VIRGINIA MILITARY INSTITUTE
Lexington, Virginia

GENERAL ORDER)
NUMBER 16) 2 July 2014

Discrimination, Harassment, Sexual Misconduct, and Retaliation

A. 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 Discrimination Grievance Procedures. (Appendix A) This policy and the Discrimination 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.

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

C. 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 activities off Post. This policy also is applicable to any conduct that occurs off Post that has continuing effects that create a hostile environment on Post. Allegations of on-Post or off-Post violations of this policy should be reported to the Inspector General / Title IX Coordinator (IG) in accordance with the guidance below and the Discrimination Grievance Procedures. This Policy replaces and supersedes General Order 22 and General Order 52.

D. Definitions

1. **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.

2. **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.

3. **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 v. male/masculine or a failure to conform to those gender stereotypes.

This policy prohibits the following types of sexual harassment:

a. 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.

b. Hostile environment. Acts that create a hostile environment, as defined below.

4. **Hostile environment** may be created by oral, written, graphic or physical conduct that is sufficiently severe, persistent or 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, persistent or pervasive, and thus creates a hostile environment, the following factors will be considered: (a) the degree to which the conduct affected one or more individuals' education or employment; (b) the nature, scope, frequency, duration, and location of the incident(s); (c) the identity, number, and relationships of persons involved; (d) the perspective of a “reasonable person” in the same situation as the person

subjected to the conduct, and (e) the nature of higher education and the Institute's military training program.

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

a. 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, knowingly or unknowingly); 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.

b. 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.

c. 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.

d. Dating violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. A social relationship of a romantic or intimate nature means a relationship which is characterized by the expectation of affection or sexual involvement between the parties. The existence of such a relationship shall be determined based on a 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. Dating violence does not include acts covered under the definition of domestic violence.

e. Domestic violence is a felony or misdemeanor crime of violence committed: (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 law 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.

f. 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.

E. 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, sexual harassment, or sexual misconduct or any person cooperating in the investigation of allegations of discrimination, sexual harassment, or sexual misconduct to include testifying, assisting or participating in any manner in an investigation pursuant to this policy and the Discrimination Grievance Procedures is strictly prohibited by this policy. Action is generally deemed adverse if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy. Retaliation may result in disciplinary or other action independent of the sanctions or interim measures imposed in response to the underlying allegations of discrimination, sexual harassment or sexual misconduct.

F. Reporting

1. Conduct in violation of this policy shall be reported promptly by all cadets, employees, visitors, or contractors. VMI's Inspector General ("IG") serves as the Title IX Coordinator and is responsible for overseeing the investigation of all reports of alleged discrimination, sexual harassment, or sexual misconduct in accordance with the Discrimination Grievance Procedures. Employees receiving such reports or complaints should immediately notify the IG and should not undertake any independent efforts to determine whether or not the report or complaint has merit before reporting it to the IG.

2. The VMI Inspector General and Title IX Coordinator is Colonel William R. Grace.

The members of the Inspector General/ Title IX Coordinator's staff are MAJ Jennifer deHart and MAJ Christopher Perry. Lt.Col. Kevin Faust, assigned to the Commandant's staff, serves as an Assistant Title IX Coordinator for cadets. Their contact information is listed below:

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3. Employees must report violations of this policy to the IG or a member of his staff. In the alternative, reports of violations may be made to an employee's immediate supervisor, a faculty or staff reporting contact, the Superintendent, or the Chief of Staff. Additional faculty and staff reporting contacts are listed in Appendix B. Supervisors are required to forward reports of violation to the IG without delay.

4. Reports made by Cadets: Cadets should report violations of this policy to the IG or a member of his staff, the Commandant or the Assistant Commandant for Cadet Government, or the Cadet Equity Association (CEA). Note: Cadets are not restricted to reporting to cadet contacts and may report to anyone listed in this policy or any supervising staff or faculty member at VMI. Reports are required to be forwarded to the IG.

5. CEA responsibility: Any member of the CEA receiving a report of alleged discrimination, sexual harassment, or sexual misconduct shall report it immediately to the Assistant Commandant for Cadet Government. The Assistant Commandant for Cadet Government shall notify the IG without delay. Neither the CEA nor the Assistant Commandant for Cadet Government shall 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.

6. Reports made by visitors or contractors: Visitors, including visiting students, and employees of contractors working on Post should report violations of this policy to a member of the Office of the Inspector General.

7. Mandatory employee reporting: All VMI employees in receipt of a complaint or report of discrimination, sexual harassment, or sexual misconduct, must report any information regarding the alleged incident to the IG without delay. No VMI employee shall 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. VMI employees who are statutorily privileged, including licensed health-care professionals, are exempt from this requirement (See Section H for a listing of confidential reporting contacts.)

G. 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 encouraged to report incidents of sexual misconduct to law enforcement, even if the reporting individual is not certain if the conduct constitutes a crime. Crimes dealing with minors must be reported to law enforcement.

H. 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 aconfidential report, it must be made to the Institute Physician and other medical personnel at the VMI Infirmary, Cadet Counseling personnel, or the VMI Chaplain. These individuals will encourage victims to make a report to the VMI Police, the Inspector General, or local law enforcement. Cadets and cadet organizations cannot keep reports confidential, even if working with officials above that are able to maintain confidentiality of reports. Other Institute officials receiving reports of conduct in violation of this policy are mandated reporters but will maintain privacyto 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 or that the complaint not be pursued, the Institute may also be limited in the actions it is able to take and its ability to respond.

I. 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 campus 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 safely in light of the potential danger.

J. Sexual Misconduct Survivor/Victim Procedures and Services

1. 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.

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

a. Go to a safe place.

b. For your 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.

c. 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.

d. 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:

i. Do not wash your hands, bathe, or douche. Do not urinate, if possible.
ii. Do not eat, blow your nose, drink liquids, smoke, or brush your teeth if oral contact took place.
iii. 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).
iv. 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.
v. Tell someone all the details you remember or write them down as soon as possible.
vi. Maintain text messages, pictures, online postings, video and other documentary or electronic evidence that may corroborate a complaint.

3. There is no time limit for filing a complaint of sexual misconduct. However, complainants should report as soon as possibleto 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.

4. The victim shall 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.

5. 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.

6. Resources for Victims of Sexual Misconduct

a. Any cadet or visiting student who reports sexual misconduct to the Inspector General, Officer in Charge, Institute Physician, Cadet Counseling, or VMI Chaplain will receive an information card outlining resources and options. VMI Police protocol includes coordination with Project Horizon.

b. VMI officials shall advise victims of the resources available with Project Horizon and encourage use of these resources.

c. Cadets and visiting students will be assisted with available options for changing academic, transportation, parking, work and living arrangements after alleged sexual misconduct. Safety arrangements such as no-contact orders and escorts are also available as needed.

K. Inspector General/Title IX Coordinator Oversight

The Inspector General oversees the investigation and resolution of all reports by cadets, visiting students, faculty and administrative staff of alleged discrimination, sexual harassment or sexual misconduct in accordance with the Discrimination Grievance Procedures. For complaints involving alleged violations of this policy by a cadet or cadets, the Inspector General may designate certain investigative responsibilities to the CEA at his sole discretion while maintaining oversight of the investigation. See the Discrimination Grievance Procedures for further information regarding coordination between the IG and the CEA. Reports of discrimination by the Inspector General should be made to the Superintendent.

L. Interim Measures

The Institute may take interim measures, as necessary to assist or protect the complainant during the investigation and resolution of complaints of discrimination and any law enforcement

investigation, to address the safety of the complainant 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 accused individual, the IG may provide interim remedies to address the short-term effects of harassment, discrimination and/or retaliation and to prevent further violations. VMI will seek the consent of the complainant before taking interim measures to the greatest degree possible. Interim measuresmay include, but are not necessarily limited to, changes in classroom schedules or barracks arrangement, no-contact order, 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 IG prior to such action being imposed, or as soon thereafter as reasonably possible, to show cause why the action should not be implemented.

