

# Liberty University Discrimination, Harassment, and Sexual Misconduct Policy

Updated September 7, 2018

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**I. Introduction**

Liberty University (“Liberty” or the “University”) is committed to providing a safe and non-discriminatory learning, living, and working environment for all members of the University community. According to Liberty University’s Statement of Mission and Purpose, “[t]hrough its residential and online programs, services, facilities, and collaborations, the University educates men and women who will make important contributions to their workplaces and communities, follow their chosen vocations as callings to glorify God, and fulfill the Great Commission.” This *Discrimination, Harassment, and Sexual Misconduct Policy* (“Policy”) is a key component to effectuating the University’s mission and its obligations under the law. All members of the University community are responsible for understanding and following this Policy.

**A. Statement of Policy**

Liberty University does not engage in unlawful discrimination or harassment because of race, color, ancestry, religion, age, sex, national origin, pregnancy or childbirth, disability, or military veteran status in its educational programs and activities, which includes admissions and employment. Liberty University complies with all applicable federal and Virginia laws, including Title IX of the Education Amendments of 1972 (“Title IX”); Titles VI and VII of the Civil Rights Act of 1964 (“Title VI” and “Title VII”); the Family Educational Rights and Privacy Act of 1974 (“FERPA”); Section 504 of the Rehabilitation Act of 1973 (“Section 504”); Title I of the Americans with Disabilities Act (the “ADA”); the Age Discrimination in Employment Act of 1967, as amended by the Older Worker’s Benefit Protection Act (the “ADEA”); the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”), as amended by the Violence Against Women Reauthorization Act of 2013 (“VAWA”); and Va. Code §§ 23.1-805 and 900. Liberty University maintains its Christian mission and reserves its right to discriminate on the basis of religion to the extent that applicable law respects its right to act in furtherance of its religious objectives.

This Policy prohibits Discrimination, Harassment (Non-Sexual), Sexual Harassment, Sexual Violence, Sexual Exploitation, Stalking, Intimate Partner Violence, Intimidation, False Reporting, Retaliation, and Complicity, as those terms are defined below in Section IV of this Policy (collectively those terms are referred to in this Policy as “Prohibited Conduct”). All forms of Prohibited Conduct under this Policy are regarded as serious University offenses, and as violations of this Policy. As such, they will result in discipline, including potential

separation from the University. Some forms of Prohibited Conduct may also violate state or federal laws, and civil claims as well as criminal prosecution may occur independently of any disciplinary action imposed by the University. The University will respond to reports of Prohibited Conduct with measures designed to eliminate the Prohibited Conduct, prevent its recurrence, and remedy any adverse effects of such conduct on persons, members of the campus community, and University-related programs and activities.

## **B. Statement of Purpose**

The purpose of this Policy is to establish clearly and unequivocally that Liberty University prohibits Prohibited Conduct. This Policy is strictly enforced, and members of the University community are responsible for understanding and following this Policy. The purpose of the procedures outlined in this Policy is to provide for the prompt and equitable resolution of reports and complaints of Prohibited Conduct.

## **C. The Office of Equity and Compliance**

The Office of Equity and Compliance, with executive oversight by the Vice President of Equity and Inclusion, is charged with enforcing this Policy. The Executive Director of Equity and Compliance (“Executive Director”), who reports to the Vice President of Equity and Inclusion, is the designated person responsible for addressing reports and complaints, systemic issues, and other general concerns involving discrimination, harassment, and sexual misconduct at the University. The Executive Director of Equity and Compliance has also been designated by the University to coordinate the University’s compliance with Title IX. Concerns, reports, and complaints of discrimination, harassment, and sexual misconduct, even those thought to be beyond the scope of this Policy, should be referred to the University’s Office of Equity and Compliance.

## **D. Coordination of Policy with Other University Policies, Consolidating Investigations and Coordination with Law Enforcement**

In case of a conflict between this Policy and another University policy, this Policy will govern. Generally, the University prioritizes the reporting and resolution of Prohibited Conduct under this Policy over violations of other University policies. When conduct involves the potential violations of both this Policy and another University policy, the University may choose to investigate other potential misconduct under the procedures set forth in this Policy, provided that it does not unduly delay a prompt and equitable resolution of the report or complaint, or the other application of University policy. This includes potential violations of another University policy alleged to be motivated on the basis of any protected status. In addition to this Policy, the conduct of students, faculty, and employees may be governed by other University policies, such as the *Employee Handbook*, the *Faculty Handbook*, *The Liberty Way*, the *Graduate Honor Code*, the *School of Law’s Personal Code of Honor*, the *Liberty University College of Osteopathic Medicine (“LUCOM”)’s Code of Conduct*, and the *Online Honor Code*.

The Office of Equity and Compliance has the discretion to consolidate multiple reports and/or complaints into a single matter. This may occur, for example, when evidence relevant to one report is also relevant to another report. Consolidation might involve multiple Complainants and a single Respondent, multiple Respondents, or conduct that is connected in time or logically connected.

The Office of Equity and Compliance may, at the discretion of the Executive Director of Equity and Compliance, who may consult with other University administrators, investigate other forms of conduct that may be a potential violation of other University policies. Such other forms of conduct may be resolved under this Policy, in the discretion of the Office of Equity and Compliance, giving due regard to the Amnesty provision set forth in Section VIII(C)(3) of this Policy below.

The procedures set forth in this Policy are administrative and educational in nature and are separate and distinct from criminal, civil, and administrative processes of the legal system. Pursuing resolution through procedures in this Policy does not preclude someone from also pursuing actions in that legal system at the same time or in the future. If the conduct in question is alleged to be a violation of both University policy and the law of any government, the University will proceed with its normal process, regardless of action or inaction by outside authorities. Determinations made or sanctions imposed through these or other University procedures are not necessarily subject to change simply because criminal charges or civil complaints arising from the same conduct are dismissed, reduced, or rejected in favor of or against the Respondent. Throughout the investigation and resolution processes set forth in this Policy, the University will maintain its authority to take action to ensure campus safety, which may include imposing interim measures prior to resolution of a report or complaint of Prohibited Conduct, and provide for prompt and equitable resolutions of a report or complaint of Prohibited Conduct.

## **II. Roles of Executive Director, Deputy Coordinators and Civil Rights Investigators**

The Executive Director oversees the investigation and resolution of reports and complaints of alleged Prohibited Conduct in accordance with this Policy. The Executive Director may delegate responsibilities under this Policy to designated University administrators who have appropriate training and/or experience. When used in this Policy, the term Executive Director may also include a Deputy Coordinator, a Civil Rights Investigator (“Investigator”), or other appropriate designee with such delegated responsibilities. The Executive Director oversees the University's centralized response to all reports of Prohibited Conduct to assure consistent implementation of this Policy and compliance with all applicable federal and state laws within the scope of this Policy. The Executive Director and other designated University employees will, among other actions:

- Communicate with all members of the University community regarding applicable law and policy within the scope of this Policy, including this Policy, and provide information about how persons may access reporting and support options.

- Review University policies, including this Policy, to ensure institutional compliance with applicable federal and state laws within the scope of this Policy.
- Monitor the University's administration of this Policy and related policies, to ensure functions of record keeping, adherence to timeframes, and other procedural requirements.
- Conduct on-going training involving Prohibited Conduct, as defined in this Policy, in compliance with applicable federal and Virginia laws.
- Respond to all reports and complaints regarding conduct that may violate this Policy, including reports and complaints of Prohibited Conduct. In this capacity, the Executive Director will oversee the investigation and resolution of such reports and complaints; direct the provision of any interim measures; and monitor the investigations and resolutions (including the Review Board and the Final Appeal of Sanctions, if any), their findings (which includes the outcome), notices of outcome, and, if imposed, any sanctions.

### **Contact Information for the Vice President and the Executive Director of the Office of Equity and Compliance**

Greg Dowell  
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[www.liberty.edu/studentaffairs/titleix/](http://www.liberty.edu/studentaffairs/titleix/)

### **Contact Information for Deputy Coordinators**

Deputy Coordinators assist the Vice President of Equity and Inclusion and the Executive Director by having direct oversight of the University's compliance with this Policy within their respective areas of the University. Reports and complaints of Prohibited Conduct may be made directly to the Deputy Coordinators, who will forward them to Liberty's Executive Director. The Deputy Coordinators are:

Steve Foster  
Director of Employee Relations  
Human Resources  
434.592.3345  
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### **III. Scope of Policy**

This Policy governs the conduct of Liberty University students, without regard to changes in enrollment status; University employees, including faculty, graduate assistants, and student-workers; and, to a limited extent, Third Parties (i.e., non-members of the University community, such as University vendors, Liberty alumni, University volunteers, and University visitors). Members of the University community are both protected by and subject to this Policy. Third-Parties are also protected by and subject to this Policy to a limited extent. A Third Party may report Prohibited Conduct and the University will take appropriate steps to investigate and respond. A Third Party who engages in Prohibited Conduct may also be permanently barred from the University or subject to other restrictions. In some circumstances, this Policy may also apply to conduct that preceded admission to, or employment by, the University.

#### **A. Application of Policy**

##### **1. On-Campus**

This Policy applies to conduct that occurs on-campus or on property owned or controlled by the University.

##### **2. Off-Campus**

This Policy applies to conduct that occurs off-campus in the context of any University-related or University-sponsored education program or activity, regardless of the location (including travel, research, study abroad, internship programs, etc.), as well as to conduct that occurs off campus but that has a nexus to the University, such as conduct with continuing adverse effects upon members of the University community

or conduct that creates a hostile environment on campus or continues it.

**3. Liberty University Students, Faculty and Employees**

This Policy applies to conduct by Liberty University students, faculty, and employees, regardless of location.

**4. Technology Resources**

This Policy applies to conduct that occurs through the use of University-owned or University-provided technology resources, regardless of location.

**B. Terms**

**1. Complainant**

Complainant refers to a person who is reported to have experienced Prohibited Conduct, regardless of whether the person makes a report or complaint, or seeks disciplinary action. If the Complainant is deceased, the Complainant may be represented by the next-of-kin under this Policy to the extent possible (e.g., investigations). A Complainant is also a Party.

**2. Respondent**

Respondent refers to a person who has been accused of Prohibited Conduct. A Respondent is also a Party.

**3. Third-Party**

Third Party refers to a person who is not a University student, faculty member, or employee (e.g., vendors, contractors, alumni, visitors, volunteers, College for a Weekend (CFAW) attendees, etc.). A Third-Party may be a reporting party, a Complainant, a Respondent, or a Witness for purposes of this Policy.

**4. Witness**

Witness refers to a person who may have information relevant to a report of Prohibited Conduct, including a person who may have observed the acts in question, who may be able to provide contextual information, or who may have other related information. A Witness may be a student, an employee, or a Third Party.

**C. The Respondent's Status as University Employee or University Student**

This Policy's procedures for responding to reports and complaints of Prohibited Conduct (both investigation and resolution) are different based on the Respondent's primary status

as an employee or a student of the University. If the Respondent is primarily a student, the Investigation and Resolution Processes for Accused Students apply (see Section XI of this Policy below). If the Respondent is primarily an employee, which includes all full-time University employees, the Investigation and Resolution Processes for Accused Employees apply (see Section XII of this Policy below). Accordingly, sanctions imposed for Prohibited Conduct are also determined according to the Respondent's status as a University student or a University employee. When a Respondent is both a student and an employee of the University, the Respondent is subject to sanctions as both a student and an employee under this Policy.

#### **IV. Prohibited Conduct**

In determining whether reported conduct constitutes Prohibited Conduct, the University will consider the facts and circumstances of the incident, including the nature of the alleged misconduct and the context in which it occurred. The following definitions and guidance provide more detail of the terms used to describe Prohibited Conduct under this Policy.

##### **A. Discrimination**

Discrimination is inequitable and unlawful treatment based on a person's protected status (e.g., race, color, ancestry, religion, age, sex, national origin, pregnancy or childbirth, disability, or military veteran status) that excludes that person from participation in; denies that person the benefits of; treats that person differently or otherwise adversely affects a term or condition of; that person's employment, education, living environment, or participation in an educational program or activity of the University.

