



## OPERATING POLICY AND PROCEDURE

**OP 915:**       **Sexual Harassment Prohibited (Title IX)**

**DATE:**        November 8, 2015

**PURPOSE:**    The purpose of this Operating Policy/Procedure (OP) is to provide guidance for the University to maintain an environment for work and study that is free from discrimination by sexual harassment.

**REVIEW:**      This OP will be reviewed and updated annually before the start of the fall term by the University's President's Council with leadership by the Chief Operating Officer/Risk Manager and advice from the Title IX Coordinator, Director of Human Resources, and other interested individuals as appropriate.

## POLICY/PROCEDURE

1. 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 harassment and misconduct.

Members of the Averett community (students, staff, faculty, volunteers, vendors, and visitors) have the right to be free from all forms of sexual harassment. All members of the Averett community are expected to conduct themselves in accordance with this policy. Sexual harassment violates the dignity of individuals and will not be tolerated. The University seeks to eliminate sexual harassment through education, prevention, and by encouraging everyone to report concerns or complaints. The University is committed to stopping sexual harassment, preventing its recurrence, eliminating any hostile environment, and remedying its discriminatory effects by the use of a thorough and fair process.

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 questions or inquiries regarding this Policy should be addressed to the University's Title IX Coordinator at [Title IX@averett.edu](mailto:Title IX@averett.edu). See Appendix A.

## Scope of Policy

2. This policy applies to allegations of sexual harassment that take place on University property or at University-sponsored events, within the United States, including field trips, internships, service activities, athletic events, and theatre, music, or other performances.
  - a. It may apply to sexual harassment that occurs off-campus, including virtual spaces, if the alleged misconduct involves a member of the University community and falls within the definitions and regulatory provisions of Title IX of the Education Amendments of 1972 as currently in effect. Misconduct falling outside this policy will be addressed under other provisions in the University Student Code of Conduct and employment policies.
  - b. The policy applies regardless of the medium used to manifest the sexual harassment including, but not limited to physical, verbal, visual, online/electronic/social media.
  - c. “Students” include undergraduate, graduate, and special students enrolled in any course or program in the University. “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.
  - d. This policy is not intended for, and will not be used to, infringe on academic freedom
  - e. Nothing in this policy impairs the rights any individual may have under Title VII of the Civil Rights Act of 1964, as amended.

## Policy Definitions

3. As used in this policy, these terms when capitalized mean:
  - a. **Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to the University’s Title IX Coordinator or any other University official who has authority to institute corrective measures on behalf of the University, as defined in this policy and identified in Appendix A.
  - b. **Bias** is 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.
  - c. **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
  - d. **Conflict of Interest** is 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.
  - e. **Consent** is 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.

- i. Consent to any one form of sexual activities does not automatically imply consent to any other form of sexual activity.
  - ii. Consent may be withdrawn at any time.
  - iii. 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).
  - iv. 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.).
    - 1. 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).
    - 2. 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.
    - 3. Being impaired by alcohol or other drugs is never a defense for behavior that violates this policy.
  - v. 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.
  - vi. 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.
- f. **Education Program or Activity** includes all of the University operations, locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the conduct occurs; and any building owned or controlled by a student organization or group that is officially recognized by the University. Such off-campus situations are fact specific and will be reviewed to determine if such location or activity is part of the University’s program or activity for purposes of this policy,
- g. **Formal complaint** means a document filed and signed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment committed by a Respondent and requesting that the University investigate the allegation of Sexual Harassment.
- h. **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.
- i. **Retaliation** is the acts of intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with rights or privileges secured by Title IX or because a person has made a report or complaint, testified, assisted, or participated or refused to participate, in any manner in an investigation, proceeding or hearing. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, constitutes retaliation.

- j. **Sexual harassment** means unwelcomed conduct on the basis of sex that satisfies one or more of the following:
- i. An employee of the University conditioned the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.
  - ii. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.
  - iii. **Dating violence** is violence or a threat of violence by a person who has been in a social relationship of a romantic or intimate nature with the Complainant. Whether there is or was such a relationship will be determined based on the length of the relationship, the type of relationship, and the frequency of interaction of the persons involved in the relationship.
  - iv. **Domestic violence** is 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 individual 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.
  - v. **Sexual assault** is non-consensual sexual contact and non-consensual sexual intercourse (rape). All acts of sexual assault are forms of sexual violence and therefore are included under this Policy.
  - vi. **Stalking** is 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.
- k. **Remedies** are measures designed to restore or preserve equal access to the University's educational program or activities where a determination has been made following a grievance process that a Respondent is responsible for one or more acts of sexual harassment under this policy. Remedies may include Supportive Measure but may include additional disciplinary or punitive measures.
- l. **Sanctions** are 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 Harassment. Such Sanctions may include some combination of:
- i. Educational measures including but not limited to additional training, monitoring.
  - ii. Corrective measures including but not limited to community service requirements, restrictions on participation in campus activities/events, permanent restrictions on interactions with Complainant, changes in working, academic or living arrangements, written warnings with expectations for improvement/behavior.

