VIRGINIA MILITARY INSTITUTE
Lexington, Virginia

GENERAL ORDER)
NUMBER 16) 28 February 2024

Discrimination, Harassment, and Sexual Misconduct

1. **Policy.** The Virginia Military Institute 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 based on race, sex, color, national origin, religion, age, veteran status, sexual orientation, pregnancy, genetic information, against otherwise qualified persons with disabilities, or based on any other status protected by law. In pursuit of this goal, any question of impermissible discrimination on these bases will be addressed with efficiency and energy and in accordance with this policy and VMI's Grievance Procedures (Appendix A). VMI's Retaliation Policy, General Order 90, and the Grievance Procedures also address complaints or reports of retaliation against those who have opposed practices prohibited by this policy, those who have filed complaints or reports under this policy, and those who have testified or otherwise participated in enforcement of this policy. Questions regarding discrimination prohibited by Title IX of the Education Amendments of 1972, or other federal law, may be referred to the VMI Inspector General and Title IX Coordinator (collectively "IG"), Alyssa Astphan, 303 Letcher Avenue, 540-464-7086, ig@vmi.edu, or to the U.S. Department of Education's Office for Civil Rights.

2. **Purpose**. The purpose of this policy is to establish clearly and unequivocally that VMI prohibits discrimination, harassment, and sexual misconduct by individuals who are subject to its control or supervision and to set forth procedures by which such allegations will be filed, investigated, and adjudicated.

3. **Applicability**. This policy applies to on-Post conduct involving VMI cadets, employees, faculty, and staff, visitors to Post (including, but not limited to, students participating in camp programs, non-degree seeking students, exchange cadets, and other students taking courses or participating in programs at VMI), and contractors working on Post who are not VMI employees, and to VMI cadets, visiting students, employees, faculty, and staff participating in VMI-sponsored, recognized, or controlled activities off Post. This policy may also apply to off-Post conduct involving VMI cadets. Conduct by cadets in violation of this policy may also be addressed in a manner consistent with other cadet misconduct that is subject to discipline under the Blue Book or as an honor offense. Allegations of violations of this policy should be reported to the IG in accordance with the guidance below and the Grievance Procedures.

4. **Definitions**
   A. **Discrimination** is inequitable and unlawful treatment based on an individual's protected characteristics or statuses -- race, sex, color, national origin, religion, age, veteran status, sexual orientation, pregnancy, genetic information, disability, 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 Institute program or activity. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities.

B. **Harassment** is a form of discrimination in which unwelcome verbal, written, or physical conduct is directed toward an individual on the basis of his or her protected characteristics or statuses, by any member of the Institute community. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.

Harassment violates this policy when it creates a hostile environment, as defined below.

C. **Sexual harassment** is a form of discrimination based on sex. 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. Sexual harassment may also include sex-based harassment directed toward stereotypical notions of what is female/feminine versus male/masculine or a failure to conform to those gender stereotypes.

This policy prohibits the following types of sexual harassment:

1) Term or condition of employment or education. This type of 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 an Institute 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 an Institute program or activity.
2) Hostile environment. Acts that create a hostile environment, as defined below.

D. **Hostile environment** may be created by oral, written, graphic, or physical conduct that is sufficiently severe, pervasive, and objectively offensive that it interferes with, limits, or denies the ability of an individual to participate in or benefit from the Institute's educational 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, pervasive, and objectively offensive 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 a person subjected to the conduct, and (e) the nature of higher education and the Institute's military training program.

E. **Responsible employee** includes all VMI employees other than the following individuals who are designated as confidential employees: The Institute Physician and other medical personnel at the VMI Infirmary, counselors at the Cadet Counseling Center, and the VMI Chaplain. Contractors and their employees working at VMI are not considered responsible employees. A responsible employee must report to the IG all relevant

information received about an incident or conduct that potentially is in violation of this policy as soon as practicable after addressing any immediate needs of the victim of such conduct.

F. **Actual Knowledge** is present when an alleged violation of this policy is reported to the IG, a member of the IG/Title IX coordinator staff, or any responsible employee as defined above.

G. **Sexual misconduct** includes sexual assault, sexual coercion, sexual exploitation, dating violence, domestic violence, and stalking.

1) Sexual assault is non-consensual contact of a sexual nature. It includes any sexual contact when the victim does not or is unable to consent through the use of force, fear, intimidation, physical helplessness, ruse, impairment or incapacity (including impairment or incapacitation as a result of the use of drugs or alcohol, such that a reasonable person would determine that the victim is unable to knowingly consent); intentional and non-consensual touching of, or coercing, forcing, or attempting to coerce or force another to touch, a person's genital area, groin, inner thigh, buttocks or breast; and non-consensual sexual intercourse, defined as anal, oral, or vaginal penetration with any object. The four offenses within the category of sexual assault, as recognized by the FBI's Uniform Crime Reporting (UCR) program are:
   a) **Rape**. The 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 victim.
   b) **Fondling**. The touching of the private parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because his/her temporary or permanent mental incapacity.
   c) **Incest**. Sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by law.
   d) **Statutory Rape**. Sexual intercourse with a person who is under the statutory age of consent as defined in Virginia Code Title 18.2, Chapter 4, Article 7.
2) Consent is knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Silence does not necessarily constitute consent. Past consent to sexual activities, or a current or previous dating relationship, does not imply ongoing or future consent. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred.
3) Sexual coercion means the application of an unreasonable amount of pressure to gain sexual access. Continued pressure after an individual has made clear that he or she does not want to go beyond a certain point of sexual interaction can be coercive. In evaluating coercion, the Institute will consider: (a) frequency of the application of pressure; (b) the intensity of the pressure; (c) isolation of the person being pressured; and (d) duration of the pressure.
4) 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, and that behavior does not meet the definition of sexual assault. Sexual exploitation includes prostituting another person, non-consensual visual or audio recording of sexual activity, non-consensual distribution of photos or other images of an individual's sexual activity or intimate body parts with an intent to embarrass such

individual, non-consensual voyeurism, knowingly transmitting HIV or an STD to another, or exposing one's genitals to another in non-consensual circumstances.

5) 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 victim. The existence of such a relationship will be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence can be a single event or a pattern of behavior that includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
6) Domestic violence is a felony or misdemeanor crime of violence committed: (i) by a current or former spouse or intimate partner of the victim; (ii) by a person with whom the victim shares a child in common; (iii) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; (iv) by a person similarly situated to a spouse of the victim under the laws of the Commonwealth of Virginia; or (v) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family laws of the Commonwealth of Virginia. Domestic violence can be a single event or a pattern of behavior that includes, but is not limited to, sexual or physical abuse.
7) Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (i) fear for his or her safety or the safety of others; or (ii) 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 stalker 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. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling."

5. Retaliation

Any form of retaliation, including intimidation, threats, harassment, and other adverse action taken or threatened against any complainant or person reporting or filing a complaint alleging discrimination, harassment, or sexual misconduct or any person cooperating in the investigation of allegations of discrimination, harassment, or sexual misconduct to include testifying, assisting, or participating in any manner in an investigation pursuant to this policy is strictly prohibited. Allegations of retaliation will be investigated per General Order 90 and the Grievance Procedures. Action is generally deemed adverse if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy. Retaliation may result in disciplinary or other action independent of the sanctions or interim measures imposed in response to the underlying allegations of discrimination, harassment, or sexual misconduct. Retaliation prohibited by General Order 90 includes any harassment, intimidation, threat, or coercion against the IG, an Assistant Title IX Coordinator, or external investigator for the purpose of interfering with his or her job responsibilities.

