Comprehensive Standard 3.11.2 – Institutional Environment

The institution takes reasonable steps to provide a healthy, safe, and secure environment for all members of the campus community.

Narrative

On Dec. 4, 2014, the University of Virginia (“U.Va.” or “the University”) received a letter from the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC). Sent pursuant to the Commission’s policy Standing Rules, SACSCOC Board of Trustees, Executive Council, and the College Delegate Assembly, the letter requested a report that “explains and documents the extent of compliance with [Comprehensive Standard 3.11.2].” As recommended by Commission staff, this response does not address components of Comprehensive Standard 3.11.2 not cited as areas of concern in the Commission’s letter.

Excerpted below is the portion of the Commission’s letter referencing Comprehensive Standard 3.11.2:

[Please provide the following: (1) information made available to students regarding instances of sexual assaults as well as how it is posted for easy accessibility, (2) grievance procedures for students who allege sexual assault, (3) the line of internal reporting within the institution regarding such actions of a criminal nature, and (4) the training used for orienting key institutional personnel dealing with sexual assault cases at the University.

If the institution has changed its practices since the release of the articles [by Rolling Stone, Inside Higher Ed, and The Chronicle of Higher Education], your report should include what existed both before and after the recent reports regarding sexual assault.

This response addresses each of these items, in turn. For reference, the University provides comprehensive information about relevant resources and University policies on its central sexual violence education and resources Web site.

As a foundational matter, the Commission’s letter references a Rolling Stone article published on Nov. 19, 2014. Within weeks of publication, and after the date of this request, The Washington Post reported significant factual inaccuracies related to the article. Rolling Stone has since posted an acknowledgement that the article was not accurate. In addition, Rolling Stone has asked the Columbia Journalism School to review “the editorial process that led to the publication of this story.”
Concurrent Regulatory, Law Enforcement, Legal, and Consultancy Reviews

There are several concurrent and ongoing reviews associated with the University’s sexual misconduct policies and procedures and/or specific allegations of sexual assault reported to the University. For the Commission’s reference, these reviews include the following.

(1) Office for Civil Rights
On June 30, 2011, the Office for Civil Rights (OCR) in the U.S. Department of Education initiated a compliance review of University sexual harassment and sexual assault policies and procedures (Case 11-11-6001). In July 2012, OCR informed the University of an individual complaint filed by a then-current student; this complaint was consolidated with the pending compliance review. The Board of Visitors (BOV) was informed of the OCR review in the Aug. 30, 2011 litigation status report, as well as in subsequent litigation status reports. In addition, the BOV has received periodic updates on the status of the review.

The University has responded to all relevant data production requests and participated in numerous campus visits and interviews with OCR investigators. Despite the University’s ongoing cooperation with OCR and its expressed desire for timely completion of the review, OCR has not provided the University with an expected completion date.

Given that three-and-a-half years have passed since initiation of the review, Sen. Mark Warner (D-VA) and Sen. Timothy Kaine (D-VA) – in a Dec. 12, 2014 letter to the U.S. Department of Education – requested information on why this and other investigations are still pending and a time frame for completion. On Jan. 9, 2015, Catherine E. Lhamon, assistant secretary for civil rights, responded that “OCR’s investigative and resolution activities in the [University’s] case are ongoing and we are moving expeditiously to bring the case to conclusion.” As of Jan. 7, 2015, the University is one of 94 institutions under review by OCR.

(2) Charlottesville Police Department
In response to the Nov. 19, 2014 Rolling Stone article, which alleged that the University had failed to properly respond to an allegation of sexual assault, President Teresa A. Sullivan referred the sexual assault allegation to the Charlottesville Police Department (CPD) and requested that CPD conduct a criminal investigation.

On the same day that the allegation was referred to CPD, in a message to the University community, the president stated:

    The [Rolling Stone] article describes an alleged sexual assault of a female student at a fraternity house in September 2012, including many details that were previously not disclosed to University officials. I have asked the Charlottesville Police Department to formally investigate this incident, and the University will cooperate fully with the investigation.

CPD issued a media release on Nov. 20, 2014 acknowledging the University’s request. CPD has since communicated with the University that “their investigation has not revealed any substantive basis to confirm that the allegations raised in the Rolling Stone article occurred at Phi Kappa Psi.”
(3) Independent Counsel
On Nov. 25, 2014, the Office of the Attorney General (OAG) appointed the law firm of O’Melveny & Myers LLP as independent counsel to the BOV. O’Melveny & Myers has been charged with:

Conduct[ing] a full internal review of the response by the [University] to the specific allegations in Rolling Stone regarding a 2012 incident involving a student (“Jackie”). The internal review will include an evaluation of whether [the University’s] response to that incident complied with its stated policies and procedures, as well as federal legal obligations under Title IX and the Clery Act.

Rector George Keith Martin – in a Dec. 17, 2014 statement – indicated that the findings of the independent counsel would be made publicly available.