- iii. Punitive measures to assure the safety of the Averett community which may range up to and including permanent dismissal from the University.
- m. **Supportive Measures** mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.
  - i. Such measures are designed to restore or preserve equal access to the University's Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment. They will be determined using an interactive process and based on what is not clearly unreasonable in light of known circumstances providing the potential Respondent the presumption of non-responsibility.
  - ii. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures as determined to be appropriate to protect and support the parties.
  - iii. The University will maintain as confidential Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality does not impair the ability of the University to provide the Supportive Measures.
- n. **Title IX Coordinator** is the University designated official with primary responsibility for coordinating the University's compliance with Title IX. This individual provides leadership for Title IX activities; offers consultation, coordinates education and training; and helps to ensure that the University responds appropriately, effectively, and equitably to all Title IX issues. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.
  - i. **Deputy Title IX Coordinators** are designated officials with secondary responsibility for the University's compliance with Title IX. Deputies will assist with implementation of this policy and serve in the Coordinator role when the Title IX Coordinator is not available, is recused from a case for conflict or bias, or as otherwise deemed appropriate. Use of the terms "Title IX Coordinator" or "Coordinator" includes Deputy Title IX Coordinators.

### **Reporting A Policy Violation**

- 4. In the interests of providing Supportive Measures to persons affected by alleged incidents of sexual misconduct and/or harassment, the University strongly encourages the reporting of potential violations by any person who has knowledge, regardless of when such violation is believed to have occurred.
  - a. Information on how to report violations of this policy will be disseminated to applicants for employment and for admission to the University; current employees; enrolled students; immediate family members of students and student applicants; visitors to the University; and employees of University vendors who work on campus.
  - b. Reports may be made by any person, including persons who are witnesses to the incident or who has heard about the incident from another source.

- c. The University respects the right of a Complainant or potential Complainant to decide whether they wish to pursue a Formal Complaint. A report of an incident does not automatically initiate a formal process but will enable persons affected to access Supportive Measures and resources and to receive information about their options.
  - d. If the person making the report is not the Complainant or potential Complainant, the University will contact the potential Complainant to offer Supportive Measures and resources.
5. Reports may be made any time (24/7) by telephone, email, or through a portal provided by the University such as the LiveSafe app or the University website. Reports may also be made in-person during regular University business hours.
6. Reports should be directed to one of the individuals who have been designated as authorized to initiate corrective measures working with the University's Title IX team. Each designated individual who is not a Title IX Coordinator must notify a Coordinator within 24 hours and provide all available information. **See Appendix A for a full list of and contact information for such designated personnel.**
7. Employees of the University who are not designated in Appendix A and become aware of potential violations of this policy are strongly encouraged to report what they know or to encourage the person with knowledge of the incident to report to the Title IX Coordinator or one of the Deputy Coordinators. If a potential Complainant requests confidentiality of a non-mandated reporting employee, the employee should relay known information to the Coordinator except the information provided confidentially.

### **Initial Response to Reports**

8. Promptly upon receipt of a report, the Title IX Coordinator or Deputy Coordinator will:
  - a. Take necessary steps to identify victims or potential claimants if not identified in the report
  - b. Contact each victim or potential claimant to offer Supportive Measures, regardless of whether the potential claimant intends to file a formal complaint.
  - c. Complete a Conflict/Bias review and if a potential Bias or Conflict is identified, transfer the report to another Coordinator who does not report to the Coordinator and to whom the Coordinator does not report.
  - d. The Title IX Coordinator will respond to the report in a manner that is reasonable in light of known circumstances at the time and will avoid acting in a manner that is deliberately indifferent as that term is used under the Title IX regulations.
9. Upon meeting/discussing the report with the potential claimant, the Title IX Coordinator responsible for overseeing the case will:
  - a. Determine if the allegations as reported meet the definition of Sexual Harassment under Title IX regulations and be covered by Title IX. If not, the report will be referred to the University's review/disciplinary/grievance process for non-Title IX violations.
  - b. If the allegations appear to meet the requirements for a Title IX resolution, offer and determine appropriate Supportive Measures, individualized to consider the wishes and needs of the victim or potential claimant, regardless of whether a Formal Complaint is filed or not.

- c. Explain how to file a Formal Complaint, the investigative and formal grievance processes, as well as the availability of an informal resolution process.

### **Emergency Removal**

10. The University may remove a Respondent from its Educational Program or Activity on an emergency basis:
  - a. After an individualized safety or risk analysis is conducted based on known facts and circumstances.
    - i. The University's threat assessment team if the Respondent is a student
    - ii. The Director of Human Resources upon consultation with the employee's supervisor and other relevant personnel as determined by the circumstances if the Respondent is an employee
  - b. If it is determined that the Respondent's actions arising from the alleged Sexual Harassment poses an immediate threat to the physical health or safety of a member of the University community (including self-harm) arising from the allegations of sexual harassment, and not removing the Respondent.
  - c. If the Respondent's actions posing an immediate and direct threat do not arise from the allegations of Sexual Harassment (such as a student possessing a weapon on campus unrelated to any Sexual Harassment allegation), then the University will address the concern in accordance with applicable law and the applicable code of conduct, separate from this policy.
  - d. Before an emergency removal decision is implemented there shall be appropriate consideration of all applicable disability laws and how those laws may require some modification of the decision.
  - e. If an Emergency Removal is made, the Coordinator shall issue a written notice to the Respondent, and with an immediate right to appeal. An appeal of an emergency removal decision is the same used for an appeal of a hearing decision determining responsibility under this policy. See Section 34-38 below.
  - f. A decision to impose an emergency removal is a discretionary one, and not tantamount to a determination of responsibility or a sanction, and the Respondent will still be entitled to the presumption of non-responsibility pending completion of the grievance process. The decision can be made whether a grievance process is underway or not.

### **Administrative Leave**

11. The University may place a non-student employee Respondent on administrative leave but may only do so after a Formal Complaint has been filed against the Respondent. Administrative Leave is meant for non-emergency situations and may be imposed in accordance with the College's other policies for leave that apply to employee, and the employee's rights under applicable disability laws must be considered.

### **Formal Complaints**

12. A written complaint may be filed and signed by a Complainant or signed by a Title IX Coordinator requesting an investigation into Sexual Harassment. The filing of a Complaint serves to initiate a formal grievance process, and also makes the informal resolution process available.
  - a. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the Education Program or Activity of the University. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, or other means the University may provide.
    - i. Filed by a Complainant means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.
  - b. Filing of a Formal Complaint initiates the grievance process and the availability of an informal resolution process.
    - i. Informal resolution is not available for complaints by students that have an employee as Respondent.
  - c. If specific circumstances warrant, the Title IX Coordinator may sign a Formal Complaint to initiate a grievance process against the Respondent when the Complainant does not wish to do so if doing so is not clearly unreasonable in light of the circumstances.
    - i. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not considered to be the Complainant.
    - ii. The Title IX Coordinator who signs a Formal Complaint must allow another Coordinator to provide oversight of that case through conclusion and cannot be involved in any way that may affect or influence the investigation, hearing, or outcome.
  - d. The Title IX Coordinator, in their discretion, also may consolidate Formal Complaints when the allegations of sexual harassment arise out of the same facts or circumstances. Consolidation is permitted if there are multiple complaints against one or more Respondents by multiple Complainants or by the same Complainant.
13. The Title IX Coordinator will provide written notice to the known parties after receiving a Formal Complaint with sufficient advance notice to enable the parties to prepare for a meeting with the assigned Investigator, that includes:
  - a. Notice of a Complaint being filed with the allegations of sexual harassment.
  - b. A statement of details known at the time including identifies of the parties involved (if known), the conduct alleged to constitute sexual harassment, and the date(s) and location(s) of the alleged incident(s).
  - c. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination of responsibility or non-responsibility is made at the conclusion of the grievance process
  - d. Notice that the parties may have an advisor of their choice to attend all meetings, who may be, but does not need to be an attorney.
  - e. Notice that the parties and their advisors will have the ability to inspect and review evidence collected during the investigation.

- f. Information regarding any provision in the University code of conduct that prohibits knowing making false statements or submitting false information during the grievance process.
  - g. Additional allegations about the Complainant or Respondent that were not included in the initial notice.
14. The Title IX Coordinator will meet with the Respondent following the filing of a Formal Complaint, or if Supportive Measures would be available and beneficial to the potential Respondent. Upon meeting with the Respondent, the Title IX Coordinator responsible for overseeing the case will:
- a. Review and explain the allegations included in the notice.
  - b. Offer and determine appropriate Supportive Measures, individualized to consider the wishes and needs of the Respondent. The Respondent will be treated in a manner that is equitable and the Coordinator may not implement measures that are punitive or disciplinary in nature unless or until the respondent has been adjudicated responsible for the sexual harassment.
  - c. Explain and provide information on the process used by the University once a complaint has been filed, including the investigative, and formal grievance processes, as well as the availability of an informal resolution process.

### **Informal Resolution Process**

15. At any time after a formal Complaint is filed, and before there has been a determination of responsibility on the allegations. Upon voluntary written consent of both parties, given without coercion, the parties may elect to utilize an informal resolution process.
- a. Informal resolution is not available in any case under this policy in which the Respondent is an employee (as specified in paragraph 2.c. above) and the Complainant is a student.
  - b. The University will provide written notice to the parties regarding the informal resolution process, may take the form of mediation or a restorative justice approach, and how a decision to utilize this alternative means interacts with the grievance process.
  - c. Participation in the informal resolution process may not be required by the University as a condition of enrollment, continued enrollment, employment or continued employment, as a condition to enjoy any other right, or as a waiver of the right to an investigation and hearing on a Formal Complaint of Sexual Harassment.
  - d. In order to initiate the informal resolution process both parties must sign an agreement that reflects their voluntary decision to submit all allegations contained in the Formal Complaint to this alternative form of resolution, subject to their right to withdraw at any time before a final resolution agreement is reached.
  - e. Either party may withdraw from the informal resolution and resume for the formal grievance process, unless the parties have reached a binding informal resolution.
  - f. The informal resolution process does not require a live hearing that allows for cross-examination, but instead may be held virtually or with the parties in one location.
16. The Facilitator appointed to lead the informal resolution process will hold both an appropriate academic credential (such a degree in dispute resolution, criminal process, or law, or certification

from a professional organization of mediators) and prior professional experience in dispute resolution, and be trained on Title IX issues.

- a. Facilitators may be external to the University retained for such a purpose or may be a University employee, provided the facilitator meets the training and experience criteria required by the Title IX regulations and are willing to serve.
  - b. Facilitators may not be the Title IX Coordinator, or the investigator assigned to the case, and must otherwise be impartial without Bias or Conflicts of Interest.
17. If the informal resolution process is successful and the parties voluntarily agree to the resolution, the Title IX process is complete.
18. If the informal resolution process is unsuccessful the facilitator shall not be called as a witness in any subsequent hearing held under the grievance process, and no records generated by the facilitator or provided by either party in confidence exclusively to the facilitator shall be offered or received by the investigators or in any hearing held under the grievance process.

### **Formal Grievance Process**

19. All personnel (internal or external to the University) who will participate in the grievance process must be cleared of conflicts of interest and bias before being assigned to a particular case. Anyone who is determined to have a potential bias or conflict of interest must recuse themselves from the case and remain uninvolved and avoid discussion of the case or the parties involved.
- a. Personnel covered include the Title IX Coordinator responsible for oversight of the grievance process, investigator, and decision makers.
  - b. The process for evaluating and clearing conflicts and bias is included in Appendix B to this policy.
20. The grievance process shall be conducted with:
- a. A presumption of non-responsibility of respondents until the conclusion of the hearing at which time a decision is rendered.
  - b. Protection of legally recognized privilege
  - c. Written notice to the parties of their right to select an advisor of their choice
  - d. All rules and processes applied to both parties equally and in the same manner.
21. Knowing that it is in the best interest of all parties and the University community to address complaints of sexual harassment correctly and promptly, the University has set reasonably prompt timelines for each phase of the process once a formal complaint has been filed through resolution. However, there may be temporary delays of the grievance process or extensions of the timeframes for good cause. Good cause may include the absence of a party, a party's advisor, or witness. It may also include concurrent law enforcement activity, the need for language assistance or disability accommodation, among other considerations necessary to provide a fair and equitable process.
22. In each case, the Title IX Coordinator, the investigator, the facilitator of informal resolution, the decision makers, including appeals, must be different persons and all must be clear of conflicts of interest and bias.

## Investigation

23. The grievance process begins with an objective and thorough investigation of the matters alleged in the Formal Complaint. The investigator(s) appointed by the University shall make best efforts to collect all relevant evidence within 30 days following the written notice to both parties of the complaint and initiation of the grievance process. During the investigation,
- a. The burden to gather all relevant evidence and to identify and speak with all witnesses, both inculpatory and exculpatory, is on the University not the parties.
  - b. The University shall not, in any way, restrict the ability of the parties to discuss allegations or gather evidence or refer witnesses or evidence to the assigned investigator.
  - c. The parties have the right to an advisor of their choice which may be an attorney. The University shall provide the advisor with information on the University's grievance process. If a party does not have an advisor and desires one during the investigation, the University shall provide a list of trained advisors from which the party may choose.
  - d. The parties must be provided an equal opportunity to identify witnesses and present facts and evidence.
  - e. The University shall send written notice of interviews, meetings, or hearings when a party's participation is expected or invited with sufficient time to enable the party to prepare to participate.
  - f. The investigator shall respect each party's Constitutional rights, legally recognized privileges, and confidentiality of the party's own medical, psychological, and similar treatment records. The investigator shall not apply pressure or seek to coerce waiver of such rights or privileges. Should a party voluntarily choose to waive such privilege, such information may be collected and reviewed for evidentiary value as part of the investigation.
24. Evidence gathered during the investigation shall be made available to each party to inspect and review and to respond. Such evidence shall include evidence that may not be deemed relevant and/or is not intended to be used in a hearing to determine responsibility and includes evidence regardless of the source from which obtained. The evidence must be sent either in hard copy or electronically to each party and their advisers and provide 10 days for the parties to review and submit a written response to be considered prior to the completion of the investigative report.
- a. At the conclusion of the investigation but prior to the hearing, the investigator must prepare an investigative report that fairly and objectively summarizes the relevant evidence. This report shall be provided to both parties (hard or electronic copy) for their review and written response at least 10 days prior to the scheduled hearing to determine responsibility
  - b. Non-Disclosure Agreement. Each party and their advisors, if any, will be required prior to the disclosure of evidence under paragraph \_\_ below, to execute a non-disclosure agreement that: (a) prohibits the public dissemination of the documents and information made are to be made available for inspection and review under paragraph\_\_ below, (b) prohibits the use of the documents and information for any purpose unrelated to the Grievance Process under this Policy, and (c) prohibits the taking of photographs or otherwise copying of any of the evidence provided to that party by the investigator(s) under Policy, including sensitive materials such as nude images.

- c. Redaction. Before sharing the documents in the Investigator’s file under paragraph \_\_\_\_, the Investigator(s) may redact information that is not directly related to the allegations in the Formal Complaint, or that is otherwise barred from use, such as a legally recognized and un-waived privilege. Personally identifiable information may be redacted from a student’s records if the information is not directly related to the allegations in the Complaint. However, the investigators shall redact student “education records” shared among the parties in the course of the investigation so long as they directly relate to the allegations raised in the Complaint because such evidence directly relates to the allegation and as such constitutes an education record of both the Complainant and Respondent. The Investigator will keep a clear record of what documents, if any, are withheld or redacted because they do not relate to the allegations in the Complaint or are subject to an un-waived privilege.
25. The University may use external or internal resources to conduct investigations. In either circumstance the investigator shall have qualifications that include formal, documented training and professional experience in law or law enforcement, the conduct of investigations, and the provision of Title IX.

## Hearing

26. A hearing shall be scheduled as soon as practicable following the delivery of the investigative report, but shall provide the parties and their advisors, and witnesses a minimum 10-day-advance written notice of the date and time of the hearing.
  - a. The hearing shall be recorded and conducted virtually using technology available to the University at the time. At the option of the University, such hearing may be conducted live and in-person and shall be recorded. Such recording will be when available, a video/audio recording and otherwise at least an audio recording.
  - b. Each party to the hearing, the witnesses, and the decision maker may be in separate locations or rooms. In this situation all shall interact via the virtual connection, so long as the technology allows the parties, advisors and the hearing officer to see the witness(es) testifying in real time.
27. Each party has the right to be present at the hearing with the right to ask the other party and all witnesses relevant questions and follow up questions, including those that challenge credibility, but such questioning must be conducted only by their advisor. The parties may not question each other or witnesses directly. The hearing officer will rule on the relevance of all questions posed.
28. If a party does not have an advisor, the hearing may not proceed until the University has provided a trained advisor to participate in the hearing at no fee or charge to the party.
29. Each party has the equal opportunity to present fact witnesses and expert witnesses and other evidence, both inculpatory and exculpatory.
30. A hearing officer shall be appointed to preside over the hearing. Hearing officers may be internal or external to the University but shall be qualified by having formal legal or criminal justice training and experience sufficient to enable performance of the following obligations:
  - a. To make a determination of responsibility or non-responsibility based on an objective evaluation of all relevant evidence provided during the investigation and hearing, both exculpatory and inculpatory, using a clearing and convincing evidence standard.
  - b. To establish such rules and procedures are deemed necessary to the operation of the hearing, so long as such rules and procedures, including restrictions on advisers, must apply equally to both parties.
  - c. To determine the relevancy of questions asked before witnesses or the parties provide answers. Such determination shall consider Constitutional rights, legal or medical privilege, and rape shield protection rules. Questions and evidence regarding the Complainant's sexual predisposition or prior sexual behavior are not relevant unless offered to prove someone other than Respondent committed the conduct alleged by the Complainant or if such questions and evidence goes to conduct with the Respondent and offered to prove consent. For each question not permitted, the hearing officer must provide the rationale for its exclusion.
  - d. To exclude and not consider any statements made by a party or witness who does not appear at the hearing, having received notice, or does not answer to cross-examination or other relevant questions posed at the hearing in reaching a determination of responsibility. A party's or witness' absence or refusal to answer questions cannot be inferred as the sole basis to determine responsibility.

- e. To prepare a written determination of findings that provides the rationale for the outcome that includes:
    - i. Identification of allegations in the complaint of potential sexual harassment
    - ii. Description of the procedural steps taken from receipt of Formal Complaint through determination (notifications to the parties, interviews with parties and witnesses, site visits, methods of evidence gathering, hearings held, and other steps taken)
    - iii. Findings of fact supporting the determination
    - iv. Conclusion regarding application of the code of conduct or policy to the facts
    - v. A statement of the result for each allegation regarding responsibility and the rationale
    - vi. A statement of the determination regarding disciplinary sanctions, if any, imposed on Respondent and remedies, if any, to be provided to Complainant to restore or preserve equal access to the education program and activity as provided by the University decision maker (Paragraph 31 below).
    - vii. The applicable process and bases for appeal for the Complainant and Respondent.
31. Subsequent to the decision of the hearing officer, the designated University decision maker shall determine the appropriate remedies and sanctions.
- a. For student Respondents, the decision maker is the Dean of Students
  - b. For employee Respondents the decision maker is the Area Vice President in consultation with the employee's supervisor and Director of Human Resources.
32. The Title IX coordinator shall send simultaneously to the parties the written determinations by the hearing officer and decision maker that provides the information required in paragraph 31.e. and provides the date on which the decision becomes final. Such date is either the date that the University provides the result of an appeal to the parties or the date on which an appeal would no longer be considered timely (if no appeal is filed).

## **Appeal**

33. As indicated in paragraph 10 above, the Respondent has the right to file an appeal of any Emergency Removal decision within 7 days of the decision on the grounds that the decision is not warranted based on the known facts and/or there are less restrictive measures available to address the safety concerns.
34. Upon receipt of the notice of decision of dismissal or following the hearing, either party may appeal within 7 days of the date the decision notice was sent. To be permissible, appeals must have one or more of the following bases:
- a. There was an identified procedural irregularity that affected the outcome.
  - b. There is new evidence that was not reasonably available at the time of the determination of responsibility or dismissal that could affect the outcome.

- c. The Title IX Coordinator, investigators, hearing officer or decision-maker had a conflict of interest or bias for/against the Complainant or Respondent or for/against Complainants/Respondents in general that affected the outcome.
  - d. The remedies or sanctions provided are unduly harsh or are insufficient given the nature of the conduct.
35. The University will notify each party, in writing, when an appeal is received. Each party may respond in writing to the appeal notice within 5 days with information relevant to the base(s) of appeal and in support of or opposed to the appeal to be considered by the decision maker. The appeal will be considered, and a decision rendered within no more than 7 days after the response period has expired or the response has been received. All supportive measures in place through the grievance process shall remain available to the parties throughout the appeals process.
36. The appeals process is as follows:
- a. For students who appeal, the Title IX Coordinator will provide the appeal and responses along with any other information, including the record of the hearing, required by the Vice President for Academic Affairs and Student Success, or designee, who shall render a final decision on the appeal. The designee may not be the decision-maker, Title IX Coordinator, investigator, advisor, or hearing officer involved in the complaint.
  - b. For employees who appeal, the Title IX Coordinator will provide the appeal and responses along with any other information, including the record of the hearing required by the President of the University, or designee, who shall render a final decision on the appeal. The designee for the decision-maker on the appeal may not be the Title IX Coordinator, investigator, advisor, or hearing officer involved in the complaint.
  - c. For faculty who appeal, the appeal shall be handled as is specified for an appeal of a grievance in the current edition of the Faculty Handbook.
37. If an appeal based on paragraph 35 section a, b, or c is granted, a new formal process (or informal if agreed to by the parties) is to be initiated in such a manner as to correct the irregularity, address the new evidence, or to correct the conflict or bias. If the appeal is based on paragraph 35, section d, the appeal decision maker may substitute alternate remedies or sanctions as deemed suitable. If the appeal is based on paragraph 34, is granted the decisionmaker can overturn the removal order and/or impose less restrictions on the Respondent. The appeal decision maker shall issue a written decision describing the result of the appeal and the rationale supporting the result. The decision on the appeal shall be sent simultaneously to all parties and is final.

## **Dismissal**

38. A Formal Complaint may be dismissed by the University under several circumstances:
- a. If the conduct alleged in the Formal Complaint, even if proven, would not constitute sexual harassment under Title IX, or did not occur in a University Education Program or Activity, or within the United States, the University is required to dismiss the Formal Complaint or the allegations not meeting the Title IX standards. Such conduct may, however, then be addressed if the University chooses under another provision of the applicable code of conduct, policy, or expectations of staff/faculty.
  - b. If the Complainant provides written notification to the Title IX Coordinator that the Complainant would like to withdraw the Formal Complaint or any allegations therein,

prior to a determination of responsibility the University may, but is not required to dismiss the Formal Complaint. In considering the request, the Coordinator will give consideration to the wishes of the Complainant and also assess the nature of the alleged misconduct, and the information obtained, including evidence from others besides the Complainant supports the potential of an ongoing risk or a threat to the safety of the Averett community. If dismissed upon Complainant request, the Coordinator may later reinstate the formal grievance process by signing a new complaint as described in paragraph 12.c. above.

- c. If prior to a determination on responsibility is reached the Respondent is no longer enrolled or employed by the University, the University may, but is not required to dismiss the Formal Complaint, or any allegation therein, when the University has no way to gather evidence sufficient to make a determination. If Respondent should re-enroll or return to employment with the University in the future, the Coordinator may later reinstate the formal grievance process by signing a new complaint as described in paragraph 12.c. above.
- d. If the Title IX Coordinator in consultation with the investigator determines that specific circumstances prevent the gathering of evidence sufficient to reach a determination of responsibility as to allegations in the Formal Complaint. Such circumstances could include, but are not limited to lack of access to or lack of cooperation by the Complainant or witnesses, severe illness or death of Complainant or Respondent, or other unique conditions. Evidence that is exculpatory is not a basis to dismiss the complaint under this provision.

39. The Title IX Coordinator will promptly and simultaneously send written notice of the dismissal and the reasons for the dismissal to the parties and their advisors.

40. Either party may file an appeal from a dismissal determination in accordance with paragraphs 35-39 above.

### **Retaliation**

41. Retaliation by a person against any person who reports or participates in any way in any part of the process contained within this policy is prohibited. Persons found to be engaging in retaliation shall be subject to disciplinary action under the grievance procedures for sex discrimination or applicable student code of conduct.

- a. The exercise of rights under the First Amendment to the US Constitution does not constitute retaliation under this policy.
- b. Charging a person with a conduct violation for making a materially false statement in bad faith during the course of the investigation or the grievance process does not constitute retaliation. A finding regarding responsibility alone is not sufficient to conclude any party made a materially false statement in bad faith.
- c. To help protect the identity of individuals who make a report or complaint of sex discrimination, including individuals who report under this policy, any Complainant, person alleged to be responsible, Respondents, and witnesses is considered to be confidential information and shall be treated as such except as needed to conduct an investigation, hearing, or grievance process, or as permitted by FERPA or required by law.

## **Training**

42. All persons assigned to the University to serve as Coordinators, University-provided advisors, investigators, hearing officers, decision makers who hear appeals, or facilitators in the informal resolution process shall be trained in
  - a. The definition of Sexual Harassment under Title IX regulations
  - b. Scope of the University's Education Program or Activity
  - c. Title IX requirements and regulations
  - d. The University's Title IX process for investigation, hearings, appeals, and the informal resolution processes, as applicable
  - e. How to remain impartially, avoiding prejudgment of facts at issue, conflicts of interest and bias
  - f. Technology to be used at the hearing
  - g. Issues of relevance of questions and evidence, including how to apply rape shield protections
  
43. Materials used in the Title IX training of Coordinators, investigators, decision-makers, and informal resolution facilitators shall be posted on the University website if owned by the University or otherwise available for inspection upon request.
  - a. Materials used in training may not rely on sex stereotypes and must promote impartial investigations and adjudications of complaints of sexual harassment.
  - b. Materials used in training shall include the presumption of non-responsibility for alleged conduct until a determination is made at the hearing

## **Recordkeeping**

44. Records related to Title IX complaints and the University's response will be maintained for seven years or longer if required in the University policy on record retention. The seven (7) year period runs from the date of creation of the last record pertaining to that case. Records to be created and preserved include:
  - a. Complete records of each investigation, outcome, recording, sanctions, remedies
  - b. Appeals and results thereof
  - c. All informal resolutions and the results
  - d. Materials used to train Title IX Coordinators, investigators, hearing officers, decision makers, and facilitators of informal resolution processes. Training materials will be available on the University website and will be made available for inspection by members of the public upon request
  - e. Complete records of reports, complaints, responses, supportive measures provided to parties including documentation of the reasons for the University's conclusion that its response was not deliberately indifferent and that it took measures designed to restore or preserve equal access to the University's Education Programs or Activities.

- f. If supportive measures were not provided – including not providing a specific supportive measure requested by the Complainant, the University will document the reasons for not providing the services and will be maintained as well as the rationale to support that the decision not to provide supportive measures was not clearly unreasonable in light of the known circumstances.

