



<b>SEXUAL HARASSMENT, SEXUAL EXPLOITATION, DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING</b>	Number <b>311-A</b>	Page <b>1 of 17</b>
	Date <b>8/12/2020</b>	

## **I. NOTICE OF NONDISCRIMINATION**

As a recipient of federal funds, each member College of the Vermont State Colleges (collectively “the VSC”) is required to comply with Title IX of the Higher Education Amendments Act of 1972, and implementing regulations issued by the Department of Education in May 2020 (“Title IX”). In accordance with Title IX, as well as applicable state and federal law, the VSC prohibits discrimination on the basis of sex in its education programs and activities, admission, and employment. Prohibited sex discrimination includes sexual harassment, as defined in VSC

Policy 311, *Non-Discrimination and Prevention of Harassment and Related Offenses*

~~REOUR3URHSHVIRU,PS~~ ~~HPHVR3R~~ *Sexual Harassment, Sexual Exploitation, Domestic Violence, Dating Violence, Sexual Assault, and Stalking* (“Chancellor’s Procedures”). C p\_ “0“ 0 Q M

sanctions for any member of the VSC community engaging in conduct prohibited under this policy may include the suspension or dismissal/expulsion of students, the suspension or termination of employment or other appropriate disciplinary action such as warnings, reprimands and educational sanctions, as well as possible referral for criminal investigation and prosecution under Vermont law.

**Reporting:** The VSC encourages, and in the case of its employees requires, the prompt and accurate reporting of sexual harassment, sexual exploitation, domestic violence, dating violence, sexual assault, or stalking (“Prohibited Conduct” defined further, below). This allows the VSC to respond quickly to allegations and offer supportive measures to individuals who may have been subjected to such misconduct. The VSC is committed to protecting the confidentiality of complainants<sup>1</sup>, wherever possible, and will work closely with individuals seeking confidential assistance regarding misconduct under this policy. Certain professionals are permitted by law to offer confidentiality. Those who do not have the privilege of offering confidentiality are expected to handle reports discreetly to the extent permitted or required under the law and VSC policy. All allegations will be investigated promptly and thoroughly as provided in the Chancellor’s Procedures, and all parties will be afforded equal rights during the investigatory and adjudicatory process.

**Prevention and Education:** It is the collective responsibility of all members of the VSC community to foster a safe and secure campus environment. In an effort to promote this environment and prevent acts of Prohibited Conduct from occurring, the VSC provides ongoing prevention and awareness programs. Incoming students and employees are expected to participate, and other members of the VSC community are encouraged to participate, in these programs.

**Retaliation:** Retaliation related to matters addressed by this policy, as defined below, is prohibited and may result in disciplinary action, up to and including suspension, expulsion/dismissal or termination.

**Interpretation:** This policy is to be read consistent with federal and state law. If there is any conflict between this policy and federal or state law, this policy will be interpreted consistent with federal or state law.

#### **IV. SCOPE OF COVERAGE**

**Who:** This policy applies to all members of the VSC community, including students, employees, and other third parties who come on to campus (such as parents, visitors, independent contractors, and vendors), who are involved in an incident of Prohibited Conduct (including those who witness an incident or report an incident on behalf of another). It covers misconduct between individuals in different types of relationships. These include, but are not limited to, student to student, employee to employee, faculty member to faculty member, visitor/contracted employee to employee/student, faculty member to student, employee to student, supervisor to subordinate, coach to student athlete, and student to employee/faculty member. Misconduct under this policy may consist of acts committed by an individual, or collective actions committed by members of a group or organization. These acts may be committed against an individual or against a group or organization. These acts may be committed by a stranger, an acquaintance, or someone with whom the complainant has a social, romantic, or intimate relationship. These acts may be committed by or against any individual, regardless of sexual orientation or gender identity.

**What:** This policy prohibits Prohibited Conduct as defined herein, in the VSC's educational, extracurricular, athletic, and other programs and activities, as well as in the employment setting. These terms are further defined in the Definitions section below. Other forms of sexual harassment that do not meet the Title IX Sexual Harassment or Non-Title IX Sexual Misconduct definitions provided in this policy are also prohibited by the VSC, and are addressed separately in VSC Policy 311, [☞](#)

## **V. RESOURCES FOR COMPLAINANTS**

Written information on existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for individuals who report that they have been subjected to misconduct in violation of this policy, both on campus and in the local community, is available from the Office of the Chancellor and each of the member Colleges. The VSC will provide written notification about options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or other supportive measures. The VSC will make such accommodations or provide such supportive measures if requested and if they are reasonably available, regardless of whether the complainant chooses to report the misconduct to cam



(“FERPA”), 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of the Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising under those regulations.

