



# Sexual Misconduct Policy

## October 2023

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# **ARTICLE I: SEXUAL MISCONDUCT POLICY & PROCEDURES**

## **I) Introduction to Sexual Misconduct Policy**

Fairfax University of America (FXUA or the university) is committed to maintaining a safe educational and work environment in which no member of the community is, on the basis of sex, including pregnancy, gender, sexual orientation, or gender identity, excluded from the participation in, denied the benefits of, or subjected to discrimination in any FXUA program or activity.

This policy applies to any form of sex, gender, pregnancy, gender identity, or sexual orientation-based discrimination, which includes, but is not limited to, sexual assault, domestic violence, dating violence, stalking, and harassment. The term **Prohibited Conduct** will be used to refer to all forms of sex, gender, pregnancy, sexual orientation, or gender identity-based discrimination.

FXUA provides ongoing prevention, awareness, and training programs for employees and students in an effort to:

- Eliminate, prevent, and address sex discrimination and its effects;
- Encourage reporting;
- Make available timely services for those affected by Prohibited Conduct; and
- To provide the prompt and equitable investigation and resolution of Prohibited Conduct cases.

Any question regarding the interpretation and application of this policy shall be referred to the Title IX Coordinator. The Title IX Coordinator may designate a Deputy Title IX Coordinator to serve as the Title IX Coordinator for any procedures outlined in this policy.

## **II) Notice of Non-Discrimination**

Fairfax University of America does not discriminate on the basis of sex in its education programs or activities. Prohibited Conduct under this policy constitutes sex discrimination prohibited by Title IX of the Education Amendments of 1972 (Title IX), sections of the Violence Against Women Reauthorization Act (VAWA), Title VII of the Civil Rights Act of 1964 (Title VII), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), and the Virginia Human Rights Act.

Title IX prohibits sex discrimination in all aspects of university activities and programs. This means that students and employees are entitled to an environment that is free from sex discrimination. Both men and women can be victims of sex discrimination and sex discrimination can occur between members of the same or opposite sex.

Individuals who have been found to have violated this policy will face disciplinary action up to, and including, termination or expulsion. It is the responsibility of every member of the FXUA community to create and foster an environment free from sex discrimination. As such, all members of the community are encouraged to take reasonable actions to stop or prevent an act of sex discrimination. Anyone who takes such actions will receive the full support of FXUA.

## **III) Application and Jurisdiction of Policy**

This policy applies to any report of Prohibited Conduct made by or against a student, an employee, a member of the Board of Trustees, or volunteers at Fairfax University of America, or a third party, regardless of where the alleged Prohibited Conduct occurred so long as the reported conduct:

1. Is related to or has an adverse effect on FXUA's academic, educational, employment, or extracurricular programs or activities; or
2. Creates a hostile environment for or has continuing adverse effects on students, employees, or third parties while engaging in academic, education, employment, or extracurricular program or activity.

FXUA is able to prohibit third parties from being on campus. However, FXUA's disciplinary authority does not extend to third parties who are not students or employees of FXUA. While there is no geographical limitation to invoking this policy, it will be difficult to investigate any Prohibited Conduct that is alleged to have transpired outside of FXUA property or involves the acts of persons not affiliated with FXUA.

FXUA may choose to adjudicate alleged misconduct or actions that are related to the Prohibited Conduct at issue, even if such misconduct or actions are not, by themselves, governed by this policy. Other Non-Academic Misconduct may be subject to the procedures and policies contained in this policy if the misconduct occurs at the same time as Prohibited Conduct, or is related to Prohibited Conduct.

#### **IV) Oversight of the Sexual Misconduct Policy**

FXUA has designated a Title IX Coordinator who is responsible for the oversight of this policy and any procedures related to it. The Title IX Coordinator is responsible for overseeing and resolving all Title IX reports, as well as identifying and addressing any patterns or systemic concerns that arise during the review of such reports. The Title IX Coordinator evaluates trends on campus by using information reported and provides campus wide training and education programs and other remedial actions designed to eliminate Prohibited Conduct, prevent its recurrence, and address its effects. For any questions or concerns regarding Title IX, please email [titleix@FXUA.edu](mailto:titleix@FXUA.edu).

Deputy Title IX Coordinators serve as designees of the Title IX Coordinator in any case where there is a conflict of interest that would prohibit the Title IX Coordinator from providing fair and impartial oversight.

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#### **V) Prohibited Conduct**

Fairfax University of America prohibits all types of sexual misconduct and sex discrimination. Such conduct is referred to as "Prohibited Conduct" in this policy. Prohibited Conduct has been broadly defined to include any unwelcome conduct of a sexual nature. The university will review all allegations of Prohibited Conduct on a case-by-case basis, in the totality of the circumstances.

Prohibited Conduct is listed in alphabetical order and defined below.<sup>1</sup>

### A) Complicity

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

### B) Dating Violence

Dating violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Dating violence includes sexual, emotional, or physical abuse, or the threat of such abuse. Dating violence may include any of the Prohibited Conduct contained in this policy, including physical assault.

Physical assault is threatening to or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of another person. Dating violence can include the use or threat of physical force or restraint carried out with the intent of causing pain or injury to another.

The existence of a social relationship of a romantic or intimate nature shall be determined based on the following factors:

- a) The reporting party's statement;
- b) The length of the relationship;
- c) The type of relationship; and
- d) The frequency of interaction between the persons involved in the relationship.

Dating violence does not include any acts covered under the definition of domestic violence.

Below are examples of behavior that may be dating violence:

- **Physical Abuse:** hitting, slapping, kicking, hurting or killing pets, denying medical treatment, throwing things, interrupting sleep, or shoving.
- **Sexual Abuse:** being forced to have sex, being afraid to say no to sex, violence or name calling during sex, or denying contraception or protection from sexually transmitted diseases and infections.
- **Emotional Abuse:** constant put downs or criticisms, name calling, minimizing abuse or blaming the victim for their behavior, isolating the victim from friends and family, or monitoring where you go and who you talk to.
- **Financial Abuse:** being given an allowance, hiding assets and money, or interfering with your job.

For more information about dating violence, visit the [National Network to End Domestic Violence's website](#).<sup>2</sup>

### C) Domestic Violence

Domestic violence is defined as violence committed by

- a) a current or former spouse or intimate partner of the victim; or
- b) a person whom the victim shares a child in common; or

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<sup>1</sup> The following definitions are the definitions FXUA will use to recognize, classify, and report Prohibited Conduct at an institutional level. These definitions may differ than those of the state of Virginia. Virginia's laws on sexual and domestic violence can be found [here](#), or accessed here: <https://law.lis.virginia.gov/vacode/title18.2/chapter4/>

<sup>2</sup> National Network to End Domestic Violence's website can be accessed here: <https://nnedv.org>.

- c) a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; or
- d) by any other person against an adult or minor who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

To be considered domestic violence the relationship between the victim and perpetrator must be more than two people living as roommates. They must be current or former spouses, or have or had an intimate relationship.

Domestic violence includes sexual, emotional, or physical abuse, or the threat of such abuse. Domestic violence may include any of the Prohibited Conduct contained in this policy.

Physical Assault is threatening to or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of another person. Domestic violence can include the use or threat of physical force or restraint carried out with the intent of causing pain or injury to another. Below are examples of behavior that may be domestic violence:

- **Physical Abuse:** hitting, slapping, kicking, hurting or killing pets, denying medical treatment, throwing things, interrupting sleep, or shoving.
- **Sexual Abuse:** being forced to have sex, being afraid to say no to sex, violence or name calling during sex, or denying contraception or protection from sexually transmitted diseases and infections.
- **Emotional Abuse:** constant put downs or criticisms, name calling, minimizing abuse or blaming the victim for their behavior, isolating the victim from friends and family, or monitoring where you go and who you talk to.
- **Financial Abuse:** being given an allowance, hiding assets and money, or interfering with your job.

For more information about domestic violence, visit the [National Network to End Domestic Violence's website](https://nnedv.org/).<sup>3</sup>

## D) Providing False Information

Any individual who knowingly submits a complaint that is not in good faith or provides false or misleading information in any review, investigation, or resolution of a complaint will be subject to disciplinary action.

## E) Retaliation

Retaliation includes threatening, intimidating, harassing, coercing, or any other conduct that would discourage a reasonable person from engaging in any activity that is protected under this policy. The presence of retaliation is not dependent on a finding of "responsibility" for any allegations of Prohibited Conduct. Under this policy, retaliation means **any** adverse action taken against a person for making a good-faith report of Prohibited Conduct or participating in any procedure under this policy.

Retaliation may include the following types of behavior; however, it is not limited to these examples:

- a) Any action such as an assault or unfounded institutional complaints, civil or criminal charges that are likely to deter reasonable people from engaging in their rights or seeking assistance;
- b) Actions that effect the academic standing of a student;
- c) Employment actions such as refusal to hire, denial of promotion, or termination; and

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<sup>3</sup> National Network to End Domestic Violence's website can be accessed here: <https://nnedv.org/>.

- d) Other actions effecting a person's employment, academic, or school-related activities such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance or supervision.

Retaliation does NOT include:

- a) Annoyances and petty snubs;
- b) Stray negative comments in an otherwise positive or neutral evaluation;
- c) Slighting a colleague;
- d) Not talking to a student;
- e) Negative comments that are justified by a student or employee's poor academic or work performance or history; or
- f) Good faith actions lawfully pursued in response to a report of Prohibited Conduct.

Any retaliation against any person who raises an allegation of Prohibited Conduct, cooperates in an investigation, or opposes discriminatory practices is strictly prohibited under this policy and is a violation of federal law. FXUA considers acts or threats of retaliation to be a serious violation of this policy. Violations of this prohibition will be addressed through this policy and potentially other FXUA disciplinary procedures, as deemed appropriate by FXUA.

Anyone who believes they have been subjected to retaliation because of making a report or assisting in an investigation of this policy, should file a report with our Title IX Coordinator by using our Online Reporting Tool found at <https://www.fxua.edu/our-university/about-fxua/institutional-effectiveness/title-ix-at-fxua/submitting-a-report/>.

Any other allegations of retaliation that are **not** related to this policy should be immediately reported to Human Resources by emailing [hrrsupport@fxua.edu](mailto:hrrsupport@fxua.edu) or Student Experience or emailing [studentexperience@fxua.edu](mailto:studentexperience@fxua.edu).

## **F) Sexual Assault**

Sexual assault is actual **or** attempted sexual contact, however slight that contact is, with another person without that person's consent. Sexual assault includes, but is not limited to:

- 1) The intentional touching of another person's intimate parts without that person's consent;
- 2) Other intentional sexual contact with another person without that person's consent;
- 3) Coercing, forcing, or attempting to coerce or force a person to touch another person's intimate parts without that person's consent; or
- 4) Penetration of a person, without that person's consent, no matter how slight, of
  - i. the vagina or anus by any body part of another person or by an object, or
  - ii. the mouth by a sex organ of another person or an object.

### **1) Consent**

Consent is knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Consent can be withdrawn at any time during a sexual act or encounter. Silence does not establish consent. The absence of resistance does not establish consent. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used.

Past consent to sexual activities does not imply ongoing or future consent. Current or previous dating relationships do not imply consent. Consent to one sexual activity is not consent for other sexual activity. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person. A person's attire does not constitute consent.

An individual who is under the age of consent **cannot** consent. If a person is mentally or physically impaired so that person cannot understand the fact, nature, or extent of the sexual situation, there is **no** consent. This includes impairment due to drug or alcohol consumption that meets the legal standard of impairment. There is **no** consent when a person is asleep or unconscious.

Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent.

## **2) Stealthing**

Engaging in the act of stealthing is a violation of consent. Stealthing is the non-consensual removal of a condom during intercourse, or the purposeful use of a faulty condom. Under this policy stealthing is a form of sexual assault.

## **G) Sexual Exploitation**

Sexual exploitation occurs when an individual takes advantage of a person in a sexual way for the benefit of anyone other than that person and takes place without that person's consent. Any sexual exploitation, regardless of the medium in which it occurs, including physical and digital exploitation, shall be treated as an incident of equal severity under this policy.

Examples of behavior that could be considered sexual exploitation:

- Causing the incapacitation of another person (through drugs, alcohol, or other means) for the purpose of compromising that person's ability to consent to sexual activity.
- Prostituting another person.
- Recording images or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent.
- Distributing images or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and it is reasonable to assume the person would object to such disclosure. This includes what is referred to as "revenge porn."
- Allowing third parties to view private sexual activity from a hidden location or through electronic means (such as Skype, Facebook Live, Snapchat, etc.).
- Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, and for the purpose of sexual arousal or gratifying sexual desire.
- Inducing another person to expose their intimate body parts without their consent.
- Knowingly transmitting or exposing another person to an STI, STD, venereal disease, or HIV.

## **H) Sexual or Gender-based Harassment**

**Sexual Harassment** is any unwelcome conduct or harassment of a sexual nature, including but not limited to unwelcome sexual advances; requests for sexual favors; or other conduct whether verbal, nonverbal, physical, or graphic when the conditions outlined below in (a), (b), or (c) are present.

**Gender-Based Discrimination** is harassment based on a person's actual or perceived sex or gender, sexual orientation, gender identity, gender expression, or non-conformity with gender stereotypes. This harassment may include intimidation, acts of aggression, or hostility, or other conduct whether verbal, nonverbal, physical, or graphic when the conditions outlined below in (a), (b), or (c) are present.

- (a) The submission or rejection of such conduct is explicitly (meaning clearly stated, leaving no confusion or doubt) made a term or condition of a person's employment, academic standing, or participation in any of FXUA's programs or activities **or** is used as the basis for any decision affecting the individual;
- (b) The submission or rejection of such conduct is implicitly (meaning suggested or not directly expressed) made a term or condition of a person's employment, academic standing, or participation in any of FXUA's programs or activities **or** is used as the basis for any decision affecting the individual; or
- (c) Such conduct creates a hostile environment.

A **Hostile Environment** exists when sex discrimination interferes with, limits, or deprives a person from participating or benefiting from FXUA's programs or activities, or interferes with a person's work or program performance.

A hostile environment can be created by anyone involved in FXUA's programs or activities, such as administrators, faculty members, students, and campus visitors. To determine if the conduct in question has created a hostile environment, FXUA will consider the conduct from both a subjective and objective perspective to determine if the conduct is severe, persistent, and pervasive enough to have created a hostile environment. FXUA will also need to find that a reasonable person in the same or similar position would have perceived the conduct as undesirable or offensive in order for that conduct to create or contribute to a hostile environment.

To make the ultimate determination of whether a hostile environment exists, FXUA will consider a variety of factors related to the severity, persistence, or pervasiveness of the harassment, including but not limited to:

- a) the type, frequency, and duration of the conduct;
- b) the severity and nature of the conduct;
- c) whether the conduct was physically threatening;
- d) the identity and relationships of persons involved;
- e) the number of individuals involved;
- f) the location of the conduct and the context in which it occurred;
- g) whether the conduct interfered with the individual's educational performance, work performance, or participation in FXUA programs or activities and to what degree that interference occurred;
- h) the effect of the conduct on the individual's mental or emotional state;
- i) Whether the conduct occurred in the context of other discriminatory conduct; and
- j) Whether the conduct raises concerns related to academic freedom or protected speech.

The more severe the sex discrimination, the less need there is to show a repetitive series of incidents to find a hostile environment. A single occurrence of sexual assault or violence may be sufficient to create a hostile environment. Similarly, a series of incidents may be sufficient even if the incidents are not particularly severe.

Below are examples of behavior that may constitute sexual harassment and gender-based discrimination:

- Giving someone unwanted gifts of a sexual nature;
- Displaying sexually suggestive or explicit materials;
- Sending sexually suggestive or explicit notes, emails, or other communications;
- Calling someone by a sexually suggestive or demeaning name;
- Touching someone without their consent;
- Brushing up against someone repeatedly;

- Continuing to ask out a person who previously said they are not interested; or
- Exposing your genitals to another person.

## **I) Sexual Violence**

Sexual violence means physical sexual acts perpetrated against a person's will or against a person incapable of giving consent.

## **J) Stalking**

Stalking is engaging in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

Stalking includes "cyber-stalking," which is a particular form of stalking in which a person uses electronic means such as the internet, social networks, blogs, texts, or other similar devices or forms of contact.

### **1) Course of Conduct**

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

### **2) Significant Emotional Distress**

Significant emotional suffering means significant mental suffering or anguish. A person can suffer from significant emotional distress without seeking or requiring mental health assistance.

### **3) Reasonable Person**

Reasonable person means a person under the same or similar circumstances and with similar identities to the victim.

## **K) Unwelcome Conduct**

Conduct is unwelcome if the person did not request or invite it and considered the conduct to be undesirable or offensive.

Unwelcome conduct does not have to include the intent to harm, be directed at a specific target, or involve repeated incidents. Unwelcome conduct can involve persons of the same or opposite sex.

Participation in the conduct or the failure to complain or report the conduct does not mean that the conduct was welcome. The fact that a person welcomed some conduct does not necessarily mean that the person welcomes other conduct. The fact that a person requested or invited conduct on one occasion does not mean that the conduct is welcome in the future.

Unwelcome conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones or the internet), or other conduct that may be physically threatening, harmful, or humiliating.

## **VI) Sex Offender Registry**

The Campus Sex Crimes Prevention Act (CSCPA) was enacted on October 28, 2000, and is a federal law that requires institutions of higher education to issue a statement advising the campus community where information on registered sex offenders in the state of Virginia can be obtained. In Virginia, convicted sex

offenders, and all others who are required, must register with the Virginia State Police. The Sex Offender Registry for the state of Virginia is available [here](#).<sup>4</sup>

CSCPA also requires sex offenders registered in other states to provide notice to the state of Virginia concerning each institution of higher education that the person is employed or enrolled at within the state of Virginia.

## **VII) Individuals with Disabilities**

Fairfax University of America recognizes that there may be circumstances in which a student or employee with a disability may be a victim of Prohibited Conduct, or may be accused of Prohibited Conduct, and will make arrangements to ensure that individuals with disabilities are provided appropriate accommodations, to the extent necessary and available, to aid in understanding and/or complying with this Policy. Any requests for accommodations must be made to the Title IX Coordinator.

## **VIII) Privacy & Confidentiality Policy**

FXUA respects the privacy of its community members. As such, FXUA will make every effort to preserve and protect the privacy of the individuals involved in an incident of Prohibited Conduct. This includes the identities of and information shared by all parties involved in an investigation of an allegation of Prohibited Conduct.

Under this policy privacy and confidentiality are treated differently and have distinct meanings. Strict confidence, and confidentiality, are only available when speaking to Confidential Employees. Confidential Employees cannot reveal information to a third party except when an applicable law or court order requires such a disclosure. Privacy means that the information shared about the alleged Prohibited Conduct will be shared with a limited number of third parties and only when it is deemed absolutely necessary.

### **A) Standard of Privacy**

In order to comply with the Federal Education Rights and Privacy Act (FERPA) and to provide for the consideration of relevant information without undue intimidation or harassment, the investigation and any information related to the complaint are not available to the general public. Those documents that are prepared or received by FXUA, including but not limited to the complaint, written statements, Investigator notes, interim measures, ongoing accommodations, and the final report will not be discoverable or disclosed unless required or authorized by law.

Due to privacy being of the utmost importance to FXUA, information regarding Prohibited Conduct typically will only be disclosed by FXUA personnel as follows:

1. Responsible Employees must report information regarding any alleged Prohibited Conduct to the Title IX Coordinator as soon as is practical after addressing the needs of the victim. The Responsible Employee must report all relevant details about the alleged Prohibited Conduct that have been shared with them.
2. FXUA personnel must handle information regarding Prohibited Conduct in accordance with applicable local, state, and federal laws.
  - a. Under conditions of potential imminent harm to the community, the university may be required by federal law to inform the community of the occurrence of the alleged incident of Prohibited Conduct. FXUA will provide the necessary information to protect the community while making every effort to protect the privacy of the parties involved.
  - b. Under the Clery Act, **anonymous, statistical** information regarding Prohibited Conduct will be compiled for data collection.
3. FXUA personnel may report alleged Prohibited Conduct to local law enforcement if warranted by the nature of the allegations.

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<sup>4</sup> The Sex Offender Registry for Virginia is available here: <https://sex-offender.vsp.virginia.gov/sor/>

- a. Pursuant to Virginia state law, in cases in which the alleged Prohibited Conduct would constitute a felony sexual assault, FXUA will contact the attorney responsible for prosecuting the crime within 24 hours.
  - b. Pursuant to Virginia state law, if FXUA determines that disclosure of an act of sexual violence is necessary to protect the health and safety of the victim or other individuals, FXUA is required to disclose information to local law enforcement. This disclosure will include personally identifiable information.
4. FXUA administrators will share information regarding alleged Prohibited Conduct, where appropriate and necessary, so as to implement temporary measures, address and resolve the complaint, prevent the recurrence of similar Prohibited Conduct, and address the effects of Prohibited Conduct on the parties and the community.

FXUA takes seriously all unauthorized sharing of private information and FXUA will take disciplinary action if unauthorized sharing of information occurs. FXUA is not responsible for and cannot control disclosures made by students or third parties.

## **B) Responsible Employees**

Responsible Employees are required by law to report to the Title IX Coordinator all information they receive regarding an alleged incident of Prohibited Conduct as soon as is practical, but the report **must** be made within 24 hours of receiving the information.

While a Responsible Employee must disclose information to the Title IX Coordinator, they are required to maintain the privacy of the individual and should not disclose any information unless the Title IX Coordinator authorizes such a disclosure.

Responsible Employees are any employees (a) who have the authority to redress sexual violence, (b) who have been given the duty to report to appropriate school officials about incidents of Prohibited Conduct, or any other misconduct by students, or (c) who a student could reasonably believe has the authority or the responsibility.

Failure of a Responsible Employee to report an incident, or incidents, of prohibited Sexual Misconduct that they knew about or should have known about is a violation of this policy and federal law and may result in disciplinary action, up to and including termination of employment.

If an employee has any questions about this policy and its application or is in doubt as to whether certain conduct violates the Sexual Misconduct Policy, they should contact the Title IX Coordinator. For more information about Responsible Employees, refer to Article II, par. III.

## **C) Confidentiality & Professional Counselors**

Members of the FXUA community may discuss any alleged Prohibited Conduct in strict confidence with FXUA's staff and faculty. FXUA does not have licensed professional counselors on staff and students will be given a referral to an outside provider. The university can assist with connecting students to counseling services in the area upon request. If you are struggling with feeling homesick, depressed, anxious, stressed, need advice, or just someone to listen, please contact [studentexperience@fxua.edu](mailto:studentexperience@fxua.edu). All information shared is kept confidential.

## **IX) Risk Reduction & Crime Prevention**

A main priority for FXUA is to ensure the safety and security of all campus facilities at all times. We believe that this responsibility is shared by everyone in the FXUA community. Experiencing Prohibited Conduct is **never** the victim's fault. Only abusers and perpetrators are responsible for the abuse they perpetrate.

The [Rape, Abuse, & Incest National Network](https://www.rainn.org/safety-prevention)<sup>5</sup> and FXUA encourage individuals to adopt strategies that may reduce your risk and give you the confidence to help others:

- **Be alert and aware.** Knowing where you are and who is around you may help you find a way out of a bad situation. Avoid isolated locations when possible because it is difficult to get help when there is no one around.
- **Take precautions after dark.** Use the buddy system/have a friend walk with you. If you are by yourself, ask security to escort you. Security is located on the second floor of the Village Drive building. Security can be reached by phone at (703) 785-8934.
- **Be careful about posting your location.** Many social media sites, like Facebook, Instagram, and Twitter, use geolocation to publicly share your location. [Consider turning this option off and adjusting your privacy settings.](#)<sup>6</sup>
- **Make others earn your trust.** A university environment can create a false sense of security. It may feel like you have found your new best friends, but give people time before relying on them.
- **Have a Plan B.** Have plans for potential situations. If your phone dies, do you have several numbers memorized that you could call? Do you have your address memorized? If you drive, is there a spare key?
- **Walk with purpose.** Even if you don't know where you are going, act like you do.
- **Avoid putting headphones in both ears.** You will be more aware of your surroundings if you can hear everything going on around you.
- **Protect your drink.** Do not leave your drink unattended and try to watch out for your friends' drinks if possible. If you accidentally leave your drink unattended, throw it out. Only drink from unopened containers or drinks you watch being made.
- **Trust your instincts.** If something doesn't feel right, it probably isn't.
- **Make a plan.** If you are going to a social gathering, go with your friends and people that you trust. Arrive together and plan to leave together. Periodically check-in with each other. You can also share your location with the friends you trust so they will be able to find you, and vice versa. [Learn how to share your location with an iPhone.](#)<sup>7</sup> [Learn how to share your location with an Android or Windows Phone.](#)<sup>8</sup> Sharing your location with only those you choose to share it with is not the same as posting your location on social media. Only share your location with those you trust.
- **Put yourself first.** You should never feel obligated to do something you do not want to do. "I don't want to" is a good enough reason. Always do what you feel is right for you and what you are comfortable with doing.
- **Immediately report any suspicious individual or item to security.**
- **In an emergency always dial 911.**

If you are in an uncomfortable or scary situation, here are some ideas to help you get out of the situation:

- **Have a safe word with your friends or family.** If you are in a situation where you do not feel safe then contact your family or friends and communicate to them that you do not feel safe by using the code word. Your family or friends can come get you or provide an excuse for why you need to leave.
- **Lie.** If you feel that you cannot get out of a situation safely by being honest or do not feel comfortable telling the truth, then lie. It is better to lie and make up a reason for leaving than to stay in a situation

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<sup>5</sup> Rape, Abuse, and Incest National Network's website can be accessed here: <https://www.rainn.org/safety-prevention>.

<sup>6</sup> Instructions and advice on how to engage in Social Media Safety can be accessed here: <https://www.rainn.org/articles/social-media-safety>.

<sup>7</sup> Instructions on how to share your location with an iPhone can be accessed here: [https://support.apple.com/kb/PH19426?viewlocale=en\\_US&locale=en\\_US](https://support.apple.com/kb/PH19426?viewlocale=en_US&locale=en_US).

<sup>8</sup> Instructions on how to share your locations with an Android or Windows phone can be accessed here: <http://www.howtogeek.com/228380/how-to-share-your-exact-physical-location-with-family-and-friends/>.

that makes you uncomfortable, scared, or worse. Some excuses are: you need to go take care of a friend/family member/pet, you don't feel well, or have somewhere else you promised you would be.

**Remember that being in this situation is not your fault.** You did not do anything wrong. It is the person who is making you uncomfortable or afraid that is to blame.

## **X) Memoranda of Understanding**

FXUA does not currently have any Memoranda of Understanding (MOU) with any law enforcement agency, state or local. The security personnel at FXUA work closely with the state and local law enforcement agencies.

## **XI) Recordkeeping**

FXUA will keep all records related to the Sexual Misconduct Policy in a locked storage area for a period of eight (8) years, regardless of the outcome of the report or complaint.

The university will destroy all records after the period of eight years.

## **XII) Annual Review**

The Title IX Coordinator will review and update this policy, as appropriate, by September 30<sup>th</sup> each year. To determine what updates may be appropriate for this policy, the Title IX Coordinator will evaluate any changes in legal requirements, existing FXUA and community resources, and complaints and resolutions from the previous academic year.

## **XIII) Filing a Title IX or Clery Act Complaint**

### **A) Title IX Complaint**

If an individual feels that the university is not complying with Title IX they may file a complaint with the Department of Education, Office for Civil Rights (OCR) alleging such. The person or organization filing the complaint does not have to be the victim of sex discrimination, but they must be complaining on behalf of another person/group or be affected by the creation of a hostile environment.

To file a complaint, complete the online form at the Department of Education [website](#), or contact the Office for Civil Rights.<sup>9</sup>

<b>The OCR Office for Virginia:</b> Washington DC (Metro) Office for Civil Rights U.S. Department of Education 400 Maryland Ave., SW Washington, DC 20202-1475 Telephone: 202-453-6020 Email: <a href="mailto:OCR.DC@ed.gov">OCR.DC@ed.gov</a>	<b>The OCR National Headquarters:</b> U.S. Department of Education Office for Civil Rights Lyndon B. Johnson Dept. of Ed. Bldg. 400 Maryland Ave., SW Washington, DC 20202-1100 Telephone: 800-421-3481 Email: <a href="mailto:OCR@ed.gov">OCR@ed.gov</a>
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For more information on how and why to file a Title IX complaint, visit [Know Your Title IX](#).<sup>10</sup>

<sup>9</sup> The online form to file a complaint with the Department of Education can be accessed at: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

<sup>10</sup> The Know Your IX: How to File a Title IX Complaint website can be accessed at: <http://knowyourix.org>.

## **B) Clery Act Complaint**

If an individual feels the university is not complying with the requirements of the Clery Act they may file a complaint alleging such. Anyone may file a complaint if he/she believes that the university is not complying with the Clery Act.

For questions or to file a complaint, email [Clery@ed.gov](mailto:Clery@ed.gov). For more information on how to file a Clery Act complaint, visit [Know Your IX](#).<sup>11</sup>

## **XIV) Notice of Policy**

The Sexual Misconduct Policy will be widely disseminated to the members of the FXUA community and will be consistently and equitably enforced. The policy will be reexamined and updated as appropriate. Training will be provided to employees and students on this policy for the purpose of preventing sexual misconduct and other Prohibited Conduct, raising awareness, and promoting a respectful community. All employees and students are responsible for completing all training that is identified as mandatory.

