitation.

An individual's incapacitation may be due to:

- Alcohol or drugs;
- Sleep or unconsciousness; or
- An intellectual or other disability.

Resolution Process



1. Report Received & Initial Assessment. Any person may submit a report involving a current or former member of the community (student, faculty or staff). Reports may be about unwelcome conduct of a sexual nature experienced, or allegations of a violation of the sexual misconduct policy.

- The Title IX Review Team assesses reports for potential ongoing threat(s), identifies interim measures to prevent further harassment or potential retaliation, and determines the course of action for responding to the report (investigation, support services or referral for non-Title IX disciplinary action)
- See Appendix B for a description of the Sexual Misconduct Procedure initial assessment process.
- The typical process involves a willing, participating reporting party; however, there are circumstances in which the process may be necessary without a reporting party's involvement (e.g. ongoing threat to the campus community, respondent accused of similar misconduct in multiple reports, use of weapon during the misconduct).

2. Investigation. If the reporting party requests an investigation and the Review Team authorizes one, the Title IX Coordinator notifies the respondent and the reporting party in writing of:

- Notice of allegations and investigation
- Rights and Options of each party including right to advisor of their choice
- Responsibility of the respondent not to retaliate against the reporting party
- Assignment of institutionally-trained advisor
 - Compliance makes assignments on a rotating basis based on advisor availability, caseload, and previous experience with particular type of misconduct.
 - Compliance asks advisors to disclose any potential conflicts of interest verbally to the Title IX Coordinator.

3. Individual Meetings with the Parties. The Title IX Coordinator or designee (and if available, a member of the CVRP staff) meets with each party and their advisor to review the role of each administrator in the process: the Title IX Coordinator, the investigators, the Determination Official, and the Dean of Students.

The Title IX Coordinator's role is to be a neutral party to the process. The Coordinator provides information about the process and addresses concerns of bias, inequity, or due process during the investigation and determination.

The Title IX Coordinator also informs the parties of available resources including counseling, academic accommodations, relocation of housing, etc. (depending on the circumstances) and provides information about rights and responsibilities. Parties receive weekly updates from the investigators regarding the status of the investigation.

- 4. Investigation.** Trained investigators from the Office of Compliance & Equity conduct the investigation, typically in a team of two. The investigators conduct an intake with reporting party and respondent, gather relevant information and evidence, and interview witnesses the investigator deems relevant. The investigators write a report that summarizes the investigation process, presents the relevant evidence collected, and analyzes the disputed elements of the allegation relative to the policy standard. Investigators do not make a determination or recommend findings relative to policy violation.
- 5. Report Distribution.** The investigators submit the final investigation report to the Determination Official and share it with the parties and their advisors. Each party may respond in writing to the Determination Official about any aspect of the report or the investigation process. Parties may request a determination conference if desired.
- 6. Determination and Rationale.** Within three (3) days after receipt of the parties' written responses to the investigation report, the Determination Official communicates to the parties the process for making the determination—Administrative or Conference. The evidentiary standard is *preponderance of the evidence*, meaning it is more likely than not that misconduct occurred.
 - **Administrative Determination:** The Determination Official issues a written finding of whether a policy violation occurred and the rationale for this decision based on the materials submitted by the investigators and the parties' responses to the report. The Determination Official issues this finding within five [5] days after determining the process to be used.
 - **Conference Determination:** The Determination Official convenes an in-person conference with the parties to resolve issues of credibility, facts, investigation process and/or gather additional information from witnesses, including parties. The Determination Official holds the Conference within nine [9] days after determining the process to be used. Within two days of the conclusion of the conference, the Determination Official issues a written finding and the rationale for this decision based on the materials submitted by the investigators, the parties' responses to the report, and the information gathered at the conference.

