

## **RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION POLICY (Hereinafter the “Resolution Process”)**

### **1. Overview**

VGCC will act on any Notice, Complaint, or Knowledge of a potential violation of the Equal Opportunity, Harassment, and Nondiscrimination Policy (“the Policy”) that the Administrator or any other Mandated Reporter receives by applying the Resolution Process below.

The procedures below apply to all allegations of discrimination on the basis of an actual or perceived protected characteristic, harassment, retaliation, or Other Prohibited Conduct involving students, employees, or third parties.

### **2. Notice/Complaint**

Upon receipt of Notice, a Complaint, or Knowledge of an alleged Policy violation, the Administrator will initiate a prompt initial evaluation to determine VGCC’s next steps. The Administrator will contact the Complainant/source of the Notice to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

### **3. Collateral Misconduct**

Collateral misconduct is defined to include potential violations of other VGCC policies not incorporated into the Policy that occur in conjunction with alleged violations of the Policy, or that arise through the course of the investigation, for which it makes sense to provide one resolution for all allegations. Thus, the collateral allegations may be charged along with potential violations of the Policy, to be resolved jointly under these Procedures. In such circumstances, the Administrator may consult with VGCC officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs) to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the discretion of Administrator. All other allegations of misconduct unrelated to incidents covered by the Policy will typically be addressed separately through procedures described in the student, faculty, and staff handbooks.

### **4. Initial Evaluation**

The Administrator conducts an initial evaluation, typically within seven (7) business days of receiving Notice/Complaint/Knowledge of alleged misconduct.<sup>1</sup> The initial evaluation typically includes:

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<sup>1</sup> If circumstances require, the **President** or Administrator will designate another person to oversee the Resolution Process should an allegation be made about the Administrator or the Administrator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

- Assessing whether the reported conduct may reasonably constitute a violation of the Policy.
  - If the conduct may not reasonably constitute a violation of the Policy, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. It may then be referred to another process, if applicable.
- Determining whether VGCC has jurisdiction over the reported conduct, as defined in the Policy.
  - If the conduct is not within VGCC jurisdiction, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. If applicable, the conduct will be referred to the appropriate VGCC office for resolution.
- Offering and coordinating supportive measures for the Complainant.
- Offering and coordinating supportive measures for the Respondent, as applicable.
- Notifying the Complainant, or the person who reported the allegation(s), of the available resolution options, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below.
- Determining whether the Complainant wishes to initiate a Complaint.
- Notifying the Respondent of the available resolution options, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below, if a Complaint is made.

### ***Helping a Complainant to Understand Resolution Options***

If the Complainant indicates they wish to initiate a Complaint (in a manner that can reasonably be construed as reflecting intent to make a Complaint), the Administrator will help to facilitate the Complaint, which will include working with the Complainant to determine whether the Complainant wishes to pursue one of three resolution options:

- a supportive and remedial response, and/or
- Informal Resolution, or
- the Resolution Process described below.

The Administrator will seek to abide by the wishes of the Complainant but may have to take an alternative approach depending on their analysis of the situation.

If the Complainant elects for the Resolution Process below, and the Administrator has determined the Policy applies and that the VGCC has jurisdiction, they will route the matter to the appropriate Resolution Pool member, will provide the Parties with a Notice of Investigation and Allegation(s), and will initiate an investigation consistent with these Procedures.

If any Party indicates (either verbally or in writing) that they want to pursue an Informal Resolution option, the Administrator will assess whether the matter is suitable for Informal Resolution and refer the matter accordingly.

If the Complainant indicates (either verbally or in writing) that they do not want any action taken, no Resolution Process will be initiated (unless deemed necessary by the Administrator), though the Complainant can elect to initiate one later, if desired.

### ***Administrator Authority to Initiate a Complaint***

If the Complainant does not wish to file a Complaint, the Administrator, who has ultimate discretion as to whether a Complaint is initiated, will offer supportive measures and determine whether to initiate a Complaint themselves. To make this determination, the Administrator will evaluate that request to determine if there is a serious and imminent threat to someone's safety or if the VGCC cannot ensure equal access without initiating a Complaint. The Administrator will consider the following non-exhaustive factors to determine whether to file a Complaint:

- The Complainant's request not to initiate a Complaint.
- The Complainant's reasonable safety concerns regarding initiating a Complaint.
- The risk that additional acts of discrimination would occur if a Complaint is not initiated.
- The severity of the alleged discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.
- The age and relationship of the Parties, including whether the Respondent is a VGCC employee;
- The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals;
- The availability of evidence to assist a Decision-maker in determining whether discrimination occurred;
- Whether the VGCC could end the alleged discrimination and prevent its recurrence without initiating its resolution process.

If deemed necessary, the Administrator may consult with appropriate VGCC employees, and/or conduct a violence risk assessment<sup>2</sup> to aid their determination whether to initiate a Complaint.

When the Administrator initiates a Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged conduct that could constitute a violation of this Policy.

## **5. Dismissal**

VGCC **may** dismiss a Complaint if, at any time during the investigation or Resolution Process, one or more of the following grounds are met:

- 1) VGCC is unable to identify the Respondent after taking reasonable steps to do so

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<sup>2</sup> See detailed information regarding Violence Risk Assessment in Appendix E

- 2) VGCC no longer enrolls or employs the Respondent
- 3) A Complainant voluntarily withdraws any or all of the allegations in the Complaint, and the Administrator declines to initiate a Complaint
- 4) VGCC determines the conduct alleged in the Complaint would not constitute a Policy violation, if proven

A Complainant who decides to withdraw a Complaint may later request to reinstate or refile it.

