



Preventing and Responding to Discrimination

Policy Type: Administrative

Responsible Office: Institutional Equity, Effectiveness and Success

Initial Policy Approved: 03/26/2009

Current Revision Approved: 5/7/2021

Policy Statement and Purpose

Virginia Commonwealth University (“VCU” or the “university”) prohibits unlawful discrimination in the workplace, academic setting or any of its programs or activities on the basis of race, color, religion, national origin (including ethnicity), age, sex (including pregnancy, childbirth and related medical conditions), parenting status, marital status, political affiliation, military status (including veteran status), genetic information (including family medical history), sexual orientation, gender identity, gender expression, or disability. This policy is designed to comply with Title IX of the Education Amendments of 1972; 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 Genetic Information Nondiscrimination Act of 2008; the Virginia Human Rights Act; the Governor’s Executive Order Number One (2018); and other state or federal laws and university policies.

Discrimination is harmful to the wellbeing of our community, the university’s learning/working environment, and collegial relationships among our students and employees. VCU supports diversity and fosters a climate of inclusion. Toward that end, VCU is dedicated to addressing impermissible disparities wherever they exist and pursuing opportunities to explore and create an environment of trust.

As a federal contractor and affirmative action and equal opportunity employer, VCU promotes the full realization of employment opportunities for all persons, including racial and ethnic minorities, women, individuals with disabilities and those protected due to military status. These efforts apply to all employment actions, including but not limited to recruitment, selection, hiring, promotion, and compensation. VCU also prohibits unlawful discrimination against employees or applicants who may have inquired about, discussed or disclosed their own pay, or the pay of another employee or applicant.

It is the responsibility of every member of the VCU community to foster an environment free from unlawful discrimination and harassment. All members of the VCU community are encouraged to take reasonable and prudent actions to prevent or stop unlawful discrimination, and those who do so will be supported by VCU and protected from retaliation. VCU prohibits retaliation against an individual who brings forth a good faith concern, asks a clarifying question, or participates in an investigation under this policy.

Violations of this policy are serious offenses and may result in discipline or other administrative action, up to and including expulsion or termination. Third parties who violate this policy may be permanently barred from VCU facilities, services or activities or subject to other restrictions.

Table of Contents

| | |
|---------------------------------|----|
| Policy Statement and Purpose | 1 |
| Table of Contents | 2 |
| Who Should Know This Policy | 2 |
| Definitions | 2 |
| Contacts | 6 |
| Policy Specifics and Procedures | 6 |
| Forms | 16 |
| Related Documents | 16 |
| Revision History | 17 |
| FAQ | 18 |

Who Should Know This Policy

All university faculty, staff and students are responsible for knowing this policy and familiarizing themselves with its contents and provisions. In addition, third parties who are visiting campus, participating in a university program or activity, or interacting with members of the VCU community should know this policy and familiarize themselves with its contents and provisions.

Definitions

Complainant

The student, employee or third party who presents as the person affected by the discrimination or retaliation under this policy, regardless of whether that person makes a report or seeks action under this policy.

Discrimination

Inequitable and unlawful treatment based on an individual's protected identity, which typically falls into one of the following categories:

Disparate impact is the disproportionately adverse effect of neutral policies on a group of individuals within a protected identity.

Disparate treatment is the less favorable treatment of an individual based on a protected identity, rather than individual merit.

Discriminatory Harassment

A form of discrimination that involves unwelcome conduct directed against a person based on one or more of that person's protected identities, which is so severe, pervasive or persistent and objectively offensive that it interferes with, limits, or denies the ability of an individual to participate in or benefit from university educational or employment programs, services, opportunities, or activities. Mere subjective offensiveness is not enough to constitute discriminatory harassment, the conduct must be such that a reasonable person would also find the conduct offensive. This type of discrimination is typically characterized as hostile environment discrimination.

Employee

Any person (faculty and/or staff) with a direct employment relationship with VCU, including those who work on a part-time, temporary, or adjunct basis. An individual can hold a status as both a student and employee. Complaints under this policy will be addressed according to the role principally held by such individuals in the context of the alleged policy violation.

Equal Opportunity

The right of all persons to be treated and evaluated fairly based on merit, ability, and potential without regard to their protected identities.

Investigator

The trained individual designated to conduct a preliminary inquiry or investigation into conduct alleged to be in violation of this policy. The investigator acts as a neutral party and provides detailed, unbiased reporting regarding the facts and findings.

Manager

Those who have responsibility for one or more employees in the workplace. These responsibilities include setting clear goals and expectations; providing ongoing feedback of employee progress, performance and competencies; responsibly and equitably handling employee workplace requests and complaints; identifying and encouraging opportunities for employee career development; and effectively communicating work-related issues within the school/unit and the university. For purposes of this policy, managers are also employees who have their own duties and responsibilities to meet career-development-related goals.

Protected Activity

Filing a good faith discrimination complaint or report under this policy, filing a good faith external discrimination complaint, participating in or cooperating with the investigation of a complaint of discrimination or a related disciplinary process, or opposing in a reasonable manner an action believed to constitute a violation of this policy.

Protected Identity

An individual's race, color, religion, national origin (including ethnicity), age, sex (including pregnancy, childbirth and related medical conditions), parenting status, marital status, military status (including veteran status) political affiliation, genetic information (including family medical history), sexual orientation, gender

identity, gender expression, and disability. Definitions of these protected identities are listed below to further clarify their meaning under this policy:

Age

Individuals aged 40 years and older are protected from adverse treatment in employment based on age, in accordance with the Age Discrimination in Employment Act of 1967. The Age Discrimination Act of 1975 prohibits discrimination based on any age in university programs or activities.

Color

A person's pigmentation, complexion, or skin shade or tone. Color discrimination can occur between persons of different races or ethnicities, or between persons of the same race or ethnicity.

