

# Christopher Newport University

## **Policy: Discrimination, Harassment and Sexual Misconduct Policy** **Policy Number: 1005**

Executive Oversight: President  
Contact Office: Office of Title IX and Equal Opportunity  
Frequency of Review: Annual  
Date of Last Review: June 2024

### **A. Statement of Policy**

Christopher Newport University (CNU) is committed to providing an environment that emphasizes the dignity and worth of every member of its community and that is free from harassment and discrimination in admission, employment, and education programs or activities based on race, color, religion, sex, national origin, age, disability, genetic information, sexual orientation, gender identity, marital status, military/veteran status, political affiliation, pregnancy, or any other status protected by law.

Such an environment is necessary to a healthy learning, working, and living atmosphere because discrimination and harassment undermine human dignity and the positive connection among everyone on campus. In pursuit of this goal, any question of impermissible discrimination and/or harassment on these bases will be addressed with efficiency and energy in accordance with this policy. This policy also addresses any reports of retaliation against individuals who under this policy have filed reports, have testified or otherwise participated in investigations or proceedings, or have intervened to prevent a violation of this policy.

CNU, an Equal Opportunity Employer, is fully committed to Access and Opportunity for all persons.

This policy prohibits specific forms of behavior as required by Title IX of the Education Amendments of 1972 (“Title IX”), the Americans with Disabilities Act of 1990, as amended; Section 504 of the Rehabilitation Act of 1973, Titles VI and VII of the Civil Rights Act of 1964; the Age Discrimination Act of 1975; the Genetic Information Nondiscrimination Act of 2008; the Virginia Human Rights Act; and other applicable state and/or federal laws. This policy also includes certain obligations that CNU must fulfill under the Violence Against Women Reauthorization Act of 2013 (“VAWA”) and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”).

**Prohibited Conduct** includes the following behavior as defined in Section D: Discrimination, Harassment, Sexual Misconduct (Non-Title IX Sexual Harassment, Title IX Sexual Harassment, Sexual Assault, Sexual Exploitation, Dating Violence, Domestic Violence, and Stalking), Complicity, and Retaliation.

### **B. Statement of Purpose**

The purpose of this policy is to establish clearly and unequivocally that CNU prohibits discrimination, harassment, sexual misconduct, and retaliation by individuals subject to its

control or supervision and to set forth procedures by which such allegations shall be reported, investigated, and adjudicated.

The purpose of the procedures is to provide a prompt, fair, and impartial resolution of reports of discrimination and/or harassment based on race, color, religion, sex, national origin, age, disability, genetic information, sexual orientation, gender identity, marital status, military/veteran status, political affiliation, pregnancy, or any other status protected by law. The procedures also address any reports of retaliation against individuals who under this policy have filed reports, have testified or otherwise participated in investigations or proceedings, or have intervened to prevent a violation of this policy.

This policy also provides for full and fair notice to anyone accused of conduct in violation of it, including all allegations, and evidence and a full and fair opportunity to respond to such allegations and evidence.

### C. **Scope and Applicability**

This policy and related procedures apply to **on-campus** Prohibited Conduct involving all students, employees, and Third Parties (i.e. volunteers, visitors to campus including, but not limited to, students participating in camp programs, non-degree-seeking students, exchange students, and other individuals taking courses or participating in programs at CNU, and contractors working on campus who are not CNU employees).

This policy and related procedures apply to **off-campus** Prohibited Conduct at CNU-sponsored programs or activities involving all students, employees, and Third Parties. This policy and related procedures are also applicable to any conduct occurring off-campus if it may have continuing effects that create a hostile environment on-campus.

This policy contains two separate procedures:

1. **Process A** applies to reports of Title IX Sexual Harassment (including Sexual Assault, Dating Violence, Domestic Violence, and Stalking) involving students and employees when the Prohibited Conduct:
  - a. Occurs within the United States; and
  - b. Occurs within CNU's education program and activity meaning 1) locations, events, or circumstances over which CNU exercises substantial control over both the Respondent and the context in which the Prohibited Conduct occurs and 2) any building owned or controlled by a student organization that is officially recognized by CNU); and
  - c. At the time of filing a Formal Complaint, a Complainant is participating in or attempting to participate in CNU's education program or activity.
2. **Process B** applies to reports of (1) Sexual Assault, Dating Violence, Domestic Violence, and Stalking when jurisdiction does not fall within Process A, as determined by the Director, (2) Non-Title Sexual Harassment, and (3) all other reports of Prohibited Conduct.

Allegations of either on-campus or off-campus violations of this policy should be reported to the Director's Office as stated in Section K. The Director will determine if the allegations are subject to resolution using the procedures in this policy.

Employees or students who violate this policy may face disciplinary actions up to and including termination or dismissal. Third Parties who violate this policy may be permanently barred from CNU property, from CNU programs, services or activities, or may be subject to other restrictions. CNU's ability to take appropriate corrective action against a Third Party will be determined by the nature of the relationship of the Third Party to CNU.

This policy applies to all reports of Prohibited Conduct received on or after the effective date of this policy. Where the date of the alleged incident precedes the effective date of this policy, the definitions used in the policy in existence at the time of the alleged incident(s) will be used. However, the procedures established under this policy will be used to address, investigate, and/or resolve all reports of Prohibited Conduct made on or after the effective date of this policy, regardless of when the incident(s) occurred.

**Complainant** refers to any individual who may have been a victim of a violation covered under this policy regardless of whether the Complainant makes a report or seeks action under this policy. **Respondent** refers to any individual who has been reported to be the perpetrator of conduct that could constitute a policy violation. **Parties** refers to the Complainant and the Respondent, collectively. **Report** refers to the process of giving a spoken or written account of a possible violation under this policy, either witnessed or experienced. **Formal Complaint** refers to a document filed or signed by a Complainant or signed by the Director alleging a violation of Title IX Sexual Harassment under this policy under Process A against a Respondent and requesting that CNU investigate the allegation(s). A Formal Complaint filed by a Complainant must contain a physical or digital signature or otherwise indicate that the Complainant is the person filing the Formal Complaint. **Student** refers to any individual who has accepted an offer of admission; any individual registered or enrolled in courses through CNU; any individual not enrolled for a particular term but who has not officially separated from CNU; and any individual who is separated from CNU for academic or disciplinary reasons regardless of the duration of the separation. However, if an individual's enrollment lapses for more than twelve consecutive months, based on that individual's voluntary decision not to enroll, that individual will no longer be considered a Student for purposes of this policy.

#### D. **Definitions of Prohibited Conduct**

1. **Discrimination** is inequitable treatment based on an individual's protected characteristics or statuses (race, color, religion, sex, national origin, age, disability, genetic information, sexual orientation, gender identity, marital status, military/veteran status, political affiliation, pregnancy, or any other status protected by law) that excludes an individual from participation in, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual's employment, education, living environment, or participation in an educational program or activity. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities.
2. **Harassment** is a form of discrimination in which unwelcome verbal, nonverbal, or physical conduct is directed toward an individual on the basis of his or her protected characteristics or statuses (race, color, religion, sex, national origin, age, disability, genetic information, sexual orientation, gender identity, marital status, military/veteran

status, political affiliation, pregnancy, or any other status protected by law). Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.

Harassment violates this policy (except for Title IX Sexual Harassment, as defined below) when it creates a hostile environment, as defined below.

**Hostile Environment** may be conduct in any medium (e.g. oral, written, graphic, or physical) that is sufficiently severe, persistent or pervasive and objectionably offensive that interferes with, limits or denies the ability of an individual to participate in or benefit from education programs, services, opportunities, or activities or the individual's employment access, benefits or opportunities. Mere subjective offensiveness is not enough to create a hostile environment. In determining whether conduct is severe, persistent or pervasive, and thus creates a hostile environment, the following factors will be considered:

- a. The degree to which the conduct affected one or more individuals' education or employment;
- b. The nature, scope, frequency, duration, and location of the incident(s);
- c. The identity, number, and relationships of persons involved;
- d. The perspective of a "reasonable person" in the same situation as the person subjected to the conduct; and
- e. The nature of higher education.

3. **Non-Title IX Sexual Harassment** is a form of discrimination based on sex that does not fall within the definition and/or jurisdiction of Title IX Sexual Harassment (i.e., behavior that did not occur within the United States such as study abroad and/or within a CNU program or activity such as an off-campus residence). It is defined as unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature including: verbal (e.g., specific demands for sexual favors, sexual innuendoes, sexually suggestive comments, jokes of a sexual nature, sexual propositions, or sexual threats); non-verbal (e.g., sexually suggestive emails, other writings, articles or documents, objects or pictures, graphic commentaries, suggestive or insulting sounds or gestures, leering, whistling, or obscene gestures); or physical (e.g., touching, pinching, brushing the body, any unwelcome or coerced sexual activity, including sexual assault). Sexual harassment, including sexual assault, can involve persons of the same or different sexes.

This policy prohibits the following types of Non-Title IX Sexual Harassment:

- a. **Term or condition of employment or education**: This type of Non-Title IX Sexual Harassment (often referred to as "quid pro quo" harassment) occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a CNU activity are conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a CNU program or activity.
- b. **Hostile environment**: Acts that create a hostile environment, as defined above in Section D.2.

4. **Title IX Sexual Harassment**<sup>1</sup> is conduct on the basis of sex that satisfies one or more of the following:
- a. **Quid Pro Quo** is when an employee of CNU conditions the provision of an aid, benefit, or service of CNU on an individual's participation in unwelcome sexual contact. (Quid Pro Quo is when a student, not in an employee role, of CNU conditions the provision of an aid, benefit, or service of CNU on another student's participation in unwelcome sexual contact and shall be addressed under Process B.)
  - b. **Hostile Environment** is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to CNU's education program or activity.

Unwelcomeness is subjective. Severity, pervasiveness, and objective offensiveness are evaluated on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns.

- c. **Sexual Assault** is:
  - (1) **Forcible Sex Offenses**: Any sexual act directed against another person without the consent of the Complainant including instances where the Complainant is incapable of giving consent. A "sexual act" is specifically defined by federal regulations to include one or more of the following:
    - (a) **Rape**: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person without the consent of the Complainant.
    - (b) **Sodomy**: Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensual), or not forcibly or against the person's will in instances in where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
    - (c) **Sexual Assault with an Object**: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will (non-consensual) or not forcibly or against that person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
    - (d) **Fondling**: The touching of the private body parts of another person (buttocks, groin, genitalia, breasts, or the clothing covering those areas) for the purposes of sexual gratification, forcibly and/or against that person's will (non-consensual) or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>1</sup> 34 CFR 106

(2) **Non-Forcible Sex Offenses:**

(a) **Incest:** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by the law of the Commonwealth of Virginia. (See Va. Code §18.2-366).

(b) **Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent in the Commonwealth of Virginia, which is 17.

d. **Dating Violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

For purposes of this definition:

(1) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.<sup>2</sup>

(2) Dating violence does not include acts covered under the definition of domestic violence.

e. **Domestic Violence** is a felony or misdemeanor crime of violence committed (1) by a current or former spouse or intimate partner of the Complainant; (2) by a person with whom the Complainant shares a child in common; (3) by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner; (4) by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the Commonwealth of Virginia, and (5) by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the Commonwealth of Virginia.

The relationship between the Complainant and Respondent must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

f. **Stalking** is engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for the person's safety; (2) the safety of others; or (3) suffer substantial emotional distress meaning significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

A "course of conduct" means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

<sup>2</sup> For example, emotional, economic, or psychological actions or threats of actions that influence another person including behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.

5. **Sexual Misconduct** includes Non-Title IX Sexual Harassment, Title IX Sexual Harassment, Sexual Assault, Sexual Exploitation, Dating Violence, Domestic Violence, and Stalking.
6. **Sexual Violence** refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent including the criminal acts of rape, sexual assault, sexual battery, sexual abuse, and sexual coercion as found under Virginia Law (Article 4 of Chapter 4 of Title 18.2).
7. **Consent** is given by voluntary words or actions that communicate a willingness to engage in a specific sexual activity. The existence of consent will be inferred from all of the facts and circumstances. Consent may be withdrawn at any time. Silence, in and of itself, is not consent. Lack of protest or resistance is not consent. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. A previous or current relationship does not imply consent to sexual activity. Past consent does not imply future consent. Consent cannot be obtained by the use of force to include physical violence, threats, intimidating behavior, and/or coercion.
  - a. **Physical Violence** means that a person is exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, strangulation, and brandishing or using any object as a weapon.
  - b. **Threats** are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.
  - c. **Intimidation** is an implied threat that menaces or causes reasonable fear in another person. A person's size, alone, does not constitute intimidation; however, a person can use their size or physical power in a manner that constitutes intimidation (i.e., by blocking access to an exit.)
  - d. **Coercion** is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to engage in sexual activity. When a person makes clear that they do not want to participate in a particular form of sexual contact or sexual intercourse, that they want to stop or that they do not want to go beyond a certain sexual activity, continued pressure may be coercive. In evaluating whether coercion was used, the frequency of the application of pressure, the intensity of the pressure, the degree of isolation of the person being pressured, and the duration of the pressure are all relevant factors.

Consent cannot be given by the following individuals:

- Individuals who are asleep or unconscious;
- Individuals who are incapacitated due to the influence of drugs, alcohol, medication, or other substances;
- Individuals who are unable to consent due to a mental or physical condition; and
- Individuals who are minors.

If an individual knows or reasonably should know someone is incapable of giving consent, it is a violation of this policy to engage in sexual activity with that person.

**Incapacitation:** An incapacitated person is incapable of giving consent. Incapacitation means that a person lacks the ability to make informed, reasonable judgments about whether or not to engage in sexual activity. An incapacitated person lacks the ability to understand the who, what, when, where, why, and/or how of the sexual interaction. A person is not necessarily incapacitated merely as a result of consuming alcohol, drugs, medications, and/or other substances. The impact of alcohol, drugs, medications, and/or other substances varies from person to person. Incapacitation is not synonymous with intoxication, impairment, blackout, and/or being drunk.

**Alcohol, Medications, and Other Drugs:** The use of alcohol, medications, and other drugs by the Respondent is not an excuse for being unable to assess if the Complainant gave consent.