Discrimination can occur in the forms of (1) different treatment or (2) disparate impact, both forms of which violate this Policy. Absent direct evidence of discriminatory intent (e.g., remarks, written or oral statements, acts, or admissions revealing discriminatory motives), circumstantial evidence will be examined to determine whether a person received different treatment on the basis of a protected status. If the Respondent states a legitimate, non-discriminatory reason for the different treatment, the Office of Equity and Compliance will consider whether the non-discriminatory reason stated is a pretext for discrimination rather than the actual reason for different treatment. In addition to different treatment, the facially protected status-neutral criterion, policies, practices, or procedures of the University, may have an unjustified, adverse effect on members of a protected status and thus constitute disparate impact Discrimination. Disparate impact Discrimination has not occurred unless there is an adverse effect on students of a particular protected status. Even if there is an adverse effect on a protected status, disparate impact Discrimination has not occurred if the criterion, policy, practice, or procedure is necessary to advance a legitimate, non-discriminatory educational goal and there is not a comparably effective alternative criterion, policy, practice, or procedure that would achieve the goal with less adverse impact.

No otherwise qualified individual with a disability shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to

discrimination under any University program or activity. To comply with Section 504 and Title I of the ADA, the University must treat a qualified disabled student or a qualified disabled employee differently if, after an individualized analysis of that qualified disabled student's or qualified disabled employee's needs, the different treatment (i.e., reasonable accommodation) is determined to be necessary by ODAS (for students) or Human Resources (for employees) to provide the disabled individual with equal access to the University's programs and activities. For students to be protected by Section 504 and employees to be protected by Title I of the ADA, they must be determined by ODAS or Human Resources, respectively, to: (1) have a physical or mental impairment that substantially limits one or more major life activities, (2) have a record of such impairment, or (3) be regarded by the University as having such impairment. To be "qualified" under Section 504, disabled students must meet the academic and technical standards requisite for admission to, or participation in, the educational program or activity with or without reasonable accommodation. To be "qualified" under Title I of the ADA, disabled employees must perform the essential functions of the job with or without reasonable accommodation. The University is not required to, and does not, provide retroactive accommodations. Moreover, the University is not required to, and does not provide, accommodations that fundamentally alter its programs or activities, or that cause an undue burden on the University.

## **B. Harassment (Non-Sexual)**

Harassment (Non-Sexual) is a form of discrimination in which unwelcome verbal, written, or physical conduct is directed toward a person on the basis of her or his protected status other than sex by any member of the University community. Harassment (Non-Sexual) does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Examples of Harassment (Non-Sexual) include unwelcome derogatory slurs, jokes, statements and remarks, pictures, drawings, and other similar negative acts done on the basis of a protected status other than sex.

Harassment (Non-Sexual) also violates this Policy when it creates a Hostile Environment. A Hostile Environment is an environment that, through harassing conduct in any medium (e.g., oral, written, graphic, or physical) based on a person's protected status other than sex is sufficiently severe, persistent, or pervasive so as to interfere with or limit the ability of the person to participate in, or benefit from, a University program or activity, including employment. Mere subjective offensiveness is not enough to create a hostile environment. The University must determine that a reasonable person (under similar circumstances and with a similar identity to the Complainant) would find the conduct harassing for there to be a hostile environment. To determine whether a hostile environment exists, the University examines the following factors:

- The degree to which the conduct at issue affected one or more person's education or employment;
- The nature, scope, frequency, duration, and location of the incident(s) at issue;
- The identity, number, and relationships of persons involved;

- The perspective of a “reasonable person” in the same situation as the person subjected to the conduct at issue; and
- The nature and culture of higher education.

### **C. Sexual Harassment**

Sexual Harassment is a form of discrimination based on sex. It is defined as unwelcome sexual advances, requests for sexual favors, or other unwelcome conduct of a sexual nature. Such conduct may be verbal (e.g., specific demands for sexual favors, sexual innuendoes, sexually suggestive comments, jokes of a sexual nature, sexual propositions, or sexual threats); non-verbal (e.g., sexually suggestive emails, articles or documents, or other writings; sexual objects, pictures, graphic commentaries, or other visual materials; sexually suggestive or insulting sounds or gestures, leering, whistling, or obscene gestures); or physical (e.g., unwanted touching, pinching, or brushing the body, and any unwelcome or coerced sexual activity, including sexual assault). Sexual harassment, including sexual assault, can involve persons of the same sex or different sexes, as well as strangers or acquaintances.

Sexual Harassment can occur in the form of either (1) quid pro quo sexual harassment or (2) environmental sexual harassment. Quid pro quo sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University program or activity are conditioned on, either explicitly or implicitly, either submission to or rejection of unwelcome sexual advances or requests for sexual favors, or when such submission or rejection is a factor in decisions affecting that person’s employment, education, living environment, or participation in a University program or activity. Environmental sexual harassment are acts that create a Hostile Environment, as defined in Section IV(B) of this Policy above.

### **D. Sexual Violence**

Sexual Violence refers, generally, to physical sexual acts perpetrated either against a person’s will or where a person is incapable of giving consent. Physical sexual acts are acts that involve the touching of a sexual or other intimate part of a person for the purpose of gratifying the sexual desire of either person. This includes touching of the Respondent by the Complainant, as well as the touching of the Complainant by the Respondent, whether directly or through clothing. For purposes of this Policy, Sexual Violence includes: (1) Non-Consensual Sexual Contact and (2) Non-Consensual Sexual Penetration, as those terms are defined below. Sexual Violence also includes the specific criminal acts of rape, sexual assault, sexual battery, sexual abuse, carnal knowledge of children and certain minors, and sexual coercion, as those specific criminal acts are defined by Virginia law to the extent they cannot be defined as Non-Consensual Sexual Contact or Non-Consensual Sexual Penetration (see Va. Code § 18.2-61, *et al.*).

**1. Non-Consensual Sexual Contact**

Non-Consensual Sexual Contact is any intentional touching of a person's breasts, buttocks, groin, genitals, or other intimate parts without consent. Touching may be over or under clothing and may include the Respondent touching the Complainant, the Respondent making the Complainant touch the Respondent or another person, or the Respondent making the Complainant touch the Complainant's own body.

**2. Non-Consensual Sexual Penetration**

Non-Consensual Sexual Penetration is any act of vaginal or anal penetration, however slight, by a person's penis, finger, other body part, or with an object, or by oral-genital contact, without consent.

***Note:** Liberty University's Statement of Professional Ethics prohibits the University's faculty members from having inappropriate and/or preferential relationships with University students apart from being a mentor, teacher, or role model. Because inappropriate and/or preferential relationships often involve a power differential, such conduct may also constitute Sexual Harassment or other forms of Prohibited Conduct under this Policy. When the conduct involves both a violation of the Statement of Professional Ethics and this Policy, the procedures under this Policy will apply.*

**E. Sexual Exploitation**

Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and such behavior does not meet the definition of Sexual Violence. Sexual Exploitation includes, but is not limited to:

- Surreptitiously observing another person's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all persons involved;
- Recording, photographing, transmitting, showing, viewing, streaming, or distributing intimate or sexual images, audio recordings, or sexual information without the knowledge and consent of all persons involved; or
- Exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances.

**F. Intimate Partner Violence**

Intimate Partner Violence is any act of violence or threatened act of violence that occurs between persons who are involved or who have been involved in a sexual, dating, spousal, domestic (cohabitating), or other intimate relationship.

**1. Dating Violence**

Dating Violence is violence committed by a person who is or has been in a relationship of a romantic or intimate nature with the other person. A relationship of a romantic or intimate nature means a relationship that is characterized by the expectation of affection or sexual involvement between those persons. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating Violence can be a single event or a pattern of behavior that includes, but is not limited to, sexual or physical violence or abuse or the threat of such violence or abuse. Dating Violence can include physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. Such behaviors include those that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound another. Dating Violence does not include acts covered under the definition of Domestic Violence below.

**2. Domestic Violence**

Domestic Violence is an act of violence committed: (i) by a current or former spouse or intimate partner of the person, including persons who are similarly situated to spouses; (ii) by one parent against another who share a child in common; (iii) by a person who is cohabitating with or has cohabitated with the other person as a spouse or intimate partner; (iv) by any other person against another who is protected from that person's acts under domestic or family laws of any state. Domestic Violence can be a single event or a pattern of behavior that includes, but is not limited to, sexual or physical abuse. Domestic Violence can include physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes behaviors that intimidate, manipulate, extort, demean, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound the victim.

**G. Stalking**

Stalking is a course of conduct directed at a specific person that would cause a reasonable person (under similar circumstances and with a similar identity to the targeted person) to: (1) feel fear for her or his safety or for the safety of others; or (2) suffer substantial emotional distress. Stalking includes behaviors or activities occurring on more than one occasion that collectively instill fear in another person and/or threaten her or his safety, mental health, or physical health. Stalking also includes cyber-stalking, conducted using online, electronic, or digital technologies or communications (e.g., the Internet, social networks, blogs, cell phones,

or text messages). Some examples of types of conduct that may, when part of a course of conduct, constitute Stalking include:

- Non-consensual communication, including face-to-face communication, telephone calls, voice messages, e-mails, texts, letters, notes, gifts, or any other communications that are undesired and place another person in fear.
- Use of online, electronic, or digital technologies or communications, including:
  - Unauthorized posting of pictures, messages, and/or other information about or related to another person on websites, Internet sites, social networking sites, and/or bulletin boards or in chat rooms;
  - Sending unwanted/unsolicited email, texts, or talk/chat requests;
  - Posting private or public messages on Internet sites, social networking sites, and/or bulletin boards;
  - Installing spyware on another person's computer; and
  - Using Global Positioning Systems (GPS) or other location-based technology to monitor another person.
- Pursuing, following, waiting, or showing up uninvited at or near a residence, workplace, classroom, or other places frequented by another person.
- Surveillance or other types of observation, including staring or "peeping."
- Trespassing.
- Vandalism.
- Non-consensual touching.
- Direct verbal, written, or physical threats.
- Gathering information about a person from friends, family, and/or co-workers.
- Threats of harm to self or others, regardless of how they are communicated.
- Defamation (slander and libel) (e.g., lying to someone about the other person).

***Note:** Some of the examples of conduct listed in this section of the Policy may, even when done as a single act and not as part of a course of conduct, constitute another form of Prohibited Conduct, such as Sexual Exploitation.*

## **H. Complicity**

Complicity is any act taken with the purpose of aiding, facilitating, promoting, or encouraging the commission of Prohibited Conduct by another person.

## **I. Intimidation**

Intimidation is actual or implied threats or acts that cause a protected class member, and that would cause a reasonable person (under similar circumstances and with a similar identity to the protected class member) to fear harm from another based on the protected class member's protected status(es).

## **J. Retaliation**

Retaliation is any adverse action taken against a person because of their participation in protected activity.

Adverse action includes threats, intimidation, harassment, coercion, and/or conduct that would discourage a reasonable person (under similar circumstances and with a similar identity to the person) from participating in protected activity, and any other conduct that has a materially adverse effect on the working, academic, or other University-controlled environment of the person, or that hinders or prevents the person from effectively carrying out her or his University responsibilities.

Protected activities are actions that are undertaken pursuant to this Policy or the laws within the scope of this Policy. Protected activities include, but are not limited to, filing a report or complaint, serving as a witness, intervening in Prohibited Conduct as a bystander, opposing in a reasonable manner and consistent with University policy an act reasonably believed to constitute Prohibited Conduct, filing an external complaint about Prohibited Conduct, and any participation in an investigation or other matter handled by the Office of Equity and Compliance. Making a lawful good faith complaint, even if it turns out to be unfounded, is a protected activity.

Anyone within the scope of this Policy can be found to have engaged in Retaliation, not just a Respondent. Reports and complaints of Retaliation necessarily require an inquiry into the motive or intent behind the adverse action. To ensure the integrity and fairness of the process, and to avoid any actual bias or conflicts of interest, as defined in Section XI(J)(1) below, such reports and complaints will be treated as separate and distinct matters from any other related matters involving the same Parties.