(4) Consultants
In an effort towards continuous improvement, the University has retained the law firm of Pepper Hamilton LLP to provide expertise on the University's sexual assault policies, procedures, and practices. As outlined in the consulting agreement, Pepper Hamilton will:

[A]ssist the University with consultation services and guidance regarding the University’s response to and handling of sexual and gender-based harassment and violence complaints and reports under Title IX of the Education Amendments of 1972 (Title IX), the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act) and § 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA). The scope of this engagement includes, without limitation, assistance and support regarding new and ongoing Title IX sexual assault reports and cases, implementation of current and proposed Title IX sexual assault policies, protocols involving local law enforcement, an assessment of the University's policies, procedures and practices with respect to Clery and VAWA, and assistance to the University in its responses to the ongoing case and compliance reviews conducted by the Office for Civil Rights of the U.S. Department of Education (“OCR”).

Legal Obligations of Colleges and Universities with Respect to Sexual Assault

Before addressing specific items referenced in the Commission’s letter, it is important to highlight federal legislation, regulation, and policy governing college and university involvement with allegations of sexual assault. Supplemental information on the policy, legal, and regulatory environment may be found in two presentations made to the BOV. On Sept. 12, 2014, representatives of the University provided a brief overview of this environment to the BOV, including a summary of The First Report of the White House Task Force to Protect Students from Sexual Assault (“Not Alone”). This report framed a discussion of the University’s recent actions to create a healthy, safe, and secure environment free from sexual violence. On Dec. 19, 2014, representatives of O’Melveny & Myers LLP – independent counsel to the BOV – provided an overview of the regulatory framework.
The institutional response to sexual and gender-based harassment and violence, dating and domestic violence, and stalking is governed by (1) Title IX of the Education Amendments of 1972 ("Title IX"); (2) the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act ("Clery Act"); and (3) the Violence Against Women Act ("VAWA"), including Section 304 of the VAWA Reauthorization Act of 2013.

(1) Title IX
Title IX is a federal law that prohibits discrimination based on sex and gender. More specifically, Title IX states:

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 financial assistance.

Sexual discrimination includes sexual harassment and sexual violence (i.e., rape or sexual assault). As noted in 2011 guidance issued to colleges and universities by OCR, “sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX.” In 2014, OCR issued additional guidance to colleges and universities, in a question and answer format, to provide further clarification on Title IX and sexual violence. [ Portions of the following discussion on Title IX are drawn from the OCR guidance.]

Title IX requires that colleges and universities “adopt and publish grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints.” Under those procedures, if an institution knows or reasonably should know of possible sexual or gender-based harassment or violence, it must take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to a request for confidentiality by the complainant). If an investigation reveals that sexual violence created a hostile environment, the institution must then take prompt and effective steps – reasonably calculated – to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

Notice
Once an institution has notice of sexual or gender-based harassment or violence, it must promptly take steps to protect the complainant and the campus community, as necessary, including taking interim steps while the investigation is pending. An institution should also ensure that the complainant is aware of any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, and the right to report a crime to campus or local law enforcement. Examples of interim measures may include no-contact orders, adjustments to academic schedules or living arrangements (as appropriate), academic support, providing counseling or emotional support, and allowing for other equitable solutions or responses for both parties.

Determination Whether to Proceed with an Investigation and/or Disciplinary Action
OCR has noted that, “Addressing the needs of a student reporting sexual violence while determining an appropriate institutional response requires expertise and attention.” In determining how to proceed when a complainant requests anonymity or does not wish to proceed with an investigation, an institution must balance competing considerations, including the agency and autonomy of an adult complainant, fundamental fairness and due process of a respondent, and a broader responsibility to campus safety. Further, an institution “should take requests for confidentiality seriously, while at the
same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence.”

OCR strongly supports a student’s interest in confidentiality in cases involving sexual violence and directs institutions to inform and obtain consent from the complainant before beginning an investigation. While, in order to meet its Title IX obligations, OCR notes that there are situations in which an institution must override a student’s request for confidentiality, it cautions that disregarding requests for confidentiality can have a chilling effect and discourage other students from reporting sexual violence.

When an individual requests confidentiality, OCR advises the institution to inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator. OCR further advises the institution to explain that Title IX includes protections against retaliation and that institutional officials will not only take steps to prevent retaliation, but also take strong responsive action if it occurs.

When weighing a student’s request for confidentiality that could preclude a meaningful investigation or potential discipline of the alleged perpetrator, OCR advises an institution to consider a range of factors, including:

- Circumstances that suggest there is an increased risk of the alleged perpetrator committing additional acts of sexual violence or other violence;
  - whether there have been other sexual violence complaints about the same alleged perpetrator;
  - whether the alleged perpetrator has a history of arrests or records from a prior institution indicating a history of violence;
  - whether the alleged perpetrator threatened further sexual violence or other violence against the student or others; and
  - whether the sexual violence was committed by multiple perpetrators.
- Circumstances that suggest there is an increased risk of future acts of sexual violence under similar circumstances (e.g., whether the student’s report reveals a pattern of perpetration, such as via illicit use of drugs or alcohol, at a given location or by a particular group, etc.)
- Whether the sexual violence was perpetrated with a weapon;
- Whether the student subjected to the sexual violence is a minor; and
- Whether the institution possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence, etc.).

