

Appendix C TITLE IX /SEXUAL MISCONDUCT POLICY

PART 1: RESOURCES AND DEFINITIONS

I. INTRODUCTION

Definitions of key terms are provided under Section X of this policy.

A. Notice of Nondiscrimination and Policy on Statement on Sexual Misconduct

The health, safety, and well-being of all members of the Appalachian School of Law (“School”) community are the School’s primary concerns. In accordance with Title IX of the Education Amendments of 1972 (“Title IX”) and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”), as amended by the Violence Against Women Act/Campus Sexual Violence Act (“Campus SaVE Act”), and other applicable state, federal and local laws, the School is committed to maintaining a community free from all forms of sex discrimination, including sexual misconduct. In accordance with Title IX, the School does not discriminate on the basis of sex in its education programs and activities. Under Title IX, discrimination on the basis of sex includes sexual harassment and sexual violence.

Sexual misconduct includes a broad range of behaviors that will not be tolerated in the School’s education programs or activities. The School strictly prohibits sexual harassment and sexual violence, including the offenses of sexual assault, sexual coercion, sexual exploitation, dating violence, domestic violence, and stalking. Sexual misconduct can occur between strangers, acquaintances, or people who know each other well, including those who are involved in an intimate or sexual relationship, and can be committed by anyone regardless of sex, gender, or gender identity. The School does not tolerate any form of sexual misconduct.

Questions regarding Title IX and the Campus SaVE Act may be referred to the School’s Title IX Coordinator or to the U.S. Department of Education’s Office for Civil Rights.

B. The Title IX Coordinator

The School’s designated Title IX Coordinator is:

Name: Jina Sauls

Title: Director of Community Service and Personnel

Address: 1169 Edgewater Dr., Grundy, VA 24614

Phone: (276) 244-1228

Email: titleixcoordinator@asl.edu or jsauls@asl.edu

The Title IX Coordinator’s responsibilities include, but are not limited to, overseeing the School’s response to complaints of sexual misconduct, coordinating investigations into allegations of sexual misconduct, and identifying and addressing any patterns or systemic problems of sexual misconduct that arise during the investigation of a complaint of sexual misconduct.

C. Scope of Policy

This policy governs sexual misconduct involving students, and applies to such students regardless of sex, race, national origin, disability, part-time/fulltime status, sexual orientation, gender identity, or other protected status. Complaints of discrimination or harassment on the basis of sex that do not involve sexual misconduct are governed by the School’s Grievance Policy contained in the School’s Catalog & Handbook.

This Title IX/ Sexual Misconduct Policy applies to any allegation of sexual misconduct that takes place on School property or any other property on which a School program or activity takes place. This policy also covers conduct that takes place off of School property, or has a reasonable connection to the School.

This policy:

1. sets forth the rights of the victim;
2. describes programs implemented by the School to educate and increase awareness among the School community regarding sexual misconduct;
3. sets forth available resources and reporting options for victims of sexual misconduct;
4. defines prohibited conduct;
5. describes the School's procedures for responding to complaints of sexual misconduct, including the investigation, hearing, and sanctioning process.

Victim's Rights

All victims of sexual misconduct have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the investigation and hearing process and/or criminal justice process free from pressure from the School;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the School courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the complainant is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident with as few School representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the School, any student, the respondent, and or their friends, family and acquaintances within the jurisdiction of the School;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process, if applicable;
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice or judicial or conduct process of the School;
12. Be informed of the outcome of the School's investigation;
13. Be provided with information about health, counseling, and other support services from School and local resources. All members of the School community may obtain information about such resources from the School's Title IX Coordinator. Students may also obtain information from such resources as:

Access Intensive Counseling
Susan Fogg
Phone: 276-244-1380 (Grundy office)
email: accessintensivecounseling@gmail.com

Healing Waters
1113 Cedar Valley Drive, Cedar Bluff, VA 24609
(276)963-0111

Cumberland Mountain Community Services (Buchanan County Satellite Office)
P.O. Box 1115, 1014 Stillhouse Hollow Road (Slate Creek), Grundy, VA 246144

Phone: (276)935-7154
Dinah Stacy Appleton, Office Manager
Email: dstacy@cmcsb.com
<http://www.cmcsb.com/substanceabuse.html>

14. Be notified of options for changing academic, living, transportation, and working situations;
15. Report the incident to School authorities and seek guidance from the School's Title IX Coordinator;
16. The prompt, impartial, and thorough investigation of his/her complaint in accordance with this Policy;
17. Be informed of the importance of preserving evidence;
18. Be informed of his/her rights and the School's responsibilities for orders of protection, restraining orders, or "no-contact" orders as applicable;
19. Confidentiality in accordance with this Policy.

II. PREVENTION AND AWARENESS EDUCATION PROGRAMS

Creating a safe and respectful environment is the responsibility of all members of the School's community. To promote and maintain this environment, the School engages in comprehensive educational programming to prevent sexual misconduct, (including sexual harassment, domestic violence, dating violence, sexual assault, stalking, and retaliation). The School provides primary prevention and awareness programs for all incoming students and employees, and ongoing prevention and awareness campaigns for all students and employees.

