

Student Sexual Misconduct Policy

Introduction

Membership in a university community carries with it the responsibility for mutual trust and respect and adherence to the standards of conduct established by the community. Standards for conduct at the university are set forth in the Rules & Procedures and in other policy documents. Accordingly, this statement sets forth the university's policy on student sexual misconduct as applicable to all Virginia Commonwealth University students.

Policy

Virginia Commonwealth University prohibits sexual misconduct by students. Actions which result in charges of sexual misconduct under this policy also may subject a student to civil and/or criminal liability under federal and state laws and policies, including Title IX of the federal civil rights laws.

Definition

Student sexual misconduct is defined as unwelcome acts of a sexual nature committed by a student against another student without consent including, sexual advances, requests for sexual favors and/or other verbal or physical conduct, including written communications of an intimidating, hostile or offensive nature, or action taken in retaliation for the reporting of such behavior.

Student sexual misconduct may include, but is not limited to: (1) unwelcome touching - either of the victim or when the victim is forced to touch another person's body, directly or through clothing - such as patting, pinching, brushing against the body, attempted or actual kissing or fondling, and any other inappropriate and/or unwelcome touching or feeling; (2) coerced sexual intercourse (e.g., rape, attempted rape, sodomy, or other sexual acts or misconduct); (3) unwelcome sexual propositions, invitations, or other pressure for sex; (4) implied or overt threats of a sexual nature; (5) making gestures of a sexual nature; (6) unwelcome sexual remarks about clothing, body, or sexual activities; and humor and jokes about sex that denigrate women or men in general.

Acts of physical student sexual misconduct are commonly considered to constitute a form of sexual assault when occurring without consent. To constitute lack of consent, the acts must be committed either by threat, force, intimidation, or through the use of the victim's physical or mental inability (of which the accused was aware or should have been aware) to understand the situation, the consequences of his/her choices, or to express his/her desires.

Application

This policy governs the conduct of all Virginia Commonwealth University students on University premises; that is, on the campuses of VCU and other property or facilities owned, controlled, or otherwise being used by the University. This policy also governs and applies to all programs offered by the University and to the conduct of students in any location where the conduct and behavior significantly impacts the University, its personnel and students.

Resolution Procedures

Any student who feels that he or she has been the victim of student sexual misconduct is encouraged to report the incident and pursue recourse through this Policy.

Informal complaints of student sexual misconduct filed under the Policy may be verbal or in writing. Formal complaints must be submitted in writing. All complaints should be submitted to the appropriate Dean of Student Affairs on the campus where the infraction occurred:

- Monroe Park Campus: Associate Vice Provost and Dean of Student Affairs, 901 Floyd Avenue or call (804) 828-8940;
- MCV Campus: Dean of Student Affairs for the MCV Campus, Bear Hall, or call (804) 828-0525.

Individuals desiring special accommodation should call VOICE TDD: (804) 828-0100. Complaints of student sexual misconduct should be filed as soon as possible following the event or occurrence giving rise to the complaint to insure a complete investigation and prompt resolution of the problem. A complaint filed more than two years after an incident or event generally will not be considered to have been filed in a timely fashion. Complaints will generally be handled expeditiously; however, certain circumstances (e.g., illness, travel, holidays, etc.) may cause delays.

Any administrator, supervisor, or other University official to whom a complaint of student sexual misconduct is made or who otherwise is made aware of incidents which might constitute student sexual misconduct, as defined in this Policy, should refer such matters to the appropriate Dean of Student Affairs.

Informal Resolution Procedures

1. Problem-Solving: The Sexual Assault Program Coordinator (1300 W. Broad St., Suite 2200, (804) 828-2085) is available to students and staff for information, consultation and advice regarding student behavior and potential complaints.
2. Informal Complaint Process: Any student who feels that he or she may have been the victim of acts of student sexual misconduct may file a verbal or written complaint with the appropriate Dean of Student Affairs. Within ten (10) working days of receiving the complaint, the Dean of Student Affairs will undertake an investigation. Additional staff members may assist in the investigation and will meet with the accuser and such other persons who may be deemed necessary, including the accused. An attempt will be made to complete the investigation and/or consultative process within an additional thirty (30) working days. The primary goal or objective of the informal complaint process is to resolve the conflict.

In addition, resolution at the informal complaint process level may include an agreement in which one or more of the parties involved agrees to accept discipline in the form of a warning, censure, probation, or other such disciplinary action as may be warranted by the circumstances of each case, administered by the Dean of Student Affairs. To the extent the parties are able to achieve a satisfactory resolution of the complaint through the informal resolution process, the complaint will be considered resolved. The accused and accuser will receive written notification of the outcome and disposition of the complaint. In those cases in which a mutually satisfactory resolution of an informal complaint of student sexual

misconduct cannot be achieved, either the accused or the accuser may request in writing to advance the complaint to the formal complaint or resolution process. The fact that a complaint of sexual misconduct may be concluded at the request of the accusing party does not preclude the filing of a formal complaint by others, including appropriate University officials. In addition, students who wish to pursue a formal complaint of student sexual misconduct may do so without first filing an informal complaint.