Upon any dismissal, VGCC will promptly send the Complainant written notification of the dismissal and the rationale for doing so. If the dismissal occurs after the Respondent has been made aware of the allegations, VGCC will also notify the Respondent of the dismissal.

This dismissal decision is appealable by any party.

## **6. Appeal of Dismissal**

The Complainant may appeal a dismissal of their Complaint. The Respondent may also appeal the dismissal of the Complaint if dismissal occurs after the Respondent has been made aware of the allegations. All dismissal appeal requests must be filed within three (3) business days of the notification of the dismissal.

The Administrator will notify the Parties of any appeal of the dismissal. If, however, the Complainant appeals, but the Respondent was not notified of the Complaint, the Administrator must then provide the Respondent with a NOIA and will notify the Respondent of the Complainant's appeal with an opportunity to respond.

Throughout the dismissal appeal process, VGCC will:

- Implement dismissal appeal procedures equally for the Parties.
- Assign a trained Dismissal Appeal Officer who did not take part in an investigation of the allegations or dismissal of the Complaint.
- Provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the dismissal.
- Notify the Parties of the result of the appeal and the rationale for the result.

The grounds for dismissal appeals are limited to:

- 1) Procedural irregularity that would change the outcome.
- 2) New evidence that would change the outcome and that was not reasonably available when the dismissal was decided.
- 3) The Administrator, Investigator, or Decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome.

The appeal should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request from one or more Parties, the Administrator will share the petition with all other Parties and provide three (3) business days for other Parties and the Administrator to respond to the request. At the conclusion of the response period, the Administrator will forward the appeal, as well as any response provided by the other Parties and/or the Administrator to the Dismissal Appeal Officer for consideration.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the Dismissal Appeal Officer will deny the request, and the Parties, their Advisors, and the Administrator will be notified in writing of the denial and the rationale.

If any of the asserted grounds in the appeal satisfy the grounds described in this Policy, then the Dismissal Appeal Officer will notify all Parties and their Advisors, and the Administrator, of their decision and rationale in writing. The effect will be to reinstate the Complaint.

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Officer has seven (7) business days to review and decide on the appeal, though extensions can be granted at the Administrator's discretion, and the Parties will be notified of any extension.

Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so.

The Dismissal Appeal Officer may consult with the Administrator and/or legal counsel on questions of procedure or rationale for clarification, if needed. The Administrator will maintain documentation of all such consultation.

## **7. Emergency Removal/Interim Suspension of a Student**

VGCC may emergency remove a student accused of Sex Discrimination or Sex-based Harassment upon receipt of Notice/Knowledge, a Complaint, or at any time during the Resolution Process. Prior to an emergency removal, VGCC will conduct an individualized risk assessment and may remove the student if that assessment determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies such action. Students accused of other forms of discrimination (not sex) are subject to interim suspension, which can be imposed for safety reasons.

When an emergency removal or interim suspension is imposed, wholly or partially, the affected student will be notified of the action, which will include a written rationale, and the option to challenge the emergency removal or interim suspension within two (2) business days of the notification. Upon receipt of a challenge, the Administrator will meet with the student (and

their Advisor, if desired) as soon as reasonably possible thereafter to allow them to show cause why the removal/action should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal or interim suspension is appropriate, should be modified, or lifted. When this meeting is not requested within two (2) business days, objections to the emergency removal or interim suspension will be deemed waived. A student can later request a meeting to show why they are no longer an imminent and serious threat because conditions related to imminence or seriousness have changed. A Complainant and their Advisor may be permitted to participate in this meeting if the Administrator determines it is equitable for them to do so.

The Respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a Complainant may provide information to the Administrator for review.

An emergency removal or interim suspension may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Administrator will communicate the final decision in writing, typically within three (3) business days of the review meeting.

## **8. Placing an Employee on Leave**

When the Respondent is an employee, or a student employee accused of misconduct in the course of their employment, existing provisions for interim action are typically applicable instead of the above emergency removal process.

## **9. Counter-Complaints**

VGCC is obligated to ensure that the Resolution Process is not abused for retaliatory purposes. Although VGCC permits the filing of counter-complaints, the Administrator will use an initial evaluation, described above, to assess whether the allegations in the counter-complaint are made in good faith. When counter-complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a violation of the Policy.

Counter-complaints determined to have been reported in good faith will be processed using the Resolution Process below. At the Administrator's discretion, investigation of such claims may take place concurrently or after resolution of the underlying initial Complaint.

## **10. Advisors in the Resolution Process**

### **A. Who Can Serve as an Advisor?**

The Parties may each have an Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings, interviews within the Resolution Process, including intake. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>3</sup>

The Administrator will offer to assign a trained Advisor to any party if the party chooses. If the Parties choose an Advisor from the pool available from VGCC, VGCC will have trained the Advisor and familiarized them with VGCC's Resolution Process.

VGCC cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not, or cannot afford an attorney, VGCC is not obligated to provide an attorney to advise that party.

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Parties are expected to provide the Administrator with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.

VGCC may permit Parties to have more than one Advisor, or an Advisor and a support person, upon special request to the Administrator. The decision to grant this request is at the Administrator's sole discretion and will be granted equitably to all Parties.

