

VIRGINIA MILITARY INSTITUTE
Lexington, Virginia

GENERAL ORDER)
NUMBER 16)

28 September 2022

Discrimination, Harassment, and Sexual Misconduct

- 1. Policy.** The Virginia Military Institute is committed to providing an environment that emphasizes the dignity and worth of every member of its community and that is free from harassment and discrimination based on race, sex, color, national origin, religion, age, veteran status, sexual orientation, pregnancy, genetic information, against otherwise qualified persons with disabilities, or based on any other status protected by law. In pursuit of this goal, any question of impermissible discrimination on these bases will be addressed with efficiency and energy and in accordance with this policy and VMI's Grievance Procedures (Appendix A), 90, and the Grievance Procedures also address complaints or reports of retaliation against those who have opposed practices prohibited by this policy, those who have filed complaints or reports under this policy, and those who have testified or otherwise participated in enforcement of this policy. Questions regarding discrimination prohibited by Title IX of the Education Amendments of 1972, or other federal law, may be referred to the VMI Inspector General and Title IX Coordinator (collectively IG), Ms. Susan LeMert, 303 Letcher Avenue, 540-464-7072, lemertsl@vmi.edu, or to the U.S. Department of Education's Office for Civil Rights.
- 2. Purpose.** The purpose of this policy is to establish clearly and unequivocally that VMI prohibits discrimination, harassment, and sexual misconduct by individuals who are subject to its control or supervision and to set forth procedures by which such allegations will be filed, investigated, and adjudicated.
- 3. Applicability.** This policy applies to on-Post conduct involving VMI cadets, employees, faculty, and staff, visitors to Post (including, but not limited to, students participating in camp programs, non-degree seeking students, exchange cadets, and other students taking courses or participating in programs at VMI), and contractors working on Post who are not VMI employees, and to VMI cadets, visiting students, employees, faculty, and staff participating in VMI-sponsored, recognized, or controlled activities off Post. This policy may also apply to off-Post conduct involving VMI cadets. Conduct by cadets in violation of this policy may also be addressed in a manner consistent with other cadet misconduct that is subject to discipline under the Blue Book or as an honor offense.

information received about an incident or

- individual, non-consensual voyeurism, knowingly transmitting HIV or an STD to another, or exposing one's genitals to another in non-consensual circumstances.
- 5) 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. The existence of such a relationship will be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence can be a single event or a pattern of behavior that includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
 - 6) Domestic violence is a felony or misdemeanor crime of violence committed: (i) by a current or former spouse or intimate partner of the victim; (ii) by a person with whom the victim shares a child in common; (iii) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; (iv) by a person similarly situated to a spouse of the victim under the laws of the Commonwealth of Virginia; or (v) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family laws of the Commonwealth of Virginia. Domestic violence can be a single event or a pattern of behavior that includes, but is not limited to, sexual or physical abuse.
 - 7) Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (i) fear for his or her safety or the safety of others; or (ii) suffer substantial emotional distress, meaning significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. A "course of conduct" means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a

circumstances and with similar identi

suffering or anguish that may, but does not

necessarily,

5. Retaliation

Any form of retaliation, including intimidation, threats, harassment, and other adverse action taken or threatened against any complainant or person reporting or filing a complaint alleging discrimination, harassment, or sexual misconduct or any person cooperating in the investigation of allegations of discrimination, harassment, or sexual misconduct to include testifying, assisting, or participating in any manner in an investigation pursuant to this policy is strictly prohibited. Allegations of retaliation will be investigated per General Order 90 and the Grievance Procedures. Action is generally deemed adverse if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy. Retaliation may result in disciplinary or other action independent of the sanctions or interim measures imposed in response to the underlying allegations of discrimination, harassment, or sexual misconduct. Retaliation prohibited by General Order 90 includes any harassment, intimidation, threat, or coercion against the IG, an Assistant Title IX Coordinator, or external investigator for the purpose of interfering with his or her job responsibilities.

6. Reporting

- A. Conduct allegedly in violation of this policy should be reported promptly

or sexual misconduct must report any relevant information about the alleged incident to the IG as soon as practicable after addressing the needs of the victim. No VMI employee will undertake any independent efforts to determine whether or not the report or complaint has merit or can be substantiated before reporting it to the IG.

D. Reports made by Cadets: Cadets should report alleged

maintain privacy to every extent possible without compromising the Institute's ability to investigate and respond in accordance with applicable law and regulations.