6. Reporting

A. Conduct allegedly in violation of this policy should be reported promptly by all cadets, employees, and visitors. VMI's IG serves as the Title IX Coordinator and is responsible for overseeing the investigation of all reports of alleged discrimination, harassment, or sexual misconduct in accordance with the Grievance Procedures (See Appendix B for Investigations Flowchart). Except for confidential employees, all employees receiving such reports or complaints must immediately notify the IG and must not undertake any independent efforts to determine whether or not the report or complaint has merit before reporting it to the IG.

B. The VMI Inspector General and Title IX Coordinator is Alyssa Astphan. Alyssa, the Inspector General/Title IX office also includes the Deputy Inspector General/ Title IX Coordinator and a Prevention, Outreach, and Education Coordinator. Several members of the Faculty and Administrative Staff serve as Assistant Title IX Coordinators.

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C. All employees, other than the confidential employees detailed in Section 8 of this policy, who receive information regarding a complaint or report of discrimination, harassment, or sexual misconduct must report any relevant information about the alleged incident to the IG as soon as practicable after addressing the needs of the victim. No VMI employee will undertake any independent efforts to determine whether or not the report or complaint has merit or can be substantiated before reporting it to the IG.

D. Reports made by Cadets: Cadets should report alleged violations of this policy to the IG or a member of her staff, the Commandant or the Assistant Commandant for Cadet Government. Other than reports made to confidential employees in accordance with Section 8 of this policy, reports received by all other employees from cadets must be forwarded to the IG.

E. CEA responsibility: Any member of the CEA receiving a report of alleged discrimination or harassment should report it immediately to the Assistant Commandant for Cadet Government. Upon receiving a report from the CEA, the Assistant Commandant for Cadet Government must notify the IG without delay. Neither the CEA nor the Assistant Commandant for Cadet Government will undertake any independent efforts to determine whether or not the report or complaint has merit or can be substantiated before reporting it to the IG.

F. Reports made by visitors or contractors: Visitors, including visiting students and employees of contractors working on Post, will report alleged violations of this policy

to the IG or a member of the .

G. All members of the VMI community are expected to provide truthful information in any report or proceeding under this policy and the Grievance Procedures. Submitting or providing false or misleading information in bad faith or with a view toward personal gain or intentional harm to another in connection with any report, investigation, or proceeding under this policy and the Grievance Procedures is prohibited and subject to honor charges for cadets or employee discipline under the appropriate policy. This provision does not apply to reports made or information provided in good faith, even if the facts as alleged are not later substantiated by a preponderance of the evidence.

H. All members of the VMI Community may report alleged violations of this policy anonymously through email using the link on the IG's webpage, Complaints, Concerns, Suggestions or by phone (540-464-7702).

7. Criminal Reporting

If a victim is in immediate danger or needs immediate medical attention, contact 911 (blue emergency lights on post connect directly to 911) or the VMI Police (540-463-9177). Some conduct in violation of this policy may also be a crime under Virginia law. Individuals are strongly encouraged to report incidents of sexual misconduct to law enforcement, even if the reporting individual is not certain if the conduct constitutes a crime. VMI will provide assistance to victims in notifying law enforcement if the victim so chooses. Crimes involving minors must be reported to law enforcement.

8. Confidentiality and Anonymous Reporting.

Institute officials have varying reporting responsibilities under state and federal law. If a victim of conduct in violation of this policy or another reporting party wishes to make a confidential report, it must be made to the Institute Physician and other medical personnel at the VMI Infirmary, counseling personnel at the Cadet Counseling Center, or the VMI Chaplain. These individuals will encourage victims to make a report to the VMI Police, the IG, or local law enforcement. Other Institute officials receiving reports of conduct in violation of this policy are responsible employees and, thus, mandated reporters, but will maintain privacy to every extent possible without compromising the Institute's Ability to investigate and respond in accordance with applicable law and regulations.

Notwithstanding a complainant's request that law enforcement not be informed of an incident, the Institute is required pursuant to Virginia Code § 23.1-806 to report information about an incident to law enforcement if necessary to address an articulable and significant threat posing a health or safety emergency, as defined by the implementing regulations of the Family Educational Rights and Privacy Act, 34 C.F.R. § 99.36, as detailed in the Sexual Violence Threat Assessment provisions of the Grievance Procedures (Appendix A). The IG may be limited in the ability to investigate an anonymous report unless sufficient information is furnished to enable the IG to conduct a meaningful and fair investigation. If the complainant requests confidentiality and does not file a signed formal complaint with the IG, the Institute also may be limited in the actions it is able to take and its ability to respond.

9. Timely Warnings

VMI is required by federal law to issue timely warnings for reported incidents that pose a substantial threat of bodily harm or danger to members of the VMI community. The Institute will ensure, to every extent possible, that a victim's name and other identifying information is not disclosed, while still providing enough information for members of the VMI community to make decisions to address their own safety considering the potential danger.

10. Emergency Removal

A respondent may be removed from Post or other education program or activity on an emergency basis, provided that VMI undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any cadet or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. The VMI Threat Assessment Team will decide whether a situation warrants an emergency removal.

11. Sexual Misconduct Survivor/Victim Procedures and Services

A. VMI will assist sexual misconduct survivors/victims in a supportive manner, implementing the procedures set out herein. Because of 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.

B. Recommended procedure for anyone who has experienced sexual misconduct:

1) Go to a safe place.

2) For safety and confidential care, report promptly to the VMI Infirmary, Stonewall Jackson Hospital, or the nearest medical facility/emergency room. You may request a Sexual Assault Advocate if one is not provided. Physical evidence may be usable if proper procedures are followed for evidence collection within 96 hours of the assault.

3) Contact a trusted friend or family member. For professional and confidential counseling support, contact Cadet Counseling (540-464-7667) or Project Horizon. Among other services, Project Horizon offers survivors a 24-hour Hotline (540-463- 2594), emergency shelter, crisis intervention, counseling, applicable referrals, and court advocacy.

4) It is your right to have evidence collected and retained anonymously by law enforcement while you consider whether to pursue criminal charges. Evidence preservation is enhanced in the following ways:

a. Do not wash your hands, bathe, or douche. Do not urinate, if possible.

b. Do not eat, blow your nose, drink liquids, smoke, or brush your teeth if oral contact took place.

c. Keep the clothing worn when the assault took place. If you change clothing, place the worn clothing in a paper bag (evidence deteriorates in plastic).

d. Do not destroy any physical evidence that may be found in the vicinity of the assault by cleaning or straightening the location of the crime. The victim

should not clean or straighten the location of the crime until law enforcement officials have had an opportunity to collect evidence.

e. Tell someone all the details you remember or write them down as soon as possible.
f. Maintain text messages, pictures, online postings, video and other documentary or electronic evidence that may corroborate a complaint.