#### **K. False Reporting**

False Reporting is when a report or a complaint made under this Policy is later found to be intentionally false or made maliciously without regard for the truth, as well as when false or misleading testimony is provided by a Party or a Witness, and will constitute Prohibited Conduct. This provision does not apply to reports and complaints made in good faith, even if the University determines there is insufficient evidence that Prohibited Conduct occurred.

### **V. Definitions and Guidance Related to Sexual Violence**

The following definitions and guidance clarify two other key terms used in this Policy.

#### **A. Consent**

Consent is the voluntary and freely given agreement, through words and/or actions, to participate in mutually agreed-upon sexual acts. Consensual sexual activity happens when each person willingly affirms that they choose to participate.

In evaluating whether consent has been voluntary and freely given, the University will consider the presence of any force, threat of force, or coercion; whether the Complainant had the capacity to give consent; and whether the communication (through words and/or actions) between the Parties would be interpreted by a reasonable person (under similar circumstances and with a similar identity) as willingness to engage in a particular sexual act.

Consent cannot be obtained from another in situations involving physical force or a reasonable belief of the threat of physical force upon another person, when one person overcomes the physical limitations of another person, or when the other person is incapacitated.

Important points regarding consent include:

- Consent to one act does not constitute consent to another act;
- Consent on a prior occasion does not constitute consent on a subsequent occasion;
- Consent to an act with one person does not constitute consent to any act with another person;
- The existence of a prior or current sexual relationship does not, by itself, constitute consent to any sexual act; even in the context of a sexual relationship, there must be mutual consent to each sexual act;
- Consent can be affirmatively withdrawn or modified at any time, and sexual contact must cease immediately once consent is withdrawn through words and/or action; and
- Consent cannot be reasonably inferred from mere silence, mere passivity, mere lack of movement or mere lack of resistance.

## **B. Incapacitation**

Incapacitation is the inability, temporarily or permanently, to give consent because the person is mentally and/or physically helpless, either voluntarily or involuntarily, or the person is unconscious, asleep, or otherwise unaware that sexual activity is occurring. In addition, a person is incapacitated whenever the person demonstrates that he or she is unaware of her or his location, present circumstances, or why or how he or she became engaged in sexual activity.

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence, or impaired by the use, of the drug. Alcohol and other drugs impact each person differently, and determining whether a person is incapacitated requires an individualized determination.

The University does not expect members of its community to be medical experts in assessing incapacitation. Persons should look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. A person's level of intoxication is not always demonstrated by objective signs; however, signs of intoxication or

being under the influence of drugs include passing out, clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness, or emotional volatility. A person who is incapacitated may not be able to understand some or all of the following questions: “Do you know where you are?”; “Do you know how you got here?”; “Do you know what is happening?”; and “Do you know whom you are with?”

A person’s level of intoxication or drug impairment may change over a period of time based on a variety of factors, including the amount of substance intake, speed of intake, body mass, and metabolism. It is especially important, therefore, that anyone engaging in sexual activity is aware of her or his own level of intoxication/drug impairment and the other person’s level of intoxication/drug impairment and capacity to give consent. The use of alcohol or other drugs can lower inhibitions and create an atmosphere of confusion about whether consent is voluntarily and freely given. If there is any doubt as to the level or extent of one’s own intoxication or another person’s intoxication, drug impairment, or incapacitation, the safest course of action is to forgo or immediately cease all sexual contact.

In evaluating consent in matters of reported incapacitation, the University asks two questions: (1) Did the Respondent know that the Complainant was incapacitated?; and, if not, (2) Should a sober, reasonable person in a similar set of circumstances as the Respondent have known that the Complainant was incapacitated? If the answer to either of these questions is “yes,” there was no consent to participate in sexual activity.

## **VI. Confidentiality and Privacy**

The University is committed to protecting the privacy of any person involved in the investigation and resolution of a report or complaint under this Policy. With respect to any report or complaint under this Policy, the University will make reasonable efforts to protect the privacy of participants while balancing the need to gather information to assess the matter, take steps to eliminate the reported conduct, prevent its recurrence, and address its effects.

### **A. Confidentiality**

Confidentiality refers to the protections provided to information disclosed in legally-protected or privileged relationships under Virginia law, including licensed professional mental health counselors and licensed medical professionals. Those confidential resources can engage in confidential communications under Virginia law when the information is disclosed within the scope of their providing professional services. When a person shares information with a confidential resource (on-campus or in the community) in the course of a protected relationship, the confidential resource cannot disclose the information (including information about whether a person has received services) to anyone without the person’s written permission or unless required or permitted by ethical or legal obligations which compel the professional to reveal such information. For example, information may be disclosed when the person gives written consent for its disclosure, when there is an imminent concern that the person will likely cause serious physical harm to self

or others, and when the information concerns conduct involving suspected abuse or neglect of a minor. A person's medical and counseling records are privileged and confidential documents.

Confidential resources submit non-personally-identifying information about certain types of crimes to the Liberty University Police Department ("LUPD") for the purpose of anonymous statistical reporting under the Clery Act. Such Clery Act reports do not contain personally-identifying information.

Pursuant to Va. Code § 23.1-805, when the University receives a report of Sexual Violence, a student's request for confidentiality will be granted except when the University's Threat Assessment Team ("TAT") determines that the report alleges Sexual Violence that would constitute a felony criminal offense . . . or that disclosure of the information in the report or complaint is necessary to protect the health or safety of the Complainant or other members of the University community. In such cases, the TAT will report felony criminal offenses of Sexual Violence to the Commonwealth's Attorney and/or local law enforcement in accordance with the law.

## **B. Privacy**

Privacy refers to the discretion that will be exercised by the University in the course of any preliminary inquiry, investigation, or resolution processes under this Policy regarding disclosures. Information related to a report or complaint of Prohibited Conduct will be shared with a limited circle of University employees who need to know in order to assist in the preliminary inquiry, investigation, and resolution of the report or complaint and any related issues. University employees receive training in how to safeguard private information.

The University will make reasonable efforts to address reports and complaints of Prohibited Conduct under this Policy. Information may be disclosed to Parties and other participants in an investigation as necessary to facilitate the thoroughness and integrity of the investigation, as well as to provide a fair process to the Parties involved. Similarly, information may be disclosed, as necessary, in the course of a preliminary inquiry. In all such occasions, the University will take into consideration the privacy of the Parties and other participants to the extent reasonably possible.

The privacy of student education records will be protected in accordance with FERPA and other relevant federal laws. The privacy of a person's medical and related records generally are protected by the Health Insurance Portability and Accountability Act ("HIPAA") and, where University treatment records are concerned, are protected by FERPA.

## **VII. Confidential Resources and Mandatory Reporting**

It is important to understand the different responsibilities of University employees. Every employee is designated as either a Confidential Resource or a Responsible Employee. As a

general matter, very few University employees are considered Confidential Resources. No employee, including Confidential Resources, are authorized or permitted to investigate or resolve a report or complaint of Prohibited Conduct other than those specific employees listed in Section II of this Policy.

#### **A. Confidential Resources**

A Confidential Resource is any University employee who is a licensed medical, clinical or mental-health professional (e.g., physicians, nurses, physician's assistants, psychologists, psychiatrists, professional counselors, social workers and those employees performing services under their supervision), when acting in that professional role in the provision of services to a patient or client. Any employee providing administrative, operational, and/or related support for such health care providers in their performance of such services is also a Confidential Resource. Confidential Resources are specifically identified in Section VIII(B) of this Policy. Confidential Resources **will not disclose information** received from a patient or client about Prohibited Conduct without that person's permission, except as set forth in Section VI(A) of this Policy. When employees who otherwise would be Confidential Resources receive information about suspected Prohibited Conduct outside of the provision of services to a patient or client, the Confidential Resource is required to share that information with the Office of Equity and Compliance.

#### **B. Responsible Employees**

With the exception of Liberty University employees designated as Confidential Resources in this Policy and student workers who work directly for such Confidential Resources, all other University employees, including faculty, instructors (including teaching assistants and graduate assistants), are Responsible Employees who **are required to report immediately** any information they know about suspected Prohibited Conduct. Student workers who are Responsible Employees are all student workers who do not work directly for such Confidential Resources, which includes, but is not limited to, Resident Assistants, Resident Shepherds, Athletics Team Managers, Graduate Assistant Coaches, and Graduate Assistant Instructors.

Responsible Employees must report all known information, including the identities of the Parties; the date, time and location; and other details about reports of suspected Prohibited Conduct to the Office of Equity and Compliance. The Office of Equity and Compliance may share its reports with LUPD and the TAT to ensure a coordinated institutional response. Consistent with applicable law, Responsible Employees may provide support and assistance to a Complainant, Witness or Respondent; but they cannot promise confidentiality or withhold information about Prohibited Conduct. Failure by a Responsible Employee to report suspected Prohibited Conduct in a timely manner may subject him or her to appropriate discipline, which may include removal from a position and/or termination of employment.

Responsible Employees are not required to report information disclosed (1) at public awareness events (e.g., “Take Back the Night,” candlelight vigils, protests, “survivor speak-outs,” or other public forums in which students may disclose Prohibited Conduct (collectively, public awareness events)); or (2) during a person’s participation as a subject in an Institutional Review Board-approved human subjects research protocol (“IRB Research”). The University may provide information about a person’s rights under this Policy and about available University and community resources and support at public awareness events, however, and Institutional Review Boards may, in appropriate cases, require researchers to provide such information to subjects of IRB Research who report Prohibited Conduct.

### **C. Training of Responsible Employees**

The University provides training to all Responsible Employees likely to witness or receive reports and complaints of Prohibited Conduct. Training for such employees includes practical information about how to prevent and identify Prohibited Conduct; the behaviors that may lead to and result in Prohibited Conduct; the attitudes of bystanders that may allow conduct to continue and bystander intervention methods; the potential for re-victimization by responders and its effect on persons; appropriate methods for responding to a person who may have experienced Prohibited Conduct, including the use of non-judgmental language; the impact of trauma on victims; and the person(s) to whom such Prohibited Conduct must be reported. Such training will explain the Responsible Employees’ reporting obligation, including what should be included in a report and any consequences for the failure to report, how to respond to requests for confidentiality, and the procedure for providing contact information for the University’s Executive Director. The University will train Responsible Employees to inform persons of: the reporting obligations of Responsible Employees; the option to request confidentiality and available confidential advocacy, counseling, and other support services; and the rights of a Complainant to file a complaint with the University and/or to report a crime to LUPD or local law enforcement.

### **D. Student Reporting**

Student workers specifically designated as Responsible Employees must report Prohibited Conduct in accordance with this Policy. All other students are encouraged to report suspected Prohibited Conduct.

### **E. Clery Reporting**

Pursuant to the Clery Act, the University includes anonymous statistics about certain offenses in its Annual Security Report and provides those statistics to the United States Department of Education in a manner that does not include any personally-identifying information about persons involved in an incident. The Clery Act also requires the University to issue timely warning notices to the University community about certain crimes that have been reported and may continue to pose a serious or continuing threat to campus safety (see Section X(B) of this Policy). Consistent with the Clery Act, the University withholds the

names and other personally-identifying information of Complainants when issuing timely warning notices to the University community.

## **VIII. Reporting Options and Resources**

A Complainant, Witness, or other person has many reporting options and resources, including seeking counseling or assistance from a Confidential Resource, making a report or complaint under this Policy, and/or making a report to law enforcement. The University recognizes that deciding among these reporting options can be difficult and is an personal decision. Complainants and witnesses are encouraged to seek assistance from a Confidential Resource and to explore their potential reporting options and their available resources.

### **A. Emergency Resources and Law Enforcement**

Emergency medical assistance and campus safety/law enforcement assistance are available both on- and off-campus. Persons are encouraged to contact law enforcement and/or seek medical treatment as soon as possible following an incident that may pose a threat to safety or physical well-being and following a potential criminal offense.