The School educates the student community about sexual misconduct through its mandatory orientation program, certain required courses, and ongoing programming initiatives throughout the students' time at School. Such programming and courses provide students with information about safety and security procedures, the School's procedures for responding to reports of sexual misconduct, options for safe and positive bystander intervention, and information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks. Some of the programs include:

1. "Prevention and Awareness" during Introduction to Law week which may be presented as a live program or a video course.
 2. "Haven" by EverFi.com and/or similar awareness and prevention training programs;
 3. Various ongoing "awareness and prevention" activities;
- For additional information about the School's sexual misconduct prevention and awareness programming, please contact the School's Title IX Coordinator, Jina Sauls; Room 133 Main Office and Classroom Building; Phone: 276-244-1228.

III. RESOURCES AND REPORTING OPTIONS FOR VICTIMS OF SEXUAL MISCONDUCT

A. Immediate Medical Assistance and Counseling

If you or someone you know is or may be the victim of any form of sexual misconduct, the School strongly urges you to seek immediate assistance. Assistance is available 24 hours a day, 7 days a week, from:

- Immediate or Emergency Assistance - Call 911
Local Police: Town of Grundy: 276-935-1993; Buchanan County Sheriff's Office: 276-935-2313;
- Campus Security - (276) 244-1295 or 276-935-4349, Ext. 1295 (during office hours only)
- Buchanan General Hospital Emergency Room, 1535 Slate Creek Road, Grundy, VA 24614, 276-935-1000;
- Clinch Valley Medical Center: 6901 Governor G.C. Peery Highway; Richlands, VA 24641, 276-596-6000;

B. Sexual Assault Forensic Examiners

Victims of sexual assault should receive immediate medical attention. Sexual Assault Forensic Examiners (SAFE) are considered the best and most appropriate medical professionals to conduct such an examination.

- Clinch Valley Medical Center: 6901 Governor G.C. Peery Highway; Richlands, VA 24641, 276-596-6000.

C. School Counseling Resources

Regardless of whether or not an official complaint of sexual misconduct is made, students can be referred to various local/regional counseling options.

Reporting Option:

Jina Sauls
Title IX Coordinator
1169 Edgewater Dr., Grundy, VA 24614
(276) 244-1228
titleixcoordinator@asl.edu or jsauls@asl.edu

IV. Reporting of Incidents of Sexual Misconduct

A. Law Enforcement Notification

If you are the victim of sexual misconduct, the School strongly encourages you to promptly report the incident to the police. Timing is a critical factor in collecting and preserving evidence that may assist in proving that the alleged misconduct occurred, or may be helpful in obtaining a protection or restraining order from the police. School representatives are available to assist you in notifying law enforcement of an incident of sexual misconduct and in contacting law enforcement or legal service organizations to learn about these remedies. You may also decline to notify law enforcement.

B. School Notification

The School is committed to providing a prompt, fair, and impartial investigation and resolution to all allegations of sexual misconduct. Therefore, the School also encourages the reporting of sexual misconduct to a School representative in a timely manner. Incidents of sexual misconduct should be reported to the School's Title IX Coordinator. Any incident of sexual misconduct reported to another School employee, with the exception of those employees designated as confidential, as set forth herein, will be reported by the employee to the Title IX Coordinator.

When the School receives a report from a student that he or she has been the victim of sexual misconduct including dating violence, domestic violence, sexual assault or stalking, whether the offense occurred on or off campus, the School will provide the reporting individual with a written explanation of his or her rights and options. The School will provide the reporting individual with written notification to students regarding existing counseling, health, mental health, victim advocacy, legal assistance, student financial aid and other services available for victims both within the School and in the community. If the reporting individual is not the complainant, and the identity of the complainant is made known to the School, the School will provide written notification to the Complainant.

A reporting individual will be provided with the Complaint and will have emergency access to the Title IX Coordinator, or his or her designee, who is trained in interviewing victims of sexual assault and who shall be available upon the first instance of disclosure by the Complainant to provide information regarding options to

proceed upon the first instance of disclosure of sexual misconduct to the School. The Title IX Coordinator, or other designated School official will be available to provide the reporting individual with information regarding his or her options to proceed, and other important information about his or her rights under School policy and the law.

The Complainant reserves the right to withdraw a complaint or his/her involvement in the School's investigation or resolution process at any time. However, in such instances the School's ability to respond will be limited and Title IX may nevertheless require the School to complete the investigation processes.

C. Reports of Sexual Misconduct from Anonymous Sources

If the School receives a report of alleged sexual misconduct by someone other than the complainant (e.g., friend or roommate, resident advisor) or from an anonymous source, the School's Title IX Coordinator will promptly notify the complainant of the report, and inform the complainant of the available resources and assistance. The School will respond to the report of sexual misconduct as if the complainant had made the initial report and an investigation will commence.

D. Time for Reporting

There is no time limit for reporting sexual misconduct. Nevertheless, any member of the School community who believes that he or she has been a victim of sexual misconduct is encouraged to report the alleged sexual misconduct immediately in order to maximize the School's ability to obtain evidence and conduct a thorough, impartial, and reliable investigation.