### **Role of the Title IX Coordinators**

45. The role of the Title IX Coordinators is to support the University's efforts to end discrimination on the basis of sex in education, including discrimination resulting from acts of sexual harassment. The Title IX Coordinators are to ensure compliance with and coordination of the processes under this policy. Specific, but not all-inclusive, responsibilities include:
  - a. Publication and dissemination of the information required by this policy
  - b. Determination of whether a filed Formal Complaint alleges sexual harassment under Title IX and its regulations
  - c. Ensuring that supportive measures and information regarding the grievance process are made available to affected parties
  - d. Coordinating the flow of communications, notices, and information, as required under this policy, among and between parties, advisers, witnesses, investigators, hearing officers, decision makers, and appeal decision makers
  - e. Ensuring the grievance process moves forward and is completed in a timely manner in conformance with this policy.
  - f. Ensure training required under Title IX regulations and this policy is provided to those individuals who the University assigned to participate in the grievance process (investigation and hearing) in appeals, or in the informal resolution process
  - g. Assigning the investigator(s), hearing officer, and advisor, if necessary, who have been properly trained, and are impartial and free from Bias and Conflict, and to rule on objections raised to the impartiality of investigators or hearing officers
  - h. Maintaining information and documentation of cases under this policy in a secure manner
  - i. Participating in and organizing prevention efforts, campaigns, and events to raise awareness of the issues, ways to prevent sexual harassment, reporting mechanisms, and options available to victims of sexual harassment and discrimination
  - j. Conduct climate survey, as appropriate, to assess effectiveness of education and prevention initiatives
  - k. Ensure that information required for statistical reporting under the Clery Act is provided in a timely manner to the Chief of Campus Safety and Security.
  - l. Ensure that the University is in compliance with the NCAA Board of Governors Policy on Campus Sexual Violence:
    - i. That the intercollegiate athletics department is fully knowledgeable about, integrated in, and compliant with institutional policies and processes regarding sexual violence prevention and proper adjudication and resolution of acts of sexual violence.
    - ii. That the institutional policies and processes regarding sexual violence prevention and adjudication, and the name and contact information for the campus Title IX coordinator are readily available within the department of athletics.

- iii. That all student-athletes, coaches and athletics staff are educated annually on sexual violence prevention, intervention, and response, to the extent allowable by state law.
- iv. That the University President, Director of Athletics, and Title IX Coordinator can attest to these above requirements annually.
- m. Report all potential cases to the insurance broker and the COO/VP of Finance promptly when a report or complaint is received, and thus the University is on notice of a potential Title IX case.

### **Conflict with State Law**

46. Consistent with the doctrine of federal pre-emption, if the requirements of Title IX conflict with state law, Title IX and its requirements prevail and federal regulations must be followed.

Virginia law requires that under certain circumstances a student (including an employee who is a student) who is under investigation for or who has been found responsible for an act of sexual violence will have a prominent notation added to that student's transcript.

- a. For purposes of this section, sexual violence means physical sexual acts perpetrated against a person's will or against a person incapable of giving consent. Such notation will be added only when:
  - i. A student withdraws from the University while under investigation for an offense involving sexual violence. Such notation will state that the student withdrew while under investigation for such a violation.
    - 1. Under the Title IX regulations effective August 14, 2020, this provision of state law may be deemed to be unenforceable if the transcript notation as prescribed is deemed to be a non-supportive measure that could be construed as disciplinary or punitive sanction since it could impact the student's ability to further their education at another institution or gain employment. It also may be deemed to violate the Title IX confidentiality requirements.
  - ii. A student is found responsible for an act of sexual violence and was suspended or permanently dismissed from the University as a consequence of that finding will have a notation that the student was suspended or dismissed for such violation.
  - iii. A student with such a transcript notation may have the notation removed:
    - 1. If the student is subsequently found, to be not responsible for such an offense or
    - 2. If the student has completed the term of suspension, and other sanctions required by the University, and has been determined by the University to be in good standing
- b. Under state law, a transcript notation will be added only when:
  - i. A student withdraws from the University while under investigation for an offense involving sexual violence. Such notation will state that the student withdrew while under investigation for such a violation.
  - ii. A student is found responsible for an act of sexual violence and was suspended or permanently dismissed from the University as a consequence of that finding will have a notation that the student was suspended or dismissed for such violation.
- c. A student with a transcript notation may have the notation removed:

- i. If the student is subsequently found, to be not responsible for such an offense or
  - ii. If the student has completed the term of suspension, and other sanctions required by the University, and has been determined by the University to be in good standing
  
- 47. State law also requires that the University's risk assessment team meet within 72 hours of receipt of a report of physical sexual violence. This meeting must occur whether or not a Formal Complaint or criminal charges have been, and this state law requires disclosure to third parties in certain circumstances.
  - a. If the reported conduct would not consist of a felony sexual assault under state law, the law enforcement representative on the review team shall notify the other team members, and within 24 hours consult with the Commonwealth Attorney with jurisdiction to prosecute, but shall do so without disclosing the name or other identifying information of any of the individuals involved.
  - b. After a review of all available information, if the review team determines a disclosure is necessary to protect the health and safety of the student or others on campus, then personal identifying information of all students known to be involved shall be released to campus security as well as the local police. The Title IX Coordinator will provide prompt notice to the student that this safety disclosure has been made.
  - c. The Department of Education has indicated in the Preamble to the new regulations that this state mandated review process which may result in required disclosures, if students or campus safety is found to be a risk, do not conflict with Title IX or its implementing regulations and are enforceable.