To contact law enforcement:

[Liberty University Police Department \(“LUPD”\)](#)

Green Hall, Southwest Corner  
1971 University Blvd.  
Lynchburg, VA 24515  
434.592.3911 (Emergency)  
434.592.7641 (Non-Emergency)

or, if off-campus:

[Lynchburg Police Department](#)

900 Court Street  
Lynchburg, VA 24504  
911 (Emergency)  
434.455.6050 (Non-Emergency)

To access on-campus medical treatment, contact:

[Liberty University Student Health Center](#) (Operated by Central Virginia Family Physicians (“CVFP”) Medical Group)  
Commons 3, Lower Level  
1606 Regents Parkway  
Lynchburg, VA 24515  
434.338.7774 (Office)

The local hospital can be contacted as follows:

[CENTRA Lynchburg General Hospital](#)

1901 Tate Springs Rd.  
Lynchburg, VA 24501  
434.200.3000 (Switchboard)

[CENTRA Virginia Baptist Hospital](#)

3300 Rivermont Ave.  
Lynchburg, VA 24503  
434.200.4000 (Switchboard)

[Salem VA Medical Center](#)

1970 Roanoke Blvd.  
Salem, VA 24153  
540.982.2463  
888.982.2463 (Switchboard)

To access crisis counseling and other community resources:

Veterans Crisis Line

[Sexual Assault Response Program \(“SARP”\)](#)

YWCA  
Lynchburg Office  
1900 Tate Springs Rd., Suite B  
Lynchburg, VA 24501  
434.947.7422 (Office)  
888.947.7273 (24-Hour Confidential Hotline)

**B. Confidential Resources**

Students can access confidential resources on-campus as follows:

[Liberty University Student Counseling Services](#)

Green Hall, Suite 1830  
1971 University Blvd.  
Lynchburg, VA 24515  
434.582.2651 (Office)  
[studentcounselingservices@liberty.edu](mailto:studentcounselingservices@liberty.edu)

[Liberty University Student Health Center](#) (Operated by Central Virginia Family Physicians (“CVFP”) Medical Group)  
Commons 3, Lower Level

1606 Regents Parkway  
Lynchburg, VA 24515  
434.338.7774 (Office)

Employees can access confidential resources off-campus through:

[Employee Assistance Program \(provided at no cost\)](#)

The Hartford Ability Assist (“EAP”)  
800.964.3577

### **C. Reporting Options**

Reports and complaints of Prohibited Conduct can be submitted by a Complainant, a Respondent, a Witness, or a Third Party. Reports and complaints that do not allege Prohibited Conduct, that allege Prohibited Conduct perpetrated by a person outside the scope of this policy under Section III above, or that allege conduct that is solely handled by another University office, are either resourced or refereed to the appropriate University office, but they will not be investigated under the procedures outlined in this Policy. Through this resourcing and referencing process, the Office of Equity and Compliance will provide recommendations on how to provide a safe and non-discriminatory environment, where appropriate. Reports and complaints of Prohibited Conduct can be submitted or received through the following University channels: Liberty University Speak UP! form; a Beacon Incident Report; Walk-in/appointment with the Office of Equity and Compliance; an email from a Responsible Employee; an email to the Office of Equity and Compliance, the Executive Director, or a Deputy Coordinator; or by a telephone call to the Office of Equity and Compliance, the Executive Director, or a Deputy Coordinator. Reports and complaints can also be made to LUPD or to local law enforcement at the contact information above but such reports and complaints will be handled pursuant to law enforcement procedures and not necessarily pursuant to this Policy.

#### **1. Anonymous Reporting**

Anyone can make an anonymous report of suspected Prohibited Conduct by submitting information on the University Title IX website: [www.liberty.edu/studentaffairs/equityandcompliance/](http://www.liberty.edu/studentaffairs/equityandcompliance/). The University’s ability to respond to an anonymous report may be limited by the nature of the information submitted.

#### **2. Requests for Anonymity, No Investigation, and No Sanction**

Once a report or complaint has been shared with the Office of Equity and Compliance, a Complainant may request that her or his identity remain private (a request for anonymity), request that no investigation occur, or request that no sanction be issued with respect to the Respondent. The University will carefully balance these requests with the University's commitment to provide a safe and non-discriminatory environment on one hand and the Respondent's right to have specific

notice of the allegation(s) if the University were to take action that affects the Respondent on the other hand. Moreover, the University may have an independent legal obligation to investigate a report or complaint once it has been made, and in those circumstances, an investigation will continue through resolution and sanction, if any. If the University cannot maintain a Complainant's confidentiality, or it determines to continue with an investigation, the Complainant will be notified by the Executive Director and the Office of Equity and Compliance will do its best to proceed while giving as much respect to the privacy of all persons involved as it determines is appropriate under the circumstances.

### **3. Amnesty**

The University encourages Complainants, Witnesses, and other persons to report Prohibited Conduct under this Policy and encourages Witnesses, Respondents, and other persons to participate in investigations of Prohibited Conduct and other resolution processes under this Policy. Sometimes, Complainants, Respondents, Witnesses and other persons are hesitant to offer assistance to others, to report to University officials, or to participate in an investigation or resolution process under this Policy because they fear that they themselves may be accused of policy violations, such as underage drinking, at the time of the incident. It is in the best interest of the University community that Prohibited Conduct and related criminal offenses are reported to the University, and that witnesses come forward to share what they know and cooperate with the University in its search for the truth. To encourage reporting, testimony and other participation in processes outlined in this Policy, the University maintains a policy of offering Complainants, Respondents and Witnesses of Prohibited Conduct, as well as University students who offer help to others in need, amnesty from minor policy violations related to the incident. Accordingly, the University will not pursue disciplinary action against Complainants, Respondents, or cooperating Witnesses for disclosure of personal consumption of alcohol or other drugs (underage or illegal) or immorality (e.g., premarital sex), where such disclosures are made in connection with a good faith report or complaint of Prohibited Conduct, an investigation of Prohibited Conduct, or a process for resolving a report or complaint of Prohibited Conduct, as long as the personal consumption or immorality did not place the health or safety of another person at risk. In lieu of taking disciplinary action in such cases, the University may require the person receiving amnesty to participate in education. Amnesty is not automatically available from University policy violations related to the incident beyond the personal consumption of alcohol or other drugs and immorality, (e.g., vandalism,

violence) which may have also occurred in connection with the incident. Amnesty will never be given from Prohibited Conduct.

#### **4. Timeframe for Reporting**

Complainants and other reporting persons are encouraged to report suspected Prohibited Conduct as soon as possible in order to maximize the University's ability to respond promptly and effectively. Reports and complaints of Prohibited Conduct may be made at any time, without regard to how much time has elapsed since the incident(s) in question.

If the Respondent is no longer a student or employee of the University at the time of the report or complaint, the University may be limited in its ability to take disciplinary action against the Respondent. However, in such circumstances, the University will provide support to the Complainant and take steps to end the Prohibited Conduct, prevent its recurrence, and address its effects. Upon request, the University will assist the Complainant in identifying and contacting law enforcement, other external enforcement agencies, and support resources.

#### **D. Other Community Resources**

Any person may also access resources located in the local community. These organizations can provide crisis intervention services, counseling, medical attention, and assistance with navigating the legal and criminal justice systems. When accessing these resources, persons are encouraged to clarify whether they desire Confidential Resources.

### **IX. Timeframe and Other General Procedural Considerations**

#### **A. Timeframe for Investigation and Resolution**

The University will seek to complete its investigation and resolution processes (including preliminary inquiries, investigations, any alternative resolution, and any requests for review submitted to the Review Board or final appeals of sanctions submitted to the Vice President of Equity and Inclusion) in approximately 60 calendar days following the date the Notice of the Investigation is sent to the Parties. This Policy designates reasonably prompt timeframes for the major stages of these processes (typically set forth in business days), but the University may extend any timeframe in this Policy for good cause, including extension beyond the 60 calendar days for completion. An extension may occur for good cause to ensure the integrity and thoroughness of these processes; to comply with a request by law enforcement; in response to the unavailability of Parties or Witnesses; or for other legitimate reasons, such as intervening breaks in the University calendar, University finals periods, the complexity of the investigation, and/or the severity and extent of the allegations. While requests for delays by the Parties will be considered, the University cannot unduly or unreasonably delay the prompt resolution of a report or complaint under this Policy. The University will notify the

Parties in writing of any extension of the timeframes for good cause and the particular reason(s) for the extension.

The University desires to cooperate with law enforcement. This may result in the University suspending the fact-finding portion of an investigation temporarily. However, the University will resume its investigation as soon as it is reasonable to do so, taking into account any notification by law enforcement of the end date of the agency's evidence gathering process. The University will not necessarily or typically wait for the conclusion of a criminal investigation or a criminal proceeding in order to begin or resume its own investigation. In all circumstances, the University will take immediate steps to provide appropriate interim measures for the Complainant and Respondent.

Investigations will proceed according to the timeframes in this Policy to the extent possible during the summer and at other times when classes on the campus are not in session. The Office of Equity and Compliance will work with the Parties to balance the need for promptness and the preference for in-person meetings in the investigation and resolution processes. Timeframes for all of these investigation and resolution processes apply equally to both the Complainant and the Respondent.

## **B. Expectations for Parties**

During the investigation and resolution processes, both Parties (Complainant and Respondent) have equal rights, including the opportunity to receive a written Notice of Investigation; to participate in the investigation; to review and present information and evidence; to be accompanied by an advisor of their choice to any meeting; to equal access to all of the information and evidence that will be considered by the Investigator when determining the finding and any sanctions; to notice of meetings at which their presence will be requested or required; to written notice of the outcome, any sanctions, and rationale; and to seek further review of the outcome and/or any sanctions, as set forth in this Policy.

Liberty University expects members of the University community to cooperate fully with the investigation and resolution procedures prescribed in this Policy. It is understood that there may be circumstances in which a Complainant or a Respondent wishes to limit her or his participation. However, the University may move forward with an investigation and with other resolution processes without the participation of a Party or the Parties. And while Complainants and Respondents may limit their cooperation, a Party delaying or failing to make oneself available for meetings with designated University administrators and a Party providing information to designated University administrators that a Party knows to be untruthful may be referred to the Office of Community Life ("OCL") or Human Resources for disciplinary action, depending on whether the Party is a student or an employee of the University.

If a Complainant or Respondent chooses not to answer any or all of the questions in an investigation for any reason, the University will continue its process; and the University will issue findings and any sanctions, as appropriate. The University will not draw any adverse

inference from a Complainant's or a Respondent's decision not to participate in the investigation or any form of resolution under this Policy; however, the Complainant and the Respondent should be aware that declining to participate in an investigation may impact the timing and resolution of the matter. For example, one Party declining to provide testimony or other evidence may leave decision makers with a greater weight of the information and evidence in favor of the other Party.

At any time, the University may place an administrative hold on the Respondent's University transcript, make a transcript notation, or defer or withhold the award of the Respondent's degree. Although a Respondent may withdraw from the University while an investigation is pending, the Respondent's transcript may be appropriately notated in accordance with Va. Code § 23.1-900 to indicate a pending investigation of Sexual Violence. Even if a Respondent withdraws from the University, the Executive Director has authority to proceed with an investigation and other resolution processes.

### **C. Respondent or Witness Refusal to Cooperate**

The University recognizes that a Respondent or a Witness may be reluctant to participate in the investigation and resolution processes; nevertheless, any student, faculty member, or employee Witness who refuses to cooperate in an investigation is subject to sanction. Refusal to cooperate includes, but is not limited to, delaying or failing to timely respond to requests from designated University administrators for information, delaying or failing to make oneself available for meetings with designated University administrators, and providing information to designated University administrators that the Witness knows to be untruthful. If a Respondent or a Witness refuses to cooperate with the Office of Equity and Compliance, he or she may be referred to the OCL or Human Resources for disciplinary action, depending on whether the Respondent or Witness is a student or an employee of the University. In addition, refusal to cooperate may result in a Student Affairs Hold being placed on a student's account.