- 7. Sanctions.** If the Determination Official finds a policy violation, the Dean of Students imposes sanctions within the range specified in the procedure, on a case-by-case basis considering the nature and the specifics of the violation, any previous findings of conduct or honor code policy violation, institutional practice, and any aggravating or mitigating factors. The Dean of Students provides both parties the sanction notification in writing within three (3) business days of the determination notice.
- 8. Appeal.** Both parties have the right to appeal the decision and/or sanctions to the Provost or designee. Appeals are due five (5) business days after either: 1) the determination notice (if there is no finding of responsibility), or 2) following the sanctions notification (if there is a finding of responsibility). The appeal is not a de novo (new) review of all the evidence, and the reviewer reviews with deference to the determination of the Determination Official and to investigators' actions, such as decisions regarding relevance of evidence within the scope of the procedure. Either party may appeal on one or more of the following grounds:
- Material procedural error
 - Decision is inconsistent with the weight of the evidence
 - New material evidence
 - Inappropriate sanction

The Role of a University Advisor

Introduction and Overview

The Title IX Coordinator or designee assigns advisors for each party upon initiation of an investigation. Parties may elect to engage an outside advisor of their choice to accompany them to meetings, interviews and the determination conference, if applicable. If a university advisor does not actively participate in the process as the advisor of choice (for example, if the student has obtained outside counsel), the assigned advisor is still available to the party to provide procedural guidance and support if requested.

Advisors shall:

- Inform the party as what to expect and how to prepare for each phase of the process
- Provide emotional support to the party while maintaining appropriate professional objectivity
- Encourage truthful and candid responses to investigators' questions
- Read the investigation report and any response drafted or submitted by the parties, and provide input and advice for the party's response (without creating the narrative for the party)
- Help the party access referrals to campus and community resources
- Communicate with or ask questions of administrative personnel as necessary

Advisors shall not:

- Develop the narrative or "story" for the party
- Advocate for or against responsibility for a policy violation
- Condone the party providing false or misleading information to an investigator, or the Determination Official
- Offer predictions as to how likely a particular finding/result is or what sanctions the Dean is likely to administer
 - The advisor can explain ranges and minimum sanctions as defined in Procedure and explain mitigating and aggravating factors applicable to sanctioning decisions
- Criticize a decision made by the university to the party or persons aligned with the party [remember you are never off the record. You may raise any concerns with the appropriate administrator(s)].

Effective Advising

Familiarize Yourself With the Matter and the Policy. In most cases, you will have limited information available prior to the initial meeting with the Title IX Coordinator or designee. This can be good because it allows you to objectively hear the

party's account and ask to review any supporting documentation without appearing to be judgmental. We recommend that you re-read this guide to refresh your memory of the process. Review the Policy definitions of the conduct alleged, and if applicable, the definitions and examples of consent and incapacitation.

The Initial Meeting with Your Advisee.

There is perhaps no meeting more important than the initial meeting, for it will set the tone for your working relationship with the party.

- **Location:** Think carefully about the appropriate location for the initial meeting; find a location that is private and comfortable—sometimes this will be your office, but depending on your work environment, this may not always be the optimal location.
- **Setting the tone:** Greet the party warmly and introduce yourself. Ask the party what they prefer to be called (many people do not use their “given” names).
- **Explain your role to the party:** As an advisor, your role is to offer the party support throughout the process and to keep the individual informed of their rights, responsibilities, and options. Let the party know that you have no role in the decision-making.
 - You are not there to obtain a particular result in the process or to prove/disprove the allegation on behalf of the party.
 - You can offer suggestions as to how the party can best comport themselves and best prepare for each phase in order to put themselves in the best position to obtain the most favorable possible outcome.
 - You can encourage candor and truthfulness.
- **Explain and review confidentiality:** Let the party know that you can maintain confidentiality of your conversations with the following exceptions:
 - You must report threats of harm to self or others
 - You must report other Title IX violations the party may disclose
 - You cannot allow the party to provide false information in the process.
- **Answer questions about the process:** Assure the party that the investigation is a deliberative process and that there is no presumption of responsibility.
 - The initial meeting with the Title IX Coordinator is to review the flowchart with the party and explain what the party should expect at each stage of the process.
 - During the initial meeting with the Title IX Coordinator, we do not expect the party to answer questions or provide specific details about the incident or events or to present evidence.
- **Suggest ways the party can prepare:** Ask the party to disclose what the party knows about the situation, if the party is comfortable doing so. Advise the party to gather:
 - Names of witnesses the party can provide to the investigators