The Sexual Misconduct Policy does not create a contract and may be changed at any time without consent or prior notice. Any incident of Prohibited Conduct shall be subject to the policy in effect at the time of the alleged Prohibited Conduct. If there was no policy at the time of the incident of Prohibited Conduct, then the most current policy will be applied. If the policy that was in effect at the time of the incident of Prohibited Conduct violates current federal law or guidelines provided by the Department of Education, Office of Civil Rights, then the most current policy will be applied.

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<sup>11</sup> The Know Your IX: How to File a Clery Act Complaint website can be accessed at: <http://knowyourix.org>.

## **ARTICLE II: REPORTING POLICY AND PROCEDURES**

### **I) Overview**

FXUA strongly encourages individuals that have been impacted by Prohibited Conduct to promptly report to the Title IX Coordinator or a Responsible Employee. Prompt reporting allows FXUA to respond immediately to the incident and to provide the impacted individual with resources. However, there is no time limit on when an incident can be reported. An individual does not have to be a student or employee of FXUA to file a complaint.

Different employees on campus have different abilities to maintain confidentiality. All employees are required to keep private any report or information provided to them about an incident of Prohibited Conduct. Responsible Employees are required to report all details of an incident of Prohibited Conduct to the Title IX Coordinator. Professional Counselors are not required to disclose any identifying information unless required by law.

Making a report to FXUA does not require participation in any subsequent FXUA proceedings, nor is a report required for an individual to receive support or remedial measures.

Upon receipt of a report, the university will inform the reporting individuals of their right to file (or to choose not to file) criminal charges, as well as the availability of medical and counseling services, and the availability of interim measures.

***If you have an emergency, dial 911.***

### **II) Professional Counselors**

If a victim is not ready to report an incident of Prohibited Conduct to FXUA administration, they may choose to seek out the assistance of a Professional Counselor.

The university can assist with connecting students to counseling services in the area upon request. If you are struggling with feeling homesick, depressed, anxious, stressed, need advice, or just someone to listen, please contact [studentexperience@fxua.edu](mailto:studentexperience@fxua.edu). All information shared is kept confidential.

### **III) Reporting Options**

An individual has the option to report to FXUA, to local law enforcement, or not at all. An individual may choose to report to FXUA and not local law enforcement. Or to report to local law enforcement and not to FXUA. Or to report to both. Or to make a report anonymously. The decision to report, and to whom, is the individual's decision. FXUA fully supports and respects whatever decision an individual makes, but FXUA encourages prompt reporting that allows for immediate investigation and remedial action.

#### **A) Reporting to FXUA**

##### **i) Reporting to a Responsible Employee**

An individual may report an incident of Prohibited Conduct to a Responsible Employee. A Responsible Employee is any employee who:

- a) Has the authority to redress sexual violence;
- b) Has been given the duty to report to appropriate school officials about incidents of Prohibited Conduct, or any other misconduct by students; or
- c) A student could reasonably believe has the authority or the responsibility to report.

Title IX operates under the theory of “notice.” A school is on notice when a Responsible Employee knew, or should have known, that an incident of Prohibited Conduct has occurred. Responsible Employees must report to the Title IX Coordinator all alleged incidents of Prohibited Conduct that have been reported to them or which they have witnessed. The Title IX Coordinator is required to investigate and take reasonable action to address and remedy the effects of any incidents of Prohibited Conduct.

Responsible Employees are required by law to report to the Title IX Coordinator all information they receive regarding an alleged Prohibited Conduct incident as soon as is practical, but the report **must** be made within 24 hours of receiving the information. While a Responsible Employee must disclose information to the Title IX Coordinator, they are required to maintain the privacy of the parties involved and should not disclose any information to anyone unless the Title IX Coordinator authorizes such a disclosure.

A Responsible Employee will make every effort to inform an individual of the employee’s reporting obligations and ensure that the individual understands the meaning of these obligations *before* any information is revealed. If an individual decides to share information with the Responsible Employee but also wants to maintain anonymity, the Responsible Employee will inform the individual that FXUA will consider the request, but may not be able to honor it. Requests for anonymity are addressed below in Article II, par. V (see page 18), along with other potential requests an individual may make.

A Responsible Employee **will not** pressure an individual to:

- 1) Reveal any information they are not comfortable disclosing;
- 2) Not pursue disciplinary action;
- 3) Discourage them from filing a report with law enforcement;
- 4) Pursue disciplinary action; or
- 5) To file a report with local law enforcement.

A Responsible Employee **will**:

- 1) Honor and support the individual’s wishes while abiding by their obligations as a Responsible Employee;
- 2) Provide the individual with their rights and resources, in writing;
- 3) Provide the individual with information about their options, in writing;
- 4) Provide the individual with a copy of the grievance and disciplinary procedure, in writing;
- 5) Inform the individual that this information will be shared with the Title IX Coordinator; and
- 6) Inform the individual of the next steps that will be taken, in writing.

Failure of a Responsible Employee to report an incident, or incidents, of prohibited Sexual Misconduct that they knew about, or should have known about, is a violation of this policy and federal law, and may result in disciplinary action, up to and including termination of employment.

If an employee has any questions about this policy and its application or is in doubt as to whether certain conduct violates the Sexual Misconduct Policy, they should contact the Title IX Coordinator.

## **ii) Reporting to Campus Security**

All crimes that take place on campus should be reported to the Office of Emergency Management and Campus Security, this includes any Prohibited Conduct. FXUA fully encourages prompt reporting that allows for an immediate investigation. All reports may be made by telephone by calling (703) 507-2180, by email at [reportcrime@fxua.edu](mailto:reportcrime@fxua.edu) or in person at 4401 Village Drive by requesting at the front desk to speak with someone from the Office of Emergency Management.

Fairfax University of America does not employ a dedicated campus law enforcement agency. In the interest of maintaining a safe and secure environment, the university has contracted with a fully licensed security organization to provide armed security guard services to the institution. The guards are considered security personnel for FXUA and they are available on campus during all hours of operation. The guards are considered Responsible Employees and are required to report incidents of Prohibited Conduct.

### **iii) Reporting to a Title IX Coordinator**

If an individual would like to report an incident of Prohibited Conduct directly to the Title IX Coordinator, or a Deputy Title IX Coordinator, they may do so. It is also possible to report an incident by emailing [titleix@fxua.edu](mailto:titleix@fxua.edu).

**Title IX Coordinator**  
**Dr. Amy Buras**  
**Learning Resource Manager**  
Village Drive, 2nd Floor  
Telephone: (703) 865-8736  
**Email:** [aburas@fxua.edu](mailto:aburas@fxua.edu)

**Deputy Title IX Coordinator**  
**Dr. NS Hasan**  
**Executive Dean for Academic Programs/Administration**  
Village Drive, 2nd Floor  
Telephone: (703) 865-6420 ext. 336  
**Email:** [nshasan@fxua.edu](mailto:nshasan@fxua.edu)

**Deputy Title IX Coordinator**  
**George Rado**  
**Accreditation & Regulatory Compliance Officer**  
Village Drive, 2nd Floor  
Telephone: (703) 865-8784 ext. 334  
**Email:** [grado@fxua.edu](mailto:grado@fxua.edu)

### **iv) Anonymous Reporting to FXUA**

FXUA has a web form that allows for anonymous reporting and the web form is easily accessible on the university [website](#).<sup>12</sup> The purpose of anonymous reporting is to allow individuals to take steps to promote safety without self-identifying. Anonymous reporting allows the university is able to keep current and accurate numbers of incidents, and determine if there is a pattern of criminal activity in a certain time period or location on campus, and to react appropriately.

Anonymous reports can also be submitted in writing to any Responsible Employee. However, the level of detail or identifying information regarding the alleged Prohibited Conduct will determine the FXUA's ability to thoroughly investigate and respond to the report.

## **B) Reporting to Local Law Enforcement**

***If you have an emergency, dial 911.***

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<sup>12</sup> Anonymous reporting is accessible here: <https://www.fxua.edu/our-university/about-fxua/institutional-effectiveness/title-ix-at-fxua/submitting-a-report/anonymous-reporting-tool/>

An individual may choose to make a report to local law enforcement. In the case of an emergency, **always dial 911**. The contact information for local law enforcement is below for non-emergency situations. For all emergency situations, **dial 911 immediately**.

**City of Fairfax Police Department**

10455 Armstrong St.,  
Fairfax, VA 22030  
Dispatch: (703) 385-7924

**Fairfax County Police Department**

Fair Oaks District Police Station  
12300 Lee Jackson Memorial Hwy,  
Fairfax, VA 22033.  
Dispatch: (703) 691-2131 (703) 591-0966

The security personnel at FXUA work closely with state and local law enforcement agencies, but FXUA does not currently have any signed MOUs with these entities.

The report of or filing of a complaint of Prohibited Conduct under the Sexual Misconduct Policy is independent of any criminal investigation or proceeding. FXUA will not wait for the conclusion of any criminal investigation or proceeding to commence its own investigation or to put in place interim measures. FXUA's investigation may be temporarily delayed to allow the gathering of evidence for a criminal investigation at the request of law enforcement. If FXUA's investigation is delayed so as not to compromise any criminal investigation, FXUA will take interim measures to ensure the safety of the reporting individual and the FXUA community. In the event that FXUA's investigation is delayed by a criminal investigation, the Title IX Coordinator will contact the necessary parties to inform them of the delay and what measures are being taken during this period.

The standards for finding a violation of criminal law are different from the standards for finding a violation under this policy. As a result of this difference, FXUA will investigate an incident and may pursue disciplinary action even if law enforcement agencies lack sufficient evidence of a crime or declines to prosecute. FXUA's resolution of an incident of Prohibited Conduct may differ from the resolution of a criminal investigation. If FXUA learns that a court has entered a lawful order relating to any incident of Prohibited Conduct, such as a protective order or a restraining order, the Title IX Coordinator will review the order and take actions to comply with the applicable law.

Prohibited Conduct may constitute both a violation of the Sexual Misconduct Policy *and* criminal activity. FXUA encourages students to report Prohibited Conduct to the university, as well as the Fairfax County Police Department. An individual can pursue both a FXUA disciplinary action and a criminal investigation. Nevertheless, an individual is not required to report the incident to local law enforcement. FXUA respects the choice of an individual to not report to local law enforcement, however, FXUA may be required to notify law enforcement under Virginia law.

Upon request, FXUA will provide assistance to an individual that wishes to make a report to local law enforcement. Individuals will be informed of this option and the resources available to them.

#### **IV) Duty to Investigate**

Title IX operates under the theory of "notice." A school is on notice when a Responsible Employee knew, or should have known, that an incident of Prohibited Conduct has occurred. If FXUA is aware of, or reasonably should be aware of, any conduct that could create a hostile environment (such as an incident of Prohibited Conduct) then FXUA will investigate the conduct and take any steps necessary to eliminate its effects and remedy the harm caused. FXUA is obligated to investigate any conduct that may create a hostile environment, regardless of whether a report has been made to FXUA.

To meet this obligation, FXUA may consider and engage in broader remedial action. Broader remedial action includes, but is not limited to, increased monitoring of campus, enhanced security at locations where Prohibited Conduct is reported to have occurred, increasing education and training efforts, or revising policies and practices. Any report of Prohibited Conduct may trigger a broader examination of past reports, including anonymous reports, in an effort to identify serial perpetrators.

All reports and known incidents of Prohibited Conduct will be reviewed by FXUA on a case-by-case basis, in the totality of the circumstances.

## **V) Requests**

Making a report to FXUA does not require participation in any subsequent FXUA proceedings, nor is a report required in order for an individual to receive support or remedial measures. When information regarding an alleged Prohibited Conduct is disclosed to a Responsible Employee, the Responsible Employee must report that information to the Title IX Coordinator as soon as is practical after taking care of the needs of the person reporting.

A person may disclose an incident to a Responsible Employee but may:

- 1) Request to remain anonymous;
- 2) Request that no investigation into the incident be conducted or refuse to cooperate with an investigation;
- 3) Request that the Respondent not be notified;
- 4) Request that no disciplinary action be taken against the Respondent; or

FXUA takes these requests very seriously and will make every effort to honor them. However, any such request may hinder FXUA's ability to conduct an investigation into the incident, pursue disciplinary action against the Respondent, provide remedial measures, or remedy the effects of the incident. Therefore, FXUA must weigh any requests against the ongoing obligation to provide a safe and nondiscriminatory environment to the FXUA community. The Responsible Employee or Title IX Coordinator will inform the individual making any of the above requests of FXUA's limitations when honoring such requests.

The Title IX Coordinator has the authority to evaluate any request and may seek input from any person(s) deemed appropriate to render a decision. There may be times when FXUA is unable to honor these requests. If FXUA is unable to honor any request that is made the Title IX Coordinator will inform the individual who made the request. Regardless of what an individual chooses to do, information about on-campus and community resources will still be made available.

Any request will be weighed against the following factors:

- a) The seriousness of the alleged Prohibited Conduct;
- b) The pervasiveness of the alleged Prohibited Conduct;
- c) The victim's age;
- d) The Respondent's age;
- e) Whether there have been other complaints of Prohibited Conduct against the Respondent; and
- f) The applicability of any laws surrounding the incident.

FXUA will take prompt action to limit the effects of the alleged Prohibited Conduct and to prevent its recurrence in cases when FXUA is unable to take disciplinary action against the Respondent due to a refusal to file a complaint or participate in an investigation.

Regardless of any request made, FXUA will always be mindful of an individual's wellbeing and safety. Therefore, FXUA will take the following steps, as needed:

- a) Assist the individual in accessing available victim advocacy; academic support; counseling; disability, health, or mental health services; and other assistance, both on- and off-campus;
- b) Inform the individual of the right to file a complaint with FXUA or report a crime to local law enforcement, and provide the individual with assistance if they wish to file a report;
- c) Inform the individual of their rights and provide them with a written copy of these rights; and
- d) Take prompt action to limit the effects of the alleged Prohibited Conduct and prevent its recurrence.

The report and other information regarding the alleged Prohibited Conduct may be used in the anonymous data collection required under the Clery Act regardless of whether a request is honored.

## **VI) Timeframe for Reporting**

Fairfax University of America does not impose a time limit for reporting or filing a complaint. However, FXUA encourages reports to be made as soon as reasonably possible following an incident so as to enable FXUA to gather adequate information. The earlier an incident is reported, the easier it is to collect valuable evidence and investigate the incident. FXUA's ability to adequately gather information may be limited if a significant period of time has elapsed. Promptly reporting or filing a complaint, when possible, can assist in preserving evidence for potential legal proceedings and investigations.

FXUA's ability to complete an investigation and come to a resolution may be limited if Respondent(s) are no longer enrolled or employed at FXUA. If the Respondent is no longer enrolled or employed at FXUA, then FXUA will provide all reasonable remedial measures, assist the victim in identifying external reporting options, and take steps to prevent the recurrence of such conduct and remedy the effects.

## **VII) Limited Amnesty and Related Misconduct**

Fairfax University of America encourages the reporting of all potential violations of Prohibited Conduct. FXUA does not condone underage alcohol consumption or the use of illegal drugs. However, because it is of the utmost importance of FXUA to protect the wellbeing of its students and employees, FXUA may extend limited amnesty from disciplinary action for the illegal consumption of alcohol or illegal drug use by victims, witnesses, and those reporting incidents or assisting victims of Prohibited Conduct. These individuals must have acted in good faith, and any such violation must not have placed the health or safety of any other person(s) at risk. The Title IX Coordinator, or a designee, will determine if amnesty will be applied and to what extent.

Alcohol and drug amnesty is intended to encourage students and employees to seek assistance for themselves and others by reducing the fear of facing FXUA's Students Rights & Responsibilities Policy/Employee Handbook Policies for such conduct. It is an attempt to remove barriers that may prevent an individual from reporting, seeking medical assistance, or other assistance.

FXUA may choose to adjudicate alleged misconduct or actions that are related to the Prohibited Conduct at issue, even if such misconduct or actions are not, by themselves, governed by this policy. This policy does not grant amnesty for criminal, civil, or other legal consequences for the violation of local, state, or federal laws.

## **VIII) Providing False Information**

All information provided to FXUA will be taken seriously and investigated fully. Any individual who knowingly submits a complaint that is not in good faith or provides false or misleading information in any report, complaint, investigation, or resolution of a complaint will be subject to disciplinary action. Submitting false information can have serious consequences and as such FXUA takes the submission of false information very seriously.

## **IX) Minors**

Victims under the age of 18 who file a report with campus police will be deemed a “child in need” and the appropriate authorities will make a decision of whether to pursue charges. Refer to Virginia Code [16.1-278](#) for further information.<sup>13</sup>

## **X) Awareness Programs**

Any public awareness event, such as candlelight vigils, protests, or other gatherings where members of the FXUA community might disclose incidents of Prohibited Conduct, are not considered notice for the purpose of triggering FXUA’s obligation to investigate an incident of Prohibited Conduct.

However, these events and the disclosures made at these events will be used to inform FXUA about the campus atmosphere and the need for campus-wide education and prevention efforts. FXUA will also distribute information about Title IX, the Clery Act, and the Sexual Misconduct Policy at these events.

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<sup>13</sup> Virginia Code § 16.1- 278.4. Accessible here: <http://law.lis.virginia.gov/vacode/title16.1/chapter11/section16.1-278.5/>.

# **ARTICLE III: GRIEVANCE AND DISCIPLINARY POLICY AND PROCEDURES**

## **I) Introduction**

When an incident of Prohibited Conduct is reported, this policy will be utilized to eliminate, prevent, and address sex discrimination and its effects; as well as provide a prompt and fair investigation and resolution of Prohibited Conduct cases. FXUA must promptly investigate and resolve any cases of sex discrimination, regardless of whether a report is made with FXUA under this policy.

FXUA's investigation into Prohibited Conduct is different from any law enforcement investigation. A law enforcement investigation does not relieve FXUA of its obligation to investigate and resolve the incident and its effects. All reports will be reviewed by FXUA on a case-by-case basis, in the totality of the circumstances.

The Title IX Coordinator is responsible for overseeing the prompt, fair, and impartial investigation and resolution of all Prohibited Conduct incidents reported to the university. Any question regarding the interpretation and application of this policy shall be referred to the Title IX Coordinator. The Title IX Coordinator may designate a Deputy Title IX Coordinator to serve as the Title IX Coordinator for any procedures outlined in this policy.

The university will provide any individual who has been a victim of Prohibited Conduct with any available resources and inform them of the community resources available to him/her. The procedures included in this policy are intended to afford a prompt and fair response to all known incidents of Prohibited Conduct, maintain the privacy of all parties involved consistent with the applicable legal requirements, and impose sanctions on violators of this policy in accordance with the egregiousness of the Prohibited Conduct and its effects on the victim.

## **II) Interim Measures**

FXUA may determine it is necessary to enact interim (meaning temporary) measures at any time during the investigation. Interim measures are intended to eliminate the Prohibited Conduct, prevent the recurrence of Prohibited Conduct, and remedy the effects of such conduct while the investigation and other procedures are taking place. These measures may be both remedial or protective and are designed to address the safety and well-being of all parties involved in the incident and the FXUA community, and to provide for the continued access to educational opportunities.

These measures are available regardless of what an individual chooses to do under this policy. Upon receiving a report of alleged Prohibited Conduct, the reporting individual will be provided with a written explanation of interim measures available, report and complaint options, and on- and off-campus resources. If the victim requests an interim measure that is not already being provided or is not listed below, the Title IX Coordinator will consider the request and determine whether it is appropriate on a case-by-case basis. The Title IX Coordinator has the discretion to impose or modify any interim measures and is available to meet with any parties involved to address any concerns or questions about the measures.

FXUA will maintain the privacy of all parties involved to the extent that it is practical to do so. The Respondent and other parties will be informed of interim measures to the extent necessary to ensure that the measures are complied with. The violation of any interim measures will be considered a violation of this policy and is subject to disciplinary action under the Sexual Misconduct Policy. The Title IX Coordinator will address the violation of any interim measures.

Interim Measures include, but are not limited to:

- No contact orders;
- Academic accommodations;
- Changes in supervisor or work location;

- Social restrictions;
- An escort to ensure safe movement between classes;
- Increased campus security;
- Increased monitoring or supervision;
- Assistance in arranging for alternative FXUA student employment;
- Change in work schedule; and □ Change in academic class schedule.

FXUA will provide interim measures to third parties (third parties are anyone who has been affected by the Prohibited Conduct but are not the victim or the Respondent) as appropriate and available. The availability of measures for third parties will be determined based on the role of the third party, the actions of the Respondent, and the nature of the relationship between the third party and FXUA.

When a Professional Counselor requests any of the above measures, or any other measure, on behalf of an individual without disclosing that Prohibited Conduct has occurred and is the basis of the request, then the Title IX Coordinator will consider those requests within the framework of general FXUA policies and with the acknowledgment that counselors can seek assistance for victims of trauma without being required to disclose any information.

Because interim measures are intended to protect and support all parties involved in the student conduct process and the university community, any interim measures put in place during the sexual misconduct proceeding may be continued regardless of a finding of responsibility against the responder or other party.

Interim measures should be requested in writing; this includes through email. The university may choose to implement interim measures even if a party does not request any interim measures.

### **A) No Contact Orders**

A no contact order is a bilateral order which mandates that none of the parties listed in the order may communicate with each other. Prohibited communication includes in-person communication, electronic communication of any kind, and communications through third parties. Other restrictions may be included on a case-by-case basis, such as a minimum distance requirement. The no contact order is in effect both on- and off-campus.

If a No Contact Order is issued, it will remain in effect until it is determined that is no longer necessary. The termination of the No Contact Order is at the discretion of the university.

A No Contact Order is not a disciplinary sanction. However, failure to abide by a No Contact Order will be addressed immediately by the university and may result in further interim measures, which could include removal from or restriction on campus or other remedies, and may result in disciplinary sanctions and a conduct record.

Generally, the following steps will be taken if a No Contact Order is violated:

- 1) A Written Warning will be issued to the violating party;
- 2) A Written Final Warning will be issued to the violating party;
- 3) The violating party will be suspended until the completion of the investigation.

Depending on the severity of the violation, the university may, at its discretion, skip steps (1) or (2).

## **III) Report Review & Initial Determination**

The Title IX Coordinator will review a report of alleged Prohibited Conduct within one (1) day of the report being submitted to a Title IX Coordinator.

After reviewing the report, the Title IX Coordinator will make an initial determination as to whether the alleged conduct, if true, would constitute a violation of the Sexual Misconduct Policy. The Title IX Coordinator will make an initial determination within two (2) days of receiving the report.

If the initial determination is that the allegations, if true, would be a violation of the Sexual Misconduct Policy, the Title IX Coordinator will send a Notice of Investigation to the relevant parties within one (1) day of making the initial determination.

If the Title IX Coordinator's determination is that the alleged conduct would not be a violation of the Sexual Misconduct Policy, then the Title IX Coordinator will inform all parties involved within one (1) day of the initial determination. The adversely effected party may appeal for reconsideration. Any such appeal must be submitted to the Title IX Coordinator in writing within three (3) days of the parties being informed and must meet the requirements of an appeal. For more information about the appeals process, refer to Article III, par. XIII (see page 31).

A Violence Prevention and Evaluation Committee (VPE Committee) may be required under Virginia state law.<sup>14</sup> If so, the Title IX Coordinator will convene and promptly forward all known information about the incident to the VPE Committee after the Initial Review of the report/complaint. For more information about the VPE Committee, refer to Article III, par. XVI (see page 36).

#### **IV) Notice of Investigation**

If the initial determination is that the allegations, if true, would be a violation of the Sexual Misconduct Policy, the Title IX Coordinator will send a Notice of Investigation to the relevant parties within one (1) day of making the initial determination.

The Notice of Investigation will inform the parties that the university will be conducting an investigation into the incident, and contain the following information:

- What the allegations are;
- Information about an advisor;
- Request to schedule a meeting;
- Information on submitting a written statement and the names of individuals with information about the incident;
- Reminders about interim measures if any have been put in place; and
- Any other information that is relevant.

#### **V) Meeting with a Title IX Coordinator**

The Notice of Investigation will contain a request for a meeting. The Title IX Coordinator will meet with each person individually unless the individual brings an advisor. The meeting is meant to gather information about the incident, inform the individual about their options, and what, if any, interim measures need to be put in place that have not already been put in place. An individual is not required to meet with the Title IX Coordinator, however, it is in their best interest to do so, so as to provide a more complete picture of the alleged incident. An individual will not be penalized for not scheduling a meeting with the Title IX Coordinator, however, a notation will be made in the investigative file that the individual has chosen not to meet with the Title IX Coordinator. The meeting will be conducted in a trauma-sensitive manner, as appropriate.

During this meeting, the Title IX Coordinator will, as appropriate:

- a) Provide a copy of the Sexual Misconduct Policy, in writing;
- b) Provide information on how to file a report with local law enforcement;
- c) Provide a copy of their rights, in writing;
- d) Provide information on how to obtain a civil protection order;
- e) Explain the potential outcomes of the investigation and grievance procedure process;
- f) Explain the next steps of the investigation and grievance procedure process;

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<sup>14</sup> Virginia Code § 23.1- 805, accessible here: <http://law.lis.virginia.gov/vacode/title23.1/section23.1-805/>. and Virginia Code § 23.1- 806, accessible here: <http://law.lis.virginia.gov/vacode/title23.1/section23.1-806/>.

- g) Discuss potential interim measures that could be provided during the investigation and grievance procedure process. Interim measures will be put in place as appropriate and reasonably available;
- h) Provide information about campus and community resources, in writing;
- i) Discuss retaliation and how to report it;
- j) Discuss privacy standards and concerns. Parties are free to share their own experiences regarding the report/complaint. Parties are not free to share any information they learn through the investigative process. However, sharing any information regarding the incident can potentially compromise the integrity of the investigation and grievance procedure, thus it is advisable that parties limit the number of people with whom they share information and confide in. Parties will be informed that sharing information could be construed as retaliation.

Following the initial meetings, the Title IX Coordinator will determine whether it is appropriate to implement any Interim measures not already in place and that have not been requested by an individual, or to revise any interim measures that are already in place. Any changes will be communicated to the affected parties.

## **VI) Informal Resolution**

An Informal Resolution is a voluntary alternative approach designed to address Prohibited Conduct and its effects without taking disciplinary action against the Respondent. An Informal Resolution does not result in a finding of Responsibility.

A victim, or reporter, may request, in writing, for an Informal Resolution. This request should be submitted after a report has been made to FXUA. The Title IX Coordinator will review the request and all other known information about the alleged incident, consider the severity of the alleged Prohibited Conduct, and the potential risks to others in the FXUA community to determine if an Informal Resolution is appropriate.

An Informal Resolution is not available for any incident of Prohibited Conduct that involves sexual violence or physical violence of any kind.

An Informal Resolution may be appropriate if:

- A) The victim or reporter requests it;
- B) The Respondent agrees to the Informal Resolution;
- C) Both parties are students;
- D) The Title IX Coordinator determines that an Informal Resolution is an appropriate method for resolving the incident; and
- E) The incident does not involve allegations of sexual violence or physical violence.

If an Informal Resolution is deemed appropriate, the mediator will consult with the individual that has requested the Informal Resolution so as to determine their desired outcome. Once the desired outcome is clear, the mediator (who will be designated by the Title IX Coordinator) will inform the Respondent and gather additional information as required. Interim measures may be enacted, as appropriate, during the Informal Resolution process.

The mediator will aid the parties in finding a mutually agreeable outcome. If an agreement is reached between the parties, it will be put into writing and signed by both parties and the mediator. The incident will be considered resolved if both parties find the outcome agreeable and the Title IX Coordinator approves of the final outcome.

The Informal Resolution process can be terminated by either party at any point before reaching a written, signed agreement. The Title IX Coordinator may terminate the Informal Resolution process at any point before an express agreement is reached and initiate the investigative process instead. In the event that the Informal Resolution process is terminated, all disclosures and statements made during the Informal Resolution process may be considered in the investigative process.

## **VII) Investigation**

If the initial determination is that the alleged Prohibited Conduct, if true, would be a violation of the Sexual Misconduct Policy, then the Title IX Coordinator will appoint an Investigator to assist in conducting the investigation. The name and contact information of the Investigator will be shared with all parties. Title IX Investigators (Investigator) conduct thorough and impartial investigations into the facts of a case which includes interviewing the victim, Respondent, witnesses or others who may have relevant information, and collecting any other evidence deemed relevant to a case. The Investigator may be the Title IX Coordinator, Deputy Title IX Coordinator, or any other individual that is qualified.

If the Respondent acknowledges responsibility for the alleged incident of Prohibited Conduct, then there will be no further investigation. Instead, the process will move forward towards completing the Final Report.

The Investigator must remain neutral at all times. If a party has a basis to believe that an Investigator has a personal bias, a conflict of interest, or is otherwise unable to be fair or impartial to the party, they must promptly notify the Title IX Coordinator and the Department of Institutional Effectiveness in writing and **before** the conclusion of the investigation. While the notification must occur before the conclusion of the investigation, the notification can occur at any time before the conclusion. The party must include the basis for their belief in this notification. The Title IX Coordinator and the Department of Institutional Effectiveness will evaluate and respond to the information submitted by the party.

An investigation into the alleged Prohibited Conduct is to determine if a violation of the Sexual Misconduct Policy has occurred, the extent of any risk of ongoing or repeated harm, whether additional protective measures need to be enacted, and if changes of policy, practices, and training should be evaluated and implemented.

### **A) Investigative Process & Procedures**

If the Title IX Coordinator determines that the alleged conduct, if true, would constitute a violation of the Sexual Misconduct Policy then the Investigator will promptly begin their investigation. The Investigator has the discretion to determine what is and is not relevant, and what should be included in the investigative file and report.

