



**Policy Title:** Employee VAWA Sexual Misconduct

**Policy Oversight:** Chief Human Resources Officer

**Policy Application:** This Policy applies to faculty and staff.

**Contact Information:** All questions or inquiries regarding this Policy should be addressed to the Chief Human Resources Officer. The Chief Human Resources Officer can be reached Monday through Friday during normal business hours at (434) 791-7601 or by email at [ktune@averett.edu](mailto:ktune@averett.edu).

**Policy Review and Approval:** This Policy will be reviewed annually. Policy revisions will be approved by the Vice President and Chief Financial Officer/Chief Operations Officer.

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## **I. Policy Statement**

Averett University is committed to maintaining a safe and healthy education and work environment in which no member of the community is excluded from participation, denied the benefits of, or subjected to discrimination or harassment in any University program or activity (including admission to or employment with the University) on the basis of sex. The University emphasizes that every member of the University community, regardless of demographic, personal characteristics, or identity is entitled to protection against sexual misconduct.

The University seeks to eliminate sexual misconduct through education and prevention and by encouraging everyone to report concerns. The University is committed to stopping sexual misconduct, preventing its recurrence, eliminating any hostile environment, and remedying its discriminatory effects by the use of a prompt, thorough, equitable, fair, and impartial process.

Averett University prohibits sexual misconduct, as defined in this Policy, by any person governed by this Policy. The University encourages prompt reporting of sexual misconduct,

Retaliation against any person who makes a report or cooperates with an investigation or participates in proceedings under this Policy is prohibited conduct and is subject to disciplinary action.

All employees are expected to conduct themselves in accordance with this Policy.

## **II. Purpose of Policy**

- To prevent and address sexual misconduct by setting community expectations and outlining the University's response to reports of sexual misconduct.

- To ensure compliance with Violence Against Women Act amendments to The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics (“Clery Act”), its implementing regulations, and other applicable state and federal laws.

### **III. Scope**

This Policy applies to all University employees.

When the Respondent is a member of the University community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the University community.

Even when the Respondent is not a member of the University community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Chief Human Resources Officer.

“Employees” include all staff and faculty members, whether full-time, adjunct, or part-time, on campus or remote, and whether in the capacity of Complainant or Respondent. Graduate Assistants as Complainants may be students or employees depending on their role at the time and the facts and circumstances surrounding the events. Graduate Assistants as Respondents will always be deemed to be employees.

This Policy is not intended for, and will not be used to, infringe on academic freedom.

Nothing in this Policy impairs the rights any individual may have under Title VII of the Civil Rights Act of 1964, as amended.

### **IV. Jurisdiction**

This Policy applies to allegations of sexual misconduct that do not fall within Title IX.

It may apply to sexual misconduct that occurs off-campus, including virtual spaces, if the alleged misconduct involves a member of the University community.

This Policy applies regardless of the medium used to manifest the sexual misconduct including, but not limited to physical, verbal, visual, online/electronic/social media.

The procedures may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this Policy.

There are no time limits on reporting sexual misconduct. Sexual misconduct will be addressed based on the policy definitions in place at the time the conduct reportedly occurred using the current procedures.

The Chief Human Resources Officer has the discretion to re-open a case at any time should germane new evidence become available that the Chief Human Resources Officer determines would significantly impact the outcome of the case.

### **V. Definitions of Prohibited Conduct**

As used in this Policy and its accompanying procedures, these terms when capitalized mean:

#### **A. False Statements and Evidence:** Conduct that includes any of the following:

- Deliberately false and/or malicious accusations
- Knowingly providing false evidence or statements

- Tampering with or destroying evidence after being directed to preserve such evidence
- Deliberately misleading an official conducting an investigation
- Interfering with sexual misconduct proceedings

False Statements and Evidence can be subject to discipline under this Policy or referred to other appropriate University procedures.

- B. Retaliation:** The acts of intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with rights or privileges secured by the VAWA amendments to the Clery Act or because a person has made a report testified, assisted, or participated or refused to participate, in any manner in an investigation, proceeding or hearing.

Retaliation can be subject to discipline under this Policy or referred to other appropriate University procedures.

- C. Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant and where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship, (2) the type of relationship, and (3) the frequency of interaction of the persons involved in the relationship.

**D. Domestic Violence:**

- **Definition Effective prior to October 1, 2022:** Conduct that would meet the definition of felony or misdemeanor crime of violence committed by the Complainant's current or former spouse or intimate partner, a person with whom the Complainant shares a child in common, a person who is or has cohabitated with the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse under domestic or family violence law, or anyone else protected under the domestic or family violence law of the jurisdiction in which the offense occurred.
- **Definition Effective October 1, 2022:** Felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction in which the offense occurs, including the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who—
  - is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
  - is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
  - shares a child in common with the victim; or
  - commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction in which the offense occurs.