M. Sanctions

If it is determined that conduct in violation of this policy has occurred, sanctions will be determined in accordance with the Discrimination 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 sexual misconduct, including sexual violence, and to remedy discriminatory effects on the complainant and others, if appropriate.

N. Cadet Amnesty

Ensuring the safety of cadets who report violations of this policy is the Institute's primary concern. In order to facilitate reporting, the Institute will, with the following limited exceptions, provide amnesty to a cadet who reports an incident in violation of this policy, directed toward that cadet or another cadet, for minor disciplinary infractions, such as underage drinking, at the time of the incident. Amnesty may not be offered if (1) the minor 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 minor disciplinary infractions. Amnesty for minor disciplinary infractions also may be offered to cadets who intervene to help others before a violation of this policy occurs and cadets 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. The Assistant Commandant for Cadet Government shall maintain records regarding the provision of amnesty for at least five (5) years. Infractions that constitute honor offenses shall not be considered minor policy violations for which amnesty may be offered under this provision.

O. Education and Awareness

1. For more information about sexual misconduct and resources available in the local Community; please visit the Project Horizon website at www.projecthorizon.org.

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

P. Academic Freedom and Free Speech

This policy does not allow curtailment or censorship of constitutionally protected expression, which isvalued 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 guidance 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:

James P. Inman
Colonel, US Army (Ret.)
Chief of Staff

DIST: E, Cadets

Appendix A:

Discrimination 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 sexual harassment or sexual misconduct prohibited by General Order Number 16 ("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.

Complaints and Reporting

Complaints and reports of discrimination, sexual 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, sexual harassment, or sexual misconduct and is trained to help individuals who file complaints 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, sexual harassment, or sexual misconduct should immediately notify the IG and should 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 Colonel William R. Grace. The members of the Inspector General/Title IX Coordinator staff are MAJ Jennifer deHart and MAJ Christopher Perry. Lt.Col. Kevin Faust serves as an Assistant Title IX Coordinator for cadets. Their contact information is listed below:

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Lt.Col. Kevin Faust
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Reports of conduct in violation of GO 16 should be made without undue delay after the incident and may be made orally or in writing, including by electronic mail to any of the individuals identified above. 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. As will be the case with all reports, however made, the reporting individual will be contacted promptly, but in no case more than three calendar days from the date of the report, for an interview with a member of the Inspector General's staff.

Notwithstanding the forgoing, individuals who believe they have been the subject of conduct in violation 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 identified parties the procedures outlined below, including confidentiality. As appropriate, the IG will provide all identified parties with information about obtaining medical and counseling services, making a criminal report, information about 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 interim measures as described below. The IG will explain to all involved 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 identified parties the right to have a personal advisor present and to review and respond to the allegations and evidence. The IG will also explain to the parties and witnesses that retaliation for reporting alleged discrimination, sexual 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.

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. 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 Title IX investigation detailed in the procedures below while the VMI Police or the local law enforcement agency gathers evidence. The Office of the IG will promptly resume its Title IX investigation as soon as notified by the VMI Police or law enforcement agency that it has completed the evidence gathering process. Otherwise, the IG investigation will not be altered or precluded on the grounds that criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