Under no circumstances will the School allow an impending graduation to compromise its resolution of a sexual misconduct complaint. The conferral of a degree may, therefore, be withheld, if necessary, until proper resolution of any sexual misconduct charges, provided that a hearing opportunity will be scheduled for the earliest practicable date that can accommodate the parties and their witnesses.

V. Confidentiality

The School understands that, for many victims of sexual misconduct, confidentiality is a primary concern. However, certain School employees are required by state and federal laws to share information from a report of sexual misconduct with the School or governmental agencies. Even School employees who cannot guarantee confidentiality will maintain the privacy of the reporting individual to the greatest extent possible. The information that the reporting individual provides to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. When reporting crimes for the purposes of Clery Act compliance, the School will not release identifying information of the victim. The ability of School employees to maintain confidentiality is as follows in the subsequent section describing Responsible Employees and their obligations under this policy.

A. Professional and Pastoral Counselors

The School does not offer professional, licensed counselors or pastoral counselors (ordained clergy.)

B. Responsible Employees

A "responsible employee" is a School employee who has the authority to redress sexual misconduct, who has a duty to report incidents of sexual misconduct, or who a student could reasonably believe has this authority or duty. A responsible employee must report all relevant details about the alleged sexual misconduct shared by the victim to the Title IX Coordinator. A responsible employee will strive to maintain privacy and information reported to the responsible employee will be shared only with those having a need to know such information in order to respond in accordance with School policy.

The School is obligated by law to investigate all allegations of sexual misconduct regardless of whether the complainant wishes to file a complaint. Therefore, if a complainant reports an incident of sexual misconduct to a responsible employee but wishes to remain anonymous or requests that no investigation into the incident be conducted, the School will weigh that request against the School's obligation to provide a safe, nondiscriminatory environment for all members of the School community, including the complainant. If the School honors the request for confidentiality, the complainant must understand that the School's ability to effectively investigate the incident and pursue disciplinary action against the respondent may be limited. In certain circumstances, the School may not be able to honor a complainant's request for confidentiality when doing so would jeopardize the School's responsibility to provide a safe, non-discriminatory environment. The Title IX Coordinator is designated to evaluate requests for confidentiality once a responsible employee is notified of alleged sexual misconduct.

When weighing a complainant's request for confidentiality or the need to continue to pursue the investigation, the Title IX Coordinator will consider a range of factors, including, but not limited to, the following:

- whether there have been other sexual misconduct complaints about the same respondent;
- whether the respondent has a history of arrests or records from a prior school indicating a history of violence;
- whether the incident represents an escalation in and unlawful conduct on behalf of the respondent from previously noted behavior;
- whether there is an increased risk that the respondent will commit additional acts of violence;
- whether the sexual misconduct was committed by multiple perpetrators;
- whether the complainant's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
- whether the alleged sexual misconduct was perpetrated with a weapon;
- the age of the complainant;
- whether the School has other means to obtain relevant evidence (e.g., security cameras or personal, physical evidence).

After considering these factors, the School may be compelled to investigate the alleged sexual misconduct and, if appropriate, pursue disciplinary action in a manner that may require the School to disclose the complainant's identity to the respondent. If the School determines that an investigation is required, the School will inform the complainant and take immediate action necessary to protect and assist the complainant.

If, after considering these factors, the School determines that it is able to respect the complainant's request for confidentiality, the School will nevertheless take all reasonable steps to respond to the complaint consistent with the complainant's confidentiality request, and will determine whether interim measures are appropriate or necessary. The School will also consider broader remedial action, such as increased monitoring, supervision of security at locations where the reported sexual misconduct occurred, increasing training, education and prevention efforts, and conducting climate surveys.

VI. School Amnesty Policy

The health and safety of every student at School is of utmost importance. The School recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The School strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to School officials. A bystander acting in good faith or reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to School officials or law

enforcement will not be subject to the School Code of Conduct for violations of alcohol and/or drug use policies occurring at or near the time of the domestic violence, dating violence, stalking or sexual assault incident.

VII. Immediate Measures and Accommodations

Any individual who has been the victim of sexual misconduct may request assistance in changing academic, living, transportation, and working situations. The School will grant such accommodations, provided they are reasonable and available, regardless of whether the student chooses to report the crime to law enforcement. Such accommodations may include providing increased security, supervision or monitoring at locations or activities where the alleged misconduct occurred, moving a student's residence, adjusting a student's academic or Schoolwork schedules, and issuing a "no contact" order. The complainant or respondent may request a review of any individual against whom a no-contact order is issued and will, upon request, receive a prompt review of the need for, and terms of, the no-contact order, including potential modification, and may submit evidence in support of his or her request. The School will conduct a prompt review in response to such request.

VIII. Orders of Protection

The School is not able to assist an eligible complainant in acquiring an order of protection; however, the Title IX Coordinator may provide the necessary information and support to assist a victim to file for a protective order. Emergency Protective orders (EPO) can be obtained from a Buchanan County Magistrate's office or a petition for Preliminary Protective orders (PPO) can be obtained from the Juvenile and Domestic Relations Court Clerk. Both an EPO and PPO require filing under oath. There are employees of the 29th Judicial Court Services Unit who may be able to assist with filling out the PPO petition that can be reached at (276)935-8549. Alternatively, a complainant may call the Department of Social Services at (276)935-8106 during regular business hours, or 911 outside of regular business hours for an on-call service worker to be dispatched to their home; however, this option will require the notification of law enforcement since a Sheriff's Deputy will accompany the worker.