Disability

A documented physical or mental impairment of an individual that substantially limits one or more major life activity and/or major bodily functions, a record of such an impairment, or being regarded or perceived as having such an impairment.

Gender Expression

External manifestations of gender, such as those expressed through one's name, pronouns, clothing, haircut, behavior, voice or body characteristics.

Gender Identity

One's internal sense of one's gender or lack of gender. Unlike gender expression, gender identity is not visible to others.

Genetic Information (including Family Medical History)

Information about an individual that includes the individual's genetic tests, the genetic tests of family members, the manifestation of a disease or disorder in family members of such individual (i.e., family medical history), the use of genetic services and participation in genetic research, which includes genetic testing and counseling or education, by the individual or any family member of the individual.

Marital Status

The actual or potential state of being married or not married.

Military Status

A member of the uniformed forces, as defined in 10 U.S.C. § 101(a)(5), of the United States or a reserve component thereof named under 10 U.S.C. § 10101, (ii) a veteran as defined in 38 U.S.C. § 101(2), or (iii) a dependent as defined in 50 U.S.C. § 3911(4) except that the support provided by the service member to the individual shall have been provided 180 days immediately preceding an alleged action that if proven true would constitute unlawful discrimination under this section instead of 180 days immediately preceding an application for relief under 50 U.S.C. Chapter 50.

National Origin (including Ethnicity)

Place where an individual (or their ancestors) is from, or the physical, cultural, ancestral, racial, linguistic, or other social characteristics of a particular group of people.

Parenting Status

The actual or potential state of being a parent or not being a parent.

Political Affiliation

A person's association with a particular political party or ideology, or lack of such an association.

Race

The grouping of people related to their shared personal characteristics (such as hair texture, skin color, or certain facial features) and cultural characteristics (such as language or group identity) that can span multiple countries or territories.

Religion

Beliefs, practices, and observances that are theistic in nature as well as non-theistic moral or ethical beliefs as to what is right and wrong, which are sincerely held. Religion includes not only traditional, organized religions such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by one or a small number of people, or that seem illogical or unreasonable to others. A belief is religious if it is a sincerely held and meaningful belief that occupies in the life of its possessor a place parallel to that filled by God.

Sex (including Pregnancy, Childbirth and Related Medical Conditions)

A classification based on anatomy, sex organs, chromosomes, and hormones. Discrimination based on sex includes, but is not limited to, treatment based on an individual's actual or perceived sex, pregnancy, childbirth, or related medical conditions; sexual harassment and sex stereotyping.

Sexual Orientation

An individual's physical, romantic and/or emotional attraction to the same and/or different genders. Sexual orientation also includes an individual's lack of sexual attraction (asexuality).

Reasonable Accommodation

Reasonable accommodation allows individuals to enjoy the benefits and privileges of employment, education, and access to university programs and services equal to those enjoyed by other individuals. Accommodations under this policy may be related to disabilities, pregnancy/childbirth or religious beliefs and should be requested as soon as possible following the guidance noted under "Reasonable Accommodation" in Section 4 of this policy.

Respondent

The student, employee or third party who is reported to have committed discrimination, discriminatory harassment or retaliation in violation of this policy.

Retaliation

Retaliation is any adverse action including intimidation, threats, or harassment taken against an individual or group of individuals for protected activity. Action is generally deemed to be retaliatory if it would deter a reasonable person in the same circumstances from engaging in protected activity.

Third Party

Any individual, including contractors, vendors, ticket holders, invited guests, alumni/ae or local residents, who is not a VCU student or employee (faculty or staff).

Contacts

VCU's office of Institutional Equity, Effectiveness and Success ("IES") officially interprets this policy and is responsible for obtaining approval for any revisions as required by the policy *Creating and Maintaining Policies and Procedures* through the appropriate governance structures. Please direct policy and procedural questions to:

Office of Institutional Equity, Effectiveness and Success
Virginia Commonwealth University
1001 Grove Avenue
Box 842549
Richmond, Virginia 23284-3022

Phone: 804-828-1347
Fax: 804-828-7201
Email: equity@vcu.edu
Website: equity.vcu.edu

Policy Specifics and Procedures

Section 1. Scope of This Policy

This policy applies to all conduct reported on or after the effective date of this policy. Where the date of the conduct precedes the effective date of this policy, the definitions in existence at the time of the alleged incident(s) will be used. The procedures of this policy will be used to address, investigate and/or resolve all uncompleted cases on or after the effective date of this policy, regardless of when the underlying conduct occurred.

This policy does not apply to incidents of sexual harassment, sexual assault, dating violence, domestic violence, stalking and other sex-based misconduct. These incidents are governed by the university's policies on [Title IX Sexual Harassment](#) and [Sex-Based Misconduct](#). In addition, the determination of reasonable accommodations under the ADA/Section 504 are governed by the university's policy on [Accessibility and Reasonable Accommodation for Individuals with Disabilities](#).

Nothing in this policy prevents the university from imposing disciplinary action against a respondent for conduct which does not constitute a violation of this policy, but may violate other university policies. The university reserves the right to take such action as it deems appropriate to further its educational mission and to protect the safety and security of the university community.

A. Persons Covered

This policy applies to all members of the VCU community, including employees, students, and third parties.

B. Locations Covered

This policy applies in a variety of circumstances, including conduct that occurs on VCU property (i.e., property owned, leased or controlled by the university). This policy applies to all actions that involve the use of VCU's

computing and network resources, including email accounts, even if from a remote location. Additionally, this policy applies to conduct that occurs off of VCU property when the conduct is associated with a VCU-sponsored program or activity, such as travel, research, internship programs, remote instruction and other operations, or when such conduct may have a continuing adverse effect or could create a hostile environment on campus.

