

**RESOLUTION TO REVISE POLICY 1025  
ANTI-DISCRIMINATION AND HARASSMENT PREVENTION**

**WHEREAS**, Virginia Tech is committed to providing a premier learning and working environment to all members of its community and to recruiting and retaining a diverse student body and workforce; and

**WHEREAS**, providing redress for addressing discriminatory behaviors works in furtherance of that commitment; and

**WHEREAS**, 20 of 25 SCHEV-approved peer institutions have included gender identity and gender expression in their non-discrimination policies; and

**WHEREAS**, there has been a rising awareness at Virginia Tech of the issue of discrimination and harassment on the basis of gender identity and gender expression; and

**WHEREAS**, the Governor's Executive Order Number One (2014) ("Equal Opportunity") specifically prohibits discrimination on the basis of gender identity in state employment; and

**WHEREAS**, several federal actions including the U.S. Higher Education Act of 1965 amended by the Violence Against Women Reauthorization Act of 2013; and July 2014 amendments to Executive Order 11478 Equal Employment Opportunity in the Federal Government and Executive Order 11246 Equal Employment Opportunity and Affirmative Action Guidelines for Federal Contractors include gender identity; and

**WHEREAS**, gender identity and gender expression are not the same as gender or sexual orientation, both of which are included in Policy 1025; and

**WHEREAS**, the Commission on Student Affairs passed a resolution including both gender identity and gender expression in a revised Policy 1025 and formally supports the proposed Commission on Equal Opportunity and Diversity resolution;

**NOW, THEREFORE BE IT RESOLVED** that Policy 1025 be revised to reflect state and federal policy to include the terms gender identity and gender expression throughout. These changes are to be reflected in university documents and statements, including but not limited to: undergraduate, graduate, and professional student handbooks; the faculty handbook; employee handbooks; and equal opportunity/affirmative statements; and in each place where they appear in publications and websites issued by Virginia Tech entities and affiliated programs.

**RECOMMENDATION:**

That the resolution to revise policy 1025 be passed.

September 15, 2014

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**Subject: Anti-Discrimination and Harassment Prevention Policy**

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## **1. Purpose**

Virginia Tech does not tolerate discrimination or harassment on the basis of age, color, disability, gender, **gender identity, gender expression**, genetic information, national origin, political affiliation, race, religion, sexual orientation, veteran status, or any other basis protected by law. Such behavior is inconsistent with the university's commitments to excellence and to a community in which mutual respect is a core value as articulated in the Virginia Tech Principles of Community. The prohibition against discrimination and harassment applies to all levels and areas of university operations and programs, to students, administrators, faculty, staff, volunteers, vendors and contractors.

The university is subject to Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, as amended, the Age Discrimination in Employment Act, the Equal Pay Act, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, Federal Executive Order 11246, Genetic Information Nondiscrimination Act of 2008 (GINA), Virginia Executive Order Number Two, and all other rules and regulations that are applicable.

Virginia Tech is also committed to the free and vigorous discussion of ideas and issues. This policy does not allow curtailment or censorship of constitutionally protected expression, nor does it attempt to address behaviors that do not constitute discrimination or harassment. Offensive

behavior that does not violate this policy should be addressed by the appropriate supervisor or administrator.

## 2. **Policy**

### 2.1 **Prohibited Acts**

#### 1. Discrimination/Harassment

Discrimination/ Harassment includes the following behaviors:

Conduct that conditions any element of a person's employment, enrollment as a student, receipt of student financial aid, or participation in university activities on that person's age, color, disability, gender (including pregnancy), **gender identity, gender expression**, genetic information, national origin, political affiliation, race, religion, sexual orientation, or veteran status, unless otherwise permitted or required by applicable law. Discrimination on the basis of sex in education programs and activities receiving federal financial funding as set forth in Title IX of the Education Amendments of 1972, as amended, is included in this definition of prohibited discrimination;

Conduct of any type (oral, written, graphic, electronic or physical) that is based upon a person's age, color, disability, gender (including pregnancy), **gender identity, gender expression**, national origin, political affiliation, race, religion, sexual orientation, or veteran status and unreasonably interferes with the person's work or academic performance or participation in university activities, or creates a working or learning environment that a reasonable person would find hostile, threatening or intimidating; and/or

Conduct consisting of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when submission to such conduct is made, explicitly or implicitly, a term or condition of an individual's employment or education, or submission to or rejection of such conduct is used as a basis for employment or educational decisions affecting an individual.

#### 2. Retaliation

It is a violation of this policy to retaliate against any party for participating in a discrimination/harassment investigation ("protected activity"). Retaliation includes any adverse treatment that is reasonably likely to deter the complainant or others from filing a charge of discrimination/harassment or participating in a discrimination/harassment investigation. Retaliation can be verbal, written, graphic, electronic or physical.

