GENERAL ORDER)
NUMBER 16) 15 May 2025

Nondiscrimination Policy

1. Purpose.

The Virginia Military Institute is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination and harassment based on a protected characteristic, and free from retaliation for engaging in a protected activity.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of civility and respect in all aspects of its education program and activities, VMI developed policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of a protected characteristic, and for allegations of retaliation under General Order 90.

2. Policy Statement.

Unless otherwise permitted, restricted, or required by Federal or State law, VMI does not discriminate and prohibits discrimination in its employment, programs, activities on any basis protected by law.

VMI adheres to all federal and state laws regarding non-discrimination and anti-harassment in institutions of higher education.

3. IG/Title IX Coordinator.

A. Responsibilities. VMI's Inspector General serves as the Institute's Title IX Coordinator and Inspector General (collectively, "IG") and oversees implementation of General Order 16 ("this Policy" or "the Policy"). The IG has the primary responsibility for coordinating VMI's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent discrimination and harassment under this Policy, and retaliation under General Order 90. All parties will be provided with a copy of this Policy detailing options and resources, which the IG may also review with the parties in person.

B. Contact Information. Complaints or notice (reports) of alleged violations of this Policy, or inquiries or concerns regarding this Policy may be made internally to:

Alyssa Astphan, IG/Title IX Coordinator
303 Letcher Avenue, Lexington, Virginia, 24450
ig@vmi.edu
540-464-7086

Inquiries about Title IX or other civil rights laws, such as Title VI and Title VII, may also be referred to the U.S. Department of Education's Office for Civil Rights at:

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

Web: http://www.ed.gov/ocr

C. Independence and Conflict of Interest. The IG and their staff act with independence and authority free from bias and conflicts of interest. The IG oversees all resolutions under this Policy and these procedures. The members of the IG staff are vetted and trained to ensure they are not biased for or against any party in a specific Complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the IG, contact the VMI Superintendent or Chief of Staff at 540-464-7311. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other IG staff member should be raised with the IG.

4. Scope.

When the Respondent is a member of the VMI community, a Formal Complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the VMI community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, vendors, contractors, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed and investigated in accordance with this Policy.

VMI recognizes that reports and/or Formal Complaints under this Policy may include multiple forms of discrimination and harassment as well as violations of other VMI policies; may involve various combinations of students, employees, and other members of the VMI community; and may require the simultaneous attention of multiple VMI departments. Accordingly, all VMI departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable VMI policies, to provide uniform, consistent, efficient, and effective responses to alleged discrimination and harassment or retaliation.

5. Jurisdiction.

This Policy applies to VMI's education program and activities, to conduct that takes place on property owned or controlled by VMI, at VMI-sponsored events. The Respondent must be a member of VMI's community for this Policy to apply.

Regardless of where the conduct occurred, VMI will review reports (notice) or Complaints to determine whether the conduct occurred in the context of its employment or education program or activity and/or has continuing effects on Post (including virtual learning and employment environments) or in an off Post sponsored program or activity.

A. Off-Post Misconduct. This Policy may also be applicable to the effects of off-Post misconduct that effectively deprives a person of access to VMI's education program or activities, when the Institute determines that the conduct affects a substantial VMI interest. VMI policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on VMI's education program and activities or when they involve the use of VMI networks, technology, or equipment. A substantial VMI interest includes:

- Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.
- Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.
- Any situation that significantly impinges upon the rights, property, or achievements of others,

significantly breaches the peace, and/or causes social disorder.

- Any situation that substantially interferes with the educational interests or mission of VMI

B. Non-GO 16 Discrimination and Harassment. VMI does not tolerate discrimination or harassment of any employee, student, visitor, or third party and will act to remedy all forms of harassment when reported, whether or not the conduct meets the jurisdictional requirements set forth in this Policy. In cases where the conduct alleged would not violate this Policy, but may violate other VMI policy or regulation, the IG will refer the matter to the appropriate office for resolution under other processes. Conduct involving cadets will be referred to the Commandant of Cadets for resolution under the VMI Blue Book. Conduct involving employees will be referred to the appropriate Official with Authority and/or Human Resources) for resolution under the applicable VMI or DHRM policy or regulation. See Paragraph 5 of this Policy, for additional information.

C. If the Respondent is Not a Member of the VMI Community. The IG will assist the Complainant in identifying appropriate institutional and local resources and support options. If criminal conduct is alleged, VMI can assist in contacting local or institutional law enforcement if the individual would like to file a police report. Further, even when the Respondent is not a member of VMI's community, supportive measures, remedies, and resources may be provided to the Complainant by contacting the IG. In addition, VMI may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from VMI property and/or events.

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

Similarly, the IG may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to VMI where Sexual Harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse.

D. Vendors Serving VMI Through Third-Party Contracts. These vendors are subject to the policies and procedures of their employers and/or to these Policies and procedures, if and when their employer has agreed to be bound by their contracts.

6. Prohibited Conduct.

The sections below describe the specific offenses that are prohibited under VMI Policy, including the applicable grievance procedures used to resolve Complaints and the range of sanctions for findings of responsibility. All offense definitions encompass actual and/or attempted offenses. Complaints that meet the jurisdiction and definitions within this Policy and as described below will be resolved through the GO 16 Grievance Procedures found in Appendix B, except as described in Paragraph 6.E., below. VMI reserves the right to impose any level of sanction for violations of this Policy resolved through the Grievance Procedures in Appendix B and/or Appendix E. Sanctions may range from a reprimand up to and including suspension or dismissal/termination.

A. Discrimination. Acts by any member, office, or organization of the VMI community that deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of any member of VMI community, guest, or visitor on the basis of that person's protected characteristics as defined in this Policy.

B. Discriminatory Harassment. Unwelcome verbal, written, graphic, and/or physical conduct by any member or group of the community on the basis of characteristics protected by policy or law. Discriminatory Harassment violates this Policy when it rises to the level of creating a hostile

environment. A hostile environment is defined as unwelcome conduct, determined by a reasonable person to be so severe, pervasive, and objectively offensive that it unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities. VMI reserves the right to address Complaints of Discriminatory Harassment that occur off-Post and effectively deprive a person of access to VMI's education program or activities, and when the Institute determines that the conduct affects a substantial VMI interest, as described in this Policy.

C. Title IX Sexual Harassment, as an umbrella category, includes the offenses of Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking. The alleged conduct must have occurred within VMI's education program and activities, taken place on property owned or controlled by VMI, or at VMI-sponsored events off-Post, and the Respondent must be a VMI student or employee. The following definitions apply:

1) **Title IX Sexual Harassment.** Conduct on the basis of sex that satisfies one or more of the following:

   a. **Quid Pro Quo.** Occurs when an employee of VMI conditions the provision of an aid, benefit, or service of VMI on an individual's participation in unwelcome sexual conduct.

   b. **Sexual Harassment (Hostile Environment).** Unwelcome conduct, determined by a reasonable person, to be so severe, pervasive, and objectively offensive, that it effectively denies a Complainant equal access to VMI's education program or activity.

   c. **Sexual Assault.** Any sexual act directed against a Complainant without their consent, or instances in which the Complainant is incapable of giving consent. For purposes of this Policy, sexual assault includes any of the following offenses:

      i. Rape. Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without their consent. Attempts to commit rape are included.

      ii. Criminal Sexual Contact. The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

      iii. Incest. Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Virginia law.

      iv. Statutory Rape. Non-forcible sexual intercourse, with a person who is under the statutory age of consent, as defined in the Code of Virginia, Title 18.2, Chapter 4, Article 7.

   D. Dating Violence. Violence on the basis of sex committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not

include acts covered under the definition of Domestic Violence.

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

b. **Stalking.** Engaging in a course of conduct on the basis of sex directed at the Complainant, that would cause a reasonable person to fear for the person's safety, fear for the safety of others, or suffer substantial emotional distress. For the purposes of this definition,

   i. Course of conduct means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

   ii. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

   iii. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

E. Sexual Exploitation. An individual taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute Sexual Harassment under this Policy. Sexual Exploitation includes prostituting another person, non-consensual visual or audio recording of sexual activity, non-consensual distribution (including showing) of photos or other images of an individual's sexual activity or intimate body parts with an intent to embarrass such individual, non-consensual voyeurism, knowingly transmitting HIV or an STD to another, or exposing one's genitals to another in non-consensual circumstances. Sexual Exploitation is not considered Title IX Sexual Harassment.

F. Other Prohibited Misconduct. Complaints or reports of alleged misconduct that meet the definitions in this paragraph, but not the jurisdiction, within this Policy will be referred to the appropriate Official with Authority for resolution under other disciplinary processes. At the request of the Official with Authority, or as directed by the Superintendent, the IG will investigate allegations of misconduct through the Grievance Procedures, found in Appendix E of this Policy.

G. Retaliation. Intimidation, threats, coercion, or discrimination against any person by VMI, a student, or an employee or other person authorized by VMI to provide aid, benefit, or service under its education program or activity, for the purpose of interfering with any right or privilege secured by this Policy because the person has reported information, made a Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under these Grievance Procedures. For VMI's policy on Retaliation, see General Order 90, Retaliation.

H. Force, Coercion, Consent, and Incapacitation. As used in the offenses above, the following definitions and understandings apply.

1) **Force.** The use of physical violence and/or physical imposition to gain sexual access. Force

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

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

2) **Coercion.** Unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

3) **Consent.** Knowing, voluntary, and clear permission by word or action to engage in sexual activity.

- For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Silence or absence of resistance does not imply consent. Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.
- Consent is voluntary and may be withdrawn at any time by communicating the withdrawal through an outward demonstration of understandable words or actions.

I. Consent cannot be obtained by physical or verbal coercion that is expressed or implied, which includes the use of intimidation, threats, force, or duress.