If a party requests that all communication be made through their attorney Advisor instead of to the party, VGCC will refuse that request **OR** agree to copy both the party and their Advisor on all communications at the discretion of the Administrator.

Advisors appointed by the institution cannot be Confidential Employees, and although they will not be asked to disclose details of their interactions with their advisees to institutional officials or Decision-makers absent an emergency, they are still reminded of their Mandated Reporter responsibilities.

## **B. Advisor's Role in the Resolution Process**

Advisors should help the Parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

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<sup>3</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. The Advisor cannot have institutionally conflicting roles, such as being an administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions. Additionally, choosing an Advisor who is also a witness in the process creates potential for bias and conflicts of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Decision-maker(s).

The Parties are expected to ask and respond to questions on their own behalf throughout the Resolution Process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.

### **C. Records Shared with Advisors**

Advisors are entitled to the same opportunity as their advisee to access relevant evidence, and/or the same written investigation report that accurately summarizes this evidence.

Advisors are expected to maintain the confidentiality of the records the VGCC shares with them, per the Confidentiality section of the Policy. Advisors may not disclose any VGCC work product or evidence VGCC obtained solely through the Resolution Process for any purpose not explicitly authorized by VGCC.

VGCC may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by VGCC's confidentiality expectations.

### **D. Advisor Expectations**

VGCC generally expects an Advisor to adjust their schedule to allow them to attend VGCC meetings/interviews when planned, but VGCC may change scheduled meetings/interviews to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

VGCC may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview by telephone, video conferencing, or other similar technologies.

All Advisors are subject to the same VGCC policies and procedures, whether they are attorneys or not, and whether they are selected by a party or appointed by VGCC. Advisors are expected to advise without disrupting proceedings.

### **E. Advisor Policy Violations**

Any Advisor who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with VGCC's established rules of decorum will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview may be ended, or other appropriate measures implemented, including VGCC requiring the party



to use a different Advisor or providing a different VGCC-appointed Advisor. Subsequently, the Administrator will determine how to address the Advisor's non-compliance and future role.

## **11. Resolution Options Overview**

This Resolution Process, consisting of Informal Resolution Administrative Resolution is the VGCC's chosen approach to addressing all forms of discrimination on the basis of protected characteristics, harassment, retaliation, and Other Prohibited Conduct under the Policy. The process considers the Parties' preferences but is ultimately determined at the Administrator's discretion.

Resolution proceedings are confidential. All individuals present at any time during the Resolution Process are expected to maintain the confidentiality of the proceedings in accordance with VGCC Policy.

### **A. Informal Resolution**

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Administrator at any time prior to a final determination, or the Administrator may offer the option to the Parties, in writing. The VGCC will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution.

Before initiation of an Informal Resolution process, VGCC will provide the Parties with a NOIA that explains:

- The allegations.
- The requirements of the Informal Resolution process.
- That, prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and to initiate or resume the VGCC's Resolution Process.
- That the Parties' agreement to a resolution at the conclusion of the Informal Resolution process will preclude the Parties from initiating or resuming the Resolution Process arising from the same allegations.
- The potential terms that may be requested or offered in an Informal Resolution agreement, including notification that an Informal Resolution agreement is binding only on the Parties.
- What information VGCC will maintain, and whether and how it could disclose such information for use in its Resolution Process.

VGCC offers four categories of Informal Resolution:

- 1) **Supportive Resolution.** When the Administrator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation.
- 2) **Educational Conversation.** When the Administrator can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and institutional expectations or can accompany the Complainant in their desire to confront the conduct.
- 3) **Accepted Responsibility.** When the Respondent is willing to accept responsibility for violating Policy and is willing to agree to actions that will be enforced similarly to sanctions, and the Complainant(s) and VGCC are agreeable to the resolution terms.
- 4) **Alternative Resolution.** When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.

The individual facilitating an Informal Resolution must be trained and cannot be the Investigator, Decision-maker, or Appeal Decision-maker.

It is not necessary to pursue Informal Resolution first in order to pursue an Administrative Process. Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the Administrative Resolution Process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Administrative Resolution Process, should Informal Resolution not be successful, unless agreed to by all Parties.

If an investigation is already underway, the Administrator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

### Categories of Informal Resolution

#### **Supportive Resolution**

The Administrator will meet with the Complainant to determine reasonable supportive measures that are designed to restore or preserve the Complainant's access to VGCC's education program and activity. Such measures can be modified as the Complainant's needs evolve over time or circumstances change. If the

Respondent has received the NOIA, Administrator may also provide reasonable supportive measures for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options, and the Administrator does not initiate a Complaint.

### **Educational Conversation**

The Complainant(s) may request that the Administrator address their allegations by meeting (with or without the Complainant) with the Respondent(s) to discuss concerning behavior and institutional policies and expectations. Such a conversation is non-disciplinary and non-punitive. Respondent(s) are not required to attend such meetings, nor are they compelled to provide any information if they attend. The conversation will be documented as the Informal Resolution for the matter, if it takes place. In light of this conversation, or the Respondent's decision not to attend, the Administrator may also implement remedial actions to ensure that policies and expectations are clear and to minimize the risk of the recurrence of any behaviors that may not align with Policy.

### **Accepted Responsibility<sup>4</sup>**

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for **all** alleged Policy violations, the ongoing process will be paused, and the Administrator will determine whether Informal Resolution is an option.

