



## OPERATING POLICY AND PROCEDURE

**OP 027: Sexual Misconduct**

**DATE:** November 8, 2015

**PURPOSE:** The purpose of this Operating Policy/Procedure (OP) is to maintain an environment for work and study that is free from sexual misconduct by providing guidance on appropriate and inappropriate behavior and consequences for violations.

**REVIEW:** This OP will be reviewed and updated annually in June of each year by the University's President's Council with advice from the Title IX Coordinator, and other interested parties (compliance, HR, student life, etc.).

### 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 on the basis of gender, sexual orientation, or gender identity.

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

2. This policy applies to all allegations of sexual misconduct that take place on University property or at University-sponsored events, regardless of their location, including field and study-abroad trips, athletic events, and theatre, music, or other performances.
  - a. It may apply to sexual misconduct that occurs off-campus, including virtual spaces, if the alleged sexual misconduct involves a member of the University community and could reasonably create a hostile environment.
  - b. The policy applies regardless of the medium used to manifest the sexual misconduct including, but not limited to: physical, verbal, visual, online/electronic/social media.
  - c. "Students" include undergraduate, graduate, special students, and Graduate Assistants (for events occurring while in their student capacity) enrolled in any course or program in the University. "Employees" include all staff, faculty, and Graduate Assistants (for events occurring in their employee capacity), whether full or part-time, on campus or remote.
  - d. This policy is not intended for, and will not be used to, infringe on academic freedom.

3. The University has a compelling obligation to address allegations and suspected instances of sexual misconduct when it knows or should have known information that would lead a reasonable person to believe that this policy has been violated.
  - a. The University may take appropriate actions, including informing the accused individual(s) of the allegations and pursuing an investigation even when the complainant is reluctant to proceed. The complainant will be notified in advance when such action is necessary.
  - b. The University’s disciplinary response may be limited if the accused is a visitor, other third-party, or is not subject to the University’s jurisdiction such as a student who is no longer enrolled or a former employee.
  - c. Romantic and/or sexual relationships between individuals in a supervisory, teaching, evaluation, advising, coaching, or counseling relationship constitutes a conflict of interest and may violate the University’s Non-Fraternization Policy (OP 026). If an allegation of sexual misconduct is made, the University may take disciplinary action, if appropriate, under both policies.

**REPORTING OPTIONS**

4. Reports or complaints of alleged sexual misconduct can be made by an individual who is directly involved in, who observes, or who reasonably believes that sexual misconduct may have occurred, including allegations by third-party witnesses. Making a report or filing a complaint with the University does not preclude the individual from filing a report with an external law enforcement or other agency such as the Office of Civil Rights, nor does it extend time limits with those agencies. Individuals may request assistance from the Title IX Coordinator or the deputy coordinator to notify such authorities.
  - a. Members of the university community may make reports or file complaints according to the following table; such reports/complaints will satisfy the employee duty to report.

| <b>Sexual misconduct involving:</b>   | <b>Report to:</b>  | <b>Contact Information:</b>  |
|---|--|--|
| <b>Students</b><br>(residential, commuter, and GPS)                           | Title IX Coordinator<br>Chief of Campus Safety & Security  | 434-791-5628<br><br>434-791-5888 or ext. 15888 from a campus phone |
| <b>Employees</b><br>(including vendor employees)                              | Director of Human Resources<br>Deputy Title IX Coordinator | 434-791-7106<br><br>434-791-7244                                   |
| <b>Guests, visitors, persons not part of the Averett University community</b> | Title IX Coordinator<br>Chief of Campus Safety & Security  | 434-791-5628<br><br>434-791-5888 or ext. 15888 from a campus phone |

|   |                              |   |
|---|------------------------------|---|
| <b>Other reporting options available to members of the Averett community; employees must also report to one of the offices above.</b> |                              |   |
| <b>Privileged-Confidential Reporting</b>  | Averett Counseling Services  | 434-791-5624  |
|   | Averett University Chaplain  | 434-791-7104  |
| <b>Anonymous Reporting</b>  | Title IX Coordinator         | LiveSafe: Report/Tips: Discrimination   |
| <b>Criminal Conduct</b>   | Caswell County Sheriff Dept. | 911 or 336-388-5950   |
|   | Danville Police Department   |   |
|   | Henrico County Police Dept.  | 911 or 434-799-5111   |
|   | Quantico Marine Base         | 911 or 804-501-5000   |
|   | Roanoke Police Department    | 911 or 703-784-2252   |
|   | Virginia State Police        | 911 or 540-853-2211   |
| <b>Department of Education</b>  | Office of Civil Rights       | <a href="http://www.ed.gov/about/offices/list/ocr/complaintintro.html">http://www.ed.gov/about/offices/list/ocr/complaintintro.html</a><br><a href="mailto:ocr@ed.gov">ocr@ed.gov</a> |