- Text messages, Facebook postings, pictures, etc.—inform the party not to delete anything, no matter how seemingly insignificant, until the matter is concluded.
 - A written account of everything the party can remember about the events before, during and after the incident(s) for their personal benefit—the party will not be required to share this written account with investigators.
- **Warn the party about retaliation.**
 - Caution the party from creating social media posts about the other party, witnesses or the investigation process during the course of the investigation.
 - There is no strict gag order on either party, but the university could consider the appearance of attempting to influence or intimidate through public or private comments online or through third parties to be retaliation.
 - The university could view parties attempting to intimidate other parties or witnesses with their physical presence or intentionally contacting the other party in violation of a no contact order as retaliation.
 - Even if the underlying allegation is not determined a violation of policy, the university can find a respondent responsible for retaliation, and the consequences could be severe.
- **Let the investigators conduct the investigation.** Parties may be inclined to investigate the matter themselves and talk to others who witnessed events surrounding the incident to assure themselves that they did not act inappropriately or to support their allegation. Advise the party to refrain from influencing witnesses' recollections by talking about the incident with a witness before the witness is interviewed by investigators. Doing so can compromise the perceived credibility of the witness' testimony
 - Parties may notify a potential witness that an investigator may be contacting them without providing details.
 - Parties may confide in friends and family that will not be witnesses to the investigation for needed affirmation.
- **Discuss how to contact one another.**
 - Share your preferred means of contact with the party (email or telephone calls—text message is not recommended)
 - Encourage the party to contact you as far in advance as possible
 - Discuss whether you are available after hours or on weekends
 - Check in with the party periodically (agree on a preferred interval—weekly, every two weeks, after each stage)
- **Encourage parental notification.** Especially for respondents, there may be a hesitancy to involve parents until the party knows the outcome. While this certainly is within the party's right, it often is not advisable. Often a party will indicate that they do not want their parents involved because they do not want to worry them or they are embarrassed. While this may be the case, and the student

rightfully may not want to tell them, students often underestimate their parents' capacity to support them, and parents can help the student with contingency planning and keeping things in perspective.

- You are not permitted to contact parents yourself, and we caution you from speaking with them without the student being present to hear and participate in the conversation.

Subsequent Meetings

- **Begin to prepare the party emotionally.** Help the party understand appropriately that these matters are very serious and involve potentially serious consequences. If the matters being investigated have prescribed minimum sanctions such as suspension, inform the party of this. Ask the party what other emotional supports are available such as friends, parents, a mentor, counselor, etc.
- **Help address questions that arise.** Check the Procedure and talk to the Title IX Coordinator to help the party get the answers that they need.
- **Prepare for the review of the investigation report.** This is an intense process in a relatively short timeframe, and for many parties it will be very helpful if you can make yourself available during this period. You can communicate with the Title IX Coordinator to help plan for this and plan around any obstacles such as anticipated trips or absences.