If, based upon these factors, the institution determines that it can respect the student’s request not to disclose his or her identity to the alleged perpetrator, OCR advises to take all reasonable steps to respond to the complaint consistent with the request. The institution may also take other means to address the sexual violence. There are steps an institution can take to limit the effects of the alleged sexual violence and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the student complainant. Examples provided by OCR include providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; changing and publicizing the institution’s policies on sexual violence; and conducting climate surveys regarding sexual violence. OCR advises that an institution must also take immediate action, as necessary, to protect the student while keeping the identity of the student confidential. These actions may include providing
support services to the student and changing living arrangements, course schedules, assignments, and/or tests.

OCR cautions institutions to be mindful that traumatic events such as sexual violence can result in delayed decision-making by a student who has experienced sexual violence. Hence, a student who initially requests confidentiality might later request that a full investigation be conducted.

**Intersection with Law Enforcement**
Conduct that violates Title IX or University policy may also violate criminal law, especially conduct related to sexual assault, dating violence, domestic violence, and stalking. However, “Title IX does not require an institution to report alleged incidents of sexual violence to law enforcement.” Instead, in cases involving potential criminal conduct, institutional personnel must determine, “consistent with State and local law, whether appropriate law enforcement or other authorities should be notified.”

Generally speaking, when an allegation arises that implicates both University policy and criminal law, an adult complainant has the right to choose where to report an incident. Indeed, recent amendments to VAWA explicitly recognize an adult complainant’s agency and autonomy to choose to notify or decline to notify law enforcement. This choice may involve a report to the University only, to local law enforcement only, or a report to both entities.

As outlined above, Title IX requires that educational institutions take “immediate and appropriate steps” to investigate or determine whether sexual violence has occurred and to take immediate and corrective action to eliminate the misconduct, prevent its occurrence, and address its effects. This obligation exists regardless of whether a complainant makes a report to the University or local law enforcement.

When an incident has been reported to both the University and local law enforcement, each entity is required to conduct its own investigation to determine whether a policy or criminal law was violated. Moreover, to the extent that there is a concurrent law enforcement investigation, the investigation conducted by law enforcement “does not relieve the institution of its independent Title IX obligation to investigate” incidents of sexual violence. Further, “[p]olice investigations may be useful for fact-gathering, but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX” and “[c]onduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation.”

**(2) Clery Act**
The Clery Act is a federal statute, enacted in 1990, that requires all institutions that receive federal financial assistance, either directly or indirectly, to keep and publish information about crime on or near campus. The purpose of the Clery Act is to provide students, their families, and employees with accurate, complete, and timely information about campus safety to better inform future decisions.

The Clery Act requires that institutions report offenses and disclose statistics for crimes reported to the local police and University employees designated as Campus Security Authorities (CSAs). External reporting occurs through the maintenance of a daily crime log and the dissemination of an annual security report. The Clery Act also requires timely warning notification to the campus community of all Clery Act crimes that are reported to CSAs or local police and are considered by the institution to represent a threat to students and employees. Finally, the Clery Act mandates that institutions develop policies, procedures, and programs regarding sexual offenses. The reporting procedures should outline
the steps that a student should follow if a sexual offense occurs, including who should be contacted, the importance of preserving evidence, and to whom the alleged offense should be reported. The procedures should also assure that the victim be informed of his/her right to call police (both campus and local), the availability of on- and off-campus counseling and mental health services, and the options for reasonable accommodations in changing academic and living situations after an alleged sexual assault.

(3) Violence Against Women Act (VAWA)
Section 304 of the VAWA Reauthorization Act of 2013 was enacted on Mar. 7, 2013, with an effective date of Mar. 1, 2014. A negotiated rulemaking process concluded on Oct. 20, 2014, with an effective date for implementation of the rules of July 1, 2015. Section 304 amends the Clery Act, expanding the responsibility of colleges and universities with respect to the education and prevention, reporting, and policy and procedures related to sexual assault. It also extends those same requirements to include domestic violence, dating violence, and stalking.

Like the Clery Act, VAWA requires that institutions develop and distribute policies regarding educational programs designed to promote the awareness and prevention of sexual assault, domestic violence, dating violence, and stalking; procedures an institution will follow once an incident of domestic violence, dating violence, sexual assault, or stalking is reported; and the standard of evidence used during disciplinary actions. The educational programs must be provided to all incoming students and new employees and must also be repeated on an ongoing basis for returning students and faculty.

In addition to expanding the scope of relevant conduct under the Clery Act, VAWA expanded the rights and options available to a complainant or respondent in several significant aspects. Under VAWA, a complainant must be informed of the option to notify or decline to notify law enforcement. Both parties must have the same opportunities to have others present during a disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice, which may include an attorney. Both parties are entitled to timely access to all information that will be used during informal and formal disciplinary meetings and hearings. Finally, the institution must provide simultaneous, written notification of the outcome and sanction and the rationale for each.

Institutions also must notify individuals regarding on- and off-campus counseling, health, mental health, victim advocacy and legal assistance programs; interim remedies that are available regardless of whether an individual chooses to report an alleged crime to campus police or law enforcement; and a written explanation of an individual’s rights and options when a student or employee reports that they have been a victim of on- or off-campus domestic violence, dating violence, sexual assault, or stalking.