If an order of protection is granted, the requesting individual will have the right to receive a copy of the order of protection when the order is received by the School. The Complainant will also have the opportunity to have an appropriate School employee explain the order, the consequences for violating the order, and answer any questions about the order. Additionally, if the Respondent violates the order of protection, the no contact order is violated and the Complainant may receive assistance from the School in calling local law enforcement to inform them of the violation.

When the Respondent is a School student and is determined to present a continuing threat to the health and safety of the School community, the Respondent may be subject to interim suspension pending the outcome of the hearing resolution process, described herein. In the event the School imposes an interim suspension on the Respondent, the Complainant or Respondent may request a review of the need for an interim suspension, including potential modification, and may submit evidence in support of his or her request. Upon such request, the School will conduct a prompt review.

Requests for accommodations in connection with incidents of sexual misconduct should be made to the School's Title IX Coordinator. The School will provide information about the student's request for accommodations only to those having a need to know such information in order to implement the accommodations. Both the Complainant and the Respondent may ask the School to review the need for and terms of any interim measures or accommodations that directly affects him or her and may submit evidence in support of his or her request. Upon such request, the School will conduct a prompt review.

IX. Anti-Retaliation Policy

The School prohibits retaliation against any person who reports sexual misconduct or participates in the investigation of any allegation of sexual misconduct, including testifying as a witness. Retaliation should be reported promptly to the School's Title IX Coordinator. Reports of retaliation will be investigated in accordance with the appropriate School policy, and such conduct may result in disciplinary action independent of the sanction(s) or interim measures imposed in response to the underlying allegations of sexual misconduct.

X. Definitions within the Policy

"Bystander" means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior or conduct that is in violation of rules or policies of the School.

"Complainant" means the individual who experienced the sexual misconduct, regardless of whether such individual reports such sexual misconduct to the School or participates in the School's conduct process for responding to complaints of sexual misconduct described herein.

"Confidentiality" may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092 (f) and 20 U.S.C. 1681 (a).

"Consent" must be affirmative. Consent means a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated.
- Consent cannot be given when it is the result of any coercion, intimidation, force, threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

"Force" The use of physical violence and/or imposing on someone physically to engage in sexual contact or intercourse. Force can also include threats, intimidation (implied threats), or coercion used to overcome resistance.

"Incapacitation" A state where a person cannot make a rational, reasonable decision because the person lacks the ability to understand his or her decision. A person can become incapacitated as a result of disability, involuntary physical constraint, sleep, or consumption of alcohol or other drugs.

"Intimidation" means implied threats or acts that reasonably cause another to fear for his/her safety or well-being.

"Privacy" may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a complainant or bystander to a crime or incident reporting individual, including appropriate School employees, above what is necessary to comply with this and other applicable laws or School policy.

“No-Contact Order” A directive prohibiting contact between or among designated individuals through any means, direct or indirect, including personal contact, email, telephone, text message, social media, or by means of a third party.

“Reporting Individual” Any individual who reports a violation of this policy to the School, including, but not limited to, a complainant or bystander.

“Responsible employee” is a School employee who has the authority to redress sexual misconduct, who has a duty to report incidents of sexual misconduct, or who a student could reasonably believe has this authority or duty.

“Respondent” means the individual alleged to have committed acts constituting sexual misconduct.

“Retaliation” Taking any adverse action or attempting to take adverse action, including intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual’s complaint of sexual misconduct or participation in an investigation or proceeding related to alleged sexual misconduct.

Definitions of Gender-Based Misconduct

“Sexual Misconduct” means a range of unwelcome behavior of a sexual nature that is committed without consent or by intimidation, coercion, threat or force. Sexual Misconduct includes, but is not limited to, sexual assault, sexual coercion, sexual exploitation, sexual harassment, dating violence, domestic violence, and stalking.

Under the Code of Virginia, §18.2, Sexual Misconduct and related crimes are defined as follows:

§ 18.2-67.10. General Definitions:

As used in this article:

"Complaining witness" means the person alleged to have been subjected to rape, forcible sodomy, inanimate or animate object sexual penetration, marital sexual assault, aggravated sexual battery, or sexual battery.

"Intimate parts" means the genitalia, anus, groin, breast, or buttocks of any person.

"Mental incapacity" means that condition of the complaining witness existing at the time of an offense under this article which prevents the complaining witness from understanding the nature or consequences of the sexual act involved in such offense and about which the accused knew or should have known.

"Physical helplessness" means unconsciousness or any other condition existing at the time of an offense under this article which otherwise rendered the complaining witness physically unable to communicate an unwillingness to act and about which the accused knew or should have known.

The complaining witness's "prior sexual conduct" means any sexual conduct on the part of the complaining witness which took place before the conclusion of the trial, excluding the conduct involved in the offense alleged under this article.

"Sexual abuse" means an act committed with the intent to sexually molest, arouse, or gratify any person, where:

a. The accused intentionally touches the complaining witness' intimate parts or material directly covering such intimate parts;

b. The accused forces the complaining witness to touch the accused's, the witness' own, or another person's intimate parts or material directly covering such intimate parts;

c. If the complaining witness is under the age of 13, the accused causes or assists the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; or

d. The accused forces another person to touch the complaining witness' intimate parts or material directly covering such intimate parts.

§ 18.2-61. Rape.

A. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape.

§ 18.2-60.3. Stalking; penalty.

A. Any person, except a law-enforcement officer, as defined in § 9.1-101, and acting in the performance of his official duties, and a registered private investigator, as defined in § 9.1-138, who is regulated in accordance with § 9.1-139 and acting in the course of his legitimate business, who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member is guilty of a Class 1 misdemeanor.

Similar to Statutory Rape:

§ 18.2-63. Carnal knowledge of child between thirteen and fifteen years of age.

A. If any person carnally knows, without the use of force, a child thirteen years of age or older but under fifteen years of age, such person shall be guilty of a Class 4 felony.

B. If any person carnally knows, without the use of force, a child thirteen years of age or older but under fifteen years of age who consents to sexual intercourse and the accused is a minor and such consenting child is three years or more the accused's junior, the accused shall be guilty of a Class 6 felony. If such consenting child is less than three years the accused's junior, the accused shall be guilty of a Class 4 misdemeanor.

Similar to Domestic Violence:

§ 18.2-57.2. Assault and battery against a family or household member; penalty.

A. Any person who commits an assault and battery against a family or household member is guilty of a Class 1 misdemeanor.

B. Upon a conviction for assault and battery against a family or household member, where it is alleged in the warrant, petition, information, or indictment on which a person is convicted, that such person has been previously convicted of two offenses against a family or household member of (i) assault and battery against a family or household member in violation of this section, (ii) malicious wounding or unlawful wounding in violation of § 18.2-51, (iii) aggravated malicious wounding in violation of § 18.2-51.2, (iv) malicious bodily injury by means of a substance in violation of § 18.2-52, (v) strangulation in violation of § 18.2-51.6, or (vi) an offense under the law of any other jurisdiction which has the same elements of any of the above offenses, in

any combination, all of which occurred within a period of 20 years, and each of which occurred on a different date, such person is guilty of a Class 6 felony.

Virginia has no separate criminal code violation relating to Dating Violence.

§ 18.2-67.6. Proof of physical resistance not required.

The Commonwealth need not demonstrate that the complaining witness cried out or physically resisted the accused in order to convict the accused of an offense under this article, but the absence of such resistance may be considered when relevant to show that the act alleged was not against the will of the complaining witness.

PART II: PROCEDURES FOR RESPONDING TO A COMPLAINT OF SEXUAL MISCONDUCT

The School is committed to providing a prompt, fair, and impartial investigation and resolution of all allegations of sexual misconduct. Incidents of sexual misconduct should be reported to the School's Title IX Coordinator. Any incident of sexual misconduct reported to another School responsible employee, with the exception of those employees designated above as confidential, will be reported by the responsible employee to the Title IX Coordinator.

XI. Initial Steps

A. Intake Meeting with Complainant

Upon notice of any allegation of sexual misconduct, the Title IX Coordinator or his or her designee will schedule an individual intake meeting with the Complainant. At the intake meeting, the Title IX Coordinator or his or her designee will provide the Complainant with a general understanding of this policy for reports of student sexual misconduct, and identify forms of support or immediate assistance available to the Complainant (e.g., referrals to appropriate law enforcement agencies; referrals for medical treatment at local hospitals and trauma centers). The Title IX Coordinator or his or her designee will also provide the Complainant with a written explanation of his or her rights and options with respect to his or her report of sexual misconduct. The intake meeting may also involve a discussion of any interim accommodations that may be appropriate concerning the Complainant's academic schedule, School housing, and/or School employment arrangements. Additional information regarding interim accommodations is set forth below.

At the initial intake meeting or at a subsequent time the Title IX Coordinator or his or her designee will seek to determine how the complainant wishes to proceed, i.e., whether the complainant wishes to pursue Formal Resolution, Informal Resolution, or does not wish to pursue resolution of any kind. Regardless of how the complainant chooses to proceed, the School seeks to resolve every report of sexual misconduct within 60 calendar days of the initial report, excluding any appeal. The time frames included in this policy may vary depending on the details of the complaint and, in some cases, the time of the academic year (e.g., during School breaks or final exams). The School may extend any time frame for good cause, provided the complainant and respondent are given a written explanation as to the reason for such extension.

If the complainant wishes to proceed with either Formal Resolution or Informal Resolution, the Title IX Coordinator will ascertain the name of the respondent, and the date, location, and nature of the alleged sexual misconduct, and, in a timely fashion, will schedule an individual intake meeting with the respondent. The School will notify the respondent that a complaint has been filed and provide the date, time, location and factual allegations concerning the alleged violation, and possible sanctions.