Section 2. Management Responsibilities to Prevent and Respond to Discrimination

Managers are responsible for knowing the university's [Expectations of Ethical Conduct](#), the Commonwealth of [Virginia's Department of Human Resource Management Standards of Conduct policy](#), and policies related to the [Duty to Report and Protection from Retaliation](#), [Nondiscrimination, Equal Opportunity and Affirmative Action](#), among others.

Under this policy, Managers are also responsible for all of the following:

- Knowing and understanding this policy;
- Explaining this policy to persons under their supervision;
- Recognizing and reporting violations of this policy;
- Taking appropriate action to prevent violations of this policy generally, including ensuring that persons under their supervision complete any university required training;
- Being receptive to concerns and complaints of discrimination, discriminatory harassment, and/or retaliation; and
- Following up with individuals who report an incident of discrimination, discriminatory harassment or retaliation and determining whether any remedial actions are necessary or were successful.

Managers who do not fully perform their responsibilities under this policy may be rated unfavorably on their performance reviews and may be subject to disciplinary action, up to and including termination.

Section 3. Privacy

The university will make reasonable efforts to protect the privacy of individuals while balancing the need to gather information to assess a report, provide due process, and take steps to eliminate the conduct in violation of the policy, prevent its recurrence, and remedy its effects. Information related to a report under the policy will be shared within a limited circle of university employees who "need to know" in order to assist in the assessment, investigation and resolution of the report.

The privacy of student education records will be protected in accordance with state law, the Family Educational Rights and Privacy Act ("FERPA") as outlined in the university's [FERPA policy](#), and the Virginia Freedom of Information Act ("FOIA"), Va. Code § 2.2-3700 *et seq.* Records directly related to an identifiable student, and information derived from such records, including a report or complaint, investigation report, party statements, and other documents prepared in the course of intake, preliminary inquiry, investigation, and resolution, constitute education records that the university will not disclose outside of the proceedings, except as may be required or authorized by law.

The privacy of an individual's medical and related records will be protected in accordance with applicable privacy law, such as the Health Insurance Portability and Accountability Act ("HIPAA") and Virginia's Health Records Privacy statute, [Va. Code § 32.1-127.1:03](#). The privacy of individuals about whom personal information may be located by name in an information system of the university is protected by the Virginia Government Data Collection and Dissemination Practices Act.

The privacy of an employee's personnel records will be protected in accordance with FOIA, the Commonwealth of Virginia Department of Human Resource Management Policy 6.05, and the university's [Records Management Policy](#). The university will not disclose personnel information contained in records, including a report or complaint, investigation report, party statements, and other documents prepared in the course of intake, preliminary inquiry, investigation, and resolution, outside of the proceedings, except as may be required or authorized by law.

The university does not impose any restrictions on the parties on disclosure of information derived from their personal experiences about a reported incident, their participation in these procedures, or their personal knowledge of the outcome.

Section 4. Reasonable Accommodation

VCU provides reasonable accommodation in response to requests by individuals through the procedures below:

A. Disabilities

Individuals with disabilities may request reasonable accommodations by following the procedures set forth in the university's policy on [Accessibility and Reasonable Accommodation for Individuals with Disabilities](#). For VCU-sponsored events, visitors may request accommodation through the sponsoring VCU department, unit or office responsible for the event. This may be in consultation with the ADA/504 Coordinator. Individuals may also request accommodation during the complaint process.

B. Pregnancy, Childbirth, and Parenting

To ensure a pregnant or parenting student's access to VCU's educational programs, when necessary, VCU will make adjustments to the regular program that are reasonable and responsive to the student's temporary pregnancy/childbirth status. Students may request adjustments directly through their instructor. Students who disagree with an instructor's response to a request for adjustments should contact the dean of their school with their concerns. If the dean's office is unable to resolve the student's concern, a complaint may be filed with the university's Title IX Coordinator at titleix@vcu.edu or (804) 828-1347 or by filing a complaint through the [Title IX and Sex-Based Misconduct Reporting Form](#).

For pregnant employees and job applicants, VCU will provide reasonable accommodation that enables the individual to perform their job or apply for a job, absent undue hardship upon the university. Employees may request accommodation for pregnancy/childbirth directly through the ADA/504 Coordinator or may request a referral to the ADA/504 Coordinator through their manager. Job applicants may request accommodation for pregnancy/childbirth through Human Resources for the hiring department, unit or office. Should pregnancy or childbirth result in a disabling condition, the university's policy on [Accessibility and Reasonable Accommodation for Individuals with Disabilities](#) will apply.

C. Religious Beliefs

VCU supports an environment that respects religious observances, practices and beliefs and is committed to providing reasonable accommodation for religion in accordance with state and federal law. Each semester, students must provide advance written notification to instructors of their intent to observe religious holidays, according to the [VCU Bulletin](#). The deadlines for notification are listed in the [VCU Academic Calendar](#). Employees may request religious accommodation through their manager. For VCU-sponsored events, visitors may request accommodation through the VCU office or department responsible for the event.

Section 5. Reporting Options

Students, employees, applicants for employment and third parties may report alleged violations of the policy through one of the following methods:

- [VCU Helpline](#) (also permits anonymous reporting)
- Email at equity@vcu.edu
- In-person by contacting (804) 828-1347 to schedule an appointment
- Mail and hand-delivery to: Moseley House, Box 842549, 1001 Grove Avenue, Richmond, Virginia 23284-2549

A. Initial Assessment of the Report

Upon receipt of a report of conduct allegedly in violation of this policy, the university launches an initial assessment of the report that includes:

1. Assessing whether interim measures, pending resolution of the matter, may be appropriate. Interim measures may include, but are not limited to, a safety plan, schedule change, interim suspension, administrative leave, and other workplace or academic modifications; and
2. Assessing whether supportive measures, such as counseling, training or educational programming, may be appropriate.
3. Contacting the complainant (when identified in the report) to discuss options for addressing the alleged violation of this policy and to ascertain how the complainant would like the concerns raised in the report to be resolved.