(4) Institutional Policy
In light of the evolving regulatory framework, the University has engaged in two significant efforts to ensure that institutional policies and procedures incorporate federal compliance mandates and comport with effective practices in the institutional response to sexual- and gender-based violence. Those efforts occurred in 2011 and more recently during fall 2014. Key milestones in institutional policy development include the following:

- On Apr. 4, 2011, OCR issued a “Dear Colleague” letter providing additional guidance on the responsibilities of colleges and universities in addressing sexual violence.
• On July 8, 2011, largely to incorporate OCR guidance outlined in the “Dear Colleague” letter, the University promulgated a revised Policy and Procedures on Student Sexual Misconduct Complaints (“2011 Policy”).
• On Apr. 29, 2014, OCR issued more detailed guidance through a question and answer format. On the same day, the White House Task Force to Protect Students from Sexual Assault issued its first report Not Alone. The report contained, among other items, a checklist for institutions to use in drafting – or reevaluating – sexual misconduct policies and a sample reporting and confidentiality protocol regarding disclosures of sexual violence. The University consulted these documents in reviewing its sexual misconduct policies and procedures
• On June 20, 2014, the Office of Postsecondary Education (OPE) issued a Notice of Proposed Rulemaking (NPRM) to incorporate VAWA into the Code of Federal Regulations (CFR).
• On Aug. 25, 2014, the University implemented a Policy on Reporting by University Employees of Sexual Misconduct Disclosures Made by Students (“2014 Reporting Policy”). The policy is based, in large part, on the sample reporting and confidentiality protocol recommended in the Not Alone report. [This policy is discussed in greater detail in the section “Line of Internal Reporting for Actions of a Criminal Nature.”]
• On Oct. 20, 2014, OPE issued the final rule incorporating VAWA into the CFR, with an effective date of July 1, 2015.
• As of Jan. 31, 2015, the University is evaluating these comments and completing final review with internal and external legal counsel. The University expects to implement a new policy (“2015 Policy”) this spring that will apply to all students and employees and will comply with recent legal and regulatory developments referenced above.

The University expects that the 2014 Proposed Draft Policy may be subject to future review and revision due to pending legislative, regulatory, and policy developments at the state level. For example, on Jan. 14, 2015, Virginia Gov. Terry McAuliffe – during his State of the Commonwealth address – proposed that “the State Council of Higher Education for Virginia [SCHEV] develop a unified sexual misconduct policy for all of Virginia’s public colleges and universities by July 31 of this year.” In addition, the Governor’s Task Force on Combating Campus Sexual Violence is expected to issue a final report by June 1, 2015.

More than 30 bills have been proposed by the Virginia legislature that may require additional revisions to institutional policy. The Virginia General Assembly convened on Jan. 14, 2015 and will adjourn sine die on Feb. 28, 2015. Any applicable legislation passed by the General Assembly and signed by the Governor will, unless otherwise indicated, take effect on July 1, 2015.

**Sexual Assault Data Made Available to Students**

In accordance with the Clery Act, the University utilizes the following mechanisms to provide information to students on instances of sexual assault. Clery Act disclosures are coordinated by the University Police Department (UPD).
(1) Annual Security Report
Each year, UPD distributes the University’s Annual Security Report (ASR). The most recent ASR was released Sept. 30, 2014.

As noted by UPD:

[The ASR] contains three years of crime statistics related to incidents that occurred on the campus, in certain off-campus buildings or property owned or controlled by the University of Virginia; and on public property immediately adjacent to and accessible to University Grounds. The [ASR] also contains institutional policies concerning campus security, such as policies concerning sexual assault; safety and crime prevention information.

Each September, UPD mails a color postcard and sends an e-mail to students, faculty, and staff notifying them of the availability of the ASR. Individuals are directed to a Web site where UPD maintains Clery Act information.

(2) Crime Log
UPD maintains a crime log which includes police reports filed with UPD. Unless exclusion is permitted by law, each entry details the nature of the alleged crime, the location of the alleged crime, and the disposition of the case. Individuals may search crime logs by year and month. A sample crime log, from December 2014, is included for reference.

(3) Crime Statistics
As noted above, crime statistics are included in the University’s ASR. Students are notified of the availability of the ASR each September.

With respect to instances of sexual assault, the ASR includes statistics for (1) rape or fondling, and (2) incest/statutory rape. (Prior to 2013, such crimes were reported as “forcible sex offense” or “non-forcible sex offense.”) The ASR also includes statistics on domestic violence, dating violence, and stalking. Statistics are further segregated by location – on campus, in residential facilities, at a non-campus property, or on public property.

The statistics provided in the ASR are derived from multiple sources, including crimes reported (1) directly to UPD, (2) by CSAs or other law enforcement agencies, (3) to off-site continuing education centers affiliated with the University, (4) by the International Studies Office (ISO), and (5) by Semester at Sea.

(4) Timely Warnings
When the University chief of police or his designee deems that a situation constitutes a serious or continuing threat to the University community, UPD issues a campus-wide timely warning. The ASR outlines the procedure for issuing a timely warning:

The on-duty police shift commander notifies the police command staff of an event. The chief of police either receives this notification or a call from another member of the command staff. The chief will then request a timely warning be issued by the [UPD] public information officer. The public information officer drafts a timely warning, with input from at least one public information officer at the investigating agency. The warning is forwarded to the Office of University Communications, [which] forwards it to the University community.
Distribution may be accomplished through press releases, email messages, posters, desktop alerts and with messages on the [UPD] Web site. All distribution methods may not be used for every incident. For information on U.Va. Alerts, please visit [https://www.virginia.edu/uvaalerts](https://www.virginia.edu/uvaalerts).