Confidentiality, Anonymity and Requests Not to Pursue Title IX 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, Cadet Counseling personnel, or the VMI Chaplain. These individuals will encourage victims to make a report to the VMI Police, the Inspector General, or local law enforcement. Cadets and cadet organizations cannot keep reports confidential, even if working with officials above that are able to maintain confidentiality of reports. Other Institute officials receiving reports of conduct in violation of this policy are 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 or that an investigation not be conducted, 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 for confidentiality or that an investigation not be pursued and the IG will take all reasonable steps to respond to the complaint consistent with the request. The IG will consider the reasons for the request, including concerns about continued safety of the person reportedly harmed and members of the VMI community. Factors that also will be considered in weighing a request by a complainant for confidentiality or not to proceed with a formal investigation include the seriousness of the alleged violation of GO 16, the respective ages and positions of the complainant and the respondent, whether there have been other complaints against the respondent, and the respondent’s right to receive information. In cases in which a complainant requests confidentiality or that an investigation not be pursued, but the IG has concerns that not conducting an informal or formal investigation might endanger the health or safety of members of the campus community, the IG will initiate confidential consultation with appropriate individuals who may include, as appropriate, the Superintendent, the Commandant, the Dean of the Faculty, the VMI Chief of Police, the Threat Assessment Team, Cadet Counseling, and legal counsel. The IG will make the ultimate decision on whether to conduct an informal or a formal investigation or to respond in another manner, including use of interim measures described below.

Interim Measures

The Institute may take interim measures, as necessary to assist or protect the complainant during investigations of alleged discrimination and the resolution process and any law enforcement investigation, to address the safety of the complainant 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 accused individual, the IG may provide interim remedies to address the short-term effects of harassment, discrimination and/or retaliation and to prevent further violations. VMI will seek the consent of the complainant before taking interim measures to the greatest degree possible. Interim measures may include, but are not necessarily limited to, changes in classroom schedules or barracks arrangement, no-contact order, 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 IG 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 campus 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 safely 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 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 a Post-wide climate of respect and equitable treatment for cadets and conducting investigations of complaints of gender, racial, religious, ethnic, and other types of discrimination involving cadets.

Any member of the CEA receiving a report of alleged discrimination, sexual harassment, or sexual misconduct shall 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 shall, upon receipt of the complaint by the CEA, notify the IG without delay. Neither the CEA members nor the Assistant Commandant for Cadet Government shall 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 shall conduct all investigations of allegations of sexual misconduct in violation of GO 16 in accordance with the procedures below. At the sole discretion of the IG, the CEA may be tasked with conducting investigations of complaints of discrimination and harassment while under the oversight of the Assistant Commandant for Cadet Government/Assistant Title IX Coordinator in coordination with the IG. The CEA shall report the findings of investigations of discrimination and harassment to the IG through the Assistant Commandant for Cadet Government. At the conclusion of the investigation, the IG shall recommend a penalty, if any, to the Commandant.

In the alternative, the IG, in consultation with the Assistant Commandant for Cadet Government/ Assistant Title IX Coordinator, may, in cases other than those involving allegations of sexual violence, refer the matter for adjudication to the Commandant to resolve the matter through the cadet judicial process, including the General Committee or the Executive Committee, as outlined in the cadet White Book. All sanctions recommended by the General Committee or the Executive Committee for complaints alleging discrimination or sexual harassment shall be coordinated with the IG.

Investigation and Resolution

There are two possible methods for investigation and resolution of a complaint alleging violations of GO 16: formal and informal resolution. For alleged violations of GO 16 other than sexual misconduct, the complainant and the respondent have the option to proceed under an informal procedure, when deemed permissible by the IG. The IG will explain the informal and formal procedures to both the complainant and the respondent, if known. In all cases, VMI will ensure there is no actual conflict of interest in the investigation and resolution of complaints and will strive to avoid the appearance of conflict of interest.

A. Informal investigation and resolution

1. If the complainant, the respondent, and the IG all agree that an informal investigation and resolution should be pursued, the IG and IG staff shall attempt to facilitate a resolution that is agreeable to the parties. Under this procedure, the IG will conduct a preliminary investigation only to the extent fact-finding is needed to resolve the conflict and to protect the interests of the parties, the Institute and the VMI community. Both parties will be permitted to request witnesses to be interviewed by the IG and other evidence to be considered in the preliminary investigation. Typically, a preliminary investigation will be completed within30 days of receipt of notice. If extension of the preliminary investigation beyond 30 days is necessary, all parties will be notified of the expected resolution time frame. If at any point during this informal investigation and resolution procedure, the complainant, the respondent or the IG wish to suspend the informal procedure and proceed through the formal grievance procedure, such request will be granted.

2. Any resolution of a complaint through the informal procedure 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 informal counseling to an individual whose conduct, if not ceased, could rise to the level of discrimination or harassment, confidential briefing of the respondent's work supervisor, use of penalties through the cadet governance system, or other methods. All parties will be provided written notification of the resolution of the complaint through the informal procedures, including whether the preliminary investigation substantiated discrimination or harassment by a preponderance of the evidence and a description of VMI's response.

3. There shall be no right of appeal afforded to the complainant or the respondent following informal investigation and resolution.

B. Formal investigation and resolution

1. A formal complaint may be submitted either in written format or through a verbal interview of the complainant by the IG regarding the events and circumstances underlying the complaint. The complainant is not required to submit a written complaint to the IG to commence an investigation. In the case of a third party notification, the IG, or a member of the Office of the IG will contact the alleged victim promptly, and in no case later than three calendar days from the date of the complaint. 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, state or federal agency for the same offense.

2. The IG will discuss the complaint with the complainant and the respondent as appropriate, including providing information about the formal investigation procedure and other resources. The IG will explain to the parties that each has the opportunity to provide evidence and to suggest witnesses to be interviewed during the course of the investigation.

3. The IG will consider whether interim 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.

4. The IG will conduct a prompt, adequate, reliable, and impartial investigation of the complaint. Typically an investigation, not including the time necessary for potential appeals, will be completed within 60 days of receipt of notice. If extension of the investigation beyond 60 days is necessary, all parties will be notified of the expected time frame. Only the IG, a trained investigator assigned to the Office of the IG, or a trained member of the Cadet Equity Association shall conduct the investigation. All investigations of complaints alleging violations of GO 16 shall be overseen by the IG.

5. Both complainant and respondent will have the same opportunity to review and respond to evidence obtained during an investigation and will be afforded the same opportunity to review and provide comment to the investigator about the written investigation report before it is finalized.

6. The IG will determine whether there is a preponderance of the evidence to substantiate the complaint of an alleged violation of GO 16. A respondent will not be found in violation of GO 16 absent a finding of preponderance of evidence that the violation occurred. The "preponderance of the 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.

7. In determining whether alleged harassment has created a hostile environment, the IG shall consider not only whether the conduct was unwelcome to the complainant, but also whether the conduct was severe or pervasive and whether a reasonable person similarly situated to the complainant would have perceived the conduct to be objectively offensive.

8. The IG shall prepare a written investigation report, which shall be provided to both the complainant and the respondent concurrently. In most cases the written investigation report shall be provided to both parties within 60 days of notice of the allegation. If extension of the time frame for the IG to finalize the investigation report beyond 60 days is necessary, all parties will be notified of the expected time frame for completion of the investigation report.

9. If the IG finds by a preponderance of the evidence that a violation of GO 16 did not occur, the matter will be documented as closed. The Complainant may appeal the finding to the Discrimination Appeals Committee under the procedure described below.

10. If the IG finds by a preponderance of the evidence that violation of GO 16 did occur, the IG's written report will contain recommendations for steps that should be taken to prevent recurrence of any such violation and, as appropriate, remedies for the complainant and the community. The written report also will contain the IG's recommendation on sanctions. If interim measures as described above have been taken, the IG shall include a recommendation regarding continuation, suspension or modification of any such interim measures. The IG shall provide the written report to both the complainant and respondent, in accordance with subsection 8, above, including the steps the IG has recommended to eliminate a hostile environment, if one was found to exist, and to prevent its recurrence. Notwithstanding any other provision of these procedures, the respondent shall not be provided information about the individual remedies offered or provided to the complainant, but such information shall be provided to the complainant. The respondent and the complainant will be advised of their right to appeal any finding or recommended sanction to the Discrimination Appeals Committee. The appeal procedure outlined below will also be explained. If the respondent does not contest the finding or recommended sanction, the respondent shall sign a statement acknowledging no contest to the finding and the recommended sanction. The completed investigation will be provided to the appropriate individual to determine and impose appropriate sanctions, as described below.