**CONFIDENTIALITY AND PRIVACY**

- 5. To the extent possible, information received in connection with a report or complaint of sexual misconduct, investigation, and resolution thereof, will be treated as confidential.
  - a. Information provided to a privileged-confidential reporting contact is protected under that legal privilege and only information essential to the safety of the University community or non-personally identifying required for statistical reporting purposes may be shared.
  - b. Information reported through other avenues will be treated as confidential except as necessary to conduct an appropriate investigation, to provide assistance and resources to complainants and respondents, to perform other appropriate university functions, or when the University is required to provide information under law.
    - i. If the University determines there are conditions of potentially imminent or ongoing risk of harm to the University community, the University may be required to inform the community of the occurrence of alleged incident.
    - ii. Under Virginia law, if the University determines that disclosure of the alleged incident is necessary to protect the health and safety of the victim or other persons, the

University is required to disclose information, including personally identifiable information to law enforcement. If the alleged sexual misconduct constitutes a felony sexual assault, the University is required by Virginia law to consult with the Commonwealth Attorney responsible for prosecuting such crime.

- iii. The University cannot control and is not responsible for disclosures made by students or third parties.
  - c. When reporting sexual misconduct, the person making the report may request confidentiality. The request will be evaluated by the Title IX Coordinator to determine whether or not it can be honored and still provide a safe and nondiscriminatory environment.
    - i. Honoring a request for confidentiality may limit the University's ability to respond fully to the incident and pursuing disciplinary action against the accused.
    - ii. The University may have a compelling responsibility to pursue an investigation regardless of the complainant's request for confidentiality.
    - iii. All individuals involved in the reporting, investigation, and disciplinary process will observe a high standard of discretion and respect for everyone involved in the process.
  - d. The University encourages reporting of all incidents of sexual misconduct and thus will extend limited amnesty from disciplinary action for the use of alcohol or drugs by victims, witnesses, and those members of the University community who report incidents or assist victims (See Good Samaritan policy statement in the student handbook).
6. As part of its commitment, all University employees (faculty, adjunct faculty, staff, and graduate assistants) have timely (within 48 hours) reporting responsibilities of information regarding sexual misconduct. An employee who receives a disclosure of sexual assault or becomes aware of information that would lead a reasonable person to believe that a sexual assault may have occurred must report all known information immediately. If unsure, err on the side of safety and report the information to the: Chief of Campus safety and Security, Title IX Coordinator (if a student is affected), the Deputy Title IX Coordinator or Director of HR (if an employee is affected).
- a. Except, University employees exempted by legal privilege of confidentiality or expressly identified as a confidential reporter, the University's Professional Counselor and the University's Chaplain (pastoral counselor), need report only that criminal misconduct occurred, where, and when, with no identifying details, so that the incident can be logged and included in the University's mandatory crime statistics report.
    - i. A professional counselor is a person whose official responsibilities include providing mental health counseling to members of the university community and who is functioning within the scope of that license or certification and their University employment. A person who is a licensed counselor but whose role at the University is not as a counselor (such as faculty or administrator), is not exempt from the reporting obligations.
    - ii. A pastoral counselor is a person who is associated with and is recognized by a religious order or denomination as someone who provides confidential counseling and is functioning within the scope of that recognition and role at the University. A person who is a pastor, priest, or pastoral counselor, but whose official function at the University is in another role (such as faculty or administrator), is not exempt from the reporting obligations.
    - iii. Employees who operate in dual capacities (counselor and faculty member) are required to report instances of sexual misconduct of which they become aware of in the scope

of employment as a faculty member, but any instances they become aware of in their employment as a professional or pastoral counselor would be subject to confidentiality.

- b. Other exceptions to the employees' reporting requirement are:
    - i. Disclosures made at public awareness events when individuals do not intend to make a report (e.g., "Take Back the Night," candlelight vigils, etc.), or
    - ii. Disclosures made during an individual's participation as a subject in a University-approved academic research project.
  - c. Corrective or disciplinary action may be taken against individuals who have a duty to report and who fail to do so.
7. The University encourages members of its community who are impacted by sexual misconduct, whether reported or not, to use counseling and support services listed in Appendix A.
8. The University will not tolerate retaliation in any form against any individual who makes an allegation, files a report or complaint, serves as a witness, assists a complainant, or participates in an investigation of discrimination, or harassment, or for participating in an investigation.
- a. Retaliation is a serious violation that can subject the offender to discipline, up to and including termination of employment or termination of student status, independent of the merits of the underlying allegation.
  - b. Allegations of retaliation should be reported to the Title IX Coordinator, the Deputy Title IX Coordinator, or the Director of Human Resources.