#### 3. Knowingly Filing False Complaints

Knowingly filing a false complaint of discrimination/harassment or of retaliation is a violation of this policy. Such conduct may be pursued using the steps followed for a complaint of discrimination/harassment, and if found to have occurred, will result in disciplinary action that may include termination or expulsion.

#### 4. Intentional Breaches of Confidentiality

All participants in the discrimination/harassment complaint resolution process described below, including the complainant and respondent, witnesses and any other parties, shall respect the confidentiality of the proceedings. Breaches of confidentiality jeopardize effective functioning of internal complaint resolution. Participants are authorized to discuss the case only with those persons whose university duties entail a clear and genuine need to know.

A complaint alleging an intentional breach of confidentiality may be pursued using the procedures set forth in Section 5 below. Such a breach may also constitute an act of retaliation. Further, a breach of confidentiality may void the outcome of any previously agreed-upon resolution to a complaint.

#### 2.2 Consensual Relationships

It should be understood by all members of the university community that consensual amorous or sexual relationships (hereinafter referred to as consensual relationships) that occur in the context of educational or employment supervision and evaluation present serious ethical concerns. Consensual relationships between faculty members and students enrolled in their classes or students for whom they have professional responsibility as advisor or supervisor violate the policy on Professional Ethics and Responsibilities and may be a violation of this discrimination/harassment policy. Similarly, consensual relationships between supervisors and employees they directly supervise violate university policy. Faculty members or others performing instructional or academic advising duties and supervisors involved in consensual relationships must remove themselves from any activity or evaluation that may reward or penalize the affected student or employee.

Consensual relationships between faculty and students are particularly susceptible to exploitation. The respect and trust accorded a professor by a student, as well as the power exercised by the professor in giving praise or blame, grades, recommendations for further study and future employment, make voluntary consent by the student suspect, given the fundamentally asymmetric nature of the relationship.

Faculty members and supervisors should be aware that engaging in consensual relationships with students or employees they supervise could make them liable for formal action. Even when both parties have consented to the development of such a relationship, it is the faculty member or supervisor who, by virtue of his or her special responsibility, may be held accountable for unprofessional behavior. Complaints alleging discrimination/harassment, as defined above, may be filed by either party to the consensual relationship or by an aggrieved party outside the relationship.

#### 3. Responsibilities of Those Experiencing Discrimination / Harassment

Anyone who believes that he or she has been subject to or have observed instances of discrimination/harassment should take one or more of the following steps:

1. ask the person to cease the offending behavior

2. seek the assistance of a supervisor, Human Resources, the Dean of Students, a faculty member or a university administrator; and/or
3. contact the director for compliance and conflict resolution in the Department of Human Resources (HR) or his/her designee (hereinafter, director for compliance). (See Section 5 below.)

It bears emphasis that the complainant is not required to confront or complain to the discriminating/harassing party. He or she may instead pursue steps 2 and/or 3 above. A respondent may be held accountable for violating this policy whether or not the complainant has followed these steps.

#### **4. Responsibilities of Administrators, Supervisors and Faculty**

University administrators, supervisors, and those performing instructional or academic advising duties have an added responsibility to create and maintain a work and learning environment free of discrimination/harassment.

If an administrator, supervisor or individual with instructional responsibility becomes aware of an incident that might reasonably be construed as constituting discrimination/harassment, he or she must take immediate steps to address the matter. In such cases, the administrator, supervisor or individual with instructional responsibility should promptly contact the Department of Human Resources in order to coordinate any further action that may be necessary.

Administrators, supervisors and those with instructional responsibility should act whenever they learn—either directly or indirectly—about discrimination/ harassment. This obligation exists even if the complainant requests that no action be taken. It is not the responsibility of the complainant to correct the situation.

Administrators, supervisors and those with instructional responsibility (for their respective teaching obligation) have the legal responsibility to protect a complainant from continued discrimination, harassment or retaliation. They must also protect persons accused of discrimination/ harassment from potential damage by false allegations. Administrators and supervisors will be held accountable for dealing with and taking necessary steps to prevent discrimination/harassment.

Administrators and supervisors are responsible for informing their employees and students of this policy.

### **5. Procedures**

#### **5.1 Introduction**

This Policy reflects the university's commitment to maintain a community that is free from discrimination/ harassment. Virginia Tech has designed procedures for prompt internal resolution of discrimination/harassment complaints that arise within the university community. The university expects that the use of these procedures will facilitate a prompt resolution of such complaints, but the assistance of faculty, staff and students is critical to helping the university

learn of and address problem behavior. Every member of the university community should be provided with a civil and productive work and learning environment, and has the responsibility to maintain the highest standards to accomplish this goal.

## 5.2 Scope

These procedures apply to prohibited acts (defined above) performed by any employee, volunteer, vendor, or contractor of Virginia Tech.

Wage and probationary employees, as well as other employees, may file complaints or seek redress under this policy.

Discrimination/harassment allegedly perpetrated by an undergraduate or a graduate student who is **not** acting in the capacity of a university employee, volunteer, vendor or contractor falls within the jurisdiction of the Office of Student Conduct **regardless of the status of the complainant** (i.e. student, faculty, or staff). The Office of Student Conduct will address the complaint in accordance with procedures described in University Policies for Student Life. Complaints of sexual harassment (including sexual violence) of students allegedly perpetrated by an undergraduate or a graduate student who is **not** acting in the capacity of a university employee, volunteer, vendor or contractor fall within the jurisdiction of the Associate Vice President for Student Affairs/Deputy Title IX Coordinator, **regardless of the status of the complainant** (i.e. student, faculty, or staff). The Office of Student Affairs will address the complaint in accordance with procedures described in the Hokie Handbook and University Policies for Student Life.

## 5.3 Informal Resolution

Once the Department of Human Resources receives information suggesting a reasonable possibility that discrimination/ harassment has occurred, it will arrange a meeting with the complainant in order to further review the information, the applicability of this policy and available options. For an individual who does not wish to file a formal complaint, but who nevertheless wishes to put an end to conduct they believe to violate this policy, the following options are available:

1. With the advice and assistance of the director for compliance as requested, the complainant may write to or meet with the respondent, discuss the situation and make it clear that the behavior is unwelcome; or
2. The director for compliance may discuss the alleged conduct with the charged party. A complainant may request that, if practical, such a conversation be held without revealing his or her identity directly to the charged party. Action taken by the director for compliance under this provision shall not constitute a finding of discrimination/ harassment.
3. If both parties are willing to do so, they may use Virginia Tech's mediation program (administered by Human Resources) to assist them in discussing the matter and resolving issues in ways in which they can both agree.
4. The director for compliance can consult with appropriate supervisors to explore options for informal resolution, including training and education.

All records relating to an informal investigation will be retained in the Department of Human Resources for a period consistent with applicable federal and state law and in accordance with university records management policy, after which the records will be destroyed.

#### **5.4 Departmental Request for Investigation**

The director for compliance may initiate an investigation upon referral of a significant concern by another department, or upon learning of a possible violation. The appropriate administrator of the relevant area, unless he or she is the respondent, will be notified immediately of any such review. The respondent will be informed as soon as possible and practical, taking into consideration any investigative needs or similar factors involved in addressing the situation. The respondent will also be informed of the outcome of any investigation.

#### **5.5 Individual Formal Complaint**

An individual may file a formal complaint of harassment or discrimination by completing and signing the designated Formal Complaint Form and submitting it to the director for compliance. The complainant may include suggestions for resolution(s) of the matter as part of the formal complaint or at any time during the process. A formal complaint must be made within 300 calendar days of last incident of alleged discrimination/harassment complained of.

Within ten business days after a written complaint is filed, the director for compliance will provide written notification to the respondent of the allegations and the identity of the complainant. The respondent also will be furnished with a copy of the written charge and will have an opportunity to respond to the allegations contained therein. The respondent's immediate supervisor will receive a copy of the written notification. After the notification described above, the director for compliance will conduct any additional investigation that may be necessary.

#### **5.6 Outcomes**

Following an investigation or review, the director for compliance will issue a finding of whether there has been a violation of this policy. In the case of an individual formal complaint, the complainant will be informed of the completion of the investigation as well as the finding, and the respondent and the appropriate administrators will receive a report outlining the findings and the basis for those conclusions. The decision to impose any discipline or corrective action is the responsibility of relevant administrators. If discipline is imposed, the severity and pervasiveness of the conduct, the apparent intent of the respondent, and other relevant factors in the case shall be taken into account. Any proposed disciplinary action shall be imposed in accordance with policies and procedures in the relevant faculty or staff handbooks.

Records of investigation will be retained by the Department of Human Resources for a period consistent with federal and state law and in accordance with university records management policy, after which the records will be destroyed.

A complainant found to have intentionally made false allegations of discrimination/harassment is subject to university discipline. (See Section 2.1(3) above.)

## **5.7 Appeal**

Disciplinary action imposed as a result of violations of this policy may be appealed in accordance with policies in the relevant faculty, staff, or student handbooks. During an appeal, the record of established facts and findings of the case should be made part of the record.