Sanctions

1. Sanctions for cadets will be determined by the Commandant of Cadets in accordance with the cadet regulations and policies and, where necessary or appropriate, in consultation with the Superintendent. Sanctions may include, but are not limited to, penalties described in the cadet Blue Book, suspension or dismissal.

2. Sanctions for teaching and research faculty will be determined by the Deputy Superintendent for Academics and Dean of the Faculty, in consultation with the Superintendent and in accordance with the faculty handbook. Sanctions for non-teaching

faculty and other non-classified staff shall be determined by the Deputy Superintendent for Finance, Administration and Support; the Director of Intercollegiate Athletics; the Commandant; the Chief of Staff; or the Superintendent, in accordance with the 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 regulation.

3. Sanctions for classified employees will be determined by 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, additional training, issuance of a Written Notice, suspension or termination of employment.

4. Contractors shall 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.

5. 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.

6. A determination regarding the imposition of sanctions shall be made within 14 calendar days of the date of the IG's final investigative report. If extension of the time frame for sanctions to be imposed beyond 14 days is necessary, all parties will be notified of the expected time for completion of the investigation report. Respondent shall be informed in writing of any sanctions imposed for violation of GO 16 by the individual imposing the sanctions within five calendar days of the determination. The IG shall be provided a copy of such written notification. The IG will disclose to the complainant within five calendar days of notification to respondent sanctions that directly relate to the complainant as permitted by state and federal law including the Federal Educational Rights and Privacy Act (FERPA) and the Virginia Freedom of Information Act. The IG also will disclose in writing to the complainant the final results of a disciplinary proceeding involving the respondent with regard to an alleged forcible or non-forcible sex offense, act of stalking, domestic violence or dating violence on the complainant, as permitted by state and federal law including FERPA and the Virginia Freedom of Information Act.

Discrimination Appeals Committee

1. Composition of the Committee

The Discrimination Appeals Committee ("Committee") shall be comprised of three trained individuals: one faculty member to be nominated by the Deputy Superintendent for Academics and Dean of the Faculty, one non-faculty member of the administration to be nominated by the Chief of Staff, and one classified employee to be nominated by the

Director of Human Resources. The Superintendent shall appoint members of the Committee and the Committee Chair. Committee members shall serve indefinitely at the pleasure of the Superintendent. The Superintendent may appoint one or more persons to serve on the Committee temporarily to fill a vacancy due to recusal or otherwise to ensure a full three-member Committee. The Superintendent may permanently remove members of the Committee for cause at his sole discretion.

2. Appeal Procedure

a. A complainant or respondent desiring to appeal the investigative findings of the IG shall file a written request for appeal with the IG within three (3) business days of receipt of the written investigation report along with information to support one or more of the following grounds for appeal:

i. the IG exhibited unfair bias which influenced the results of the investigation;
ii. new evidence, unavailable at the time of the investigation, that could substantially impact the IG's finding;
iii. error in the conduct of the investigation that is of such magnitude as to deny fundamental fairness.
iv. the sanctions recommended by the IG are substantially outside the parameters or guidelines set by the Institute for this type of offense or the cumulative conduct record of the respondent.

b. Within five (5) days of receipt of the written request for appeal, the IG will notify the parties of the time and place of hearing before the Committee. Such hearing typically will be scheduled within fifteen (15) days of receipt of the request for appeal. If extension beyond fifteen (15) days is necessary, both parties will be notified of the expected time frame.

c. Within five (5) days of filing the request for appeal, the party appealing the IG's findings (appellant) must submit a written statement 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 portion of GO 16 allegedly violated and the grounds for appeal; and (iv) requests a specific remedy.

