

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 Re, VM

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

electronic format to the parties and their advisors at least ten (10) business days prior to the hearing. ness days prior to

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
-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
s 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 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

removal ordered by the Threat Assessment Team; and an appeal hearing requested by any Appeals will be heard by one Appeal Officer. If either the complainant or the respondent suspects that the Appeal Officer could be biased or 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 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
- 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 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 the respondent

Appendix B:

