



GO 16

VMI Leadership

Training

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Cynthia H. Norwood
Senior Assistant Attorney General
VMI Legal Counsel



**What conduct may constitute
discrimination prohibited in
VMI's programs and
activities?**



VMI prohibits discrimination on the basis of . . .

- Race/Color
- Sex
- Pregnancy
- Sexual orientation
- National origin
- Gender identification
- Age
- Veteran status
- Religion
- Disability
- Genetic information

And any other status protected by law.



General Order 16

Prohibits:

Discrimination

Harassment causing a hostile
environment AND

Sexual Misconduct

Retaliation now has its own GO, GO
90



Title IX (1972)

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal assistance.”



Title IX prohibits sex discrimination in:

ALL VMI programs, including athletics, academics, admissions, clubs, and other activities.

The Title IX prohibition on sex discrimination includes sexual harassment and sexual assault of a violent and non-violent nature against cadets, faculty, and staff.



VMI's responsibilities under Title IX

- Promptly investigate incidents regarding which VMI knows or reasonably should have known;
- Take appropriate disciplinary action against those who commit offenses, with required due process protections; and
- Take actions to end any hostile environment, prevent its recurrence, and remedy its effects.



Sexual harassment

Unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature – including verbal, non-verbal, or physical conduct.

- May involve persons of the same or different genders.
- Includes harassment based on failure to conform to gender stereotypes.



Hostile Environment

- Sexual harassment violates Title IX if it creates a “hostile environment.”
- Conduct that is sufficiently severe, pervasive, and objectively offensive that it interferes with or limits or denies the ability of an individual to participate in or benefit from VMI programs, services, opportunities, or activities.
- One incident can cause a hostile environment.



Sexual misconduct under GO 16

- Sexual assault
(physical sexual harassment)
- Sexual exploitation
- Sexual coercion
- Dating violence
- Domestic violence
- Stalking

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Sexual assault

- Non-consensual contact of a sexual nature (including 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 due to the knowing or unknowing use of alcohol or drugs), or age (in Virginia – cannot consent under age 18).



Sexual exploitation

Taking sexual advantage of another for advantage or benefit, short of sexual assault:

- Prostituting another person
- Non-consensual exposing of genitals
- Non-consensual video or audio recording of sexual activity or images
- Non-consensual distribution of recordings of sexual activity or images with intent to embarrass the individual recorded



Sexual coercion

The application of an unreasonable amount of pressure to gain sexual access. Continued pressure after an individual has made clear that he/she does not want to go beyond a certain point of sexual interaction can be coercive.



Dating violence

Violence – sexual or otherwise – committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.



Domestic violence

A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim or someone cohabitating with the victim as a spouse or intimate partner.



Stalking

Two or more acts in which the individual directly, indirectly, or through third parties, **BY ANY MEANS**, follows, monitors, observes, threatens, or communicates to or about a person in a way that would cause a **reasonable person** to (i) fear for his/her safety or the safety of others; or (ii) suffer substantial emotional distress, meaning significant mental suffering that may or may not require professional treatment.

Texting? Social media?

Office of the Attorney General



Retaliation

Intimidation, threats, harassment, and other adverse action taken or threatened against any individual filing a complaint, or participating in the investigation of a complaint, relating to any type of conduct that violates GO 16 or other VMI policies, not just sexual misconduct.

Includes, but is not limited to, retaliation against the IG, the IG Staff, an external investigator, the Decision Maker, the Appeals Officer, witnesses, advisors, or members of the CEA or OGA.



Jurisdiction

- Conduct on Post
- Conduct off Post that creates a hostile environment on Post **OR** is subject to discipline under the Blue Book or other VMI policies.



Jurisdiction

Jurisdiction exists under the following three conditions: 1) the conduct occurred against a person while 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.



Jurisdiction

VMI 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.



Jurisdiction

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. The conduct still may be adjudicated pursuant to other VMI policies, including but not limited to in accordance with GO 13 or GO 17.



Confidential Reporting

On Post confidential reporting contacts for cadets and employees include only:

- Cadet Counseling
- Post Physician
- Chaplain

Off Post can report confidentially to Project Horizon



Anonymous Reporting

Individuals may make anonymous reports by providing limited information to the IG, Colonel Boobar, by phone, e-mail, or a written statement in a sealed envelope addressed to “Inspector General.”



Sexual Misconduct Threat Review Committee

Law passed in 2015 requires VMI to:

- Convene a review committee comprised of the IG, Post Police, and Commandant to discuss any non-confidential reports of sexual violence against cadets or employees.
- Determine whether to override the wishes of a cadet or employee who does not want to report to law enforcement if concerns exist for health or safety of members of VMI community.
- Notify the Commonwealth's Attorney.



Filing a Criminal Complaint

- Cadets and employees are strongly encouraged to report any complaint of sexual violence to the VMI Police or, if off Post, to Lexington or Rockbridge County law enforcement, or law enforcement for the jurisdiction of the incident.
- Cadets or employees who express a desire to file a report with VMI or local police should immediately be referred to the IG/Title IX Coordinator, who will assist the cadet or employee as needed.



Amnesty

- When a cadet reports an incident potentially in violation of GO 16, VMI may provide amnesty to that cadet for minor disciplinary infractions occurring at the time of the incident, including alcohol use and fraternization.
- No amnesty if the disciplinary infraction places or placed at risk the health or safety of any person, OR the cadet seeking amnesty previously has been found to have committed the same infraction.
- No Amnesty for honor offenses.



Supportive Measures

VMI will provide supportive measures and resources **to both complainants and respondents** including, but not limited to:

- Changes in class or work schedules
- Modification of academic or training requirements
- Changes to barracks assignments
- For employees, changes in supervisors, working groups, etc.



Supportive Measures Cont.

- Modification of employee work schedules or locations
- No-contact orders or bar from Post
- Escorts on Post
- Counseling and health services



Investigations & Resolution Processes

All investigations pursuant to GO 16 are coordinated by and under the oversight of the IG. There are two possible processes under GO 16, a formal or an informal process

Informal Process:

- Both the complainant and the respondent must agree in writing, and either party may choose, in writing, to switch to a formal process at any time prior to final resolution.
- No right of appeal after final resolution of an informal process.
- A trained Informal Resolution Facilitator coordinates and assists the parties with reaching a solution agreeable to both parties.
- The Informal Resolution Process cannot be utilized when the complainant is a student and the respondent is an employee.



Formal Resolution Process

At the time of filing a formal written complaint, the complainant must be participating in or attempting to participate in a VMI education program or activity, including as an employee. The IG also may sign a formal complaint based on several factors including 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.



Formal Resolution Process

Written notice to respondent includes:

- The identities of all involved parties;
- The specific section of the Blue Book or applicable policies allegedly violated;
- The precise conduct allegedly constituting the potential violation; and
- The date, or a reasonable approximate date, and location of the alleged incident.
- 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.



Formal Resolution Process

After formal complaint is filed, respondent receives required notice, and investigation is completed (only IG, trained investigator assigned to OIG, or a trained external investigator will conduct the investigation), then the investigator:

- Will send a copy of his/her final report to both parties and their advisors at least 10 business days prior to the hearing (evidence is provided to them during the investigation);
- Will provide to the Decision Maker a copy of the final report and all evidence gathered during the investigation.



DECISION MAKER

The Initial Hearing: One Decision Maker (“DM”)

- Upon receiving the investigator’s report, the DM will notify all parties and their advisors of the hearing date, time, and location.
- The hearing typically is scheduled within 15 business days of the DM’s receipt of the investigative report.
- Either party may claim the DM is biased or has a conflict of interest. That party has 3 business days from notification of the DM’s name to file a written statement detailing why possible bias or conflict of interest. If reasonable, VMI Chief of Staff will select a replacement DM.



Formal Resolution Process

- DM conducts live hearing involving all parties, their advisors, and all witnesses.
- 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.
- DM presides 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. If a party does not select an advisor, VMI 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.
- If a party or witness refuses to submit to cross-examination, DM must ignore any prior statements provided by that party or witness.



Formal Resolution Process

- DM must not draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross-examination or other questions.
- DM 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 complainant or a respondent, with anyone other than each other, will not be admissible. Exception: demonstrating a pattern or repeated or predatory behavior by the respondent, in the form of previous findings in any VMI or judicial proceeding, will be admissible. The parties will be notified prior to the hearing if any information concerning prior conduct is deemed admissible.



Formal Resolution Process

- An advisor may be a witness in the proceedings.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on party's 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.
- After the hearing, the DM will issue within 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.



Formal Resolution Process

- The DM can consider only 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.



Formal Resolution Process

The DM'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.



Formal Resolution Process

- DM will simultaneously provide a copy of his/her final decision to all parties, their advisors, and the IG. The written determination should be completed within 10 business days from the completion of the hearing.
- After receiving the written determination, the IG will meet with the parties to review the appeals procedures. A party must inform the IG of their desire to appeal the DM's written determination within 3 business days of receipt of the written determination, Such notification must include information to support one or more of the grounds of appeal. If no request is made within the 3 business days, the DM's decision is final.



GO 16 – Sanctions

- Sanctions for violations of GO 16 will be recommended by a DM and, when applicable, an Appeals Officer.
- Sanctions for cadet violations may include any penalty in the Blue Book, including suspension or dismissal.
- Sanctions against employees are any authorized by applicable VMI policies up to and including termination of employment.



Appeals Process

An Appeals Officer (AO) hears appeals by either party relating to:

- An IG decision to dismiss a formal complaint;
- An emergency removal ordered by the Threat Assessment Team; or
- A Decision Maker's written determination of responsibility.

Appeals will be heard by one appeals officer. If either party suspects bias or a conflict of interest, that party has 3 business days from notification of the name of the AO to file a written statement detailing why bias or a conflict of interest is suspected. If reasonable, the Superintendent or the President of the VMI Board of Visitors will select a replacement AO.



GO 16 – Appeals

Limited grounds for appeal –

- (1) New evidence not available at the time of hearing;
- (2) Error in the conduct of the investigation that denied fundamental fairness;
- (3) Sanctions disproportionate to the offense; or
- (4) Conflict of interest or bias by the IG’s Office, an external investigator, or other VMI official involved in the Grievance Procedures process that affected the outcome of the hearing.



GO 16 – Appeals

- Within 5 business days of written request for appeal, the IG will notify the parties of the time and place of the hearing. The IG also will provide the parties with the name of the Appeals Officer (AO). The hearing typically will be scheduled within 15 business days of receipt of the request for appeal. If extension beyond 15 business days is necessary, both parties will be notified of the expected timeframe.
- Within 5 business days of appeal request, the party appealing the DM’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 AO’s consideration.



GO 16 – Appeals

- The IG will provide to the AO within 5 business days of receiving the information from the appellant and the appellee:
 - (i) the written determination of responsibility from the DM;
 - (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.



GO 16 – Appeals

- Both the appellant and the appellee may be accompanied by an advisor of their choice to the appeals 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 AO at the hearing. If either party is represented by legal counsel, VMI may be 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.



QUESTIONS?