The non-appealing party (appellee) also may submit such information for the Committee's consideration. If the appellee chooses not to participate in the Committee hearing, the IG will provide to the Committee within five (5) days of notification that the appellee will not participate in the hearing: (i) the written investigative report; (ii) the names and addresses of witnesses the IG will call at the hearing; and (iii) identification and copies of any documents that will be submitted as evidence at the hearing. If the appellee provides notification less than five (5) days prior to the scheduled hearing that he or she will not participate, the hearing shall be postponed to give the IG a full five (5) days to provide the Committee the above information.

The IG shall provide the written investigation report and all witness information and documents identified pursuant to this subsection to the Committee and to all parties at least three (3) days prior to the hearing.

d. Both the appellant and the appellee may retain legal counsel at their own expense or designate a non-attorney advisor to accompany him or her at any meeting or proceeding in the appeal process. If either party has retained legal counsel or a non-attorney advisor, the party must immediately notify the Committee Chair of such representation. The role of counselor the non-attorney advisor for the parties shall be limited to advice and consultation with the attorney's client and the client's witnesses. Neither counsel/advisor for the appellant nor counsel/advisor for the appellee shall be permitted to question witnesses, raise objections, or make statements or arguments to the Committee at the hearing. If either party is represented by legal counsel, the Institute maybe represented at the hearing by assigned legal counsel from the Office of the Attorney General, who will ensure that the rights of the Institute and the parties are respected.

e. The Chair of the Committee shall preside over the hearing. The hearing will be a non-adversarial proceeding and the rules of evidence shall not be strictly applied. However, the Chair of the Committee may limit evidence or testimony that is not relevant to a determination of whether a violation of GO 16 occurred and whether the grounds for appeal are met by a preponderance of evidence. The hearing will be conducted in a fair and impartial manner. Both appellant and appellee, or the IG if the appellee does not participate, will address the Chair of the Committee and not each other. The Chair will be the final decision-maker on all matters of procedure during the hearing. All hearings will be closed to the public.

f. 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 student, 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 addressed by this paragraph is deemed admissible.

g. Within ten (10) days of the hearing, the Committee will submit a written decision to the parties, the IG, and the Superintendent. The decision shall 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 Committee's decision to uphold or reject the findings of the IG and/or the recommended sanction and the rationale for such determination; (iv) if the IG's findings and/or recommended sanction are rejected, the findings of the Committee and recommendations for resolution.

h. Within three (3) days of the Committee's decision, the Superintendent shall notify the Committee, the IG, and the parties, in writing, of his decision relative to the findings and recommendations of the Committee. The decision of the Superintendent is final with no further right to appeal.

Documentation and record-keeping

The Office of the IG shall maintain, in a confidential manner, for at least ten (10) years paper or electronic files of all complaints, witness statements, documentary evidence, written investigation reports, resolutions, and appeal hearings and associated documents. The IG will prepare a monthly summary of pending complaints that will be presented to the Superintendent and also will be retained for at least ten (10) years. Such summary will contain sufficient information to permit the Title IX Coordinator and the Superintendent to assess VMI's compliance with the requirements of Title IX.

Appendix B:

Contact	**Building/Office/Phone extension**
LTC Neil Whitmore	Admissions/7039
COL Dave Williams	Aux. Services (Laundry, Mess Hall, Hospital, etc.)/7095
Mr. Lance Fujiwara	Cameron Hall/7310
Mrs. Pat Troppoli	Carroll Hall/7208
CPT Daniel Jaffe	Cocke Hall/7555
SGM John Neel	Commandant/7706
MAJ Meagan Herald	Mallory Hall/7684
MAJ Amy Dehart	Marshall Hall/7740
Ms. Tamara Stoops	Maury Brooke Hall/7417
Ms. Lisla Cowles	Moody Hall/7221
COL Jim Squire	Nichols/7548
Ms. Tracy Gordon	Physical Plant/7130
LTC Susan Hastings	Preston Library/7228
SFC Donald “Buck” Bryan	ROTC/7698
COL Mary Rose Sheldon	Scott Shipp Hall/7691
Ms. Katrina Butner	Smith Hall/7104
Ms. Betty Skillman	VMI Museum/7671