C. Complainants should report as soon as possible to maximize VMI's ability to respond. Failure to report promptly could result in the loss of relevant evidence and impair VMI's ability to adequately respond to the allegations.
D. The victim will have the right to file a complaint with law enforcement and the option to be assisted by the IG and other Institute authorities in notifying the proper law enforcement authorities of the alleged sexual misconduct.
E. VMI officials (excluding VMI Police) receiving reports of a possible sexual misconduct will follow the procedures listed in VMI's Sexual Misconduct Response Protocol located in the Commandant's Office and Officer in Charge Room. VMI Police will follow departmental procedures.
F. Resources for Victims of Sexual Misconduct
   1) Any cadet or visiting student who reports sexual misconduct to the IG, Officer in Charge, Institute Physician, Cadet Counseling, or VMI Chaplain will receive information outlining resources and options. VMI Police protocol includes coordination with Project Horizon.
   2) The IG or an Assistant Title IX Coordinator will advise victims of the resources available with Project Horizon and encourage use of these resources. Any individual who is reported to be the victim of sexual misconduct will receive from the IG or his staff information on contacting Project Horizon and services available through Project Horizon's memorandum of understanding with VMI. VMI Cadets and employees may utilize Project Horizon services including confidential crisis intervention, counselling, information and referral, accompaniment to medical and legal services as requested, and transportation if needed.
   3) Cadets and visiting students will be assisted with available options for changing academic classes, and transportation, parking, work, and living arrangements after alleged sexual misconduct. Safety arrangements such as no-contact orders and escorts are also available as needed.

12. Inspector General/Title IX Coordinator Oversight

The IG oversees the investigation and resolution of all reports by cadets, visiting students, faculty, and administrative staff of alleged discrimination, harassment, or sexual misconduct in accordance with the Grievance Procedures. Reports of violations of this policy by the IG should be made to the Superintendent.

13. Supportive Measures

The Institute will offer supportive measures, as appropriate, to both the complainant and the respondent during the investigation and resolution of complaints of discrimination, harassment, or sexual misconduct, as well as, any law enforcement investigation, to address the safety of the complainant, the respondent, or any member of the VMI community, and to avoid retaliation. If, in the judgment of the IG or other VMI leadership, the safety or well- being of any member of the VMI community may be

jeopardized by the presence on-Post of the complainant or the respondent, the IG will notify the Threat Assessment Team. VMI will seek the consent of the complainant and the respondent before taking supportive measures to the greatest degree possible. Supportive measures will be individualized and may include, but are not necessarily limited to, changes in classroom schedules or barracks arrangement, no-contact orders between the parties, bar from Post, escorts on Post, referral and coordination of counseling and health services, and modification of work, academic, or training requirements. The Institute may temporarily reassign or place on administrative leave an employee alleged to have violated this policy. In such situation the employee will be given the opportunity to meet with the Chief of Staff prior to such action being imposed, or as soon thereafter as reasonably possible, to show cause why the action should not be implemented.

14. Sanctions

If it is determined that conduct in violation of this policy has occurred, sanctions will be determined in accordance with the Grievance Procedures. 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 conduct in violation of this policy.

Sanctions may include penalties up to and including dismissal for cadets and termination for employees. In addition to sanctions that may be imposed on an individual found in violation of this policy, the Institute will take steps to prevent recurrence of any discrimination, including sexual misconduct, and to remedy discriminatory effects on the complainant and others, if appropriate.

15. Cadet Amnesty

In order to facilitate reporting, the Institute may provide amnesty to a cadet who reports an incident in violation of this policy, directed toward that cadet or another cadet, for disciplinary infractions, occurring at the time of the incident. Amnesty may not be offered if (1) the disciplinary infraction places or placed the health or safety of any other person at risk or (2) the cadet who committed the disciplinary infraction previously has been found to have committed the same disciplinary infraction. If amnesty is provided, no conduct proceedings or conduct record will result for disciplinary infractions. Amnesty for disciplinary infractions also may be offered to cadets who are witnesses in an investigation under this policy, who intervene to help others before a violation of this policy occurs, or who receive assistance or intervention. Abuse of amnesty requests may result in a decision by the Commandant not to extend amnesty to the same cadet repeatedly. Infractions that constitute honor offenses will not be considered policy violations for which amnesty may be offered under this provision.

16. Education and Awareness

A. VMI has developed the VMI REACH OUT app for safety and security information. The home page of the app displays icons that direct users to information, reporting contacts, and services they may need. The app can be downloaded free of charge from the Apple App Store and from Google Play. Search for “REACH OUT College Edition” app, download it, and select “Virginia Military Institute” when prompted. For more information about sexual misconduct

and resources available in the local community, please visit the Project Horizon website at www.projecthorizon.org.

B. The IG's Office coordinates an education, training, and awareness program on discrimination, harassment, and sexual misconduct for cadets and employees, including training on primary prevention, bystander intervention, risk reduction, consent, and other pertinent topics.

17. Academic Freedom and Free Speech

This policy does not allow curtailment or censorship of constitutionally protected expression, which is valued in higher education and by the Institute. In addressing all complaints and reports of alleged violations of this policy, the Institute will take all permissible actions to ensure the safety of cadets and employees while complying with any and all applicable legal authority regarding free speech rights of cadets 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.

FOR THE SUPERINTENDENT:

John M. Young
Colonel, Virginia Militia
Chief of Staff

DIST: E, Cadets

Appendix A:

Grievance Procedures

Purpose: These procedures provide a prompt and equitable resolution for complaints or reports of discrimination based on race, sex, color, national origin, religion, age, veteran status, sexual orientation, pregnancy, genetic information, against otherwise qualified persons with disabilities, or based on any other status protected by law, including complaints alleging harassment or sexual misconduct prohibited by General Order (GO) 16. Any person who believes he or she has been subjected to discrimination or harassment on any of these bases may file a complaint with the Institute as outlined in these procedures. These procedures also address any complaints or reports of retaliation against individuals who have filed complaints or reports of discrimination, who have opposed discriminatory practices, and those who have testified or otherwise participated in investigations or proceedings arising from complaints or reports of discrimination, harassment, or sexual misconduct. Questions regarding discrimination prohibited by Title IX of the Education Amendments of 1972, or other federal law, may be referred to the VMI Inspector General and Title IX Coordinator (IG), Alyssa Astphan, 303 Letcher Avenue, 540-464-7086, ig@vmi.edu, or to the U.S. Department of Education's Office for Civil Rights.

Complaints and Reporting
Complaints and reports of discrimination, harassment, and sexual misconduct should be made to VMI's Inspector General ("IG") who serves as the Institute's Title IX Coordinator. The IG is responsible for overseeing the investigation of all reports of alleged discrimination, harassment, or sexual misconduct and is trained to help individuals who file complaints and those against whom complaints are filed find resources, to investigate reported incidents, and to respond appropriately to conduct alleged to be in violation of GO 16. Individuals receiving reports or complaints of discrimination, harassment, or sexual misconduct should notify the IG as soon as practicable after addressing the immediate needs of the victim and must not undertake any independent efforts to determine whether or not the report or complaint has merit before reporting it to the IG.

The VMI Inspector General and Title IX Coordinator is Alyssa Astphan. The Inspector General/Title IX office also includes the Deputy Inspector General/ Title IX Coordinator and a Prevention, Outreach, and Education Coordinator. Several members of the Faculty and Administrative Staff serve as Assistant Title IX Coordinators.

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Reports of conduct in violation of GO 16 should be made as soon as practicable after addressing the immediate needs of the victim and may be made orally or in writing, including by electronic mail directly to the IG. The IG also will accept, without comment or need for explanation, a sealed envelope addressed to the "Inspector General." The envelope, at a minimum, need only contain a piece of paper with the name and room number or phone number of the individual wishing to make a report. Individuals also can report incidents anonymously online through the IG webpage: (http://www.vmi.edu/issuesandconcerns) or by leaving an anonymous message with the IG's hotline (540-464-7702). With all reports other than those made anonymously, the reporting individual will be contacted promptly for an interview with a member of the Inspector General's staff or an external investigator when applicable.

Notwithstanding the forgoing, individuals who believe they have been the subject of conduct in violation of GO 16 are encouraged to make detailed written statements of the facts, including the name(s) of the offending individual(s) and any witness(es), promptly after an incident.

The Role of the IG

The IG and the Office of the IG are charged with coordinating the Institute's compliance with federal civil rights laws. The IG does not serve as an advocate for either the complainant or the respondent. The IG will explain to all parties the rights and procedures outlined in these procedures. As appropriate, the IG will provide all parties with information about obtaining medical and counseling services, making a criminal report, receiving advocacy services including those offered by Project Horizon, and guidance on other Institute and community resources. The IG will offer to coordinate with other VMI leadership, when appropriate, to implement supportive measures as described below. The IG will explain to all parties the process of a prompt, adequate, reliable, and impartial investigation, including the opportunity for both complainant and respondent to identify witnesses and provide other evidence. The IG will explain to all parties both the initial hearing process in front of a decision maker and the appeals hearing process in front of an appeals officer. The IG will explain to all parties the right to have a personal advisor of their choice present throughout the process, as well as the right to have VMI assign an advisor to either party for the initial hearing process if needed. The IG will explain to each party the right to review and respond to the allegations and all evidence collected during the IG investigation. The IG will also explain to the parties and witnesses that retaliation for reporting alleged discrimination, harassment, or sexual misconduct, or participating in an investigation of an alleged violation, is strictly prohibited and that any retaliation should be reported immediately and will be promptly addressed per GO 90.

Explanation of Sexual Misconduct Rights and Options

When a cadet or VMI employee reports that he or she has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off Post, the cadet or VMI employee will be provided an explanation of rights and options, which will

include:

1. Procedures victims should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred, including information about:
   A. The importance of seeking medical attention and of the collection and preservation of evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protective order;
   B. How and to whom the alleged offense should be reported;
   C. Options about the involvement of local law enforcement and the VMI Police, including the victim's option to:
      1) Notify proper law enforcement authorities, including local law enforcement and/or the VMI Police;
      2) Be assisted by VMI staff in notifying law enforcement authorities, if the victim so chooses; and
      3) Decline to notify such authorities; and
   D. The rights of victims and VMI's responsibilities regarding no contact orders, restraining orders, protective orders, or similar orders;

2. Information about how the Institute will protect the confidentiality of victims and other parties, including how the Institute will:
   A. Complete publicly available recordkeeping, including reporting and disclosures required by the Clery Act, without the inclusion of personally identifying information about the victim;
   B. Maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the Institute to provide the accommodations or protective measures; and
   C. Ensure confidentiality of investigative files as education records protected by the Family Educational Rights and Privacy Act (FERPA), including that the process for the Sexual Violence Threat Assessment in accordance with Virginia Code § 23.1-806 could, if the incident poses to members of the VMI community a health or safety emergency as defined by the FERPA regulations, lead to disclosure of personally identifying information to the law enforcement agency that would be responsible for investigating the incident and other appropriate parties whose knowledge of the information is necessary to protect the health and safety of the victim or other individuals.

3. Notification of existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the Institute and in the local community;

4. Options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures, regardless of whether the victim chooses to report the crime to VMI police or local law enforcement; and

5. The procedures for VMI investigation, adjudication, and disciplinary action, including the right to decline to participate in a VMI investigation.

Criminal Reporting and Coordination
The IG will make all complainants aware of the right also to file a complaint with the VMI Police or local law enforcement and will encourage accurate and prompt reporting when the complainant elects to report. If a victim of sexual assault, dating violence, domestic violence, or stalking is physically or mentally incapacitated for at least ten (10) calendar days, and thereby unable to report the incident to law enforcement, then the IG will make such report. VMI will comply with all requests by the VMI Police Department or local law enforcement for cooperation in investigations. Such cooperation may require the IG to temporarily suspend the fact-finding aspect of a GO 16 investigation detailed in the procedures below while the VMI Police or the appropriate law enforcement agency conducts a criminal inquiry.

Confidentiality, Anonymity, and Requests Not to Pursue GO 16 Investigation
Institute officials have varying reporting responsibilities under state and federal law. If a victim of conduct in violation of this policy or another reporting party wishes to keep a report confidential, it must be made to the Institute Physician and other medical personnel at the VMI Infirmary, counseling personnel at the Cadet Counseling Center, or the VMI Chaplain. These individuals will encourage victims to make a report to the VMI Police, the IG, or local law enforcement. Other Institute officials receiving reports of conduct in violation of this policy are responsible employees and, thus, mandated reporters, but will maintain privacy to every extent possible without compromising the Institute's ability to investigate and respond in accordance with applicable law and regulations. The IG may be limited in the ability to investigate an anonymous report unless sufficient information is furnished to enable the IG to conduct a meaningful and fair investigation.

If the complainant requests confidentiality and does not sign a formal written complaint, the Institute may be limited in the actions it is able to take and its ability to respond while respecting the request. The complainant will be asked to sign a statement stating a desire not to sign a formal written complaint. Notwithstanding a complainant's request that local law enforcement not be informed of an incident, the Institute is required pursuant to Virginia Code § 23.1-806 to report information about an incident to local law enforcement if necessary to address an articulable and significant threat posing a health or safety emergency, as defined by the implementing regulations of the Family Educational Rights and Privacy Act (FERPA), 34 C.F.R. § 99.36, and as detailed in the Sexual Violence Threat Assessment provisions, below.

Sexual Violence Threat Assessment

1. Upon receipt of any report of sexual violence, defined as a physical sexual act perpetrated against a person’s will or where a person is incapable of giving consent, that is alleged to have occurred (i) against any VMI cadet; or (ii) on Post, in or on a VMI building or property, or on public property that is on Post or immediately adjacent to and accessible from Post, the IG will promptly inform a review committee of the report, including personally identifying information. The review committee will be comprised of, at a minimum, the IG, the Chief of the VMI Police, and the Commandant of Cadets, or their designees. The review committee may consult other VMI officials depending on whether the accused individual is a cadet, faculty, or staff member and the circumstances of the report. The review committee will be advised by VMI counsel.

2. Within 72 hours of receipt of the report from the IG, the review committee will meet to review the information and will continue to meet as necessary as new information becomes available. If the criteria in Paragraph 1 are met, the review committee will convene regardless of whether or not the victim has notified the VMI Police or local law enforcement or whether or not the victim has requested that VMI proceed with a GO 16 investigation.

3. The review committee may obtain law-enforcement records and criminal history record information as provided in Virginia Code § 19.2-389 and § 19.2-389.1, health records as provided in Virginia Code § 32.1-127.1:03, available conduct or personnel records, and known facts and circumstances of the reported incident of sexual harassment or sexual misconduct and other evidence known to VMI, including the VMI Police, and local law enforcement. The review committee will be considered to be a threat assessment team established pursuant to Virginia Code § 23.1-805 for purposes of (i) obtaining criminal history record information and health records and (ii) the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 *et seq.*) The review committee will comply with the Family Educational Rights and Privacy Act in conducting its review.

4. In addition to the available information detailed in Paragraph 3, above, the review committee will consider factors that suggest there is an increased risk of the accused individual committing additional acts of sexual misconduct or other violence, including, but not limited to:
   A. Other sexual misconduct complaints about the same individual;
   B. Prior arrests or reports of misconduct at another institution or a history of violent behavior;
   C. Threats of further sexual misconduct against the reporting individual or others;
   D. A history of failing to comply with a no-contact order issued by Institute officials;
   E. Allegations of multiple perpetrators in the same incident;
   F. Use of physical violence in the reported incident or a prior incident. Examples of physical violence include, but are not limited to, hitting, punching, slapping, kicking, restraining, or choking;
   G. Reports or evidence of a pattern of perpetration, including a pattern of the accused individual using alcohol or drugs to facilitate sexual misconduct or harassment;
   H. Use of a weapon in the reported incident or a prior incident;
   I. A victim under the age of 18 or who is significantly younger than the accused individual;

   The review committee will also consider whether means exist to obtain evidence other than investigation by law enforcement or a GO 16 investigation such as security camera footage, eyewitness reports from security or guard personnel, or physical evidence.

