

Commission. Contact information for the Coordinators is located in Appendix A and contact information for the state and federal agencies is located in Appendix C to the *Chancellor's Procedures for Implementation of Policy 311: Non-Discrimination and Prevention of Harassment and Related Unprofessional Conduct*.

II. POLICY STATEMENT

The Vermont State Colleges and member Institutions (collectively the "VSC") are committed to maintaining an educational and working environment free from discrimination, harassment and related unprofessional conduct. The VSC prohibits discrimination on the basis of a person's race, color, ancestry, ethnicity, national origin, place of birth, sex, sexual orientation, gender identity, creed, religion, disability, age, veteran status, marital status, genetic information, positive HIV-related blood test results, any other status protected by state or federal law (collectively "protected categories"). Sexual harassment, marital harassment, and harassment based upon a person's status in a protected category are forms of discrimination and will not be tolerated. In addition, inappropriate sexual relationships between VSC employees and students, including those that may not otherwise rise to the level of sexual harassment, are prohibited.

III. POLICY COVERAGE

In accordance with Title IX, as well as applicable state and federal law, the VSC nor any member Institution shall discriminate on the basis of the above listed protected categories in the application processes for admissions or employment, in academic and residential programs, in employment policies and practices in scholarship and loan programs, in athletic programs, or any other academic, extra-curricular or VSC sponsored program activities, or facilities. The prohibitions set forth in this Policy also apply to all members of the VSC community, including students, employees, and third parties who come on to campus (such as, visitors, independent contractors, and vendors). This Policy covers conduct that occurs off campus or through the use of online, electronic digital technologies, and that has a reasonable nexus to any VSC education program or activity, for example, creating a hostile environment on campus or representing a threat to the safety of members of the VSC community or to the continuance of normal VSC operations.

IV. POLICY INTENT AND OVERVIEW

This Policy is intended to be read consistently with, and unless otherwise expressly stated, no broader than, Vermont and federal non-discrimination and harassment prevention laws,

¹ Policy 311 and the Chancellor's Implementing Procedures apply to reports of sexual harassment that do not fall within the scope of Title IX Sexual Harassment or Title IX Prohibited Conduct as defined in Policy 311A and the accompanying Chancellor's Procedures for Implementation of Policy 311-A.

resources or the effect of objectively undermining and detracting from or interfering with an employee's work or creating an objectively intimidating, hostile, or offensive environment.

Harassment includes the use of epithets, stereotypes, slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, and taunts on manner of speech and negative references to customer service to any of the protected categories.

C. Sexual Harassment

"Sexual harassment is unwelcome conduct of a sexual nature and includes *quid pro quo* sexual harassment and hostile environment sexual harassment. Sexual harassment includes physical conduct of a sexual nature, such as sexual assault or other acts of sexual violence. Sexual harassment under Title IX, including sexual assault, is addressed separately in VSC Policy 311A, *Sexual Harassment, Sexual Exploitation, Domestic Violence, Dating Violence, Sexual Assault and Stalking*. Where conduct is not deemed to meet the definitions of Title IX Sexual Harassment or Title IX Prohibited Conduct under Policy 311A, the following definitions apply:

"*Quid pro quo* sexual harassment is defined as a person in a position of power or authority who demands or implies that a person will receive a benefit or avoid a detriment if the person engages in a sexual act or relationship with the person in a position of power or authority." (Title IX Policy 311A)

Images and depictions of a sexual nature, including sexually derogatory or sexually suggestive pins, posters, cartoons, and calendars; and

Writings of a sexually derogatory or suggestive nature

This list is not exhaustive and other unwelcome behavior of a sexual nature if it is severe and pervasive enough, may constitute sexual harassment. See Section E, Hostile Environment, below for further elaboration.

“Employee hostile environment sexual harassment” is sexual harassment of an employee that meets the above definition of “employee hostile environment sexual harassment” above except that the unwelcome behavior of a sexual nature creates a hostile employment environment and it need not be severe or pervasive in order to constitute sexual harassment.

Conduct is “unwelcome” if the person subjected to the alleged sexually harassing behavior does not request or invite it and regards the conduct as undesirable or offensive. The fact Tc 0.004 Tw -15.

2. Sexual Harassment of an Employee

Under Vermont law, “sexual harassment of an employee” means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (a) Submission to that conduct is made either explicitly or implicitly a term or condition of employment; or
- (b) Submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or
- (c) The conduct has the purpose or effect of objectively interfering with an individual's work or creating an objectively intimidating, hostile or offensive work environment.