Formal Resolution Procedures

Formal complaints of sexual harassment must be filed in writing with the appropriate Dean of Student Affairs. Upon receipt of a formal complaint, the Dean of Student Affairs within ten (10) working days of receiving the complaint will undertake a preliminary fact-finding investigation to determine whether further investigation or proceedings appear to be warranted. In those situations in which the Dean of Student Affairs determines that the alleged conduct does not fall within the definition of sexual harassment or does not appear to be supported or substantiated, the accuser will be so informed. When the Dean of Student Affairs determines that there is reasonable evidence to support the complaint, the Dean of Student Affairs will conduct an investigation as described above.

In instances where a formal complaint of student sexual misconduct is made without first filing an informal complaint, the Dean of Student Affairs will, upon completing an investigation, consult with other appropriate university officials. Formal complaints may be resolved through actions such as a warning, censure, probation, public service and/or educational experience, restitution, suspension, or dismissal as may be warranted by the circumstances and administered by the Dean of Student Affairs or other appropriate university official. If the accuser and the accused accept the action taken to resolve the complaint, the complaint will be considered resolved. The accused and accuser will receive written notification of the outcome and disposition of the complaint. If either the accuser or the accused rejects the action taken to resolve the complaint, upon written request of either party, the complaint will proceed to the formal hearing process.

The Dean of Student Affairs will forward the complaint to the administrator designated to receive charges against students as provided in Section V.B of the Rules and Procedures. The administrator will immediately refer the charges to the University Hearing Board without additional investigation. The University Hearing Board, in addition to the usual procedures specified in Section V.F for Hearings and Procedural Due Process, will observe the following special procedures for charges of student sexual misconduct:

1. The past sexual conduct of either the accused or accuser is not admissible in a hearing or appeal conducted under the Rules & Procedures.
2. Hearings related to charges of student sexual misconduct will be closed, unless both the accused and the accuser agree to admitting observers. If the accused and the accuser agree that observers may be admitted, each may select up to four observers. No hearings of charges related to student sexual misconduct will be open to the University community.
3. All members of the University Hearing Board are required to hold all information regarding hearings and deliberations confidential in accordance with Section V.F.11. of the Rules & Procedures. In addition, all other persons present at the hearing will be required to sign a

statement indicating that each agrees to hold in confidence all statements and evidence presented at the hearing.

4. Any violation of the provisions of the Rules & Procedures, or the additional procedures set forth in paragraphs one through three above, shall subject a student to additional charges. It should be noted that conduct that "harasses or intimidates any person" (including witnesses to a hearing) or "causes physical injury or threatens any person with force or violence" is prohibited by Section III.A. of the Rules & Procedures.

Penalties

A formal complaint of student sexual misconduct which is referred to the University Hearing Board will be handled in accordance with the provisions of the Rules & Procedures, and persons found guilty of such charges will be subject to the penalties as provided therein, including censure, probation, public service and/or educational experience, separation and dismissal, interim suspension, and restitution. Actions which result in charges of student sexual misconduct under this policy may also subject a student to civil and/or criminal liability under state law, in addition to the sanctions provided by the Rules & Procedures.

Appeals

Any student who is found by the University Hearing Board to have violated the VCU Student Sexual Misconduct Policy may appeal such findings and sanctions to the University Appeal Board in accordance with the procedures specified in the University Rules & Procedures document.

Frivolous or False Charges

The accused, the accuser, and all other parties to a complaint are reminded that it is a violation of the VCU Rules & Procedures for any member of the University community to bring charges against a member of the University community that are spurious, or that are intended primarily to harass or maliciously defame, or that are designed to intentionally overburden the adjudicatory system.

Retaliation Prohibited

The accused, the accuser, and all other parties to a complaint are reminded that it is a violation of the VCU Rules & Procedures for any member of the University community to harass or intimidate any person, or to lie in making statements in connection with a charge under the provisions of this policy. The Dean of Student Affairs will investigate any reported acts of harassment or intimidation, including any act of reprisal, interference, restraint, or penalty - overt or covert - against any student or employee who is a party to a complaint under this policy.

Consensual Relationships

Consenting romantic and sexual relationships between employee and student, or between supervisor and supervisee, while not expressly forbidden by Virginia Commonwealth University, are generally discouraged and deemed very unwise. Graduate assistants, resident assistants, tutors and other professionals responsible for students or employees are also encouraged to exercise care in their relationships with students or employees. An employee who enters into a relationship with a student,

or a supervisor with a supervisee, where a professional power differential exists, must realize that a consensual relationship can become sexual harassment when the person with more power refuses to let the person with less power end the relationship.

Records and Release of Information

The appropriate Dean of Student Affairs will be responsible for collecting all records and documents from all personnel involved in a complaint to be either destroyed or included in a complete set of all records to be maintained by the Dean of Student Affairs. For any complaint which is adjudicated through the formal hearing process with the University Hearing Board, all records shall be maintained in accordance with the provisions established in the VCU Rules & Procedures.

Approved by University Council: February 9, 1994

As Amended by the Student Affairs Committee of the Board of Visitors: May 19, 1994

Approved by the Board of Visitors: May 20, 1994

Revised and revisions approved by the Board of Visitors: January 22, 1998