Notwithstanding a complainant's request that law enforcement not be informed of an incident, the Institute is required pursuant to Virginia Code § 23.1-806 to report information about an incident to law enforcement if necessary to address an articulable and significant threat posing a health or safety emergency, as defined by the implementing regulations of the Family Educational Rights and Privacy Act, 34 C.F.R. § 99.36, as detailed in the Sexual Violence Threat Assessment provisions of the Grievance Procedures (Appendix A). The IG may be limited in the ability to investigate an anonymous report unless sufficient information is furnished to enable the IG to conduct a meaningful and fair investigation. If the complainant requests confidentiality and does not file a signed formal complaint with the IG, the Institute also may be limited in the actions it is able to take and its ability to respond.

9. Timely Warnings

VMI is required by federal law to issue timely warnings for reported incidents that pose a substantial threat of bodily harm or danger to members of the VMI community. The Institute will ensure, to every extent possible, that a victim's name and other identifying information is not disclosed, while still providing enough information for members of the VMI community to make decisions to address their own safety in light of the potential danger.

10. Emergency Removal

A respondent may be removed from Post or other education program or activity on an emergency basis, provided that VMI undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any cadet or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. The VMI Threat Assessment Team will decide whether a situation warrants an emergency removal.

11. Sexual Misconduct Survivor/Victim Procedures and Services

- A. VMI will assist sexual misconduct survivors/victims in a supportive manner, implementing the procedures set out herein. Because of the potential seriousness and sensitivity of the investigations involved, it is important to undertake these investigations properly. Preserving the evidence is often a key step of successful investigation of alleged sexual misconduct.
- B. Recommended procedure for anyone who has experienced sexual misconduct:
 - 1) Go to a safe place.
 - 2) For safety and confidential care, report promptly to the VMI Infirmary, Stonewall Jackson Hospital, or the nearest medical facility/emergency room. You may request a Sexual Assault Advocate if one is not provided. Physical evidence may be usable if proper procedures are followed for evidence collection within 96 hours of the assault.
 - 3) Contact a trusted friend or family member. For professional and confidential counseling support, contact Cadet Counseling (540-464-7667) or Project Horizon. Among other services, Project Horizon offers survivors a 24-hour Hotline (540-463-2594), emergency shelter, crisis intervention, counseling, applicable referrals, and court advocacy.

- 4) It is your right to have evidence collected and retained anonymously by law enforcement while you consider whether to pursue criminal charges. Evidence preservation is enhanced in the following ways:
 - a. Do not wash your hands, bathe, or douche. Do not urinate, if possible.
 - b. Do not eat, blow your nose, drink liquids, smoke, or brush your teeth if oral contact took place.
 - c. Keep the clothing worn when the assault took place. If you change clothing, place the worn clothing in a paper bag (evidence deteriorates in plastic).
 - d. Do not destroy any physical evidence that may be found in the vicinity of the assault by cleaning or straightening the location of the crime. The victim should not clean or straighten the location of the crime until law enforcement officials have had an opportunity to collect evidence.
 - e. Tell someone all the details you remember or write them down as soon as possible.

13. Supportive Measures

The Institute will offer supportive measures, as appropriate, to both the complainant and the respondent during the investigation and resolution of complaints of discrimination, harassment, or sexual misconduct, as well as, any law enforcement investigation, to address the safety of the complainant, the respondent, or any member of the VMI community, and to avoid retaliation. If, in the judgment of the IG or other VMI leadership, the safety or well-being of any member of the VMI community may be jeopardized by the presence on-Post of the complainant or the respondent, the IG will notify the Threat Assessment Team. VMI will seek the consent of the complainant and the respondent before taking supportive measures to the greatest degree possible. Supportive measures will be individualized and may include, but are not necessarily limited to, changes in classroom schedules or barracks arrangement, no-contact orders between the parties, bar from Post, escorts on Post, referral and coordination of counseling and health services, and modification of work, academic, or training requirements. The Institute may temporarily reassign or place on administrative leave an employee alleged to have violated this policy. In such situation the employee will be given the opportunity to meet with the Chief of Staff prior to such action being imposed, or as soon thereafter as reasonably possible, to show cause why the action should not be implemented.

14. Sanctions

If it is determined that conduct in violation of this policy has occurred, sanctions will be determined in accordance with the Grievance Procedures. Consequences for violating this policy will depend on the facts and circumstances of each particular situation, the frequency and severity of the offense, and any history of past conduct in violation of this policy. Sanctions may include penalties up to and including dismissal for cadets and termination for employees. In addition to sanctions that may be imposed on an individual found in violation of this policy, the Institute will take steps to prevent recurrence of any discrimination, including sexual misconduct, and to remedy discriminatory effects on the complainant and others, if appropriate.