## **RESOLUTION AND REMEDIES**

9. Informal resolution may be appropriate in some circumstances. It may be used if all parties agree; the University approves; and only with the assistance of an appropriate official such as the Title IX Coordinator or designee. Informal resolution may be appropriate when the parties desire to resolve the situation cooperatively or when a formal resolution is not likely to yield a satisfactory outcome. Participation in informal resolution is voluntary. It may include some or all of the following: an inquiry into the facts, informal discussion with the parties, mediation, referral to counseling, conducting targeted preventative educational and training programs, and providing remedies for the individual harmed by the offense. Informal resolution may be appropriate for responding to anonymous reports or third-party reports. Each step taken as part of informal resolution will be documented.
- a. In cases of alleged sexual violence, mediation is not an appropriate option, even on a voluntary basis.
  - b. Complainants are not required, by the University, to discuss issues directly with the accused.
  - c. In all informal resolution cases, the parties have the right to end the informal resolution process at any time and the complainant may choose to begin the formal process, or choose not to pursue the matter further.
10. Formal investigation and resolution is used in instances when informal resolution is inappropriate or unsuccessful, when a party requests it, or when the University requires formal investigation of alleged sexual misconduct. The University will consider the concerns and rights of all parties and provide an equitable process.
- a. If a complainant does not want to pursue a formal investigation, the University's ability to investigate may be limited. When determining whether or not to move forward with a formal investigation, the Title IX Coordinator may consider:
    - i. The seriousness of the allegation;

- ii. The age of the parties;
      - iii. Whether there have been other complaints or reports against the accused; and
      - iv. Privacy concerns of the parties.
    - b. In some circumstances, the University may have an obligation to conduct a formal investigation of a complaint independent of the complainant's request or refusal to cooperate, such as when there is a risk to the campus community. The complainant will be notified in these instances.
    - c. All investigators are trained to resolve cases of alleged sexual misconduct and are familiar with applicable policies and procedures.
11. Remedies will be implemented when the University makes a finding of a policy violation. The University will take steps, individual or systemic, to stop the alleged sexual misconduct, prevent its recurrence, eliminate any hostile environment, and remedy the discriminatory effects on the complainant and others, as appropriate.
- a. The range of corrective actions or sanctions that may or may not be applied include:
    - i. When the accused is a student, sanctions may be taken pursuant to the Student Code of Conduct. Potential sanctions include formal reprimand, disciplinary probation, suspension, dismissal, and other appropriate educational sanctions. If a record of such sanction will become part of the accused's educational records, prior notice will be given.
    - ii. When the accused is an employee, corrective actions may be taken pursuant to the appropriate employee or faculty disciplinary or grievance policy. Potential corrective actions include coaching, development plans, reduction in supervisory duties and leadership responsibilities, reprimand, change in position or salary, termination, and other corrective actions deemed appropriate to the violation and findings. If a record of such corrective action will become part of the accused's personnel records, prior notice will be given.
      - 1. Corrective action may be taken with regard to an individual employee with a duty to report but who fails to report alleged sexual misconduct in a manner consistent with the provisions of this policy.
    - iii. Individuals who are both students and employees (such as employees enrolled in courses or graduate assistants) may be subject to corrective action and sanctions as both an employee and student. For example an employee who is dismissed as a student may also be subject to termination or other corrective action as an employee.
    - iv. Implementation of increased monitoring, enhanced security, increased education and training efforts, and revision of policies and practices.
12. Interim measures may be available to either Complainant or Respondent or both, before the final outcome of an investigation to ensure equal access to the University's education and employment programs and activities, and to protect the parties when necessary. Interim measures will be implemented in a fair and impartial manner taking into consideration all parties' rights to education and employment, and every effort will be made to avoid depriving any student of their education. Interim measures may be available to the parties whether or not formal investigation is used. Interim measures may continue past the duration of the investigation.
- a. Interim measures shall not restrict the ability of a party to discuss the investigation or impair their ability to obtain and present evidence or otherwise promote or defend their interests. Interim measures may include, but are not limited to:

- i. No contact order,
    - ii. Victim advocacy,
    - iii. Housing assistance or relocation,
    - iv. Counseling,
    - v. Health services,
    - vi. Safety resources,
    - vii. Academic support,
    - viii. Safety escorts,
    - ix. Classroom monitoring,
    - x. Change in work, academic, or meal schedule or location,
    - xi. Change in reporting relationship, and
    - xii. Consideration of leave requests.
  - b. The Title IX Coordinator, Deputy Title IX Coordinator, and other designated University employees, as appropriate to each case, will coordinate the provision of interim measures. Complainants and Respondents will not be required to arrange such measures by themselves.
13. Other remedial measures may be available to remedy the effects of the alleged sexual misconduct and to prevent its recurrence when the University is unable to conduct a full investigation into a particular incident (because of a lack of specificity in the report or a request for confidentiality).
- a. Remedial measures may be implemented when it is determined that inappropriate behavior occurred, but that the behavior did not rise to the level of a policy violation meriting sanctions or disciplinary action.
  - b. Remedial measures may include, but are not limited to:
    - i. Providing training on sexual misconduct,
    - ii. Increasing security in a designated area or space,
    - iii. Changing policy or procedure, and
    - iv. Conducting climate checks.
14. It is a violation of this policy for anyone to knowingly or with reckless disregard for the truth make false allegations of sexual misconduct. Corrective action or sanctions may be imposed on individuals who do so. The finding of no policy violation is not equivalent to a false allegation.
15. Decisions affecting:
- a. A student's status with the University, regarding allegations of sexual misconduct, may be considered only if they have been addressed through this policy and procedure.
  - b. An individual's employment status, regarding allegations of sexual misconduct, may be considered only if they have been addressed through this policy/procedure, a court of law, or other legal administrative proceeding.
16. The investigative process is:
- a. All parties will be informed of the procedures to be followed and the allegations being investigated, including sufficient details with sufficient time to prepare before an initial