### **D. Advisor of Choice**

Throughout the investigation and resolution processes, each Party has the right to consult with an advisor of her or his choosing. The advisor may be any person, including an attorney, who is not otherwise a Party or Witness involved in the investigation and resolution of the matter. The Parties who are students may be accompanied by their respective advisor at any meeting or proceeding related to the investigation and resolution of a matter under this Policy. While the advisor to a student may provide advice and support to her or his respective Party at any meeting and/or proceeding, the advisor may not speak on behalf of any Party or otherwise participate in, or in any manner delay, disrupt, or interfere with, meetings and/or proceedings conducted under this Policy. Generally, the Office of Equity and Compliance and its Executive Director will communicate directly with the Complainant or Respondent, and any communications with an advisor to a student may occur only after a FERPA waiver has been executed giving the University the Party's consent to discuss the matter with the advisor. An advisor to a student should plan to make himself or herself

reasonably available, as the University will not unduly delay the scheduling of meetings or proceedings based on an advisor's unavailability. An advisor to a student may be asked to confer with a University administrator in advance of any proceedings to ensure the advisor understands the expectations of her or his role, privacy considerations and appropriate decorum.

#### **E. Prior Sexual History**

The prior sexual history of the Parties will never be used as evidence of their character or reputation. Evidence related to the prior sexual history of the Parties is generally not used in determining whether Prohibited Conduct has occurred and will only be considered under limited circumstances. For example, prior sexual history may be deemed relevant to explain injury, to provide evidence of a pattern of misconduct, or to address another specific issue raised in the investigation. In addition, if consent is at issue, the prior sexual history between the Parties may be deemed relevant to determine the nature and manner of communications between the Parties, which may inform the determination whether consent was given at the time of the incident in question. As set forth in the definition of Consent in Section V(A) of this Policy above, even in the context of a sexual relationship, consent to one sexual act does not constitute consent to another sexual act, and consent on a prior occasion does not constitute consent on a subsequent occasion. The Executive Director, in conjunction with the assigned Investigator, will determine whether the limited circumstances for relevance of prior sexual history are present. Both Parties will be informed if evidence of prior or subsequent sexual conduct will be used in determining whether Prohibited Conduct has occurred.

#### **F. Prior Disciplinary History**

Evidence related to the prior disciplinary history of the Parties is generally not used in determining whether Prohibited Conduct has occurred and will only be considered under limited circumstances. For example, the Respondent's prior disciplinary history may be deemed relevant and considered if the information provides evidence of a pattern of misconduct by the Respondent in substantial conformity with the present allegation of Prohibited Conduct. In addition, the Complainant's prior disciplinary history may be deemed relevant if he or she has been found to have been responsible for prior False Reporting. The Executive Director, in conjunction with the assigned Investigator, will determine whether the limited circumstances for relevance of prior disciplinary history are present. Both Parties will be informed if evidence of disciplinary history will be used in determining whether Prohibited Conduct has occurred. If the Respondent is determined to be responsible for a violation of this Policy, the Respondent's prior disciplinary history (and other relevant and available information) will be taken into consideration by the sanctioning body when determining which, if any, sanctions are appropriate.

### **X. Initial Assessment of Reports and Complaints**

## **A. Threat Assessment Team (“TAT”)**

The Executive Director will convene a Threat Assessment Team (the “TAT”) meeting within seventy-two (72) hours of receipt of a report of Sexual Violence. The TAT will be comprised of the Executive Director, or designee; a representative of LUPD; and a representative from the Division of Student Affairs. In addition, the TAT may include a non-voting representative from Human Resources or the Office of the Provost if the Respondent is a University employee or faculty member, depending on the circumstances of the report. The TAT will operate in a manner that complies with applicable law.

The TAT operates pursuant to Va. Code § 23.1-806 and has access, under Virginia law, to certain otherwise confidential information, including law enforcement records and criminal history information, as provided in Va. Code § 19.2-389 and § 19.2-389.1; health records, as provided in Va. Code § 32.1-127.1:03; University disciplinary, academic, and/or personnel records; and prior reports of Prohibited Conduct maintained by the Executive Director. The TAT will have access to all available facts and circumstances and may seek additional information about the reported Sexual Violence through any other legally permissible means.

The TAT will determine whether the report and any other available information presents a rational basis for concluding that there is a risk to the health or safety of the Complainant or any member of the University community that is an ongoing risk or continuing danger of future victimization of similar Sexual Violence. If the TAT determines that there is a risk to the health or safety of the Complainant or any member of the University community, the LUPD representative will disclose the reported Sexual Violence together with personally identifiable information to the law enforcement agency that would be responsible for investigating the alleged incident. The Complainant will be given notice of any disclosure to law enforcement. The Review Committee will determine whether such a risk exists based upon the following factors as they may be known:

- Whether the identity of the Respondent is unknown;
- Whether the Respondent has been apprehended or is in the custody of law enforcement;
- Whether the reported risk has been addressed or otherwise contained;
- Whether the Respondent has prior arrests and their nature; is the subject of prior reports or complaints of Prohibited Conduct, especially Sexual Violence; or has any history of violent behavior;
- Whether the Respondent acted alone or has accomplices;
- Whether the report or complaint reveals a pattern of Prohibited Conduct or that similar acts of Sexual Violence have been set in motion (e.g., by the Respondent, by unknown person(s), by a particular group or organization, around a particular recurring event or activity, or at a particular location);
- Whether the Respondent has a history of failing to comply with any University No-Contact Directive, University protective measures, and/or judicial protective orders;

- Whether the Respondent has threatened to commit violence or engage in any form of Prohibited Conduct;
- Whether the Respondent was known to or had any relationship with the Complainant or whether the Complainant was a random victim of opportunity;
- Whether the reported Sexual Violence involved multiple Respondents;
- Whether the reported Sexual Violence involved physical force or violence;
- Whether the reported Sexual Violence involved any weapon;
- Whether the reported Sexual Violence was facilitated through the use of “date-rape” drugs or whether other drugs or controlled substances were involved;
- Whether the reported Sexual Violence occurred while the Complainant was unconscious, physically helpless, or unaware that Prohibited Conduct was occurring; and
- Any other factor deemed relevant to making a determination of such risk.

If the reported Sexual Violence constitutes a felony violation of Va. Code § 18.2-61, *et al.*, the LUPD representative will notify the local Commonwealth’s Attorney or other responsible prosecutor within twenty-four (24) hours and provide the prosecutor with the information received by the TAT without disclosing personally identifiable information. However, such personally identifiable information shall be disclosed if the TAT determines a risk to the health or safety of the Complainant or a member of the University community existed.

## **B. Timely Warning Notices**

The University will issue timely warnings for reported Prohibited Conduct and other incidents that pose a substantial threat of bodily harm or danger to members of the University community that is an ongoing risk or continuing danger of future victimization of similar violations or crimes. The University will ensure, to the extent possible, that a Complainant’s name and other personally identifying information is not disclosed in a timely warning notice, while still providing enough information for members of the campus community to make decisions to address their own safety in light of the potential danger. The University will expeditiously determine whether such a risk exists based upon the following factors as they may be known:

- Whether the identity of the reported perpetrator is unknown;
- Whether the reported perpetrator has been apprehended or is in the custody of law enforcement;
- Whether the reported risk has been addressed or otherwise contained;
- Whether the reported perpetrator has prior arrests and their nature; is the subject of prior reports or complaints of conduct that is harmful to others; or has any history of violent behavior;
- Whether the reported perpetrator acted alone or has accomplices;
- Whether the report reveals a pattern of conduct that is harmful to others or that similar criminal acts have been set in motion (e.g., by the reported perpetrator, by unknown person(s), by a particular group or organization, around a particular recurring event or activity, or at a particular location);

- Whether the reported perpetrator has a history of failing to comply with any University No-Contact Directive, University protective measures, and/or judicial protective orders;
- Whether the reported perpetrator has threatened to commit violence or other conduct harmful to others;
- Whether the reported perpetrator was known to or had any relationship with the reported victim or whether the reported victim was a random victim of opportunity;
- Whether the reported incident involved multiple perpetrators;
- Whether the reported incident involved physical force or violence;
- Whether the reported incident involved any weapon;
- Whether the reported incident facilitated through the use of “date-rape” drugs or whether other drugs or controlled substances were involved;
- Whether the reported incident occurred while the reported victim was unconscious, physically helpless, or unaware that the incident was occurring; and
- Any other factor deemed relevant to making a determination of such risk.

### **C. Interim Measures**

Upon receiving a report or complaint of Prohibited Conduct, the University will provide reasonable and appropriate interim measures designed to preserve the Parties’ educational experiences; to protect the Parties during the investigation and resolution of a matter; to address safety concerns of the Parties or other affected members of the campus community; to maintain the integrity of the investigative and resolution processes; and to deter Retaliation. Interim measures may be remedial in nature (i.e., designed to address a Parties’ safety and well-being and to ensure the Parties’ continued access to educational programs and activities), protective in nature (i.e., involving a restrictive action against a Party), or both. Interim measures are available regardless of whether a Complainant pursues an investigation under this Policy.

The University will consult with both the Complainant and Respondent before taking interim measures to the extent possible. Any interim measures will not disproportionately impact the Complaint, but the University seeks to minimize any impact of interim measures on both Parties. Both Parties will be notified in writing of the imposition of interim measures that impact them. The Office of Equity and Compliance is responsible both for the implementation of interim measures (including enforcement measures) and for coordinating the University’s response with the appropriate University office(s). The Office of Equity and Compliance has the discretion to impose and/or modify any interim measure based on available information and is available to meet with a Complainant, a Respondent, or any other affected member of the University community to address any concerns related to interim measures. The University will maintain the privacy of interim measures provided under this Policy to the extent practicable and will promptly address any violation of an interim measure. All persons are encouraged to report to the Office of Equity and Compliance any concerns about failures of any person to abide by interim measures. Disciplinary action, including any of the sanctions listed in this Policy, can be imposed for failing to abide by a University-imposed interim measure.

Interim measures are not permanent resolutions or substitutes for the investigation and resolution processes under this Policy; however, interim measures may remain in place permanently or for extended periods of time beyond resolution of the matter if the Executive Director determines that they are necessary to accomplish a purpose of preserving educational opportunity, addressing safety concerns or deterring Retaliation. Any interim measures that remain in place permanently or for extended periods of time cannot be overly restrictive or burdensome to the extent that they amount to a sanction on the Respondent. Interim measures may be modified or withdrawn as additional information is obtained and upon final resolution of the report or complaint.

Interim measures may include:

- Academic arrangements and accommodations;
- Academic support;
- Housing and dining arrangements;
- Escort or other safety planning steps, which may include the LU Safe Ride Program operated by LUPD;
- Referral to resources that can assist with financial aid, a VISA, or other immigration concerns;
- Referral to resources that can assist in obtaining a legal protective order;
- Work-related arrangements and accommodations;
- Limitation on participation in athletics, clubs, and/or other extracurricular activities;
- No-Contact Directive, which serves as notice to both Parties that they must not have verbal, electronic, written, or other communication with one another, whether directly or indirectly (e.g., via another person);
- Limitations on access to campus, including a full campus ban,, University facilities, and University events;
- Referral and coordination of counseling and health services;
- Training for students, faculty, and/or staff;
- Interim suspension/immediate restriction;
- Voluntary withdrawal;
- Administrative leave with or without pay; and
- Any other measures that may be arranged by the University (to the extent reasonably available) to accomplish one or more of the purposes of interim measures listed above.

## **XI. Investigation and Resolution Processes for Students**

The investigation and resolution processes contained in Section XI of this Policy, only apply to reports or complaints that a student has violated this Policy.