- An individual who is incapacitated because of age, disability, voluntary activity, or through the acts of others cannot give consent. Consent cannot be obtained by taking advantage of another person's incapacitation or physical helplessness where one knows, or a reasonable person should have known, of such incapacitation or helplessness. The reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.
- Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected.
- Proof of consent or non-consent is not a burden placed on either party involved in a Complaint. Instead, the burden remains on VMI to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

1) **Incapacitation**: Physical or mental inability to make informed, rational judgments.

- A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drug consumption. This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.
- Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or

being drunk.

7. Reports/Complaints of Discrimination, Harassment, and/or Retaliation.

As used in this Policy, the term "report" means verbal or written notice given to the IG, a member of their staff, or an Official with Authority that alleges an occurrence of harassing, discriminatory, and/or retaliatory conduct.

The term "Formal Complaint" means a document or electronic submission that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Complaint, and requests that VMI investigate the allegations.

Because reporting carries no obligation to initiate a formal response, and because VMI respects Complainant requests to dismiss Complaints, unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of confidentiality by making a report that allows VMI to discuss and/or provide supportive measures.

Reports or Complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

A. File a report or Formal Complaint with the IG or a member of their staff.

Reports to the IG may be made using the online reporting form, via email (ig@vmi.edu), phone (540-464-7086), in-person (303 Letcher Avenue), via mail at the same address, or to any of the reporting contacts found on the IG website.

Formal Complaints must be submitted to the IG in person (303 Letcher Avenue), via mail at the same address, or via email (ig@vmi.edu). Blank forms are available in the IG office and a member of the staff can assist, if needed. If a Formal Complaint is submitted in a form that does not meet this standard, the IG will contact the Complainant to ensure that it is filed correctly. The Complainant must also disclose if a formal Complaint has been filed with another VMI office, or a state or federal agency for the same offense.

B. File a report with any Mandated Reporter.

As defined in this Policy, all non-confidential employees are Mandated Reporters. Any information provided to a Mandated Reporter that includes potential violations of this Policy will be shared with the IG, who will attempt to contact the victim. Reports may be made in any form, including phone, email, in-person, or mail. See the section on Mandated Reporting for more information.

C. Make an anonymous report.

Reports may be made to the IG anonymously through the online reporting form or via anonymous voicemail at 540-464-7702. 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. Even if no further formal action is taken, measures intended to protect the community may be enacted. VMI tries to provide supportive measures to all Potential Complainants, which may be impossible with an anonymous report that does not identify the Potential Complainant.

D. Report Through Cadet Government.

Any reports made to any member of Cadet Government that includes conduct that may violate this Policy must be immediately forwarded to the Cadet Government Officer for review. The Cadet Government Officer will share reports with the IG, who has ultimate discretion over whether the reported conduct will be resolved through this Policy or referred for resolution through Cadet Conduct procedures. Cadets are encouraged to ensure the victim's safety, in

coordination with the Commandant's Staff; however, no action should be taken to investigate or resolve the Complaint.

8. Mandated Reporting and Confidential Resources.

A. Mandated Reporting Requirements. All VMI employees (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the IG all known details of a report made to them in the course of their employment using any of the reporting options provided in Reports/Complaints section of this Policy. Employees must also promptly share all details of behaviors under this Policy that they observe or have knowledge of, even if not reported to them by a Potential Complainant or third party.

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

Finally, a Mandated Reporter who is themselves a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are encouraged to do so.

B. Confidential Resources. If a Potential Complainant would like the details of an incident to be kept confidential, they may speak with the following resources designated as Confidential Resources by VMI:

- Counselors at the Cadet Counseling Center. Contacts: 540-464-7667, 2nd floor of the VMI Health Center, or email at cadetcounseling@vmi.edu.
- Providers and staff at the VMI Infirmary. Contacts: 540-464-7218, 1st floor of the VMI Health Center, or email at infirmary@vmi.edu.
- Institute Chaplains. Contacts: 540-464-7460, 540-464-7390, or Old Hospital. (note: Cadet Chaplains are not designated Confidential Resources)
- Project Horizon, an off-Post resource for victims of sexual violence. 24-hour Hotline: 540-463-2594
- Other off-Post sexual violence-focused resources
- Off-Post licensed professional counselors, medical providers, clergy/chaplains, and attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, professional credentials, or official designation, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

9. When a Potential Complainant Does Not Wish to Proceed.

A Potential Complainant may request confidentiality with the IG when declining to file a formal complaint The IG will evaluate that request in light of the duty to ensure the safety of the institution and to comply with state or federal law. VMI's ability to remedy and respond to notice (reports) may be limited if the Potential Complainant does not want VMI to proceed with an investigation and/or grievance process. The goal is to provide the individual with as much control over the process as possible, while balancing VMI's obligation to protect its community.

A. Declining a Formal Complaint. In cases in which the Potential Complainant requests confidentiality/no formal action and the circumstances allow VMI to honor that request, the IG will request the individual sign a document stating such. VMI may offer supportive measures and remedies to the individual and the community but will not otherwise pursue formal action.

B. Filing at a later date. If the Potential Complainant elects to take no action, they can change that decision if they decide to pursue a Formal Complaint at a later date. Upon making a Formal

Complaint, a Complainant has the right, and can expect, to have allegations taken seriously by VMI and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

C. Legal reporting obligations. Notwithstanding a Potential Complainant's request that local 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 local 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 (FERPA), 34 C.F.R. § 99.36, and as detailed in the Sexual Violence Threat Assessment provisions in Appendix C.

D. Proceeding with an investigation.

1) The IG has ultimate discretion over whether VMI proceeds when the Potential Complainant does not wish to do so, and the IG may sign a Formal Complaint to initiate a grievance process when a compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The IG must also consider the effect that non-participation by the victim may have on the availability of evidence and VMI's ability to pursue a Formal Grievance Process fairly and effectively.

2) When the IG executes the written Complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

3) When VMI proceeds, the Complainant (and/or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

10. Time Limits on Reporting.

There is no time limitation on providing a report (notice) or Complaint to the IG; however, if the Respondent is no longer subject to VMI's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be limited or impossible.

Acting on a report (notice) or Complaint significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the IG, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When the report (notice) or Complaint is affected by significant time delay, VMI will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of the report (notice) or Complaint. In most cases, this Policy is only applied to alleged incidents that occurred after August 14, 2020. For incidents alleged to have occurred prior to August 14, 2020, previous versions of this Policy will apply.

11. Supportive Measures.

VMI will offer and implement appropriate and reasonable supportive measures to the parties upon a notice (report) of alleged harassment, discrimination, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. They are offered, without fee or charge to the parties, to restore or preserve access to VMI's

education program or activity, including measures designed to protect the safety of all parties and/or VMI's educational/work environment and/or to deter harassment, discrimination, and/or retaliation.

The IG promptly makes supportive measures available to the parties upon receiving a report (notice) or a Complaint. At the time that supportive measures are offered, the IG will inform the Complainant, in writing, that they may file a Formal Complaint with the IG either at that time or in the future. The IG works with the Complainant to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

VMI will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair VMI's ability to provide those supportive measures. VMI will act to ensure as minimal an academic/occupational impact on the parties as possible. VMI will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, or community-based service providers
- Altering rooming assignments
- Altering company or platoon assignments
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Class schedule modifications, withdrawals, or leaves of absence
- Providing transportation assistance
- Visa and immigration assistance
- Student financial aid counseling
- Altering work arrangements for employees or student-employees
- Referral to the Employee Assistance Program
- Safety measures, including safety planning, providing on-Post safety escorts, increased security and monitoring of certain areas of the Post or Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Any other actions deemed appropriate by the IG or other Institute Officials

Violations of no contact orders or other restrictions may be referred to the appropriate student or employee conduct process for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

12. 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 student 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.

13. Federal Timely Warning Obligations.

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.

14. Promptness.

Once VMI has received a report (notice) or a Formal Complaint, all allegations are promptly acted upon. Complaints typically take 90-120 business days to resolve through the Formal Resolution process, and 60-90 business days to resolve through the Informal Resolution process. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but VMI will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in VMI's procedures will be delayed, VMI will provide written notice to the parties of the delay, the cause for the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

See Appendix F for process flowcharts and timeframes.

15. Confidentiality/Privacy.

Every effort is made by VMI to preserve the confidentiality of reports. VMI will not share the identity of any individual who has made a report or Formal Complaint of harassment, discrimination, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of harassment, discrimination, or retaliation; any Respondent; or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA) or its implementing regulations, or as required by law; or to carry out the purposes of 34 C.F.R. Part 106, including any investigation, hearing, or grievance proceeding arising under these policies and procedures.

VMI reserves the right to determine which VMI officials have a legitimate educational interest in being informed about incidents that fall under this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will be told about the Complaint. These may include but are not limited to: The Commandant of Cadets (for Complaints involving cadets), the Superintendent, VMI Police, and the Threat Assessment Team, when appropriate. Information will be shared as necessary with Investigators, Decision-maker, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

16. False Allegations and Evidence.

All members of the VMI community are expected to provide truthful information in any report or proceeding under this Policy and the Grievance Procedures. Deliberately providing false and/or malicious accusations under this Policy is prohibited and subject to honor charges for cadets or employee discipline under the appropriate policy. This provision does not apply to reports made or information provided in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation, hearing, or Informal Resolution can be subject to discipline under appropriate VMI policies.

17. Federal Statistical Reporting Obligations.

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

- All "primary crimes," which include criminal homicide, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, and arson
- Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property
- VAWA-based crimes, which include Sexual Assault, Domestic Violence, Dating Violence, and

Stalking
- Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug law violations

All personally identifiable information is kept private, but Institute officials must share statistical information with VMI Police regarding the type of incident and its general location (on or off Post or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily Post crime log.

Campus Security Authorities include Cadet conduct staff, Post Police, local police, coaches, athletic directors, human resources staff, advisors to student organizations, IG/Title IX staff, and any other official with significant responsibility for student and on-Post activities.