interview. Such details include: the parties identities, the section of the code of conduct/policy alleged to be violated, and the date and location of the alleged incident.

- b. Each party shall have sufficient advance written notice of any interview or hearing to prepare for meaningful participation. Parties may have a support person of their choice present during investigation meetings, student hearings, or other disciplinary proceedings related to the investigation. The role of the support person is to be present; they are not permitted to speak or interfere with the meeting or proceeding. If a support person is unreasonably interfering with the meeting or hearing, they may be required to leave.
  - c. Irrelevant prior sexual history of the parties will not be permitted as evidence in any investigation or proceeding.
  - d. The University will apply the preponderance of the evidence standard to determine whether a violation of this policy has occurred by students, visitors, or vendors. For allegations involving employees the University will normally apply the preponderance of the evidence standard, except in allegations so severe that they could result in the termination of employment, then the standard used will be that of clear and convincing evidence.
  - e. Reasonable efforts will be made to complete the investigation within 60 calendar days following receipt by the University of the complaint. The actual time needed will depend on the complexity, severity, and extent of the alleged sexual misconduct. The process may be extended because of illness, holidays, unavailability of parties or witnesses, complexity of the case, competing demands on the investigators or decision makers, access to evidence, and pendency of criminal investigations.
  - f. The investigation will include interviews with the parties, interviews with other witnesses, and a review of other relevant evidence (video, social media posting, documents, physical evidence, medical evidence, etc.). Parties will be given timely and equal access to information that will be used during disciplinary meetings or employee hearings.
    - i. In cases of alleged sexual misconduct by a student, guest, or visitor, the Title IX Coordinator will appoint two investigators who will interview parties and witnesses and collect relevant evidence and prepare a written report summarizing the investigation and findings that includes the relevant exculpatory and inculpatory evidence. The report will be presented to the Title IX Coordinator for review followed by acceptance or request for additional investigation. The final report will be shared with the complainant and respondent at the conclusion of the investigation. Each party shall be permitted to provide a written response to the investigation report before a determination is made on responsibility.
    - ii. In cases of alleged sexual misconduct by an employee or a vendor employee the Deputy Title IX Coordinator and the Director of Human Resources who is responsible for Title VII compliance, will work together to determine the appropriate investigator and to finalize the investigative report. The appropriate investigator will likely be an external investigator. In the instance that the accused is an executive officer of the University, the investigation shall be conducted through and at the direction of an external legal specialist. The final report will be shared with the complainant and respondent at the conclusion of the investigation.
17. In all cases of alleged sexual misconduct, the accused/respondent will be informed in writing of the finding and potential sanctions or corrective action.
- i. When the accused respondent is a student, the decision of what sanctions will be imposed or corrective action will be taken will be made by the Title IX Coordinator

with advice from the investigators and the Chief of Campus Safety and Security. Sanctions shall be proportionate to the violation and will be made with consideration of the impact of separating a student from their education.

- ii. When the accused respondent is a University employee or the employee of a vendor, the decision of what sanctions will be imposed or corrective action will be taken will be made by the appropriate area vice president with advice from the employee's supervisor, the Director of Human Resources, and the Deputy Title IX Coordinator.
- iii. The complainant will be informed of the findings and actions taken to resolve the complaint that are directly related to complainant. The complainant will be informed of disciplinary action or sanction imposed on the respondent only when the complainant needs to be aware of the sanction for it to be fully effective (such as restrictions on communication or contact with the complainant).
- iv. In all cases, including those of sexual assault, relationship violence, or stalking, parties will receive notice of findings simultaneously, in writing, including notice of sanctions or corrective actions imposed as provided above.
- v. All parties will be notified of the institution's procedures for appeal, the results of an appeal if there is a change to the results, and when such results become final.

18. Appeals of findings and sanctions or corrective actions are permitted only in limited circumstances. Once an appeal is filed, other parties to the complaint will be notified of the appeal and provided an opportunity to respond in writing. Once the outcome of an appeal is determined, written notification of the final decision will be provided to all parties.