If Informal Resolution is available, the Administrator will determine whether all Parties and VGCC are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Administrator implements the accepted finding that the Respondent is in violation of VGCC Policy, implements agreed-upon restrictions and remedies, and determines the appropriate responses in coordination with other appropriate administrator(s), as necessary.

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<sup>4</sup>In [Section 20](#) below, there is a description of a process to waive the decision-making step of the Resolution Process if a Respondent decides to admit to violating the charged Policies. That section and this one are similar, but there are meaningful differences. In this section, the Parties must agree to the resolution, and the Respondent in essence self-sanctions as part of the Informal Resolution by agreeing to voluntarily comply with whatever the terms are to which the Parties agree. Section 20, in contrast, is unilateral. Neither the Complainant nor the Administrator determine eligibility. It is simply a waiver of steps in the process by the Respondent, who can admit violations and accept sanctions assigned by the Decision-maker, if they choose to. No Complainant approval is sought or needed. Under Section 20, the outcome involves sanctioning imposed by the Recipient, rather than an agreement to self-sanction, as outlined in this section.

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Resolution Process will either continue or resume.<sup>5</sup>

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the discrimination or harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

### **Alternative Resolution**

The institution offers a variety of alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent(s); indirect action by the Administrator or other appropriate VGCC officials; and other forms of resolution that can be tailored to the needs of the Parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an alternative resolution process.

The Administrator may consider the following factors to assess whether alternative resolution is appropriate, or which form of alternative resolution may be most successful for the Parties:

- The Parties' amenability to alternative resolution
- Likelihood of potential resolution, considering any power dynamics between the Parties
- The nature and severity of the alleged misconduct
- The Parties' motivation to participate
- Civility of the Parties
- Results of a violence risk assessment/ongoing risk analysis
- Respondent's disciplinary history
- Whether an emergency removal or other interim action is needed
- Skill of the alternative resolution facilitator with this type of Complaint
- Complaint complexity

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<sup>5</sup> The Parties may not want discussions that take place within Informal Resolution to be admissible in a later Resolution Process, but essential facts must and do transfer from the informal process to subsequent resolution proceedings. Disclosing something in an informal setting to shield it from formal admissibility is a cynical strategy, so administrators should take care in determining the terms of any assurances of the confidentiality of the Informal Resolution.

- Emotional investment/capability of the Parties
- Rationality of the Parties
- Goals of the Parties
- Adequate resources to invest in alternative resolution (e.g., time, staff)

The Administrator has the authority to determine whether alternative resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. The Administrator will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

The Administrator maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). The results of Complaints resolved by alternative resolution are not appealable.

If an Informal Resolution option is not available or selected, VGCC will initiate or continue an investigation and subsequent Resolution Process to determine whether the Policy has been violated.

## **B. Administrative Resolution Process (see [Section 22](#) below)**

### **12. Resolution Process Pool**

The Resolution Process relies on a pool of administrators ("the Pool") to carry out the process.<sup>6</sup>

#### **A. Pool Member Roles**

Members of the Pool are trained annually, and can serve in the following roles, at the discretion of the Administrator:

- Appropriate intake of and initial guidance pertaining to Complaints
- Advisor to Parties
- Informal Resolution Facilitator

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<sup>6</sup> External, trained third-party neutral professionals may also be used to serve in Pool roles.

- Perform or assist with initial evaluation
- Investigator
- Hearing Facilitator
- Decision-maker for challenges to emergency removal and supportive measures
- Decision-maker
- Appeal of Dismissal Decision-maker
- Appeal Decision-maker

## **B. Pool Member Appointment**

The Administrator, in consultation with senior administrators as necessary, appoints the Pool, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different Complaints, the VGCC can also designate permanent roles for individuals in the Pool.

## **C. Training (see Appendix H for details of training for Pool Members)**

### **13. Notice of Investigation and Allegations (NOIA)**

Prior to an investigation, the Administrator will provide the Parties with a detailed written NOIA. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.

The NOIA typically includes:

- A meaningful summary of all allegations
- The identity of the involved Parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence
- The name(s) of the Investigator(s), along with a process to notify the Administrator of any conflict of interest that the Investigator(s) may have in advance of the interview process,
- A statement that VGCC presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination

- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity during the review and comment period to inspect and review all relevant evidence
- A statement that retaliation is prohibited
- Information about the confidentiality of the process, including that the Parties and their Advisors (if applicable) may not share VGCC work product obtained through the Resolution Process
- A statement that the Parties may have an Advisor of their choice who may accompany them through all steps of the Resolution Process
- A statement informing the Parties that VGCC's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how a party may request disability accommodations or other support assistance during the Resolution Process
- A link to VGCC's VAWA Brochure
- An instruction to preserve any evidence that is directly related to the allegations

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address(es) as indicated in official VGCC records, or emailed to the Parties' VGCC-issued email or designated accounts. Once mailed, emailed, and/or received in person, the notification will be presumptively delivered.

#### **14. Resolution Timeline**

VGCC will make a good faith effort to complete the Resolution Process within sixty to ninety (60-90) business days, including any appeals, which the Administrator can extend as necessary for appropriate cause. The Parties will receive regular updates on the progress of the Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take longer, depending on issues such as the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.

If a party or witness chooses not to participate in the Resolution Process or becomes unresponsive, VGCC reserves the right to continue it without their participation to ensure a prompt resolution. Non-participatory or unresponsive Parties retain the rights outlined in this Policy and the opportunity to participate in the Resolution Process.