8. **Sexual Exploitation** occurs when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, when that behavior does not otherwise constitute Prohibited Conduct under this policy. Sexual exploitation includes, but is not limited to: prostituting another person, non-consensual recording or photographing sexual activity and/or a person's intimate body parts, non-consensual distribution of photos, other images, or recordings of an individual's sexual activity and/or intimate body parts, non-consensual voyeurism, knowingly transmitting HIV or an STD to another, causing or attempting to cause the incapacitation of another person for a sexual purpose, or exposing one's genitals to another in non-consensual circumstances.
9. **Complicity** is any act taken with the purpose of aiding, facilitating, promoting, or encouraging the commission of a violation of this policy by another person. Complicity is prohibited by this policy.
10. **Retaliation** is any adverse action taken or threatened against a person for making a good faith report of Prohibited Conduct or participating in any proceeding under this policy. Retaliation includes intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by this policy or law, or because the individual has made a report or Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. Action is generally deemed adverse if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy.

Retaliation is a separate offense and may result in disciplinary or other action independent of the sanctions or supportive measures imposed in response to the underlying allegations of Prohibited Conduct.

Charging an individual for making a materially false statement in bad faith in the course of the Resolution Process under this policy does not constitute retaliation, provided that the determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.



Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Conduct or the exercise of rights protected under the First Amendment.

11. **Online Misconduct** occurring completely outside of CNU's control (i.e. not on CNU's networks, websites, or between CNU email accounts) will only be subject to this policy when such online conduct causes a substantial effect on a student's or employee's participation in a CNU education program or activity or infringement on the rights of others. Otherwise, such communication is considered speech protected by the First Amendment.

**E. Role of the Title IX Coordinator**

The Director of Title IX and Equal Opportunity ("Director") is the Title IX Coordinator. The Director is charged with coordinating CNU's compliance with federal civil rights laws; overseeing the intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent Prohibited Conduct in accordance with this policy; and ensuring appropriate education and training. The Director may delegate responsibilities under this policy to Deputy Title IX Coordinators and other appropriate trained administrators.

The Director acts with independence and authority free from bias and conflicts of interest. The members of the Director's Office are trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents. The members of the Director's Office do not serve as advocates for either the Complainant or the Respondent.

Allegations of Prohibited Conduct against the Director should be made to the President.

**F. Supportive Measures**

The Director will promptly offer and implement appropriate and reasonable supportive measures to either or both of the Parties upon receipt of a report of alleged Prohibited Conduct. Supportive measures are available regardless of whether resolution is pursued under this policy.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Parties in order to restore or preserve equal access to CNU's education programs or activities, without unreasonably burdening the other party, including measures designed to protect the safety of all Parties or CNU's educational environment, and/or to deter Prohibited Conduct.

The Director will consult with the Parties before taking supportive measures to the greatest degree possible. Both Parties will be notified in writing concerning the imposition of supportive measures that impact them.

CNU must maintain the privacy of supportive measures, provided that privacy does not impair CNU's ability to provide the supportive measures to the Parties.

Supportive Measures are not intended to be permanent resolutions. They may be amended or withdrawn as additional information is obtained and upon final resolution of the report or Formal Complaint.

Supportive measures may include, but are not limited to:

1. Academic arrangements;
2. Housing and dining arrangements;
3. Work-related arrangements;
4. Limitation on extracurricular or athletic activities;
5. No-contact order (that serves as notice to one or both Parties that they must not have verbal, electronic, written, or third-party communication with one another);
6. Limitations on access to campus, CNU facilities, and CNU events;
7. Visa and immigration assistance;
8. Referral and coordination of counseling and health services;
9. Referral to the Employee Assistance Program (EAP);
10. Training for students, faculty, and/or staff;
11. Administrative leave with or without pay; and
12. Any other measures that may be arranged by CNU (to the extent reasonably available) to ensure the safety and well-being of the Parties.

Individuals are encouraged to report concerns about failure of a party to abide by any restriction imposed by a supportive measure. CNU will take immediate action to enforce a previously implemented supportive measure, and disciplinary action may be imposed for failing to abide by a supportive measure.

#### **G. Expectations of the Parties**

Under this policy, all Parties can expect:

1. Reasonably prompt and equitable resolution of allegations of Prohibited Conduct;
2. Written notice of an investigation, including the potential policy violation(s), nature of the allegation(s), the identities of the Parties involved, and the date, time and location of the incident (if known);
3. The opportunity to offer information, present evidence, and/or identify witnesses relevant to the allegation(s);
4. Reasonable notice of any meeting where the party's presence is requested;
5. The opportunity to have an Advisor of choice for matters involving Sexual Misconduct or when the allegation of Prohibited Conduct could result in suspension or dismissal, including the opportunity to have that Advisor attend any meetings where the party's presence is requested;
6. Appointment of an Advisor to conduct cross-examination during Process A if a party does not have an Advisor;
7. Timely and equal access to any information that will be used during the investigation, related meetings, and hearing (if applicable);
8. A reasonable length of time to prepare any response;
9. Written notice of any extension of time frames for good cause;
10. Privacy to every extent possible in accordance with this policy and legal requirements;
11. The opportunity to challenge a member of the Director's Office or the Decision-Maker for actual bias or conflict of interest;

12. Written notice of the outcome, imposition of any sanction(s), the rationale for each, appeal procedures, change to the finding and/or sanction, if any, after an appeal, and when the outcome and sanctions become final;
13. Reasonably available supportive measures;
14. Limited amnesty as stated in Section S;
15. No tolerance for false information as stated in Section T;
16. No unauthorized audio or video recording of any kind by the Director's Office, Party and/or witness during any meeting or interview where other employee's and/or student's information may be discussed, as it is not permitted. If the Director's Office decides to audio and/or video record any meeting or interview, all involved in the meeting or interview shall be made aware of the recording; and
17. Protection against retaliation.

## **H. Privacy and Confidentiality**

CNU is committed to protecting the privacy of any individual involved in the resolution of a report under this policy. With respect to any report under this policy, CNU will make reasonable efforts to protect the privacy of participants while balancing the need to gather information to assess the matter, take steps to eliminate the reported conduct, prevent its recurrence, and address its effects.

Privacy and confidentiality have distinct meanings under this policy.

**Privacy:** Privacy means that information related to a report or Formal Complaint will be shared with a limited circle of CNU employees identified as needing to know in order to assist the assessment, investigation, and resolution of the matter. While not subject to a legal obligation of confidentiality, these individuals will respect the privacy of all individuals involved in the process and will not share information except as necessary to effectuate this policy.

The privacy of student education records will be protected in accordance with CNU's policy for compliance with the Family Educational Rights and Privacy Act (FERPA). The privacy of an individual's medical and related records generally is protected by the Health Insurance Portability and Accountability Act (HIPAA), except health records protected by FERPA and by Virginia's Health Records Privacy statute, Va. Code § 32.1-127.1:03. Access to an employee's personnel records in Virginia may be limited in accordance with the Virginia Freedom of Information Act, Va. Code § 2.2-3700, and, where applicable, Department of Human Resources Management (DHRM) Policy 6.05.

**Confidentiality:** Confidentiality exists in the context of laws that protect certain relationships, including licensed health-care professionals and employees providing administrative support for such licensed health-care professionals, mental health providers, counselors, and ordained clergy, all of whom may engage in confidential communications under Virginia law. These individuals cannot violate their obligation of confidentiality unless (i) given written consent to do so by the person who disclosed the information; (ii) there is a concern of serious physical harm to self or others; (iii) the conduct involves suspected abuse or neglect of a minor under the age of 18; or (iv) as otherwise required or permitted by law or court order.

**Confidential Resources:** The CNU Office of Counseling Services and the community resources listed in Section I are Confidential Resources. Confidential Resources will not disclose information about a report of a possible violation of this policy to CNU (including the Director’s Office or University Police) without the Complainant’s permission (subject to the exceptions listed above under Confidentiality).

**Clery Act Reporting:** Pursuant to the Clery Act, CNU includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about the individuals involved in the incident. The Clery Act also requires CNU to issue timely warnings to the CNU community about certain crimes that have been reported and may continue to pose a serious or continuing threat to the campus. Consistent with the Clery Act, CNU will ensure, to every extent possible, that personally identifying information of Reporting Parties is not included in timely warnings.

**I. Confidential Resources and Procedures for Anyone Who Has Experienced Sexual Misconduct**

1. In a supportive manner, CNU will assist anyone who has experienced Sexual Misconduct by implementing the procedures set out herein. Due to the potential seriousness and sensitivity of the investigations involved, it is important to undertake these investigations properly. Preserving the evidence is often a key step of successful investigation of alleged Sexual Misconduct.
2. **Recommended Steps:** For anyone who has experienced Sexual Misconduct, the following steps are recommended.
  - a. Go to a safe place.
  - b. **Confidential Resources (Medical Assistance):** For your safety and confidential care, report promptly to one or more of the following Confidential Resources:
    - (1) **On-Campus Confidential Resource**

CNU Health and Wellness Services

(2) **Off-Campus Confidential Resources**

Riverside Regional Medical Center

- (757) 594-7661
- Freeman Center 1<sup>st</sup> Floor
- [uhws@cnu.edu](mailto:uhws@cnu.edu)
- <http://cnu.edu/life/health/>
- 500 J. Clyde Morris Boulevard, Newport News, VA 23601
- (757) 594-2000 or Emergency-Trauma Center (757) 594-2050
- You may request a Sexual Assault Advocate if one is not provided.
- You may receive a forensic sexual assault examination by a Sexual Assault Nurse Examiner (SANE Nurse).
- Physical evidence may be usable if proper procedures are followed for evidence collection within 120 hours of the assault.
- <http://riversideonline.com/rrmc/>

Nearest Medical Facility or Emergency Room

c. **Confidential Resources (Support and Counseling):** For professional and confidential counseling support, the following on-campus and off-campus Confidential Resources may be contacted.

(1) **On-Campus Confidential Resource**

CNU Office of Counseling Services

- (757) 594-7047
- 
- 
- <http://cnu.edu/life/counseling/>

(2) **Off-Campus Confidential Resources**

<p><u>The Center for Sexual Assault Survivors (The Center)</u></p>	<ul style="list-style-type: none"> <li>• (757) 599-9844</li> <li>• Crisis Hotline (757) 236-5260</li> <li>• 718 J Clyde Morris Boulevard, Newport News, VA 23601</li> <li>• Provides individual and group counseling, outreach, and information for survivors, family, and friends</li> <li>• <a href="http://visitthecenter.org/">http://visitthecenter.org/</a></li> </ul>
<p><u>Transitions</u></p>	<ul style="list-style-type: none"> <li>• (757) 722-2261</li> <li>• 24-Hour Hotline (757) 723-7774</li> <li>• Provides comprehensive family violence services for Hampton, Newport News, and Poquoson, and a co-provider of services for York County</li> <li>• <a href="http://www.transitionsfvs.org/">http://www.transitionsfvs.org/</a></li> </ul>
<p><u>Newport News Victim Services Unit (Commonwealth Attorney’s Office)</u></p>	<ul style="list-style-type: none"> <li>• (757) 926-7443</li> <li>• 2501 Washington Avenue, 6<sup>th</sup> Floor, Newport News, VA 23607</li> <li>• Victim advocate</li> <li>• <a href="https://www.nnva.gov/477/Victim-Services">https://www.nnva.gov/477/Victim-Services</a></li> </ul>
<p><u>Virginia Family Violence and Sexual Assault 24-Hour Hotline</u></p>	<ul style="list-style-type: none"> <li>• Call: (800) 838-8238</li> <li>• Text: (804) 793-9999</li> </ul>
<p><u>Virginia LGBTQ Partner Abuse and Sexual Assault 24-Hour Hotline</u></p>	<ul style="list-style-type: none"> <li>• Call: (866) 356-6998</li> <li>• Text: (804) 793-9999</li> </ul>
<p><u>LGBT Life Center of Hampton Roads</u></p>	<ul style="list-style-type: none"> <li>• (757) 640-0929</li> <li>• 5360 Robin Hood Road, Norfolk, VA 23513</li> <li>• Provides resources, advocacy, and counseling</li> <li>• <a href="https://lgbtlifecenter.org/">https://lgbtlifecenter.org/</a></li> </ul>
<p><u>Planned Parenthood</u></p>	<ul style="list-style-type: none"> <li>• (757) 826-2079</li> <li>• Hampton Health Center, 403 Yale Drive, Hampton, VA 23666</li> <li>• Provides reproductive health care and education</li> <li>• <a href="http://www.plannedparenthood.org/">http://www.plannedparenthood.org/</a></li> </ul>
<p><u>AVALON</u></p>	<ul style="list-style-type: none"> <li>• (757) 258-5022</li> <li>• 24-hour Helpline (757) 258-5051</li> <li>• Located in Williamsburg, VA</li> <li>• Provides prevention, education, shelter, and support services to survivors of domestic violence and sexual assault</li> <li>• <a href="http://www.avaloncenter.org/">http://www.avaloncenter.org/</a></li> </ul>

<u>National Sexual Assault Hotline (RAINN)</u>	<ul style="list-style-type: none"> <li>• 24-hour Hotline: (800) 656-HOPE (4673)</li> </ul>
<u>Employee Assistance Program (EAP)</u>	<ul style="list-style-type: none"> <li>• Counseling provided by all health plans offered to Commonwealth of Virginia employees and their dependents</li> <li>• COVA CARE and COVA HDHP Anthem (855-223-9277)</li> <li>• COVA HealthAware Aetna (888-238-6232)</li> <li>• Optima Health Vantage HMO Optima (800-899-8174)</li> <li>• Kaiser Permanente HMO Kaiser (866-517-7042)</li> <li>• <a href="http://www.dhrm.virginia.gov/employee_programs/employeeassistance">http://www.dhrm.virginia.gov/employee_programs/employeeassistance</a></li> </ul>

- d. Contact a trusted friend or family member.
- e. Preservation of Evidence: It is your right to have evidence collected and retained anonymously by law enforcement while you consider whether to pursue criminal charges. Pending a decision to report, it is strongly encouraged that you take immediate steps to preserve all evidence that might support a future report. Evidence preservation is enhanced in the following ways:
- (1) Do not wash your hands, bathe, or douche. Do not urinate, if possible.
  - (2) Do not eat, blow your nose, drink liquids, smoke, or brush your teeth if oral contact took place.
  - (3) Keep the clothing worn when the incident took place. If you change clothing, place the worn clothing in a paper bag (evidence deteriorates in plastic).
  - (4) Obtain a forensic sexual assault examination by a Sexual Assault Nurse Examiner (SANE Nurse) within 120 hours of the incident. (Regardless of whether a forensic exam is obtained within the first 120 hours after the incident, individuals are encouraged to seek care to address any medical concerns.)
  - (5) Do not destroy any physical evidence that may be found in the vicinity of the incident and do not clean or straighten the location of the crime until law enforcement officials have had an opportunity to collect evidence.
  - (6) Tell someone all the details you remember and/or write them down as soon as possible.
  - (7) Maintain text messages, voice mails, pictures, online postings, video, and other documentary or electronic evidence that may corroborate a report.
3. There is no time limit for filing a report of Sexual Misconduct. However, Complainants should report as soon as possible to maximize CNU's ability to respond. Not reporting promptly may result in the loss of evidence and limit the investigation.
  4. The Complainant shall have the right to file a report with law enforcement and the option to be assisted by the Director's Office and other University authorities in notifying the proper law enforcement authorities of the alleged Sexual Misconduct.

5. CNU officials (excluding University Police) receiving reports of a possible Sexual Misconduct will follow the procedures listed in this policy. University Police will follow departmental procedures in accordance with standard law enforcement policies.
6. Resources for Anyone who has experienced Sexual Misconduct
  - a. Anyone who reports Sexual Misconduct to the Director's Office, the Office of Counseling Services, or University Police shall receive information, as those offices deem appropriate, outlining resources on and off campus and options.
  - b. Students and employees will be assisted with available options for supportive measures such as changing academic, transportation, parking, work, and/or living arrangements, after alleged Sexual Misconduct. Safety arrangements like no-contact orders may be made available as deemed necessary and reasonable.

#### **J. Reporting to the Police**

In an emergency, contact the University Police on campus at extension 4-7777 or from outside the CNU telephone system at (757) 594-7777 or contact 911. Someone may also walk into the University Police Headquarters at 12270 Warwick Boulevard (across from the Ferguson Center for the Arts) and speak directly to a CNU police officer.

The Director will make all Complainants aware of the right also to file a report with the University Police or local law enforcement. CNU will comply with all requests by the University Police or local law enforcement for cooperation in investigations. Such cooperation may require the Director to temporarily suspend the fact-finding aspect of an investigation detailed in the procedures below while the University Police or other law enforcement agency gathers evidence. If the investigation is suspended, any supportive measures remain in place and available. The Director's Office will promptly resume its investigation as soon as notified by the University Police or other law enforcement agency that it has completed the evidence gathering process. Otherwise, the investigation will not be altered or precluded on the grounds that criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

Some conduct in violation of this policy may also be a crime under Virginia law. Individuals are encouraged to report incidents of Sexual Misconduct to law enforcement, even if the reporting individual is not certain if the conduct constitutes a crime. Crimes dealing with minors must be reported to law enforcement.

A Protective Order may be available and enforced through the appropriate law enforcement agency. Protective Orders are legal documents issued by a judge or magistrate to protect the health and safety of a person who is alleged to be a victim of any act involving violence, force, or threat that results in bodily injury or places that person in fear of death, sexual assault, or bodily injury.

#### **K. Reporting to CNU**

1. The Director and Deputy Title IX Coordinators are trained to help individuals find the resources they might need, explain all reporting options, and respond appropriately to the conduct of concern, including retaliation.

2. There is no time limit for filing a report under this policy. However, Complainants should report as soon as possible to maximize CNU's ability to respond. Not reporting promptly may result in the loss of evidence and/or jurisdiction over the Respondent if they are no longer affiliated with CNU and therefore limit the Resolution Process.
3. Any reports of Prohibited Conduct may be made to the Director, a Deputy Title IX Coordinator, or a Responsible Employee.

Title IX Coordinator: The Director of Title IX and Equal Opportunity (Katie Wellbrock is the Interim Title IX Coordinator).

Katie Wellbrock  
Interim Title IX Coordinator  
100 Christopher Newport Hall  
(757) 594-8819  
[kathryn.wellbrock@cnu.edu](mailto:kathryn.wellbrock@cnu.edu)

4. **Responsible Employee (Mandated Reporters of Sexual Misconduct)**: All CNU employees, including full-time, part-time, and students, are Responsible Employees for purposes of reporting Sexual Misconduct as defined in Section D. This does not include employees of contractors. Student employees are Responsible Employees when they receive information while acting in their capacity as a CNU employee.

Once in receipt of information regarding Sexual Misconduct, the Responsible Employee must directly report the information obtained regarding the alleged incident to the Director's Office without delay and should otherwise respect the privacy of the individuals involved. No CNU employee shall undertake any independent efforts to determine whether or not the report has merit or can be substantiated before reporting it to the Director.

The report from the Responsible Employee must include all relevant details (obtained directly or indirectly) about an incident including the names of the Parties and witnesses (if known), and the date, time and location of the incident. The Responsible Employee may directly contact the Director's Office or submit a report online by completing the [\*Sexual Misconduct Responsible Employee Reporting Form\*](#).

Before someone reveals this type of information to the Responsible Employee, the Responsible Employee should make every effort to ensure that the person understands the Responsible Employee's obligation and that the person has the option to request



confidentiality and share the information with a Confidential Resource either on campus or off campus as listed in Section I.

When a Responsible Employee fails to make a required report to the Director’s Office, CNU is unable to acquire the information necessary to stop, remedy, and prevent Sexual Misconduct. As a result, the employee may face disciplinary consequences up to and including termination of employment.

5. **Online Reporting:** Any reports of Prohibited Conduct can be submitted through CNU’s website for online reporting by completing the [Title IX and EO Community Reporting Form](#). This form also allows for anonymous reporting.
6. **Reports of Other Discrimination/Harassment Not Sexual Misconduct:** CNU administrators, supervisors, faculty, coaches, and assistant coaches should report other conduct in violation of this policy without undue delay after the incident. Any such report may be made orally or in writing, including electronic mail to the Director or completing the [Title IX and EO Community Reporting Form](#) online.

**L. Reporting to External Agencies**

Inquiries or complaints concerning discrimination/harassment on the basis of race, color, national origin, sex including Sexual Misconduct, age, disability, or retaliation may be directed to the United States Department of Education’s Office for Civil Rights (OCR).

<u>OCR National Headquarters</u>	U. S. Department of Education Office of Civil Rights Lyndon Baines Johnson Building 400 Maryland Avenue, SW Washington, D.C. 20202-1100 (800) 421-3481 Email: <a href="mailto:OCR@ed.gov">OCR@ed.gov</a> <a href="http://www2.ed.gov/about/offices/list/ocr/index.html">http://www2.ed.gov/about/offices/list/ocr/index.html</a>
<u>OCR Regional Headquarters</u>	U.S. Department of Education Office of Civil Rights Lyndon Baines Johnson Building 400 Maryland Avenue, SW Washington, D.C. 20202-1475 (202) 453-6020 Email: <a href="mailto:OCR.DC@ed.gov">OCR.DC@ed.gov</a>

Inquiries or complaints concerning discrimination and harassment of **employees** may also be directed to the following:

<u>EEOC National Headquarters</u>	U.S. Equal Employment Opportunity Commission 131 Main Street NE Washington, D.C. 20507 (800) 669-4000 Email: <a href="mailto:info@eeoc.gov">info@eeoc.gov</a> <a href="http://www.eeoc.gov/">http://www.eeoc.gov/</a>
<u>EEOC Local Office</u>	U.S. Equal Employment Opportunity Commission 200 Granby Street Suite 739 Norfolk, VA 23510 (800) 669-4000 <a href="http://www.eeoc.gov/field-office/norfolk/location">http://www.eeoc.gov/field-office/norfolk/location</a>

<u>Commonwealth of Virginia:</u> <u>Department of Human Resource</u> <u>Management Office of Workforce</u> <u>Engagement (Diversity, Equity and</u> <u>Inclusion Unit)</u>	101 North 14 <sup>th</sup> Street, 12 <sup>th</sup> Floor Richmond, VA 23219 (800) 533-1414 <a href="https://www.dhrm.virginia.gov/employee-relations/equity-diversity-and-inclusion">https://www.dhrm.virginia.gov/employee-relations/equity-diversity-and-inclusion</a>
<u>Commonwealth of Virginia:</u> <u>Office of the Attorney General</u> <u>(Office of Civil Rights)</u>	202 North 9 <sup>th</sup> Street Richmond, VA 23219 (804) 225-2292 <a href="mailto:CivilRights@oag.state.va.us">CivilRights@oag.state.va.us</a> <a href="https://www.oag.state.va.us/programs-initiatives/civil-rights">https://www.oag.state.va.us/programs-initiatives/civil-rights</a>

**M. Timely Warning**

CNU is required by federal law, the Clery Act, to issue timely warnings for reported incidents that pose a substantial threat or danger to members of the campus community. CNU will ensure, to every extent possible, that identifying information is not disclosed, while still providing enough information for members of the campus community to make decisions to address their own safety in light of the potential danger.

**N. Initial Assessment**

Upon the receipt of a report, the Director will make an initial assessment of the reported information and respond to any immediate health or safety concerns. In this initial assessment, the Director will:

1. Inform the Complainant of the option to seek medical treatment, and explain the process and importance of obtaining and preserving evidence and provide the appropriate assistance if requested;
2. Inform the Complainant of the option to contact law enforcement and provide the appropriate assistance if requested;
3. Inform the Complainant about CNU resources (including supportive measures) and community resources;
4. Consider whether supportive measures and involvement of other CNU leadership is appropriate;
5. Explain CNU’s prohibition against retaliation;
6. Determine if the report alleges Prohibited Conduct, thereby conferring jurisdiction on the Director’s Office. If the Director determines that the Director’s Office does not have jurisdiction under the policy, the Director shall forward the report to the appropriate office and notify Parties about appropriate resources;
7. Seek to determine whether the Complainant wishes to seek resolution under the policy and procedures or request confidentiality;
8. Inform the Complainant that they may seek supportive measures, Informal Resolution, or Formal Resolution under this policy and procedures, and explain each option and the process for filing a Formal Complaint (if necessary);
9. Seek to determine if the Complainant prefers a response of only supportive measures, Informal Resolution, or Formal Resolution;
  - a. If only supportive measures are preferred, the Director works with the Complainant to identify what is sought, assess the request, and implement any reasonably appropriate supportive measures.

- b. If Informal Resolution is preferred, the Director determines whether the Director's Office has jurisdiction under the policy, whether the matter is suitable for Informal Resolution, and whether the alleged Prohibited Conduct falls within the scope of Process A or Process B.
  - c. If Formal Resolution is preferred, the Director determines whether the Director's Office has jurisdiction under the policy and whether the alleged Prohibited Conduct falls within the scope of Process A or Process B; and
10. Communicate with appropriate CNU officials regarding possible Clery Act obligations.

The Director will ensure that the Complainant receives an explanation of available options and resources and is offered the opportunity to meet to discuss those options and resources. When a decision is made to take action under this policy and procedures that impacts a Respondent, the Director will ensure that the Respondent is notified, receives an explanation of available options and resources, and is offered the opportunity to meet to discuss those options and resources.

#### **O. Request for Confidentiality and Anonymous Reporting**

Any requests of confidentiality concerning matters of possible Sexual Violence will be handled as stated in Section P. All other requests of confidentiality will be handled as described below.

1. Request for Confidentiality or No Formal Action Be Taken: If the Complainant requests confidentiality or that the report not be pursued, CNU may be limited in the actions it is able to take and its ability to respond while respecting the request. The Director will seek confirmation from the Complainant regarding the desire for confidentiality or no formal action be taken, and the Director will take all reasonable steps to respond to the report consistent with the request. The Director will consider the reasons for the request along with CNU's obligation to provide a safe and nondiscriminatory learning and work environment and to comply with state and federal laws and regulations. The ability to maintain or respect the request is expressly limited by the threat assessment required in Section P for reports of Sexual Violence. The Director may initiate consultation with appropriate CNU leadership concerning the request for confidentiality or no formal action be taken. The Director shall make the ultimate decision on whether to conduct an Informal Resolution or a Formal Resolution or to respond in another manner, including use of supportive measures as stated in Section F. If it is determined that a Formal Resolution must proceed, the Director will inform the Complainant prior to notifying the Respondent about the Formal Resolution, but in no event will the Complainant be required to participate in the Formal Resolution. By proceeding with a Formal Resolution, the Director does not become the Complainant or a party in the matter. The Complainant is the person who allegedly experienced the Prohibited Conduct and retains the option to participate or not to participate in the Formal Resolution.

For matters under Process A, the Director will sign a Formal Complaint to initiate the Resolution Process.

Confidential Resources: The CNU Office of Counseling Services and the community resources listed in Section I are Confidential Resources. Confidential Resources are not permitted to disclose information about a report of a possible violation of this policy to

CNU (including the Director's Office or University Police) without the Complainant's permission (subject to the exceptions listed above under Confidentiality in Section H).

Reports or Complaints Involving Minors: If the Complainant is (or was at the time of the incident) a minor (under 18), the University Police shall be notified.

2. Anonymous Report: A report may be made anonymously through CNU's website for online reporting by using the *Title IX and EO Community Reporting Form*. The Director's Office may be limited in its ability to respond and investigate an anonymous report unless sufficient information is furnished to enable the Director's Office to conduct a meaningful and fair investigation.

P. **Threat Assessment for Sexual Violence**: In addition to the steps taken during the initial assessment as stated in Section N, CNU shall submit every allegation of Sexual Violence that is alleged to have occurred (i) against any CNU student; or (ii) on campus, in or on a CNU building or property, or on public property that is within the campus or immediately adjacent to and accessible from campus to the Review Committee pursuant to Va. Code §23.1-806.

1. Review Committee: The Review Committee may include any and all members of CNU's Threat Assessment Team established under Va. Code §23.1-805 and shall include, at a minimum: (1) the Director or designee, (2) a representative of the University Police, and (3) a representative from the Office of Student Affairs. The Review Committee may also include a representative from the Office of Human Resources or the Office of the Provost or others as needed, depending on the status of the Respondent and the circumstances of the report.

The Review Committee operates pursuant to Va. Code §23.1-805 and has access, under Virginia law, to certain otherwise confidential information, including law enforcement records and criminal history information, as provided in Va. Code §19.2-389 and §19.2-389.1; health records, as provided in Va. Code §32.1-127.1:03; University disciplinary, academic and/or personnel records; and prior reports of misconduct maintained by the Director. The Review Committee shall have access to all available facts and circumstances, including personally identifiable information, and may seek additional information about the reported incident through any other legally permissible means.

2. Risk Factors: The Review Committee shall consider the following factors to determine whether there is an increased risk of the Respondent committing additional acts of Sexual Misconduct or other violence, including, but not limited to:
  - a. Whether the Respondent has prior arrests, reports and/or complaints related to any form of conduct in violation of this policy or any history of violent behavior;
  - b. Whether the Respondent has a history of failing to comply with any CNU No-Contact Order, other CNU protective measures, and/or any legal Protective Order;
  - c. Whether the alleged conduct involved multiple Respondents;
  - d. Whether the alleged conduct involved physical violence;
  - e. Whether the allegation reveals a pattern of conduct in violation of this policy (i.e., by the Respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location);

- f. Whether the alleged conduct was facilitated through the possible use of “date-rape” or similar drugs or intoxicants;
  - g. Whether the alleged conduct occurred while the Complainant was unconscious, physically helpless or unaware that the conduct in question was occurring;
  - h. Whether the Complainant is (or was at the time of the alleged incident) under the age of 18; and/or
  - i. Whether any other aggravating circumstances or signs or predatory behavior are present.
3. Review Committee Procedures and Determinations: Upon the Director’s receipt of information of an alleged act of Sexual Violence, the Review Committee shall meet (in person, electronically, by telephone, or by videoconference) within seventy-two (72) hours to review the information and shall meet again as necessary as new information becomes available.

If the Review Committee determines that there is a significant and articulable threat to the health or safety of the Complainant or to any other member of the campus community and that disclosure of personally identifiable information is necessary in order to protect the health or safety of the Complainant or other members of the campus, the representative of University Police on the Review Committee shall immediately disclose such information to the law enforcement agency that would be responsible for investigating the alleged act of Sexual Violence. This determination will be based on the totality of the known circumstances and Risk Factors listed above in Section P.2. If the Review Committee cannot reach a consensus, the representative of the University Police on the Review Committee shall make the determination. This disclosure shall be for the purposes of investigation and other actions by law enforcement. The Director shall immediately notify the Complainant if such a disclosure is made. The provisions of this paragraph shall not apply if the law enforcement agency responsible for investigating the alleged incident is located outside of the United States.

In cases in which the alleged act of Sexual Violence would constitute a felony violation under Virginia law (Article 7 of Chapter 4 of Title 18.2), the representative of the University Police on the Review Committee shall inform the other members and shall within twenty-four (24) hours consult with the appropriate Commonwealth Attorney and provide to him or her the information received by the Review Committee without disclosing personally identifiable information, unless such information was disclosed to a law enforcement agency pursuant to the paragraph above. If such consultation does not occur and any other Review Committee member individually concludes that the alleged act of Sexual Violence would constitute a felony violation under Virginia law, that member shall within twenty-four (24) hours consult the appropriate Commonwealth Attorney and provide to him or her the information received by the Review Committee without disclosing personally identifiable information, unless such information was already disclosed to the University Police as allowed above.

The Review Committee shall also consider and recommend other appropriate or necessary actions including supportive measures beyond any already in place.

4. Actions Following Threat Assessment: At the conclusion of the Threat Assessment, the Director and representative of the University Police shall each retain (i) the authority to

proceed with any further investigation or adjudication allowed under state or federal law and (ii) independent records of the review committee's determination considerations, which shall be maintained under applicable state and federal law.

**Q. Emergency Removal**

CNU may remove a Respondent who is a student or student-employee, entirely or partially, from its education programs and activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual (including themselves, the Respondent, the Complainant, or any other individual) justifies removal. This risk analysis is performed by the Behavioral Intervention Team ("BIT").

The Respondent shall be given notice and the opportunity to challenge the decision by the BIT either prior to such removal being imposed, or as soon thereafter as reasonably possible.<sup>3</sup> The challenge shall be considered by three (3) members of the Threat Assessment Team as identified by the co-chairs of the Threat Assessment Team described in Section P of this policy. The Respondent shall provide a statement regarding why the removal should not be implemented or why it should be modified to the Director within twenty-four (24) hours of the decision by the BIT. If the Respondent does not submit this within twenty-four (24) hours, objections to the removal are considered waived. The Director shall provide Respondent's statement to the Threat Assessment Team members as designated by the co-chairs as soon as reasonably possible once received.

The decision of the three (3) members of the Threat Assessment Committee is final.

This section applies to any restrictions a coach or athletic administrator may place on a student-athlete arising from allegations of Prohibited Conduct under Process A.

Violations of an emergency removal under this policy will be grounds for further disciplinary action, which may include dismissal.

Where the Respondent is an employee, existing provisions for interim action are applicable.

**R. Academic Record Hold and Transcript Notation**

For alleged violations of this policy when the Respondent is a CNU student, the Director upon the initiation of a Formal Resolution under Process B shall immediately notify the University Registrar who shall immediately place a "hold" on the student's academic record to prevent registration or release of an academic transcript.

If the student requests an academic transcript during a Formal Resolution under Process B for an alleged violation of this policy, the University Registrar shall place a prominent notation on the student's academic transcript reading "*Under Investigation - Sexual Misconduct*" and/or "*Under Investigation - Discrimination/Harassment*" depending on the charge(s) being investigated. It shall also be noted on the academic transcript that the inclusion of this

<sup>3</sup> The decision by the BIT remains in effect unless and until any appeal results in a different decision.

language is not intended to indicate a finding of responsibility for the pending charge, but is included to comply with Va. Code §23.1-900.<sup>4</sup>

If the student leaves while a Formal Resolution is pending under Process A or Process B, the investigation may be suspended or may proceed at the direction of the Director, and a finding of responsibility and imposition of sanctions may occur without the participation of the student. If the Formal Resolution is suspended, the “hold” on the student’s academic record to prevent registration and the prominent notation on the student’s academic transcript reading “*Under Investigation – Sexual Misconduct*” and/or “*Under Investigation – Discrimination/Harassment*” will remain for Process B matters and both the “hold” and notation will be added for Process A matters.

If the Formal Resolution under Process B continues to its conclusion including any appeal and the student is found not responsible or if the sanction is other than a suspension or a dismissal, the Director shall notify the University Registrar to remove the “hold” and transcript notation.

If the sanction is suspension or dismissal from CNU under Process A or Process B, the Director shall notify the University Registrar who shall place a prominent notation on the Respondent’s academic transcript reading “*Suspended – Sexual Misconduct*,” “*Dismissed – Sexual Misconduct*,” “*Suspended – Discrimination/Harassment*,” and/or “*Dismissed – Discrimination/Harassment*” depending on the violation.

- Such notation for a suspension or a dismissal shall be removed if the Respondent is subsequently found not to have committed the offense.
- Such notation will be removed for a suspension or dismissal pursuant to University Policy 9045 (Transcript Notation Policy).

If a Formal Resolution is pending at the time of anticipated degree conferral, the conferral of a student’s degree may be deferred until the completion of the investigation, applicable hearing, applicable appeals, and associated requirements pursuant to University Policy 9055 (Conduct Violation, Degree Conferral and Graduation Policy). Any such student may not participate in graduation-related activities or ceremonies.

## **S. Amnesty**

CNU encourages the reporting of violations of this policy. Alcohol and/or drug violations should not be a deterrent to reporting or cooperating during the Resolution Process. CNU’s primary focus shall be on addressing any alleged Prohibited Conduct and not on alcohol and drug violations that may be discovered or disclosed. CNU does not condone underage drinking or illicit drug use; however, except in compelling circumstances, CNU will extend limited amnesty from consequences related to the personal consumption of drugs or alcohol to individuals who in good faith report alleged incidents of Prohibited Conduct and/or participate in an investigation. CNU may provide referrals to counseling and may require educational initiatives, rather than disciplinary sanctions, in such cases.

<sup>4</sup> Pursuant to the U.S. Department of Education’s Title IX Regulations effective August 14, 2020, the academic hold and transcript notation of “*Under Investigation – Sexual Misconduct*” are not available for allegations falling under Process A.

## **T. False Information**

CNU is a community grounded in honor; our Honor Code serves as a guide to our university experience. It provides clarity on behavior expected of all members of the community. Engaging in Prohibited Conduct is a serious offense against an individual and the community. It requires every person's efforts in order to address this unacceptable behavior. Those efforts are undermined by the presentation of false information.

Any individual who knowingly provides false information, who intentionally withholds information or who intentionally misleads individuals who are involved in the investigation or resolution of a report of Prohibited Conduct shall be subject to disciplinary action which can include dismissal or termination from CNU. However, that an allegation of Prohibited Conduct cannot be proven by a preponderance of the evidence is not evidence of a false report.

## **U. Violations of Law**

Behavior that violates this policy also may constitute a crime under the laws of the jurisdiction in which the incident occurred. For example, the Commonwealth of Virginia criminalizes and punishes sexual assault, dating/domestic violence, sexual exploitation, stalking, and physical assault. The criminal statutes that may apply in cases of Physical Assault and Dating/Domestic Violence are found in various sections of Chapter 4, Articles 1 (Homicide) and 4 (Assaults and Bodily Woundings), of Title 18.2 of the Code of Virginia. The criminal statutes relating to Sexual Assault are found in Sections 18.2-61 to 18.2-67.10 of the Code of Virginia. Section 18.2-60.3 of the Code of Virginia defines and identifies the penalty for criminal Stalking. Finally, Sections 18.2-386.1 and 18.2-386.2 of the Code of Virginia provide for criminal penalties in some cases of Sexual Exploitation.

This compilation of criminal statutes is not exhaustive but is offered to notify the CNU community that, in some cases, the alleged conduct may also constitute a crime under Virginia law, which may subject a person to criminal prosecution and punishment in addition to any sanctions under this policy.

## **V. Education and Awareness**

1. For information about Prohibited Conduct including Sexual Misconduct and resources available on and off-campus, please visit the CNU Office of Title IX and Equal Opportunity website at <http://cnu.edu/titleix-eo/> and the CNU Sexual Assault and Violence Education (S.A.V.E.) website at <http://cnu.edu/save/>.
2. The Director together with other institutional leaders oversees education, training, and awareness programs on Prohibited Conduct for students and employees, including training on primary prevention, bystander intervention, risk reduction, consent, and other pertinent topics.
  - a. Incoming students and new employees shall participate in primary prevention and awareness programming as part of their orientation.
  - b. Returning students and employees shall have ongoing opportunities for additional training and education.



3. This policy shall be disseminated widely to the CNU community through electronic mail, publications, websites, new employee orientation, student orientation, and other appropriate channels of communication.

#### **W. Academic Freedom and Free Speech**

This policy does not allow curtailment or censorship of constitutionally protected expression. The fact that speech or a particular expression is offensive is not, standing alone, a sufficient basis to establish a violation of this policy. In addressing all complaints and reports of alleged violations of this policy, CNU will take all permissible actions to ensure the safety of students and employees while respecting the free speech rights of students and employees. This policy does not in any way apply to curriculum and curriculum decisions or abridge the use of particular textbooks or curricular materials.

This policy is maintained by the Office of Title IX and Equal Opportunity. The Director shall review it on an annual basis to capture evolving legal requirements, evaluate resources available to the Parties, and assess the effectiveness of the investigation and resolution process. Any suggestions and comments shall be sent to the Director through the year for consideration. Any proposed amendments shall be submitted to the appropriate administrative body for further review and approval. This policy shall be amended in any manner deemed necessary without the need for further approval from the CNU Board of Visitors.

#### **Approval and Revisions:**

**Approved By:** CNU Board of Visitors, June 19, 2015.

**Revision 1:** July 1, 2016

**Revision 2:** July 1, 2017

**Revision 3:** July 1, 2018

**Revision 4:** July 1, 2019

**Revision 5:** August 14, 2020

**Revision 6:** July 1, 2021

**Revision 7:** August 30, 2021

**Revision 8:** July 1, 2022

**Revision 9:** August 1, 2023

**Revision 10,** June 13, 2024, updated TIX office staff only.

## **Appendix A: Process A Procedures**

### **A. Scope**

These procedures apply to reports of Title IX Sexual Harassment (including Sexual Assault, Dating Violence, Domestic Violence, and Stalking) involving students and employees when the Prohibited Conduct:

1. Occurs within the United States; and
2. Occurs within CNU's education program and activity meaning 1) locations, events, or circumstances over which CNU exercises substantial control over both the Respondent and the context in which the Prohibited Conduct occurs and 2) any building owned or controlled by a student organization that is officially recognized by CNU); and
3. At the time of filing a Formal Complaint, a Complainant is participating in or attempting to participate in CNU's education program or activity.

All other reports of Prohibited Conduct including Non-Title IX Sexual Harassment and reports of Sexual Assault, Dating Violence, Domestic Violence, and Stalking when jurisdiction does not fall within Process A, as determined by the Director, will be resolved under the procedures in Process B.

Process A may be used to address collateral Prohibited Conduct arising from the investigation of or occurring in conjunction with the alleged policy violation. All other allegations of misconduct unrelated to incidents of the alleged violation will be referred to the appropriate office.