15. Cadet Amnesty

In order to facilitate reporting, the Institute may provide amnesty to a cadet who reports an incident in violation of this policy, directed toward that cadet or another cadet, for disciplinary infractions, occurring at the time of the incident. Amnesty may not be offered if (1) the disciplinary infraction places or placed the health or safety of any other person at risk or (2) the cadet who committed the disciplinary infraction previously has been found to have

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Reports of conduct in violation of GO 16 should be made as soon as practicable after addressing the immediate needs of the victim and may be made orally or in writing, including by electronic mail directly to the IG. The IG also will accept, without comment or need for explanation, a

contain a piece of paper with the name and room number or phone number of the individual wishing to make a report. Individuals also can report incidents anonymously online through the IG webpage: (<http://www.vmi.edu/issuesandconcerns>) or by leaving an anonymous message with the IG's hotline (540-464-7702). With all reports other than those made anonymously, the reporting individual will be contacted promptly

hearing process in front of an appeals officer. The IG will explain to all parties the right to have a personal advisor of their choice present throughout the process, as well as, the right to have VMI assign an advisor to either party for the initial hearing process if needed. The IG will explain to each party the right to review and respond to the allegations and all evidence collected during the IG investigation. The IG will also explain to the parties and witnesses that retaliation for reporting alleged discrimination, harassment, or sexual misconduct, or participating in an investigation of an alleged violation, is strictly prohibited and that any retaliation should be reported immediately and will be promptly addressed per GO 90.

Explanation of Sexual Misconduct Rights and Options

When a cadet or VMI employee reports that he or she has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off Post, the cadet or VMI employee will be provided an explanation of rights and options, which will include:

1. Procedures victims should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred, including information about:
 - A. The importance of seeking medical attention and of the collection and preservation of evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protective order;
 - B. How and to whom the alleged offense should be reported;

objectively offensive even if the allegations are assumed to be true, then dismissal of the investigation under GO 16 is mandatory. This determination likely will occur after an investigation has begun.

If the IG determines that VMI does not have jurisdiction over the incident, the allegation must be dismissed pursuant to Title IX, but may be adjudicated through GO 16 Grievance procedures or pursuant to other VMI policies, including but not limited to in accordance with GO 13 or GO 17. Sexual harassment conduct that is determined not to be severe, pervasive, and objectively offensive, as defined by Title IX of the Civil Rights Act of 1964 as amended (Civil Rights Act), may be addressed under these or other policies.

The complainant has the right to appeal the IG decision to dismiss the allegation per the appeals procedures explained below. The IG may also dismiss an allegation if the complainant requests in writing to withdraw a formal complaint, the respondent is no longer enrolled or employed by VMI, or if specific circumstances prevent VMI from gathering evidence sufficient to reach a determination.

Once a formal written complaint is signed by a complainant or the IG alleging violations to GO 16, there are two possible methods for investigating, adjudicating, and resolving the alleged complaint: informal and formal resolution. The IG will explain the informal and formal procedures to both the complainant and the respondent, if known. The complainant and the respondent have the option to proceed under an informal resolution process. Both parties must voluntarily sign a written request to enter into an informal resolution process. This process is voluntary and either party can terminate their participation in the process and request a formal resolution at any time. In all cases, VMI will ensure there is no actual conflict of interest or bias among officials involved in the investigation and resolution of complaints to include the IG, Assistant Title IX Coordinators, Decision Makers, Appeals Officers, and Informal Re, VM

resolution through the informal process must adequately address the concerns of the complainant, as well as the rights of the respondent and the responsibility of the Institute to prevent, address, and remedy alleged violations of GO 16. Informal resolution remedies might include providing training, providing counseling to an individual whose conduct, if not ceased, could rise to a higher level of policy violations, confidential briefing of the respondent's work supervisor, use of penalties through the cadet governance system, use of penalties through the Human Resources Department, or other methods deemed appropriate by the facilitator. Informal resolutions will be reviewed and approved by the IG. All parties will be provided written notification of the resolution of the complaint through the informal process.

- D. There will be no right of appeal afforded to the complainant or the respondent following the completion of an informal resolution process.

2. Formal Resolution Process and Decision Maker Hearing

- A. A formal complaint is a physical or electronic document that describes the facts alleged and is signed by an alleged victim of a GO 16 policy violation or the IG. At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in a VMI education program or activity, including as an employee. The IG may also sign a formal complaint based on several factors to include the severity of the conduct alleged, the risk that the conduct may be repeated, multiple reports of serious

electronic format to the parties and their advisors at least ten (10) business days prior to the hearing. ness days prior to

recording, audiovisual reading, or digital media, including but not limited to text messages, emails, or social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint.