The VSC will strive to protect the privacy interests of individuals to the extent it can while fulfilling its obligations to uphold relevant policies and regulations, to conform to any legal requirements, and to take reasonable steps to promote the safety of members of the VSC community. The VSC has an obligation to investigate complaints of sexual harassment, sexual exploitation, dating violence, domestic violence, sexual assault, and stalking, and to take reasonable steps to prevent recurrence of such behavior. Therefore, in some circumstances, the VSC may report an incident of misconduct under this policy to law enforcement or investigate and pursue disciplinary action against a respondent, even if an individual requests confidentiality or chooses not to file a complaint. For this reason, absolute or strict confiden



A complaint about conduct that does not meet this strict definition for Title IX Sexual Harassment is still prohibited by this policy if it otherwise constitutes Prohibited Conduct within the definition of Non-Title IX Sexual Misconduct as defined below.

The following Prohibited Conduct definitions apply for purposes of the definition of Title IX Sexual Harassment:

**a. *Title IX Quid Pro Quo Sexual Harassment***

Quid pro quo sexual harassment for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of VSC in the United States by which an employee of VSC conditions the provision of an educational or employment aid, benefit, or service of VSC on a student's or employee's participation in unwelcome sexual conduct.

**b. *Title IX Severe, Pervasive and Objectively Offensive Sexual Harassment***

Severe, pervasive and objectively offensive sexual harassment for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of VSC in the United States that constitutes unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a student or employee equal access to a VSC education program or activity, whether in the employment or educational context.

**c. *Title IX Sexual Assault***

As required by the May 2020 Title IX regulations, Title IX Sexual Assault incorporates the definitions of the FBI's Uniform Crime Reporting (NIBRS) program, and is defined as follows:

- x **Rape:**<sup>4</sup>
  - o The carnal knowledge of a person (i.e., penile-vaginal penetration), without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity (it should be noted that either females or males could be complainants under this definition);
  - o Oral or anal sexual intercourse (i.e., penile penetration) with another person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
  - o To use an object or instrument (e.g., an inanimate object or body part other than a penis) to unlawfully penetrate, however slightly, the genital or anal opening of the body of another

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<sup>4</sup> Both completed rape and attempted rape is prohibited by this policy.

person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;

- x **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity (for purposes of this definition, “private body parts” includes breasts, buttocks, or genitals, whether clothed or unclothed);
- x **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- x **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.

Sexual assault can be committed by any person against any other person, regardless of gender, gender identity, sexual orientation, or past or current relationship status. Sexual assault may occur with or without physical resistance or violence.

Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting. It is also a violation of VSC policy and is prohibited.

**d.**

e. *Title IX Domestic Violence*

Title IX domestic violence for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex committed in an education program or activity of VSC in the United States that constitutes a “felony or misdemeanor crime of violence committed—

- (A) By a current or former spouse or intimate partner of the victim;
- (B) By a person with whom the victim shares a child in common;
- (C) By a person who is cohabiting with, or has cohabited with, the victim as a spouse or intimate partner;
- (D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- (E) By any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the

(C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.”<sup>7</sup>

Any incident(s) meeting this definition is/are considered a crime for the purposes of Clery Act reporting. It is also a violation of VSC policy and is prohibited.

Examples of stalking behaviors or activities include, but are not limited to the following, if they occur in the context of stalking as defined above (i.e., the behaviors or activities that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress): (1) non-consensual communication, including face-to-face communication, telephone calls, voice messages, e-mails, text messages, written letters, gifts, or any other communications that are unwelcome; (2) use of online, electronic or digital technologies, such as posting pictures or text in chat rooms or on websites, sending unwanted or unsolicited e-mail or talk requests, posting private or public messages on Internet sites, social networks, and/or school bulletin boards, installing spyware on a person’s computer, or using Global Positioning Systems (GPS) or similar technology to monitor a person; (3) pursuing, following, waiting for, or showing up uninvited at or near a residence, workplace, classroom, or other places frequented by the person; (4) surveillance or other types of observation, including staring and voyeurism; (5) trespassing; (6) vandalism; (7) non-consensual touching; (8) direct verbal or physical threats against a person or a person’s family member, pet or personal property; (9) gathering information about a person from friends, family, or co-workers; (10) accessing private information through unauthorized means; (11) threats to harm self or others; (12) defamation and/or lying to others about the person; and (13) using a third party or parties to accomplish any of the above.