### **B. Notice, Initial Assessment, and Formal Complaint**

Upon receipt of a report of Title IX Sexual Harassment (including Sexual Assault, Dating Violence, Domestic Violence, and Stalking), the Director shall seek to meet with the Complainant within five (5) business days and engage in an initial assessment under Section N of the policy. The Director will seek to determine if the Complainant wishes to file a Formal Complaint (a document submitted/signed by a Complainant or signed by the Director alleging a violation of Title IX Sexual Harassment under the policy by a Respondent and requesting that CNU investigate the allegation), and will assist in doing so, if desired.

If the Complainant declines to file a Formal Complaint, the Director will decide if there is a need to initiate a Formal Complaint due to concerns about the continued safety of the Complainant and/or members of the CNU community or at the conclusion of the Threat Assessment in Section P of the policy, the Review Committee determined that the presence of one or more risk factors requires Formal Resolution regardless of the Complainant's decision not to file a Formal Complaint.

### **C. Dismissals (Mandatory and Discretionary)**

Once a Formal Complaint is filed, the Director shall review it at the filing and continuously assess throughout the investigation and hearing whether one or more of the following dismissals of the Formal Complaint is applicable.

1. Mandatory Dismissal

The Director shall dismiss a Formal Complaint or allegation therein, at any time during the investigation or hearing, if it is determined that:

- a. The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined in the policy, even if proved; and/or
- b. The conduct did not occur in an education program or activity controlled by CNU (including buildings or property controlled by recognized student organizations), and/or CNU does not have control of the Respondent; and/or
- c. The conduct did not occur against a person in the United States; and/or
- d. At the time of filing the Formal Complaint, the Complainant was not participating in or attempting to participate in CNU's education programs or activities.

2. Discretionary Dismissal

The Director may dismiss a Formal Complaint or any included allegation therein, at any time during the investigation or hearing if:

- a. A Complainant notifies the Director in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- b. The Respondent is no longer enrolled in or employed by CNU; and/or
- c. Specific circumstances prevent CNU from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

The Director will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the Complainant and the Respondent.

The dismissal decision is appealable by the Complainant and/or the Respondent as described in Section I below. A Complainant who withdraws a Formal Complaint may later request to reinstate it or refile it.

Dismissal of a Formal Complaint does not automatically prohibit CNU from possibly addressing a report of alleged Prohibited Conduct under Process B of this policy or another appropriate CNU policy.

**D. Resolution Process**

There are two possible methods for resolution of a Formal Complaint alleging violations of this policy: 1) Informal Resolution and 2) Formal Resolution (Investigation and Hearing). The Director shall explain the Informal Resolution and Formal Resolution procedures to the Complainant and the Respondent, if known.

CNU will make every effort to avoid any actual bias or conflict of interest during the Resolution Process

Recording of Meetings/Interviews: No unauthorized audio or video recording of any kind is permitted during any meetings and/or interviews where other employee's and/or student's information may be discussed, as it is not permitted. If the Director's Office decides to audio and/or video record any meeting or interview, all involved in the meeting or interview shall be made aware of the recording.

## **E. Informal Resolution**

Informal Resolution resolves a Formal Complaint by the Parties reaching a mutually agreed upon resolution that does not involve a full investigation and adjudication. Informal Resolution is voluntary by both Parties. Under Informal Resolution, there is no disciplinary action taken against the Respondent, and the resolution will not appear on the Respondent's disciplinary record. Methods of Informal Resolution may include, but are not limited to: conflict resolution, mediation, facilitated conversations, counseling, training, and/or educational projects.

1. **Eligibility**: The Director has the discretion to determine whether the nature of allegation of Prohibited Conduct is appropriate for Informal Resolution and the method of Informal Resolution that may be appropriate in a specific case. Informal Resolution must adequately address the concerns of the Complainant and the Respondent and the overall interest of CNU addressing, remedying, and preventing the Prohibited Conduct. Informal Resolution is not available to resolve allegations that an employee sexually harassed a student.
2. **Initiation of Informal Resolution**: To initiate Informal Resolution, a Complainant must submit a Formal Complaint and inform the Director that Informal Resolution is the preferred resolution option. If a Respondent wishes to initiate Informal Resolution, the Respondent should contact the Director.

It is not necessary to pursue Informal Resolution first in order to pursue Formal Resolution. Any party participating in Informal Resolution may stop the process at any time before agreeing to a resolution and may begin or resume Formal Resolution.

3. **Notice of Informal Resolution**: Prior to beginning the Informal Process, the Director will provide the Parties with written notice disclosing: (1) the alleged Prohibited Conduct, (2) the requirements of the Informal Resolution including the circumstances under which it precludes the Parties from resuming a Formal Complaint arising from the same allegations, (3) the option of each Party to withdraw from the Informal Resolution and initiate or resume a Formal Resolution, and (4) any outcomes that may result from participating in Informal Resolution including information regarding any records that will be maintained or shared by CNU.

The Director will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not compel the Parties to participate in Informal Resolution. CNU will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of a Formal Complaint. Similarly, CNU will not require, encourage, or discourage the parties from participating in an Informal Resolution.

4. **Time Frame**: An Informal Resolution will typically be completed within thirty (30) business days after both Parties have agreed in writing to Informal Resolution. If an extension beyond thirty (30) business days is necessary, all parties will be notified in writing of the expected resolution time frame. If at any point during the Informal Resolution procedure, the Complainant, Respondent, or the Director wish to proceed with

a Formal Resolution instead, such request shall be granted and every effort will be made to complete the Formal Resolution within ninety (90) business days of that decision.

5. **Outcome:** Any resolution of a Formal Complaint through the Informal Resolution must adequately address the concerns of the Complainant, as well as the interests of the Respondent and the responsibility of CNU to prevent, address, and remedy alleged violations of this policy. Any agreement reached during Informal Resolution must be acceptable to the Director, the Complainant, and the Respondent with both Parties receiving simultaneous written notification of the outcome.

Upon completion of Informal Resolution, the matter is considered resolved and closed. There shall be no right of appeal afforded to the Complainant or the Respondent following Informal Resolution.

Informal Investigation resolution remedies may include, but are not limited to, the following:

- a. Training;
- b. Adjustments to work, academic, or housing arrangements;
- c. Informal counseling with a Respondent whose conduct, if not ceased, could rise to the level of discrimination or harassment;
- d. Advisory discussion with the Respondent's supervisor, professor, coach, etc.;
- e. No-contact order;
- f. Written notice or written warning; and/or
- g. Other actions as deemed appropriate.

If Informal Resolution does not produce an agreement acceptable to the Director, the Complainant, and the Respondent, and the Director determines that further action is necessary, Formal Resolution may be initiated.

If the Complainant or the Respondent withdraws from Informal Resolution or Informal Resolution is otherwise terminated for any reason, any statements or disclosures made by the Parties during the course of the Informal Resolution shall not be considered during the Formal Resolution without the written consent of the Parties.

If a Respondent fails to comply with the terms of the Informal Resolution, disciplinary action may be imposed and/or Formal Resolution may be initiated.

## **F. Formal Resolution (Investigation and Hearing)**

1. **Initiation of Formal Resolution:** Formal Resolution is initiated when (1) a Complainant submits a Formal Complaint requesting that CNU investigate allegations of Prohibited Conduct or (2) the Director signs a Formal Complaint to initiate Formal Resolution based upon a determination that there is a risk to health and/or safety that requires CNU to pursue Formal Resolution to protect the CNU community.
2. **Notice of Investigation and Allegation(s)**  
Upon receipt of a Formal Complaint that is not subject to dismissal, as described in Section C of this procedure, the Director will provide written notice of the investigation

and allegation(s) (“NOIA”) to the Respondent upon commencement of Formal Resolution. The Complainant will receive a copy of the NOIA.

The NOIA will include:

- a. The identities of the Parties (if known);
- b. The specific section of the policy allegedly violated;
- c. The precise conduct allegedly constituting the potential violation;
- d. The date, or a reasonable approximate date, and location of the alleged incident (if known);
- e. A description of the applicable procedures including the Informal Resolution;
- f. A statement of the potential sanctions/remedies that could result;
- g. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Formal Resolution;
- h. A statement that Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney;
- i. A statement that Parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the investigation;
- j. A statement that the policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process;
- k. A statement instructing the Parties to preserve and not destroy any potentially relevant evidence;
- l. A statement about CNU’s prohibition against retaliation; and
- m. Information on how a party may request disability accommodations during the interview process.

The Director may amend the NOIA as the investigation progresses and more information becomes available regarding the addition or dismissal of charges.

Notice will be made in writing and may be hand-delivered or emailed to the party’s email account. Once received in-person or emailed, notice is presumed delivered.

3. Resolution Timeline

CNU will make a good faith effort to complete the Formal Resolution within ninety (90) business days after the issuance of the NOIA, excluding any appeal. This can be extended as necessary for appropriate good cause by the Director, who will provide notice and rationale for any extensions or delays to the Parties and the expected time frame.

4. Ensuring Impartiality

Any individual materially involved in the administration of the Resolution Process (including the Director, Investigator(s), and Decision-Maker) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

Formal Resolution consists of an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation.

Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

5. Advisor

The Complainant and the Respondent may be accompanied by an Advisor of their choice at meetings, interviews, and the hearing within the Formal Resolution. The Advisor may be an attorney, advocate, support person, family member, friend, or any other individual a party chooses. An Advisor shall not be another party, witness, or otherwise have any role in the process that would create a conflict of interest.

Advisors are expected to maintain the privacy of any records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by CNU.

A party may decide to change Advisors during the Formal Resolution. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be obtained.

Advisors are expected to make themselves available for meetings, interviews, and the hearing throughout the Resolution Process as reasonably scheduled by CNU.

- a. Meetings and Interviews: The Advisor may not speak on behalf of the party during, or participate in, meetings or interviews. The Advisor may be excluded if they fail to respect this limitation and may be prohibited from participating in future meetings and/or proceedings.
- b. Hearing: Cross-examination is required during the hearing and must be conducted by each Party's Advisor. The Parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for the hearing, the Director will appoint an Advisor for the limited purpose of conducting any cross-examination. A party may decline this appointment and choose their own Advisor. A party may not proceed in a hearing without an Advisor. If the party's Advisor will not conduct cross-examination, the Director will appoint an Advisor who will.

The Advisor may not speak on behalf of the party during the hearing other than to conduct the cross-examination. Otherwise, the Advisor may be excluded if they fail to respect this limitation and may be prohibited from participating in future meetings and/or proceedings. The Advisor will conduct cross-examination by asking questions of the other party and witnesses that have been provided by the party they are advising.

Parties are expected to inform the Director of the identity of their Advisor at least three (3) business days before the hearing if the Parties are going to use an Advisor of their choice.

If one party selects an Advisor who is an attorney, CNU is not obligated to provide an attorney for the other party.

## 6. Investigation

### a. Investigation Process

The Director will designate one or more Investigators from the Director's Office to conduct a prompt, thorough, reliable, and impartial investigation of the Formal Complaint. Only a trained member of the Director's Office or a trained investigator assigned to the Director's Office shall conduct the investigation. All investigations shall be overseen by the Director. If a member of the Director's Office is found to have an actual bias or conflict of interest in the matter, that person will not be allowed to participate in the investigation.

Investigations involve interviews with all relevant Parties and witnesses and obtaining available, relevant evidence. The Director's Office shall explain to the Parties that each has the opportunity to suggest witnesses and questions to be asked of the witnesses, to provide evidence and expert witnesses, and to fully review and respond to all of the evidence on the record.

When participation of a party is expected, that party will be notified in writing of the date, time, and location of the meeting. Written notification will be by hand-delivery or email to the party's email account. Once received in-person or emailed, notice is presumed delivered.

The Director may temporarily delay the investigation for good cause, including but not limited to, the absence of a party and/or witness, concurrent law enforcement activity, the need for language assistance, and/or accommodations for disabilities.

### b. Presumption of Non-Responsibility

The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible. This presumption may be overcome only where the Decision-Maker concludes that there is sufficient evidence, by a preponderance of the evidence, to support a finding that the Respondent violated the policy.

### c. Participation by Parties and Witnesses

No party or witness is required to participate in Formal Resolution, and the Investigator(s), Decision-Maker, and Appeal Officer will not base a finding of responsibility solely on a party's decision not to participate. If either party or any witness declines to participate or limits the extent of their participation, it may limit the ability of CNU to thoroughly investigate and resolve the Formal Resolution. Neither the Complainant nor Respondent is required to participate in the investigation and/or hearing and no adverse inferences may be drawn from a decision by either party not to participate. However, the investigation and hearing may proceed and a finding of responsibility and imposition of sanctions may occur without the participation of the Complainant and/or the Respondent.

Parties and witnesses may not indefinitely delay Formal Resolution by refusing to cooperate. While CNU will attempt to accommodate the schedules of the Parties and witnesses, Formal Resolution may proceed to conclusion even in the absence of a party or witness.



d. Party and Witness Interviews

While in-person interviews for Parties and witnesses are ideal, circumstances may require individuals to be interviewed remotely. CNU will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

e. Investigation Evidentiary Considerations

The investigation does not consider: 1) incidents not directly related to the alleged policy violation unless they evidence a pattern of behavior; or 2) questions and evidence about the Complainant's sexual predispositions or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. In addition, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve other questions raised by the report or during the investigation. Prior sexual history shall not be used to prove character or reputation.

Within the boundaries stated above, the Investigator(s) can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

The Investigator(s) must not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

f. Draft Investigation Report and Evidence Inspection and Review

Prior to the conclusion of the investigation, the Parties and their Advisors shall be provided a Draft Investigation Report that fairly summarizes the relevant evidence in a secured electronic format or a hard copy. The Parties will have an opportunity to review the Draft Investigation Report and all of the evidence obtained as part of the investigation that is directly related to the alleged policy violation(s), including evidence upon which CNU does not intend to rely in reaching a determination, for a ten (10) business day review and written comment period so that each party may meaningfully respond to the evidence by submitting additional comments and information; identifying any additional witnesses or evidence for the Investigator(s) to pursue; and identifying any further topics that they believe the Investigator(s) should address with the other party or any witness. The Parties may elect to waive the full ten (10) days. The Parties shall submit any response in writing to the Investigator(s) within ten (10) business days from receipt of the Draft Investigation Report and the file containing the evidence gathered.