- P. The advisor is not prohibited from being a witness in the matter. If a party does not
-examination on
his or her behalf. If neither a party nor their advisor appears at the hearing, VMI will provide an advisor to appear on behalf of the non-appearing party.
- Q. VMI, and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of GO 16 has occurred. This burden does not rest with either party, and either party may decide not to share his or her account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from VMI and does not indicate responsibility.
- R. VMI cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information.
- S. The Decision Maker will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove or disprove the allegations).
- T. Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from retaliation.
- U. After the hearing, the Decision Maker will issue within ten (10) business days a written determination of responsibility based on the preponderance of evidence standard of
s that the weight of the
evidence, in totality, supports a finding that it is more likely than not that the alleged misconduct occurred. The Decision Maker will consider only the evidence that is directly related to the allegations. In determining whether alleged harassment has created a hostile environment, the Decision Maker will consider not only whether the conduct was unwelcome to the complainant, but also whether the conduct was severe, pervasive, and a reasonable person similarly situated to the complainant would have perceived the conduct to be objectively offensive.
- V. the following:
- 1) Identification of the allegations at issue.
 - 2) Description of the procedural steps taken throughout the case.
 - 3) Findings of fact supporting the determination.
 - 4) Conclusions regarding application of GO 16.
 - 5) A statement and rationale as to the determination for each allegation.
 - 6) A statement of any disciplinary sanctions and whether any remedies will be provided to the complainant.
 - 7) A description of the procedures and permissible grounds for appeal.
- W. Upon completion of the written determination, the Decision Maker will at the same time provide a copy to all parties, their advisors, and the IG. The written determination should be completed within ten (10) business days from the completion of the hearing. Subsequent to receiving the written determination, the IG will meet with the parties to review the appeals procedures. If neither party notifies the IG of their desire to appeal, the findings, sanctions, and recommendations in the written determination become final.

Sanctions

- A. Sanctions for cadets will be determined by the Decision Maker, in consultation with the Commandant of Cadets. Sanctions may include, but are not limited to, penalties described in the Blue Book, suspension, or dismissal.
- B. Sanctions for teaching and research faculty will be determined by the Decision Maker in consultation with the Dean of Faculty. Sanctions for non-teaching faculty and other non-classified staff will be determined by the Decision Maker, in consultation with the Deputy Superintendent of Finance, Administration and Support; the Director of Intercollegiate Athletics; the Commandant; the Chief of Staff; or the Superintendent, in accordance with any applicable VMI regulations. Possible sanctions include, but are not limited to, counseling, training, reassignment, or the initiation of termination proceedings according to procedures in the appropriate governing policy.
- C. Sanctions for classified employees will be determined by the Decision Maker, in consultation with the Director of Human Resources, in accordance with the

removal ordered by the Threat Assessment Team; and an appeal hearing requested by any Appeals will be heard by one Appeal Officer. If either the complainant or the respondent suspects that the Appeal Officer could be biased or have a conflict of interest, then that party has three (3) business days from notification of the identity of the Appeal Officer to file a written statement claiming that the Appeal Officer likely will be biased or likely has a conflict of interest. The statement must include details regarding why possible bias or conflict of interest is suspected. If a bias or conflict-of-interest claim is reasonable, the Superintendent or the President of the VMI Board of Visitors will select a replacement Appeal Officer.

2. Appeal Procedures

A complainant or respondent desiring to appeal a responsibility will file a written request for appeal with the IG within three (3) business days of receipt of the written determination along with information to support one or more of the following grounds for appeal:

- A. Procedural irregularity that affected the outcome.
- B. New evidence, unavailable at the time of the investigation that could substantially impact
- C. Conflict of interest or bias by the institutional participants that affected the outcome.
- D. The sanctions recommended by the Decision Maker are substantially outside the parameters or guidelines set by the Institute for this type of offense or the cumulative conduct record of the respondent.

Within five (5) business days of receipt of the written request for appeal, the IG will notify the parties of the time and place of the hearing before an Appeal Officer. In addition, the IG will provide the parties with the name of the Appeal Officer. The hearing typically will be scheduled within fifteen (15) business days of receipt of the request for appeal. If extension beyond fifteen (15) business days is necessary, both parties will be notified of the expected time frame.

Within five (5) business days of filing the request for appeal, the party appealing the findings (appellant) must submit a written statement to the IG that (i) identifies the names and addresses of witnesses that are requested to be called at the hearing; (ii) identifies and includes copies of any documents that will be used as evidence at the hearing; (iii) describes with specificity the grounds for appeal, including any procedures in GO 16 allegedly violated during the course of the investigation; and (iv) requests a specific remedy. The non-appealing party (appellee) also may submit such information for the Appeal Officer's consideration.

The IG will provide to the Appeals Officer within five (5) business days of receiving the above information from the appellant and the appellee: (i) the written determination of responsibility from the Decision Maker; (ii) the final investigative report from the IG; (iii) copies of all appeals documents provide to the IG by the appellant and the appellee; and (iv) the names and addresses of any witnesses that will be called at the hearing.

Both the appellant and the appellee may be accompanied by an advisor of their choice to the the respondent

Appendix B:

