



Title IX Training

Discrimination, Harassment, Sexual Misconduct, and Retaliation

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What conduct may constitute discrimination prohibited in VMI's programs and activities?



VMI prohibits discrimination on the basis of . . .

- Race/Color
- Sex
- Pregnancy
- Sexual orientation
- National origin
- Gender identification
- Age
- Veteran status
- Religion
- Disability
- Genetic information

And any other status protected by law.



General Order 16

Prohibits:

Discrimination

Harassment causing a hostile
environment AND

Sexual Misconduct

Retaliation is now in its own GO as
of today!



General Order 13

Superintendent's Statement on Equity

“ . . . I expect us to maintain a culture of civility and mutual respect. Failure by any individual to treat any other member of the VMI community with respect and dignity may constitute a violation of this policy . . . any question of impermissible discrimination . . . will be addressed with impartial process, efficiency, and energy.”



Title IX (1972)

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal assistance.”



Title IX prohibits sex discrimination in:

ALL VMI programs, including athletics, academics, admissions, clubs, and other activities.

The Title IX prohibition on sex discrimination includes sexual harassment and sexual assault of a violent and non-violent nature against cadets, faculty, and staff.



VMI's responsibilities under Title IX

- Promptly investigate incidents regarding which VMI knows or reasonably should have known;
- Take appropriate disciplinary action against those who commit offenses, with required due process protections; and
- Take actions to end any hostile environment, prevent its recurrence, and remedy its effects.



Sexual harassment

Unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature – including verbal, non-verbal, or physical conduct.

- May involve persons of the same or different genders.
- Includes harassment based on failure to conform to gender stereotypes.



Verbal Sexual Harassment

UNWELCOME . . .

- Demands for sexual favors
- Sexual propositions
- Sexual innuendo or sexually suggestive comments
- Jokes of a sexual nature



Non-verbal sexual harassment

UNWELCOME . . .

- Sexually suggestive email or texts
- Other sexually suggestive writings, objects, pictures, Facebook or Snapchat posts, and other use of social media
- Suggestive or insulting sounds or gestures (whistling, obscene gestures)



Hostile Environment

Sexual harassment violates Title IX if it creates a “hostile environment”

*Conduct that is sufficiently severe, pervasive, and **objectively** offensive that it interferes with or limits or denies the ability of an individual to participate in or benefit from VMI programs, services, opportunities, or activities.*

One incident can cause a hostile environment.



Sexual misconduct under GO 16

- Sexual assault
(physical sexual harassment)
- Sexual exploitation
- Sexual coercion
- Dating violence
- Domestic violence
- Stalking



Sexual assault

Non-consensual contact of a sexual nature, including when the victim does not or is unable to consent through the use of force, fear, intimidation, physical helplessness, ruse, impairment or incapacity (including impairment due to the knowing or unknowing use of alcohol or drugs), or age (in Virginia – **cannot** consent under age 18).



What is 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 activity does not imply on-going or future consent.
- Consent to some sexual contact cannot be presumed to be consent for other sexual activity.



Sexual exploitation

Taking sexual advantage of another for advantage or benefit, short of sexual assault:

- Prostituting another person
- Non-consensual exposing of genitals
- Non-consensual video or audio recording of sexual activity or images
- Non-consensual distribution of recordings of sexual activity or images with intent to embarrass the individual recorded



Sexual coercion

The application of an unreasonable amount of pressure to gain sexual access. Continued pressure after an individual has made clear that he or she does not want to go beyond a certain point of sexual interaction can be coercive.



Dating violence

Violence – sexual or otherwise – committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.



Domestic violence

A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim or someone cohabitating with the victim as a spouse or intimate partner.



Stalking

Two or more acts in which the individual directly, indirectly, or through third parties, **BY ANY MEANS**, follows, monitors, observes, threatens, or communicates to or about a person in a way that would cause a **reasonable person** to (i) fear for his/her safety or the safety of others; or (ii) suffer substantial emotional distress, meaning significant mental suffering that may or may not require professional treatment.

Texting? Social media?



Retaliation

Intimidation, threats, harassment, and other adverse action taken or threatened against any individual filing a complaint, or participating in the investigation of a complaint, relating to any type of conduct that violates GO 16 or other VMI policies, not just sexual misconduct.

Includes, but is not limited to, retaliation against the IG, the IG Staff, an external investigator, and members of the CEA and OGA.