VGCC may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to a request from law

enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. VGCC will promptly resume its Resolution Process as soon as feasible. During such a delay, VGCC will implement and maintain supportive measures for the Parties as deemed appropriate.

VGCC action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

VGCC will make a good faith effort to complete the Resolution Process as promptly as circumstances permit and will regularly communicate with the Parties to update them on the progress and timing of the process.

### **15. Ensuring Impartiality**

Any individual materially involved in the administration of the Resolution Process, including the Administrator, Investigator(s), and Decision-maker(s), may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Administrator will vet the assigned Investigator(s), Decision-maker(s), and Appeal Decision-makers for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the Parties may raise a concern regarding bias or conflict of interest, and the Administrator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Administrator, concerns should be raised with the College President.

The Resolution Process involves an objective evaluation of all available relevant and not otherwise impermissible evidence, including evidence that supports that the Respondent engaged in a Policy violation and evidence that supports that the Respondent did not engage in a Policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written investigation report that accurately summarizes this evidence.

### **16. Investigator Appointment**

Once an investigation is initiated, the Administrator appoints an Investigator(s) to conduct it. These Investigators may be members of the Resolution Process Pool, or any other properly trained Investigator, whether internal or external to VGCC's community.

### **17. Witness Role and Participation in the Investigation**



Employees (not including Complainant and Respondent) are required to cooperate with and participate in VGCC's investigation and Resolution Process. Student witnesses and witnesses from outside VGCC community cannot be required to participate but are encouraged to cooperate with VGCC investigations and to share what they know about a Complaint.

Interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, WebEx), or, in limited circumstances, by telephone. VGCC will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

### **18. Interview Recording**

It is standard practice for Investigators to create record of all interviews pertaining to the Resolution Process. The Parties may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

All interviews are recorded, and all involved persons should be made aware of the audio and/or video recording. The recording and/or transcript of those meetings will be provided to the Parties for their review, after which the Parties may pose additional questions to each other. Those subsequent meetings or interviews are also recorded and/or transcribed and shared with the Parties.

### **19. Evidentiary Considerations**

The Investigator(s) and the Decision-maker(s) will only consider evidence that is deemed relevant and not otherwise impermissible.

Relevant Evidence is that which may aid in determining whether the allegation occurred, or whether the behavior constitutes a violation of Policy.

Impermissible evidence is defined as evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless 1) evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct, or 2) is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent.

The fact of prior consensual sexual conduct occurred between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent or preclude a determination that sex-based harassment occurred.

Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

Within the limitations stated above, the investigation and determination can consider character evidence, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

## **20. Respondent Admits Responsibility**

At any point in the proceedings, if a Respondent elects to admit to the charged violations and waive further process, the Decision-maker is authorized to accept that admission, adopt it as their finding/final determination, and administer sanctions. This would waive the Respondent's right to appeal. If the Respondent rejects the finding/final determination/sanctions, or does not admit to all conduct charged, the Resolution Process continues to its conclusion. The Complainant retains their right to appeal a determination when a Respondent admits responsibility.

## **21. Investigation**

All investigations are adequate, thorough, reliable, impartial, prompt, and fair. They involve interviewing all relevant Parties and witnesses, obtaining relevant evidence, and identifying sources of expert information, as necessary.

After an interview, Parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

VGCC may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

The Investigator(s) typically take(s) the following steps, if not already completed and not necessarily in this order:

- Determine the identity and contact information of the Complainant.
- Identify all offenses implicated by the alleged misconduct and notify the Complainant and Respondent of all specific policies implicated.
- Assist the Administrator, if needed, with conducting a prompt initial evaluation to determine if the allegations indicate a potential Policy violation.

- Work with the Administrator, as necessary, to prepare the initial NOIA. The NOIA may be amended with any additional or dismissed allegations.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses.
- When participation of a party is expected, provide that party with written notification of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible.
- Interview the Complainant and the Respondent and conduct any necessary follow-up interviews with each.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript or recording) of the relevant evidence/testimony from their respective interviews and meetings.
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses. Document which questions were asked with a rationale for any changes or omissions in the investigation report.
- Where possible, complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide the Parties with regular status updates throughout the investigation.
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors with a list of witnesses whose information will be used to render a finding.
- Ask the Parties to provide a list of questions they would like asked of the other party or any witnesses. The Investigator will ask those questions deemed relevant, and for any question deemed not relevant, will provide a rationale for not asking the question.
- Write a draft investigation report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation and party and witness interviews, and provides all relevant evidence.
- Provide the Parties and their respective Advisors an electronic copy of the draft investigation report as well as an opportunity to inspect and review all relevant evidence obtained as part of the investigation for a review and comment period of ten (10) business days so that each party may meaningfully respond to the evidence. The Parties may elect to waive all or part of the review period.
- The Investigator may share the investigation report with the Administrator and/or legal counsel for their review and feedback.

## **22. Administrative Resolution Process**

The Administrative Resolution Process is used for all Complaints of discrimination on the basis of protected characteristics, harassment, retaliation, and Other Prohibited Behaviors (as defined in Policy) or when Informal Resolution is either not elected or is unsuccessful.

The Administrative Resolution Process consists of a hand-off of the investigation report and all relevant evidence to the Decision-maker to make a finding and determine sanctions (if applicable).