The Investigator will contact all parties to conduct separate interviews. To facilitate the scheduling of these interviews, the Investigator will be provided with the class schedules of parties, as applicable. To ensure a prompt and equitable investigation, all parties are expected to adhere to deadlines set by the Investigator.

The Investigator will take steps such as:

- i) Interviewing all parties;
- ii) Interviewing any witnesses;
- iii) Reviewing law enforcement investigation documents where available;
- iv) Reviewing student and personnel files;
- v) Gathering and reviewing any other relevant documents or evidence; and
- vi) Visiting, inspecting, and taking photographs of relevant sites.

The Investigator will review all of the material information available and make a recommendation that will be included in the investigative file and report.

#### **1) Notice**

All parties will be provided with at least two (2) days' notice of interviews, meetings, or other proceedings. The notice will include, as applicable, the date, time, and location of the interview, meeting, or proceeding. If a party makes a request to meet within forty-eight (48) hours of the meeting, a notice will not be sent out but a confirmation of the meeting time and place will be.

## **2) Failure to Appear**

If a party fails to attend any interview, meeting, or proceeding and the party was provided with proper notice of the meeting, absent any extenuating circumstances or prior request, then a notation of this absence will be made, and the investigation will proceed so as to determine the resolution of the incident.

## **3) Evidence**

All parties will have an equal opportunity to provide information and present evidence related and material to the incident.

Information that is not permitted as evidence:

- a) An individual's manner of dress, style, or attire;
- b) Character assessments;
- c) Information from a third-party investigator; or
- d) Information regarding an individual's prior, or current, sexual history unless the individual makes a specific claim about his/her sexual history.

Information that is permitted as evidence:

- a) Evidence that the reporter has previously been disciplined for falsely filing complaints alleging that a violation of the Sexual Misconduct Policy has occurred;
- b) Evidence that shows the Respondent has previously been convicted in a criminal proceeding or found responsible by the university for Prohibited Conduct; or
- c) Evidence that shows the Respondent has previously had complaints filed against her/him but was not found to be responsible for the Prohibited Conduct, provided that the Investigators are able to verify that the information is reliable and trustworthy, and that the previous conduct is sufficient and substantially similar enough to the conduct at issue in the current report to suggest a pattern of behavior.

## **4) Accommodations**

As stated above, the university will provide any disability-related accommodations as appropriate. In addition to these accommodations, parties may request accommodations in connection with the investigation. This request must be submitted in writing to the Title IX Coordinator. The Title IX Coordinator will determine if these requests will be granted and his/her decision is final. The Title IX Coordinator may also determine that accommodations may be necessary even when they have not been requested, in this situation these accommodations will be discussed with the effected party.

## **B) Investigative File**

As soon as is practical, the Investigator will turn over the investigative file and report to the Title IX & Coordinator. The investigative file and report will include all evidence and documentation regarding the incident. The investigative file and report will also include the Final Sanctions form, which includes the recommended sanctions, as well as the rationale for the findings and recommended sanctions, as appropriate.

## **VIII) Final Determination**

Within seven (7) days of receiving the investigative file and report the Title IX Coordinator, or their designee, will make a final determination as to whether the Respondent is Responsible for the alleged Prohibited Conduct and determine the appropriate sanctions, as applicable. The Title IX Coordinator will review all of the information contained within the investigative file and report, and apply a preponderance of the evidence standard, in the totality of the circumstances.

If the Title IX Coordinator has any questions or concerns regarding the materials contained within the investigative file and report, the Title IX Coordinator may reach out to the Investigator or any of the involved parties for clarification. In this situation, all correspondence and information obtained from these questions or any clarification sought will be documented in an addendum to the investigative file and report.

## **IX) Final Report**

Within one (1) day of the final determination, the Title IX Coordinator will provide all parties with a copy of the Final Report. All parties will be provided with the Final Report at approximately the same time.

The Final Report will include, but is not limited to:

- The findings of fact for each alleged violation;
- Application of the Preponderance of the Evidence Standard to the findings of fact, unless some other evidentiary standard is mandated by the U.S. Department of Justice;
- Determination of whether the Respondent is responsible for the Prohibited Conduct and the rationale for that determination;
- The sanction(s) imposed on the Respondent if a finding of responsibility is found and the rationale of the sanctions imposed;
- Any protective measures or additional remedies put in place to remedy the effect of the conduct;
- The interim measures that were put in place during the investigation and whether those interim measures will be continued or discontinued;
- Information on how to file an appeal and any other relevant and material information.

## **X) Advisors**

Any individual included in a Prohibited Conduct proceeding may bring an advisor for support to any interview, meeting, or other proceeding under this policy. If an individual chooses to hire an advisor, they do so at their own expense. If a chosen advisor is a FXUA employee there is no cost; however, in general, employees are under no obligation to perform advisor duties. An individual may choose anyone to be their advisor, however, there are some restrictions.

To be an individual's advisor, the advisor cannot:

- a) Have any firsthand knowledge of the incident;
- b) Be a Title IX Coordinator or Deputy Title IX Coordinator; or
- c) Be involved in the proceedings in any capacity.

An advisor must maintain complete confidentiality regarding any and all communications exchanged and information learned about the incident or parties. Timelines and deadlines will not be altered to accommodate an advisor's schedule. If an advisor becomes disruptive or disrespectful during any interview, meeting, or proceeding, they may be asked to leave. If the advisor will not leave when asked, they will be removed.

During the proceedings the advisor may:

- a) Consult with the advisee he/she is there to support; and
- b) Offer feedback on an advisee's written statements.

During the proceedings the advisor cannot:

- a) Participate by asking or answering questions;
- b) Make statements to the Investigator;
- c) Interview any witnesses; or
- d) Have any kind of speaking role except to speak directly to their advisee.

## **XI) Sanctions**

If it is determined that the alleged Prohibited Conduct has occurred and finds the Respondent responsible for the Prohibited Conduct, the Title IX Coordinator may impose any sanction, or combination of sanction(s), that is fair and proportionate to the violation. To determine the appropriateness of a sanction, the following factors may be taken into consideration:

- a) The nature of the Prohibited Conduct;
- b) Any record of past violations by the Respondent;
- c) Any past accusations of prohibited conduct against the Respondent;
- d) Whether the sanction will bring an end to the violation in question;
- e) Whether the sanction will reasonably prevent a recurrence of a similar violation;
- f) Whether the sanction will remedy the effects of the violation on the victim and the FXUA community; and
- g) Any other aggravating, mitigating, or relevant factors.

Any sanction imposed on the Respondent will be described and included in the written decision of the Final Report. The failure to abide by, or complete, any sanction(s) imposed will result in additional sanction(s) that are unable to be appealed by the Respondent. This includes any failure to comply with the directions of a FXUA official that is acting within their role as a FXUA official.

Any of the following sanction(s), or combinations of sanction(s), may be imposed for any prohibited conduct violation. Disciplinary action other than those outlined below may be taken as the situation warrants. Sanctions are intended to eliminate, prevent, and address sex discrimination and its effects, and to remedy the effects of the Prohibited Conduct on the effected individual and the FXUA community.

### **Sanctions for Prohibited Conduct (Excluding Sexual Assault):**

1. **Written Statement.** A written statement that he/she has violated institutional rules and an acknowledgment that the continuation or repetition of inappropriate conduct will be cause for more severe disciplinary action.
2. **No Contact Order:** Prohibition of contact between a Respondent and victim including, but not limited to, in person and/or via third party, phone, text, or any form of social media. The No Contact Order may be indefinite or for a specific period of time. The length of the No Contact Order will be detailed in the Final Report.
3. **Change of Office Area:** Requires the relocation of the Respondent from one office area to another. The victim will only be relocated if they request to be relocated instead of having the Respondent relocated.
4. **Change of Academic Schedule:** The Respondent's academic schedule is changed so as to avoid, or minimize, contact with the victim. The victim's academic schedule will only be changed if they request to have their schedule changed instead of having the Respondent's schedule changed.
5. **Trespass Order:** The Respondent is prohibited from visiting or returning to part or all of any designated area of campus and any FXUA functions or activities. If the individual returns, he/she is subject to arrest by local law enforcement.
6. **Temporary Trespass Order:** The Respondent is prohibited from visiting or returning to part or all of any designated area of campus and any FXUA functions or activities for a specific period of time. If the individual returns before the end of that specific time period, he/she will be subject to further disciplinary action, legal action, and/or arrest by local law enforcement. The specific period of time will be detailed in the Final Report.

7. **Revocation of Honors or Awards:** The Respondent is stripped of any honors or awards they have received from FXUA. This may include their degree.
8. **Evaluation by Health or Mental Health Professional:** A requirement that the Respondent be evaluated by a health or mental health professional and comply with any treatment recommendations prior to returning to FXUA (if a period of suspension is imposed) or as a condition of continued enrollment/employment at FXUA (if a period of suspension is not imposed).
9. **Education:** The Respondent must complete educational training.
10. **Community Restitution:** The assignment of service hours and/or participation in educational programs or projects either on-campus or in the community.
11. **Loss of Privileges:** Restricting use of or loss of campus privileges.
12. **Disciplinary Probation:** Indicates the Respondent is not in “good standing” with FXUA for a period not exceeding one academic year. Note: This may result in exclusion from participation in privileged or extracurricular FXUA activities. The terms of the probation will be included in the Final Report.
13. **Suspension:** Suspension from all classes, including on-line, work, and other privileges or activities for a designated period of time.
14. **Expulsion:** Termination of Respondent’s student status at FXUA.
15. **Termination of Employment:** Termination of Respondent’s employee status with FXUA.

#### **Minimum Sanction(s) for Sexual Assault:**

1. **Suspension:** Suspension from all classes, including on-line, work and other privileges or activities, or from FXUA for a designated period of time; or
2. **Expulsion:** Termination of Respondent student status at FXUA; or
3. **Termination of Employment:** Termination of Respondent employee status with FXUA.

Any sanction(s) imposed will take effect five days after the release of the Final Report to all parties. If an appeal of the Final Report is filed, any sanction(s) imposed will not take effect until the appeal is finalized.

However, if it is determined that it is necessary to protect the welfare of the victim or the FXUA community, then the sanction(s) may take effect immediately and continue to remain in effect until the appeal is resolved. If it is determined that the sanction(s) should take effect immediately then an addendum will be added to the Final Report to reflect this decision and all parties will be immediately notified. If it has been determined that the appropriate sanction is expulsion or termination of employment, these sanctions may not take effect until the end of the appeal process. Other FXUA officials may be informed of the Final Report and the imposed sanctions so that the sanctions can be properly implemented. Regardless of any determination as to whether the sanction(s) should take immediate effect, the Title IX Coordinator may implement any temporary measures deemed appropriate until the appeal process is concluded or until the sanctions take effect.

If the matter is appealed, the appointed Appeals Officer may suspend the enacted sanction(s) by the Title IX Coordinator; or allow the Respondent to attend work, classes, or other activities on a supervised or monitored basis; or make any other modifications deemed advisable until the appeal process is concluded.

If the sanction imposed is expulsion or termination of employment, the President of the university, or his designee, will review the expulsion regardless of whether the Final Report is appealed.

## **XII) Transcript Notation**

Section § 23.1-900 of Virginia Code requires that a Respondent suspended for, expelled for, or withdrawn from FXUA while under investigation for a violation of this policy that involves sexual violence will have a hold or prominent notation on their academic transcript indicating said suspension, expulsion, or withdrawal.<sup>15</sup>

Special notations may also be applied depending upon specific circumstances in which a specific violation of the university's policies occurred. The notation would include the following type of statement, "[Suspended, Dismissed, or Withdrew while under investigation] for a violation of [insert name of institution's code, rules, or set of standards]." Refer to the Non-Academic Misconduct section of the catalog for further information.

### **Documentation of Non-Academic Misconduct**

While all prohibited behaviors should be avoided by members of the learning community, some prohibited behaviors represent more egregious actions than others. Such egregious activities represent significant departures from the values and philosophy of the university and require formal and more permanent actions that highlight this violation. If egregious violations are alleged, it may require the sitting of an Institutional Grievance Panel, unless governed by a pre-established body under another section of the Academic Catalog. The Office of Institutional Effectiveness will communicate to the student regarding the results of the Panel and will inform the student that documentation will be made on the transcript.

### **Non-Academic Misconduct Requiring Documentation**

When the university formally deems an action to be of an egregious nature, specific notation is made on the transcript highlighting the misconduct. The notation would include the following statement, "[Suspended, Dismissed, or Withdrew while under investigation] for a violation of [insert name of institution's code, rules, or set of standards]."

Section § 23.1-900 of Virginia Code requires that notation of suspension, permanent dismissal, or withdrawal from the institution while under investigation because of an act of sexual violence be documented on the transcript.

### **Removal of Notations of Non-Academic Misconduct**

Notations of non-academic misconduct can be removed under the following circumstances:

- **Completion of any formal non-academic conduct probation:** A student who may be placed on a formal non-academic probation, and successfully completes those requirements pursuant to the parameters of the probation and has been deemed to be in good standing.
- **Completion of a formal suspension:** A student completes a formal suspension and has completed all conditions of that suspension and has been deemed to be in good standing.
- **Absolution of the offense:** If a student who has been accused of non-academic misconduct is found to have been absolved of the misconduct or to have subsequently been found to not have committed the.

## **XIII) Appeal**

All appeal decisions are final.

The victim or Respondent may file an appeal of the decision stated within the Final Report. The appeal must be filed within five (5) days of the Final Report becoming available to the parties. If an appeal is filed, the Title IX Coordinator will designate an individual as the Appeals Officer. The Appeals Officer will not be an individual that has participated in any proceeding surrounding the original complaint. The Appeal Officer will be reviewed for any potential conflicts.

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<sup>15</sup> Virginia Code § 23.1-900. Accessible here: <http://law.lis.virginia.gov/vacode/title23.1/section23.1-900/>

The appeal must be in writing (this includes email) and addressed to the Title IX Coordinator. The individual who submits the appeal is the “Appellant.” The burden rests upon the Appellant to establish that the Final Determination or investigative process was flawed. The Appellant must include the grounds of their appeal within the written appeal.

The only permissible grounds for an appeal are:

- 1) **New Material Information.** The discovery of significant or relevant information that was otherwise unknown or unavailable during the investigation and that may have substantially affected or altered the Final Determination had the information been available and known.
- 2) **Substantially Disproportionate Sanction.** The sanction appears to be substantially disproportionate to the Prohibited Conduct: that the sanction is too lenient and/or severe based on the facts of the case.
- 3) **Substantial Procedural Error.** A specific procedural or interpretational error of FXUA policies occurred that affected the investigation, determination, or sanction to the extent that the Appellant was denied a fair process.

Merely disagreeing with the Final Determination contained in the Final Report is not a valid or proper basis for an appeal.