- a. For students, an appeal of findings, sanctions, or corrective action may be made in writing, within five days of receipt of the notification of findings, to the Dean of Students whose decision shall be final. Appeals are limited:
  - i. The Dean of Students will conduct a review equivalent to an appeal automatically for a case in which a student is to be suspended from the University.
  - ii. Otherwise, an appeal is permitted only if:
    1. There is discovery of new material evidence that was not readily available at the conclusion of the investigation and that could impact the conclusion of the investigation;
    2. There was a material procedural error, bias, or a conflict of interest related to the investigation that affected the determination or sanction; or
    3. The respondent was found to have violated this policy and there is material evidence that the sanction imposed is excessive or insufficient.
- b. For University employees, appeal of findings, sanctions, or corrective action may be made in writing, within five days from notification, to the President of the University whose decision (or decision of their delegate) shall be final. Appeals are limited to those in which:
  - i. There is discovery of new material evidence that was not readily available at the conclusion of the investigation and that could impact its conclusion;
  - ii. There was a material procedural error, bias or a conflict of interest related to the investigation that affected the determination or sanction; or
  - iii. The respondent was found to have violated this policy and there is material evidence that the sanction imposed is excessive or insufficient.

19. Virginia law requires that under certain circumstances (see a.i. and a.ii. below) 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.
    - 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.
  - b. A student with such 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.

#### **RESPONSIBILITIES OF ADMINISTRATORS & SUPERVISORS**

20. Responsibility for compliance with the provisions of this policy and Title IX involves many members of the University community:
  - a. The Title IX Coordinator is responsible to oversee all Title IX reports and investigations:
    - i. Ensure that investigations are conducted consistent with this policy.
    - ii. Oversee the maintenance of comprehensive documentation of receipt of a report, investigation, and resolution.
    - iii. Provide and coordinate interim measures, in consultation with appropriate others.
    - iv. Notify the complainant in advance when the University determines to pursue an investigation when the complainant is reluctant to proceed.
    - v. Notify the parties of the right to end the early resolution process at any time and the complainant's right to begin the formal stage or to choose no further pursuit of the matter.
    - vi. Inform the complainant that the ability to investigate may be limited if no formal investigation is pursued.
    - vii. Oversee the communication of investigation findings to the complainant and accused.
    - viii. Ensure appropriate action steps, corrective actions, or sanctions are implemented and monitored to ensure behavioral change and compliance.
    - ix. Address all concerns promptly and thoroughly.
    - x. Respect the confidentiality and reputation of all parties.
    - xi. Evaluate requests for confidentiality to determine whether the University can honor the request while still providing a safe and nondiscriminatory environment.
    - xii. Refer individuals to available University and community resources based on assistance needed and desired.

- xiii. Ensure that individuals with responsibility to receive or investigate reports receive ongoing training on the substantive requirements of Title IX.
  - xiv. Coordinate investigations with law enforcement as necessary.
  - xv. Ensure that the Title IX Coordinator has no conflict of interest in regard to any Title IX responsibility.
  - xvi. Periodically review reports to identify any patterns of sex or gender-based discrimination.
  - xvii. Develop and implement regular university-wide events to raise awareness about all forms of sex- and gender-based discrimination.
  - xviii. Provide periodic Title IX training for the University community.
  - xix. Periodically review Title IX related policies and procedures to ensure they are an efficient resource for the University and to suggest and recommend updates as appropriate.
  - xx. Conduct climate survey, as appropriate, to assess effectiveness of education and prevention initiatives.
  - xxi. Assure that this policy and appropriate notice of effectiveness is available to all members of the University community, including policy summaries where appropriate.
  - xxii. 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.
  - xxiii. Ensure that the University is in compliance with the NCAA Board of Governors Policy on Campus Sexual Violence:
    - 1. 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.
    - 2. 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.
    - 3. 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.
    - 4. That the University President, Director of Athletics, and Title IX Coordinator can attest to these above requirements annually.
- b. The Deputy Title IX Coordinator in the office of Human Resources is responsible for leading investigations when the accused is a University employee, employee of a vendor, a graduate assistant, or a student employee if the reported action is taken in the role of an employee. Investigations will be coordinated with and reported to the Title IX Coordinator.
- i. Ensure that investigations are conducted consistent with this policy.
  - ii. Provide and coordinate interim measures, in consultation with appropriate others.
  - iii. Provide documentation of the receipt of a report, investigation, and resolution to the Title IX Coordinator.