5. If based on a consideration of all factors, the review committee determines that there is a significant and articulable threat to the health or safety of one or more individuals

and that disclosure of the information to local law enforcement, including personally identifying information, is necessary to protect the health and safety of one or more individuals, the Chief of the VMI Police will immediately disclose such information to the law-enforcement agency that would be responsible for investigating the incident, for the purpose of investigation and other actions by law enforcement. If the review committee cannot reach a consensus, the Chief of the VMI Police may make the threat determination. Upon any disclosure to law enforcement under this paragraph, the IG will notify the victim that such disclosure is being made. The provisions of this paragraph will not apply if the law enforcement agency responsible for investigating the alleged incident is located outside the United States.

6. If information is disclosed to law enforcement under Paragraph 5 or if the responsible for handling VMI response to incidents of sexual violence and VMI will review committee determines that sufficient factors exist to proceed with a GO 16 investigation, despite the stated desires of the victim for confidentiality or not to proceed with an investigation, the IG will proceed with a full investigation under these procedures. In those situations, the IG will notify the victim that VMI is overriding the victim's requests for confidentiality and not to sign a formal written compliant. Other than the disclosure under Paragraph 5, if made, the information will only be shared with individuals who are ensure that any information maintained by VMI is maintained in a secure manner.

7. If the reported incident would constitute a felony violation of Article 7 (§ 18.2-61 *et seq*.) of Chapter 4 of Title 18.2 of the Code of Virginia, as determined by the Chief of the VMI Police or any other member of the review committee, the Chief of the VMI Police will inform other members of the review committee and will notify the attorney for the Commonwealth or other prosecutor responsible for prosecuting the incident and provide information received without disclosing personally identifying information, unless such information was disclosed to a law-enforcement agency pursuant to Paragraph 5.

8. At the conclusion of the Sexual Violence Threat Assessment, the IG and the Chief of the VMI Police will 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 will be maintained under applicable state and federal law.

Supportive Measures

The Institute will offer supportive measures, as appropriate, to both the complainant and the respondent during investigations of alleged violations of this policy and the resolution process and any law enforcement investigation, to address the safety of the complainant, the respondent, or any member of the VMI community, and to avoid retaliation. If, in the judgment of the IG or other VMI leadership, the safety or well-being of any member of the VMI community may be jeopardized by the presence on-Post of the complainant or the respondent, the IG will notify the Threat Assessment Team. VMI will seek the consent of the complainant and the respondent before taking supportive measures to the greatest degree

possible. Supportive measures will be individualized and may include, but are not necessarily limited to, changes in classroom schedules or barracks arrangement, no-contact orders between the parties, bar from Post, escorts on Post, referral and coordination of counseling and health services, and modification of work, academic, or training requirements. The Institute may temporarily reassign or place on administrative leave an employee alleged to have violated GO 16. In such situation, the employee will be given the opportunity to meet with the Chief of Staff prior to such action being imposed, or as soon thereafter as reasonably possible, to show cause why the action should not be implemented.

Timely Warnings

VMI is required by federal law to issue timely warnings for reported incidents that pose a substantial threat of bodily harm or danger to members of the VMI community. The Institute will ensure, to every extent possible, that a victim's name and other identifying information is not disclosed, while still providing enough information for members of the VMI community to make decisions to address their own safety in light of the potential danger.

Coordination with the Cadet Equity Association

As the Institute's Title IX Coordinator, the IG is responsible for overseeing all complaints of discrimination, harassment, and sexual misconduct and identifying and addressing any pattern or systemic problems that arise during the review of such complaints. The Cadet Equity Association (CEA) is charged with monitoring and enforcing a Post-wide climate of respect and equitable treatment within the Corps of Cadets.

Any member of the CEA receiving a report of alleged discrimination or harassment should report it without delay to the Assistant Commandant for Cadet Government/Assistant Title IX Coordinator. The Assistant Commandant for Cadet Government as an Assistant Title IX Coordinator will, upon receipt of the complaint by the CEA, notify the IG without delay. Neither the CEA members nor the Assistant Commandant for Cadet Government will undertake any independent efforts to determine whether or not the report or complaint has merit before reporting it to the IG. The Office of the IG will conduct all investigations of allegations of discrimination, harassment, or sexual misconduct in violation of GO 16 in accordance with the procedures below.

Investigation and Resolution

Upon receiving information concerning alleged violations of GO 16, the IG will determine whether the conduct constitutes a possible violation of GO 16 and whether VMI has jurisdiction to conduct an administrative investigation into the incident. Jurisdiction exists under the following three conditions: 1) the conduct occurred against a person in the United States, 2) the conduct occurred during a VMI education program or activity, and 3) at the time of filing a formal complaint, the complainant must be participating in or attempting to participate in a VMI education program or activity. An education program or activity includes locations, events, or circumstances over which VMI exercised substantial control over both the respondent and the context in which the incident occurred, and also includes any building owned or controlled by a cadet organization that is officially recognized by VMI. Additionally, for jurisdiction relating to sexual harassment, if the conduct alleged does not rise to the level of severe, pervasive, and objectively offensive even if the allegations are

assumed to be true, then dismissal of the investigation under GO 16 is mandatory. This determination likely will occur after an investigation has begun.

If the IG determines that VMI does not have jurisdiction over the incident, the allegation must be dismissed pursuant to Title IX, but may be adjudicated through GO 16 Grievance procedures or pursuant to other VMI policies, including but not limited to in accordance with GO 13 or GO 17. Sexual harassment conduct that is determined not to be severe, pervasive, and objectively offensive, as defined by Title IX of the Civil Rights Act of 1964 as amended (Civil Rights Act), may be addressed under these or other policies.

The complainant has the right to appeal the IG decision to dismiss the allegation per the appeals procedures explained below. The IG may also dismiss an allegation if the complainant requests in writing to withdraw a formal complaint, the respondent is no longer enrolled or employed by VMI, or if specific circumstances prevent VMI from gathering evidence sufficient to reach a determination.

Once a formal written complaint is signed by a complainant or the IG alleging violations to GO 16, there are two possible methods for investigating, adjudicating, and resolving the alleged complaint: informal and formal resolution. The IG will explain the informal and formal procedures to both the complainant and the respondent, if known. The complainant and the respondent have the option to proceed under an informal resolution process. Both parties must voluntarily sign a written request to enter into an informal resolution process. This process is voluntary and either party can terminate their participation in the process and request a formal resolution at any time. In all cases, VMI will ensure there is no actual conflict of interest or bias among officials involved in the investigation and resolution of complaints to include the IG, Assistant Title IX Coordinators, Decision Makers, Appeals Officers, and Informal Resolution Facilitators. VMI will also strive to avoid even the appearance of conflict of interest or bias in all cases.