18. Cadet Amnesty.

A. Policy.

It is in the best interests of VMI community that individuals choose to report misconduct to VMI officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process. To encourage reporting and participation in the process, VMI maintains a policy of offering parties and witnesses amnesty for disclosing conduct otherwise subject to discipline under the Blue Book. This includes, with some exceptions described below, consumption of alcohol in Barracks, underage consumption of alcohol anywhere, or status violations. If amnesty is provided, no conduct proceedings or record of adverse conduct actions will result for disclosed disciplinary infractions.

B. Exceptions and Limitations to the Amnesty Policy.

Amnesty may not be offered when the disciplinary infraction:

1) Places or placed the health or safety of any other person at risk,
2) Indicates a potential violation of the Honor Code, or
3) Indicates a pattern of misconduct for similar incidents by the same cadet.

Additionally, abuse of amnesty requests may result in a decision by the Commandant of Cadets not to extend amnesty to the same cadet repeatedly.

C. Reports of Sexual Violence.

In the event that a cadet discloses personal consumption of drugs or alcohol in conjunction with a good faith report of an act of sexual violence and the superintendent of Virginia Military Institute determines that such cadet's personal consumption of drugs or alcohol constitutes a threat to the cadet's well-being or the well-being of others, the Superintendent may require such cadet to attend drug or substance use disorder counseling.

19. Sexual Violence Response.

A. Sexual Violence Threat Assessment. Upon receipt of any report of sexual violence, defined as a physical sexual act perpetrated against a person's will or where a person is incapable of giving consent, that is alleged to have occurred (i) against any VMI student; or (ii) on Post, in or on a VMI building or property, or on public property that is on Post or immediately adjacent to and accessible from Post, the IG will promptly inform a review committee of the report, including personally identifying information. The review committee will be comprised of, at a minimum, the IG, the Chief of the VMI Police, and the Commandant of Cadets, or their designees. The review committee may consult other VMI officials depending on whether the accused individual is a student, faculty, or staff member and the circumstances of the report. The review committee

will be advised by VMI counsel. The full response procedures are found in Appendix C.

B. Sexual Violence Victim's Rights, Options, and Procedures. VMI will assist sexual misconduct survivors/victims in a supportive manner, implementing the procedures set out in Appendix D of this Policy. Preserving the evidence is often a key step of successful investigation of alleged sexual misconduct.

20. Education and Awareness.

The IG's Office coordinates an education, training, and awareness program on discrimination, harassment, and sexual misconduct for students and employees, including training on primary prevention, bystander intervention, risk reduction, consent, and other pertinent topics.

21. Academic Freedom and Free Speech.

This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial, or sensitive subject matters protected by academic freedom. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of VMI Policy, though supportive measures will be offered to those impacted.

This Policy does not allow curtailment or censorship of constitutionally protected expression, which is valued in higher education and by the Institute. In addressing all Complaints and reports of alleged violations of this Policy, the Institute will take all permissible actions to ensure the safety of students and employees while complying with any and all applicable legal authority regarding free speech rights of students and employees. This Policy does not in any way apply to curriculum and curriculum decisions or abridge the use of particular textbooks or curricular materials.

FOR THE SUPERINTENDENT:

Travis Homiak '95
Colonel (Retired)
Chief of Staff

DIST: E, Cadets

APPENDIX A: DEFINITIONS

Advisor. A person chosen by a party or appointed by the institution to accompany the party to meetings related to the Resolution Process, to advise the party on that process, and to conduct questioning for the party at the hearing, if any.

Complainant. An individual who has filed a Complaint alleging they were the victim of conduct that could constitute harassment or discrimination based on a protected characteristic, or retaliation for engaging in a protected activity.

Confidential Resource. An employee who is not a Mandated Reporter of reports (reports/notice or Complaints) of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status). The Institute Physician and other medical personnel at the VMI Infirmary, counselors at the Cadet Counseling Center, and the VMI Chaplains are designated as the Institute's confidential resources.

Consent. Knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Silence does not necessarily constitute consent. Past consent to sexual activities, or a current or previous dating relationship, does not imply ongoing or future consent. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonably immediate time. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred.

Day. A business day when VMI is in normal operation.

Decision-maker. The person who hears evidence, determines relevance, and makes the Final Determination of whether this Policy has been violated and/or assigns sanctions.

Directly Related Evidence. Evidence connected to the Complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the Decision-maker. Compare to Relevant Evidence, below.

Education Program or Activity. Locations, events, or circumstances where VMI exercises substantial control over both the Respondent and the context in which the harassment, discrimination, and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by VMI.

Finding. A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a "finding of fact").

Formal Complaint. A document submitted or signed by a Complainant or signed by the IG/Title IX Coordinator alleging a Respondent engaged in harassment or discrimination based on a protected characteristic or retaliation for engaging in a protected activity and requesting that VMI investigate the allegation(s).

Formal Resolution. A method of formal resolution designated by VMI to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45) and the Violence Against Women Act § 304.

Informal Resolution. A Complaint resolution agreed to by the Parties and approved by the IG/Title IX Coordinator that occurs prior to a formal Final Determination being reached.

Mandated Reporter. A VMI employee who is obligated by policy to share knowledge, report (notice), and/or reports of harassment, discrimination, and/or retaliation with the IG/Title IX Coordinator.

Official with Authority (OWA). A VMI employee who has responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the Institute. VMI has designated the following individuals as Officials with Authority: Superintendent, Commandant of Cadets, Dean of the Faculty, Director of Intercollegiate Athletics, Deputy Superintendent for Finance and Support, and Chief of Staff.

Parties. The Complainant(s) and Respondent(s), collectively.

Potential Complainant. An individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected characteristic, or retaliation for engaging in a protected activity and who has not yet filed a formal Complaint.

Relevant Evidence. Evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the Complaint.

Remedies. Measures provided, as appropriate, to a Complainant or any other person VMI identifies as having had their equal access to the Institute's education program or activity limited or denied by discrimination, harassment, or sexual misconduct. These measures are provided to restore or preserve that person's access to the VMI's education program or activity after a determination that a policy violation occurred.

Report. An employee, student, or third party informs the IG, a member of their staff, or an Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.

Respondent. An individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected characteristic, or retaliation for engaging in a protected activity under this Policy.

Sanctions. Consequences imposed on a Respondent following a determination under this Policy that the Respondent violated VMI's prohibition on discrimination, harassment, or sexual misconduct.

APPENDIX B: GO 16 GRIEVANCE PROCEDURES

1. Purpose.

VMI will act on any formal Complaint of violation of General Order (GO) 16, VMI's Nondiscrimination and Discriminatory Harassment Policy ("the Policy") that is received by the IG or any other Official with Authority by applying these procedures, known as the Grievance Procedures.

The procedures below apply to all allegations of harassment or discrimination on the basis of an actual or perceived protected characteristic involving students, staff, administrators, or faculty members and that are prohibited by the Policy.

2. Reports (Notice) and Complaints.

Upon receipt of a report (notice) of an alleged policy violation, the IG initiates a prompt initial assessment to determine the next steps VMI needs to take. The IG will contact the Potential Complainant to offer supportive measures and determine whether they wish to file a Formal Complaint. The IG will then initiate at least one of four responses:

- Offering supportive measures because the individual does not want to file a Formal Complaint
- A Formal Resolution, including an investigation and a hearing
- An Informal Resolution
- An Accepted Responsibility Resolution

VMI uses a Formal Grievance Process as described below to determine whether the Policy has been violated. If it is determined the Policy was violated, VMI will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, and/or their effects.

If more than one Respondent is involved in the alleged violations of this Policy, then the Complainant must file a separate formal Complaint against each Respondent. The IG may choose to consolidate the cases once the separate Complaints are filed.

3. Initial Assessment.

Following receipt of report (notice) or of an alleged violation of the Policy, the IG engages in an initial assessment, typically within one to five (1-5) business days. The steps in an initial assessment can include:

A. Initial Contact. The IG reaches out to the Potential Complainant to offer supportive measures and to determine if they wish to make a Formal Complaint, and will assist them to do so, if desired. If they do not wish to do so, the IG:

1) Documents the Potential Complainant's declination of their right to file a formal Complaint. No Formal Grievance Process is initiated, though the individual can elect to initiate one later, if desired.

2) Works with the individual to identify any supportive measures or resources needed/requested and coordinates with the applicable office for implementation.

3) Determines whether they will initiate a Complaint because a violence risk assessment indicates a compelling threat to health and/or safety.

B. When a Formal Complaint is Filed. If a Formal Complaint is received, the IG:

1) Assesses its sufficiency and works with the Complainant to make sure it is correctly completed.

2) Works with the Complainant to ensure they are aware of the right to have an Advisor.

3) Works with the Complainant to determine whether they prefer an Informal or Formal Resolution option.

   a. If an Informal Resolution option is preferred, the IG assesses whether the Complaint is suitable for Informal Resolution and may seek to determine if the Respondent is also willing to engage in Informal Resolution.

   b. If a Formal Grievance Process is preferred by the Complainant, the IG determines if the alleged misconduct falls within the scope and jurisdiction of the Policy. If so, the IG will initiate the formal investigation and grievance process. If some or all of the alleged misconduct falls outside the scope and jurisdiction of the Policy, the IG will dismiss that aspect of the Complaint, assess which policies may apply, and refer the matter accordingly. Please note that dismissing a Complaint under the Policy does not limit VMI's authority to address a Complaint with an appropriate process and remedies.

C. Dismissal of Complaints (Mandatory and Discretionary).

1) **Mandatory Dismissal of Title IX Sexual Harassment Complaints.** VMI must dismiss a Formal Complaint alleging Title IX Sexual Harassment if, at any time during the investigation or hearing, it is determined that:

   a. The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment, as defined in this Policy, even if proved.

   b. The conduct did not occur in an educational program or activity controlled by VMI (including buildings or property controlled by recognized student organizations), and/or VMI does not have control of the Respondent.

   c. The conduct did not occur against a person in the United States.

   d. At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in VMI's education program or activity, and based on the available information, the IG has determined that they do not need to sign a Formal Complaint on behalf of VMI.