- iv. Communicate findings to complainant and accused who are employees of the University or vendor.
  - v. Give prior notice to employee when sanctions will become a part of the accused's personnel records, as appropriate.
  - vi. Monitor action steps and corrective action to ensure behavioral change and compliance
  - vii. Address all concerns promptly and thoroughly.
  - viii. Respect the confidentiality and reputation of all parties.
  - ix. Refer individuals to available University and community resources based on assistance needed and desired.
  - x. Facilitate or consult with parties about notification and making acceptable alternative arrangements regarding prohibited relationships.
  - xi. Provide training to employees on topics related to prevention of sexual misconduct and discrimination.
  - xii. Serve as a backup to the Title IX Coordinator in instances where the Title IX Coordinator is not available or has a conflict of interest.
- c. The Chief Conduct Officer is responsible to collaborate in the conduct of investigations when the accused is a student.
- i. Give prior notice when sanctions will become a part of the accused's conduct records, as appropriate.
  - ii. Cooperate and assist the Title IX Coordinator in implementing, monitoring and reporting on action steps, interim measures, or sanctions to ensure behavioral change and compliance.
  - iii. Respect the confidentiality and reputation of all parties.
  - iv. Refer individuals to available University and community resources based on assistance needed and desired.
- d. The athletics department is responsible for cooperating with University investigations into reports and matters related to sexual violence involving student-athletes and athletics department staff in a manner compliant with institutional policies in accordance with NCAA requirements.
- e. Employing unit supervisors are responsible for taking appropriate steps to report, prevent or stop sexual misconduct, eliminate hostile environment, and remedy discrimination effects, in consultation with the Office of Human Resources and Title IX Coordinator.
- i. Persons who supervise employees, students, volunteers, or vendors are responsible to be familiar with and report violations of this policy; respect the confidentiality and reputation of all parties; and to refer individuals to available University and community resources based on assistance needed and desired.
- f. All members of the University community are responsible to conduct themselves in a manner that maintains an environment free from sexual misconduct; report sexual misconduct immediately; recuse themselves from situations in which they have a conflict of interest (which includes a romantic or sexual relationship); and to be supportive of the University's efforts to investigate, resolve, and eliminate sexual misconduct within the University community.

## **DEFINITIONS**

21. The following definitions apply to terms used in this policy:

- a. **Complainant** is an alleged victim of sexual misconduct who chooses to file a complaint and participate in the University's investigation and resolution of the alleged sexual misconduct.
- b. **Complaint** is an allegation of sexual misconduct asserted against another party or parties and reported to or filed with the University.
- c. **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.
- d. **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.
- e. **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. An individual does not need to be charged with or convicted of a criminal offense to be found responsible for domestic violence pursuant to this policy.

- f. **Gender- and sex-based discrimination** is the unfair treatment of an individual or group of individuals differently than others on the basis of sex or gender (including gender identity). Sexual misconduct is a form of gender- and sex-based discrimination.
- g. **Good standing**, for purposes of this policy, means that a student has completed all sanctions, requirements, and recommendations imposed upon the student for a violation of the Code of Conduct or University policy and has not engaged in additional offenses since the sanctions, requirements, and recommendations were imposed.
- h. **Investigation** is the process of compiling and synthesizing information gathered by investigators in their effort to determine whether a respondent is in violation of this policy.
- i. **Investigator** is a neutral fact-finder who is designated by the Title IX Coordinator to investigate a complaint. The investigator regularly receives training on reasonable and appropriate investigative techniques, issues related to sexual misconduct, and how to conduct an investigation that protects the safety of victims and promotes accountability.
- j. **Notification of findings** is issued by the Title IX Coordinator and includes findings of fact, application of the preponderance of the evidence standard, and determination of whether or not the Respondent violated the Sexual Misconduct Policy. It also includes the rationale for findings and sanctions, statement of sanctions, the appeals process, ongoing accommodations, and other relevant information as appropriate.
- k. **Personally identifiable information** is defined by the Family Educational Rights and Privacy Act of 1974 and refers to information that is unique to a specific individual. It includes, but is not limited to, name of the student or student's family members; address of the student or student's family members; personal identifiers (social security number, student ID number or biometric information); indirect identifiers (birthdate, birthplace, maiden name, etc.); and information that would enable a reasonable person to identify the student. See the University's FERPA policy for further details.
- l. **Preponderance of the evidence** is a legal standard meaning "it is more likely than not" that the alleged misconduct has occurred. It is the standard of proof used by the University in all complaints of sexual misconduct.
- m. **Rape** is penetration, no matter how slight, of the vagina or anus with any body part or object, or the oral penetration by a sex organ of another person, without the consent of the victim.
- n. **Respondent** is an individual accused of committing sexual misconduct by a complainant through the report or filing of a formal or informal complaint.
- o. **Retaliation** is any adverse action threatened or taken against a person because that person has filed, supported, or provided information in connection with a complaint of sexual misconduct. Retaliation includes direct and indirect intimidation, threats, or harassment.
- p. **Sexual misconduct** is conduct of a sexual nature or conduct based on sex or gender that is nonconsensual or has the effect of threatening, intimidating, or coercing a person. It includes sexual harassment, sexual violence, relationship violence, and stalking; as well as complicity in such acts. Sexual misconduct is a form of sex-and gender-based discrimination.
- q. **Sexual harassment** is a form of sexual misconduct under this policy.
  - i. It consists of unwelcome, sex- or gender-based verbal or physical conduct that:
    - 1. Is sufficiently severe, persistent, or pervasive that it interferes with, denies, or limits an individual's ability to participate in or benefit from the university's education programs and activities; or

2. Unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment.
- ii. It can take two forms: quid pro quo or a hostile environment:
1. Quid pro quo sexual harassment exists when:
    - a. There are unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature; and
    - b. Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment or academic status; or
    - c. Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions adversely affecting such individual.
  2. A hostile environment includes a situation in which there is harassing conduct that is sufficiently severe, persistent, or pervasive that it limits, interferes with, or denies educational benefits or opportunities from both a subjective (complainant's) and an objective (reasonable person's) viewpoint; or in a work context unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment.
    - a. The determination of whether an environment is 'hostile' is based on a totality of circumstances that may include:
      - i. The degree to which the conduct interfered with the complainant's educational or work performance;
      - ii. The type, frequency, and duration of the conduct;
      - iii. The identity of and relationship between the accused and the complainant(s);
      - iv. The number of individuals involved;
      - v. The age and sex of the accused and the complainant(s);
      - vi. The location of the incident(s) and the context in which it occurred;
      - vii. The nature and severity of the conduct;
      - viii. Whether the conduct was physically threatening;
      - ix. Whether the conduct was humiliating;
      - x. The effect of the conduct on the complainant's mental or emotional state;
      - xi. Whether the conduct arose in the context of other discriminatory conduct;
      - xii. Whether the speech or conduct deserves the protections of academic freedom or the first amendment.
    - b. A single or isolated incident of sexual harassment may be severe enough to create a hostile environment.

- r. **Sexual violence** is sexual acts perpetrated against an individual's will or when an individual is incapable of giving consent. All acts of sexual violence are forms of sexual misconduct under this policy.
- i. **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 sexual misconduct under this policy.
  - ii. **Non-consensual sexual contact** includes intentional sexual touching, however slight, with any body part or object, by an individual upon another that is without consent and/or by force or coercion.
    1. Sexual contact includes intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts or object, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth, or other orifice.
  - iii. **Non-consensual sexual intercourse** is any sexual penetration, however slight, with any body part or object, by an individual upon another that is without consent and/or by force or coercion. Sexual penetration includes: vaginal penetration, anal penetration, and oral copulation; no matter how slight the penetration or contact. All acts of non-consensual sexual contact are forms of sexual assault and therefore are sexual misconduct under this policy.
  - iv. **Sexual exploitation** occurs when an individual takes non-consensual or abusive sexual advantage of another for that individual's own advantage or benefit or to benefit or advantage anyone other than the individual being exploited, and that behavior does not otherwise constitute one of the other sexual violence offenses. All acts of sexual exploitation are forms of sexual assault and therefore are sexual misconduct under this policy. Sexual exploitation includes, but is not limited to:
    1. Engaging in voyeurism;
    2. Exposing one's genitals in non-consensual circumstances and/or inducing another to expose their genitals;
    3. Going beyond the boundaries of consent (such as allowing others to secretly watch having consensual sex with a person who is unaware of being watched);
    4. Invasion of sexual privacy;
    5. Knowingly transmitting a sexually transmitted infection (STI) to another person;
    6. Non-consensual pictures, video-or audio-recording of sexual activity;
    7. Possession, use and/or distribution of alcohol or other drug for the purpose of engaging in or facilitating any activity prohibited under this policy;
    8. Prostituting another.
- s. **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.

- t. **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, education, and training; and helps to ensure that the University responds appropriately, effectively, and equitably to all Title IX issues.

## APPENDIX A

### SUGGESTED ACTIONS AND RESOURCES FOR VICTIMS OF SEXUAL MISCONDUCT

Any type of Sexual Misconduct is inappropriate and is taken seriously by the University. If you are the victim of Sexual Misconduct, the University's priority is to help you take steps to address your safety, medical needs, and emotional wellbeing. You are strongly encouraged to seek assistance regardless of whether or not you decide to pursue criminal or University disciplinary charges.

#### 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.**

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.**

The Director of Counseling Services and the University Chaplain can help victims 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 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.

#### **4. Obtain Information and Report Misconduct.**

Even if you have filed a report directly with law enforcement, you are encouraged to report incidents of sexual misconduct to the University's Title IX Coordinator or a Responsible Employee. These University personnel can help you access resources and can provide you with support and additional information.

#### **CAMPUS RESOURCES**

Averett University's **Title IX Coordinator** is Jill Adams, whose office is in the Student Engagement Center located in the Galesi Student Success Center. Mrs. Adams may be contacted from 8:30 a.m. to 5:00 p.m., Monday through Friday at 434-791-5628 or by email at [jadams@averett.edu](mailto:jadams@averett.edu).

Averett University's **Deputy Title IX Coordinator** is Anna Kautzman, whose office is in the lower level of Main Hall, Room 10. Dr. Kautzman may be contacted from 8:30 a.m. to 5:00 p.m., Monday through Friday at 434-791-7244 or by email at [akautzman@averett.edu](mailto:akautzman@averett.edu).