Once the Appellant has filed their request for an appeal, the Appeals Officer will review the appeal to ensure it meets one of the permissible grounds for an appeal. The Appeals Officer will determine if the appeal falls within permissible grounds within two (2) days of the appeal being filed. If the Appeals Officer decides that the appeal falls within permissible grounds, the Appeals Officer will notify the other party in writing within one (1) day of this decision. The other party may submit a written response within three (3) days of receiving the notification. The response must respond to the specific grounds contained in the appeal.

The Appeals Officer will review all materials and reach a conclusion of the appeal within five (5) days of all appeal deadlines. The Appeals Officer will provide both parties with the appeal outcome within one (1) day of reaching a conclusion.

The appeal outcome may include, but is not limited to:

- a) Findings for each ground which the Appellant appealed;
- b) Any alterations to sanction(s);
- c) The rationale for the appeal conclusion.

If the sanctions in the Final Report are upheld, or new sanctions implemented, they will take effect three (3) days after the parties are informed of the appeal outcome.

The Appeals Officer will not be the same individual who made the Final Determination contained within the Final Report. The Appeals Officer will also be reviewed for any potential conflicts.

An appeal is only available to the victim and the Respondent.

## **XIV) Conflicts**

If any administrator that is designated to participate in the investigation or other proceeding under this policy has a conflict of interest that would prohibit the administrator from providing fair and impartial oversight, then the administrator will remove themselves and another administrator will be appointed. The Title IX Coordinator will review any administrator participating in any investigation, adjudication, or other proceeding to determine if there are any potential conflicts. If the Title IX Coordinator has a conflict of interest, then the Department of Institutional Effectiveness will appoint another administrator to oversee the proceedings.

## **XV) Timeline**

FXUA will make every reasonable effort to ensure that the investigation and resolution of a report occur in a timely manner. Typically, the investigation and resolution, including any potential appeal, will not exceed sixty (60) days from the date the report was submitted. This timeframe is not rigid and may be extended for good cause. Good cause may exist if additional time is required to maintain the integrity of the investigation, ensure the completeness of the investigation, to comply with a request from local law enforcement to temporarily delay proceedings to gather evidence for a criminal investigation, or for other legitimate purposes.

Throughout this period, the parties will receive status updates from the Title IX Coordinator. All parties will be notified, in writing, if the timeframe is extended for good cause. This notification will include the projected length of the delay and the cause of the delay.

## **XVI) Violence Prevention & Evaluation Committee**

A Violence Prevention and Evaluation Committee (VPE Committee) may be required under Virginia state law.<sup>16</sup> If a report or complaint alleges an act of sexual violence, the Title IX Coordinator may convene and promptly forward all known information about the incident to the VPE Committee.

The VPE Committee will assess all reports of sexual violence. The VPE Committee will convene within seventy-two (72) hours after receiving a report of sexual violence from the Title IX Coordinator. The VPE Committee will convene again, as necessary, when more information becomes available so as to reassess the situation. The VPE Committee can convene in person, by telephone, or through video conference.

The VPE Committee will consist of (a) the Title IX Coordinator or a Deputy Title IX Coordinator, (b) a law enforcement representative, (c) a Human Resources representative, and (d) a Student Experience representative.

### **i) Safety Assessment**

Upon a preliminary decision that a Respondent poses a threat of violence to themselves or others, exhibits significantly disruptive behavior or a need for assistance, then the VPE Committee may obtain the Respondent's criminal records and health records in accordance with Virginia state law.<sup>17</sup> The VPE Committee will review the information available in the totality of the circumstances and will use the Risk Factors listed below to come to a preliminary decision.

#### **Risk Factors:**

- 1) Whether the Respondent has a history of:
  - a. Violent behavior;
  - b. Prior arrests;
  - c. Prior reports or complaints related to Prohibited Conduct;
  - d. Failing to comply with No Contact Orders;
  - e. Failing to comply with other FXUA protective measures; or
  - f. Failing to comply with judicial orders (including protective orders).
- 2) Whether the Respondent has threatened to commit violence or any form of Prohibited Conduct;
- 3) Whether the Prohibited Conduct involved multiple Respondents;
- 4) Whether the Prohibited Conduct involved multiple victims;
- 5) Whether the Prohibited Conduct involved physical violence;

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<sup>16</sup> Virginia Code § 23.1- 805, accessible here: <http://law.lis.virginia.gov/vacode/title23.1/section23.1-805/>. and Virginia Code § 23.1- 806, accessible here: <http://law.lis.virginia.gov/vacode/title23.1/section23.1-806/>.

<sup>17</sup> Virginia Code § 19.2-389, accessible here: <http://law.lis.virginia.gov/vacode/19.2-389/>; Virginia Code § 19.2-389.1, accessible here: <http://law.lis.virginia.gov/vacode/19.2-389.1/>; Virginia Code § 32.1-127.1:03, accessible here: <http://law.lis.virginia.gov/vacode/32.1-127.1:03/>.

- 6) Whether the report reveals a pattern of sexual violence (a pattern from the Respondent, an organization or group, location, or recurring event or activity);
- 7) Whether the Prohibited Conduct was aided by the use of drugs, alcohol, or other intoxicants;
- 8) Whether the Prohibited Conduct was perpetrated while the victim was unconscious, physically helpless, or otherwise unaware that the Prohibited Conduct was occurring;
- 9) Whether the victim(s) is/are (or was at the time of the Prohibited Conduct) under the age of 18 years old; and
- 10) Whether any other aggravating circumstances or predatory behavior are present.

## **ii) Disclosure to Law Enforcement**

Virginia state law requires the VPE Committee to disclose information about alleged Prohibited Conduct in certain circumstances. These circumstances are detailed below:

- (a) If the VPE Committee comes to the conclusion, based on the consideration of all of the Risk Factors, that the disclosure of known information surrounding the report of alleged Prohibited Conduct is necessary to protect the health and safety of the victim or other individuals then the VPE Committee shall immediately disclose all available information to the law enforcement agency that has jurisdiction to investigate the alleged act of sexual violence.
- (b) If the VPE Committee is unable to come to a general consensus, based on the consideration of all of the Risk Factors, then the law enforcement representative's decision will be the final determining factor on whether the disclosure of known information surrounding the report of alleged Prohibited Conduct is necessary to protect the health and safety of the victim or other individuals. If the law enforcement representative determines that the disclosure is necessary, then the law enforcement representative shall immediately disclose all available information to the law-enforcement agency that has jurisdiction to investigate the alleged act of sexual violence.
- (c) If the alleged act of sexual violence constitutes a felony violation of Virginia law, the VPE Committee's law enforcement representative shall consult with the attorney of the Commonwealth, or other prosecutor, responsible for prosecuting the alleged act of sexual violence. The law enforcement representative will provide the prosecutor with all of the information the VPE Committee received without disclosing any personally identifiable information, unless it has been disclosed pursuant to circumstance (b).

## ARTICLE IV: RESOURCES

### Campus Resources

#### **Campus Security**

Village Drive, 2<sup>nd</sup> Floor  
(703) 507-2180

#### **Student Experience**

Village Drive, 1<sup>st</sup> Floor

Email: [studentexperience@fxua.edu](mailto:studentexperience@fxua.edu)

#### **Title IX Email**

[titleix@fxua.edu](mailto:titleix@fxua.edu)

#### **Counseling Services**

The university can assist with connecting students to counseling services in the area upon request by contacting Student Experience at [studentexperience@fxua.edu](mailto:studentexperience@fxua.edu).

#### **Disability Services**

Village Drive, 1<sup>st</sup> Floor

Phone: 703-591-7041

Email: [studentexperience@fxua.edu](mailto:studentexperience@fxua.edu)

Website: <https://www.fxua.edu/our-university/about-fxua/institutional-effectiveness/rights-and-responsibilities/americans-with-disabilities/>

#### **Title IX Coordinators**

##### **Title IX Coordinator**

**Dr. Amy Buras**

**Learning Resource Manager**

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##### **Deputy Title IX Coordinator**

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##### **Deputy Title IX Coordinator**

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### Community Resources

#### **LOCAL RESOURCES**

##### **Office for Women & Domestic And Sexual Violence Services**

The Office for Women & Domestic and Sexual Violence Services offers counseling services, hotline services, shelter and support services, support groups, and educational programs, among many other services. Fairfax County Government Center

12000 Government Center Pkwy, Suite 339  
Fairfax, VA 22030

703-324-5703 TTY: 703-324-5706

<http://www.fairfaxcounty.gov/ofw/>

24/7 Hotline: 703-360-7273

24/7 TTY Hotline: 703-435-1235

Counseling Services: 703-324-5730, TTY 703-324-5706

##### **Domestic Violence Action Center**

South County Human Services Building

8350 Richmond Highway

Suite 507

Hours: 9am to 5pm

703-246-4573

TTY: 703-246-4573 ext. 711

##### **Artemis House**

Artemis House is a shelter for victims of domestic violence.

703-435-4940

TTY: 703-435-1235

##### **The Women's Center**

The Women's Center provides mental health counseling, support and education to help people live healthy, stable, and productive lives.

133 Park St NE

Vienna, VA 22180 703-242-8657  
(TTY 711)  
<http://thewomenscenter.org/>

**City of Fairfax Police Department**  
10455 Armstrong St.,  
Fairfax, VA 22030  
Dispatch: (703) 385-7924

### **LOCAL RESOURCES CONT.**

**Fairfax County Police Department**  
Fair Oaks District Police Station 12300  
Lee Jackson Memorial Hwy, Fairfax,  
VA 22033.  
Dispatch: (703) 691-2131  
(703) 591-0966

### **STATEWIDE RESOURCES**

**Virginia Sexual and Domestic Violence  
Action Alliance**  
Charlottesville, VA  
434-979-9002 Richmond,  
VA TTY: 804.377.0335  
<http://www.vsdvalliance.org>

### **NATIONAL RESOURCES**

**Rape, Abuse, and Incest National Network  
(RAINN)**  
RAINN offers a variety of resources on their  
website, operates a hotline that automatically  
routes your call to the nearest sexual assault  
service provider and an online chat hotline.  
[www.rainn.org](http://www.rainn.org) 24/7 Hotline: 800-656-HOPE  
(4673) Live Online Hotline available at:  
[https://hotline.rainn.org/online/terms-  
ofservice.jsp](https://hotline.rainn.org/online/terms-ofservice.jsp)

**National Sexual Violence Resource Center**  
Offers a variety of information and resources  
about sexual violence.  
<http://www.nsvrc.org/>

### **National Organization for Victim Assistance**

510 King Street, Suite 424  
Alexandria, VA 22314

800-879-6682, Monday-Friday, 9am-5pm  
<http://www.trynova.org/>

### **National Street Harassment Hotline**

<http://www.stopstreetharassment.org/> This  
is a resource for individual's affected by  
gender-based street harassment. 24/7  
Hotline: 855-897-5910 Live Online Hotline:  
[https://hotline.rainn.org/ssh-en/terms-  
ofservice.jsp](https://hotline.rainn.org/ssh-en/terms-ofservice.jsp)

### **National Domestic Violence Hotline**

An advocate can provide local service resources  
(shelters and transportation, etc.) and crisis  
intervention. Interpreter services are available in  
170 languages. A videophone option is also  
available.

<http://www.thehotline.org/> 24/7  
Hotline: 1-800-799-7233  
24/7 TTY Hotline: 1-800-787-3224 Online  
Hotline is available on the website.

### **Stalking Resource Center**

Provides information and statistics on stalking.  
Safety planning is available, along with other  
resources.

[http://www.victimsofcrime.org/ourprograms/stal  
king-resource-center](http://www.victimsofcrime.org/ourprograms/stalking-resource-center)

### **Know Your IX**

Know Your IX provides students with information  
on Title IX and the Clery Act, how to file a Title IX  
complaint or lawsuit, a Clery complaint, and how  
to become engaged in activism to end sexual  
violence on campuses. <http://knowyourix.org/>

### **End Rape on Campus (EROC)**

EROC is an advocacy organization dedicated to  
assist students with filing Title IX complaints.  
<http://endrapeoncampus.org/>

### **Know Your Rights, American Civil Liberties Union**

The website provides basic knowledge for issues  
ranging from criminal law reform, free speech,  
and immigrant's rights.  
<http://www.aclu.org/know-your-rights>

### **Substance Abuse and Mental Health Services' Treatment Referral Routing Service**

This service provides referrals to local treatment facilities, support groups, and community-based organizations. Callers can also order free publications and other information. It is a confidential, free, 24/7/365 information service. Hotline: 1-800-662-4357  
Online treatment locators:

<https://findtreatment.samhsa.gov/> Helpline website:

<https://www.samhsa.gov/findhelp/national-helpline>

Organization website: <https://www.samhsa.gov/>

### **Center for Changing Our Campus Culture (previously Not Alone)**

The Center for Changing Our Campus Culture (The Center) is an online resource to address sexual assault, domestic violence, dating violence and stalking. The Center is supported by the Department of Justice's Office on Violence Against Women in collaboration with its designated Campus Program Technical Assistance Provider Team.

<http://changingourcampus.org/>

### **Love is Respect**

Love is Respect offers support, information, and advocacy to young people who have questions or concerns about their dating relationships, as well as to concerned friends, family members, counselors, service providers, and law enforcement. They offer an online, mobile messaging, and traditional hotline 24/7/365.

Chat online at: [www.loveisrespect.org](http://www.loveisrespect.org) Text "loveis" to 22522.

Hotline: 1-866-331-9474 TTY: 1-866-331-8453  
<http://www.loveisrespect.org/>

## **APPS**

### **B Safe You**

Available for both iPhones and Androids.

Information available at: <http://getbsafe.com/>  
Cost: Free

**Purpose:** It is a personal safety app that is designed to keep you and your friends safer, 24/7/365. Features include social personal safety network, Fake Call, a check in mode that will set off an alarm if you do not check in by the scheduled time, and an alert system if you are ever in danger, along with other features. This is not a substitute for law enforcement or emergency services.

### **Circle of 6/Circulo**

Available for both iPhones and Androids.

Information available at:

<https://encirculo.org/en/>

Cost: Free

**Purpose:** This is a personal safety app. This is not a substitute for law enforcement or emergency services.

### **Watch Over Me**

Available for both iPhones and Androids.

Information available at:

<https://watchovermeapp.com/>

Cost: Free

**Purpose:** This app is an emergency safety device that allows you to share your location. It lets you select individuals to keep an eye on you when you're on the move, it also allows you to report areas that make you feel uneasy. You can initiate tracking and if you do not reach your destination, it will send an alert to your emergency contacts with information to help them locate you.

This is not a substitute for law enforcement or emergency services.

### **Noonlight**

Available for both iPhones and Androids.

Information available at:

<https://www.safetrekapp.com/>

Cost: Free, \$5.00, or \$10.00 a month depending on the plan.

**Purpose:** This is a personal safety app. This is not a substitute for law enforcement or emergency services.

**Tech Safety**

Available for both iPhones and Androids.