2) **Discretionary Dismissal of Complaints.** VMI may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

   a. For Complaints alleging conduct other than Title IX Sexual Harassment, the conduct alleged in the Formal Complaint would not constitute a clear violation of the Policy, as defined in Prohibited Conduct, and/or the conduct alleged occurs outside the jurisdiction set forth in this Policy.

   b. For all Complaints, a Complainant notifies the IG in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein. A Complainant who decides to withdraw a Complaint may later request to reinstate it or refile it.

   c. For all Complaints, the Respondent is no longer enrolled in or employed by VMI.

   d. For all Complaints, specific circumstances prevent VMI from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

3) **Dismissal Procedures.** Upon any dismissal, VMI will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. This dismissal decision is appealable by any party under the procedures for appeal (See the Appeals section of these Grievance Procedures). At the conclusion of the appeals process, or five business days after the written notice of dismissal was issued to the parties if no appeal was received, the IG

refers the matter to the appropriate disciplinary process/administrator.

4. Counterclaims.

VMI is obligated to ensure that the grievance process is not abused for retaliatory purposes, thus counterclaims made with retaliatory intent will not be permitted. VMI permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith.

Counterclaims determined to have been reported in good faith will be processed using the Resolution Process below. Investigation of such claims may take place after resolution of the underlying initial Complaint, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying Complaint, at the discretion of the IG. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this Policy.

5. Right to an Advisor.

A. Selection of Advisor.

1) **Advisor of Choice.** The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the Resolution Process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.

   Choosing an Advisor who is also a witness in the process is not prohibited but does create potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker.

   If either party has retained legal counsel, the party must immediately notify the IG of such representation. The role of counsel for the parties will be limited to advice and consultation with the attorney's client.

2) **VMI-Provided Advisors.** If either party does not choose to have an advisor of his/her choice, the IG will assign an advisor to that party in order to participate in the initial hearing phase of the process and for the limited purpose of conducting the Questioning at no fee or charge to the party. 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.

3) All Advisors are subject to the same VMI policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by VMI.

B. Advisor Roles and Expectations. When an Advisor is selected by the party or assigned by VMI, **t**he IG will provide Advisors and their parties the VMI Advisor's Guide, meet with the Advisor and their party to review Advisor roles and expectations, document the Advisor's acknowledgement of their roles and expectations, and document the party's consent to release case information and records protected by FERPA to their Advisor.

1) **Roles.** During the investigation, the Advisor's role is limited to advice and consultation. Neither the advisor for the Complainant nor the advisor for the Respondent will be permitted to question witnesses, raise objections, or make statements or arguments at any meetings or proceedings during the investigation.

   During the hearing, the Advisor's role expands to include conducting questioning of the other party and witnesses, on behalf of their party. If a party does not attend the live hearing, the party's advisor may appear and conduct questioning on his or her behalf.

2) **Expectations.** Advisors are expected to advise their party without disrupting proceedings. Advisors should not address VMI officials or Investigators in a meeting or interview unless invited to do so or unless asking procedural questions. The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigators or other Decision-maker except during a hearing proceeding during questioning.

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

3) **Advisor Non-Compliance with the Policy.** Any Advisor who oversteps their role as defined by this Policy, or who refuses to comply with VMI's established rules of decorum for the hearing, will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including VMI requiring the party to use a different Advisor or providing a different VMI-appointed Advisor. Subsequently, the IG will determine how to address the Advisor's non-compliance and future role.

6. Informal Resolution Processes.

A. Overview. Informal Resolution is a resolution in which the parties agree to resolve the matter through an Informal Resolution, including facilitated mediation, restorative practices, and facilitated dialogue, as described below. All parties must consent to the use of an Informal Resolution approach.

B. Initiating Informal Resolutions.

1) To initiate Informal Resolution, a Complainant must submit a Formal Complaint, as defined above, and request Informal Resolution. A Respondent who wishes to initiate Informal Resolution should contact the IG.

2) It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process. The IG has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

C. Prior to implementing Informal Resolution, VMI will provide the parties with written notice of the reported misconduct and will meet with the parties to obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution, that they understand the expectations and rules for participating in Informal Resolution, and that they are allowed to have one advisor of their choice participate in the process, if they so choose.

1) The IG will assign an Informal Resolution Facilitator to oversee the process. Facilitators are members of the Institute faculty and staff who have received formal training on facilitating Informal Resolutions.

D. The Informal Resolution Process.

1) The Informal Resolution Facilitator will work with the Complainant and the Respondent in order to reach a resolution that is satisfactory to both parties. Any 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 this Policy.

2) No finding of responsibility for violations of the Policy will be implemented when Informal Resolution is used.

3) 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.

4) The parties may not enter into an agreement that requires VMI to impose suspension or dismissal/termination sanctions, though the parties can agree to certain restrictions or other courses of action. For example, the parties cannot require a student be suspended, but the parties can agree that the Respondent will temporarily or permanently withdraw. Only the Accepted Responsibility or Formal Resolution Processes can result in suspension or dismissal/termination sanctions levied by the institution.

5) Informal Resolutions will be reviewed and approved by the IG and all parties will be provided written notification of the resolution of the Complaint through the informal process.

6) There will be no right of appeal afforded to the Complainant or the Respondent following the completion of an Informal Resolution process.

7) Failure to fulfill the terms of the Resolution Agreement by either party may result in referral to an appropriate disciplinary process and may subject the non-compliant party to sanctions.

E. Limitations to the Use of Informal Resolutions.

1) The IG reserves the right to determine whether Informal Resolution is appropriate, or which form of Informal Resolution may be most successful for the parties. The IG is authorized to determine when an Informal Resolutions is not available based on the following factors:

- The nature, severity, and complexity of the alleged misconduct
- Likelihood of potential resolution
- Informal Resolution facilitator skill
- Adequate resources to invest in Informal Resolution (time, staff, etc.)
- The parties' emotional investment/capability, rationality, goals, motivation to participate, civility, power dynamics, and amenability to Informal Resolution
- Respondent's disciplinary history

2) The Informal Resolution Process cannot be utilized when the Complainant is a student, and the Respondent is an employee.

3) When the IG determines the Informal Resolution Process is not/is no longer appropriate, they will notify the parties and begin/resume the Formal Resolution process to resolve the Complaint.

7. Respondent Accepts Responsibility for Alleged Violations

A. Overview. The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the IG will determine whether the "Accepted Responsibility" resolution process can be used according to the criteria in Section C, below. All parties and VMI must agree on responsibility, restrictions, remedies, and/or sanction.

B. Accepted Responsibility Resolution Process.

1) The IG will determine whether all parties and VMI are able to agree on responsibility, restrictions, remedies, and/or sanctions; any agreement must adequately address the concerns of the Complainant, uphold the rights of the Respondent, and enable the Institute to meet its responsibility to prevent, address, and remedy alleged violations of the Policy, as determined by the IG. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

2) If the parties and VMI are able to agree, the IG implements and documents the accepted finding that the Respondent is in violation of the Policy. All parties will be provided written notification of the resolution of the Complaint, the accepted findings of responsibility, and the agreed-upon restrictions, remedies, and sanction(s).

3) The IG refers a summary of the resolution to the applicable administrator for their implementation of the agreed-upon restrictions, remedies, and sanction(s).

4) This result is not subject to appeal once all parties indicate their written assent to all agreed upon resolution terms.

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

C. Limitations to the Use of Accepted Responsibility Resolutions.

1) The IG reserves the right to determine whether Accepted Responsibility is appropriate. The IG is authorized to determine when an Informal Resolutions is not available based on the following factors:

- The nature, severity, and complexity of the alleged misconduct
- Likelihood of potential resolution
- Informal Resolution facilitator skill
- Adequate resources to invest in Informal Resolution (time, staff, etc.)
- The parties' emotional investment/capability, rationality, goals, motivation to participate, civility, power dynamics, and amenability to Informal Resolution
- Respondent's disciplinary history

2) The Accepted Responsibility Resolution Process cannot be utilized when the Complainant is a student, and the Respondent is an employee.

3) When the IG determines the Accepted Responsibility Resolution Process is not/is no longer appropriate, they will notify the parties and resume the Formal Resolution process to resolve the Complaint.

8. Formal Resolution Process – Preparation for the Investigation.

A. Notice of Investigation and Allegations.

1) The IG will provide written Notice of the Investigation and Allegations (the "NOIA") to the parties upon commencement of any of the resolution processes in these Grievance Procedures. The Complainant will be given advance notice of when the NOIA will be delivered to the Respondent.

2) The NOIA will include:

- A meaningful summary of all allegations
- The identity of the involved parties (if known)

- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies implicated
- A description of the applicable procedures
- A statement that VMI presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity during the review and comment period to inspect and review all directly related and/or relevant evidence obtained
- A statement about VMI's policy on retaliation
- Information about the confidentiality of the process
- Information on the need for each party to have an Advisor, the right to have an Advisor of their choosing, and VMI's responsibility to provide an Advisor if one is not selected
- A statement informing the parties that VMI's policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how the party may request disability accommodations during the Resolution Process
- The name(s) of the Investigators, along with a process to identify to the IG, in advance of the interview process, any conflict of interest that the Investigators may have
- Information on the parties' right to submit relevant evidence and the names of any known witnesses with relevant information to the Investigators.

3) In Formal Resolutions, the IG will issue a supplemental written notice providing additional details and will provide additional time to the Respondent to prepare a response before any initial interview occurs regarding those additional charges if the scope of the investigation expands.

B. Resolution Timeframes, Delays, and Interactions with Law Enforcement.

1) VMI will make a good faith effort to complete the Resolution Process within ninety to one hundred twenty (90-120) business-days, including any appeal. The timeframe can be extended as necessary for appropriate cause by the IG, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

2) Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take many weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, law enforcement involvement, etc. VMI will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

3) VMI may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or health conditions.