D. Related Unprofessional Conduct

“Related unprofessional conduct” on the part of a VSC employee means the initiation of or participation in an amorous or sexual relationship with a VSC student when the employee is, or may reasonably be perceived to be, in a position of power and authority over the student, even if the conduct does not otherwise constitute sexual harassment. Examples include, but are not limited to, situations where the VSC employee is an administrator, instructor, coach, advisor, work study supervisor or counselor for the student, or a member of a committee having responsibility for decisions that affect students.

E. Hostile Environment

A “non-employee hostile educational environment” is one in which the alleged conduct is sufficiently serious as to limit or deny the ability of the person subjected to the harassment to participate in or benefit from the educational environment. The severity and pervasiveness of the alleged harassing conduct is evaluated using common sense and reasonable judgment to determine whether it created an intimidating, hostile or offensive environment. The determination is made from the perspective of a reasonable person in the position of the person subjected to the alleged harassment, considering all of the relevant circumstances. Factors that may be considered include

- The degree to which the conduct affected the student’s education;
- The type(s) of harassment (for example, whether it was verbal and/or physical);
- The frequency and duration of the harassing conduct;
- The identity of and relationship between, the alleged harasser and the subject of the harassment;

- The number of individuals engaged in the harassing conduct (for example, a group of students targeting a single student)
- The setting(s) and context(s) in which the harassing conduct occurred.

Generally, the more severe the conduct, the less need there is to show a repetitive series of incidents to establish a hostile environment, particularly if the harassment was physical. Harassing conduct may violate this Policy if, for multiple instances of conduct, it is so pervasive that when viewed from an objective standard of a similarly situated reasonable person, it substantially and adversely affected the targeted student's educational opportunities or benefits. A single incident of harassing conduct may violate this Policy if the conduct is so severe that, when viewed from an objective standard of a similarly situated reasonable person, it substantially and adversely affected the targeted student's educational opportunities or benefits.

Employees of the VSC are expressly prohibited from engaging in related unprofessional conduct with students

C. HIV -related Blood Test

Under Vermont law, it is unlawful for the VSC or any member institution to request or require any applicant, prospective student, or current student to have an HIV-related blood test or to discriminate against an applicant, prospective student, or current student on the basis of a person's having a positive test result from an HIV-related blood test.

Under Vermont law, it is unlawful for employers and labor organizations to discriminate against, indicate a preference or limitation, refuse properly to classify or refer, or to limit or segregate membership on the basis of a person's having a positive test result from an HIV-related blood test or to require an applicant, prospective employee, employee, prospective member, or member to have an HIV-related blood test as a condition of employment or membership, classification, placement, or referral

D. Retaliation

Retaliation against any person for reporting a violation of this Policy, filing a complaint, or cooperating with an investigation into an alleged violation of this Policy is prohibited and will be considered a violation of this Policy. Retaliation under this Policy may be found whether or not the underlying complaint is ultimately found to have merit. A complaint of retaliation should be reported, and will be investigated and adjudicated, using the procedures implementing this Policy.

E. False Information

Providing false information in connection with a complaint under this Policy or intentionally misleading officials in the investigation or resolution of such a complaint is prohibited and may result in disciplinary action.

VIII. DUTY TO COOPERATE

Failure to cooperate fully with an investigation may subject the individual to the full range of disciplinary actions, up to and including expulsion or termination.

All actions taken to investigate and resolve complaints through this procedure shall be conducted with as much privacy, discretion and confidentiality as possible without compromising the thoroughness and fairness of the investigation. All persons involved are expected to treat the situation under investigation with respect. To conduct a thorough investigation, the investigator(s) may discuss the complaint with witnesses and those persons involved in or affected by the complaint, and those persons necessary to assist in the investigation or to implement appropriate disciplinary actions. Nothing herein shall be deemed to limit the procedural rights of unionized and other employees with regard to such investigations

IX. SANCTIONS

Violation of the prohibitions set forth in this Policy is grounds for discipline up to and including the dismissal/expulsion of students or the termination of employees. Generally, the range of sanctions for students includes verbal and written warnings, written reprimands, counseling, loss of privileges, probationary status, removal from institution housing, suspension, dismissal/expulsion, revocation of degree, and/or withholding of transcript or other action determined appropriate under the circumstances.

The Chancellor shall establish and periodically update the procedures for handling complaints alleging violations of this Policy and for developing educational programs designed to prevent such conduct. Such procedures shall be consistent with Vermont and federal legal requirements and any collective bargaining agreements governing the rights and responsibilities of the VSC, its member Institutions and employees. The procedures shall ensure that the VSC and any Institution, upon receiving notice of conduct that allegedly violates this Policy, promptly and impartially investigates such complaints and, where complaints are substantiated, takes prompt and appropriate remedial action reasonably calculated to stop the misconduct, prevent its recurrence, and remedy its effects, if necessary.