Information available at:

<http://techsafetyapp.org/>

Cost: Free

Purpose: This app explores six categories: harassment, impersonation, cellphone safety, device safety, location safety, and online safety. Under each category, more information is

provided with specific explanations on what someone can do if they are being harassed as well as privacy tips that can be used to increase privacy and security. The Tech Safety App also includes additional resources on documenting abuse, talking with an advocate, contacting police, getting an attorney, and where to call for help. This is not a substitute for law enforcement, emergency services, or legal services.

This is not a substitute for receiving help and guidance from a mental health professional or law enforcement.

## ARTICLE V: PROTECTIVE ORDERS

Fairfax University of America will put in place a No Contact Order at the request of any individual that is party to an incident of Prohibited Conduct, or when the university deems it to be necessary to provide for the safety and well-being of an individual, or to guarantee the continued access of educational opportunities. A No Contact Order is different than a Protective Order.

A Protective Order is a civil court order meant to protect victims who have experienced physical violence, sexual assault, or stalking, or they have reasonable fear that they may experience physical violence, sexual assault, or stalking. A Protective Order is free. The university will provide assistance to any individual seeking a Protective Order, upon request. An individual may also seek assistance from the Fairfax County Police Department or from the City of Fairfax Police Department, or any other law enforcement agency that is appropriate.

The information provided below is not legal advice and is specific to the state of Virginia. A Protective Order issued in one state is acknowledged and enforced in all other states and territories. If you would like to file a Protective Order in Maryland or the District of Columbia, the university can assist you in doing so. For more information about requesting a Protective Order in Maryland, [click here](#).<sup>18</sup> For more information about requesting a Protective Order in the District of Columbia, [click here](#).<sup>24</sup>

### I) EMERGENCY PROTECTIVE ORDER

An Emergency Protective Order (EPO) aims to protect the health and safety of any person regardless of a decision to arrest by law enforcement. A police office, or an individual, may request an EPO for any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. Such acts include, but are not limited to, any forceful detention, stalking, domestic violence, or criminal sexual assault in violation of Virginia law.

An EPO is issued by a judge or magistrate upon the request of a law enforcement officer or individual. For the EPO to be granted the judge/magistrate must find:

1. That the individual requesting the EPO must have been subjected to an act of violence, force, or threat; and
2. One of the following:
  - a. There is probable danger of a further such act being committed by the Respondent against the individual; OR
  - b. A petition or warrant for the arrest of the Respondent has been issued for a criminal offense resulting from the commission of an act of violence, force, or threat.

An EPO can:

- Prohibit acts of violence, force, or threat, or criminal offenses resulting in injury to person or property;
- Prohibit contact by the Respondent with the individual/Complainant, the Complainant's family or household members; and
- Grant other conditions that the judge or magistrate deems necessary to prevent:
  1. Acts of violence, force, or threat;
  2. Criminal offenses resulting in injury to person or property; or
  3. Communication or other contact of any kind by the Respondent.

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<sup>18</sup> Information about MD Protective Orders is available here: (1) [http://www.womenslaw.org/laws\\_state\\_type.php?id=75&state\\_code=MD](http://www.womenslaw.org/laws_state_type.php?id=75&state_code=MD); (2) <http://www.courts.state.md.us/courtforms/joint/ccdcvpo001br.pdf>; and (3) <https://www.peoples-law.org/protective-orders> <sup>24</sup> Information about DC Protective Orders is available here: (1) <https://mpdc.dc.gov/redflaglaw>; (2) <http://www.dccourts.gov/services/domestic-violence-matters/get-a-protection-order>; and (3) [http://www.womenslaw.org/laws\\_state\\_type.php?id=10741&state\\_code=DC](http://www.womenslaw.org/laws_state_type.php?id=10741&state_code=DC)

An EPO remains in effect for 72 hours after it has been issued or the next day court is in session, whichever is later. The EPO will have the date and time that the order will expire. If an individual feels that they need protection for a longer period of time, they may ask the court for a Preliminary Protective Order.

## **II) PRELIMINARY PROTECTIVE ORDER**

A Preliminary Protective Order (PPO) is issued by a judge or magistrate after an individual has filled out the necessary forms requesting a PPO. If the matter falls under the jurisdiction of the Juvenile and Domestic Relations District Court, the forms should be filed with the Court Services Unit. If the matter falls under the jurisdiction in the General District Court, the forms should be filed with the General District Court's Clerk's Office. Once the forms have been filed, you may then go into the courtroom where the judge or magistrate may ask questions to decide whether to grant you a PPO. An individual must appear before a judge for a PPO to be granted.

For the PPO to be granted the judge/magistrate must find:

1. That the individual requesting the EPO must have been subjected to an act of violence, force, or threat; or
2. A petition or warrant for the arrest of the Respondent has been issued for a criminal offense resulting from the commission of an act of violence, force, or threat.

### **UNSURE WHERE TO FILE THE FORMS FOR A PRELIMINARY PROTECTIVE ORDER?**

If the person you want a protective order from is a family or household member, or a juvenile then you should go to the Juvenile and Domestic Relations District Court. For all other situations, you should go to the General District Court.

A PPO can:

- Prohibit acts of violence, force, or threat, or criminal offenses resulting in injury to person or property;
- Prohibit contact by the Respondent with the individual/Complainant, the Complainant's family or household members; and
- Grant other conditions that the judge or magistrate deems necessary to prevent:
  1. Acts of violence, force, or threat;
  2. Criminal offenses resulting in injury to person or property; or
  3. Communication or other contact of any kind by the Respondent.

A PPO is valid for fifteen (15) days or until the date of the full hearing that is scheduled at the time the PPO is issued.

## **III) FULL PROTECTIVE ORDER**

A Full Protective Order (Protective Order or PO) is issued by a judge following the full hearing that was scheduled at the time the PPO was issued. The date of the full hearing will be written on the PPO. If you do not go to the full hearing, the PPO ends on the date of the scheduled full hearing. If you believe the other person is not going to attend the full hearing, you should attend anyway and ask the court for a PO.

### WHAT IS A FULL HEARING?

A full hearing is when both you and the other person (Respondent) get to present evidence to the court.

A PO can:

- Prohibit acts of violence, force, or threat, or criminal offenses resulting in injury to person or property;
- Prohibit contact by the Respondent with the individual/Complainant, the Complainant's family or household members; and
- Grant other conditions that the judge or magistrate deems necessary to prevent:
  1. Acts of violence, force, or threat;
  2. Criminal offenses resulting in injury to person or property; or
  3. Communication or other contact of any kind by the Respondent.

A PO takes effect when the other person is "personally served" and is valid for any period of time up to a maximum of two years. If you are granted a PO it is important that you keep a copy of it with you at all times. If the Respondent violates the order, show the PO to a police officer, magistrate, prosecutor, or judge.

FXUA will honor and enforce all Protective Orders from Virginia, other states, and territories of the United States. If you have a Protective Order, please inform FXUA as soon as possible. It is only possible for FXUA to honor Protective Orders if the university is made aware of them. To inform FXUA of any Protective Order (EPO, PPO, PO), email [titleix@FXUA.edu](mailto:titleix@FXUA.edu).

For more information, [click here](#).<sup>19</sup>

<b>To make a safety plan, call:</b> Virginia Family Violence and Sexual Assault Hotline  1-800-838-8238 (v/tty)  <b>For additional information on how the court works, call:</b> Virginia Department of Criminal Services, Crime Victim Assistance 1-888-887-3418	<b>For legal help, call:</b> Legal Aid Hotline 1-866-534-5243  Virginia Poverty Law Center (Family & Sexual Violence) 1-800-868-8752  Virginia State Bar Lawyer Referral Service 1-800-552-7977	<b>For assistance filling out a protective order petition form online:</b>  Go to <a href="http://www.courts.state.va.us">www.courts.state.va.us</a> , Click Online Services, then Assistance with Protective Orders (I-CAN!).
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<sup>19</sup> Virginia Court System – District Court Protective Information Sheet.  
[http://www.courts.state.va.us/forms/district/info\\_sheet\\_protective\\_order\\_stalking.pdf](http://www.courts.state.va.us/forms/district/info_sheet_protective_order_stalking.pdf).

This information is provided as general information and is not legal advice.

## **ARTICLE VI: STUDENT RIGHTS**

Fairfax University of America abides by the requirements of Title IX of the Education Amendments of 1972 (Title IX), applicable sections of the Violence Against Women Reauthorization Act (VAWA), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), and the Campus Sexual Assault Victims' Bill of Rights to provide all parties with rights throughout the complaint and investigative process.

Students have the right to:

- A thorough, prompt, and fair investigation and resolution of a report/complaint.
- Victims shall be notified of their options to notify law enforcement.
- All parties will have the same opportunity to have an Advisor present during all proceedings of the investigation.
- All parties will be informed of the outcome of any investigation at approximately the same time.
- All parties will be informed of the available counseling services on-campus.
- Respectful treatment throughout the investigative process, regardless of the outcome.
- All parties will be notified of the progress of the investigation, on an ongoing basis.
- All parties will be able to access the Investigative File, within the legal parameters and within the policies of the university.
- All parties will have equal opportunity to submit a written statement addressing the allegations.
- All parties will have equal opportunity to provide evidence and witnesses.
- All parties are protected against retaliation from any FXUA staff or student.
- All parties may request protective measures and remedies.
- All parties will be informed of available resources on- and off-campus.
- The Respondent will have a thorough, prompt, and fair investigation using the Preponderance of the Evidence Standard to determine Responsibility.
- The Respondent will receive a written notification of the complaint and have the allegations explained to them by the Title IX Coordinator.
- All parties have the right to receive assistance and accommodation to modify their academic or employment schedule.

## **ARTICLE VII: PROCEDURES VICTIMS ARE ENCOURAGED TO FOLLOW**

### **I) In Cases of Sexual Violence or Sexual Assault**

**Remember:** an assault is **NEVER** the victim's fault.

#### **A) IF THE ASSAULT JUST OCCURRED**

##### **Encouraged Actions:**

**1. Take steps to ensure your immediate safety.**

Try to get to a safe place. If you are unable to get to a safe place on your own or need immediate police or medical assistance, call 9-1-1. The police can also take you to the hospital.

**2. Contact someone who can help you.**

This could be a friend, loved one, or the police. Or all of the above. You can also contact the Office for Women & Domestic and Sexual Violence Services at their 24-hour hotline (703-360-7273, TTY: 703-435-1235).

**3. Try to preserve physical evidence.**

Preserving physical evidence is important if you ever decide to pursue a criminal report. In Virginia, a victim may request the collection of evidence even if the victim chooses not to make a report to law enforcement. Reported rape kits will be kept for at least ten (10) years, allowing you time to make a decision about pursuing legal action.

**4. Seek medical attention and treatment.**

You do not have to report the incident to police to receive treatment at the hospital or have an evidence gathering exam conducted (also known as a physical evidence recovery kit (PERK), rape kit, or sexual assault medical forensic exam). You should seek medical treatment even if you do not want to report the incident. There may be injuries you do not know about or that you don't know the full scope of. A doctor can also inform you of your options to prevent pregnancy or sexually transmitted infections.

**5. Document the incident.**

This does not mean filing a police report. It means that when you have a quiet moment, write down everything you can remember with as much detail as possible. Writing down a detailed account can help with any legal action you may decide to take and it can also help you in your healing process.

**6. Obtain information about the resources available to you.**

The Sexual Misconduct Policy offers a list of on-campus and community resources that are available. These resources range from information about protective orders, hotlines, organizations, and shelters.

**7. Obtain emotional support.**

This can mean talking to a professional counselor, on- or off-campus, talking to a friend or family member, or anyone you feel comfortable talking with about the incident. Getting help, whether emotional or medical, is the best thing that you can do for yourself, your health, and your future.

## B) PRESERVATION OF EVIDENCE

Preserving physical evidence is important if you ever decide to pursue a criminal report. In Virginia, a victim may request the collection of evidence even if the victim chooses not to make a report to law enforcement. Reported rape kits will be kept for at least ten (10) years, allowing you time to make a decision about pursuing legal action.

To preserve evidence, it is important to follow these suggestions:

- **Do not** bathe or shower;
- **Do not** brush or comb your hair;
- **Do not** douche;
- **Do not** urinate (if possible);
- **Do not** change clothes – If you do change your clothes, take the clothes worn at the time of the assault to the hospital with you in a PAPER bag (plastic bags cause the deterioration of evidence);
- **Do not** eat or drink;
- **Do not** brush your teeth or rinse your mouth out;
- **Do not** touch items at the incident or crime scene; and
- **Do not** put on or remove makeup.

Take a change of clothes with you to the emergency room if you can because some items of clothing may be kept as evidence. At the emergency room, the physician may collect hair samples, semen, other fluids, and other physical evidence. The police will be contacted to take possession of these samples and evidence. However, just because the police are being contacted does not mean that you have to file a report with them.

## C) WHAT TO EXPECT AT THE HOSPITAL

In Northern Virginia, the preferred hospital for an evidence gathering exam is Inova Fairfax Hospital. There are specially trained nurses at this facility that are on call 24 hours a day. Inova Fairfax Hospital will provide an exam no matter where the crime occurred. A rape kit is free and increases the likelihood of prosecution if you decide to pursue legal action.

At the hospital you will receive immediate medical treatment for any injuries that require immediate attention. You will be asked about any medications you have taken, if you have any pre-existing conditions or allergies, and other questions relating to your health history. Some of these questions may be very personal, such as asking about your most recent consensual sexual activity. However, these questions are meant to ensure that the evidence collected can be traced to the perpetrator of the assault.

You will also be asked about the details of the assault so that the examiner can identify any areas that may be injured. There will be a head-to-toe examination and this examination may vary depending on your specific experience, which is why it is important to provide accurate details to the best of your ability. The exam may include a full body examination, including internal examinations of the mouth, vagina, and anus. Samples of blood, urine, saliva, swabs of body surface areas, and hair may be taken. The examiner may also take pictures of your body to document injuries. They may collect your clothes or undergarments, as well as other physical evidence such as debris or stray hair.

You may be offered preventive treatment for sexually transmitted infections or pregnancy. This medical care may require a follow-up appointment or care.

The exam can take several hours and it can be helpful to have a friend or advocate with you during the exam for support. If you call the National Sexual Assault Hotline (800-656-4673) or Office for Women & Domestic and Sexual Violence Services (703-360-7273, TTY: 703-435-1235), you may be connected with an advocate who can offer support and information about the exam.

[Click here](#) for more information about what to expect during an examination.<sup>20</sup>

## **D) IF THE ASSAULT OCCURRED SOME TIME AGO**

You may just now be realizing that what you experienced was sexual assault, or may finally be ready to call the experience a sexual assault. Even if the incident did not take place recently, you still have options.

### **Encouraged Actions:**

#### **1. Consider seeking medical attention.**

You should seek medical treatment even if you do not want to report the incident. There may be injuries you do not know about or that you don't know the full scope of. You may still need treatment for physical symptoms or infections.