Engaging in such stalking behaviors or activities is a violation of VSC policy and is prohibited.

## **2. *Non-Title IX Sexual Misconduct***

Non-Title IX Sexual Misconduct is Prohibited Conduct that falls within the scope of this policy and the definitions below but that does not fall within the definition of Title IX Sexual Harassment, either due to the nature of the conduct or because it did not reportedly occur within a program or activity of VSC in the United States.<sup>8</sup> Such conduct is defined for purposes of this policy as:

### **a. *Non-Title IX Sexual Assault***

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<sup>7</sup> 34 C.F.R. § 668.46(a).

<sup>8</sup> Misconduct that does not fall within either the definitions below or the definition of Title IX Sexual Harassment, but that does fall within the scope of Policy 311: *Non-Discrimination and Prevention of Harassment and Related Unprofessional Conduct*, which prohibits among other things certain types of discrimination and harassment on the basis of sex, gender identity, and sexual orientation, will be addressed through the *Chancellor’s Procedures for the Implementation of Policy 311: Non-Discrimination and Prevention of Harassment and Related Unprofessional Conduct*.

Sexual Assault (i.e., rape, fondling, incest or statutory rape) as defined in the Title IX Sexual Assault definition above that did not reportedly occur in a program or activity of VSC in the United States, and attempts to commit such misconduct.

Any incident meeting this definition is considered a crime for the purposes of Clery Act

Specifically, this section is not intended to proscribe or inhibit the use of sexually-explicit materials, in or out of the classroom, when in the judgment of a reasonable person the use of such materials appropriately promotes genuine discourse, inquiry and learning.

Sexual exploitation as defined here violates VSC policy and is prohibited.

## **B. Additional Definitions Applicable to This Policy**

**Coercion:** The act of compelling or forcing someone to act based on harassment, threats, or intimidation.

**Complainant:** A complainant is an individual who is reported to have experienced conduct that could constitute Prohibited Conduct, regardless of whether the individual makes a report or seeks disciplinary action. In some cases (such as, e.g., cases in which a person involved in an incident of alleged Prohibited Conduct does not wish to participate in the process but VSC decides that the alleged misconduct needs to be investigated), VSC may pursue an investigation and adjudication under this policy without a designated complainant, in accordance with the Chancellor's Procedures. In these cases VSC may extend some or all of the rights of a complainant as defined in this policy to affected parties as deemed appropriate by VSC and/or as required by law.

For ease of reference, the term "complainant" is also used throughout this policy to refer generally to an individual who was reported by another to have been subjected to Prohibited Conduct, even if they do not participate in any related process. **Consent:** For purposes of this policy, effective consent means words or actions that demonstrate to a reasonable person a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Effective consent cannot be gained by threat, force, coercion or intimidation or by ignoring words or actions that indicate a lack of consent or objection to the activity. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent can be rescinded at any time. It is the responsibility of a person who wants to engage in sexual activity to ensure that they have effective consent from any other person involved. Silence, lack of protest, or lack of resistance are not sufficient standing alone to establish consent. The actions of the individuals involved and the context in which those actions occurred will be considered in determining whether or not there was consent. The existence of a dating relationship or a past sexual relationship between the persons involved is not a sufficient basis to assume consent. Past consent between two individuals does not imply present or future consent to sexual activity.

Consent is not valid when a person is incapable of giving consent: (1) due to the person's use or consumption of drugs or alcohol; (2) when intimidation, threats, physical force, or other actions that are coercive are applied; (3) when a physical or mental condition is present such that the person cannot knowingly or voluntarily give consent; or (4) when a person is under the age of 16.