   VMI will communicate the anticipated duration of the delay and reason to the parties in writing and provide the parties with status updates if necessary. VMI will promptly resume its investigation and Resolution Process as soon as feasible. During such a delay, VMI will implement supportive measures as deemed appropriate.

C. Appointment of Investigators and Impartiality.

1) **Appointment of Investigators.**

   a. Once the decision to commence a formal investigation is made, the IG appoints the Investigators from the pool of trained and available IG staff. The IG may also use an external investigator, if deemed appropriate. VMI typically uses a team of two Investigators and usually makes the appointment within five (5) business days of determining that an investigation should proceed.

   b. Any individual materially involved in the administration of the Resolution Process, including the IG, their staff, Investigators, and Decision-maker, may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

   c. The IG will vet the assigned Investigators for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases.

2) **Concerns with Bias or Conflict of Interest.**

   a. Within three business days of receipt of the NOIA, the parties may raise a concern regarding bias or conflict of interest, and the IG will determine whether the concern is reasonable and supportable. If so, another trained staff member will be assigned, and the impact of the bias or conflict, if any, will be remedied.

   b. If the IG is suspected of possible bias or conflict of interest, then an external investigator chosen by the Superintendent will conduct the investigation and the VMI Chief of Staff will oversee the investigation.

3) **Impartiality.**

   a. The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

   b. VMI operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

9. Formal Resolution Process – Investigation Procedures.

The IG will conduct a thorough, prompt, reliable, impartial, and fair fact-finding investigation of the Complaint. Investigations involve interviews with all available relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record. Recordings of interviews are not provided to the parties, but the parties will have the ability to review the transcript or summary of the interview once the investigation report is compiled.

At the discretion of the IG, investigations can be combined when complaints implicate a pattern, collusion, and/or other shared or similar actions.

A. Investigation Process Steps.

The investigators typically take the following steps, but not necessarily in this order:

- Commence a thorough, reliable, and impartial investigation by identifying issues and

developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the parties and witnesses.

- Meet with the Complainant to conduct or finalize their interview/statement, if necessary.
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes or transcript of the relevant evidence/testimony from their respective interviews and meetings.
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Allow each party the opportunity to suggest witnesses to be interviewed.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide regular status updates to the parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices will include relevant physical or documentary evidence and directly related but not relevant physical or documentary evidence. The Investigators should gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which VMI does not intend to rely in reaching a determination, for a ten (10) business-day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) days.
- Respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses, when appropriate.
- Incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigators should document all rationales for any changes made after the review and comment period.
- Share the report with the IG and/or legal counsel for their review and feedback.
- Incorporate any relevant feedback and share the final report with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties and Advisors are also provided with a file of any directly related evidence that was not included in the report.

B. Witness Role and Participation in the Investigation.

1) Witnesses (as distinguished from the parties) who are employees of VMI are strongly encouraged to cooperate with and participate in VMI's investigation and Resolution Process. Student witnesses and witnesses from outside VMI community are encouraged to cooperate with VMI investigations and to share what they know about a complaint. Witnesses are encouraged to provide any relevant evidence in their possession.

2) Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Zoom, Microsoft Teams, FaceTime, or similar technologies may be used for interviews if the Investigators determine that timeliness, efficiency, or other reasons dictate a need for remote

interviewing. VMI will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

3) Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigators, though not preferred.

C. Interview Recording.

1) No unauthorized audio or video recording of any kind is permitted during investigation meetings, or any other meetings held within the course of the resolution process.

2) Investigators may elect to audio and/or video record interviews for the purpose of creating a transcript or record of the interview. When an interview is recorded, all involved participants will be made aware of such recording and its purpose.

D. Evidentiary Considerations.

1) Neither the investigation nor the hearing will consider:

   a. Incidents not relevant or not directly related to the possible violation(s), unless they evidence a pattern; or

   b. Questions and evidence about the Complainant's sexual predisposition; or

   c. Questions and evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

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

3) Evidence that will be available for inspection and review by the parties will be any evidence that is either relevant or directly related to the allegations raised in the formal Complaint.

   a. Relevant evidence is evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the Complaint and is relied upon by the Decision-maker.

   b. Directly related evidence is evidence connected to the Complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the Decision-maker.

E. Referral for Hearing.

1) Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the IG will refer the matter for a hearing, with one exception: in cases alleging Discriminatory Harassment or Title IX Sexual Harassment (Hostile Environment), the IG will review the evidence to verify that the conduct meets the Hostile Environment standard, as defined in the Prohibited Conduct section of the Policy.

2) The IG will select an appropriate Decision-maker from the pool of trained and available IG staff, and provide them with a copy of the investigation report and the file of directly related evidence.

3) The hearing cannot be held less than ten (10) business days from the conclusion of the investigation–when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

4) No less than ten (10) business days prior to the hearing, the IG or the Decision-maker will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker and parties to see and hear a party or witness answering questions. Such a request must be raised with the IG as soon as possible, but at least five (5) business days prior to the hearing.
- The name and contact information of the Decision-maker selected to chair the hearing, and an invitation to object to the selection based on demonstrated bias or conflict of interest at least five (5) business days prior to the hearing.
- Information on how the hearing will be recorded and how the parties can access the recording after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Decision-maker may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the IG if they wish to conduct questioning and do not have an Advisor, and VMI will appoint one. Each party must have an Advisor present if they intend to cross-examine others. There are no exceptions.
- An invitation to each party to submit to the Decision-maker an impact and/or mitigation statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the IG to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least five (5) business days prior to the hearing.

5) Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held during the summer, as needed, to meet the resolution timeline followed by VMI and remain within the 90-1200 business-day goal for resolution. Employees who do not have 12-month contracts are still expected to participate in Resolution Proceedings that occur during months between contracts.

F. Hearing Decision-maker Selection.

1) VMI will designate a single Decision-maker from the pool of trained and available IG staff, at the discretion of the IG. The single Decision-maker will chair the hearing.

2) The Decision-maker will not have had any previous involvement with the complaint. The IG may elect to have an alternate from the pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

3) Those who have served as Investigators may not serve as Decision-maker. Those who are serving as Advisors for any party may not serve as Decision-maker in that matter.

4) The IG may not serve as a Decision-maker in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill the facilitator role. The hearing will convene at a

time and venue determined by the IG or designee.

G. Alternative Hearing Participation Options.

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the IG or the Decision-maker as soon as possible, preferably at least five (5) business days prior to the hearing.

The IG or the Decision-maker can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the IG or the Decision-maker know as soon as possible, preferably at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

10. Formal Resolution – Pre-Hearing Preparation and Meetings.

A. Pre-Hearing Preparation.

1) After any necessary consultation with the parties, the IG, on behalf of the Decision-maker, will provide the names of persons who have been asked to participate in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

2) Any witness scheduled to participate in the hearing must have been first interviewed by the Investigators or have proffered a written statement or answered written questions, unless all parties and the Decision-maker assent to the witness's participation in the hearing. The same holds for any relevant evidence that is first offered at the hearing. If the parties and Decision-maker do not assent to the admission of evidence newly offered at the hearing, the Decision-maker may delay the hearing and/or instruct that the investigation needs to be re-opened to consider that evidence.

3) The parties will be given the name of the Decision-maker at least ten (10) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the IG as soon as possible and no later than five (5) business days prior to the hearing. Decision-makers will only be removed if the IG concludes that their actual or perceived bias or conflict of interest precludes an impartial hearing of the complaint.

4) The IG will give the Decision-maker a list of the names of all parties, witnesses, and Advisors at least ten (10) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the IG as soon as possible.

5) During the ten (10)-business-day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Decision-maker at the hearing.

B. Pre-Hearing Meetings.

1) The IG will offer a pre-hearing meeting to each of the parties and their Advisors within the ten business-days prior to the hearing. During the meeting, the IG will invite the parties and/or their Advisors to submit the questions or topics they wish to ask or discuss at the hearing. The IG will provide all questions or topics to the Decision-maker so that they can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing. The IG will provide

the Decision-makers response at least two (2) business-days prior to the hearing, including those questions/topics approved for inclusion and their rationale for any exclusions.

2) This advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a pre-hearing ruling by the Decision-maker based on any new information or testimony offered at the hearing.

3) The Decision-maker, typically with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigators in the investigation report or during the hearing.

4) At each pre-hearing meeting with a party and/or their Advisor, the IG will document arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigators may be argued to be relevant. The IG will provide this information to the Decision-maker so they have the option to rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Decision-maker may consult with legal counsel and/or the IG and may attend pre-hearing meetings.

5) The pre-hearing meetings will not be recorded. The pre-hearing meetings will be conducted separately with each party and their Advisor, and may be held in-person, remotely, or as a written-only exchange. The IG will work with the parties to establish the format.

11. Formal Resolution Process – Hearing Procedures.

At the hearing, the Decision-maker have the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation. The Decision-maker will preside over the hearing, including the presentation of evidence, the questioning of witnesses, and the questioning of witnesses by each party's advisor.

A. Order of the Hearing.

1) **Introductions and Explanation of Procedure.** The Decision-maker explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker based on bias or conflict of interest. The Decision-maker will rule on any such challenge unless the Decision-maker is the individual who is the subject of the challenge, in which case the IG will review the challenge and decide.

2) **Investigator Presentation of Final Investigation Report.** The Investigators will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker and the parties (through their Advisors). Neither the parties nor the Decision-maker should ask the Investigators their opinions on credibility, recommended findings, or determinations, and Advisors and parties will refrain from discussion of or questions for Investigators about these assessments. If such information is introduced, the Decision-maker will direct that it be disregarded.

3) **Testimony and Questioning.** Once the Investigators present the report and respond(s) to questions, the parties may provide an opening statement including relevant information in turn. The hearing will facilitate questioning of parties and witnesses by the Decision-maker and then by the parties through their Advisors. The parties are not permitted to conduct questioning; it must be conducted by the advisor. As a result, if a party does not select an advisor, the Institute will select an advisor to serve in this role for the limited purpose of conducting the Questioning at no fee or charge to the party.