At the discretion of Administrator, the assigned Decision-maker will be an individual or a panel drawn from the Resolution Process Pool, or other trained individuals either internal or external to the institution.<sup>7</sup> Once the Decision-maker receives and reviews the file, they can recommend dismissal to the Administrator, if they believe the grounds are met.

The Administrative Resolution Process typically takes approximately thirty (30) business days to complete, beginning with the Decision-maker's receipt of the Draft Investigation Report. The Parties will be regularly updated on the timing and any significant deviation from this typical timeline.

### **Investigator-led Questioning Meetings**

- The Administrator provides the Draft Investigation Report to the Decision-maker and the Parties simultaneously for review. The Decision-maker can then provide the Investigator with a list of relevant questions to ask the Parties or any witnesses.
  - To the extent credibility is in dispute and relevant to one or more of the allegations, the questions provided by the Decision-maker may also explore credibility.
- The Investigator will also ask each of the Parties to provide a proposed list of questions to ask the other Parties and any witnesses.
  - To the extent credibility is in dispute and relevant to one or more of the allegations, questions proposed by the Parties may also explore credibility.
  - All party questions must be posed during this phase of the process and cannot be posed later unless authorized by the Decision-maker.
  - The Investigator will share all party-proposed questions with the Decision-maker, who will finalize the list with the Investigator to ensure all questions are both relevant and permissible.
- The Investigator will then hold individual meetings with the Parties and witnesses to ask the questions posed by the Decision-maker, as well as the questions proposed by the Parties that have been deemed relevant and not duplicative, including questions intended to assess credibility. These meetings will be recorded and transcribed.

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<sup>7</sup> The choice of a single Decision-maker or panel should generally be consistent for the same types of Complaints, and not vary Complaint-by-Complaint.

- For any question deemed not relevant or duplicative, the Investigator will provide a rationale for not asking the question, either during the recorded meeting, or in writing (typically as an appendix to the Final Investigation Report).
- Typically, within three (3) business days of the last of these meetings, the recordings or transcripts of them will be provided to the Parties for their review. The Parties will then have five (5) business days to review these recordings or transcripts and propose any follow-up questions for the Investigator to ask.
- The Investigator will review the proposed questions with the Decision-maker to determine relevance and permissibility. If deemed necessary, the Investigator will then meet individually with the Parties or witnesses for whom there are relevant, and not duplicative, follow-up questions. These follow-up meetings will also be recorded, and the Parties will receive the recordings or transcripts of these meetings. This final round of questioning is the last round permitted, unless permission is granted to extend by the Decision-maker.
- The Investigator will then incorporate any new, relevant evidence and information obtained through the Parties' review of the Draft Investigation Report, the questioning, and follow-up meetings into a Final Investigation Report.
- The Investigator will also respond in writing (typically within the Final Investigation Report) to the relevant elements of the Parties' responses to the Draft Investigation Report and incorporate relevant elements of the Parties' written responses, additional relevant evidence, and any necessary revisions into the Final Investigation Report.
- The Investigator will then share the Final Investigation Report with the Administrator and/or legal counsel for their review and feedback.
- The Investigator will then provide the Administrator with the Final Investigation Report and investigation file.

#### The Decision-maker's Determination

- The Administrator will provide the Decision-maker, the Parties, and their Advisors with the Final Investigation Report (FIR) and investigation file, including the evidence and information obtained through the Investigator-led Questioning meetings.
- The Decision-maker will review the FIR, all appendices, and the investigation file.
- If the record is incomplete, the Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informal meetings with the Parties or any witnesses, if needed.
- Upon reviewing the relevant evidence, the Decision-maker may also choose to pose additional questions:
  - To the extent credibility is in dispute and relevant to one or more of the allegations, the Decision-maker may meet individually with the Parties and witnesses to question them in order to assess their credibility. These meetings will be recorded, and the recording or transcript will be shared with the Parties.
  - At their discretion, the Decision-maker may also meet with any party or witness to ask additional relevant questions that will aid the Decision-maker in making

their findings. These meetings will be recorded, and the recording or transcript will be shared with the Parties.

- The Decision-maker will then apply the preponderance of the evidence standard to make a determination on each of the allegations and, if applicable, any associated sanctions.
- **Timeline.** The Decision-maker's determination process typically takes approximately ten (10) business days, but this timeframe can vary based on a number of factors and variables. The Parties will be notified of any delays.
- **Impact Statements.** Prior to a determination, the Administrator will also provide the Parties with an opportunity to submit a written impact and/or mitigation statement. The Administrator will review these statements upon receipt to determine whether there are any immediate needs, issues, or concerns, but will otherwise hold them until after the Decision-maker has made determinations on the allegations. If there are any findings of a Policy violation, the Decision-maker will request the Impact Statements from the Administrator and review them prior to determining sanctions. They will also be exchanged between the Parties at that time.
- If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a Resolution Process at any time, and/or referring that information to another process for resolution.

### **23. Sanctions**

Factors the Decision-maker may consider when determining sanctions and responsive actions include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the Parties
- The Respondent's acceptance of responsibility
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as it is feasible once a determination is final, either upon the outcome of any appeal or the expiration of the window to appeal, without an appeal being requested.