In making this initial assessment of the report, the totality of the circumstances, the nature and severity of the allegation(s), and whether the allegation(s) implicate a potential, ongoing safety threat to the complainant and/or the university community will be taken into consideration. University administrators may be consulted to determine appropriate supportive or interim measures, as applicable.

B. Anonymous Reporting

While the university accepts anonymous reports, its ability to meaningfully investigate and respond to an anonymous report may be limited. The university reserves the right to conduct an Administrative Investigation and/or speak with the respondent and others to effectively and appropriately respond to the alleged conduct even when a complainant requests anonymity, that no investigation occur, or that no disciplinary action be taken.

Section 6. Resolution Procedures

A. Resolution of Concerns at the Academic/Employment Unit Level

Certain reported concerns may be antithetical to VCU's core values of diversity, inclusion and equity even if they do not yet rise to a violation of this policy. In these circumstances, the university will appropriately and efficiently resolve the reported concerns at the academic department or employment unit level through supportive measures, interventions, education, restorative practices, community dialogue, and/or other measures that can be tailored to the individuals involved and to achieve the goals of this policy. When determining the appropriate response and remedy, the university will take into account the nature and severity of the reported incident and the impact on the complainant and/or university community. IES may also monitor the academic department or employment unit's implementation of resolution measures to verify that they are being properly implemented.

Complainants are not required to report or resolve their concerns at the academic department or employment unit level prior to filing a complaint with IES. In addition, complainants not satisfied with the resolution at the academic department or employment unit level may file a complaint with IES.

B. Filing a Complaint

A complainant must submit a complaint to the university to proceed with the informal or formal resolution process. A complaint can be filed under this policy by a:

- Current or former VCU student, applicant for admission, or participant in the university's educational programs or activities within 180 days of the alleged discriminatory or retaliatory conduct;
- Current or former VCU employee or applicant for employment within 300 days of the alleged conduct; or
- Third party who is not a VCU student or employee within 300 days of the alleged conduct.

The university retains discretion to accept complaints filed outside of these time frames for good cause under this policy.

Complaints can be filed through one of the following methods:

- Online by completing the [IES Complaint Form](#)
- Email at equity@vcu.edu
- In-person by contacting (804) 828-1347 to schedule an appointment
- Mail and hand-delivery to: Moseley House, Box 842549, 1001 Grove Avenue, Richmond, Virginia 23284-2549

Whenever possible, individuals filing a complaint should use the [online complaint form](#). If a reasonable accommodation or other assistance is needed to file a report, please contact the ADA/504 Coordinator directly at (804) 828-1347 or adaservices@vcu.edu. If not using the online complaint form, the required information for filing a complaint (at a minimum) includes:

1. The complainant's full name and contact information (e.g., telephone, email);
2. The name(s) of the respondent(s);
3. A description of the conduct believed to constitute discrimination, discriminatory harassment and/or retaliation with the approximate date(s) and time(s) of when the action(s) occurred; and
4. A brief explanation why the complainant believes the alleged conduct is based on one or more protected identities.

If a complaint is submitted that does not include the above information, the university will contact the complainant to ensure that the complaint is filed in complete form.

C. Adviser

A party may request to have an adviser of their choosing accompany them to meetings, interviews, and proceedings held in connection with these resolution procedures. The adviser may be anyone who is not otherwise a party or witness. While the adviser may provide support or advice, the adviser may not speak on behalf of the party or otherwise directly participate in, or in any manner disrupt any process or proceeding under this policy. The university reserves the right to remove any individual serving as an adviser whose actions are disruptive to the process or proceeding.

D. Preliminary Inquiry

A preliminary inquiry is conducted upon receipt of a complaint to determine whether there is a basis for resolution under this policy. A preliminary inquiry typically includes a review of the complaint and intake meeting with the complainant to discuss the information in the complaint and options available under the policy. The complainant may be asked to provide additional information before intake proceeds. The intake meeting may occur in-person, by phone or by another agreed means of communication. As part of its preliminary inquiry, the university may request or gather additional information beyond what the complainant is able to provide during intake. A preliminary inquiry does not involve a full review of all of the available evidence related to an allegation or interviews with the respondent or any material witnesses. The university does not make credibility determinations in its preliminary inquiry and instead seeks only to determine whether there is a basis for resolution under this policy, assuming the alleged facts to be true.

At the conclusion of the preliminary inquiry process, the university will make one of the following determinations:

1. ***No basis for resolution under this policy.*** The university will conclude there is no basis for resolution under the policy when:
 - a. the allegations in the complaint, if assumed to be true, do not describe or implicate prohibited discrimination under this policy; or
 - b. the reported conduct is not within the scope of this policy.

If there is no basis for resolution, the university will provide a written explanation of its decision to the complainant. In most cases, when there is no basis for resolution under the policy, the complaint will be referred to the appropriate academic department/employment unit to assess and address the alleged conduct, as appropriate. IES shall monitor such referrals to ensure that the complaint has been addressed under applicable university policies and processes.

2. ***Potential basis for resolution under this policy.*** If the university determines that there is a potential basis for resolution under this policy then it will notify the complainant in writing of such determination and ascertain whether the complainant wishes to proceed with the Informal Resolution or Formal Resolution process.

E. Informal Resolution

Informal resolution resolves a complaint by the parties reaching a mutually agreed upon resolution that does not involve an investigation. Informal resolution is voluntary; the university will not compel a complainant or a respondent to engage in this resolution option. Methods of informal resolution may include, but are not limited to: conflict resolution, mediation, restorative justice, facilitated conversations, counseling, training and/or educational conversations or projects.