Prepare for Determination Conference

- **Focus on their Account.** Parties should focus on presenting their account of events and facts and not try to discredit or refute everything the other party says.
- **Agenda** is sent by OCE at least two (2) days prior to the scheduled conference. Agenda includes order of interviews with the determination official, witnesses to be interviewed, and scope of the issues to be examined. Appendix A of the Procedure outlines the conference generally.
- **Logistics** are communicated by OCE with regard to room assignment for the parties as well as designated areas for breaks. Parties are typically located on separate floors with access to restrooms and open areas on that floor in addition to their assigned room. Ingress and egress into the building are also specifically communicated to ensure neither party crosses paths with the other person.
- **Advisors and Support Person.** Each party can have the advisor of their choice and a silent supporter in the room with them during the conference determination.
- **Final Statements.** Each party can make a final statement to the Determination Official about any aspect of the investigation, the conference, or

the events and the impact on them. This statement is limited to 10 minutes for each party.

General Tips

- **Conflicts of Interest.** Both parties are in need of support and are members of our community. Even if you do not agree with the party's life choices or the party is not someone you ordinarily would gravitate toward, you have a job to do as an advisor and a professional. To the best of your ability, put aside personal judgments and offer support throughout the process.
 - If you have a professional relationship with either party or a personal or professional relationship with the party's family member (e.g. parent is a long-time family friend), please disclose this connection to the Title IX Coordinator to assess if the conflict is manageable or if you should recuse yourself.
- **Put aside developmental goals and the “teachable moment”.** Many of your “day jobs” involve student development, but you should refrain from developmental conversations during the process. They are not likely to yield teachable moments, but rather may frustrate your advisee or make the party see you as out of touch, as adjudging the party responsible or to blame for the matters being investigated, or unfocused on the issues that are important to them.
- **Preparing for interviews.** Encourage the party to dress nicely for interviews (khakis, a skirt/dress pants, etc.), but it is not necessary to dress as though the party is preparing for a business interview, unless that is what the party wants to do.
- **Answering the question, “Should I get an attorney?”** Students have the right an advisor of their choice, and that advisor can be legal counsel. The party may ask you if hiring an attorney is advisable/necessary. You should not provide a “yes/no” answer to this question. You should explain the role of an advisor, even an outside advisor, in our process and let the party decide. You can emphasize the following factors for consideration:
 - An attorney's role is no different from yours—attorneys have no extra rights, options, or access.
 - The process is not an adversarial process, like the court of law, so there is no place where an attorney objects to questions or advocates on behalf of a party.
 - If the party does choose to receive assistance from an attorney, the attorney can help the party prepare in advance and can attend any meetings the party will attend (see below). If the attorney does this, your role likely will be limited – the party can only bring one advisor to a meeting or interview.

- **Remember that this is an emotional experience for everyone involved.** Participants may present as nervous, upset, crying, or even cold or unemotional. An individual’s emotional presentation should not be interpreted as evidence for the veracity of their account. (e.g. Concluding that if a reporting party doesn’t look upset, means the reporting party must not have been assaulted, or, because a respondent does not seem nervous, then the respondent must have committed the violation.)
- **Recognize that stress also can affect memory and concentration.** All parties involved in these matters typically consider this as an extremely stressful experience; thus, both parties may struggle to remember details, even beyond the normal limitations of human memory. You can help such as by encouraging your advisee to think about any electronic or other evidence that may exist, such as texts or photos.

Often, incidents of sexual misconduct involve one or both individuals being under the influence of alcohol and other drugs, and this may further compromise memory. Encourage the party to try to recall types and amounts of alcohol consumed before, during and after an incident, including quantity, what kind of cup/glass they used, whether they prepared the drink themselves, and the types and amounts of food they ate and any medications taken.

- **Take care of yourself as well as your advisee.** Advising can present many challenges, and it is not reasonable to assume one can always keep an emotional distance from the party or the situation. If you are having any trouble managing the situation or your own emotional response, do not hesitate to reach out to more seasoned advisors, the Title IX Coordinator, or Community Values. Sometimes just talking through a situation can help put things into perspective and ease anxiety.

Working with Attorneys

As the student has the right to an advisor of their choice, it is possible that the student will opt to have the support of an attorney (or a parent, relative or friend who has a legal background). Attorneys often come into our process applying the lens of their own experiences—expecting our process to “act” like a criminal or civil court.