### **Publication**

- 48. This policy, the appendices hereto, including identification and contact information of the designated Title IX Coordinators shall be displayed prominent on its website and in every handbook and catalog available to students, potential students, employees, and potential employees.

### **Appendices:**

- A. University and Community Action Steps, Resources & Reporting
- B. Conflict of Interest and Bias Process
- C.

## **APPENDIX A ACTION STEPS, RESOURCES, AND REPORTING**

### **ACTION STEPS FOR VICTIMS OF SEXUAL ASSAULT/HARASSMENT**

#### **1. Ensure Your Physical Safety.**

Please do not hesitate to call the Campus Safety and Security Department (434-791-5888) or dial 911. Campus Safety and Security officers are on duty 24 hours a day, 7 days a week and can provide you with both on- and off-campus resources.

#### **2. Seek Medical Assistance and Treatment, if Needed**

Local options for emergency medical care and collection of personal evidence include SOVAH located in Danville, Virginia (434-799-2100).

It is crucial that you obtain medical attention as soon as possible after a Sexual Assault to determine the possibilities of physical injury, to prevent or treat sexually transmitted diseases, and/or to screen for the presence of sedative drugs such as Rohypnol or GHB (date-rape drugs). University staff can help you contact a support person, such as a family member, friend, or roommate.

If you choose to have an evidence collection kit (PERK kit) completed, it is important to do so within 120 hours of an assault. Even if you have not decided to file charges, it is advisable to have the evidence collection kit completed so that you can preserve the options of obtaining a protective order and/or filing criminal charges at a later date.

In order to best preserve evidence for an evidence collection kit, it may be advisable to avoid showering, bathing, going to the bathroom, or brushing your teeth before the kit is completed. You should also wear (or take with you in a paper – not plastic – bag) to the hospital the same clothing that you were wearing during the assault. An evidence collection kit can still be completed even if you have showered or bathed.

You can visit [www.notalone.gov/students](http://www.notalone.gov/students) for additional information and resources.

#### **3. Obtain Emotional Support – Campus Resources.**

The Office of Counseling Services and the University Chaplain can help people sort through their feelings and begin the recovery process as they are trained to provide confidential crisis intervention on short-term and emergency issues. They can also provide referrals for outside providers and law enforcement.

Counseling is free of charge to all students. In some instances, the law may require the disclosure of information shared by students with counselors; however, absent a legal mandate to the contrary, counseling services are confidential, are not part of students' University records, and will not be reported to other University personnel.

The University Chaplain can provide pastoral counseling for students which is also confidential, not part of students' records, and not reportable to other University personnel except in instances where the law may require the disclosure of information shared by students with counselors.

Employees may access counseling services through the University's Employee Assistance Program (EAP).

## REPORTING SEXUAL HARASSMENT

Everyone with knowledge of sexual harassment is encouraged to report such incidents to the University. The University can help you access resources and can provide you with support and additional information concerning your rights and options.

Averett University has designated the following individuals to receive notice of incidents of sexual harassment. Reports may be made in-person, by telephone, email, or through a provided portal on LiveSafe or the University website. *A report made to persons not listed here will not serve as Notice to the University and may not provide the full access to information and supportive measures.*

Contact	Location	Telephone	Email
Title IX Coordinator Chief Compliance Officer	Compliance Office	434-791-7222	TitleIX@averett.edu
<b>Kathie Tune</b> Sr. Deputy Title IX Coordinator (reports involving University employees) Director of Human Resources	Main Hall #13	434-791-7106	ktune@averett.edu
<b>Bren Taylor</b> Deputy Title IX Coordinator – North Campus Director of Operations (Athletics)	Grant Center	434-791-5677	Bren.taylor@averett.edu
<b>Dr. James Hodgson</b> Deputy Title IX Coordinator – Averett Online Criminal Justice Program Director	Frith 421	434-791-6881	jhodgson@averett.edu
<b>Izy Obi</b> Deputy Title IX Coordinator – Riverview Campus Director MSN Clinical Placement	Riverview #233	434-791-7115	iobi@averett.edu
In addition, reports may be made to any officer of University (President, Vice President), the Dean of Students, the Director of Athletics or the office of Campus Safety & Security. These individuals will notify one of the Title IX Coordinators of the information and will place the University on notice of the alleged incident.			

## COMMUNITY RESOURCES

**Local Law Enforcement Agencies** can be reached by calling 911.

**Danville Police Department** may be contacted at 434-799-5111. They are located at 427 Patton Street in Danville.

**SOVAH** is located at 142 South Main Street in Danville. The Emergency Department can be reached by calling 434-799-2100.

**Sexual Assault Response and Awareness, Inc. (SARA)** runs a 24-hour hotline that can be reached at 540-981-9352. You can also visit them online at [www.sararanoke.org](http://www.sararanoke.org).

**Piedmont Community Service Board, Danville** is located at 24 Clay Street Martinsville and can be reached by calling 276-632-7128.

**Contact Listen Line** is a 24-hour counseling hotline that can be reached at 1-877-WEHELP6 or 1-877-934-3576.

**Haven of the Dan River Region Inc.** they can be reached at 434 483-5482.

Rape, Abuse, and Incest National Network (**RAINN**), is a confidential, anonymous national sexual assault hotline. They can be reached at 800-656-4673 or [www.rainn.org](http://www.rainn.org).

The **U.S. Government website** [www.notalone.gov/students](http://www.notalone.gov/students) offers links for additional information and resources.