The University is committed to providing a prompt, thorough, equitable and impartial resolution of all reported violations of this Policy. Reports and complaints of Prohibited

Conduct will receive prompt attention. Such reports and complaints may be resolved during the preliminary inquiry stage or through the investigation and resolution processes set forth below. The choice of where to begin rests with the Executive Director, who will consult with the Complainant in making this determination. The Executive Director will take into consideration the Complainant's desired outcome regarding the matter. Even if the Complainant does not want an investigation, the Executive Director may determine that the matter is sufficiently grave or that it poses a safety risk to the University community because it seems to be part of a persistent pattern, because of the serious nature of the alleged offense, or because the Complainant seeks to have a sanction imposed which cannot be imposed outside of formal process. In such cases, the Executive Director may initiate an investigation, or take other appropriate action.

As part of a preliminary inquiry or of an investigation, the Office of Equity and Compliance will, as appropriate:

- Assess the nature and circumstances of the report or complaint, including whether it provides the names and/or any other information that identifies the Complainant, the Respondent, any Witness, and/or any other person with knowledge of the reported incident;
- Address immediate physical safety and emotional well-being;
- Notify the Parties of their right to contact (or decline to contact) law enforcement and to seek a civil protection order;
- Notify the Parties of their right to seek medical treatment;
- Notify the Parties of the importance of preservation of evidence;
- Refer the report or complaint to LUPD to enter it into the University's daily crime log, if such entry is required by the Clery Act;
- With the LUPD, assess the reported conduct and discern the need for a timely warning under the Clery Act;
- Provide the Parties with written information about on- and off-campus resources;
- Notify the Parties of the range of interim measures available, including the right to reasonable interim measures regardless of whether the Complainant chooses to participate in a University or law enforcement investigation;
- Notify the Parties of the range of interim measures available;
- Provide the Parties with an explanation of procedural options, including preliminary inquiry, alternative resolution, investigation, the Review Board, and a final appeal of sanctions to the Vice President of Equity and Inclusion;
- Notify the Parties of their right to be accompanied by an advisor of choice to any required meetings;
- Assess any patterns of conduct by the Parties, including whether there is a pattern of conduct that might impact campus safety;
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding (e.g., confidentiality concerns);
- Explain to the Parties that Retaliation is strictly prohibited, that the University will take prompt action when Retaliation is reported, as well as how to report Retaliation; and

- Determine the age of the Complainant and, if the Complainant is a minor, whether any notifications are required by Virginia law.

#### **A. Balancing Complainant Autonomy with the University's Responsibility to Investigate**

To protect the safety of the campus community, the Executive Director may need to proceed with an investigation even if a Complainant specifically requests that the matter not be pursued. The Office of Equity and Compliance may also initiate an investigation of suspected Prohibited Conduct absent a formal report or complaint, or absent an identified Complainant or Respondent, and even if a report or complaint has been withdrawn. In such circumstances, the Executive Director will take into account the Complainant's articulated concerns, the safety of the campus community, fairness to all persons involved, and the University's legal obligations.

A Complainant may request that her or his name or other personally-identifiable information not be shared with a Respondent, to otherwise retain anonymity, that no investigation be pursued, or that no disciplinary action be taken. In these instances, before taking any further investigative steps, the Office of Equity and Compliance will discuss any concerns with the Complainant and then seek to address and remedy any barriers to pursuing an investigation based upon concerns about Retaliation or other lack of clarity in understanding procedural options and potential outcomes.

The Executive Director will balance any Complainant request against the following information, as it may be known, in reaching a determination on whether such a request will be granted:

- the totality of the known circumstances;
- the nature and scope of the alleged conduct, including whether the reported behavior must be reported under the Clery Act (criminal offense, hate crime, etc.);
- the respective ages and roles of the Complainant and Respondent;
- the risk posed to any person or to the greater campus community by not proceeding, including the risk of additional violence;
- whether there have been reports of other Prohibited Conduct or other misconduct by the Respondent and the nature of those reported incidents;
- whether the report or complaint reveals a pattern of misconduct related to Prohibited Conduct (e.g., underage or illegal consumption of alcohol or other drugs, or immorality) at a given location, or by a particular group or organization, or around a particular recurring event or activity;
- the Complainant's interest in the University's not pursuing an investigation or resolution process, and the impact of such actions on the Complainant;
- whether the University possesses other sufficient means to obtain relevant evidence;
- fairness considerations for both the Complainant and the Respondent;
- the University's obligation to provide a safe and non-discriminatory environment;
- and

- any other available information relevant to the propriety of granting Complainant's request.

The Executive Director will also consider what steps may be possible or appropriate when a Respondent is unknown and what other measures or remedies might be considered to address any effects of the reported behavior on the campus community. The University will seek resolution consistent with the Complainant's request, if it determines it is appropriate to do so after considering the above-listed information. The Executive Director will make such determinations.

When the Executive Director determines that the University must proceed with investigation despite the Complainant's request that it not occur, the Executive Director will notify the Complainant that the University intends to proceed with an investigation. The Complainant is not required to participate in the investigation or in any of the actions taken by the University but is certainly welcome and encouraged to do so. In all cases, the final decision on whether, how, and to what extent the University will conduct an investigation will be made by the Executive Director consistent with this Policy.

## **B. Civil Rights Investigators**

The University's Civil Rights Investigators ("Investigators") are neutral fact-finders who have received appropriate training and are designated by the University's Executive Director to investigate reports and complaints of Prohibited Conduct. The University's Investigators receive annual training on issues related to the Prohibited Conduct in this Policy and on how to conduct an investigation that is fair, impartial and thorough and that provides Parties with sufficient notice, a meaningful opportunity to be heard, and protects the safety of the greater University community while also promoting the accountability of its members. The Deputy Coordinators listed above may also serve as Investigators, especially in matters involving Respondents who are employees of the University.

The Executive Director may also designate a trained external investigator, or another trained University employee outside of the Office of Equity and Compliance, to investigate a report or complaint of Prohibited Conduct under this Policy.

## **C. Complainant Intake**

The Investigator will conduct an initial meeting, or an "Intake", with the Complainant. During the Intake, the Investigator and the Complainant will discuss available University resources for support, including interim measures, as well as the rights and options both for pursuing a formal complaint under this Policy and for pursuing criminal charges, if not already done. The Investigator will obtain as much information as possible during the Intake about the alleged incident, including witness names and any available evidence. The Complainant may, at any time during Intake or the investigation, request that the investigation end and the University will consider this request consistent with Section XI.A. of this Policy, above. At the conclusion of the Intake, the Investigator and the Executive Director will determine

whether there is reason and sufficient information to continue with an Investigation under the processes of this Policy.

#### **D. Preliminary Inquiry**

After receiving a report or complaint of Prohibited Conduct, the Office of Equity and Compliance will gather information about the reported Prohibited Conduct and respond to any immediate health or safety concerns raised by the report or complaint. The Office of Equity and Compliance may also assess the Complainant's safety and well-being; offer the University's support and assistance, including interim measures; and assess the nature and circumstances of the report or complaint to determine whether the reported conduct raises a potential of Prohibited Conduct; whether the reported conduct is within the scope of this Policy; and, with the input of the Complainant, the appropriate manner of resolution under this Policy. The Executive Director may consult with the University's TAT and other appropriate administrators as part of the preliminary inquiry.

At the conclusion of the preliminary inquiry, the University will proceed with one of the following three options:

- (1) Proceed with an investigation. If the matter is within the scope of this Policy and it may rise to the level of Prohibited Conduct, an investigation will occur when a Complainant requests an investigation, or when the Executive Director determines that an investigation must be pursued even when a Complainant requests that no investigation be pursued and Alternative Resolution is not appropriate or available.
- (2) Proceed with Alternative Resolution. This option always requires the voluntary consent of both Parties.
- (3) If the Executive Director determines that the matter is outside the scope of this Policy, it does not rise to the level of Prohibited Conduct, or the Complainant requests that the matter is closed and the Executive Director does not determine that an investigation must be pursued, the matter will be closed following the preliminary inquiry. The Complainant may, however, request the matter to be re-opened for an investigation or Alternative Resolution at a later date.

When the Executive Director decides to initiate an investigation, impose interim measures, close a matter without proceeding with an investigation, or take any other action that impacts a Complainant, the Executive Director will ensure that the Complainant is notified and receives written information on available resources and options, consistent with this Policy. When the Executive Director decides to initiate an investigation, impose interim measures, or take any other action that impacts a Respondent, the Executive Director will also ensure that the Respondent is notified and receives written information on available resources and options, consistent with this Policy.

## **E. Notice of Investigation**

If the matter is deemed appropriate for investigation following the Complainant's Intake and the preliminary inquiry, the Investigator will provide the Complainant and Respondent with a Notice of Investigation in writing, which may be via email. Such notice will (1) identify the Complainant and the Respondent; (2) specify the date, time, location, and nature of the alleged Prohibited Conduct to the extent such details are known; (3) identify potential violation(s) of this Policy and of any other University policies over which the Office of Equity and Compliance has jurisdiction under this Policy; (4) identify various support services; (5) explain the prohibition against Retaliation; (6) provide information about the Parties' respective rights and responsibilities; (7) instruct the Parties to preserve all potentially relevant evidence in any format; (8) provide a web-link to this Policy; (9) state the Investigator's name and contact information; and (10) provide the date, time and location of Respondent Intake such that Respondent has sufficient time to prepare.

## **F. Respondent Intake**

During the Respondent's Intake, the Investigator will discuss the allegation(s) of Prohibited Conduct. The Investigator and the Respondent will discuss the Respondent's rights, as well as available University resources for support, including interim measures, while the investigation is pending. The Respondent will be given the meaningful opportunity to respond to the allegations and offer evidence and/or potential witnesses. As previously stated in this Policy, while the Respondent is required to attend the Respondent Intake meeting and receive information, the Respondent is not required to make a statement or otherwise provide information relevant to the investigation. However, the investigation will continue and a determination made in accordance with this Policy based on available information and evidence.

## **G. Alternative Resolution**

Alternative Resolution seeks to effectively resolve reports and complaints of Prohibited Conduct at the earliest stage possible, with the cooperation and consent of all Parties. The University will explore options for Alternative Resolution when both Parties desire to resolve the matter cooperatively outside of the other processes outlined in this Policy, especially when an investigation is not likely to lead to a satisfactory outcome. Alternative Resolution may include a limited inquiry into the facts, but it typically does not include a full investigation. Alternative Resolution is flexible and encompasses a full range of possible options and appropriate outcomes. For example, Alternative Resolution may include mediation with a neutral person either within or outside of the University, to reach an agreement between the Parties; separating the Parties; referring the Parties to counseling programs, conflict coaching, or restorative conferences; negotiating an agreement for disciplinary action; conducting targeted educational and training programs; or providing agreed-upon remedies for the person harmed by the Prohibited Conduct. Alternative Resolution also includes, but is not limited to, such options as discussions with the Parties, finding recommendations for resolution, and conducting a follow-up review after a period of

time to assure that the resolution has been implemented effectively. Alternative Resolution may also be appropriate for responding to anonymous reports and complaints and/or reports and complaints from a person other than the Complainant.

If all Parties agree to participate in Alternative Resolution, each party will sign a copy of an Alternative Resolution Agreement. The Office of Equity and Compliance maintains records of all Alternative Resolutions, including agreements reached through Alternative Resolution.

## **H. Investigation**

During an investigation, the Investigator will seek to meet separately with the Complainant, the Respondent, and any Witnesses. The Investigator will also gather other relevant information and evidence, including documents, photographs, communications with the Parties, medical records (subject to the consent of the applicable person), and other electronic records, as appropriate.

The Complainant and Respondent will be asked to identify Witnesses and provide other relevant information and evidence. All Parties are encouraged to provide all relevant information as promptly as possible to facilitate prompt resolution. All Parties are also encouraged to submit questions to the Investigator to ask the other Party and any witnesses. In the event that either Party declines voluntarily to provide material information, the University's ability to conduct a prompt, thorough, and equitable investigation may be impacted.

The Investigator may also consider information that comes to the attention of the Investigator and is publicly available from social media or other online sources. The Office of Equity and Compliance does not actively monitor social media or online sources; however, as with all potentially relevant information, the Complainant, the Respondent, and Witnesses should bring online information to the attention of the Investigator.