1. **Informal Resolution Process**
   A. Only after a formal complaint has been filed, the complainant and the respondent can request an informal resolution process to address the allegation. Both parties must provide their voluntary consent in writing to participate in the informal process. Either party can withdraw from the informal process at any time. Prior to commencing an informal resolution process, the IG will provide both parties with written notice of the allegations and describe the informal process. This written notice must include a statement that either party can withdraw from the informal process and resume a formal process at any time prior to a resolution being reached. The IG will also advise both parties that they are allowed to have one advisor of their choice participate in the process if they so choose.

   B. The Informal Resolution Process cannot be utilized when the complainant is a student and the respondent is an employee.

   C. Upon commencing the informal resolution process, the IG will assign an Informal Resolution Facilitator to oversee the process. This Informal Resolution Facilitator will be a member of the Institute staff who has received formal training on being a

resolution facilitator. The Informal Resolution Facilitator will work with the complainant and the respondent in order to mediate a resolution that is satisfactory to both parties. Any resolution through the informal process must adequately address the concerns of the complainant, as well as the rights of the respondent and the responsibility of the Institute to prevent, address, and remedy alleged violations of GO 16. Informal resolution remedies might include providing training, providing counseling to an individual whose conduct, if not ceased, could rise to a higher level of policy violations, confidential briefing of the respondent's work supervisor, use of penalties through the cadet governance system, use of penalties through the Human Resources Department, or other methods deemed appropriate by the facilitator. Informal resolutions will be reviewed and approved by the IG. All parties will be provided written notification of the resolution of the complaint through the informal process.

D. There will be no right of appeal afforded to the complainant or the respondent following the completion of an informal resolution process.

2. **Formal Resolution Process and Decision Maker Hearing**

A. A formal complaint is a physical or electronic document that describes the facts alleged and is signed by an alleged victim of a GO 16 policy violation or the IG. At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in a VMI education program or activity, including as an employee. The IG may also sign a formal complaint based on several factors to include the severity of the conduct alleged, the risk that the conduct may be repeated, multiple reports of serious misconduct against the same respondent, and the availability of evidence. The complaint 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 VMI office, or a state or federal agency for the same offense.

B. Once a formal complaint is filed, the respondent will be provided a copy of the complaint and written notice of (i) the identities of all involved parties; (ii) the specific section of the Blue Book or applicable policies allegedly violated; (iii) the precise conduct allegedly constituting the potential violation; and (iv) the date, or a reasonable approximate date, and location of the alleged incident. This notice will also include a statement that the respondent is presumed not responsible and that a determination of responsibility will not be made until the conclusion of the grievance process. Such written notice will be provided in advance of any interview of the respondent with sufficient time to prepare for meaningful participation. If the scope of the investigation expands, the IG will issue a supplemental written notice providing additional details and will provide additional time to the respondent to prepare a response before any initial interview occurs regarding those additional charges.

C. If more than one respondent is involved in the alleged violations of GO 16, then the complainant must file a separate formal complaint against each respondent. The IG may choose to consolidate the cases once the separate complaints are filed.

D. During the investigation, all parties will be provided equal opportunity to present witnesses, including both fact and expert witnesses, together with other inculpatory and exculpatory evidence. All parties will have the same opportunity to review and

respond to evidence obtained during an investigation.

E. The IG will consider whether supportive measures and involvement of other VMI leadership is appropriate. The IG also will confirm that the matter involves an alleged violation of GO 16, thereby conferring jurisdiction on the Office of the IG. If the IG determines that the Office of the IG does not have jurisdiction, the IG will offer to assist the complainant and, as appropriate, the respondent, in finding appropriate on-Post and off-Post resources to address the issues.

F. The IG will conduct a prompt, adequate, reliable, and impartial fact-finding investigation of the complaint. Only the IG, a trained investigator assigned to the Office of the IG, or a trained external investigator will conduct the investigation. All investigations of complaints alleging violations of GO 16 will be overseen by the IG, except as indicated below. Investigations will be transparent to the complainant and the respondent. The IG will assign the investigator, which may include the use of an external investigator if deemed appropriate. Once an investigator is assigned, the complainant and the respondent will be notified and will have three (3) business days from notification to file a written statement claiming that an investigator likely has a conflict of interest or will be biased. The statement must include details regarding why possible bias or a conflict of interest is suspected. If a bias or conflict-of-interest claim is reasonable, the IG will select a replacement for the applicable investigator. If the IG is suspected of possible bias or conflict of interest, then an external investigator chosen by the Superintendent will conduct the investigation and the VMI Chief of Staff will oversee the investigation.

G. Only evidence that is relevant to the allegations in the complaint will be considered at any stage of the process. "Relevant" evidence and questions refer to any questions and evidence that tends to make an allegation in the complaint more or less like to be true.

H. Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the formal complaint. It will include any: 1) Evidence that is relevant, even if that evidence does not end up being relied upon by VMI in making a determination regarding responsibility; and 2) inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

I. The complainant and the respondent may designate an advisor of their choice to accompany him or her at any meeting or proceeding during the formal investigation. The role of such advisors will be limited to advice and consultation. Neither the advisor for the complainant nor the advisor for the respondent will be permitted to question witnesses, raise objections, or make statements or arguments at any meetings or proceedings during the investigation. If either party has retained legal counsel, the party must immediately notify the IG of such representation. The role of counsel for the parties will be limited to advice and consultation with the attorney's client. The legal counsel will not be permitted to question witnesses, raise objections, or make statements or arguments to the IG or external investigator when applicable. If either party does not choose to have an advisor of his/her choice, the IG will assign an advisor to that party in order to participate in the initial hearing phase of the process.

J. The IG will provide written notice to the parties and any witnesses of any

interview, meeting, or hearing that the individual is expected to attend. This notice will allow sufficient time for the party to prepare to participate and will include the date, time, location, purpose, and participants of the meeting.

K. The IG or external investigator when applicable, will prepare a written report of the fact- finding investigation. The IG or external investigator will provide a draft copy of this written report along with a copy of all evidence gathered during the investigation to both parties and their advisors in electronic format. The parties will have ten (10) business days to submit a written response to the IG or external investigator. Upon finalizing the investigative report, the IG or external investigator will send a copy of the final report in electronic format to the parties and their advisors at least ten (10) business days prior to the hearing. The IG or external investigator will provide a copy of the final report and a copy of all evidence gathered during the investigation to the Decision Maker who will be overseeing the hearing.

L. The Decision Maker will be a member of the Institute staff who has received formal training on being a decision maker and overseeing a student conduct hearing. Upon receiving an investigative report from the IG or external investigator, the Decision Maker will notify all parties and their advisors of the date, time, and location of the hearing. The Decision Maker, with assistance from the IG, will also notify all witnesses involved of the date, time, and location of the hearing. The hearing will typically be scheduled within fifteen (15) business days of the Decision Make's receipt of the investigative report. If extension beyond fifteen (15) business days is necessary, all parties will be notified of the expected timeframe. If either the complainant or the respondent suspects that the Decision Maker could be biased or have a conflict of interest, then that party has three (3) business days from notification of the name of the Decision Maker to file a written statement claiming that the Decision Maker likely will be biased or has a conflict of interest. The statement must include details regarding why possible bias or a conflict of interest is suspected. If a bias or conflict-of-interest claim is reasonable, the VMI Chief of Staff will select a replacement Decision Maker.

M. The Decision Maker will convene a live hearing concerning the formal complaint involving all parties, their advisors, and all witnesses. This live hearing will be recorded via video or audio or transcribed by a licensed court reporter. While the hearing will be live, either party can request a separate room where they will have the technology to simultaneously see and hear the proceedings.