1. Eligibility

The university has the discretion to determine whether a matter is appropriate for informal resolution and to determine the method of informal resolution that may be appropriate in a specific case. Any informal resolution should adequately address the concerns of the complainant and the respondent, as well as the overall interest of the university in stopping, remedying, and preventing discriminatory and retaliatory conduct. If the university determines that informal resolution is not appropriate, or if informal resolution is not agreed upon by the parties or is not successful, the complainant may choose to withdraw the complaint or move forward with the formal resolution process.

2. Initiation of Informal Resolution

To initiate the informal resolution process, a complainant must file a complaint and communicate to the university a desire to resolve the matter informally. A respondent may also communicate to the university a desire to resolve the matter informally after receiving notice of the allegations. The university retains the discretion to refer a matter to informal resolution in the absence of a filed complaint. Pursuit of the informal resolution process is not required prior to initiating an investigation under the formal resolution process. The parties may withdraw from the informal resolution process at any time.

3. Disclosure of Information

Where the complainant or respondent withdraws from informal resolution, informal resolution is otherwise terminated for any reason or an informal resolution agreement is breached by either party, the university will not use any statements or disclosures made by the parties during the course of informal resolution in any subsequent formal resolution process without written consent of the party who made the statement.

4. Outcome

If an agreement resolving the complaint is accepted by the university and the parties, the terms of the agreement will be put in writing and signed by the parties. At this point, the parties are responsible for implementing the agreement, and the university will consider the matter resolved and closed. Failure to abide by an agreement that is reached by the parties at the conclusion of the informal resolution process may result in the commencement (or recommencement) of an investigation and/or disciplinary action.

5. Time Frame

The time frame for completing informal resolution may vary, but the university will seek to complete the process within thirty (30) business days of initiation. The university will notify the parties in writing of any extension to the thirty (30) business day time frame as well as the reason for the extension.

6. Records

IES will maintain records of complaints referred for informal resolution as well as copies of all agreements reached through the informal resolution process in accordance with the university's record retention schedule.

F. Formal Resolution

The formal resolution process commences when a complaint, as determined through the intake and preliminary inquiry process, has a basis for resolution under the policy and one of the following occurs:

- The complainant requests that the university proceed with the formal resolution process, or
- The university determines the complaint is not appropriate for informal resolution or the parties do not reach an agreement following the informal resolution process.

1. Investigation

A prompt, thorough, fair, and impartial investigation will be conducted by a trained investigator. The investigation may include, but is not limited to: interviewing material witnesses, reviewing relevant documents, investigating the treatment of individuals similarly situated to the complainant, and reviewing applicable policies and procedures. The university will complete investigations within a reasonable time frame. The university applies the "Preponderance of the Evidence" standard when determining whether this policy has been violated. Preponderance of the evidence means that it is more likely than not that a policy violation has occurred.

The respondent will be notified in writing about the nature of the alleged discriminatory or retaliatory conduct within a reasonable time after the initiation of the investigation. Employees must participate in the investigatory process and failure to do so could result in disciplinary action, up to and including termination. Students and non-affiliated parties are strongly encouraged to participate in the investigatory process.

During the investigation, the parties will have an opportunity to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by the investigator to each other or to any witness. The university will periodically update the parties as new evidence is collected, as appropriate, and permit the parties to provide additional information, suggest additional witnesses, or request witnesses be asked additional questions.

Any party who requires accommodations to participate in the investigation process can make this request through the ADA/Section 504 Coordinator at (804) 828-1347 or adaservices@vcu.edu.

a. Prior or Subsequent Conduct

Prior or subsequent conduct of the respondent may be considered in determining pattern, knowledge, intent, motive or absence of mistake. For example, evidence of a pattern of discrimination or retaliation by the respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a policy violation, may be deemed relevant to the determination of responsibility for the conduct under investigation or sanctions.

The 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. Such prior or subsequent conduct also may constitute a violation of other university policies, in which case it may be subject to additional sanctions.

b. Relevance

The investigator has the discretion to determine the relevance of any evidence offered and to include or exclude certain types of evidence. In general, the investigator will not consider statements of personal opinion or statements as to any party's general reputation or character. The investigator may consider or make direct observations or reasonable inferences from the facts.

c. Credibility

The investigator has the discretion to assess and make findings and conclusions that take into account the credibility and truthfulness of all persons interviewed as part of the investigation.

d. Obligation to Provide Truthful Information

All university community members are expected to provide truthful information in any report or proceeding under this policy. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of discrimination or retaliation is prohibited and subject to disciplinary sanctions under the university's Code of Ethical Conduct, Student Code of Conduct or other applicable policy. A complainant filing a false complaint under this policy may be subject to disciplinary action, up to and including expulsion or termination. A finding through the formal resolution process that a respondent's conduct was not in violation of this policy does not alone mean that the complaint was false or was brought in bad faith with a view to personal gain or intentional harm to another.

e. Conclusion of the Investigation

Upon conclusion of the investigation, the investigator will prepare a written investigation report, which will summarize the evidence gathered during the investigation and will include a determination as to whether the evidence establishes, by a preponderance of the evidence, that the respondent(s) engaged in conduct that violated this policy. The written investigation report will include findings of fact, determinations of policy violations and recommendations to the appropriate individuals and offices.

The university will issue the written investigation report to the parties, subject to applicable state or federal law, and may include the appropriate manager or administrator with appropriate authority (i.e., Dean of Students, Dean of College or School, Vice President) or other employee with a need to know the information.

A respondent who is found to have engaged in any of the conduct prohibited by this policy may be subject to disciplinary action, up to and including expulsion or termination of employment. When the investigator determines, by a preponderance of the evidence, that the respondent violated this policy, the investigator will recommend sanctions and remedial measures in accordance with the appropriate disciplinary policy or procedures, or steps of progressive discipline, such as (but not limited to) the:

- VCU Code of Ethical Conduct,
- VCU Student Code of Conduct,
- Working @ VCU: "Great Place" HR Policy,
- Department of Human Resources Management's Standards of Conduct, or
- VCU Faculty Handbook.