**E. Sexual Assault:**

- i. Any intentional contact or touching, however slight, with any body part or object by a person upon another person that is without consent and/or by force. Contact includes:
    - Intentional contact on or under clothing with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
    - Any other intentional bodily contact in a sexual manner (e.g. unwelcome kissing, unwelcome shoulder rubbing or other touching perceived by the recipient as sexually based).
  - ii. Non-consensual penetration
    - Any penetration, however slight, with any body part or object by a person upon another person that is without consent and/or by force.
    - Penetration Includes: Vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.
- F. Stalking:** A course of conduct directed at a specific individual that would cause a reasonable person under similar circumstances and with similar identities to the Complainant to fear for their own or others' safety, or to suffer substantial emotional distress. A course of conduct includes two or more acts, including but not limited to those in which the alleged perpetrator directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about the Complainant, or interferes with the Complainant's property. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

## VI. Definitions of Key Terms

As used in this Policy and its accompanying procedures, these terms when capitalized mean:

- B. Actual Knowledge:** Notice of sexual misconduct or allegations of sexual misconduct to a University official who has authority to institute corrective measures on behalf of the University, as defined in this Policy.
- C. Advisor:** A friend, family member, attorney, or other individual that a Complainant or Respondent has identified to support and advise them during meetings and proceedings related to this Policy.
- D. Bias:** An influence or preconceived inclination or judgment of a person towards favoring an outcome or a party. Bias can be favorable or unfavorable and can be based on the status of a party as Complainant or Respondent or on sex-based stereotypes.
- E. Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual misconduct.
- F. Conflict of Interest:** A situation in which a person has a duty to more than one person or entity but cannot do justice to the actual or potentially adverse interests of both parties. It can arise when an individual's personal interests or concerns are inconsistent with

duties and obligations to be objective, to act in the best interests of the University or contrary to loyalty.

- G. Consent:** Permission that is clear, knowing, voluntary, and expressed prior to engaging in and during an act. Consent is active not passive. Silence cannot be interpreted as Consent. Consent can be given by words or actions when those words or actions create mutually understandable, clear permission regarding willingness to engage in, and the conditions of, sexual activity.

Consent to any one form of sexual activities does not automatically imply Consent to any other form of sexual activity.

- Consent may be withdrawn at any time.
  - Previous relationships or prior Consent cannot imply Consent to future sexual acts; this includes “blanket” Consent (i.e., permission in advance for any and all acts at a later time/place).
  - Consent cannot be given by a person who is known to be or should reasonably have been known to be based on the circumstances, substantially impaired (e.g., by alcohol or other drug use, unconsciousness, or blackout, etc.).
  - Substantial impairment is a state when an individual cannot make rational, reasonable decisions because the person lacks the capacity to give knowing Consent (to understand the who, what, when, where, why, or how of sexual interaction).
  - Individuals may have substantial impairment resulting from other physical or mental conditions including mental disability, sleep, involuntary physical restraint, or from the consumption of alcohol or other drugs.
  - Being impaired by alcohol or other drugs is never a defense for behavior that violates this Policy.
  - An individual cannot Consent if the person has been coerced, including being compelled by force, threat of force, or deception; is unaware that the act is being committed; or is coerced by a supervisory or disciplinary authority.
  - No individual who is under the age of 18 at the time of the sexual act is legally capable under Virginia law of giving Consent.
- H. Formal Resolution:** A process for resolving a report through an investigation and adjudication process.
- I. Informal Resolution:** A process agreed upon by both parties to resolve a report without an investigation, hearing, or finding regarding responsibility.
- J. Preponderance of the Evidence:** The standard of evidence used to determine whether a Respondent is “responsible” or “not responsible” for violating this Policy. A “preponderance of the evidence” means that a Policy violation is more likely than not to have occurred.
- K. Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct.
- L. Remedies:** Measures designed to restore or preserve equal access to the University’s educational program or activities where a determination has been made following a

formal resolution process that a Respondent is responsible for one or more acts of sexual misconduct under this Policy. Remedies may include Supportive Measures but may not include additional disciplinary or punitive measures.

- M. Sanctions:** Measures that may be disciplinary or punitive in nature and may be imposed if a Respondent is found to be responsible for violations of this Policy against sexual misconduct.
- N. Supportive Measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent.

## **VII. Reporting Obligations of Employees**

### **A. Officials with Authority**

Averett University has designated the below employees as Officials with Authority to receive notice of incidents of sexual misconduct.

- Campus Safety and Security Officers
- Dean of Student Life
- Deputy Title IX Coordinator(s)
- Director of Human Resources
- President
- Title IX Coordinator
- Vice President and Director of Athletics
- Vice President and Chief Financial Officer
- Vice President of Academic Affairs
- Vice President of Student Engagement

Reports may be made any time via email, phone, or mail or in-person during normal business hours. *A report made to persons not listed here will not provide the University with Actual Knowledge of the report and may not provide the full access to information and Supportive Measures.*

### **B. Mandatory Reporters**

To assist in the University's goals of supporting individuals impacted by sexual misconduct and creating a safe environment for all community members, all faculty and staff, *with the exception of those listed as Title IX Coordinators or Officials with Authority or those who are confidential resources (University Chaplain, Counselor, Director of Health Services)*, are mandatory reporters. Mandatory reporters, also known as Responsible Employees, are required to report to the Title IX Coordinator, as soon as is practicable but within 24 hours, all information they receive about possible sexual misconduct. Although employees are required to report to the Title IX Coordinator, reports to a mandatory reporter does not provide the University with Actual Knowledge of a report. As such, individuals are encouraged to report directly to a Title IX Coordinator, the Chief Human Resources Officer, or an Official with Authority to ensure full access to information and Supportive Measures can be provided.

### **C. Confidential Employees**

The Director of Health Services and the University Chaplain are confidential employees when serving in their confidential role.

Confidential employees are encouraged to provide information, about reporting to the University to any individual who reports to them. Confidential employees will not share reports of sexual misconduct with University Officials.

#### **D. State and Federal Reporting**

In compliance with Virginia law, University administrators evaluate reports of physical sexual violence to determine whether they are required to notify local police in order to protect the health and safety of a student or others on campus.

In Compliance with the Clery Act, statistical data related to reports of on-campus sexual assault, stalking, dating violence, and domestic violence will be included in the University's statistical reporting data. When there is a serious or ongoing threat to the campus community, the University may notify the community of the danger without including any information that would identify the Complainant.

### **VIII. Procedural Requirements**

The Employee VAWA Sexual Misconduct Policy and its accompanying procedures comply with the Violence Against Women Act Amendments to the Clery Act (2013), and other applicable laws. Below is a selection of core University procedural requirements to ensure a fair and equitable process.

#### **A. Presumption of Good Faith Reporting**

The University presumes that reports of prohibited conduct are made in good faith. A finding that the alleged conduct does not constitute a violation of this Policy or that there is insufficient evidence to establish that the alleged conduct occurred as reported does not mean the report was made in bad faith.

#### **B. Amnesty**

Sometimes, employees are hesitant to report harassment, discrimination, or retaliation they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the Student Relationships Policy and is then assaulted in the course of that relationship might hesitate to report the incident to University officials.

The University may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

#### **Supportive Measures**

The University will provide reasonable and appropriate Supportive Measures to Complainants and Respondents.

The University will maintain as confidential Supportive Measures to the Complainant and Respondent, to the extent that maintaining such confidentiality does not impair the ability of the University to provide the Supportive Measures.

#### **C. Disability Accommodations**

The University will provide reasonable accommodations to Complainants, Respondents, and witnesses throughout Sexual misconduct resolution processes. Individuals should contact the Title IX Coordinator to request accommodations.

#### **E. Resolution Processes**

The University will provide a prompt and equitable resolution process. Resolution processes will be overseen by University employees or third-parties who do not have Biases for or against a specific Complainant or Respondent, Biases for or against Complainants or Respondents generally, or Conflicts of Interest.

##### **Informal Resolution**

The University will not require participation in the informal resolution process as a condition of employment or continued employment. Participation in the informal resolution process must be voluntary, without coercion.

##### **Formal Resolution**

The University will ensure investigations are thorough, reliable, impartial, prompt, and fair. The University will provide Complainants and Respondents an equal opportunity to present witnesses and provide evidence.

#### **F. Appointment of Officials with Roles in the Process**

The University reserves the right to appoint a third-party or a trained administrator to fulfill any roles outlined in the process.

### **IX. Training**

All persons assigned by the University to oversee processes; investigate; and serve as hearing officers, decision-makers, or facilitators in the informal resolution process shall, at a minimum, receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

### **X. Consequences of Noncompliance**

Employees who do not comply with this Policy may be subject to sanctions at the conclusion of a Formal Resolution Process.

### **XI. Supporting Documents and Resources**

[Procedures for Employee VAWA Sexual Misconduct](#)

[Title IX Sexual Harassment Policy](#)

[Title IX Sexual Harassment Procedures](#)

[Suggested Actions for Victims of Sexual Misconduct](#)

[Reporting Sexual Misconduct](#)

### **XII. Policy History**

**Policy created:** November 2015

**Revisions:** October 12, 2022 (Approved by Vice President and CFO/COO) Separates the policy and procedures; updated to address only employee non-Title



OP 027

Effective: October 12, 2022

IX sexual misconduct; developed to be substantially similar to the Title IX Sexual Harassment Policy and procedures.