The Investigator may visit relevant locations and record observations through written, photographic, or other means. In some matters, the Investigator may consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation. The Investigator will not consider polygraph test results. In general, a Party's medical and counseling records are confidential and not accessible to the Investigator unless the Party voluntarily chooses to share those records with the Investigator. In those instances, the relevant information from those medical and counseling records will be shared with the other Party.

The Investigator will seek to review all information identified or provided by the Parties and will determine the appropriateness, relevance, and probative value of the information developed or received during the investigation. In general, the Investigator will not consider statements of personal opinion or statements as to any Party's general reputation for any character trait. All information considered relevant by the Investigator will be provided to the Parties for their review and comment, as described in this Policy.

The Investigator should provide periodic updates to the Parties about the status of the investigation. Parties may ask the Investigator for an update at any time.

## **I. Review of Investigative Reports**

The Complainant and Respondent shall have the same opportunity to review and respond to all evidence obtained during an investigation. In separate meetings, both Parties will be presented with all of the relevant information and evidence gathered during the investigation that will be considered by the Investigator to reach a determination, which information and evidence will be summarized and compiled into a Draft Investigative Report.

### **1. Draft Investigative Report**

At the conclusion of the investigation, the Investigator will prepare a Draft Investigative Report summarizing the relevant information and evidence that will be considered to determine whether there was a violation of the Policy. The Draft Investigative Report will not include findings of fact, analysis, or a determination. The Complainant and the Respondent will each have equal and timely access to all such relevant information and evidence. Upon notice of the availability of the Draft Investigative Report, the Complainant and the Respondent will have the opportunity to (1) meet again with the Investigator; (2) provide written comment or feedback; (3) submit questions for the Investigator to ask the other Party or Witnesses; (4) submit additional information; (5) identify additional Witnesses and relevant areas of inquiry; and (6) request the collection of other information by the Investigator. The Investigator will designate a reasonable time for the Parties to complete their respective reviews of the Draft Investigative Report and provide a response, which time is not to exceed five (5) business days. If neither Party provides a written response or makes a request for additional information or evidence, the investigation is closed.

If either Party provides a written response or makes a request for additional information or evidence, the content will be shared with the other Party and, as appropriate, incorporated in the Final Investigative Report. The Parties are expected to submit all information and evidence relevant to the investigation prior to the preparation of the Draft Investigative Report. However, each Party shall have one opportunity to submit additional information after reviewing the Draft Investigative Report. Any relevant information or evidence provided by the Parties after preparation of the Draft Investigative Report or otherwise gathered through additional investigative steps will be shared with both Parties. Upon receiving any new information and evidence that has been collected, each Party will have three (3)

additional business days to review only the additional relevant information and evidence and to provide a response to it. Upon receiving any responses to the additional information and evidence from the Parties, the investigation is closed.

At either stage of review, the Investigator may provide more review and response time if necessary to providing a meaningful opportunity for both Parties to respond to the information provided during the investigation while also ensuring timely completion of the processes of this Policy.

**2. Standard of Review**

The standard of review used to determine whether there is sufficient evidence to support a finding that the Respondent is responsible for violating this Policy is the “preponderance of the evidence” standard. A preponderance of evidence means that, based on all of the relevant information and evidence, as well as all reasonable inferences from the evidence, the greater weight of the information and evidence indicates that the Respondent violated this Policy. The determination of whether the Respondent violated this Policy is made by the Investigator in the Final Investigative Report.

**3. Final Investigative Report**

The Investigator will seek to prepare the Final Investigative Report within five (5) business days of the date the investigation is closed. The Final Investigative Report includes summaries of all information and evidence considered by the Investigator in determining whether there is sufficient information, by a preponderance of the evidence, to support a finding that Respondent is responsible for a violation of this Policy. The Final Investigative Report also includes the Investigator’s determination of whether the Respondent violated this Policy and a thorough analysis of the facts under the Policy used to make that determination. In addition, if there is a determination that Respondent violated this Policy, the Final Investigative Report will specify sanctions for the violation. Both Parties will then receive simultaneous notification that the Final Investigative Report is complete and available for review by the Parties, as well as an invitation for the Parties to meet with the Investigator to review and discuss the Report. The simultaneous notification will also contain a short statement of the outcome of investigative outcome, including any sanctions imposed, and notice of the Party’s rights to a higher level review of the Investigator’s determinations.

**J. The Review Board**

Either Party may accept or contest the investigative outcome and/or the sanction(s). A Party may contest the investigative outcome and/or sanction(s) by asserting that (1) there was a material procedural error that substantially impacted the outcome; (2) there was no rational basis to find a violation of this Policy, applying a preponderance of the evidence standard; (3) there is new evidence available that was not available prior to the investigation being closed, and that could not reasonably have been made available prior to the investigation being closed, for the Investigator to consider, which new evidence is material and would have substantially impacted the outcome; or (4) the sanction(s) are grossly disproportionate to the Policy violation(s) for which Respondent was found to be responsible. To contest the investigative outcome and/or the sanction(s), the contesting Party or Parties must submit a written statement (which includes email) to the Investigator or to the Executive Director within (5) five business days of receiving notification of the investigative outcome and the sanction(s) that states at least one of the four grounds for review listed above, as well as supporting explanation(s). If no statement requesting review is received, the investigative outcome and any sanction(s) imposed will become final. If a statement requesting review is submitted, the non-contesting Party will have an opportunity to review and respond in writing to the contesting Party's request for review of the investigative outcome and/or sanction(s). Responses from non-contesting Parties must be received by the Office of Equity and Compliance within three (3) business days. If a timely response is not received by the Office of Equity and Compliance, the Review Board will objectively conduct its review proceedings without making any negative inference against the Party who did not provide a response. The Office of Equity and Compliance will provide the Final Investigative Report, the request for review from the contesting Party, and any response from the non-contesting Party, together with all information and evidence related to the request(s) for review, to the Review Board to determine whether the request for review is properly based on one of the four grounds for review listed above and then determine whether any stated ground for review was met. The Review Board will typically be scheduled within ten (10) business days of the Office of Equity and Compliance's receipt of all information and evidence related to the request(s) for review, including the Parties' submissions concerning review, although this timeframe may be adjusted for good cause.

**1. Review Board Composition**

The Executive Director maintains a standing pool of trained University employees (including faculty) and, at the discretion of the Executive Director, external trained professionals with experience adjudicating cases of Prohibited Conduct. The Executive Director will, subject to availability, select (a) three members from this pool to serve on the Review Board, and (b) the Vice President for Equity and Inclusion, or an additional member from this pool, to serve as the non-voting Chair of the Review Board. All members of every Review Board (including its Chair) must be impartial and free from actual bias or conflict of interest. Actual bias or conflict of interest occurs when a member of the Review Board is, for any reason extrinsic to the Review Board's role and function as a fair and objective adjudicatory body as set forth in this Policy, in favor of or against either a Party or a certain outcome, or

when a member of the Review Board is unable to make a fair and objective determination based only on the relevant information and evidence. When a member of the Review Board has actual bias or conflict of interest, that member must promptly recuse him- or herself prior to when the Review Board convenes. A member of the Review Board (including its Chair) shall recuse himself when he or she is a (1) is a Witness in the matter; (2) is the spouse, parent, child, or immediate family member of a Party; (3) is biased, prejudiced, or personally interested in the matter or its outcome, or biased or prejudiced toward or against a Party or any Witness to such an extent that the member would be unable to be fair, objective, and impartial; or (4) would be unable, for any other reason, to be fair, objective, and impartial. The recusal of a member of the Review Board requires not only a finding of actual bias or conflict of interest, but also that the actual bias or conflict of interest is of a substantial nature and based on more than conclusory allegations, or on a professional relationship or personal acquaintanceship. The Review Board will review the Final Investigative Report, along with all information and evidence related to the request(s) for review which includes the Parties' submissions concerning review, to make a determination concerning whether request for review is properly based on one of the four grounds for review listed above and then determine whether any stated ground for review was met..

## **2. Standard of Review**

The Review Board will determine, by majority decision, first if request for review is properly based on one of the four grounds for review listed above and then determine whether any stated ground for review was met and then, also by majority decision, depending upon the ground(s) of appeal raised: (1) if there was a material procedural error that substantially impacted the outcome; (2) if there was no rational basis to find a violation of this Policy, applying a preponderance of the evidence standard, if any; (3) if there is new evidence available that was not available prior to the investigation being closed, and that could not reasonably have been made available prior to the investigation being closed, for the Investigator to consider, which new evidence is material and would have substantially impacted the outcome; and/or (4) if the sanction(s) are grossly disproportionate to the Policy violation(s) for which the Respondent was found to be responsible. The Review Board's review will be narrowly tailored to whether a proper basis for review was raised and the stated ground(s) for review, and in addition, the Review Board will not reweigh the facts beyond what is necessary to make its determination or substitute its determination of whether it believes that Prohibited Conduct occurred for that of the Investigator who actually saw and heard the Parties and the witnesses.

### **3. Determination by the Review Board**

Neither Party nor the Investigator will appear before the Review Board. The Review Board makes its determination based solely on the Final Investigative Report and the information and evidence submitted with the Parties' request(s) for review that are provided to the Board.

If the Review Board determines, by majority decision, either that no proper ground for appeal was stated or that no properly stated ground for review was met, the contested investigative outcome and/or the sanctions, if any, will be upheld.

If the Review Board determines, by majority decision, that a proper ground for review as stated and that (1) there was a material procedural error that substantially impacted the outcome; (2) there was a rational basis to find a violation of this Policy, applying a preponderance of the evidence standard; (3) there is new evidence available that was not available prior to the investigation being closed, and that could not reasonably have been made available prior to the investigation being closed, for the Investigator to consider, which new evidence is material and would have substantially impacted the outcome; and/or (4) the sanction(s) are grossly disproportionate to the Policy violation(s) for which the Respondent was found to be responsible, the Review Board will send the matter to the Executive Director with instructions for how to fairly remedy the defect, which may include one or a combination of the following: overturning the outcome and/or any or all of the sanction(s); issuing new or different sanction(s); appointing a new Investigator; remanding the matter to the same or new Investigator for further investigation and/or to cure the material procedural error; or taking another action that sufficiently remedies the defect(s) in a way fair to both Parties.

If the Review Board upholds an investigative outcome that there was insufficient evidence to support a finding that the Respondent violated this Policy, the matter will be considered resolved and the Investigation will be closed. Appropriate interim measures, including a No-Contact Directives issued to both Parties, may remain in effect provided they are not burdensome and do not amount to being a sanction against the Respondent.

The Parties will receive prompt and simultaneous written notification of the Review Board's determination and its rationale, although Parties can typically expect it to take approximately ten (10) days to receive this written notice. The written notification will also contain a notice of the Party's rights to a higher level appeal of the Review Board's

determinations. The determinations of the Review Board regarding procedural error, new evidence and responsibility for violation of this Policy, but not necessarily regarding the sanction(s), are final resolutions and not subject to further appeal.

## **K. Sanctions**

When a Respondent is ultimately found responsible for violating this Policy, the Investigator and/or the Review Board (each hereinafter referred to as a “sanctioning body”) may impose one or more sanctions. Sanctions may include any of the sanctions that are listed below, as well as any sanctions that are set forth in other applicable University policies or conduct codes. When a request for review of the Investigator’s determination is made to the Review Board, any sanctions imposed by the Investigator will be stayed pending final resolution of the matter, but interim measures may remain in effect.

In keeping with the University’s commitment to foster an environment that is safe, inclusive, and free from Prohibited Conduct, the sanctioning body has great latitude under this Policy to tailor sanctions for Prohibited Conduct to the facts and the circumstances of each violation of this Policy, to the impact of the Prohibited Conduct on the Complainant and the University community, and to the need to provide accountability for the Respondent. The imposition of sanctions is designed to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects while supporting the University’s educational mission and legal obligations. Sanctions may include educational, restorative, rehabilitative and punitive components. Some Prohibited Conduct, however, is so egregious in nature, harmful to the persons involved, or deleterious to the educational process that it requires a more severe sanction, such as non-return or administrative withdrawal of the Respondent.