The determination on sanctions and remedial measures for a violation of this policy will be referred to and made by the following:

- i. For a non-faculty employee, including student-employee, respondent: VCU Human Resources providing consult to management
- ii. For a faculty employee respondent: the Senior Vice Provost for Faculty Affairs providing oversight and consult to management
- iii. For a student respondent: Student Conduct and Academic Integrity

Section 7. Administrative Investigation

The university retains the discretion to conduct an administrative investigation of reported conduct allegedly in violation of this policy in the absence of a filed complaint. In determining whether to conduct an administrative investigation, the university will consider all known information, including but not limited to:

- The nature and the severity of the allegations;
- Whether the allegations are amenable to management resolution;
- The history of prior complaints against the same individual(s), department and/or area;
- The expressed wishes, if known, of the affected individual(s); and
- Any other pertinent information.

The university may proceed, in its discretion, with an administrative investigation when a complainant has requested anonymity. In such cases, the university will notify the complainant that it intends to move forward with an administrative investigation and will make reasonable efforts to protect the privacy of the complainant to the extent possible. However, the university's investigation may involve speaking with the respondent and others who may have relevant information, in which circumstance the complainant's identity may have to be disclosed.

The appropriate senior executive of the department/unit/area and the relevant human resources professional will be notified of the commencement and scope of the administrative investigation and will be provided with a written report of the findings and any recommended action items, as appropriate. The same level of privacy applicable to the formal resolution process will apply to administrative investigations. Students and third parties are strongly encouraged to participate in an administrative investigation, but are not required. Employees must participate in an administrative investigation and failure to do so may result in disciplinary action, up to and including termination.

Section 8. External Complaints

Students, employees and third parties also have the right to file complaints with external federal or state agencies. Note that each agency may have different and distinct deadlines and time limitations for filing complaints, and the university's investigation may not toll or otherwise suspend these deadlines or time limitations. Please contact the appropriate agency for more information about their procedures and applicable deadlines.

U.S. Equal Employment Opportunity Commission

<https://www.eeoc.gov/>

1-800-669-4000

1-800-669-6820 (TTY for Deaf/Hard of Hearing callers only)

1-844-234-5122 (ASL Video Phone for Deaf/Hard of Hearing Callers only)

info@eeoc.gov

U.S. Department of Education Office for Civil Rights

<https://www2.ed.gov/about/offices/list/ocr/index.html>

1-800-421-3481

ocr@ed.gov

Commonwealth of Virginia Division of Civil Rights

<https://www.oag.state.va.us/programs-initiatives/civil-rights>

(804) 225-2292

CivilRights@oag.state.va.us

Commonwealth of Virginia Office of Equal Employment and Dispute Resolution

<http://www.dhrm.virginia.gov/equal-employment-opportunity>

Equal Employment Opportunity: (804) 225-2136

Employment Dispute Resolution: (804) 786-7994

Section 9. Other State and University Formal Grievance Procedures

The following are additional state and university grievance protocols that may be available to affected parties at the university. Grievance protocols include but are not limited to:

- Commonwealth of Virginia's Department of Human Resource Management: provides a [grievance procedure](#) through which Classified Employees can resolve employment concerns and complaints. The [Grievance Manual](#) and applicable forms are available online.
- VCU [Students with Disabilities Grievance Procedures](#): addresses Student complaints regarding disability accommodation or accessibility. Students may file a written grievance with the Student Accessibility and Educational Opportunity office (saeo@vcu.edu) or Division for Academic

Success (acadsuccess@vcu.edu). These offices maintain grievance records, including complaints and resolution, and report as appropriate to the university's Section 504/ADA Coordinator in IES.

- VCU [Faculty Mediation and Grievance Procedure](#) and Human Resources [Employee Mediation and Grievance Procedure](#) are also available to Employees. Note: allegations of unlawful discrimination (including discriminatory harassment) and retaliation **cannot be grieved** under these procedures and are administered under this policy.
- Non-faculty employees (i.e., University and Academic Professionals): [The Working@VCU: Great Place HR](#) policy outlines a formal dispute resolution process under which they may file a grievance. Note: allegations of unlawful discrimination (including discriminatory harassment) and retaliation **cannot be grieved** under these procedures and are administered under this policy.
- [VCU Integrity and Compliance Office](#): provides a variety of resources for reporting violations or concerns. Individuals may also log a confidential and anonymous report online at www.vcuhelpline.com or by calling 1-888-242-6022 24 hours a day, 365 days a year.
- [VCU Ombudsperson](#): the designated confidential and informal dispute resolution practitioner for faculty, staff and students.

Section 10. Rights Under Other Laws

Nothing in this policy abrogates post-adjudication rights as provided by state or federal law (e.g., State Grievance Procedure under Chapter 30 (§ 2.2-3000 et. seq.) of Title 2.2 of the Code of Virginia; or complaint to the Office for Civil Rights of the U.S. Department of Education or the U.S. Equal Employment Opportunity Commission).

Forms

1. VCU Helpline (www.vcuhelpline.com/)

Related Documents

1. [Notice of Nondiscrimination, Equal Opportunity and Affirmative Action](#)
2. [Title IX Sexual Harassment Policy](#)
3. [Sex-Based Misconduct Policy](#)
4. [Duty to Report and Protection from Retaliation Policy](#)
5. [Creating and Maintaining Policies and Procedures Policy](#)
6. [Expectations of Ethical Conduct](#)
7. [Student Code of Conduct](#)
8. [VCU Code of Conduct](#)
9. [Working @ VCU: "Great Place" HR Policies](#)
10. [Progressive Discipline Guidelines](#)
11. [Accessibility and Reasonable Accommodation for Individuals with Disabilities Policy](#)
12. [Faculty Mediation and Grievance Procedure](#)
13. [Students with Disabilities Grievance Procedures](#) (Section 7.01 of the Accessibility and Reasonable Accommodation Policy)
14. [FERPA statement](#)
15. [Employee Mediation and Grievance Procedure](#)