Alcohol-related incapacity results from a level of alcohol ingestion that is more severe than mere impairment, being under the influence, drunkenness or intoxication. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation. The question of incapacitation is determined on a case-by-case basis using both objective and subjective standards and includes by

way of example but not limitation an analysis of the objective behaviors of the person alleging Prohibited Conduct, whether the accused person knew or reasonably should have known that the person was incapacitated, and whether the accused person played a role in creating the circumstances of incapacity. Whether the respondent knew or reasonably should have known the complainant was incapacitated will be assessed in light of all relevant circumstances. Objective physical indications of incapacity include slurred speech, difficulty walking or standing, vomiting, and losing consciousness.

The use of alcohol or other drugs does not make a complainant at fault for Prohibited Conduct. The use of alcohol or other drugs does not minimize or excuse a person's responsibility for committing Prohibited Conduct. Nor does the use of alcohol or other drugs minimize or excuse a person's responsibility for determining whether another person is capable of giving consent, as described above.

**Officials With Authority:** Officials with authority to institute corrective measures regarding matters involving Prohibited Conduct include the Title IX Coordinator at each VSC campus, any Deputy Title IX Coordinators on campus, the Dean of Students, the Academic Dean or Provost, and the President or their designee. As outlined in more detail in the Chancellor's Procedures, an Official With Authority will, upon receipt of a Formal Complaint of Title IX Sexual Harassment, take action on such a complaint in accordance with the Chancellor's Procedures.

**Respondent:** A respondent is an individual who has been reported to have engaged in conduct that could constitute Prohibited Conduct and whose alleged conduct is being investigated to determine if it is in violation of VSC's policies.

**Retaliation:** Retaliation (that is, intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing regarding Prohibited Conduct (including both Title IX Sexual Harassment and Non-Title IX Sexual Misconduct)), is strictly prohibited. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct

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The VSC may also impose certain non-disciplinary remedial actions where appropriate, such as required counseling or training for the respondent and/or a group of students or employees, to stop the misconduct, prevent its recurrence, and remedy its effects. Additional non-disciplinary outcomes, such as extending and modifying no contact orders, room changes, class changes, work schedule changes, building restrictions, and extracurricular activity restrictions may also be imposed, regardless of the finding, to maintain an environment free from Prohibited Conduct and/or retaliation.

## **XII. OTHER POLICY VIOLATIONS**

The VSC's primary goals in responding to complaints of Prohibited Conduct are to promote the safety of the VSC community, to address the misconduct, to prevent it from recurring, and/or to restore or preserve the complainant's access to VSC's educational programs or activities. A person (whether a complainant or another reporting person) should not be deterred from reporting a violation of this policy because alcohol, drugs, or other violations of VSC's policies were involved in the incident. VSC officials may, in their discretion and on a case-by-case basis, decide not to pursue relatively minor drug, alcohol or other policy violations related to incidents of misconduct under this policy or, if they do pursue such violations, to handle them separately from complaints brought under this policy. No such violations will be handled by the VSC in a manner that violates the anti-retaliation policy stated above.

Misconduct that does not meet the definition of Prohibited Conduct may violate other VSC policies, e #

### **Relevant Legal Authorities**

- 20 U.S.C. § 1681 et seq., Title IX of the Higher Education Amendments of 1972
- 34 C.F.R. Part 106 (Title IX regulations)
- 20 U.S.C. § 1092(f), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Section 485(f) of the Higher Education Act of 1965 (as amended)
- 34 C.F.R. § 668.46 (Clery Act regulations)
- 42 U.S.C. § 13925(a)(20), Violence Against Women Act of 1994 (as amended) (definition of personally identifying information)
- 20 U.S.C. § 1232g, the Family Educational Rights and Privacy Act of 1974 (FERPA)
- 34 C.F.R. Part 99 (FERPA regulations)
- 13 V.S.A. § 3251(3), Sexual Assault - Definitions
- 13 V.S.A. § 3252, Sexual Assault
- 13 V.S.A. § 1042, Domestic Assault
- 15 V.S.A. § 1101(2), Domestic Relations, Abuse Prevention - Definitions
- 13 V.S.A. § 1061, Stalking – Definitions
- 16 V.S.A. § 178, Harassment and Hazing Prevention Policies; Postsecondary Schools
- 16 V.S.A. § 14, Harassment; Notice and Response
- 16 V.S.A. § 11(a)(26), Classifications and Definitions, Harassment

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