The procedures established by the Chancellor may be modified as necessary to comply with federal and state law and to ensure that complaints of discrimination and harassment are promptly and impartially investigated and adjudicated.

Students who have concerns about perceived discrimination, harassment, related unprofessional conduct or retaliation are encouraged to report their concerns as soon as possible. Employees who learn of an incident of discrimination, harassment, related unprofessional conduct, or retaliation are required to report this information as soon as possible, as set forth in the accompanying procedures.

The VSC's primary goals in responding to violations of this Policy are to promote the safety of the VSC community, to address discrimination and harassment, to prevent discrimination and harassment from recurring. Individuals should not be deterred from reporting a violation of this Policy because alcohol, drugs, or violations of other 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 alleged violations of this Policy or, if they do pursue such violations, to handle them separately from complaints brought under this Policy.

A. Standard of Proof

The standard of proof applicable to the investigation and adjudication of complaints under this Policy shall be by a preponderance of the evidence, meaning that it is more likely than not (there is more than a 50% likelihood) that the alleged actions or behavior in violation of the Policy occurred.

B. Coordinators

The Chancellor (for the Office of the Chancellor) and the President of each member Institution (for each Institution) shall appoint individuals to coordinate efforts to carry out and comply with Title IX of the Education Amendments of 1972 and the other federal and state laws prohibiting

discrimination and harassment on the basis of a protected category; Sect(2) 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. Contact information for the coordinator shall be attached to the Chancellor's Procedures

XI. POLICY DISTRIBUTION AND EDUCATION

The Institutions and the Office of the Chancellor shall distribute or make available annually copies of the Policy and related procedures for all students and employees. Institutions and the Office of the Chancellor will make available appropriate educational materials and programs to facilitate understanding and implementation of this Policy for all students and employees.

Date adopted by the Board of Trustees: September 19, 2023

Signed by: 
Sophie E. Zdatny, Chancellor

Date	Version	Revision	Approved By
2006	1.0	Adopted	VSCS Board of Trustees
2/19/15	2.0	Updated	VSCS Board of Trustees
8/12/20	3.0	Updated per 2020 Title IX regulations	VSCS Board of Trustees
9/19/23	4.0	Updated per 2023 VT Fair Employment Practices Act	VSCS Board of Trustees

Relevant Legal Authorities

Federal

- 20 U.S.C. § 1681 *et seq.* Title IX of the Education Amendments of 1972
- 34 C.F.R. Part 106 (Title IX regulations)
- 20 U.S.C. § 1232g, Family Educational Rights and Privacy Act of 1974 (FERPA)
- 34 C.F.R. Part 99 (FERPA regulations)
- 29 U.S.C. § 602(d), Equal Pay Act of 1963
- 29 U.S.C. § 621 *et seq.* Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act of 1990
- 29 U.S.C. § 701 *et seq.* Section 504 of the Rehabilitation Act of 1973, as amended
- 38 U.S.C. § 4212, Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended
- 38 U.S.C. § 4301 *et seq.* Uniformed Services Employment and Reemployment Rights Act of 1994
- 42 U.S.C. § 2000d, Title VI of the Civil Rights Act of 1964
- 42 U.S.C. § 2000e *et seq.* Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978 and the Civil Rights Act of 1991
- 42 U.S.C. § 2000ff *et seq.*, Genetic Information Nondiscrimination Act of 2008
- 42 U.S.C. § 12101 *et seq.* Americans with Disabilities Act of 1990, as amended by the Americans with Disabilities Amendments Act of 2008

State

- 3 V.S.A. § 961(6)(8), State Employees Labor Relations Act
- 9 V.S.A. §§ 4500 *et seq.* Vermont Public Accommodations Act
- 16 V.S.A. § 11(a)(26), Classifications and Definitions, Harassment
- 16 V.S.A. § 178, Harassment and Hazing Prevention Policies; Postsecondary Schools
- 16 V.S.A. § 570f, Harassment; Notice and Response
- 18 V.S.A. § 1127, HIV Discrimination and Testing
- 21 V.S.A. § 495, Fair Employment Practices Act
- 21 V.S.A. § 495d(5)(12), Definitions, Disability
- 21 V.S.A. § 495d(13), Definitions, Sexual Harassment
- 21 V.S.A. § 495h, Fair Employment Practices Act Sexual Harassment