N. The Decision Maker will preside over the hearing, including the presentation of evidence, the questioning of witnesses, and the cross-examination of witnesses by each party's advisor. The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the Institute will select an advisor to serve in this role for the limited purpose of conducting the cross- examination at no fee or charge to the party. The decision-maker cannot draw an absence from the live hearing or refusal to answer cross-examination or other questions. The Decision Maker will determine the relevancy of questions and explain during the hearing any decision not to permit a question. Questions about the past sexual history or sexual character of a party to the complaint, complainant, or respondent, with anyone other than each other, will not be admissible. Notwithstanding the above, demonstration of pattern, repeated, and/or predatory behavior by the respondent, in the form of previous findings in any Institute or judicial proceeding will be admissible. The parties

will be notified in advance of the hearing if any information concerning prior conduct is deemed admissible.

O. Each party must be given the opportunity to participate in the live hearing. If a party refuses or waives its right to participate in the live hearing, the Decision Maker may still proceed with the live hearing in the absence of a party and may reach a determination of responsibility in his or her absence, including through any evidence gathered that does not constitute a "prior statement" by that party. A recorded verbal or written statement be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement does not include a document, audio recording, audiovisual reading, or digital media, including but not limited to text messages, emails, or social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint.

P. The advisor is not prohibited from being a witness in the matter. If a party does not Attend the live hearing, the party's advisor may appear and conduct cross-examination on his or her behalf. If neither a party nor their advisor appears at the hearing, VMI will provide an advisor to appear on behalf of the non-appearing party.

Q. VMI, and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of GO 16 has occurred. This burden does not rest with either party, and either party may decide not to share his or her account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from VMI and does not indicate responsibility.

R. VMI cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information.

S. The Decision Maker will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove or disprove the allegations).

T. Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from retaliation.

U. After the hearing, the Decision Maker will issue within ten (10) business days a written determination of responsibility based on the preponderance of evidence standard of evidence. The "preponderance of evidence" standard requires that the weight of the evidence, in totality, supports a finding that it is more likely than not that the alleged misconduct occurred. The Decision Maker will consider only the evidence that is directly related to the allegations. In determining whether alleged harassment has created a hostile environment, the Decision Maker will consider not only whether the conduct was unwelcome to the complainant, but also whether the conduct was severe, pervasive, and a reasonable person similarly situated to the complainant would have perceived the conduct to be objectively offensive.

V. The Decision Maker's written determination will include the following:
    1) Identification of the allegations at issue.
    2) Description of the procedural steps taken throughout the case.
    3) Findings of fact supporting the determination.
    4) Conclusions regarding application of GO 16.

5) A statement and rationale as to the determination for each allegation.
6) A statement of any disciplinary sanctions and whether any remedies will be provided to the complainant.
7) A description of the procedures and permissible grounds for appeal.

W. Upon completion of the written determination, the Decision Maker will at the same time provide a copy to all parties, their advisors, and the IG. The written determination should be completed within ten (10) business days from the completion of the hearing. Subsequent to receiving the written determination, the IG will meet with the parties to review the appeals procedures. If neither party notifies the IG of their desire to appeal, the findings, sanctions, and recommendations in the written determination become final.

Sanctions

A. Sanctions for cadets will be determined by the Decision Maker, in consultation with the Commandant of Cadets. Sanctions may include, but are not limited to, penalties described in the Blue Book, suspension, or dismissal.

B. Sanctions for teaching and research faculty will be determined by the Decision Maker in consultation with the Dean of Faculty. Sanctions for non-teaching faculty and other non- classified staff will be determined by the Decision Maker, in consultation with the Deputy Superintendent of Finance, Administration and Support; the Director of Intercollegiate Athletics; the Commandant; the Chief of Staff; or the Superintendent, in accordance with any applicable VMI regulations. Possible sanctions include, but are not limited to, counseling, training, reassignment, or the initiation of termination proceedings according to procedures in the appropriate governing policy.

C. Sanctions for classified employees will be determined by the Decision Maker, in consultation with the Director of Human Resources, in accordance with the Commonwealth's Standards of Conduct Policy, Sanctions that may be imposed by the Institute include, but are not limited to, verbal counseling, and additional training, issuance of a Written Notice, or suspension or termination of employment.

D. All sanction proceedings for cadets, faculty, and other VMI employees will be conducted consistent with GO 16 and these procedures and will be transparent to the complainant and the respondent to the extent permitted by federal and state law and regulations.

E. Contractors will assign for duty only employees acceptable to the Institute. The Institute reserves the right to require the Contractor to remove from the Post any employee who violates GO 16.

F. Visitors (including, but not limited to, students participating in camp programs, non- degree seeking students, exchange cadets, and other students taking courses or participating in programs at VMI), who violate GO 16 will be directed to immediately leave the Post and may be subject to a permanent bar from Post.

G. To the extent permitted by applicable VMI policies and regulations, sanctions will be imposed within fourteen (14) business days of completion of the Decision Maker's written determination of responsibility if neither the complainant nor the respondent requests an appeal hearing. If an appeal is requested, sanctions, if any, will be imposed within fourteen (14) business days of the final decision of the Appeals Officer. If extension of the time frame for sanctions to be imposed beyond fourteen (14) business days is necessary, all parties will be notified of the expected time for

imposition of sanctions. The respondent will be informed in writing of any sanctions imposed for violation of GO 16 by the individual imposing the sanctions within five (5) business days of the determination. The IG will be provided a copy of such written notification. The IG will disclose to the complainant, as simultaneous as possible to the notification provided to the respondent, sanctions that directly relate to the complainant as permitted by state and federal law including the Family Educational Rights and Privacy Act (FERPA) and the Virginia Freedom of Information Act.

Appeal Hearing

1. **Appeal Officers**

The Appeal Officer will be a member of the Institute staff who has received formal training on being an Appeal Officer and on overseeing an appeal hearing. Appeal Officers will be authorized to hear appeals by either party to include: an appeal hearing in regard to an IG decision to dismiss a formal complaint; an appeal hearing in regards to an emergency removal ordered by the Threat Assessment Team; and an appeal hearing requested by any party in regards to a Decision Maker's written determination of responsibility. Appeals will be heard by one Appeal Officer. If either the complainant or the respondent suspects that the Appeal Officer could be biased of have a conflict of interest, then that party has three (3) business days from notification of the identity of the Appeal Officer to file a written statement claiming that the Appeal Officer likely will be biased or likely has a conflict of interest. The statement must include details regarding why possible bias or conflict of interest is suspected. If a bias or conflict-of-interest claim is reasonable, the Superintendent or the President of the VMI Board of Visitors will select a replacement Appeal Officer.

2. **Appeal Procedures**

A complainant or respondent desiring to appeal a decision maker's written determination of responsibility will file a written request for appeal with the IG within three (3) business days of receipt of the written determination along with information to support one or more of the following grounds for appeal:

A. Procedural irregularity that affected the outcome.
B. New evidence, unavailable at the time of the investigation that could substantially impact the Decision Maker's findings.
C. Conflict of interest or bias by the institutional participants that affected the outcome.
D. The sanctions recommended by the Decision Maker are substantially outside the parameters or guidelines set by the Institute for this type of offense or the cumulative conduct record of the respondent.

Within five (5) business days of receipt of the written request for appeal, the IG will notify the parties of the time and place of the hearing before an Appeal Officer. In addition, the IG will provide the parties with the name of the Appeal Officer. The hearing typically will be scheduled within fifteen (15) business days of receipt of the request for appeal. If extension beyond fifteen (15) business days is necessary, both parties will be notified of the expected time frame.