The sanctioning body may request information from the Complainant, the Respondent, and any other person who can provide information relevant to determination of an appropriate sanction.

In determining an appropriate sanction, the sanctioning body will consider the following factors:

- the nature and level of violence of the conduct at issue, if any;
- the impact of the conduct on the Complainant;
- the impact or implications of the conduct on the community or the University;
- prior misconduct by the Respondent, including the Respondent’s relevant prior discipline history, both at the University and elsewhere (if available), including criminal convictions;
- the degree to which the Respondent has accepted responsibility for the Prohibited Conduct;
- whether the Respondent cooperated with the University’s investigation;
- maintenance of a safe and respectful environment conducive to learning;
- protection of the University community; and

- any other mitigating, aggravating, or compelling circumstances useful in reaching a just and appropriate resolution in each matter.

Sanctions may be imposed individually or in combination with other sanctions. For determinations of responsibility for Prohibited Conduct, the following sanctions may be imposed (as adopted from *The Liberty Way*):

**1. Warning**

A formal admonition, which appears in a student's disciplinary record at the University and may be disclosed by the University when the student consents in writing or as otherwise required by law.

**2. Disciplinary Probation**

A more serious admonition that may be assigned for a definite amount of time. Disciplinary Probation means that any future policy violation, of whatever kind, during that time, may be grounds for non-return, non-return with conditions, or, in especially serious cases, administrative withdrawal from the University. Disciplinary probation will be taken into account in judging the seriousness of any subsequent infraction, even if the probationary period has expired. Disciplinary probation appears in a student's disciplinary record at the University and may be disclosed by the University when the student consents in writing or as otherwise required by law.

**3. Revocation or Withholding of Degree**

The University reserves the right to withdraw or withhold academic degrees. If the Prohibited Conduct is found to have occurred before graduation and during the time the student has applied to, or was enrolled at the University, but a complaint had not been filed prior to graduation, and a sanction for the Prohibited Conduct would have included non-return or administrative withdrawal of the Respondent, the degree may be withdrawn. If alleged Prohibited Conduct with a potential sanction of non-return or administrative withdrawal occurs prior to a student graduating and is under investigation, the University may postpone the awarding of a degree pending the outcome of the investigation and imposition of appropriate disciplinary sanctions.

**4. Points**

Residential undergraduate students may be assigned up to 30 points for a violation of this Policy.

**5. Non-Return**

Student status at the University may be terminated for a minimum specified period of time. The student is permitted to complete the

current academic semester and may re-enroll for classes after the specified period without need for re-admission. Relevant information remains on the student's disciplinary record at the University and may be disclosed by Liberty University when the student consents in writing or as otherwise required or permitted by law.

**6. Non-Return with Conditions**

Student status at the University may be terminated for at minimum specified period of time, with the Non-Return to continue until certain conditions listed by the sanctioning body have been fulfilled. The student is permitted to complete the current academic semester and may re-enroll for classes after the specified period without need for re-admission once the conditions have been fulfilled. These conditions may include, but are not limited to, restitution of damages, completion of a recovery program, community service, fine, and written apology(ies). Relevant information remains in the student's disciplinary record at the University and may be disclosed by the University when the student consents in writing or as otherwise required or permitted by law.

**7. Administrative Withdrawal**

This is an indefinite and immediate termination of the Respondent's student status at Liberty University with a specified period before which the student may not apply for re-admission or enroll in classes. Re-admission may or may not be conditioned upon fulfilling certain conditions listed by the sanctioning body. These conditions may include, but are not limited to, restitution of damages, completion of a recovery program, community service, fine, and written apology(ies). Relevant information remains in the student's disciplinary record at the University and may be disclosed by the University when the student consents in writing or as otherwise required or permitted by law.

**8. Transcript Notation**

Liberty University will make a prominent notation on the academic transcript of each student who is under investigation for a report of Prohibited Conduct under this Policy. In accordance with Va. Code § 23.1-900, Liberty University will also make a prominent notation on the academic transcript of each student who has been administratively withdrawn for, has been non-returned for, or has withdrawn from the University while under investigation for, an offense involving sexual violence under this Policy. The notation will be removed once the student is found not responsible or has been determined to be in good standing by the University.

- 9. Community Service**  
Community service work for a church or non-profit organization for a prescribed number of hours.
- 10. Fines**  
Penalty monetary fees payable to the University.
- 11. Restitution of Damages**  
Penalty monetary fees payable to the Complainant via the University.
- 12. University Housing**  
Removal from University housing or reassignment to a different location within University housing.
- 13. Restriction of Access to Spaces, Resources, Activities**  
Restrictions placed on a student's access to space and/or resources or on a student's participation in activities so as to limit opportunities for contact between the Parties.
- 14. Written Apology(ies)**  
Submission of a written apology for the Prohibited Conduct and the harm it caused to the Complainant or other persons. The written apology will be submitted through the University, rather than directly to the recipient(s). This sanction will only be appropriate with the prior consent of the Complainant or other recipient(s).
- 15. Recovery Program**  
Required completion of a recovery program, such as a 12-Step Celebrate Recovery program or another similar program approved by the University.
- 16. Educational Programs**  
Required participation in educational programs prescribed by the University.

**L. Additional Remedies**

Regardless of the outcome and/or any sanction(s), the Executive Director may recommend or put into place any additional remedies to address the effects of Prohibited Conduct on the Complainant; to preserve or restore the Complainant's access to University programs and activities; or to restore to the Complainant, to the extent possible, benefits and opportunities lost as a result of the Prohibited Conduct.

The Executive Director will review the remedies recommended by the sanctioning body, if any, and will consider the appropriateness of continuing interim measures on an ongoing basis so long as such measures do not amount to being a sanction against the Respondent. For example, a No-Contact Directive may remain in effect as a means of protecting both Parties' access to University programs and activities.

#### **M. Final Appeal of Sanctions to the Vice President of Equity and Inclusion**

Either Party may contest the sanction(s) in place following the Review Board determination by asserting to the Vice President of Equity and Inclusion that the sanction(s) were grossly disproportionate to the violation(s) for which the Respondent was found to be responsible. To contest the sanction(s), the Complainant and/or Respondent must submit a written statement to the Vice President of Equity and Compliance or to the Executive Director via email that explains the reasons for contesting the sanction(s) within three (3) business days of receiving notice of the Review Board's determination. The non-appealing Party will be provided a copy of the written statement submitted by the appealing Party and have three (3) business days of receiving it to submit his or her response.

The Vice President of Equity and Inclusion, or designee, who must be impartial and free of a actual bias or conflict of interest, as defined in Section XI(J)(1) above, makes the determination on a appeal of sanctions after considering the written statements submitted in support of the appeal and in response to it. The Vice President of Equity and Inclusion, or designee, may elect to review some or all of the other relevant materials associated with the matter to make a determination on the appeal. Thereafter, the Vice President of Equity and Inclusion, or designee, will issue a written determination and a rationale for that determination based on the specific appeal request, which may include either upholding or modifying the sanction(s) in place following the Review Board. The appealing Party must have first received a determination by the Review Board to be eligible for a final appeal of sanctions under this section of the Policy. This sanction appeal determination is the final resolution and not subject to further review.

#### **N. Notice of Final Outcome**

Both the Complainant and the Respondent will receive a written Notice of Outcome that documents the outcome, the rationale, the sanction(s) (if any), and an explanation of what portions of the outcome are final, subject to review or subject to appeal. As explained above, the University will seek to issue a Notice of Final Outcome in a matter no later than 60 calendar days from the date of the Notice of Investigation; however, there may be matters that, for various good cause, cannot be concluded within 60 calendar days.

The Office of Equity and Compliance will also notify relevant administrative and academic offices, including the Financial Aid Office, the Registrar, Human Resources, LUPD, the Dean of Students Office, and the Office of Community Life ("OCL"), as appropriate and necessary to ensure that sanctions and remedies are implemented promptly.

The Office of Equity and Compliance maintains records of all reports and complaints, investigations and resolutions, including Review Boards, Alternative Resolutions, final appeals of sanctions and other steps taken to eliminate Prohibited Conduct, prevent its recurrence, and address its effects. Final outcomes and sanctions may also be included in a student's disciplinary record maintained by the OCL.

## **XII. Investigation and Resolution Processes for Employees**

The investigation and resolution processes contained in Section XII of this Policy, only apply to reports or complaints that A University employee or faculty member has violated this Policy.

### **A. Investigation and Resolution**

When the Executive Director receives a report or complaint that a University employee or faculty member has violated this Policy, the Executive Director will appoint the Deputy Coordinator for Human Resources and/or an Investigator from the Office of Equity and Compliance to work in conjunction with the Human Resources, and/or the Office of Equity and Compliance to investigate the report or complaint of Prohibited Conduct in a manner consistent with University policy and applicable law. The Executive Vice President for Human Resources will, in consultation with the Deputy Coordinator for Human Resources and/or the Investigator, make a final determination, by a preponderance of the evidence, whether an employee is responsible for a violation of this Policy or any of the University's personnel policies.

### **B. Sanctions**

If the Executive Vice President for Human Resources determines that this Policy or any of the University's personnel policies were violated, the University employee or faculty member will be issued an appropriate sanction, in accordance with the University's employment policies governing the employee found responsible for a violation of this Policy. Sanctions may include counseling or training, written warning, financial penalty, paid or unpaid leave of absence, suspension, demotion, reassignment of duties and termination.

Sanctions will be determined based on the seriousness of the misconduct and on the University employee or faculty member's prior disciplinary history. The findings of fact, determination of responsibility, rationale for the determination, and any sanctions will be communicated to both Parties in writing by the Office of Equity and Compliance or Human Resources. This documentation of the investigation and outcome, including any sanctions, will be placed in the relevant employee(s) files and will be archived by the Office of Equity and Compliance and Human Resources.

### **C. No Right of Appeal**

Neither Party has a right to appeal the outcome or any sanctions determined by the Executive

Vice President for Human Resources.

### **XIII. Prevention and Awareness Programs**

The University is committed to the prevention of Prohibited Conduct through regular and ongoing education and awareness programs. The University provides coordinated programming and training through multiple offices and departments, including the Office of Equity and Compliance, the Dean of Students Office, LUPD, Human Resources, the Provost's Office, the OCL, Student Counseling Services (SCS), and other Liberty University offices and departments.

### **XIV. External Reporting**

Concerns about the University's compliance with applicable laws related to this Policy may be reported to appropriate government agencies. Concerns related to Title VI, Title IX, the ADEA, and Section 504 may be addressed to the United States Department of Education, Office for Civil Rights (OCR) (at [OCR@ed.gov](mailto:OCR@ed.gov) or 800.421.3481) or to the United States Equal Employment Opportunity Commission (EEOC) (at [info@eeoc.gov](mailto:info@eeoc.gov) or 800.669.4000), with jurisdiction depending on whether the complainant is a student or an employee. Concerns related to the Clery Act may be reported to the United States Department of Education, Clery Act Compliance Division (at [clery@ed.gov](mailto:clery@ed.gov)). Concerns related to FERPA may be reported to the United States Department of Education, Family Policy Compliance Office (FPCO) (at [FERPA.Complaints@ed.gov](mailto:FERPA.Complaints@ed.gov)). Concerns related to Title I of the ADA may be reported to the United States Department of Justice (at [https://www.ada.gov/filing\\_complaint.htm](https://www.ada.gov/filing_complaint.htm)).

### **XV. Annual Review**

This Policy is maintained by the University's Office of Equity and Compliance. The University will review this Policy at least annually. The review will take into account evolving legal requirements, evaluate the supports and resources available to the Parties, and assess the effectiveness of investigation and resolution processes. This Policy does not create a contractual obligation on the part of the University. The University reserves its right to amend this Policy at any time and for any reason, including an informal amendment to ensure fairness in the investigation and resolution processes. This Policy was last revised on September 7, 2018.