If the complainant wishes to proceed with Formal Resolution, the Title IX Coordinator will promptly prepare a formal letter to the Hearing Committee on Student Behavior ("Hearing Committee") notifying the Hearing

Committee of the initiation of a formal investigation. The letter will provide the Hearing Committee with the names of the complainant and respondent and the date, location, and nature of the alleged sexual misconduct.

If the complainant does not wish to pursue Formal Resolution or Informal Resolution, and either requests that his or her complaint remain confidential, or refuses to participate in the initial intake meeting with the Title IX Coordinator, the Title IX Coordinator will inform the complainant that the School's ability to respond may be limited. In such scenarios, Title IX nevertheless requires the School to evaluate the complainant's request(s) for no action in the context of the School's commitment to provide a reasonably safe and non-discriminatory environment for the entire School community.

B. Interim Measures

In all complaints of alleged sexual misconduct, the School will undertake an appropriate inquiry and take immediate action to support and protect the complainant, including taking appropriate interim steps before the final outcome of the investigation and hearing, if any. Accordingly, at or after the intake meeting, the School may impose a "no-contact" order, which typically will include a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, including social media, pending the investigation and, if applicable, the hearing.

To ensure the safety and well-being of the complainant, the Title IX Coordinator also may take any further protective action that he or she deems appropriate concerning the interaction of the parties pending the hearing, which may include directing appropriate officials to alter the students' academic, transportation, School housing, and/or School employment arrangements, or other appropriate protections. Any student who has been the victim of sexual misconduct may request assistance in changing academic, living, transportation, and working situations after a report of sexual misconduct. The School will grant such accommodations, provided they are reasonable and available, regardless of whether or not the victim chooses to report the crime to law enforcement.

When taking such steps to separate the complainant and the respondent, the School will, to the extent practicable, minimize the burden on the complainant.

Violation(s) of the Title IX Coordinator's directives and/or protective actions will constitute related offenses that may lead to additional disciplinary action.

C. Effect of Criminal Proceedings

Sexual misconduct may constitute a violation of both law and School policy. The School encourages students to report alleged sexual misconduct promptly to local law enforcement agencies. Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. The standards for finding a violation of criminal law are different from the standards for finding a violation of this policy. Therefore, criminal investigations or reports are not determinative of whether sexual misconduct under this Policy, has occurred. In other words, conduct may constitute sexual misconduct under this Policy even if law enforcement agencies lack sufficient evidence of a crime and decline to prosecute.

The filing of a complaint of sexual misconduct under this policy is independent of any criminal investigation or proceeding. The School will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation or to take any necessary interim measures to protect the complainant and the School community. However, the School may temporarily delay its investigation to enable law enforcement to gather evidence and to engage in a preliminary investigation of sexual misconduct matters that may also violate the state criminal code.

XII. Formal Resolution Process

A. Investigation

When the complainant indicates a desire to pursue Formal Resolution, the reported allegations will be investigated promptly, thoroughly, and impartially. School will notify the respondent that a complaint has been filed and will include notice of the allegations. The complainant and respondent will be given the opportunity to meet separately with the Title IX Coordinator. Additionally, the Title IX Coordinator will inform both the complainant and respondent that both parties have the right to an advisor of their choice to assist in the resolution process. During all phases of the Formal Resolution Process, the parties will be provided with advance notice of any meeting they are required or eligible to attend.

The Title IX Coordinator will collect and review evidence it deems necessary or helpful to the investigation of the alleged sexual misconduct. The Title IX Coordinator may designate a specially trained investigator or investigators to conduct the interviews and investigation. The investigation will include individual interviews with the parties involved and with individuals who may have observed the alleged conduct or may have other relevant knowledge. The investigation may also include examination of medical records, surveillance video, cell phone and other electronic records, and other evidence.

In response to the Investigation, both the complainant and the respondent will be given the opportunity to submit a written statement. The written statement will be provided to the Title IX Coordinator, the opposing party, as well as members of the Hearing Committee.

B. Hearing Committee

Formal Resolution involves a hearing before a committee. The Committee is comprised of at least three School Administrators, all of whom receive training, at least annually, on the issues relating to sexual misconduct, including sexual harassment, dating violence, domestic violence, sexual assault, and stalking. They will also be trained regarding how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. The Hearing Committee Chair will select the

Hearing Committee members who will participate in the hearing and will either serve as the presiding chair of the hearing, or will appoint the presiding chair (or, if the Hearing Committee Chair is unavailable or otherwise unable to serve, the Associate Dean for Academic Affairs will select the members who will conduct the hearing and a presiding chair of the Committee).

C. The Hearing

After the investigation the School will provide written notice at least five business days before the hearing date to both parties stating the date, time, and place of the hearing. A party wishing to challenge the participation of any member appointed to the Committee must notify the Hearing Committee Chair, in writing, within three business days of receipt of the notice of hearing, stating the specific reason(s) for the party's objection. The Committee Chair will determine whether the challenge has merit, and reserves discretion to make changes in the composition of the Committee at any time. A party wishing to challenge the participation of the Committee Chair must notify the Title IX Coordinator, in writing, within three business days of receipt of the notice of hearing, stating the specific reason(s) for the party's objection. The Title IX Coordinator will determine whether the challenge has merit and reserves discretion to instruct the Hearing Committee to designate a new Committee Chair.

i. Pre-Hearing Submissions

In addition to the written statements submitted by the parties, the parties will provide the Title IX Coordinator with a list of witnesses they wish the Committee to call, copies of documents, and a description of any other information they propose to present at the hearing at least three business days prior to the hearing.