#### **2. Seek counseling.**

Unresolved experiences of sexual assault can have long-term effects on your mental and physical health, as well as social effects. Getting help is the best thing that you can do for yourself, your health, and your future.

#### **3. Obtain information about resources available to you.**

The Sexual Misconduct Policy offers a list of on-campus and community resources that are available. These resources range from information about protective orders, hotlines, organizations, and shelters.

#### **4. Take advantage of the resources available to you.**

Knowing what resources are available is the first step, but sometimes taking the next step can be challenging. If you are unsure of what you want or what would be best for your situation, contact [titleix@fxua.edu](mailto:titleix@fxua.edu) for help exploring your options.

## **II) In Cases of Stalking**

Under no circumstances should you make an effort to have an in-person meeting with someone who is stalking you, or who you believe is stalking you. Never agree to meet the perpetrator in person to try to “work it out” or “talk things out.” Stalkers have the potential to be very dangerous and meeting a stalker in person will only increase this danger.

### **Encouraged Actions:**

#### **1. Tell someone.**

Individuals are encouraged to contact local law enforcement officials and FXUA Student Affairs or a Title IX Coordinator. If you are not comfortable informing any of the above, you are encouraged to talk to your friends and family about the situation.

#### **2. Send one clear written warning.**

This warning should convey that the contact the perpetrator is engaging in is unwanted and that you would like all communication to end. Do this only once. After sending one clear written warning, do not respond to any communications or have any other contact with the stalker, under any circumstances. This warning can be via text messaging or email, but it should be written so that it is documented.

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<sup>20</sup> Information about what to expect during an exam is available here: <https://www.rainn.org/articles/rape-kit>

### **3. Collect and document all evidence.**

Save all communications the stalker has with you in both electronic and hard-copy form. Communications include but are not limited to: text messages, emails, Facebook messaging, Skype messages, Snapchat chats (take screenshots if possible), or any other possible communication tools. Record the dates and times of any contact with the stalker. Do not edit any of the communications, all evidence should be preserved to aid in obtaining a protection order against the perpetrator.

### **4. Keep a detailed log and account of stalking behavior.**

Start a log that details each communication. Include the date, time, type of incident, witnesses, or other relevant information. Document any steps you have taken to stop the stalking, such as the written clear warning, blocking the stalker's number, unfriending or blocking on Facebook and other social media platforms, and any other steps you have taken. Keep an account of how the stalking is affecting you personally, emotionally, and in your daily life. A free template for a Stalking Log is [available here](#).<sup>21</sup>

### **5. File a report with FXUA or local law enforcement officials.**

Save any and all copies of police reports and record all contact with law enforcement, the prosecutor's office, and FXUA. Include these notes in your Stalking Log.

### **6. Change your contact information.**

You may want to consider changing your email address and phone number. If you would like to change your FXUA email address, please email [IT@fxua.edu](mailto:IT@fxua.edu) or [titleix@fxua.edu](mailto:titleix@fxua.edu) with this request.

### **7. Obtain information about the resources available to you.**

The Sexual Misconduct Policy offers a list of on-campus and community resources that are available. These resources range from information about protective orders, hotlines, organizations, and shelters.

### **8. Take advantage of the resources available to you.**

Knowing what resources are available is the first step, but sometimes taking the next step can be challenging. If you are unsure of what you want or would be best for your situation, contact [titleix@fxua.edu](mailto:titleix@fxua.edu) for help exploring your options.

### **9. Consider seeking a protective order.**

A civil protection order is a civil order that protects victims of stalking. For more information about obtaining a Protective Order in DC, [click here](#).<sup>22</sup> For more information about obtaining a Protective Order in Virginia, [click here](#).<sup>23</sup> For more information on obtaining a Protective Order in Maryland, [click here](#).<sup>24</sup>

For more information about Safety Planning and Stalking Safety, visit the [Stalking Resource Center](#).<sup>31</sup>

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<sup>21</sup> The Stalking Log template is available here: [http://mnadv.org/wp-content/uploads/2020/07/stalking-incident-log\\_pdf.pdf](http://mnadv.org/wp-content/uploads/2020/07/stalking-incident-log_pdf.pdf)

<sup>22</sup> Information about DC Protective Orders is available here: (1) <https://mpdc.dc.gov/redflaglaw>; (2) <http://www.dccourts.gov/services/domestic-violence-matters/get-a-protection-order>; and (3) [http://www.womenslaw.org/laws\\_state\\_type.php?id=10741&state\\_code=DC](http://www.womenslaw.org/laws_state_type.php?id=10741&state_code=DC)

<sup>23</sup> Information about VA Protective orders is available here: (1) [http://www.womenslaw.org/laws\\_state\\_type.php?id=10047&state\\_code=VA](http://www.womenslaw.org/laws_state_type.php?id=10047&state_code=VA); and (2) [http://www.courts.state.va.us/forms/district/info\\_sheet\\_protective\\_order\\_stalking.pdf](http://www.courts.state.va.us/forms/district/info_sheet_protective_order_stalking.pdf)

<sup>24</sup> Information about MD Protective Orders is available here: (1) [http://www.womenslaw.org/laws\\_state\\_type.php?id=75&state\\_code=MD](http://www.womenslaw.org/laws_state_type.php?id=75&state_code=MD); (2) <http://www.courts.state.md.us/courtforms/joint/ccdcvpo001br.pdf>; and (3) <https://www.peoples-law.org/protective-orders>

<sup>31</sup> The Stalking Resource Center is available here: <http://www.victimsofcrime.org/stalking-resource-center>

### **III) In Cases of Relationship Violence**

**Remember:** violence is **NEVER** the victim's fault.

#### **Encouraged Actions:**

**1. Take steps to ensure your immediate physical safety.**

If you do not feel safe where you are, try to get to a safe place. If you think you are unable to get to a safe place on your own, call 9-1-1. The police can also take you to the hospital.

**2. Seek medical assistance and treatment.**

You do not have to report the incident to the police to receive treatment at the hospital. You should seek medical treatment even if you do not want to report the incident. There may be injuries you do not know about or that you don't know the full scope of.

**3. Document the incident.**

This does not mean filing a police report. It means that when you have a quiet moment, write down everything you can remember with as much detail as possible. Writing down a detailed account can help with any legal action you may decide to take and it can also help you in your healing process.

**4. Obtain information about the resources available to you.**

The Sexual Misconduct Policy offers a list of on-campus and community resources that are available. These resources range from information about protective orders, hotlines, organizations, and shelters.

**5. Obtain emotional support.**

This can mean talking to a professional counselor, on- or off-campus, talking to a friend or family member, or anyone you feel comfortable talking with about the incident. Getting help, whether emotional or medical, is the best thing that you can do for yourself, your health, and your future.

**6. Obtain information about the resources available to you.**

The Sexual Misconduct Policy offers a list of on-campus and community resources that are available. These resources range from information about protective orders, hotlines, organizations, and shelters.

**7. Take advantage of the resources available to you.**

Knowing what resources are available is the first step, but sometimes taking the next step can be challenging. If you are unsure of what you want or would be best for your situation, contact [titleix@fxua.edu](mailto:titleix@fxua.edu) for help exploring your options.

Trust your instincts. Don't second guess yourself or your feelings.

## ARTICLE VIII: GLOSSARY

Listed in alphabetical order below are additional terms that are used in this policy that are not defined within the body of the Sexual Misconduct Policy.

**Clery Act:** The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) is a federal law. The Clery Act requires all colleges and universities that receive federal funding to keep and disclose information about crime that occurs on and near their campuses. For more information about the Clery Act, visit the [Clery Center for Security on Campus website](https://www.knowyourix.org/college-resources/clery-act/)<sup>32</sup> or the [Know Your IX: Clery Act website](http://knowyourix.org).<sup>33</sup>

**Day:** A business day unless otherwise specified.

**Deputy Title IX Coordinator:** The Deputy Title IX Coordinator works under the oversight of the Title IX Coordinator to assist with the handling of Title IX-related complaints. The Title IX Coordinator may assign a Deputy Title IX Coordinator to oversee or investigate any incident.

**Employee:** Under the Sexual Misconduct Policy, an employee is anyone who is employed by Fairfax University of America. This includes full-time, part-time, temporary, seasonal, and student employees.

**FERPA:** FERPA refers to The Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g; 34 C.F.R. Part 99. FERPA is a federal law that generally protects the privacy of student education records. FERPA grants students or eligible parents the right to access, inspect, and review education records, the right to challenge the content of education records, and the right to consent to the disclosure of education records.

**Final Report:** Is issued at the end of the investigation. The Final Report will include the findings of fact, application of the preponderance of the evidence standard to the findings, determination of whether or not the Respondent violated the Sexual Misconduct Policy, the rationale for the findings and sanctions determined appropriate, information on how to file an appeal, any interim measures that were put in place before or during the investigation process, any ongoing accommodations, what measures FXUA will take to remedy any effects of the conduct, and any additional information that is deemed relevant.

**Gender:** Refers to the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex. Behavior that is compatible with cultural gender-stereotypes are referred to as gender normative. Behaviors that are viewed as incompatible with cultural gender-stereotypes are referred to as gender non-conforming behaviors.

**Gender Bias:** A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender.

**Gender Expression:** Refers to how a person presents themselves—female, male, androgynous, or other—as evidenced by their manner of dress, speech, or other physical expression.

**Gender Identity:** A person's internal sense of being male, female, or a combination of both; that internal sense of a person's gender may be different from the person's designated biological sex at birth.

**Gender Identity Bias:** A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender identity, e.g., bias against transgender or gender non-conforming individuals.

**Good Standing:** A student is deemed in Good Standing as it pertains to Prohibited Conduct if the student has completed all sanctions, requirements, and recommendations related to the offense. FXUA may determine

<sup>32</sup> The Clery Center for Security on Campus website can be accessed here: <https://www.knowyourix.org/college-resources/clery-act/>.

<sup>33</sup> The Know Your IX website can be accessed here: <http://knowyourix.org>.

that a student is not in Good Standing if there are extenuating circumstances involving the offense or if there were additional offenses of any kind following the student's departure from the university.

Good Standing is only used to determine if the transcript notation can be removed. The removal of the notation marks the end of the suspension period. However, the removal of the transcript notation does not guarantee readmission to a student who has been expelled, suspended, or who has withdrawn.

**Personally Identifiable Information:** Is defined by FERPA and includes but is not limited to:

- 1) A student's name;
- 2) The name of a student's parent(s) or other family members;
- 3) The address of a student or a student's family;
- 4) A personal identifier, such as a student's social security number, student number, or biometric record;
- 5) Other indirect identifiers, such as a student's date of birth, place of birth, or mother's maiden name;
- 6) Other information that, alone or in combination, is linked or linkable to a specific student and that would allow a reasonable person in the FXUA community, who does not have personal knowledge of the relevant circumstances, to identify the Student with reasonable certainty; or
- 7) Information requested by a person whom the university reasonably believes knows the identity of the Student to whom the education record relates.

**Preponderance of Evidence:** A standard of proof in which the totality of the evidence offered in support of a fact is greater or more convincing than the evidence which is offered in opposition to it. When given the totality of information, it is the version of events that is more likely than it is not likely. Preponderance of the evidence is understood to require more than 50 percent certainty to determine guilt (51% or greater). This is the standard of evidence that FXUA will use to determine responsibility for Prohibited Conduct.

**Prohibited Conduct:** Refers to all forms of sex and gender-based discrimination.

**Protected Activity:** Refers to activity that is protected under this policy includes making a report of sex discrimination; filing an official complaint; seeking interim measures; filing a Clery complaint; filing a Title IX complaint with the Dept. of Education; engaging in any activity that is protected under the Victim's Bill of Rights or the Student's Bill of Rights; or the Accused Bill of Rights; and any other conduct that may be reasonably related to this policy.

**Reasonable Person:** Reasonable person is defined as a person under the same or similar circumstances and with the same or similar identities to the victim.

**Report:** An individual makes a report when they share information about Prohibited Conduct with a Responsible Employee. The individual making a report can be a student, employee, third party, victim, or bystander.

**Respondent:** This is an individual, or individuals, who have been accused of committing Prohibited Conduct by a report or filing of a complaint with FXUA. This is the alleged perpetrator of the Prohibited Conduct.

**Responsible Employees:** Refers to any employee:

- (a) who has the authority to redress sexual violence;
- (b) who have been given the duty to report to appropriate school officials about incidents of sexual violence or misconduct, or any other misconduct by students; or
- (c) who a student could reasonably believe has the authority or the responsibility.

The university acknowledges that supervisors (this includes those who supervise employees and those who supervise students) have a particularly important responsibility to deter Sexual Misconduct.

**Sex:** Refers to a person's biological status and is typically categorized as male, female, or intersex.

**Sex Discrimination:** This is a broad term used to describe prohibited behavior under Title IX and the Sexual Misconduct Policy. The Supreme Court of the United States determined that sexual harassment and sexual assault is a form of sex discrimination, as well as any retaliation connected to the reporting of such discrimination. Since those decisions, the Dept. of Education has provided more guidance on what falls within sex discrimination such as domestic violence, dating violence, stalking, and sexual exploitation.

**Sexual Violence:** Means physical sexual acts perpetrated against a person's will or against a person who is incapable of giving consent.

**Student:** Under this policy, a new or re-admitted student will be considered enrolled if the following conditions are met:

- 1) The person is registered for courses in any term;
- 2) The person's attendance in at least one class has been verified; and 3) The person has not completed a course of study.

Under this policy, student status continues whether or not FXUA's academic programs are in session.

After classes begin, students need to be attending classes in order to continue their enrollment status. Students are considered continuously enrolled when they are registered for consecutive terms. Those who arrive to campus prior the start of classes for any official FXUA function including, but not limited to student employment, trainings, or activities are considered students.

**Substantial Emotional Distress:** Means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**Title IX:** Title IX refers to Title IX of the Education Amendments of 1972. 20 U.S.C. Section 1681 (a). Title IX states: *No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.*

Title IX prohibits sex-based discrimination in all aspects of education. This means that you are entitled to an educational environment free from sex-based discrimination, including sexual harassment or assault, and that the university must work diligently to prevent and eliminate sex discrimination in the community. Title IX applies equally to both men and women.

**Title IX Coordinator:** Title IX Coordinator is responsible for the oversight of this policy and any procedures related to it. In addition, the Title IX Coordinator is responsible for overseeing and resolving all Title IX reports, as well as identifying and addressing any patterns or systemic concerns that arise during the review of such reports. The Title IX Coordinator evaluates trends on campus by using information reported and provides campus wide training and education programs and other remedial actions designed to eliminate Prohibited Conduct, prevent its recurrence, and address its effects.

**Totality of the Circumstances:** Refers to a standard that suggests there is no single deciding factor, that one must consider all the facts, the context, and conclude from the whole picture whether an event has occurred.