16. DHRM [Policy Standards of Conduct 1.60](#)
17. DHRM [Policy Equal Employment Opportunity 2.05](#)
18. DHRM [Policy Civility in the Workplace 2.35](#)
19. DHRM [Policy Personnel Records Disclosure 6.05](#)
20. Commonwealth of Virginia [Grievance Procedure for State Employees](#), VA Code § 2.2-3003

VCU is committed to the policy of nondiscrimination under the following laws and regulations:

1. [Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 \(2018\) and regulations \(29 C.F.R. Part 1625\)](#)
2. [Age Discrimination Act of 1975, 29 U.S.C. § 6101 and regulations \(29 C.F.R. Part 1626\)](#)
3. [Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, et seq. and regulations \(28 C.F.R. Part 35\)](#)
4. [Equal Pay Act of 1963, as amended, 29 U.S.C. § 206\(d\)](#)
5. [Executive Order 13672, 79 Fed. Reg. 42971 \(Jul. 21, 2014\)](#)
6. [Executive Order 13899, 84 Fed. Reg. 68779 \(Dec. 11, 2019\)](#)
7. [Virginia Executive Order Number One \(2018\)](#)
8. [Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff and regulations \(29 C.F.R. Part 1635 \[2017\]\)](#)
9. [Pregnancy Discrimination Act of 1978, as amended, 42 U.S.C. § 2000e](#)
10. [Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 and regulations \(41 C.F.R. § 60-300 \[2017\]\)](#)
11. [Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 \(2018\) and regulations \(41 C.F.R. § 60-741 \[2017\]\)](#)
12. [Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq. and regulations \(34 C.F.R. Part 100 \[2017\]\)](#)
13. [Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.](#)
14. Title IX of the Education Amendments of 1972, as amended, [20 U.S.C. § 1681](#) et seq. and regulations, [34 C.F.R. § 106.1](#) et seq. (2017)
15. [The Virginians with Disabilities Act, Virginia Code § 51.5-41 \(2013\)](#)
16. [Virginia Fair Employment Contracting Act of 1975, Virginia Code § 2.2-4200 \(2001\)](#)
17. [Virginia Human Rights Act, Virginia Code § 2.2-3900 \(2001\)](#)
18. [Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and regulations \(34 C.F.R. Part 99\)](#)

Revision History

This policy supersedes the following archived policies:

| Approval/Revision Date | Title |
|------------------------------------|--|
| Initial Approval Date: 03/26/2009, | Affirmation of VCU's Equal Opportunity Policy |
| 11/15/2013 | Affirmation of VCU's Equal Opportunity Policy |
| 12/12/2014 | Affirmation of VCU's Equal Opportunity-Interim |
| 5/29/2018 | Preventing and Responding to Discrimination |

FAQ

1. Which offices at the university provide resources that may address my concern?

VCU's Office of Institutional Equity, Effectiveness and Success ("IES") leads, coordinates and supports civil rights compliance for the university community. IES is responsible for addressing concerns regarding violations of this policy, including the coordination of intake and coordination of investigation of discrimination reports and complaints involving faculty, students and third parties. IES also monitors compliance with federal and state laws pertaining to individuals with disabilities. IES is also responsible for actualizing diversity initiatives that foster a welcoming community that supports all individuals at the university. IES partners with many of the departments, units and/or the offices listed below to coordinate and enforce civil rights compliance based on the nature of the parties involved.

[VCU Human Resources](#) provides strategic leadership and coordination of human resources for university employees and managers and may conduct investigations as set forth in this policy. VCU Human Resources Employee Relations also provides policy guidance and confidential assistance, including conflict coaching and mediation, to help resolve employment-related matters.

The offices of faculty affairs in the [Office of the Provost](#) and the [Office of the Vice President for Health Sciences](#) provide strategic leadership and coordination of faculty affairs and faculty-related human resources across the Monroe Park, MCV and VCU-Qatar campuses.

The [Division of Student Affairs](#) serves as a resource for students, parents, faculty and staff and is comprised of the following units: Central Office, Dean of Students, Military Student Services, New Student and Family Programs, Office of Multicultural Student Affairs, Office of Student Conduct & Academic Integrity, Recreational Sports, Residential Life & Housing, Student Accessibility and Educational Opportunity, Student Media Center, Technology Support Services, University Counseling Services, University Student Health Services, University Student Commons and Activities, The Wellness Resource Center, and VCU LEAD.

The [Office of Multicultural Student Affairs](#) assists traditionally underserved and/or underrepresented student populations through advising, support, program development, retention, mentoring and by promoting an appreciation of diversity throughout the campus community.

[Student Accessibility and Educational Opportunity \("SAEO"\)](#) serves VCU students with documented disabilities who are registered for classes on the Monroe Park Campus.

The [Integrity and Compliance Office](#) receives ethics and compliance inquiries and concerns, particularly issues of university-wide significance or impact. ICO provides guidance and support on compliance requirements and self-monitoring. ICO also provides guidance on policy needs, assessment, creation and approval processes.

The university's [Ombudsperson](#) is designated to provide confidential and informal dispute resolution for students and employees. The ombudsperson is an advocate for fairness and is independent of VCU's standard reporting and managerial processes.

The [Division for Academic Success \(“DAS”\)](#) offers disability and academic support services to students in the VCU Health Sciences schools or colleges: College of Health Professions, Dentistry, Medicine, Nursing and Pharmacy.

2. What can be done to address inappropriate behavior that does not constitute discrimination?

Behavior that would not constitute discrimination under this policy still may be inconsistent with university values or other university or departmental standards of conduct and may be addressed through other processes. For example, hostile or derogatory conduct toward a particular culture or class of individuals may be addressed through the employee disciplinary process or may violate the Student Code of Conduct. Employees may also utilize alternative dispute resolution services, such as mediation, ombudsperson activities, facilitated conversations, and conflict coaching. More information regarding these services can be obtained from VCU HR Employee Relations.