## **5.8 Supplemental/Alternative Avenues for Formal Complaints**

In addition to, or in lieu of, the procedures set forth above, individuals may pursue those remedies that are available to them, as appropriate, through the following agencies:

1. Students may file formal complaints with the Office for Civil Rights of the U.S. Department of Education.
2. Faculty members may file a charge with the federal Equal Employment Opportunity Commission and/or the Virginia Council on Human Rights within 300 days of the incident.
3. The following options are available to staff:
  - a. Non-probationary staff may file a grievance within 30 calendar days of the offense as outlined in the Grievance Procedure for State Employees, or
  - b. Salaried and wage staff may file a complaint using the Discrimination Complaint Procedure administered by the Office of Equal Employment Services in the state's Department of Human Resource Management.
  - c. Salaried and wage staff may file a complaint with the federal Equal Employment Opportunity Commission or the Virginia Council on Human Rights within 300 days of the alleged discrimination/harassment.

Additional information regarding any of the procedures outlined above may be obtained from the Department of Human Resources.

Additional assistance and support may be obtained from the Women's Center, the Office of the Provost (faculty), the Department of Human Resources (staff and AP faculty), the Graduate School (graduate students), the Dean of Students Office, Cook Counseling Center, or the Office of Student Conduct (students).

## **6. References**

[Virginia Department of Human Resources Management Policy 1.60 Standards of Conduct](#)

[http://www.dhrm.virginia.gov/hrpolicy/web/pol1\\_60.pdf](http://www.dhrm.virginia.gov/hrpolicy/web/pol1_60.pdf)



[Virginia Department of Human Resource Management Policy 2.05, Equal Employment Opportunity](#)

[http://www.dhrm.state.va.us/hrpolicy/policy/pol2\\_05EEO.pdf](http://www.dhrm.state.va.us/hrpolicy/policy/pol2_05EEO.pdf)

[Virginia Department of Human Resource Management Policy 2.30 Workplace Harassment](#)

[http://www.dhrm.state.va.us/hrpolicy/policy/pol2\\_30WkplaceHarrass.pdf](http://www.dhrm.state.va.us/hrpolicy/policy/pol2_30WkplaceHarrass.pdf)

[Virginia Department of Human Resource Management - Employment Dispute Resolution - Grievance Procedure Manual](#)

<http://www.dhrm.virginia.gov/EDR/grievance/GPMJuly2012.pdf>

[University Policy 4075, Policy for University Accommodation of Persons with Disabilities](#)

<http://www.policies.vt.edu/4075.pdf>

[Virginia Tech Faculty Handbook](#)

<http://www.provost.vt.edu/facultyhandbooks.php>

[Virginia Tech Classified and University Staff Policies and Handbook](#)

<http://www.hr.vt.edu/employeescorner/policy/>

[Virginia Tech Hokie Handbook and University Policies for Student Life](#)

<http://www.hokiehandbook.vt.edu/>

[Expectations for Graduate Education](#)

[http://www.expectations.graduateschool.vt.edu/wp-content/uploads/2011/08/Expectations\\_Print.pdf](http://www.expectations.graduateschool.vt.edu/wp-content/uploads/2011/08/Expectations_Print.pdf)

[Virginia Tech Principles of Community](#)

<http://www.vt.edu/diversity/principles-of-community.html>

## 7. **Approval and Revisions**

- Revision 1

Revised by Commission on Faculty Affairs, December 17, 1990, the Faculty Senate, January 8, 1991, and the EO/AA Committee on January 8, 1991, with further revisions, February 12, 1991.

Approved March 4, 1991 by University Council.

- Revision 2

Revised by the EO/AA Committee, March 29, 1994; approved by Commission on Faculty Affairs, May 13, 1994.

Approved October 3, 1994 by University Council.

- Revision 3

Revised by the Commission on Equal Opportunity and Diversity, March 28, 2005.

Approved by University Council, May 2, 2005.

Approved by the Board of Visitors, August 29, 2005.

- Revision 4

Revised by the Commission on Equal Opportunity and Diversity, March 29, 2010.

Approved by University Council, April 19, 2010.

Approved by the Board of Visitors, June 7, 2010.

- Revision 5

Section 4 – “faculty member” replaced with “individual with instructional responsibility.”

Approved March 16, 2011 by Charles W. Steger, University President.

- Revision 6

April 24, 2013: Technical updates to:

- reflect regulations, particularly those that add genetic information to the list of protected statuses;
- clarify oversight responsibilities for sexual harassment complaints involving any student who is **not** acting in the capacity of an employee, volunteer, or contractor;
- clarify that non-probationary employees have 30 “calendar” days to file a grievance; and
- update references and hyperlinks.

Approved June 3, 2013, by Charles W. Steger, University President, and the Board of Visitors.

Approved September 15, 2014 by Timothy D. Sands, University President, and the Board of Visitors.