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

## A. Student Sanctions

The following are the common sanctions that may be imposed upon students singly or in combination:

- *Reprimand*: A formal statement that the conduct was unacceptable and a warning that further violation of any VGCC policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either VGCC-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Restrictions*: A student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, study abroad, or holding leadership roles in student organizations.
- *Probation*: An official sanction for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from extra-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Separation from the institution, or one or more of its facilities, for a defined period of time, typically not to exceed two (2) years, after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension, on successfully applying for readmission, or upon a general condition that the student is eligible to return if the institution determines it is appropriate to re-enroll/readmit the student. The student is typically required to vacate institutional property within 24 hours of notification of the action, though this deadline may be extended at the discretion of the Administrator or other appropriate official. During an institution-wide suspension, the student is banned from institutional property, functions, events, and activities unless they receive prior written approval from an appropriate institutional official. This sanction may be enforced with a trespass action, as necessary.
- *Expulsion*: Permanent separation from the institution. The student is banned from institutional property, and the student's presence at any institution-sponsored activity or event is prohibited. This action may be enforced with a trespass action, as necessary.
- *Other Actions*: In addition to, or in place of, the above sanctions, VGCC may assign any other sanctions as deemed appropriate.

## B. Student Group and Organization Sanctions

The following are the common sanctions that may be imposed upon student groups or organizations singly or in combination:

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any VGCC policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Probation:* An official sanction for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the group or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of VGCC funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student group or organization recognition and/or institutional support for a defined period of time not to exceed two (2) years and/or until specific criteria are met. During the suspension period, a student group or organization may not conduct any formal or informal business or participate in VGCC-related activities, whether they occur on- or off-campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from the VGCC.
- *Permanent Termination:* Permanent termination of student group organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
- *Loss of Privileges:* Restricted from accessing specific VGCC privileges for a specified period of time.
- *Other Actions:* In addition to or in place of the above sanctions, the VGCC may assign any other sanctions as deemed appropriate.

## C. Employee Sanctions/Responsive/Corrective Actions

Responsive actions for an employee who has engaged in, discrimination, harassment, and/or retaliation include:

- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*



- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Internal transfer*
- *Shift or schedule adjustments*
- *Reassignment*
- *Assignment to a New Supervisor*
- *Restriction of Stipends, Research, and/or Professional Development Resources*
- *Suspension/Administrative Leave with Pay*
- *Suspension/Administrative Leave without Pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, VGCC may assign any other responsive actions as deemed appropriate.

## **24. Notice of Outcome**

Within ten (10) business days of the conclusion of the Resolution Process, the Administrator provides the Parties with a written outcome notification. The outcome notification will specify the finding for each alleged Policy violation, all applicable sanctions that VGCC is permitted to share pursuant to state or federal law, and a detailed rationale, written by the Decision-maker, supporting the findings to the extent VGCC is permitted to share under federal or state law.

The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no party appeals.

The Administrator will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome notification may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official VGCC records, or emailed to the Parties' VGCC-issued or designated email account. Once mailed, emailed, and/or received in person, the outcome notification is presumptively delivered.

## **25. Withdrawal or Resignation Before Complaint Resolution**

### **A. Students**

Should a student Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a student Respondent withdraws from VGCC, the Resolution Process may continue, or the Administrator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, VGCC will still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the Complaint is dismissed or pursued to completion of the Resolution Process, VGCC will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

When a student withdraws or leaves while the process is pending, the student may not return to VGCC in any capacity until the Complaint is resolved and any sanctions imposed are satisfied. If the student indicates they will not return, the Administrator has discretion to dismiss the Complaint. The Registrar, Office of Admissions, and HR may be notified, accordingly.

If the student Respondent takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely. If found in violation, that student is not permitted to return to VGCC unless and until all sanctions, if any, have been satisfied.

## **B. Employees**

Should an employee Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If an employee Respondent leaves their employment with the VGCC with unresolved allegations pending, the Resolution Process may continue, or the Title IX Administrator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, VGCC may still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

When an employee resigns and the Complaint is dismissed, the employee may not return to VGCC in any capacity. The Registrar, Office of Admissions, Campus Police, and HR will be notified, accordingly. A note will be placed in the employee's file that they resigned with allegations pending and are not eligible for academic admission or rehire with the VGCC. The records retained by the Administrator will reflect that status.

## **26. Appeal of the Determination**

The Administrator will designate an Appeal Decision-maker – either a three-member panel or an individual chosen from the Pool, or other trained internal or external individuals, to hear the appeal. No Appeal Decision-maker(s) will have been previously involved in the Resolution Process for the Complaint, including in any supportive measure challenge or dismissal appeal that may have been decided earlier in the process. If a panel is used, a voting chair will be designated by the Administrator.

## **A. Appeal Grounds**

Appeals are limited to the following grounds:

- 1) A procedural irregularity that would change the outcome.
- 2) New evidence that would change the outcome and that was not reasonably available at the time the determination regarding responsibility was made.
- 3) The Administrator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the specific Complainant or Respondent that would change the outcome.
- 4) The Final Determination by the Decision-maker is substantially contrary to the weight of the evidence in the record (applicable to sanctions of suspension, expulsion, or termination, only).

## **B. Request for Appeal**

Any party may submit a written request for appeal (“Request for Appeal”) to the Administrator within five (5) business days of the delivery of the Notice of Outcome.

The Request for Appeal will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the request will be denied by the Appeal Decision-maker, and the Parties and their Advisors will be simultaneously notified in writing of the denial and the rationale.