The **Campus Safety and Security Department** has officers available 24 hours a day, 7 days per week who can be reached by calling 434-791-5888 or 911. They are located at Room 103 in Davenport Hall.

The **Director of Counseling Services**, Joan Kahwajy-Anderson, is located in Suite 417 of the Student Center and is available by phone at 434-791-5624 (you should leave a message if she does not answer the phone). Mrs. Kahwajy-Anderson is on campus from 8:30 a.m. to 5:00 p.m., Monday through Friday.

**Skyler Daniel**, the University Chaplain, is located in Suite 412 of the Student Center. He can be reached by calling 434-791-7104 or through email at [sdaniel@averett.edu](mailto:sdaniel@averett.edu).

The **Residence Life on-Call** is available 24 hours a day, 7 days per week who can be reached by calling 434-203-7245.

#### **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.

## APPENDIX B

### SUGGESTED ACTIONS AND RESOURCES FOR INDIVIDUALS ACCUSED OF SEXUAL MISCONDUCT

Any type of sexual misconduct is inappropriate and is taken seriously by the University. If you have been accused of Sexual Misconduct, the University encourages you to take steps to address your emotional wellbeing. You are strongly encouraged to seek assistance and support through this process.

#### **Obtain Emotional Support.**

The Director of Counseling and the University Chaplain can help you sort through your feelings as they are trained to provide confidential crisis intervention on short-term and emergency issues. They can also provide referrals for outside providers.

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.

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## APPENDIX C

### SAMPLE BEHAVIORS CONSITUTING SEXUAL MISCONDUCT

This list of sample behaviors that constitute Sexual Misconduct is not a complete, all-inclusive list, but rather is intended to help members of the Averett University community understand the types of behaviors that are prohibited without specific consent.

#### **Examples of Sexual Assault**

Unless there is effective consent, the follow behaviors are examples of sexual contact that are prohibited as Sexual Assault.

- Sexual Intercourse:
  - Vaginal or anal penetration, no matter how slight
  - Penetration with a body part such as penis, tongue, finger, hand, etc.
  - Penetration with an object
  - Oral penetration involving mouth to genital contact
- Sexual Contact: Intentional, non-accidental, and non-consensual:
  - Touching of the intimate parts of another person's body
  - Causing another person to touch one's intimate body parts
  - Disrobing or exposure of another person
  - Intimate body parts include breasts, genitals, buttocks, groin, mouth, or any other part of the body touched in a sexual manner
- Sexual Exploitation:
  - Taking advantage of the sexuality of another person for any purpose (sexual gratification, financial gain, personal benefit, etc.):
  - Observing another person's nudity or sexual activity
  - Allowing others to observe consensual sexual activity without consent of every person involved
  - Streaming of images, photography, video, or audio recording of sexual activity or nudity
  - Distribution of images, photography, video, or audio recording of sexual activity or nudity
  - Prostituting another person
  - Inducing incapacitation for purposes of making a person vulnerable to non-consensual sexual activity

#### **Examples of Sexual Harassment**

A wide range of behavior can fall within the general definition of sexual harassment. Key factors are that the behavior is not welcome, is gender based or of a sexual nature, and is reasonably perceived as offensive and objectionable. Harassment may be one severe incident or it can be a series of less severe incidents. It does not require an intent to harm and can occur anywhere.

- Physical conduct:
  - Unwelcome touching, sexual/physical assault, impeding, restraining, or blocking movements
  - Unwanted sexual advances or suggestions

- Verbal conduct:
  - Making or using derogatory comments, epithets, slurs, or humor
  - Verbal abuse of a sexual nature;
    - graphic verbal commentaries about an individual's body;
    - sexually degrading words used to describe an individual;
    - suggestive or obscene letters, notes, or invitations
  - Offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes
  
- Visual conduct:
  - Leering; making sexual gestures; displaying suggestive objects or pictures, cartoons, or posters in a public space or forum
  - Severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading, sexually oriented images that are not pedagogically appropriate
  
- Written conduct:
  - letters, notes or electronic communications, including social media, containing comments, words, or images described above
  
- Quid pro quo conduct:
  - Direct propositions of a sexual nature between those for whom a power imbalance exists, such as teacher-student or supervisor-worker
  - Offering employment benefits or grades in exchange for sexual favors
  - Making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose
  
- Making or threatening reprisals after a negative response to sexual advances

### **Examples of Stalking Behavior**

Stalking includes physical as well as the use electronic media to pursue, harass, or make unwelcome and unsolicited contact with another person. Examples include any (or combination) of these behaviors:

- Unwelcome and repeated visual or physical proximity to a person
- Unwelcome and repeated electronic contact with a person (internet, social networks, blogs, calls, texts, etc.)
- Repeated oral or written or electronic threats
- Unwelcome/unsolicited written communications including letters, notes, cards, email, IMs, Snapchats, messages on online boards or social media messages, etc.
- Implicitly threatening physical conduct