UPD maintains an inventory of timely warnings and other safety announcements. Timely warnings also are compiled in the ASR. The most recent timely warning related to sexual assault was issued on Nov. 15, 2014.

**Grievance Procedures for Students Alleging Sexual Assault**

Grievance procedures for students alleging sexual assault are maintained on the University’s [sexual violence education and resources](https://www.virginia.edu/) Web site and in the ASR. This site provides students with a summary of the University’s policy, as well as how students may file a complaint under the policy. The policy and procedures are available and applicable to all University students, regardless of location or instructional modality.

As previously noted, legal and regulatory developments surrounding issues of sexual assault have resulted in two major policy revisions over the last four years – in 2011 and 2014.

- **2011 Policy** – [Policy and Procedures on Student Sexual Misconduct Complaints](https://www.virginia.edu/uvaalerts)

The 2014 Proposed Draft Policy provided above represents the version posted for public comment on Nov. 19, 2014. It is subject to revision, based on public comment and legal review.

**(1) 2011 Policy**
On May 4, 2011, the University posted its proposed Policy and Procedures for Cases of Student Sexual Misconduct for public comment. (An [executive summary](https://www.virginia.edu/uvaalerts), partially reproduced below, is available for review.) At the time, the last revision of University policy and procedures occurred on Mar. 16, 2005 (“2005 Policy”). The 2011 revision largely responded to federal guidance contained in the aforementioned “Dear Colleague” letter. The president signed the 2011 Policy on July 8, 2011. Among the primary revisions were:

- **Emphasis on Assistance to Victims** – The 2011 Policy begins by setting out, in clear terms, where a victim of sexual misconduct can turn to obtain immediate assistance and support.

- **Definition of “Sexual Misconduct” Significantly Broadened** – Under the 2011 Policy, sexual misconduct is a broad term that encompasses any unwelcome sexual behavior that occurs without effective consent. Sexual misconduct has therefore been revised to include sexual harassment, which is broadly defined and may include instances of stalking, cyberstalking or relationship violence, and sexual exploitation, which includes causing another’s incapacitation, recording or transmitting sexual images, voyeurism, and the knowing transmission of a sexually transmitted infection to another person.
• **Clarification of the Definitions of “Effective Consent” and “Incapacitation”** – The concepts of “effective consent” and “incapacitation” play a central role in most student sexual misconduct cases. Under the 2011 Policy, these terms have been elaborated and clarified.

• **No Geographical Limit on Jurisdiction** – Under the 2005 Policy, jurisdiction was limited to conduct committed on University-owned or leased property or where a student, faculty member, employee, or visitor resides within the City of Charlottesville or Albemarle County. Under the 2011 Policy, there is no geographical limit on jurisdiction. Although conduct that is alleged to have occurred far from the Grounds may prove difficult to investigate, the 2011 Policy covers sexual misconduct by a University student, wherever it occurs.

• **No Time Limit on Invoking Procedures** – Under the 2005 Policy, complaints must be brought within one year of the alleged misconduct. There is no time limit to invoking jurisdiction under the 2011 Policy, as long as the accused student is a University student at the time the complaint is made.

• **Clarification of Intake Procedures** – The 2011 Policy clarifies the initial steps in the process, from intake through the complainant’s decision whether or not to pursue adjudication.

• **Clarification of University’s Response Where Complainant Does Not Wish to Pursue Adjudication or Insists on Confidentiality** – Pursuant to the “Dear Colleague” letter, the 2011 Policy clarifies how the University will respond when a complainant asks that his/her complaint not be investigated and pursued through adjudication or requests confidentiality of his/her complaint.

• **Closed-Circuit Technology** – Under the 2011 Policy, parties and witnesses may request to testify by closed-circuit technology, in appropriate cases.

• **Evidentiary Standard Changed** – Pursuant to the “Dear Colleague” letter, the evidentiary standard in adjudication of sexual misconduct cases has been changed from “clear and convincing evidence” to a “preponderance of the evidence.”

• **Mediation Eliminated** – Pursuant to the “Dear Colleague” letter, traditional mediation between the parties is no longer available, although a complainant may choose between a formal and an informal process of adjudication.

During the 2013-14 academic year, eight complaints were filed under the 2011 Policy.