   All questions are subject to a relevance determination by the Decision-maker. The Advisor, who will remain seated during questioning, will pose the proposed question, the proceeding

will pause to allow the Decision-maker to consider the question, and the Decision-maker will determine whether the question will be permitted, disallowed, or rephrased.

The Decision-maker may invite explanations or persuasive statements regarding relevance with the Advisors if the Decision-maker so chooses. The Decision-maker will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Decision-maker has final say on all questions and determinations of relevance. The Decision-maker may consult with legal counsel on any questions of admissibility. The Decision-maker may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Decision-maker has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Decision-maker may elect to address those issues, consult with legal counsel, refer them to the IG, and/or preserve them for appeal. If bias is not in issue at the hearing, the Decision-maker should not permit irrelevant questions that probe for bias.

4) **Refusal to Submit to Questioning and Inferences.**

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to questioning or answer other questions.

5) **Hearing Recordings.**

Hearings are recorded by VMI for purposes of review during deliberations and/or in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker, the parties, their Advisors, and appropriate administrators of VMI may be permitted to review the recording or review a transcript of the recording, upon request to the IG. No person will be given or be allowed to make a copy of the recording without permission of the IG.

B. Additional Evidentiary Considerations in the Hearing.

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

2) The parties may each submit a written impact and/or mitigation statement prior to the hearing for the consideration of the Decision-maker at the sanction stage of the process when a determination of responsibility is reached.

3) After post-hearing deliberation, the Decision-maker render(s) a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

4) VMI has the burden of proof and the burden of gathering evidence. 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.

5) 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.

6) Only evidence that is relevant to the allegations in the Complaint will be considered at any stage of the process. "Relevant" evidence and questions refer to any questions and evidence that tends to make an allegation in the Complaint more or less likely to be true.

C. Joint Hearings.

In hearings involving more than one Respondent and/or involving more than one Complainant who has accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each complaint with respect to each alleged policy violation. The IG may permit the investigation and/or hearings pertinent to each Respondent or complaint to be conducted separately if there is a compelling reason to do so.

12. Formal Resolution Process – Post-Hearing Decision-Making

A. Deliberation and Decision-Making.

B. After the hearing, the Decision-maker will deliberate in closed session to determine whether the Respondent is responsible for the Policy violation(s) in question. The preponderance of the evidence standard of proof is used. The Decision-maker may consult with the Institute's legal counsel during deliberation, if desired.

1) When deliberating potential Discriminatory Harassment or Title IX Sexual Harassment (Hostile Environment) policy violations, the Decision-maker must first determine whether the conduct created a hostile environment, as defined in the Prohibited Conduct section of the Policy. They should consider not only whether the conduct was unwelcome to the Complainant, but also whether the conduct was severe and pervasive, and whether a reasonable person similarly situated to the Complainant would have perceived the conduct to be objectively offensive. If the alleged conduct created a hostile environment as defined in the Policy, the Decision-maker then makes a determination on whether the Respondent is responsible for those policy violation(s).

C. When there is a finding of responsibility on one or more of the allegations, the Decision-maker will recommend the appropriate sanctions, after consulting with the administrator with disciplinary authority over the Respondent. Coordination may occur through an in-person or virtual meeting or over e-mail. The Decision-maker and administrator may consider any previously submitted party impact and/or mitigation statements (Decision-maker provides) and should consider any pertinent conduct history (administrator provides) during their consultation. The Decision-maker will submit written documentation of the consultation to the IG. There is no format specified (email is sufficient) but the document should include the date, method, individuals involved, and results of the coordination.

1) The Decision-maker will complete their deliberations not later than ten (10) business days from the date of the hearing.

D. Notice of Final Determination.

1) The Decision-maker, with support from the IG, will prepare the Notice of Final Determination letter within two (2) business days of the end of deliberations, unless the IG

grants an extension. If an extension is granted, the IG will notify the parties. The Notice of Final Determination will be reviewed by legal counsel. The IG will share the letter, which includes the final determination, rationale, and any recommended sanction(s).

2) The Notice of Final Determination will be shared with the parties and their Advisors simultaneously. Notification will be made in writing and, in most cases, delivered by email. The IG may also provide notice in person or via mail, if required. Once emailed, received in-person, or mailed, the notice will be presumptively delivered.

3) The Notice of Final Determination will articulate the specific alleged policy violation(s), including the relevant policy section(s), and will contain a description of the procedural steps taken by VMI from the receipt of the misconduct report to the determination and will specify the finding for each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent VMI is permitted to share such information under state or federal law; any sanction(s) recommended which VMI is permitted to share according to state or federal law; and whether remedies will be provided to the Complainant to ensure access to VMI's educational or employment program or activity.

4) The Notice of Final Determination will also include information on when the results are considered final by VMI, will note any changes to the outcome and/or sanction(s) that occur prior to finalization, and the relevant procedures and bases for appeal (See the Appeals section, below).

5) Subsequent to receiving the Notice of Final Determination, the parties may request a meeting with the IG to review the appeals procedures. If neither party notifies the IG of their desire to appeal, the findings become final and, when sanctions are recommended, the IG will forward a copy of the Notice of Final Determination to the appropriate administrator for review and implementation of the recommended sanctions.

13. Sanctions.

A. Procedures.

Sanctions are recommended by the Decision-maker, in consultation with the appropriate administrator. The Superintendent reserves the right to determine and issue sanctions for any violation of this Policy; it is the Institute Official with Disciplinary Authority's responsibility to communicate and coordinate with the Superintendent for his decision on sanctions prior to the date the decision becomes final (after appeal or the date the appeal period expires) and sanctions may be implemented, but preferably ahead of the Decision-maker's Notice of Final Determination. Sanctions are implemented by the appropriate administrator, as recommended by the Decision-maker or determined by the Superintendent, unless the administrator has a compelling need to modify the sanctions. Any modification of recommended sanctions must be documented, with rationale, and a copy sent to the IG for review and record-keeping.

To the extent permitted by applicable VMI policies and regulations, sanctions will be imposed within fourteen (14) business days of completion of the Decision-maker's written determination of responsibility if neither the Complainant nor the Respondent requests an appeal hearing. If an appeal is requested, sanctions, if any, will be imposed within fourteen (14) business days of the final decision of the Appeals Officer. If extension of the time frame for sanctions to be imposed beyond fourteen (14) business days is necessary, all parties will be notified of the expected time for imposition of sanctions. The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

1) If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a grievance process at any time, and/or referring that information to another process for resolution.

2) The Respondent will be informed in writing of any sanctions imposed for violation of this Policy by the individual imposing the sanctions within five (5) business days of the determination. The IG will be provided a copy of such written notification. The IG will disclose to the Complainant, as simultaneous as possible to the notification provided to the Respondent, sanctions that directly relate to the Complainant as permitted by state and federal law including the Family Educational Rights and Privacy Act (FERPA) and the Virginia Freedom of Information Act.

3) Factors considered when determining a sanction/responsive action may include, but are not limited to:

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

B. Student (Cadet) Sanctions.

The Commandant of Cadets implements sanctions for cadets, based on the recommendation of the Decision-maker and the results of their prior consultation during the deliberation phase. Sanctions may include, but are not limited to:

- Blue Book Penalties #1 through #10, as described in the Blue Book: Penalties may include assessment of demerits, confinement, penalty tours, Conduct Probation, and loss of rank and/or position.
- Suspension: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at VMI.
- Suspension in Abeyance: Deferment of Suspension, as defined above, provided the Respondent is not found responsible for further misconduct that results in a Blue Book Penalty #1 through #6.
- Dismissal: Permanent termination of student status and revocation of rights to be on Post for any reason or to attend VMI-sponsored events.
- Withholding Diploma: VMI may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for violating policy.
- Revocation of Degree: VMI reserves the right to revoke a degree previously awarded from VMI for fraud, misrepresentation, and/or other violation of VMI policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- Other Actions: In addition to or in place of the above sanctions, VMI may assign any other sanctions as deemed appropriate.

Students suspended or dismissed, or who withdraw from VMI while under investigation, for

offenses involving sexual violence under this Policy will have their academic transcript annotated. (i.e., "Suspended for a violation of General Order 16, VMI's Policy on Non-Discrimination")

VMI will notify each student that any such suspension, permanent dismissal, or withdrawal will be documented on the student's academic transcript, remove such notation from the academic transcript of any student who is subsequently found not to have committed an offense involving sexual violence under the institution's code, rules, or set of standards governing student conduct, and expunge such notation for good cause shown and after a period of three years.

VMI will remove such notation from a suspended student's academic transcript if the student completed the term and any conditions of the suspension and has been determined by VMI to be in good standing.

C. Employee Sanctions.

1) **Teaching and Research Faculty.** The Dean of the Faculty implements sanctions for Teaching and Research Faculty based on the recommendation of the Decision-maker and the results of their prior consultation during the deliberation phase, and in accordance with the procedures in the Faculty Handbook. Possible sanctions include, but are not limited to counseling, training, reassignment, or the initiation of termination proceedings according to procedures.

2) **Administrative and Professional Faculty.** The appropriate Official with Authority (the Dean of the Faculty; the Director of Finance and Support; the Director of Intercollegiate Athletics; the Commandant of Cadets; the Chief of Staff; or the Superintendent) implements sanctions for non-teaching faculty and other non-classified staff based on the recommendation Decision-maker and the results of their prior consultation during the deliberation phase, and in accordance with the procedures in the A&P Faculty Handbook or other applicable VMI regulations. Possible sanctions include, but are not limited to counseling, training, reassignment, or the initiation of termination proceedings according to procedures.

3) **Classified Employees**. The Director of Human Resources, in coordination with the employee's supervisor, implement sanctions for classified employees based on the recommendation of the Decision-maker, in consultation with the Director of Human Resources, and in accordance with the Commonwealth's Standards of Conduct Policy. Sanctions that may be imposed by the Institute include, but are not limited to verbal counseling, and additional training, issuance of a Written Notice, or suspension or termination of employment.