The Title IX Coordinator will determine whether such witnesses and documents are relevant to the Hearing. The Title IX Coordinator will provide each party with a copy of the list of witnesses and copies of documents or other information submitted by each party.

In the absence of good cause, as determined by the Committee, the parties may not introduce witnesses, documents, or other information at the hearing that were not provided by this deadline.

ii. Conduct of the Hearing

The hearing will take place on the date and time specified in the notice of hearing. If circumstances arise that require a change in the hearing date or time, the School will provide both parties with written notice explaining the reason for such change. The School will arrange for the hearing to be recorded, and may arrange for the preparation of any transcript of the recording that the School deems appropriate.

As a non-adversarial process, the hearing will not follow a courtroom model, and formal rules of evidence will not be observed. The Hearing Committee will determine the order of the witnesses and resolve any questions of procedure arising during the hearing. The School will ask for all necessary witnesses to be present, or to have provided written statements in lieu of attending the hearing. This may be done as necessary to accommodate a witness who cannot be present, or whom the Hearing Committee determines may remain anonymous. The Hearing Committee will review in advance of the hearing all the written materials provided.

Only the Hearing Committee may question the individual parties and any witnesses, unless permission is granted to modify the questioning process. After all witnesses have been questioned, each party may make a closing statement.

In order to comply with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public. Accordingly, the School will not disclose documents prepared in anticipation of the hearing, documents, testimony, or other information introduced at the hearing, and any transcript of the hearing itself may not be disclosed outside of the hearing proceedings, except as may be required or authorized by law and/or School policy.

Both the complainant and the respondent may have advisors present to support and assist them during any meeting, the hearing and appeal stages of the Formal Resolution process. At the complainant's or respondent's request, the Title IX Coordinator will appoint to each party an advisor who has been formally trained. An advisor may not direct questions to the Hearing Committee or witnesses at the hearing, but may consult with the party that he or she is assisting. The Hearing Committee will not allow an advisor's presence to inhibit the parties' sharing of information or the conduct of the hearing.

The parties are expected to cooperate at the hearing. If either party fails to appear at the scheduled hearing, the Hearing Committee may postpone the proceedings if there is a legitimate documented reason for the absence, or proceed and determine the complaint on the basis of the evidence available, provided the absent party was duly notified of the scheduled hearing date.

If the Hearing Committee determines that unresolved issues exist that would be clarified by the presentation of additional information, the Hearing Committee may suspend the hearing and reconvene it in a timely manner to receive such information. A delay may not be based on the failure of witnesses to appear without good cause or on the proposed introduction of documents which were readily available at the time of the hearing.

D. Determination

In all investigations into alleged sexual misconduct, the School will evaluate evidence under a "preponderance of the evidence" standard. A preponderance of the evidence means that information shows it is "more likely

than not” that the respondent violated this policy. The Hearing Committee must decide if the respondent is responsible, not responsible, or whether there is sufficient evidence to make a determination.

The respondent will be found to be responsible for the alleged sexual misconduct if the Hearing Committee concludes, based upon careful review of all information presented, that such sexual misconduct more likely than not occurred. The Hearing Committee shall determine whether the respondent is responsible for sexual misconduct, and will provide a written statement of such determination to the Associate Dean for Academic Affairs. The Hearing Committee’s written report will also be sent to the Associate Dean for Academic Affairs.

Complainant and Respondent Impact Statement

Within three business (3) days of the conclusion of the hearing, both the complainant and respondent will be given access to the record of the hearing and offered an opportunity to provide an impact statement to the Associate Dean for Academic Affairs while he or she is deliberating on the appropriate sanctions. The record of the hearing may not be copied.

The impact statement may be up to five (5) pages single spaced. The impact statement is the students’ opportunity to discuss his or her experience, and the incident in question, as well as respond to how the investigation and hearing was conducted and any areas of agreement or/disagreement with the investigation or hearing, or determination of the Hearing Committee.

This impact statement must be provided to the Title IX Coordinator who will provide it to the opposing party as well and the Associate Dean for Academic Affairs, and all members of the Hearing Committee.

XIII. Sanctions

The Associate Dean for Academic Affairs may consider suspending or expelling any student found responsible for sexual misconduct; however, he or she may impose any of the following sanctions that are determined to be fair and proportionate to the violation:

- Reprimand or warning
- Changing the respondent’s academic schedule
- Disciplinary probation
- Revocation of honors or awards
- Restricting the respondent’s access to School facilities or activities
- Community service
- Issuing a “no-contact” order to the respondent or requiring that such an order remain in place
- Dismissal from or restricting or reassignment of School employment
- Suspension (limited time or indefinite)
- Expulsion

In determining appropriate sanctions, the Associate Dean for Academic Affairs will consider any record of past violations of School policies, as well as the nature and severity of such past violation(s). The Associate Dean for Academic Affairs will consider as part of the deliberations whether the respondent poses a continuing risk to the complainant and/or the School community. Any sanction imposed will be explained and supported in the written decision of the Associate Dean for Academic Affairs.