(2) **2014 Proposed Draft Policy**
As previously noted, the 2014 Proposed Draft Policy represents the version posted for public comment on Nov. 19, 2014. (An executive summary, partially reproduced below, is available for review.) The original deadline for comment – Dec. 5, 2014 – was established prior to the release of the article in Rolling Stone. In the wake of the article and due to requests from the University community, the president extended the deadline until Dec. 20, 2014. The University received almost 600 comments during the public comment period, which are currently under review. Upon conclusion, the University will work with legal counsel to finalize the 2015 Policy.
The 2014 Proposed Draft Policy largely responds to recent federal guidance and regulatory developments. Significant *proposed* revisions to the 2011 Policy include:

- **Expansion of Content** – The 2014 Proposed Draft Policy is significantly longer than the 2011 Policy, which is focused almost exclusively on the procedures for resolving student disciplinary complaints. Consistent with new federal guidance, the 2014 Proposed Draft Policy – as does the 2011 Policy – outlines all of a student’s options following an incident of sexual misconduct, including how to obtain immediate and ongoing support and assistance, how to report an incident to the University and/or to police, and how to file a University complaint. The University has developed a separate infographic to ensure that students have a reference sheet containing all of this information. The infographic has been widely distributed throughout Grounds.

- **“Intimate Partner Violence,” “Domestic Violence,” and “Stalking” Added as Defined Terms** – The 2011 Policy addresses intimate partner violence, domestic violence, and stalking as forms of sexual harassment. The 2014 Proposed Draft Policy includes stand-alone definitions for these terms and treats each as a separate form of prohibited conduct. The 2014 Proposed Draft Policy adopts the definitions contained in VAWA, which now requires colleges and universities to compile and report separate statistics for these three offenses.

- **Clarification of the Definitions of “Effective Consent” and “Incapacitation”** – The concepts of "effective consent" and "incapacitation" will continue to play a central role in student sexual misconduct cases. The 2014 Proposed Draft Policy provides additional discussion and clarification of these foundational concepts.

- **Revision of Sexual Harassment Definition; Explanation of “Hostile Environment”** – The 2014 Proposed Draft Policy clarifies the definition of sexual harassment and explains how the University evaluates the existence of a "hostile environment" from both a subjective and objective viewpoint. The 2014 Proposed Draft Policy lists several factors that the University considers in evaluating hostile environment claims, including whether the conduct in question is protected speech.

- **Complicity Added** – The 2014 Proposed Draft Policy adds "complicity" as a type of prohibited conduct. "Complicity" means any act that knowingly aids, facilitates, promotes, or encourages another person to commit any other form of conduct prohibited by the policy.

- **Preservation of Evidence** – The 2014 Proposed Draft Policy encourages students to preserve evidence of any act of sexual misconduct and outlines various methods for doing so. These methods include obtaining a confidential forensic examination by a sexual assault nurse examiner at the University’s Emergency Department. Appendix I to the 2014 Proposed Draft Policy outlines how to obtain such an examination and what to expect at the Emergency Department.

- **Accessing Confidential Sources** – The 2014 Proposed Draft Policy outlines where students can go to obtain confidential counseling and support in the aftermath of an incident of sexual misconduct. Appendix II to the 2014 Proposed Draft Policy lists the confidential resources available both inside and outside the University.
• **Assistance from the Office of the Dean of Students; Obtaining Interim Remedial Measures and Support** – The 2014 Proposed Draft Policy provides students more detail about the many options for support and assistance available through the Office of the Dean of Students (ODOS), including the many types of remedial measures that ODOS can implement, following an incident of sexual misconduct.

• **Options for Reporting Sexual Misconduct to the University** – The 2014 Proposed Draft Policy incorporates expanded options for reporting sexual misconduct to the University. Students may now report sexual misconduct via an on-line system or they may report by disclosing information about sexual misconduct to any "responsible employee." The University adopted a new reporting policy on Aug. 25, 2014, clarifying an employee’s reporting responsibilities, identifying "responsible employees" under Title IX, and requiring all "responsible employees" to report student disclosures of sexual misconduct to the University's Title IX Coordinator. The 2014 Proposed Draft Policy incorporates and reflects this new reporting policy.

• **Explanation of University’s Response When Reporting Student Does Not Wish to Participate in University Investigation or Disciplinary Action or Requests Confidentiality** – The 2014 Proposed Draft Policy explains that such requests are evaluated by a designated "evaluation panel," describes the specific factors the evaluation panel considers, and describes the University's response in the event that such requests cannot be honored while ensuring the safety of the University community.

• **Changes in How Formal Complaints are Investigated** – The University has hired one new full-time investigator, and has budgeted for an additional position, in the Office of Equal Opportunity Programs (EOP) to investigate student and employee complaints of discrimination and harassment. Complaints filed under the 2014 Proposed Draft Policy will be investigated by EOP.

• **Changes in Formal Resolution of Complaints** – Under the 2014 Proposed Draft Policy, the University investigator will prepare a report summarizing the evidence and recommending a finding of "responsibility" or "no responsibility," applying a preponderance of the evidence standard. This recommendation will be made only after the investigator has conducted a thorough investigation that includes equal and ample opportunity for each party to identify and respond to relevant witnesses and evidence. The investigator's recommended finding will be reviewed by a standing review committee appointed by the vice president and chief student affairs officer.

• **Changes in Role of Sexual Misconduct Board** – Under the 2014 Proposed Draft Policy, the role of the Sexual Misconduct Board (SMB) will be limited to conducting hearings on sanctions. Recent OCR guidance discourages institutions from allowing students to serve on hearing boards in cases involving sexual violence. This guidance is inconsistent with the University's tradition of student self-governance. Under the 2014 Proposed Draft Policy, the SMB will continue to include student members unless either of the parties objects, in which case the SMB hearing panel for that case will consist solely of faculty and staff members.
• **Inclusion of List of Possible Sanctions** – The 2014 Proposed Draft Policy includes a list of the range of sanctions that may be imposed by the SMB hearing panel. Consistent with the 2011 Policy, the 2014 Proposed Draft Policy requires the SMB hearing panel to consider a sanction of suspension or expulsion in every case.