Outside advisors, including attorneys, can sit in on any meeting the party is required to attend, provided that if they do so, you will not be able to, as a party can only have one advisor present. However, the advisor cannot actively participate in those meetings beyond a limited opportunity to ask questions. While we cannot accommodate the schedule requests of every outside advisor, we try within reason to do so, or to employ alternative methods that facilitate participation, such as a conference telephone call.

Understand that attorneys have different obligations and objectives than you. Unlike you, they are not university employees and therefore do not speak on behalf of the university. Attorneys have a duty to “zealously represent” their “clients;” thus, if an

attorney senses that obfuscation, delay, or “puffery” is in their client’s objective, they may engage in this behavior to the boundary of their professional ethical standards.

If you receive substantive questions from an attorney representing a party about the process, please refer them to the Office of Compliance & Equity—do not attempt to answer them yourself. For all other inquiries or legal concerns from outside counsel, or if you have concerns about the conduct of an attorney, please contact the University Counsel’s Office (757-221-3146) for advice and assistance.

Caveats and Pitfalls

- Not being familiar with the process.
- Making predictions of potential outcome or sanctions (beyond communicating the range specified in the Sexual Misconduct Procedure).
- Making statements or promises for matters outside of your immediate control (such as when another administrator will complete a particular task or phase of the process).
- Not maintaining appropriate professional boundaries.
- Becoming the party’s counselor—instead of making referrals (Note: we usually can get priority from the Counseling Center for students going through the process—contact Community Values for an expedited referral).
- Expressing disagreement with the process or a decision-maker.

Parties’ Perspectives

The Perspective of a Reporting Party

A reporting party can, and often does, report an incident weeks, months, or even years after it occurred. According to a recent Department of Justice report, only about 20%¹¹ of campus sexual assaults are ever reported to police, and due to the overwhelming emotions connected to the experience, and the disbelief often associated with being harmed by an acquaintance, delayed reporting is quite common.

In cases of sexual assault, it is important to understand that traumatic events can impact memory and concentration. It is common for survivors to have difficulty remembering details about their assault (e.g. they may have dissociated during the assault, or it may be too painful to remember) and may have difficulty remembering things in chronological order. This is not as a result of being deceptive – rather this is consistent with the documented effects of trauma. Research has shown that when one experiences a traumatic event, it inhibits the formation of memories and can also make it difficult for survivors to retrieve these memories. The difficulty for trauma victims to recount their experience in neat, chronological fashion is one of the reasons they may encounter disbelief from others. For this reason, it is important to take into account the effect that

¹¹ <http://www.bjs.gov/content/pub/pdf/rsavcaf9513.pdf>

recounting the experience is difficult, and the subsequent anxiety and emotion may impact the reporting party's ability to respond to questions.

One common misconception about sexual assault is the notion that if the victim did not fight back, then the person has not been sexually assaulted. During the attack itself, it is common to "freeze" instead of fight, due to reactions such as an intense fear of death and dissociation. These are natural physical responses. Being paralyzed by fear does not mean the person was not assaulted. Even if the person "decides" that it is safest not to physically resist in the situation, this does not mean that consent was provided.¹²

Other considerations of Reporting Party's Perspective:

- Reporting Party may feel "victim blamed" by the investigation report and/or Respondent's statements about the events.
- Reporting Party's may blame themselves or their actions for causing the misconduct.
- Respondents sometimes file a counter-complaint against the Reporting Party.
- Reactions may progress from not wanting to get Respondent in trouble to wanting sanctions imposed.
- Reporting Party may self-medicate in unhealthy ways, by abusing drugs or alcohol.
- Reporting Party may feel the process is automatically against them and that the university wants to protect its reputation.
- Reporting Party may feel the respondent has more influence (for a variety of reasons) and therefore the university will automatically not find them responsible.