Jurisdiction

- Conduct on Post
- Conduct by cadets off Post that creates a hostile environment on Post **OR** is subject to discipline under the Blue Book.



HELP EACH OTHER! BE A BATTLE BUDDY!

- Especially for the Homecoming Hop and the Mid-winter Formal, designate **Battle Buddies!** Don't leave the room even if your friend asks you to do so! Whenever alcohol is involved, stay close to your Battle Buddy!
- If someone has been drinking **any** alcohol, you must assume he/she **CANNOT CONSENT** to any form of sexual activity!
- **DON'T LET SOMEONE RUIN HIS/HER LIFE!**



Confidential Reporting

On Post confidential reporting contacts for cadets include only:

- Cadet Counseling
- Post Physician
- Chaplain

Off Post can report confidentially to Project Horizon



Anonymous Reporting

Individuals may make anonymous reports by providing limited information to the IG, Ms. Susan LeMert, by phone, e-mail, or a written statement in a sealed envelope addressed to “Inspector General.”



CEA Reporting

Any member of the CEA – or other cadet government organization – who receives a report of conduct in violation of GO 16 should provide guidance and support, as well as encourage talking with a confidential resource or reporting the violation to the IG Office or SFC Bean.

CEA members or other cadets **must not** attempt to determine if the report has merit or can be substantiated.



GO 16 - Confidentiality

If an individual requests confidentiality or that an investigation not be pursued, VMI may be limited in its ability to respond, but VMI will maintain privacy to every extent possible without compromising the ability of VMI to respond as required by law and regulations.



Sexual Misconduct Threat Review Committee

Law passed in 2015 requires VMI to:

- Convene a review committee comprised of IG, Post Police, and Commandant to discuss any non-confidential reports of sexual violence against cadets.
- Make a determination of whether to override the wishes of a cadet who does not want to report to law enforcement if concerns exist for health or safety of members of VMI community
- Notify the Commonwealth's Attorney



Filing a Criminal Complaint

- Cadets are strongly encouraged to report any complaint of sexual violence to the VMI Police or, if off Post, to Lexington or Rockbridge County law enforcement, or law enforcement for the jurisdiction of the incident.
- Cadets who express a desire to file a report with VMI or local police should immediately be referred to the IG/Title IX Coordinator, who will assist the cadet as needed.



Amnesty

- When a cadet reports an incident potentially in violation of GO 16, VMI may provide amnesty to that cadet for minor disciplinary infractions occurring at the time of the incident, including alcohol use and fraternization.
- No amnesty if the disciplinary infraction places or placed at risk the health or safety of any person, OR the cadet seeking amnesty previously has been found to have committed the same infraction.
- No Amnesty for honor offenses.



Supportive Measures

VMI will provide supportive measures and resources **to both complainants and respondents** including, but not limited to:

- Changes in class schedule
- Changes to barracks assignment
- No-contact order or bar from Post
- Escorts on Post
- Counseling and health services
- Modification of academic or training requirements



Investigations

- All investigations are coordinated by and under the oversight of the IG.
- CEA has no authority or responsibility to investigate allegations of violations of GO 16.
- CEA may investigate alleged violations of other VMI policies, such as GO 13 and Blue Book violations, **ONLY IF** specifically delegated by the IG and under her continuous oversight. Ensure **at least two** CEA cadets conduct interviews, with one being the same sex as the interviewee. Ensure that all **documents** are completed fully and professionally, with required **signatures!** Your documents could end up in a **court of law** some day!



Formal Investigations

GO 16 Discrimination Grievance Procedures

- Written statements and interviews
- Informing complainants of rights, in accordance with OCR guidance, Clery Act, and Virginia law
- Time frames for investigation
- Right to review evidence
- **Equal rights for complainant and respondent**



GO 16 – Sanctions

- Sanctions for cadet violations of GO 16 will be recommended by a Decision Maker and, when applicable, an Appeals Officer.
- Sanctions are imposed by the Commandant and, where necessary or appropriate, the Superintendent.
- Sanctions may include any penalty in the Blue Book, including suspension or dismissal.



GO 16 – Appeals

- A complainant or a respondent may appeal a decision.
- Limited grounds for appeal –
 - (1) New evidence not available at the time of hearing;
 - (2) Error in the conduct of the investigation that denied fundamental fairness;
 - (3) Sanctions disproportionate to the offense; or
 - (4) Conflict of interest or bias by the IG’s Office, an external investigator, or other Institute official involved in the Grievance Procedures process that affected the outcome of the hearing.



QUESTIONS?