3. What are some examples of behavior that would constitute discrimination under this policy?

The three broad categories of unlawful discrimination under this policy are disparate impact, disparate treatment, and discriminatory harassment. These categories involve inequitable and unlawful behavior based on an individual’s protected characteristic or status.

The following are examples of discriminatory practices that could create a disparate impact when not job-related or consistent with business necessity:

- Requiring physical characteristics for employment, such as being a certain height, maintaining a certain weight or passing a physical strength test;
- Using arrest records or criminal backgrounds to screen out applicants for employment; or
- Requiring or prohibiting the wearing of specific articles of clothing.

Disparate Treatment, typically, is intentional discrimination when based on an individual’s protected identity, such as failing or refusing to hire an individual or terminating or removing an individual from employment.

Discriminatory harassment is unwelcome conduct that is severe, pervasive or persistent and objectively offensive based on an individual’s protected identity and may include, but is not limited to the following: slurs, jokes, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work or school performance.

4. What are some examples of pregnancy-related or childbirth-related medical conditions that are protected from discrimination under this policy?

Pregnancy-related or childbirth-related medical conditions include, but are not limited to:

- Disorders directly related to pregnancy, such as preeclampsia (pregnancy induced high blood pressure), placenta previa, and gestational diabetes;
- Symptoms such as back pain;
- Complications requiring bed rest;
- The after-effects of a delivery; and
- Lactation

- Certain adverse actions against a lactating employee, including but not limited to the denial of an adequate time and place to express milk, may be considered sex discrimination under this policy.
- [The Fair Labor Standards Act \(“FLSA”\)](#) requires the university to provide reasonable break time for an employee to express breast milk for nursing children for up to one year after the child’s birth. The FLSA also requires the university to provide employees a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public that may be used to express breast milk. A list of available lactation rooms on the Monroe Park Campus and the Health Sciences campus is [available here](#).

Accommodations for these conditions may be requested as noted in this policy.

5. Are students and employees shielded from the consequences of poor performance or misconduct if they raise an allegation of discrimination or file a discrimination claim with the university or an enforcement agency?

No. Engaging in a protected activity, such as filing a complaint or participating in an investigation, does not give students or employees immunity from disciplinary action for neglect of their job duties, violation of university rules, or other conduct that would otherwise result in adverse consequences. But the university’s policy prohibiting retaliation protects a student or employee from disciplinary or adverse action for the protected activity itself.

6. I am a student having difficulty with my request for an accommodation. What other steps should be taken to resolve a concern regarding denial of an accommodation?

First, refer to “Reasonable Accommodation” in the Definitions section of this policy and to the Reasonable Accommodation section of this policy. If a student believes that the university has denied reasonable accommodation (other than an accommodation for a disability), they should first raise the concern with the instructor, and if no resolution, then the dean. Deans should consult the Office of the Provost as needed. For disability accommodations, the student should raise the concern with the Student Accessibility and Educational Opportunity office or Division for Academic Success as outlined in Section 7.01 of the [Accessibility and Reasonable Accommodation for Individuals with Disabilities Policy](#). Employees may raise concerns with VCU’s [Human Resources Employee Relations](#) office or through their manager.

If the concern is not resolved through any of these steps, individuals can file a report alleging denial of a reasonable accommodation with the university’s ADA/Section 504 Coordinator at (804) 828-1347 or adaservices@vcu.edu.

7. Are employees required to report potential violations of this policy?

VCU expects that all members of our university community will timely report actual or suspected violations of laws, regulations, and policies, as stated in this policy and the university’s [Duty to Report and Protection from Retaliation Policy](#). Managers, human resource officials and other employees with managerial responsibilities have a special duty to recognize and report misconduct. Additionally the university’s policies on [Title IX Sexual Harassment](#) and [Sex-Based Misconduct](#) set forth reporting requirements for “Responsible Employees,” including student employees, when they are acting in their capacity as a university employee.

8. How can my department address underrepresentation in the workforce without engaging in discrimination by considering applicants' protected identities?

Under no circumstances can protected identity (e.g., race, sex, national origin, etc.) be considered in the decision to hire a particular candidate. Departments should engage in active and targeted recruitment of qualified candidates for all open positions so that their applicant pools include women, racial and ethnic minorities, individuals with disabilities, and those protected by virtue of their military status, at least in proportion to their availability in the labor market. Further information is provided in the university's annual Affirmative Action Plans. Please contact IES for more information on VCU's Affirmative Action Plans. [VCU's Human Resources](#) provides leadership and services to recruit, retain and develop an exceptional and diverse workforce. Additional resources for Faculty hiring are available from the Office of Faculty Recruitment and Retention in the Provost's Office or Office of Faculty Affairs on the medical campus.

9. Can a university employee bring a complaint of discrimination under the university's grievance procedures?

No. The university's grievance procedures are not available to faculty or university and academic professionals for complaints of discrimination. Note, however, the state grievance procedure is available for complaints of discrimination specifically for 1) current classified staff, or 2) former classified staff who chose to convert to university and academic professionals and who elect the state grievance procedure. See the section on Other State and University Formal Procedures in this policy.

10. What does it mean to "participate" in an investigation?

Participation in an investigation means providing statements, documents, or otherwise cooperating with an investigation as a complainant, respondent, non-party witness, manager, IES staff member, or a member of any university unit that is providing information for or conducting an investigation. An investigator is required to come to a finding at the conclusion of the investigation based on the available evidence and information, regardless of participation or non-participation by any individual. Employees may be required to participate in an investigation based on the nature of their role in the matter. Students and third parties, however, are strongly encouraged to participate in an investigation.