The Parties and their Advisors will be provided with each party's written responses, in electronic format or hard copy.

Evidence that is reasonably available to the Parties that is not provided to the Investigator(s) at this point in the process shall not be considered at the hearing or on

any appeal unless the Decision-Maker agrees to the admission of the evidence at the hearing.

g. Final Investigation Report

Upon receipt of the Parties' responses to the Draft Investigation Report, the Investigator(s) will identify any additional investigative steps requested by the Parties or identified by the Investigator(s), and determine the extent to which such steps are relevant and appropriate. Following the conclusion of any such additional investigative steps, the Investigator(s) will incorporate relevant elements of the Parties' written responses into the final Investigation Report, include any additional relevant evidence, make any necessary revisions, finalize the Investigation Report, and forward it to the Director. The Final Investigation Report will not include any findings regarding responsibility.

The Director shall provide the Final Investigation Report with all Parties and their Advisors through secure electronic format or hard copy at least ten (10) business days prior to the hearing and will also provide access to the information gathered during the investigation, the information submitted by the Parties to the Draft Investigation Report, and the information gathered during any additional investigative steps taken after the review of the Draft Investigation Report in order to prepare for the hearing.

The Parties may choose to provide a written response to the Final Investigation Report, which must be submitted to the Director at least five (5) business days prior to the start of the hearing. The Parties and their Advisors will be provided with the other party's written response if one is received and any response(s) received will be provided to the Decision-Maker prior to the start of the hearing.

7. Hearing

The hearing is an opportunity for the Parties to address the Decision-Maker about issues relevant to the determination of responsibility. Each party will have the opportunity to be heard (in opening and closings statements, and when subject to cross-examination), to respond to any questions of the Decision-Maker, and to have each party's Advisor cross-examine the other party and any witnesses. The Decision-Maker will objectively evaluate all relevant evidence gathered during the investigation and/or hearing to reach a determination regarding responsibility and, if applicable, in consultation with necessary CNU Administrators and the Director whether remedies and/or any sanctions are appropriate.

a. Hearing Referral

The Director shall refer the matter to a hearing once the Final Investigation Report is shared with the Parties provided that the Formal Complaint has not been dismissed or resolved through Informal Resolution.

The Director shall contact the Parties separately regarding the submission of the names of the witnesses that each party would like for the Director to contact and request their participation at the hearing for purposes of cross-examination.

The hearing shall be held no less than ten (10) business days from the time the Final Investigation Report is provided to the Parties and the Decision-Maker.

b. Decision-Maker

The Director shall designate a Decision-Maker for the hearing. The Decision-Maker must be an individual that has not previously been involved in the investigation, is impartial, and free from actual bias or conflict of interest. The Director shall not serve as the Decision-Maker but may serve as the administrative facilitator of the hearing.

Prior to the hearing, the Decision-Maker shall be provided with the Final Investigation Report, the evidence obtained as part of the investigation that is directly related to the alleged policy violation, including relevant evidence upon which CNU does not intend to rely in reaching a determination, and any written responses regarding the Final Investigation Report.

c. Hearing Evidentiary Considerations

The Decision-Maker does not consider: 1) incidents not directly related to the alleged policy violation unless they evidence a pattern of behavior; or 2) questions and evidence about the Complainant's sexual predispositions or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. In addition, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve other questions raised by the report or during the investigation. Prior sexual history shall not be used to prove character or reputation.

Within the boundaries stated above, the Decision-Maker may consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

The Decision-Maker shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

d. Notice of Hearing

The Director shall provide written notice no less than ten (10) business days prior of the hearing to the Parties by hand-delivery or email to the party's email account. Once received in-person or emailed, notice is presumed delivered.

The Notice of Hearing will include:

- (1) A description of the alleged policy violation(s) and the policy(s) allegedly violated;
- (2) The time, date, and location of the hearing;
- (3) The identity of the Decision-Maker and a statement that a party may object to the Decision-Maker on the basis of demonstrated bias by notifying the Director in writing detailing the rationale for the objection within three (3) business days prior to the hearing.

- (4) Notification that the Parties may have an Advisor at the hearing and shall be required to have one present for any cross-examination they want to conduct on the other party and/or witnesses. The party must notify the Director if they do not have an Advisor at least three (3) days prior to the hearing, and the Director will appoint one for that party for purposes of conducting cross-examination;
- (5) Any technology that will be utilized for the hearing;
- (6) Information about the option for the live hearing to occur with the Parties located in separate rooms using technology that allows the Decision-Maker and Parties to see and hear a party or witness answering questions. If a party wishes to request this option, the Director must be notified at least three (3) business days prior to the hearing;
- (7) Information on how the hearing will be recorded and on how the Parties may access the recording after the hearing;
- (8) A statement that if any party or witness does not appear at the hearing, the hearing may be held in their absence; and
- (9) Information on how a party may request disability accommodations, language assistance, and/or interpretation services during the hearing at least seven (7) business days prior to the hearing.

e. Pre-Hearing

The Director shall provide the Final Investigation Report with all Parties and their Advisors through secure electronic format or hard copy at least ten (10) business days prior to the hearing and will also provide access to the information gathered during the investigation, the information submitted by the Parties to the Draft Investigation Report, and the information gathered during any additional investigative steps taken after the review of the Draft Investigation Report in order to prepare for the hearing.

The Parties may choose to provide a written response to the Final Investigation Report, which must be submitted to the Director at least five (5) business days prior to the start of the hearing. The Parties and their Advisors will be provided with the other party's written response if one is received and any response(s) received will be provided to the Decision-Maker prior to the start of the hearing.

A party may object to the Decision-Maker on the basis of demonstrated bias by notifying the Director in writing detailing the rationale for the objection within three (3) business days prior to the hearing. Decision-Makers will only be removed if the Director concludes that their actual bias or conflict of interest precludes an impartial hearing.

f. Joint Hearings

Hearings that involve more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the Director may combine the hearings. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

g. Hearing Format

The Decision-Maker has absolute discretion with respect to administering the hearing, and may change the order of the hearing. A typical hearing may include

brief opening statements by the Complainant and/or the Respondent; Investigator(s) summary of the Final Investigation Report; direct and/or cross-examination of the Investigator(s), the Parties, and any witnesses by the Decision-Maker; cross-examination of the Parties, the Investigator(s), and any witnesses by the Parties' Advisors; and brief closing statements by the Complainant and/or Respondent.

The Hearing Facilitator may oversee the following, but is not limited to, the logistics of rooms for the Parties and/or witnesses, the flow of Parties and/or witnesses to and from the hearing room, ensuring recording and/or virtual conferencing technology is working properly, etc. The Director's Office or another appropriate office may serve as the Hearing Facilitator.

h. Investigator(s) Presentation of Final Investigation Report

The Investigator(s) will present a summary of the Final Investigation Report and will be subject to questions by the Decision-Maker and the Parties through their Advisors. The Investigator(s) will be present during the entire hearing except for the deliberations of the Decision-Maker.

Neither the Parties nor the Decision-Maker should ask the Investigator(s) their opinion on credibility, recommended findings, or determinations, and the Investigator(s), Advisors, and Parties must refrain from discussion of or questions about these assessments. If such information is introduced, the Decision-Maker must direct that it will be disregarded.

i. Direct Examination

The Decision-Maker may ask questions of the Parties, witnesses, and/or the Investigator(s) to aid the Decision-Maker objectively evaluate all relevant evidence and to reach a determination regarding responsibility and, if applicable, in consultation with necessary CNU Administrators and the Director whether remedies and/or any sanctions are appropriate. The Parties and their Advisors may not engage in the Direct Examination of any individual at the Hearing.

j. Cross-Examination

The Parties may not question each other or any witness. Instead, cross-examination must be conducted directly, orally, and in real time by the party's Advisor and never by a party personally. The Decision-Maker shall permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions designed to test the veracity and accuracy of these individuals' statements, including those challenging credibility.

(1) Relevancy Determinations

All questions of Parties and witnesses are subject to a relevance determination by the Decision-Maker. The Advisor, who will remain seated during questioning, will offer the proposed question orally, electronically, or in writing (orally is preferred, but other means may be permitted by the Decision-Maker upon request if agreed to by all Parties and the Decision-Maker). The proceeding will pause to allow the Decision-Maker to consider the proposed question, and the Decision-Maker will determine if the question is allowed, disallowed, or needs to be rephrased.

The Decision-Maker may, but is not required to, allow arguments regarding relevance with the Advisors. The Decision-Maker will state the decision about the question on the record and advise the party/witness to whom the question was directed. The Decision-Maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-Maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious, or abusive. The Decision-Maker's determination is final. The Decision-Maker will not hear arguments from an Advisor on relevance once the Decision-Maker has ruled on a question.

(2) Refusal to Submit to Cross-Examination and Inferences

Any party or witness may choose not to answer questions at the hearing, either because they do not attend the hearing or because they attend but decline to participate in some or all questioning. The Decision-Maker is entitled to rely on relevant evidence gathered during the investigation from any such non-participating party or witness. The Decision-Maker shall make the determination regarding responsibility based on all relevant evidence gathered during the investigation and/or hearing.

The Decision-Maker shall not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or other questions.

k. New Evidence Offered at Hearing

In the absence of good cause, information including the identification of witnesses that was discoverable through the exercise of due diligence, that was not provided to the Investigator(s) during the investigation, will not be considered during the Hearing. Unless the Decision-Maker agrees to the admission of new evidence offered at the Hearing, the Decision-Maker may delay the Hearing and instruct that the investigation needs to be re-opened to consider any new evidence.

In order to submit to Direct or Cross-Examination at the Hearing, any Party or witness must have first been interviewed during the Investigation.

l. Hearing Recording

The hearing (not including any deliberations by the Decision-Maker) are recorded by CNU for the purpose of review in the event of an appeal. The Parties shall not record the proceedings and no other unauthorized recordings are permitted.

The hearing recording will be available for inspection and review by the Decision-Maker, the Parties (and their Advisors), and appropriate CNU administration in a controlled environment determined by the Director. No person will be given or be allowed to make a copy of the recording without permission of the Director.

m. Standard of Evidence

At the conclusion of the hearing, the Decision-Maker shall determine whether a preponderance of the evidence substantiates that a violation of the policy occurred. A

Respondent will not be found in violation of the policy absent a finding by a preponderance of the evidence that the violation occurred.

The “preponderance of the evidence” standard requires that the evidence, in totality, supports a finding that it is more likely than not that the alleged policy violation occurred.

n. Determination of Hearing and Sanctions

The Decision-Maker will deliberate in private to determine whether the Respondent is responsible or not responsible for the alleged policy violation(s) on the basis of the preponderance of the evidence.

The Decision-Maker will determine the appropriate sanction(s) in consultation with necessary CNU Administrators and the Director, as stated in Section G below.

The Decision-Maker will provide in writing to the Director the Decision-Maker’s Report detailing the determination, rationale, the evidence used in support of the determination, the evidence disregarded, credibility assessments, and any sanction recommendation(s) within ten (10) business days of the conclusion of the hearing. The Decision-Maker may request an extension. Such extension must be deemed necessary by the Director who will notify the Parties in writing of any extension and expected time frame.

o. Notice of Outcome

The Director will provide the Notice of Outcome in writing to the Parties simultaneously within five (5) business days of receiving the Decision-Maker’s Report by hand-delivery or email to the party’s email account. Once received in-person or emailed, notice is presumed delivered.

The Notice of Outcome will include:

- i. A description of the alleged policy violation(s) and the policy(s) allegedly violated;
- ii. A description of the procedural steps taken by CNU from the receipt of the report/Formal Complaint to the determination, including any and all notifications to the Parties, interviews with the Parties and witnesses, site visits, methods used to gather evidence, and hearings held;
- iii. Finding of each alleged policy violation and the findings of fact that support the determination(s);
- iv. Conclusions regarding the application of the relevant policy to the facts at issue;
- v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- vi. Any sanctions issued that CNU is permitted to share according to state or federal law;
- vii. Any remedies provided to the Complainant designed to ensure access to CNU’s educational or employment programs or activities to the extent CNU is permitted to share according to state or federal law. (This information is normally not shared with the Respondent unless the remedy directly relates to the Respondent.);
- viii. Information on when the Resolution Process is considered final; and

- ix. The procedure and permissible bases for any available appeal for either party.

## G. Sanctions

Consequences for violating this policy will depend on the facts and circumstances of each particular situation, the frequency and severity of the offense, and any history of past misconduct. Sanctions may include penalties up to and including dismissal for students and termination for employees. In addition to sanctions that may be imposed on an individual found in violation of this policy, CNU will take any necessary steps to prevent the recurrence of any Prohibited Conduct and to remedy discriminatory effects on the Complainant and others, if appropriate. If it is determined that conduct in violation of this policy has occurred, sanctions will be determined as follows:

1. Students: Sanctions for students shall be determined by the Decision-Maker in consultation with the Dean of Students or designee and the Director. Sanctions may include, but are not limited to, disciplinary penalties described in the Student Handbook which include, but are not limited to, verbal warning, written warning, restitution, fees/fines, parental notification, community service, educational and reflective experience, loss of privilege/delayed privilege, restriction, deferred sanction, disciplinary probation, removal from CNU housing, suspension, and/or dismissal.

Transcript Notation: If the sanction is suspension or dismissal from CNU for a violation(s) of this policy, the Director shall notify the University Registrar who shall place a prominent notation on the Respondent's academic transcript reading "*Suspended – Sexual Misconduct*," "*Dismissed – Sexual Misconduct*," "*Suspended – Discrimination/Harassment*," and/or "*Dismissed – Discrimination/Harassment*" depending on the violation.