Within five (5) business days of filing the request for appeal, the party appealing the

Decision Maker's findings (appellant) must submit a written statement to the IG that (i) identifies the names and addresses of witnesses that are requested to be called at the hearing; (ii) identifies and includes copies of any documents that will be used as evidence at the hearing; (iii) describes with specificity the grounds for appeal, including any procedures in GO 16 allegedly violated during the course of the investigation; and (iv) requests a specific remedy. The non-appealing party (appellee) also may submit such information for the Appeal Officer's consideration.

The IG will provide to the Appeals Officer within five (5) business days of receiving the above information from the appellant and the appellee: (i) the written determination of responsibility from the Decision Maker; (ii) the final investigative report from the IG; (iii) copies of all appeals documents provide to the IG by the appellant and the appellee; and (iv) the names and addresses of any witnesses that will be called at the hearing.

Both the appellant and the appellee may be accompanied by an advisor of their choice to the appeal hearing. If either party has retained legal counsel or a non-attorney advisor, the party must immediately notify the IG of such representation. The role of the attorney or the non-attorney advisor for the parties will be limited to advice and consultation with the attorney's/advisor's client and the client's witnesses. Neither the attorney/advisor for the appellant nor attorney/advisor for the appellee will be permitted to question witnesses, raise objections, or make statements or arguments to the Appeal Officer at the hearing. If either party is represented by legal counsel, the Institute may be represented at the hearing by assigned legal counsel from the Office of the Attorney General.

The Appeal Officer will preside over the hearing, including the questioning of witnesses and the presentation of documentary evidence. The hearing will be a non-adversarial proceeding and the rules of evidence will not be strictly applied. However, the Appeal Officer may limit evidence or testimony that is not relevant to whether the grounds for appeal are met by a preponderance of evidence. The hearing will be conducted in a fair and impartial manner. The Appeal Officer will be the final decision-maker on all matters of procedure during the hearing. All hearings will be closed to the public.

Within ten (10) business days of completion of the hearing, the Appeal Officer will submit a written decision to the parties, the Decision Maker, and the IG. The decision will include: (i) a description of the appellant's grounds for appeal; (ii) whether such grounds are accepted or rejected and the rationale for such determination; (iii) the Appeal Officer's decision to uphold or reject the findings of the Decision Maker and/or the recommended sanction and the rationale for such determination; and (iv) if the findings and/or recommended sanction are rejected, the findings of the Appeal Officer and recommendations for resolution. The decision of the Appeal Officer is final with no further right to appeal.

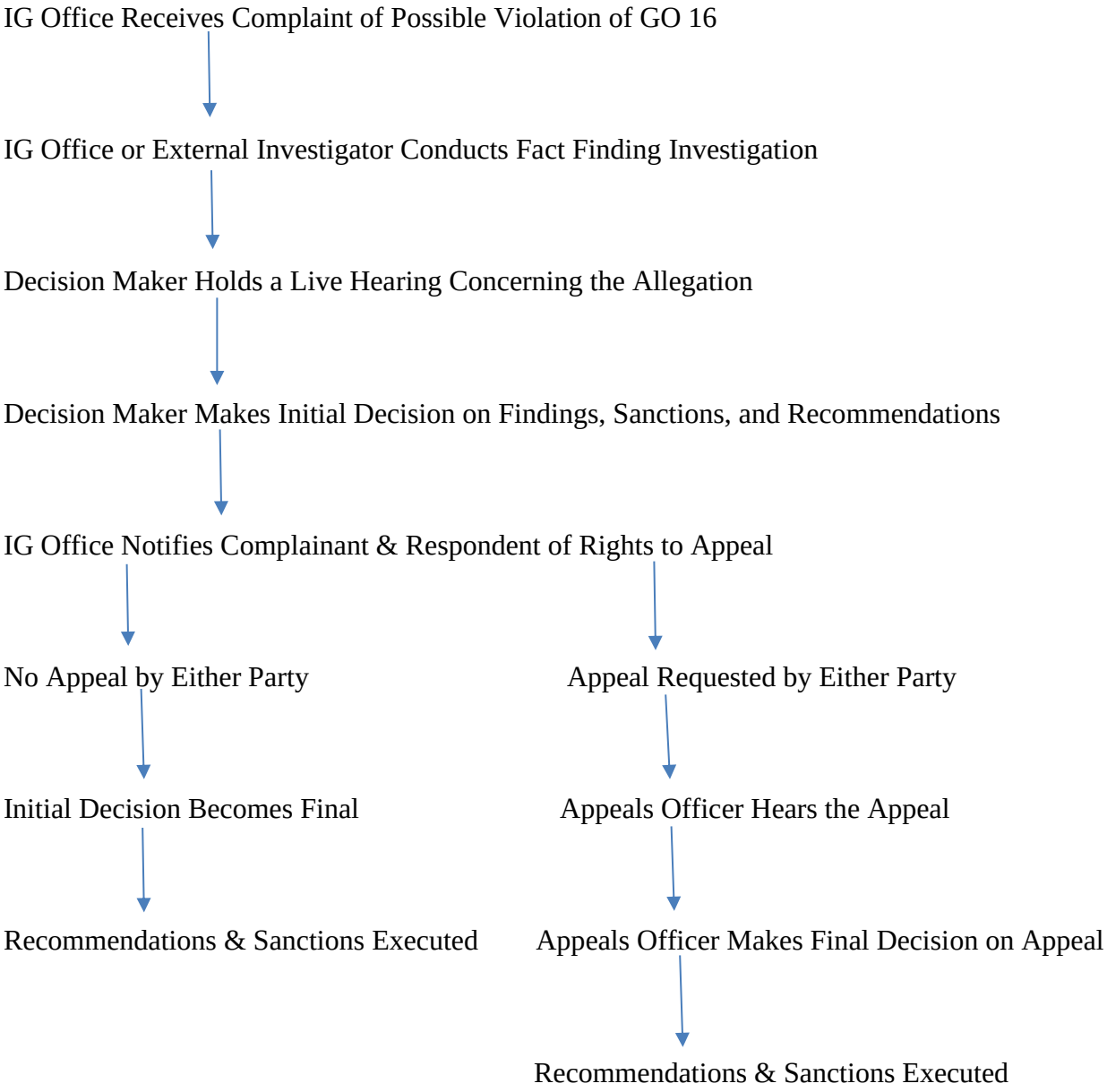
Documentation and Recordkeeping

The Office of the IG will maintain, in a confidential manner, for at least seven (7) years paper or electronic files of all investigative case files to include: complaints, witness statements, documentary evidence, written investigation reports, written determinations of responsibility,

informal resolutions, written appeals decisions, hearings documentation, and other associated case-related documents. The IG will prepare a monthly summary of pending cases that will be presented to the Superintendent. The summary will contain sufficient information to permit the Superintendent to assess VMI's compliance with the requirements of Title IX.

Training

Institute officials who are involved in these Grievance Procedures will receive formal training in regard to their roles in the process. This training will be provided to the IG, Assistant Title IX Coordinators, external investigators when applicable, Informal Resolution Facilitators, Decision Makers, and Appeal Officers. The training will cover various aspects of GO 16 and the grievance procedures including: the definition of sexual harassment and other policy violations; the scope of the Institute's education programs and activities; how to conduct investigations; how to conduct decision maker hearings and appeals hearings; informal resolutions; and how to serve impartially including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The training for Decision Makers and Appeal Officers will also include understanding technology to be used at live hearings, relevance, and the permissible use of sexual history. All training provided in regard to this policy and the grievance procedures will be posted on VMI's website for public review.

Appendix B:

GO 16 Adjudication Process