If any of the information in the Request for Appeal meets the grounds in this Policy, then the Appeal Decision-maker will notify all Parties and their Advisors, the Administrator, and, when appropriate, the Investigator(s) and/or the original Decision-maker.

All other Parties and their Advisors, the Administrator, and, when appropriate, the Investigator(s) and/or the Decision-maker will be provided a copy of the Request for Appeal with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. The Appeal Decision-maker will forward all responses, if any, to all Parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that Request for Appeal will be reviewed by the Appeal Decision-maker to determine if it meets the grounds in this Policy and will either be approved or denied. If approved, it will be forwarded to the party who initially requested an appeal, the Administrator, and

the Investigator(s) and/or original Decision-maker, as necessary, who will submit their responses, if any, within five (5) business days. Any such responses will be circulated for review and comment by all Parties. If denied, the Parties and their Advisors will be notified accordingly, in writing.

No party may submit any new Requests for Appeal after this time period. The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved appeal grounds, and the subsequent responses will be shared with the Appeal Decision-maker, who will promptly render a decision.

### **C. Appeal Determination Process**

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Decision-maker will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions are made by majority vote and apply the preponderance of the evidence standard of proof.

An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the finding and/or sanction(s).

The Appeal Decision-maker may consult with the Administrator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Administrator will maintain documentation of all such consultation.

### **D. Appeal Outcome**

An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker or the Administrator (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new determination with new Pool members serving in the Investigator and Decision-maker roles.

A Notice of Appeal Outcome letter (“Appeal Outcome”) will be sent to all Parties simultaneously, or without significant time delay between notifications. The Appeal Outcome will specify the finding on each appeal ground, any specific instructions for remand or reconsideration, all sanction(s) that may result which VGCC is permitted to

share according to federal or state law, and the rationale supporting the essential findings to the extent VGCC is permitted to share under federal or state law.

Written notification may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent addresses indicated in official institutional records, or emailed to the Parties' VGCC-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, the Appeal Outcome will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

If a remand results in a new determination that is different from the appealed determination, that new determination can be appealed, once, on any of the five (5) available appeal grounds.

#### **E. Sanction Status During the Appeal**

Any sanctions imposed as a result of the determination are stayed (i.e., not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the emergency removal procedures (detailed above) for a "show cause" meeting on the justification for doing so must be permitted within two (2) business days of implementation.

### **27. Long-Term Remedies/Other Actions**

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented or Informal Resolution terms, the Administrator may implement additional long-term remedies or actions with respect to the Parties and/or the VGCC community that are intended to stop the discrimination, harassment, and/or retaliation, remedy the effects, and prevent recurrence.

These remedies/actions may include, but are not limited to:

- Referral to the Employee or Student Assistance Program
- Course and registration adjustments, such as retroactive withdrawals
- Education to the individual and/or the community

- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation assistance
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Administrator, certain long-term supportive measures may also be provided to the Parties even if no Policy violation is found.

When no Policy violation is found, the Administrator will address any remedies VGCC owes the Respondent to ensure no effective denial of educational access.

The VGCC will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair VGCC's ability to provide these services.

## **28. Failure to Comply with Sanctions, Responsive Actions, and/or Informal Resolution Terms**

All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the final Decision-maker(s), including the Appeal Panel or Decision-maker or the Informal Resolution agreement.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or for any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from VGCC.

Supervisors are expected to enforce the completion of sanctions/responsive actions for their employees.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Administrator's satisfaction.

## **29. Recordkeeping**

For a period of at least seven (7) years following the conclusion of the Resolution Process, VGCC will maintain records of:

- 1) Each discrimination, harassment, and retaliation resolution process, including any Final Determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation.

- 2) Any disciplinary sanctions imposed on the Respondent.
- 3) Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to VGCC's education program or activity.
- 4) Any appeal and the result therefrom.
- 5) Any Informal Resolution and the result therefrom.
- 6) All materials used to provide training to the Administrator, Title IX Coordinator and designees, Investigators, Decision-makers, Appeal Decision-makers, Informal Resolution Facilitators, and any person who is responsible for implementing VGCC's Resolution Process, or who has the authority to modify or terminate supportive measures. VGCC will make these training materials available for review upon request.
- 7) All materials used to train all employees consistent with the requirements in the Title IX Regulations.

VGCC will also maintain any and all records in accordance with federal and state laws.

### **30. Accommodations and Support During the Resolution Process**

#### **Disability Accommodations**

VGCC is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to VGCC's Resolution Process.

Anyone needing such accommodations or support should contact the Administrator, who will work with Accessibility Services as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

#### **Other Support**

VGCC will also address reasonable requests for support for the Parties and witnesses, including:

- Language services/Interpreters
- Access and training regarding use of technology throughout the Resolution Process
- Other support as deemed reasonable and necessary to facilitate participation in the Resolution Process

### **31. Revision of these Procedures**

These procedures succeed any previous procedures addressing discrimination, harassment, and retaliation for incidents occurring on or after August 1, 2024. The Administrator will regularly review and update these procedures. VGCC reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If governing laws or regulations change, or court decisions alter, the requirements in a way that impacts this document, this document will be construed to comply with the most recent governing laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the background federal and state laws that frame such policies and codes, generally.

These procedures are effective October 9, 2024.

**Based on 1 Policy, 1 Procedure (1P1P) Model created by ATIXA © June 2024. Used with contractual permission by Vance-Granville Community College.**