D. Contractors. Contractors will assign for duty only employees acceptable to the Institute. The Institute reserves the right to require the Contractor to remove from the Post any employee who violates this Policy.

E. Visitors (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), who violate this Policy will be directed to immediately leave the Post and may be subject to a permanent bar from Post.

14. Appeals.

A. Overview.

Parties have the right to appeal a Decision-maker's written determination of responsibility or the IG/Title IX Coordinator's decision to dismiss a complaint.

Appeals must be filed in accordance with these procedures and based on one of the following grounds of appeal:

1) Procedural irregularity that affected the outcome.
2) New evidence, unavailable at the time of the investigation that could substantially impact the Decision-maker's findings.
3) Conflict of interest or bias by the institutional participants that affected the outcome.
4) 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.

The decision of the Appeal Officer is final with no further right to appeal.

B. Appeal Decision-makers.

The Appeal Decision-maker will be a member of the Institute staff who has received formal training on being an Appeal Decision-maker and on overseeing an appeal hearing. Appeal Decision-maker will be authorized to hear appeals by either party to include: an appeal hearing in regard to an IG decision to dismiss a formal Complaint; an appeal hearing in regard to an emergency removal ordered by the Threat Assessment Team; and an appeal hearing requested by any party in regards to a Decision-maker's written determination of responsibility.

Appeals will be heard by one Appeal officer. If either the Complainant or the Respondent suspects that the Appeal officer could be biased of 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.

C. Appeal Procedures.

1) A Complainant or Respondent desiring to appeal must file a written Request for Appeal with the IG within five (5) business days of delivery of the written determination or dismissal. Their written submission may be made via email to ig@vmi.edu or delivered by mail or in person to 303 Letcher Avenue, Lexington, Virginia 24450, and must include:
    a. The ground(s) upon which the appeal will be based, as described in Paragraph 14.A.2) above.
    b. A written description of the specific reasons for their appeal.
    c. Evidence supporting the appeal, if any.
2) The Request for Appeal will be forwarded to the Appeal Decision-maker, selected by the IG, for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.
    a. If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, or if the request is not timely filed, that request will be denied by the Appeal Decision-maker, and the parties and their Advisors will be notified in writing of the denial and the rationale.
    b. If any of the grounds in the Request for Appeal meet the grounds in this Policy and it was timely filed, then the Appeal Chair will notify all parties and their Advisors, the IG, and,

when appropriate, the Investigators and/or the original Decision-maker.

3) The IG will provide a written copy of the Request for Appeal to all parties and the name of the Appeal Decision-maker assigned to hear the appeal. All other parties may submit a written response within five (5) business days of the notification. All responses will be forwarded to the Appeal Decision-maker upon receipt.

4) The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved grounds for appeal and will render a decision within no more than five (5) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard. The written decision will include:

   a. A description of the appellant's grounds for appeal.

   b. The Appeal Decision-maker's decision to uphold or reject the findings of the initial Decision-maker and/or the recommended sanction and the rationale for such determination.

   c. If the Decision-maker's findings and/or recommended sanction are rejected, the findings of the Appeal Decision-maker and recommendations for resolution.

15. Record-Keeping.

The Office of the IG will maintain, in a confidential manner, for at least seven (7) years paper or electronic files of all investigative case files to include: Complaints, witness statements, documentary evidence, written investigation reports, written determinations of responsibility, Informal Resolutions, written appeals decisions, hearings documentation, and other associated case-related documents. The IG will prepare a monthly summary of pending cases that will be presented to the Superintendent. The summary will contain sufficient information to permit the Superintendent to assess VMI's compliance with the requirements of Title IX.

16. IG and Supporting Staff Training.

Institute officials who are involved in these Grievance Procedures receive formal training in regard to their roles in the process. This training will be provided to the IG and their staff, Assistant Title IX Coordinators/investigators, external investigators when applicable, Informal Resolution Facilitators, and Decision-makers. The training covers various aspects of this Policy and the grievance procedures including: the definition of Sexual Harassment and other policy violations; the scope of the Institute's education programs and activities; conducting investigations; conducting hearings, including appeals hearings; facilitating Informal Resolutions; and serving impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The training for Decision-makers and Appeal Officers will also include understanding technology to be used at live hearings, relevance, and the permissible use of sexual history. All training provided in regard to this Policy and the grievance procedures will be posted on VMI's website for public review.

APPENDIX C: SEXUAL VIOLENCE THREAT ASSESSMENT PROCEDURES

1. Overview.

Upon receipt of any report of sexual violence, defined as a physical sexual act perpetrated against a person's will or where a person is incapable of giving consent, that is alleged to have occurred (i) against any VMI student; or (ii) on Post, in or on a VMI building or property, or on public property that is on Post or immediately adjacent to and accessible from Post, the IG will promptly inform a review committee of the report, including personally identifying information.

2. Review Committee Members.

The review committee will be comprised of, at a minimum, the IG, the Chief of the VMI Police, and the Commandant of Cadets, or their designees. The review committee may consult other VMI officials depending on whether the accused individual is a student, faculty, or staff member, and depending on the circumstances of the report. The review committee will be advised by VMI counsel.

3. Review Committee Actions.

A. Within 72 hours of receipt of the report from the IG, the review committee will meet to review the information and will continue to meet as necessary as new information becomes available. If the criteria in Paragraph 1 are met, the review committee will convene regardless of whether or not the victim has notified the VMI Police or local law enforcement or whether or not the victim has requested that VMI proceed with a Title IX investigation.

B. The review committee may obtain law-enforcement records and criminal history record information as provided in Virginia Code § 19.2-389 and § 19.2-389.1, health records as provided in Virginia Code § 32.1-127.1:03, available conduct or personnel records, and known facts and circumstances of the reported incident of Sexual Harassment or sexual misconduct and other evidence known to VMI, including the VMI Police, and local law enforcement.

C. The review committee will be considered to be a threat assessment team established pursuant to Virginia Code § 23.1-805 for purposes of (i) obtaining criminal history record information and health records and (ii) the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 et seq.) The review committee will comply with the Family Educational Rights and Privacy Act in conducting its review.

D. In addition to the available information detailed in this paragraph, above, the review committee will consider factors that suggest there is an increased risk of the accused individual committing additional acts of sexual misconduct or other violence, including, but not limited to:

1) Other sexual misconduct Complaints about the same individual;

2) Prior arrests or reports of misconduct at another institution or a history of violent behavior;

3) Threats of further sexual misconduct against the reporting individual or others;

4) A history of failing to comply with a no-contact order issued by Institute officials;

5) Allegations of multiple perpetrators in the same incident;

6) Use of physical violence in the reported incident or a prior incident. Examples of physical violence include, but are not limited to, hitting, punching, slapping, kicking, restraining, or choking;

7) Reports or evidence of a pattern of perpetration, including a pattern of the accused individual using alcohol or drugs to facilitate sexual misconduct or harassment;

8) Use of a weapon in the reported incident or a prior incident;

9) A victim under the age of 18 or who is significantly younger than the accused individual;

E. The review committee will also consider whether means exist to obtain evidence other than investigation by law enforcement or a Title IX investigation such as security camera footage, eyewitness reports from security or guard personnel, or physical evidence.

4. Review Committee Responsibilities and Determinations.

If based on a consideration of all factors, the review committee determines that there is a significant and articulable threat to the health or safety of one or more individuals and that disclosure of the information to local law enforcement, including personally identifying information, is necessary to protect the health and safety of one or more individuals, the Chief of the VMI Police will immediately disclose such information to the law-enforcement agency that would be responsible for investigating the incident, for the purpose of investigation and other actions by law enforcement.

If the review committee cannot reach a consensus, the Chief of the VMI Police may make the threat determination. Upon any disclosure to law enforcement under this paragraph, the IG will notify the victim that such disclosure is being made. The provisions of this paragraph will not apply if the law enforcement agency responsible for investigating the alleged incident is located outside the United States.

If information is disclosed to law enforcement under this paragraph or if the review committee determines that sufficient factors exist to proceed with a Title IX investigation, despite the stated desires of the victim for confidentiality or not to proceed with an investigation, the IG will proceed with a full investigation under these procedures. In those situations, the IG will notify the victim that VMI is overriding the victim's requests for confidentiality and not to sign a formal written compliant. Other than the disclosure under this paragraph, if made, the information will only be shared with individuals who are responsible for handling VMI's response to incidents of sexual violence and VMI will ensure that any information maintained by VMI is maintained in a secure manner.

If the reported incident would constitute a felony violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, as determined by the Chief of the VMI Police or any other member of the review committee, the Chief of the VMI Police will inform other members of the review committee and will notify the attorney for the Commonwealth or other prosecutor responsible for prosecuting the incident and provide information received without disclosing personally identifying information, unless such information was disclosed to a law-enforcement agency pursuant to this paragraph.

At the conclusion of the Sexual Violence Threat Assessment, the IG and the Chief of the VMI Police will each retain (i) the authority to proceed with any further investigation or adjudication allowed under state or federal law and (ii) independent records of the review committee's determination considerations, which will be maintained under applicable state and federal law.

APPENDIX D: SEXUAL VIOLENCE VICTIM RIGHTS, OPTIONS, AND PROCEDURES

1. Overview.

When a student 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 student or VMI employee will be provided an explanation of rights and options.

