

**RESOLUTION ON REVISING UNIVERSITY POLICY 1025,  
ANTI-DISCRIMINATION AND HARASSMENT PREVENTION**

**WHEREAS**, discriminatory and harassing behavior is inconsistent with Virginia Tech'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; and

**WHEREAS**, university Policy 1025 articulates and provides guidance on processes pertaining to the resolution of allegations and complaints of discriminatory and harassing behavior; and

**WHEREAS**, the process for investigating complaints, reporting outcomes, and providing appeals has been updated to match current and best practices, and to provide discipline and appeal options for all types of employees in accordance with relevant and existing employee handbooks;

**NOW, THEREFORE, BE IT RESOLVED**, that sections of Policy 1025 be revised to reflect the changes described below. These changes are to be reflected in documents and statements, including but not limited to:

- faculty handbooks
- undergraduate, graduate, and professional student handbooks
- staff handbooks
- publications issued and web sites maintained by Virginia Tech entities and affiliated programs.

**RECOMMENDATION:**

That the above resolution revising sections of Policy 1025, anti-discrimination and harassment prevention, be approved.

June 7, 2010

## **REVISIONS TO POLICY 1025, Anti-Discrimination and Harassment Prevention Policy**

Revisions to Policy 1025 are detailed below in the excerpts from the policy, highlighted in green and/or struck through:

### **2.2 Consensual Relationships**

It should be understood by all members of the university community that consensual amorous or sexual relationships (referred to below as consensual relationships) that occur in the context of educational or employment supervision and evaluation present serious ethical concerns. Consensual relationships between faculty 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 supervise may violate this 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 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 has observed instances of discrimination/harassment should take one or more of the following steps:

~~Create a detailed record of the offending behavior, and any response thereto~~

1. Ask the person to cease the offending behavior and/or;
2. Seek the assistance of a supervisor, Human Resources, Dean of Students, faculty member or 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 sections 5.3 and 5.5 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, faculty members and others 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 faculty member becomes aware of an incident that might in any way be construed as constituting discrimination/harassment, he or she should take immediate steps to address the matter. In such cases, the administrator, supervisor or faculty member should promptly contact the director for compliance in order to coordinate any action that may be necessary.

Administrators, supervisors and faculty members ***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 faculty members 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 promptly 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.

## 5.3 Informal Resolution

Once the director for compliance receives information suggesting a possibility that discrimination/harassment has occurred, he or she will arrange to meet 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 nevertheless wishes to put an end to conduct he or she believes 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. ~~review this policy with him or her, and seek an explicit commitment to comply with the requirement stated therein.~~ 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 resolution 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.

## **PROPOSED NEW TEXT:**

### **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 the alleged discrimination/harassment.

**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. The complainant (if any) will be informed of the completion of the investigation as well as the finding. 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 investigations 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 or staff handbooks. During an appeal the record of established facts and findings of the case should be made a part of the record.

## EXISTING TEXT

### ~~5.4 Formal Resolution~~

~~A formal complaint includes a written description of the facts and circumstances allegedly constituting discrimination/harassment signed by the complainant and filed with the Office for Equal Opportunity. A formal complaint must be made within 300 days of the alleged discrimination/harassment. Promptly after a written complaint is filed, the Office for Equal Opportunity will provide written notification to the accused ("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. An accused student may wish to consult a faculty mentor in responding to the complaint. After the notification described above, the Office of Equal Opportunity will conduct any additional investigation which may be necessary.~~

~~The investigation is expected to lead to one of the following possible outcomes:~~

- ~~1. The Office for Equal Opportunity finds insufficient facts to support the charge;~~
- ~~2. The Office for Equal Opportunity finds facts to support the charge, reaches a negotiated resolution satisfactory to the parties, and does not recommend further action; or~~
- ~~3. The Office for Equal Opportunity finds facts to support the charge and recommends further action.~~

~~Upon completion of the investigation, the Office for Equal Opportunity will submit to the President a report including findings of fact and any recommended action. Disciplinary action shall reflect the status of the accused, the severity and pervasiveness of the~~

~~conduct, the apparent intent of the accused, and other relevant factors in the case. Copies of the report will be provided to the complainant, the respondent, the respondent's immediate supervisor, the Dean, Director and /or Department Head as appropriate, and the Provost or Executive Vice President as appropriate.~~

### ~~5.5 Appeal~~

~~In the event that either the complainant or the respondent disagree with or object to the Office for Equal Opportunity's findings and recommendations rendered pursuant to section 5.4 above, the following options are available:~~

- ~~1. Complainants may pursue the appropriate remedy set forth in Paragraph 5.6 below.~~
- ~~2. Classified staff respondents, including those performing instructional or academic advising duties, may pursue their grievance rights as set forth in the State Employee Grievance Procedure.~~
- ~~3. Faculty respondents and others performing instructional or academic advising duties within fourteen days of receipt of the findings of fact and/or recommended action, may request review of the Office for Equal Opportunity's findings and recommendations by the Provost or Executive Vice President as appropriate. The Provost or Executive Vice President will appoint a three-member panel and designate one of the members as chair. Members of the panel will be selected from among the General Faculty in consultation with the President of the Faculty Senate or the Chair of the Commission on Administrative and Professional Faculty as appropriate. The Director of the Office for Equal Opportunity will participate in all meetings of the panel and serve as a non-voting advisor to the panel. If the appellant respondent is a student, the Provost will appoint a representative from the Graduate School or Student Affairs as a non-voting member. The panel will determine whether there existed in the available evidence of record a reasonable basis for Office for Equal Opportunity's findings and recommendations. The panel will report its determination to the Provost or Executive Vice President for further action as warranted.~~

~~Records of the investigation will be retained by the Office for Equal Opportunity 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 made intentionally false allegations of discrimination/harassment is subject to University discipline. (See Section 2.1(3) above.)~~

## **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 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 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 Office of the Provost, the Office of Human Resources, the Women's Center, the Graduate School (graduate students), Cook Counseling Center (students), or the Office of the Dean of Students (students).