Within five business days from the determination of the Committee hearing, the Associate Dean for Academic Affairs will issue a determination letter to the respondent and the complainant. Both parties, concurrently, will receive a copy of this determination letter.

The determination letter will contain only the following information: (i) the name of the respondent; (ii) whether the respondent has been found responsible or not responsible for specific violation(s) of the sexual misconduct policy; (iii) a list of the possible sanctions imposed, if any; (iv) the sanctions actually imposed; (v) the rationale for the sanctions imposed, if any; (vi) the School's appeal process; (vii) any change to the results that occur prior to the time that the results become final; and (viii) when the results become final. Both the respondent and the complainant have a right to this information.

If the respondent is found responsible for sexual misconduct that involves a crime required by the Clery Act to be reported by the School, and, as a result, is suspended and or expelled by the School, the School is required by Virginia law to make a notation on the respondent's transcripts in accordance with the School's Transcript Notation Policy.

XIV. Appeal Process

Either party may appeal the Hearing Committee's determination and/or the disciplinary decision of the Associate Dean for Academic Affairs. A party has three grounds under which to appeal the School's determination: (i) the Hearing Committee committed procedural errors that had an impact on the complaint's decision, (ii) there is new evidence that was not reasonably available at the time of the hearing before the Hearing Committee, or (iii) the sanctions are not consistent with past practices or the severity of the alleged sexual misconduct.

Final sanctions are in effect until any timely appeal of the decision is resolved. The Associate Dean for Academic Affairs may suspend the determination pending exhaustion of appeal, allow the student to attend classes or other activity on a supervised or monitored basis, or make such other modifications to the determination as may be advisable. Interim measures will remain in effect until the appeal is resolved.

The procedure to file an appeal is as follows:

1. A party wishing to appeal the findings of the Hearing Committee and/or sanctions by the Associate Dean for Academic Affairs must file a notice of intent to appeal within five business days of the date the party is notified of the Hearing Committee's finding and the Associate Dean for Academic Affairs' sanctions. The notice of intent to appeal must be submitted in writing (either email or hard-copy) to the Title IX Coordinator. The notice of intent to appeal must contain the party's grounds for the appeal.
2. Within two weeks of filing a notice of intent to appeal, the party's formal appeal must be filed. The party should submit copies of any and all material the party wishes to provide as evidence for his/her appeal.
3. A committee made up of three full-time faculty members ("Appeals Committee"), which shall not include the Associate Dean for Academic Affairs or members of the Hearing Committee, will be assembled by the Title IX Coordinator. Except for appeals brought under (ii) above, the Appeal Committee's entire review process will be based on the party's appeal and the Hearing Committee's record of the case. Otherwise, no additional evidence is allowed and no witnesses may be heard.
4. The Appeals Committee will make a final determination on the appeal. The Appeals Committee shall render its decision regarding the appeal within 20 calendar days of receipt of the appeal, record of the case, and if applicable, any new evidence pursuant to (ii) above.
5. Within three business days of the Appeals Committee's determination, the Associate Dean for Academic Affairs will issue a final determination letter to the respondent and the complainant. Both parties, concurrently, will receive a copy of this final determination letter.

XV. Informal Resolution

A complainant who wishes to file a complaint but who does not wish to pursue Formal Resolution may request a less formal proceeding, known as “Informal Resolution.”

While the Informal Resolution process is not as structured as the Formal Resolution process, it can be an effective and appropriate means to deal with the complaint. The Informal Resolution procedure is not available for complaints of sexual violence.

If the complainant wishes to proceed with Informal Resolution the Title IX Coordinator will ascertain the name of the respondent, and the date, location, and nature of the alleged sexual misconduct, and, within two business days, will schedule an individual intake meeting with the respondent in order to provide him or her with a general understanding of the policy.

The complainant and the respondent each may bring an advisor to the Informal Resolution. Advisors are subject to the same restrictions for advisors in Formal Resolution, as set forth above. The Title IX Coordinator or designee will preside over the Informal Resolution and may elect to be assisted by another member of the senior staff of the School or outside expert.

If, in the course of the Informal Resolution, the respondent admits to violating the School’s Policy and Procedures for Reports of Student Sexual Misconduct, that admission will serve as a finding of responsibility that is final and cannot be appealed. The Associate Dean will recommend one or more sanctions, which the respondent can accept or reject. The sanctions that may be imposed as the result of the Informal Resolution process are the same as those outlined in the Formal Resolution process above. If the Associate Dean for Academic Affairs’ recommended sanction is accepted, the process is concluded. If it is rejected, the complaint will proceed to the Formal Resolution process.

Informal Resolution may result in the imposition of protective actions agreed upon by the parties, or (with or without such agreement) based on information derived from the Informal Resolution taken together with any other relevant information known to the School at the time of the Informal Resolution.

The School may, at any time, elect to end such proceedings and initiate Formal Resolution instead. Statements or disclosures made by the parties in the course of the Informal Resolution may be considered in the Formal Resolution.