The Perspective of a Respondent

Students who are responding to an allegation of sexual misconduct exhibit a range of emotions, including:

- Anger—"This is defaming my reputation."
- Confusion—"I thought [the other person] was into it."
- Defiance—"I did not grab their buttocks."
- Defensive—"These comments weren't unwelcome."
- Depression—"This false accusation has been traumatic for me."
- Regret—"I did not mean to lose control of my temper."
- Shame—"I cannot tell my parents I am accused of this."
- Fear—"The system is stacked against me."
- Victimized—"They're making this up because I did not want a serious relationship with them."
- Retaliated against—"This is because of our bad break up."
- Anxious—"I have already been accepted to medical school."
- Desperate—"If I can just talk this out with them."

¹² <http://www.aifs.gov.au/acssa/pubs/sheets/rs2/>

Regardless of the accuracy of their perceptions, their feelings are real. Respondents may believe that the university automatically defers to the reporting party's perspective and thus they feel disadvantaged throughout the entire process. Respondents also can feel stressed and overwhelmed by the process themselves. They can feel the institution is not considering their trauma of being accused of sexual misconduct.

Respondents may focus on discrediting what the reporting party and other witnesses say. The respondent may be tempted to zero in on any possibly verifiable information—dates, times, sequence of events, perception of others of the reporting party's level of intoxication (if alcohol was involved), etc. Respondents may come across as unconcerned about the feelings of the reporting party and the intense emotion that is expressed; in reality, they are so focused on proving their perspective that the other party's feelings are secondary to the defense of their character.

Special Considerations with Diverse Populations

Male Victims of Sexual Misconduct

Male victims account for 5-10% of reported rapes. Most of these victims are raped by other men who identify as heterosexual. Male victims tend to be in their late teens to late 20's at the time of the assault. African-American men and gay men are over-represented among male victims.

- Be conscious of the stigma associated with the myth that "males are not victims" and "men should put up a fight."
- Be conscious of the scrutiny of the male victim, by others and the victim himself, of his sexual orientation. In particular, there is a question about whether being assaulted by another man makes someone gay (it does not – both gay and heterosexual men can be assaulted by another male).
- Normal physiological responses, such as becoming aroused during the attack, do not in any way imply the victim 'wanted' or 'liked' the assault.¹³
- Males can also be victims of sexual assault by force or coercion from a female aggressor. Women are most likely to use psychological pressure such as verbal pleading or arguments, emotional blackmail, and deception.¹⁴

Lesbian, Gay, Bisexual, Transgendered, and Queer (LGBTQ) Victims of Violence

- Remember that the LGBTQ community largely is invisible and people may fear greater isolation as a result of not having many "safe" places to hang out.
- Often a LGBTQ victim may not label the violence out of fear of being "outed" or not believed.
- In the case of same-sex dating violence and abuse, there is often a fear of being "outed" by the partner.

¹³ <https://rainn.org/get-information/types-of-sexual-assault/male-sexual-assault>

¹⁴ <http://www.psychiatrictimes.com/articles/mens-reactions-female-sexual-coercion>

- If a LGBTQ victim is not “out” to their family, then finding family support may be difficult or impossible.
- Oftentimes the LGBTQ communities are small and the victim may be afraid of what might be shared through the grapevine.
- If a person is more “closeted” the person may choose to stay with an abusive partner longer because they do not have other friends for support.
- Remember to use the word “partner” to be inclusive, unless the victim uses a different word.

International Student Victims of Violence^{15,16}

- Assaulters may threaten to have their victims deported if they try to seek help, making immigrant/foreign national survivors less likely to report these crimes.
- Immigrant and international student survivors may also be unaware or confused by the services that are available, particularly if service providers lack linguistically or culturally appropriate resources.
- The Reves Center can offer support for administrators who are advising international students, to help ensure we provide good service and support. Contact Community Values staff to facilitate a referral to the Reves Center staff.
- Sexual assault and/or domestic or dating violence may not be viewed in all communities as a crime.
- There could be repercussions in the home country for either the survivor or perpetrator. In addition to affecting the victim/survivor’s feelings about what happened and about recovery, this could also affect how the survivor views options.
- Religion is strongly tied to culture in many parts of the world and may play a large role in the survivor’s life. This may affect the survivor’s reactions, perceptions, and concerns about what happened.