2. Notification of Rights and Options.

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;

C. Options about the involvement of local law enforcement and the VMI Police, including the victim's option to:

1) Notify proper law enforcement authorities, including local law enforcement and/or the VMI Police;

2) Be assisted by VMI staff in notifying law enforcement authorities, if the victim so chooses; and

3) Decline to notify such authorities; and

4) The rights of victims and VMI's responsibilities regarding no contact orders, restraining orders, protective orders, or similar orders;

D. Information about how the Institute will protect the confidentiality of victims and other parties, including how the Institute will:

1) Complete publicly available recordkeeping, including reporting and disclosures required by the Clery Act, without the inclusion of personally identifying information about the victim;

2) Maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the Institute to provide the accommodations or protective measures; and

3) Ensure confidentiality of investigative files as education records protected by the Family Educational Rights and Privacy Act (FERPA), including that the process for the Sexual Violence Threat Assessment in accordance with Virginia Code § 23.1-806 could, if the incident poses to members of the VMI community a health or safety emergency as defined by the FERPA regulations, lead to disclosure of personally identifying information to the law enforcement agency that would be responsible for investigating the incident and other appropriate parties whose knowledge of the information is necessary to protect the health/safety of the victim or other individuals.

E. Existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the Institute and in the local community

F. Options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures, regardless of whether the victim chooses to report the crime to VMI police or local law enforcement; and

G. The procedures for VMI investigation, adjudication, and disciplinary action, including the right to decline to participate in a VMI investigation.

APPENDIX E: IG INVESTIGATION GRIEVANCE PROCEDURES

1. Purpose.

VMI may elect to resolve any Complaint of discrimination, harassment, or sexual misconduct that meets the definitions within General Order (GO) 16, VMI's Nondiscrimination and Discriminatory Harassment Policy ("the Policy"), but not its jurisdictional requirements.

The inquiry and investigation procedures below apply to allegations of harassment or discrimination on the basis of a protected characteristic involving students, staff, administrators, or faculty members and that are prohibited by the Policy but do not meet its jurisdictional requirements when the Institute determines it has a substantial interest in resolution of the matter.

2. Retaliation.

All involved parties, including the IG, their staff, and other Institute officials assisting in the investigation, are protected from retaliation, in accordance with GO 90, Retaliation. Any suspected incidents of retaliation should be reported to the IG for immediate investigation and resolution, as appropriate.

3. Rights.

Parties involved in an IG investigation will have the following rights afforded to them:

- Complainants and named subjects of investigations receive and sign a rights statement during their initial meeting with the IG, summarized below.
- Complainants, named subjects, or other involved parties are entitled to participate in a confidential process that protects their privacy.
- Complainants and named subjects are entitled to an advisor of their choice. Advisors may include legal counsel at the individual's own expense; in these cases, the individual must notify the IG in advance of any meetings at which legal counsel will be present. The Commonwealth's Attorney assigned as VMI's legal counsel must attend these meetings.
- Named subjects have the right to present matters in their own defense and to respond to the allegations and statements made by other parties during the investigation process. They also have the right to decline to present matters in their own defense or to make any statement. Named subjects are not required to make self-incriminating statements during interviews.
- Named subjects are afforded the opportunity to view material evidence and statements gathered during the investigation prior to making statements, participating in an interview, or declining to make a statement or participate in an interview.
- Complainants and named subjects are entitled to receive advanced notification of meetings and interviews.
- Complainants and named subjects are afforded the opportunity to review and provide additional statements in response to the draft "Summary of Investigation Findings" prior to submission to the Institute Official with Disciplinary Authority. The final "Summary of Investigation Findings" will include any statements received in response to the draft.

4. Investigation Procedures.

A. Investigation Initiation. Upon receipt of a directive to investigate, the IG:

1) Gathers and reviews initial evidence from the reporting source.

2) Determines relevant laws, policies, regulations, and individuals involved, including the

named subject or subjects of the investigation.

3) Provides an allegation advisement to the subject(s) of the investigation. For due process purposes, IG allegations serve as notice to the subject. The allegation advisement frames the allegation(s) by precisely identifying the who, what, when, and how of an alleged violation of law, regulation, or policy. The advisement includes the specific sections of each law, regulation, or policy that is alleged to have been violated, as well as the subject's rights in the investigation process.

4) Develops an investigation plan and timeline, including interviews and evidenced required/desired.

5) Assigns additional investigators as needed.

B. Investigation. The IG attempts to complete investigations within 60 business days from receipt of the inquiry directive. The IG and assisting investigators conduct the following steps, often in the order shown. Steps may be conducted in parallel and may be revisited if the IG determines additional evidence or statements are required.

1) Gather and review additional evidence required, including documents, correspondence, photographs, videos, screen shots, recordings, or any other material evidence related to the inquiry.

2) Schedule and conduct an interview with involved parties and witnesses.

3) Complete the "Draft Summary of Investigation Findings." This draft report includes the procedural steps taken during the investigation, facts found in the investigation, and summaries of evidence and statements gathered.

4) Provide the draft report to the complainant/named subject for review and response, if desired. Responses received to the draft will be included in the final summary.

5) Complete the final "Summary of Investigation Findings." The final report includes the draft report contents and determinations on whether the facts and evidence gathered substantiate or the allegations using the preponderance of the evidence standard, and the IG's recommendations for further action. Recommendations may include penalties, sanctions, or disciplinary measures; policy or regulatory amendments; referral to another Institute official for adjudication; remedial training on relevant topics; or no further action taken.

C. Investigation Conclusion. The IG meets with the Superintendent, or the Institute official to whom he delegates disciplinary authority, to present the "Summary of Investigation Findings" for their action. The Institute official will provide a determination on whether to adopt some or all recommendations, decline to adopt the recommendations, or take actions other than those recommended, and will document their decision by signing the "Summary of Investigation Findings," initialing those recommendations to which they intend to adopt, striking through those they decline to adopt, and/or writing in any they would like added that were not included by the IG. The IG actions, or coordinates the actions, directed by the Institute Official with Disciplinary Authority within one week of the meeting and documents the actions in a Memorandum for Record.

5. Sanctions.

A. Student (Cadet) Sanctions.

The Commandant of Cadets implements sanctions for cadets. Sanctions may include, but are not limited to:

- Blue Book Penalties #1 through #10, as described in the Blue Book: Penalties may include

assessment of demerits, confinement, penalty tours, Conduct Probation, and loss of rank and/or position.

- Suspension: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at VMI.
- Suspension in Abeyance: Deferment of Suspension, as defined above, provided the Respondent is not found responsible for further misconduct that results in a Blue Book Penalty #1 through #6.
- Dismissal: Permanent termination of student status and revocation of rights to be on Post for any reason or to attend VMI-sponsored events.

The procedures outlined in General Order 17, Administrative Process for Cadet Suspensions and Dismissal, are applicable for any student who recommended for suspension or dismissal through these Grievance Procedures.

Students suspended or dismissed, or who withdraw from VMI while under investigation, for offenses involving sexual violence under this Policy will have their academic transcript annotated. (i.e., "Suspended for a violation of General Order 16, VMI's Policy on Non-Discrimination")

VMI will notify each student that any such suspension, permanent dismissal, or withdrawal will be documented on the student's academic transcript, remove such notation from the academic transcript of any student who is subsequently found not to have committed an offense involving sexual violence under the institution's code, rules, or set of standards governing student conduct, and expunge such notation for good cause shown and after a period of three years.

VMI will remove such notation from a suspended student's academic transcript if the student completed the term and any conditions of the suspension and has been determined by VMI to be in good standing.

B. Employee Sanctions.

1) **Teaching and Research Faculty.** The Dean of the Faculty implements sanctions for Teaching and Research Faculty, in accordance with the procedures in the Faculty Handbook. Possible sanctions include, but are not limited to counseling, training, reassignment, or the initiation of termination proceedings.

2) **Administrative and Professional Faculty.** The appropriate Official with Authority (the Dean of the Faculty; the Director of Finance and Support; the Director of Intercollegiate Athletics; the Commandant of Cadets; the Chief of Staff; or the Superintendent) implements sanctions for non-teaching faculty and other non-classified staff in accordance with the procedures in the A&P Faculty Handbook or other applicable VMI regulations. Possible sanctions include, but are not limited to counseling, training, reassignment, or the initiation of termination proceedings.

3) **Classified Employees**. The Director of Human Resources, in coordination with the employee's supervisor, implements sanctions for classified employees and in accordance with the Commonwealth's Standards of Conduct Policy. Sanctions that may be imposed by the Institute include, but are not limited to verbal counseling, and additional training, issuance of a Written Notice, or suspension or termination of employment.

6. Confidentiality.

The IG is required to maintain confidentiality in its inquiries and investigations to protect the privacy and rights of those involved, as well as to ensure the integrity of the investigation and its findings.

All involved parties are expected to maintain confidentiality. No individuals should discuss interviews, evidence, statements, or other information made known through their involvement in the investigation with anyone other than the inquiry officers/investigators assigned to the case or their advisor. Disclosure of confidential information that results in an adverse effect on the inquiry/investigation, including retaliation against involved parties or IG/Institute officials conducting the inquiry/investigation, may be subject to disciplinary action.

All statements, material evidence, IG notes, or any other document contained within the case files gathered during inquiries and investigations are considered confidential and private. As such, these records are not subject to release under the Freedom of Information Act (FOIA) and any records involving students (cadets) are further protected by the Family Educational Release and Privacy Act (FERPA).

7. Record Keeping.

Records are stored on the IG's shared folder network folder, Box.com folders accessible by the IG, their staff, or involved parties, and/or the Maxient online case management website.

Records are available only to the following individuals/offices:

- The IG and their staff.
- Named subjects of investigations and their advisors.
- The Superintendent.
- Institute officials involved in the conduct or resolution of an investigation/inquiry.

8. Investigators and Training.

The Office of the IG staff conducts investigations/inquiries and receives training through the Student Conduct Institute of New York's Student Conduct Institute online training platform and/or in-person training conducted by various training providers. On occasion, members of the following offices may support IG staff in the conduct of investigations/inquiries: Human Resources (HR), Commandant, Dean of the Faculty, Intercollegiate Athletics, and Finance and Support, or any other VMI office. Non-IG officials who assist in investigations/inquiries receive training on an as-needed basis by SUNY-SCI, or in-person training conducted by IG staff or external training providers.