• **Description of Training, Education, and Prevention Programs** – The 2014 Proposed Draft Policy provides general descriptions of the training, education, and prevention programs offered to University students, faculty, and staff. Appendix III to the 2014 Proposed Draft Policy describes the University's training, education, and prevention programs in detail.

While the University asserts that the 2014 Proposed Draft Policy is compliant with legal and regulatory developments at the federal level, the aforementioned public policy developments at the state level will likely require additional revisions to institutional policy.

**Line of Internal Reporting for Actions of a Criminal Nature**

As previously noted, on Aug. 25, 2014, the University promulgated the **Policy on Reporting by University Employees of Sexual Misconduct Disclosures Made by Students** (“2014 Reporting Policy”). The policy “outlines the options available to students to report [an] alleged [act of] sexual misconduct to University employees, and the obligations of University employees to respond to such disclosures.”

For reporting purposes, the policy defines two types of employees – “confidential” and “responsible.” Responsible employees are required to disclose all relevant details about an alleged sexual misconduct to the University’s Title IX coordinator through the **Just Report It** system. With respect to responsible employees reporting allegations to law enforcement, the policy states, “[a] responsible employee should not share information with law enforcement without the reporter’s consent or unless the reporter has already reported the incident to law enforcement.”

Consistent with applicable Title IX, Clery Act, and VAWA requirements, the 2014 Proposed Draft Policy will codify the University's current practice with respect to disclosures and reporting of alleged sexual misconduct, including such acts of a criminal nature:

Except in cases of anonymous reports, all reports of sexual misconduct will be shared, concurrently, with members of the University's Title IX Response Team, consisting of the Title IX Coordinator, an ODOS representative, and a limited number of other specially-trained individuals in the Division of Student Affairs and [EOP]. An ODOS representative on the Title IX Response Team will promptly (1) initiate outreach to the reporter (and the victim, if the reporter is not the victim) in order to obtain additional information about the reported incident, if available, and to offer support, assistance and, where appropriate, interim remedial measures, (2) perform a “preliminary review” in order to identify any immediate concerns for the safety of the reporter, the victim (if other than the reporter) and/or the University community, and (3) take preliminary action, if warranted, in order to address any immediate concerns for the safety of the reporter, the victim (if other than the reporter) and/or the University community.

During initial outreach to and upon meeting with a victim, ODOS provides the reporting options outlined on the student sexual misconduct infographic, including the filing of a criminal complaint or University judicial complaint. Victims are strongly encouraged to report sexual violence to the police. Except in
cases requiring preliminary action, the University does not report such allegations to law enforcement against the wishes of the victim. This is consistent with VAWA, which affirms that it is a complainant’s option to notify, or decline to notify, law enforcement.

If a victim requests confidentiality (e.g. that his/her name not be disclosed to the alleged perpetrator, that no University investigation occur, etc.), the University refers the request to an evaluation panel. The most recent evaluation panel convened on Jan. 29, 2015. The evaluation panel weighs such a request against the safety of the University community. As outlined in the 2014 Reporting Policy, and consistent with guidance offered by OCR, the evaluation panel considers the following factors:

- Evidence, if any, of the increased risk that the alleged perpetrator will commit additional acts of sexual misconduct or other misconduct, such as:
  - whether there have been other sexual misconduct complaints about the same alleged perpetrator;
  - whether the alleged perpetrator has a history of arrests or records from a prior institution indicating a history of engaging in sexual misconduct;
  - whether the alleged perpetrator threatened further sexual misconduct or other misconduct against the reporter or others; and
  - whether the sexual misconduct was committed by multiple perpetrators.
- Whether the sexual misconduct was perpetrated with a weapon;
- Whether the reporter is a minor;
- Whether the University possesses other means to obtain relevant evidence of the alleged sexual misconduct (e.g., security cameras or personnel, physical evidence, etc.); and
- Whether the report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol, etc.) at a given location or by a particular group.

If the evaluation panel determines that the University cannot honor the request for confidentiality, information will be shared only with those individuals related to the investigation and/or those individuals responsible for addressing a threat to the safety of the University community.