- a. Such notation for a suspension or a dismissal shall be removed if the Respondent is subsequently found not to have committed the offense.
  - b. Such notation will be removed for a suspension or a dismissal pursuant to University Policy 9045 (Transcript Notation Policy).
2. Administrative/Professional Faculty: Sanctions for Administrative/Professional Faculty shall be determined by the Decision-Maker in consultation with the appropriate Vice President or designee, and the Director. Sanctions may include, but are not limited to, counseling, training, reassignment, admonition, written warning, suspension, or dismissal/termination of employment.
  3. Classified Employees: Sanctions for classified employees shall be determined by the Decision-Maker in consultation with the appropriate Director, the Director of Human Resources, and Director. Sanctions may include, but are not limited to, counseling, training, issuance of a written notice, suspension, or termination of employment.<sup>5</sup>
  4. Hourly Employees: Sanctions for hourly employees shall be determined by the Decision-Maker in consultation with the appropriate Director or designee, the Director of Human

<sup>5</sup> The federal regulations adopted for the enforcement of Title IX expressly preempt the Commonwealth of Virginia's Standards of Conduct Policy and applicable Commonwealth of Virginia personnel procedures, effective August 14, 2020.



Resources, and the Director. Sanctions may include, but are not limited to, counseling, training, reassignment, suspension, or termination of employment.

5. **Instructional Faculty**: Sanctions for Instructional Faculty shall be determined by the Decision-Maker in consultation with the Provost and the Director. Sanctions may include, but are not limited to, counseling, training, admonition, written warning, suspension, or termination.<sup>6</sup>
6. **Multiple Capacities**: If the Respondent serves in multiple capacities at CNU (i.e., student and employee), the Decision-Maker may consult with more than one CNU authority and the Director.

Sanctions will be implemented either upon the outcome of any appeal or after the time to appeal has expired and no appeal was requested.

All Respondents are expected to comply with sanctions within the timeframe specified. Failure to abide by any sanction may result in additional sanctions/disciplinary actions including suspension, dismissal, and/or termination from CNU.

## **H. Remedies**

Remedies may be provided in addition to any sanctions. The Decision-Maker shall consult with the Director regarding the implementation of remedies with respect to the Parties and/or campus community that are intended to stop the Prohibited Conduct, remedy its effects, and prevent its reoccurrence.

Remedies may include, but are not limited to:

1. Academic arrangements;
2. Housing and dining arrangements;
3. Work-related arrangements;
4. Limitations on extracurricular or athletic activities;
5. No-contact order;
6. Limitations on access to campus, CNU facilities, and CNU events;
7. Referral and coordination of counseling and health services;
8. Referral to the Employee Assistance Program (EAP);
9. Training for students, faculty, and/or staff;
10. Informal counseling with a Respondent whose conduct, if not ceased, could rise to the level of discrimination or harassment;
11. Advisory discussion with the Respondent's supervisor, professor, coach, etc;
12. Any other remedy that may be arranged by CNU (to the extent reasonably available) to ensure the safety and well-being of the Parties and the CNU community.

CNU will maintain the privacy of any remedies, provided privacy does not impair CNU's ability to provide these services.

<sup>6</sup> The federal regulations adopted for the enforcement of Title IX expressly preempt the University Handbook procedures regarding Instructional Faculty personnel procedures, effective August 14, 2020.

All Respondents are expected to comply with remedies within the timeframe specified. Failure to abide by them may result in additional sanctions/disciplinary actions including suspension, dismissal, and/or termination from CNU.

When no policy violation is found, the Director may provide supportive measures and/or remedies to the Parties if deemed necessary and reasonable.

## **I. Appeals**

Appeals under this procedure will be heard by an Appeals Officer. Appeals may be filed by either party at the following junctures during the process:

1. Upon the dismissal of a Formal Complaint or any allegation therein.
2. Upon receiving the Notice of Outcome of the hearing.

Once the Notice of Outcome has been provided, both Parties have seven (7) business days from the date notice is hand-delivered to the party or received into the party's email account to file an appeal.

An appeal is available only based on one or more of the following grounds:

1. Procedural irregularity that affected the outcome of the matter; and/or
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
3. The Director, Investigator(s), Decision-Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

The sufficiency of the evidence and the severity of the sanction are not available as grounds for an appeal.

A request for an appeal must be submitted in writing to the Director and must set forth the grounds upon which the appeal is based and the evidence supporting the appeal. Except for the grounds of newly discovered evidence, an appealing party is prohibited from submitting evidence that was available but not previously submitted to the Investigator or Decision-Maker. If a party files a timely appeal, the Director will promptly notify the other party in writing and provide a copy of the appeal. The non-appealing party may, but is not required to, submit a written response to the Director regarding the appeal within five (5) business days from receipt of the copy of the appeal. At the expiration of the deadline for the non-appealing party's written response, the Director shall confirm that the appeal and written response, if any, is timely and shall forward it and any written response within three (3) business days to the Chief of Staff or designee who shall assign the appeal to the Appeals Officer within five (5) business days of receipt. If an extension beyond five (5) business days is necessary, all Parties will be notified in writing of the expected time frame. The Director will notify the Parties in writing of the date the appeal was assigned for review.

If adequate grounds for appeal have been stated, the Appeals Officer will consider the merits of the appeal. In considering the merits of the appeal, the Appeals Officer may review any pertinent materials in the record and meet with the Parties and witnesses as needed. Any information included in the appeal that does not support one of the above three reasons for filing an appeal shall not be considered in the appeal process.

The decision of the Appeals Officer shall be final. The decision and the rationale for the decision shall be provided in writing to the Director who will then forward it to both Parties simultaneously within twenty (20) business days from the Appeals Officer receiving the appeal. If an extension beyond twenty (20) business days is necessary, all Parties will be notified in writing of the expected time frame.

Notification will be made in writing and may be hand-delivered or emailed into the Parties' email account. Once received in-person or emailed, notice is presumed delivered.

If an appeal is not filed within the appeal period, the findings of the hearing become final and are not subject to further review.

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated. CNU may still place holds on official transcripts, course registration, and graduation (pursuant to University Policy 9055: Conduct Violation – Degree Conferral and Graduation Policy) pending the outcome of an appeal when the original sanctions included suspension or dismissal.

The decision of the Appeals Officer shall be final.

#### **J. Withdrawal or Resignation Before Conclusion of Formal Resolution**

If a party decides not to participate in the Formal Resolution, the process may proceed. A finding of responsibility and imposition of sanctions may occur without the participation of the Respondent.

If a student leaves while a Formal Resolution is pending, the investigation may be suspended or may proceed at the direction of the Director, and a finding of responsibility and imposition of sanctions may occur without the participation of the student. If the Formal Resolution is suspended, a "hold" shall be placed on the student's academic record to prevent registration and a prominent notation shall be placed on the student's academic transcript reading "*Under Investigation – Sexual Misconduct*" and/or "*Under Investigation – Discrimination/Harassment*".

If an employee leaves while a Formal Resolution is pending, the investigation may be suspended or may proceed at the direction of the Director, and a finding of responsibility and imposition of sanctions may occur without the participation of the employee.

#### **K. Documentation and Recordkeeping**

CNU will maintain for at least ten (10) years records of the following pertaining to matters handled under Process A:

1. Each Title IX Sexual Harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal law;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to CNU's education programs or activities;

4. Any appeal and the result;
5. Any Informal Resolution and the result;
6. All materials used to train the Director, Investigators, Decision-Makers, and any person who facilitates an Informal Resolution; and
7. Any actions, including any supportive measures, taken in response to a report or Formal Complaint of Title IX Sexual Harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to CNU's education programs and activities; and
  - c. If no supportive measures were provided to the Complainant, the reason(s) why such a response was not unreasonable in light of the known circumstances.

## **Appendix B: Process B Procedures**

### **A. Scope**

These procedures apply to reports of Prohibited Conduct not covered by Process A.

### **B. Resolution Process**

There are two possible methods for resolution of a report alleging violations of this policy: 1) Informal Resolution and 2) Formal Resolution (Investigation). The Director shall explain the Informal Resolution and Formal Resolution procedures to the Complainant and the Respondent, if known.

CNU will make every effort to avoid any actual bias or conflict of interest during the Resolution Process.

Recording of Meetings/Interviews: No unauthorized audio or video recording of any kind is permitted during any meetings and/or interviews where other employee's and/or student's information may be discussed, as it is not permitted. If the Director's Office decides to audio and/or video record any meeting or interview, all involved in the meeting or interview shall be made aware of the recording.

#### **1. Informal Resolution**

- a. If the Complainant, Respondent, and the Director all agree that an Informal Resolution should be pursued, the Director shall attempt to facilitate a resolution that is agreeable to the Parties. Under this procedure, the Director will conduct a preliminary investigation only to the extent fact-finding is needed to resolve the conflict and to protect the interests of the Parties, CNU, and the campus community. Both Parties will be permitted to request witnesses to be interviewed by the Director and other evidence to be considered in the preliminary investigation. Typically, Informal Resolution will be completed within thirty (30) business days after both Parties have agreed to Informal Resolution. If an extension beyond thirty (30) business days is necessary, all Parties will be notified of the expected resolution time frame. If at any point during Informal Resolution, the Complainant, Respondent, or the Director wish to proceed with Formal Resolution instead such request shall be granted and every effort will be made to complete Formal Resolution within ninety (90) business days of that decision.

Under Informal Resolution, there is no disciplinary action taken against the Respondent, and the resolution will not appear on the Respondent's disciplinary record.

- b. Any resolution of a report through Informal Resolution must adequately address the concerns of the Complainant, as well as the interests of the Respondent and the responsibility of CNU to prevent, address, and remedy alleged violations of this policy.

Informal Resolution remedies may include the following:

- (1) Training;
- (2) Adjustments to work, academic, or housing arrangements;

- (3) Informal counseling with a Respondent whose conduct, if not ceased, could rise to the level of discrimination or harassment;
- (4) Advisory discussion with the Respondent's supervisor, professor, coach, etc.;
- (5) No-contact order;
- (6) Written notice or written warning; and
- (7) Other actions as deemed appropriate.

All Parties, supervisors, and other necessary parties will be provided written notification of the resolution of the report upon completion of Informal Resolution.

- c. Upon completion of Informal Resolution, the matter is considered resolved and closed. There shall be no right of appeal afforded to the Complainant or the Respondent following Informal Resolution.
- d. If Informal Resolution does not produce an agreement acceptable to the Director, the Complainant, and the Respondent, and the Director determines that further action is necessary, Formal Resolution may be initiated. If a Respondent fails to comply with the terms of Informal Resolution, disciplinary action may be imposed and/or Formal Resolution may be initiated.
- e. If the Complainant or the Respondent withdraws from Informal Resolution or Informal Resolution is otherwise terminated for any reason, any statements or disclosures made by the Parties during the course of the Informal Resolution shall not be considered during the Formal Resolution without the written consent of the Parties.

## 2. **Formal Resolution (Investigation)**

### a. Initiation of Formal Resolution

Formal Resolution is commenced when one of the following occurs:

- (1) A Complainant verbally or in writing informs the Director's Office that someone has engaged in Prohibited Conduct and wants to pursue a Formal Resolution.
- (2) Informal Resolution did not resolve a report of Prohibited Conduct and the Complainant or the Director decides that Formal Resolution is appropriate.
- (3) The Director initiates Formal Resolution based upon a determination that there is a risk to health and/or safety that requires CNU to pursue Formal Resolution to protect the CNU community regardless of the Complainant's request that no investigation be pursued.

If a Complainant has requested Formal Resolution and the Director has determined that the information available does not provide a reasonable basis/cause for conducting an investigation under the policy or that the policy is not applicable, the Director will notify the Complainant.

- b. Transcript Hold and Notation: For alleged violations of this policy when the Respondent is a CNU student, the Director upon the initiation of Formal Resolution shall immediately notify the University Registrar who shall immediately place a "hold" on the student's academic record to prevent registration or release of an academic transcript.

If the student requests an academic transcript while involved in a Formal Resolution, the University Registrar shall place a prominent notation on the student's academic transcript reading "*Under Investigation – Sexual Misconduct*" and/or "*Under Investigation – Discrimination/Harassment*" depending on the charges being investigated. It shall also be noted on the academic transcript that the inclusion of this language is not intended to indicate a finding of responsibility for the pending charge but is included to comply with Va. Code §23.1-900.

- c. Investigation Timeframe: Every effort will be made to issue a finding and sanctions, if any, within ninety (90) business days after the issuance of the NOIA, excluding any appeal. If an extension beyond ninety (90) business days is necessary, all Parties will be notified in writing of the expected revised time frame.
- d. Overview of Investigation: The Director's Office shall conduct a prompt, thorough, reliable, and impartial investigation of the report. The Director's Office shall discuss the report with the Complainant and Respondent as appropriate and provide information about Formal Resolution and available resources. The report may be supplemented by additional supporting documents, evidence, or recommendations of witnesses to be interviewed during the course of the investigation. The Complainant must also disclose if a formal complaint has been filed with another local, state, or federal entity for the same offense.

Notice of Investigation and Allegation(s) ("NOIA"): The Respondent will be provided written notice of the investigation and allegations upon commencement of the investigation. Such notice will be provided in advance of any interview of the Respondent with sufficient time to prepare for meaningful participation. The Complainant will receive a copy of the NOIA. Notice may be hand-delivered or emailed to the party's email account. Once received in-person or emailed, notice is presumed delivered.

The NOIA will include:

- (1) The identities of the Parties involved (if known);
- (2) The specific section of the policy allegedly violated;
- (3) The precise conduct allegedly constituting the potential violation; and
- (4) The date, or a reasonable approximate date, and location of the alleged incident.

The Director may amend the NOIA as the investigation progresses and more information becomes available regarding the addition of charges.

The Director's Office shall explain to the Parties that each has the opportunity to provide evidence and to suggest witnesses to be interviewed during the course of the investigation. The Director's Office will notify and seek to meet separately with the Complainant, Respondent, and witnesses, and will gather other relevant evidence and information. Both the Complainant and Respondent shall have the same opportunity to review and respond to evidence obtained during the investigation. The Complainant and Respondent shall be presented with all of the evidence gathered during the investigation in separate meetings. During these meetings, the Parties will be allowed to respond at that time and shall have five (5) business days after the

meeting to provide any further comments and/or information for consideration during the Formal Resolution.

Only the Director, a trained member of the Director's Office, or a trained investigator assigned to the Director's Office shall conduct the investigation. All investigations of reports alleging violations of this policy shall be overseen by the Director. If a member of the Director's Office is found to have an actual bias or conflict of interest in the matter, that person will not be allowed to participate in the Formal Resolution.