Relationship Violence

- Reports of relationship violence at William & Mary have increased significantly since 2016.
- Most of the above considerations for working with sexual assault cases also hold for working with relationship violence cases.
- Emotional abuse is a very real and dangerous form of dating violence, and not all victims are physically abused.
- Relationship violence can occur in all communities and in any type of relationship including same-sex relationships. Remember to use the word “partner” to be inclusive, unless the victim uses a different word.

¹⁵ <https://www.notalone.gov/resources/>

¹⁶ http://www1.umn.edu/aurora/web-docs/pdf/SARP_v.5_finaldraft.pdf

Advisor Checklist

- Initial Meeting with Student
 - Describe your role:
 - Provide support and information– I am not in charge of the outcome
 - Assist in understanding the process, including progress/status of process
 - I am not permitted to create your narrative of what happened for you, suggest answers to questions, offer theories, or provide false information
 - I cannot predict the outcome; I can inform you of the range of sanctions for particular violations
 - I cannot speak for the university
 - I can only advise you, I cannot advise an attorney or anyone else
 - I will seek information if I don't know information
 - I will be as available to you as possible, up to, during and after hearing
 - You are not required to talk with me or utilize me, and you can release me at any time
 - You can ask questions directly to the Title IX Coordinator (Mason) or Community Values (Gilbert/Palmer) or ask me to relay them on your behalf (not as efficient, but is an option)
 - Best way to reach you and plan meetings
 - Explain your schedule and that it probably is different from theirs
 - You are a full time employee with 8-5 hours, family/outside life, etc. What time are you available “after hours” if needed; what time is too late to contact, etc.?
 - Can the student call your cell phone? Can the student text you? How should they contact you?
 - Share information about resources: Counseling Center, Health Center, academic assistance from the Dean of Students (letters to professors, possible extensions, relocation from residence, etc.)
 - Ask party if their parents are aware of the situation. If so, ask them how their parents are supporting them. If the student has not told parents yet, ask why, with the acknowledgement that you respect their choice not to tell them. Explain the benefit of informing their parents so they can be supportive and not surprised if the outcome is not ideal. If you hear in the party's narrative that parental notice could truly be harmful for the student, please let the Dean of Student's Office know.
 - Explain student's options
 - Student can have an outside advisor in addition to university-assigned advisor (outside advisor can be anyone); only one advisor can attend meetings with the student

- Explain each phase of the process and how to prepare for each phase (refer to the flow chart to explain)
 - Initial Meeting with TIX Coordinator/designee
 - Investigation/interview
 - Investigation report
 - Determination Official Review
 - Administrative Determination or
 - Conference Determination
 - Dean of Students sanction determination (if violations are found)
 - Appeal-both parties have right to appeal

- Encourage the party to think of names of any possible witnesses and any documentary information that may assist the investigation (photos, texts, call records, voicemails, Facebook postings, etc.) and if possible encourage party to come to initial interview ready to provide to the investigator(s); tell the party not to delete or discard anything

- Check in with the party regularly (recommend at least once a week); ask them how they are faring and if they need any support (personal or academic) or referrals to resources

- Review materials for them in advance of submission, if the party wishes

- Attend interviews, meeting, conference determination, and determination notification meeting with the party, if the party desires
 - Make sure they know time and location
 - Attend to their emotional state

- Help anticipate possible outcomes and possible next steps

- Take care of yourself...remember that we are here to assist you; do not hesitate to let us know if you need to talk, have questions, or are encountering difficulties.