[Pages 19 to 23 of the 2014 Proposed Draft Policy articulate the University’s current practice with respect to the reporting of sexual misconduct, including the procedures described above. The entire section is excerpted here to facilitate Commission review.]
Training for Orienting Key Institutional Personnel

The 2014 Proposed Draft Policy incorporates a description of the training provided to University officials involved in implementing the policy. Though the 2015 Policy is currently being finalized, this description articulates current University practice with respect to training key institutional personnel dealing with allegations of sexual assault. It states:

The University offers on-line and in-person training to all officials charged with implementing this policy, including the University's Title IX Coordinator, Deputy Title IX Coordinators, certain ODOS employees, University Investigators, the Standing Review Committee, and members of the Sexual Misconduct Board. This training varies by official and is based upon the role(s) the official is fulfilling under this policy. Topics include working with and interviewing persons subjected to sexual misconduct; the particular types of conduct that constitute prohibited conduct under this policy; issues related to domestic violence, intimate partner violence, sexual assault, and stalking; the proper standard of review for complaints under this policy (preponderance of evidence); effective consent and the role alcohol or drugs can play in the ability to obtain effective consent, as defined by this policy; the importance of accountability for individuals found to have violated this policy, and the need for interim and other remedial actions for the respondent, the complainant, and the University community in such instances; how to determine credibility; how to evaluate evidence and weigh it in an impartial manner; how to conduct prompt, fair, impartial, and thorough investigations and hearings that ensure due process, protect the safety of victims, and promote accountability; confidentiality; the effects of trauma, including neurobiological change; and cultural awareness regarding how sexual misconduct may impact students differently depending on their cultural backgrounds.

University officials charged with implementing this policy receive regular training on these and other topics on an annual basis. The University invites national experts to train on these topics
on Grounds and frequently sends University officials to relevant local, regional, and national conferences.

Provided for Commission review is an inventory of training provided to key institutional officials. This inventory spans Sept. 1, 2011 through Jan. 30, 2015. Positions included in this inventory include:

- Title IX Coordinator
- Deputy Title IX Coordinators
- Sexual Misconduct Board: Investigators
- Sexual Misconduct Board: Members
- Sexual Misconduct Board: Advisors
- University Police Department: Officers

A separate inventory of training, spanning from 2008 to the present, is provided for the chair of the Sexual Misconduct Board.

Continuous Improvement

As outlined in the “Recent Actions Taken” section of the University’s sexual violence education and resources Web site, the University is committed to ensuring a safe environment free of discrimination and sexual violence. As previously discussed, the University is using the Not Alone report, issued by the White House Task Force to Protect Students from Sexual Assault, to frame its active project list. The report encourages colleges and universities to develop action items across three areas: (1) identifying the problem, (2) preventing sexual misconduct, and (3) responding effectively when sexual misconduct occurs. The inventory below reflects the University's work over recent months in each of these areas.

Identifying the Problem: Campus Climate Survey

- The University is participating in a consortium formed through the Association of American Universities (AAU) to develop, by spring 2015, a survey of sexual assault and campus climate for administration on college and university campuses.
- In August 2014, the AAU consortium solicited proposals for survey development and administration from qualified firms. On Nov. 14, 2014, the AAU announced that Weststat, a national research firm, was selected to design the climate survey and administer it at participating AAU institutions.
- By Apr. 1, 2015, the University will administer the sexual assault and campus climate survey.

Preventing Sexual Misconduct: Engaging the University Community

- In February 2014, the University planned and hosted a national conference on sexual misconduct. Dialogue at U.Va.: Sexual Misconduct Among College Students brought together national experts and professionals from approximately 60 colleges and universities to discuss best practices and strategies for prevention and response.
- In August 2014, the University added a prevention coordinator in ODOS.
- In August 2014, the University launched #HoosGotYourBack. Part of the Not On Our Grounds awareness campaign, it was designed in collaboration with students and local merchants to increase active bystander behavior.
• During fall orientation, a national expert on bystander intervention gave a presentation to incoming undergraduate students. Following the orientation session, students discussed the presentation in small groups with resident advisors.

• During fall 2014, peer education groups—Alcohol and Drug Abuse Prevention Team (ADAPT), Peer Health Educators, One Less, and 1 in 4—held a summit on standardizing peer education efforts. Working with the University's new prevention coordinator, the peer education groups implemented assessment tools to evaluate the effectiveness of their presentations.

• The University is partnering with violence prevention experts at Green Dot, etc. to initiate a community-wide prevention strategy, including a focus on bystander intervention. The University recently trained an implementation team of 150 faculty, staff, and students who are coordinating logistics, adapting curriculum, planning mobilization events, and training others on-Grounds as the initiative is launched.

Effectively Responding When Sexual Misconduct Occurs

• As previously discussed, on Aug. 25, 2014, the University adopted a new reporting policy which requires most University employees to report student disclosures of alleged sexual misconduct to the University's Title IX Coordinator.

• Recognizing the societal, cultural, and individual barriers to reporting sexual misconduct, the University has designated a number of locations both on-Grounds and off-Grounds where students may seek confidential support and assistance.

• The University developed an online system for reporting sexual misconduct to University officials. Students may use this system to make an anonymous or identifiable report of sexual misconduct. Responsible employees use this system to file reports with the University's Title IX Coordinator. The system contains several pages of resources and a short training video for employees.

• The University is conducting in-person training sessions for groups of faculty and staff interested in learning more about the University's new reporting policy. These sessions are coordinated by EOP.

• The University hired one full-time investigator, and has budgeted for an additional position, in EOP to investigate student and employee complaints of discrimination and harassment.

• As previously discussed, the University is currently engaged in an active and comprehensive review of its student sexual misconduct policy. The review has included student focus groups and a public comment period.

• Upon release of the 2015 Policy, the University will release a U.Va.-specific educational module on sexual misconduct for students, as well as a module on sexual misconduct and reporting obligations for all faculty and staff.