Witnesses who are CNU employees are expected to cooperate with and participate in investigations. Failure to cooperate with and/or participate may warrant disciplinary action.

While in-person interviews for Parties and witnesses are ideal, circumstance may require individuals to be interviewed remotely. CNU will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

- e. Presumption of Non-Responsibility and Participation by the Parties: The investigation is a neutral fact-finding process. The Respondent is presumed to be not responsible. This presumption may be overcome only where it is concluded during the investigation that there is sufficient evidence, by a preponderance of the evidence, to support a finding that the Respondent violated the policy. Neither the Complainant nor Respondent is required to participate in the investigation and no adverse inferences may be drawn from a decision by either party not to participate. However, the investigation may proceed and a finding of responsibility and imposition of sanctions may occur without the participation of the Complainant and/or the Respondent.
- f. Acceptance of Responsibility: The Respondent may accept responsibility for the Prohibited Conduct.
- g. Advisor: For reports involving Sexual Misconduct or when the allegations of Prohibited Conduct could result in suspension or dismissal, the Complainant and Respondent may be accompanied by an Advisor or support person of their choice (who is not otherwise a party or a witness) to meetings and interviews at which they are present. The Advisor or support person may not speak on behalf of the individual during, or participate directly in, meetings or interviews. The Advisor may be excluded if they fail to respect this limitation. Advisors are expected to maintain the privacy of any records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by CNU.

A party may decide to change Advisors during the Formal Resolution. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be obtained.

Advisors are expected to make themselves available for meetings and interviews throughout the Formal Resolution as reasonably scheduled by CNU.



- h. Prior or Subsequent Conduct: Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar conduct. Evidence of a pattern of conduct by the Respondent, regardless of whether there has been a prior finding of a policy violation, may be deemed relevant to the determination of the Prohibited Conduct under investigation.
- i. Prior Sexual History: The sexual history or sexual character of a Complainant or Respondent will not be used to prove character or reputation. Where there is a current or ongoing relationship between the Complainant and Respondent, and the Respondent alleges consent, the prior sexual history between the Parties may be relevant to assess the manner and nature of the communications between the Parties. However, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. In addition, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve other questions raised by the report or during the investigation.
- j. Credibility: Discretion exists to assess and make findings that consider the credibility and truthfulness of the Parties and witnesses interviewed.
- k. Relevance: Discretion exists to determine the relevance of any proffered evidence and to include or exclude certain types of evidence. In general, statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any party's general reputation for any character trait will not be considered.
- l. Standard of Evidence: At the conclusion of the investigation, the Director shall determine whether a preponderance of the evidence substantiates that a violation of this policy occurred. A Respondent will not be found in violation of this policy absent a finding by a preponderance of the evidence that the violation occurred.

The "preponderance of the evidence" standard requires that the evidence, in totality, supports a finding that it is more likely than not that the alleged misconduct occurred.

In determining whether alleged conduct has created a hostile environment that interferes with, limits, or denies the ability of an individual to participate in or benefit from educational programs, services, opportunities, or activities or the individual's employment access, benefits, or opportunities, the Director shall consider not only whether the conduct was unwelcome to the Complainant, but also whether the conduct was sufficiently severe, pervasive, or persistent and whether a reasonable person similarly situated to the Complainant would have perceived the conduct to be offensive.

- m. Notification of Outcome and Sanctions: The Director shall issue a written investigation report, which shall be provided to both the Complainant and the Respondent separately but concurrently with the sanctions, if any, and notification of the right to appeal as stated in Section E below. In most cases the written

investigation report shall be provided to both Parties within ninety (90) business days after the issuance of the NOIA. If extension of the time frame for the Director to finalize the investigation report beyond ninety (90) business days is necessary, all Parties shall be notified in writing of the expected time frame for completion of the investigation report. Notice will be made in writing and may be hand-delivered or emailed to the party's email account. Once received in-person or emailed, notice is presumed delivered.

- (1) Finding of No Policy Violation: If the Director does not find by a preponderance of the evidence that a violation of this policy occurred, the matter will be documented as closed for purposes of this policy, unless the Complainant or the Respondent submits an appeal as stated in Section E below.
- (2) Finding of Policy Violation: If the Director finds by a preponderance of the evidence that a violation of this policy did occur, the investigation report shall contain recommendations for steps that should be taken to prevent recurrence of any such violation and, as appropriate, remedies for the Complainant and the campus community. The investigation report shall include a recommendation on sanctions. If supportive measures as stated in Section F of the policy are in place, the Director shall include a recommendation regarding continuation, suspension, or modification of any such supportive measures. The Director shall provide the investigation report to both the Complainant and Respondent including the steps the Director has recommended to eliminate a hostile environment, if one was found to exist, and to prevent its recurrence.

Notwithstanding any other provision of this policy, the Respondent shall not be provided information about the individual remedies offered or provided to the Complainant, but such information shall be provided to the Complainant.

The investigation report shall also be provided to the appropriate CNU authority for the determination and imposition of appropriate sanctions as stated in Section C below.

### C. Sanctions

Consequences for violating this policy will depend on the facts and circumstances of each particular situation, the frequency and severity of the offense, and any history of past misconduct. Sanctions may include penalties up to and including dismissal for students and termination for employees. In addition to sanctions that may be imposed on an individual found in violation of this policy, CNU will take any necessary steps to prevent the recurrence of any Prohibited Conduct, including Sexual Misconduct, and to remedy discriminatory effects on the Complainant and others, if appropriate. If it is determined that conduct in violation of this policy has occurred, sanctions will be determined as follows:

1. Students: Sanctions for students shall be determined by the Dean of Students or designee in consultation with the Director. Sanctions may include, but are not limited to, disciplinary penalties described in the Student Handbook which include, but are not limited to, verbal warning, written warning, restitution, fees/fines, parental notification, community service, educational and reflective experience, loss of privilege/delayed

privilege, restriction, deferred sanction, disciplinary probation, removal from CNU housing, suspension, and/or dismissal.

Transcript Notation: If the sanction is suspension or dismissal from CNU for a violation(s) of this policy, the Director shall notify the University Registrar who shall place a prominent notation on the Respondent's academic transcript reading "*Suspended – Sexual Misconduct*," "*Dismissed – Sexual Misconduct*," "*Suspended – Discrimination/Harassment*," and/or "*Dismissed – Discrimination/Harassment*" depending on the violation.

- a. Such notation for a suspension or a dismissal shall be removed if the Respondent is subsequently found not to have committed the offense.
  - b. Such notation will be removed for a suspension or a dismissal pursuant to University Policy 9045 (Transcript Notation Policy).
2. Administrative/Professional Faculty: Sanctions for Administrative/Professional Faculty shall be determined by the appropriate Vice President or designee, in consultation with the Director. Sanctions may include, but are not limited to, counseling, training, reassignment, admonition, written warning, suspension, or dismissal/termination of employment.
  3. Classified Employees: Sanctions for classified employees shall be determined by the appropriate Director in consultation with the Director of Human Resources and Director in accordance with the Commonwealth of Virginia's Standards of Conduct Policy and applicable Commonwealth of Virginia personnel procedures. Sanctions may include, but are not limited to, counseling, training, issuance of a written notice, suspension, or termination of employment.
  4. Hourly Employees: Sanctions for hourly employees shall be determined by the appropriate Director or designee, in consultation with the Director of Human Resources and the Director. Sanctions may include, but are not limited to, counseling, training, reassignment, suspension, or termination of employment.
  5. Instructional Faculty: Sanctions for Instructional Faculty or referral to a Faculty Dismissal Hearing Panel shall be determined by the Provost in consultation with the Director. Sanctions may include, but are not limited to, counseling, training, admonition, written warning, suspension, or initiation of termination proceedings according to procedures in the University Handbook.
  6. Contractors: Contractors shall assign for duty only employees acceptable to CNU. CNU reserves the right to require the Contractor to remove from campus any employee who violates this policy.
  7. Visitors: Visitors who violate this policy will be directed to immediately leave campus and may be subject to a permanent bar from campus.
  8. Multiple Capacities: If the Respondent serves in multiple capacities at CNU (i.e., student and employee), the Respondent may be sanctioned by more than one CNU authority.

The Respondent shall be informed in writing of any sanctions imposed for a violation of this policy at the same time the Respondent receives the investigation report and notice of the right to appeal. The Director shall be provided a copy of such written notification by the person imposing the sanctions. The Director shall disclose to the Complainant separately but concurrently to the notification provided to the Respondent, any sanctions that directly affect the Complainant as permitted by state and federal law including the Federal Educational Rights and Privacy Act (FERPA) and the Virginia Freedom of Information Act along with the investigation report and notice of the right to appeal. The Director also will disclose in writing to the Complainant separately but concurrently to the notification provided to the Respondent, the findings of any investigation involving Sexual Misconduct, as permitted by state and federal law including FERPA and the Virginia Freedom of Information Act.

All Respondents are expected to comply with sanctions within the timeframe specified. Failure to abide by any sanction may result in additional sanctions/disciplinary actions including suspension, dismissal, and/or termination from CNU.

#### **D. Remedies**

Remedies may be provided in addition to any sanctions. The individual determining the sanctions shall consult with the Director regarding the implementation of remedies with respect to the Parties and/or campus community that are intended to stop the Prohibited Conduct, remedy its effects, and prevent its recurrence.

Remedies may include, but are not limited to:

1. Academic arrangements;
2. Housing and dining arrangements;
3. Work-related arrangements;
4. Limitations on extracurricular or athletic activities;
5. No-contact order;
6. Limitations on access to campus, CNU facilities, and CNU events;
7. Referral and coordination of counseling and health services;
8. Referral to the Employee Assistance Program (EAP);
9. Training for students, faculty, and/or staff;
10. Informal counseling with a Respondent whose conduct, if not ceased, could rise to the level of discrimination or harassment;
11. Advisory discussion with the Respondent's supervisor, professor, coach, etc;
12. Any other remedy that may be arranged by CNU (to the extent reasonably available) to ensure the safety and well-being of the Parties and the CNU community.

CNU will maintain the privacy of any remedies, provided privacy does not impair CNU's ability to provide these services.

All Respondents are expected to comply with remedies within the timeframe specified. Failure to abide by them may result in additional sanctions/disciplinary actions including suspension, dismissal, and/or termination from CNU.

When no policy violation is found, the Director may provide supportive measures and/or remedies to the Parties if deemed necessary and reasonable.

## **E. Appeal**

Once written notification of the outcome of the Formal Resolution including the investigation and sanctions has been provided, the Complainant and the Respondent have seven (7) business days from the date notice is hand-delivered to the party or received into the party's email account to file an appeal. All appeals will be reviewed and decided by at least one Appeals Officer.

An appeal is available only based on one or more of the following grounds:

1. Procedural irregularity that affected the outcome of the matter; and/or
2. New evidence that was not reasonable available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
3. The Director and/or Investigator(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

The sufficiency of the evidence and the severity of the sanction are not available as grounds for an appeal.

A request for an appeal must be submitted in writing to the Director and must set forth the grounds upon which the appeal is based and the evidence supporting the appeal. Except for the grounds of newly discovered evidence, an appealing party is prohibited from submitting evidence that was available but not previously submitted to the Investigator or Decision-Maker. If a party files a timely appeal, the Director will promptly notify the other party in writing and provide a copy of the appeal. The non-appealing party may, but is not required to, submit a written response to the Director regarding the appeal within five (5) business days from receipt of the copy of the appeal. At the expiration of the deadline for the non-appealing party's written response, the Director shall confirm that the appeal and written response, if any, is timely and shall forward it and any written response within three (3) business days of receipt to the Chief of Staff or designee who shall assign the appeal to an Appeals Officer within five (5) business days of receipt. If an extension beyond five (5) business days is necessary, all Parties will be notified in writing of the expected time frame. The Director will notify both Parties in writing of the date the appeal was assigned for review.

If adequate grounds for appeal have been stated, the Appeals Officer will consider the merits of the appeal. In considering the merits of the appeal, they may review any pertinent materials in the record and meet with the Parties and witnesses as needed. Any information included in the appeal that does not support one of the above three reasons for filing an appeal shall not be considered in the appeal process.

Disciplinary actions, sanctions, and/or supportive measures, if any, taken as a result of the original report may be implemented and enforced even while an appeal is pending. The Director may temporarily suspend the imposition of the sanction(s) and/or remedies while the appeal is pending.

The decision of the Appeals Officer shall be final. It shall be provided in writing to the party who filed the appeal and to the Director within ten (10) business days from the Appeals Officer receiving the appeal. If an extension beyond ten (10) business days is necessary, all

Parties will be notified in writing of the expected time frame. The non-appealing party shall be notified separately but concurrently of the decision.

Notification will be made in writing and may be hand-delivered or emailed into the Parties' email account. Once received in-person or emailed, it is presumed delivered.

If an appeal is not filed within the appeal period, the findings of the investigation become final and are not subject to further review.

Exceptions to Appeal Process: This appeal process is not available in addition to, or in lieu of, the processes already provided for Instructional Faculty and Classified Employees who are found responsible for a violation of this policy.

#### **F. Withdrawal or Resignation Before Conclusion of Formal Resolution**

If a party decides not to participate in the Formal Resolution, the process may proceed. A finding of responsibility and imposition of sanctions may occur without the participation of the Respondent.

If a student leaves while a Formal Resolution is pending, the investigation may be suspended or may proceed at the direction of the Director, and a finding of responsibility and imposition of sanctions may occur without the participation of the student. If the Formal Resolution is suspended, a "hold" shall be placed on the student's academic record to prevent registration and a prominent notation shall be placed on the student's academic transcript reading "*Under Investigation – Sexual Misconduct*" and/or "*Under Investigation – Discrimination/Harassment*".

If an employee leaves while a Formal Resolution is pending, the investigation may be suspended or may proceed at the direction of the Director, and a finding of responsibility and imposition of sanctions may occur without the participation of the employee.

#### **G. Documentation and Record Keeping**

The Director shall maintain, in a confidential manner, for at least ten (10) years, paper or electronic files of all complaints and reports, witness statements, documentary evidence, written investigation reports, resolutions, and appeals and associated documents.