

POLICY AGAINST HARASSMENT, SEXUAL HARASSMENT, DISCRIMINATION AND RETALIATION

ADOPTED 10/28/94

AMENDED 6/7/06

AMENDED 7/1/13

AMENDED 5/8/15

Effective Date: 5/8/15. The policies, procedures and information outlined herein supersede previous Vermont Law School policies, procedures and information on the same topics.

A. GENERAL PROVISIONS

1. INTRODUCTION: This policy applies to all Vermont Law School (VLS) employees, officers, trustees, and students with regard to their actions in connection with the application or admissions process, educational activities, career services, employment, or other law school-related activities when those actions occur on VLS property or in the use of VLS facilities (including the computer network and telephone and email systems). This policy also applies when those actions occur off campus in connection with events sponsored by VLS or VLS-approved organizations, or in connection with official business undertaken for VLS, or when the alleged conduct of concern involves interactions between VLS employees, officers, trustees and/or students, or in other circumstances where an action could have a significant impact on the educational or employment environment or the reputation or integrity of VLS, and/or could pose a threat to the safety or other interests of VLS or members of the VLS community. This policy also applies to the actions of VLS agents and contractors in the circumstances set forth in this paragraph to the extent that VLS can control their conduct.

In addition to this Policy, VLS also maintains a Sexual Misconduct, Domestic Violence, Dating Violence and Stalking Policy ("SMDVS Policy"). Sexual misconduct as defined by the Law School (which includes, for example, sexual exploitation and sexual assault) will usually also be a form of sexual harassment. Reports of sexual harassment that fit within the definition of sexual misconduct in the SMDVS Policy will be handled under the SMDVS Policy. Reports of sexual harassment that fit within the definition of sexual harassment in this Policy Against Harassment, Sexual Harassment, Discrimination and Related Retaliation ("HSHDR Policy") but do not fit within the definition of sexual misconduct in the SMDVS Policy will be handled under this HSHDR Policy. In some cases, alleged behavior may violate both policies. In such cases, the procedures outlined in the SMDVS Policy will be followed in general, though some procedural variation may be necessary where deemed appropriate by the Title IX Coordinator, the Associate Dean for Student Affairs and Diversity, and/or the Associate Dean for Academic Affairs.

2. NOTICE OF NON-DISCRIMINATION: Vermont Law School is committed to promoting an employment and educational environment free from unlawful harassment, sexual harassment, discrimination, and retaliation. Unlawful harassment or discrimination on the basis of age, race, color, creed, ethnicity, national origin, place of birth, ancestry, religion, sex/gender, gender identity/expression, sexual orientation, marital status of students, service in the armed forces of the United States, HIV-positive status, genetic information, or against qualified individuals with disabilities

on the basis of disability, as defined by applicable law, or other characteristics as defined and protected by applicable law (“protected characteristics”) is prohibited and will not be tolerated. In compliance with Title IX of the Education Amendments of 1972 (“Title IX”) and applicable state law, Vermont Law School does not discriminate on the basis of sex in its education programs and activities or in employment, and it is required by Title IX to not discriminate on that basis. Discrimination on the basis of sex prohibited by Title IX includes sexual harassment and sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion (sexual assault is addressed separately in VLS’s SMDVS Policy), as well as retaliation connected with a person’s exercise of any right or privilege secured by Title IX, defined more fully below. The Law School will take all necessary steps to end conduct prohibited by this policy, to prevent its recurrence, and to address its effects.

3. TITLE IX COORDINATOR: Pursuant to Title IX of the Education Amendments of 1972 and the U.S. Department of Education’s implementing regulations at 34 C.F.R. Part 106, the Law School’s Title IX Coordinator has primary responsibility for coordinating the Law School’s efforts to comply with and carry out its responsibilities under Title IX. Sexual harassment against students and employees can be a form of sex discrimination under Title IX. Vermont Law School has designated Shirley Jefferson, Associate Dean for Student Affairs and Diversity, 802-831-1333, to serve as its Title IX Coordinator. Kim Harris, Director, Human Resources, 802-831-1225, will act as Dean Jefferson’s Deputy Title IX Coordinator when Dean Jefferson is unavailable, or in the event of a conflict of interest. The Title IX Coordinator is responsible for coordinating VLS’s compliance with Title IX, including overseeing all complaints of sex discrimination and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. The Law School’s Title IX Coordinator also oversees, in collaboration with other Law School offices as necessary, the Law School’s response to reports and complaints of sexual misconduct, domestic violence, dating violence and stalking involving Law School students and employees. Inquiries concerning Title IX may be referred to the Law School’s Title IX Coordinator or to the United States Department of Education’s Office of Civil Rights.

A student or employee should contact the Title IX Coordinator or Deputy Title IX Coordinator(s) in order to:

- seek information or training about students’ rights and courses of action available to resolve reports or complaints that involve potential sex discrimination, including sexual misconduct, file a complaint or make a report of sex discrimination including sexual misconduct,
- notify the Law School of an incident or policy or procedure that may raise potential Title IX concerns,
- get information about available resources (including confidential resources) and support services relating to sex discrimination, including sexual misconduct,
- ask questions about the Law School’s policies and procedures related to sex discrimination, including sexual misconduct, and

- seek or provide information about any of these issues as they relate to domestic violence, dating violence or stalking involving Law School students or employees.

In the event that the incident, policy, or procedure about which the student or employee seeks to file a report or complaint creates the appearance of a conflict of interest with the Title IX Coordinator, students or employees may contact the Deputy Title IX Coordinator. If an individual perceives a conflict of interest with the Title IX Coordinator and the Deputy Title IX Coordinator, the individual may contact the President and Dean's Office. The President and Dean or designee will appoint another person to handle the Law School's Title IX-related responsibilities, as appropriate.

Inquiries or complaints that involve potential violations of Title IX may also be referred to the U.S. Department of Education's Office for Civil Rights, which can be reached at [contact information for regional office: wdcrobcolp01.ed.gov/cfapps/OCR/contactus.cfm] or the Educational Opportunities Section of the Civil Rights Division of the U.S. Department of Justice (DOJ): justice.gov/crt/complaint/#three. See attached Addendum A for a detailed outline of the Title IX Coordinator's functions and responsibilities.

4. DEFINITIONS:

a. "Unlawful Harassment" is defined as verbal or physical conduct that, on the basis of a protected characteristic, has the purpose or effect, from the point of view of a reasonable person, either of interfering with an individual's employment or educational performance or of creating an intimidating, hostile or offensive employment or educational environment. Unlawful harassment may include, but is not limited to, the following actions if, as isolated acts or as part of a pattern, they have the prohibited purpose or effect on employment or educational performance or environment: jokes, derogatory expressions, or comments; the display of graphics, cartoons, or objects; sending or forwarding electronic mail messages; and other conduct offensive to a reasonable person possessing a particular protected characteristic.

b. "Sexual Harassment" is defined as a particular type of unlawful harassment, defined generally as unwelcome conduct of a sexual nature. In addition to conduct described in the preceding paragraph that is of a sexual nature, sexual harassment includes conduct that a reasonable person would judge to be unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct explicitly or implicitly affects employment or educational decisions concerning an individual, or when the conduct has the purpose or effect of substantially interfering with an employee's performance or a student's educational experience, or creating an intimidating, hostile or offensive employment or educational environment because of the employee's or student's gender. Sexual harassment specifically includes: (a) statements or threats which imply a link between an individual's sexual conduct and his or her academic or employment status,

advancement potential, salary treatment, grading treatment, participation in VLS programs or activities, or other employment or educational actions; (b) basing an employment decision such as hiring, promotion, retention, or compensation, or an educational decision such as admission, a grade, or participation in any VLS program or activity, on whether an employee, a student, or an applicant submits to sexual advances. Sexual harassment may occur regardless of the genders of the individuals involved.

c. "Discrimination" is defined as making a decision or taking an action that affects the terms or conditions of a person's employment or education at VLS, or participation in or access to the benefits of any VLS program or activity, on the basis of a protected characteristic of that person.

d. "Retaliation" is defined as an adverse action taken against any person for making a good faith complaint of unlawful harassment, sexual harassment, or discrimination or for having participated in an investigation of such a complaint. Retaliation includes but is not limited to ostracizing the person, pressuring the person to drop or not support the complaint, or adversely altering that person's educational, living, or work environment. Retaliation may be unlawful and may constitute a violation of this policy depending on the circumstances, whether or not the complaint is ultimately found to have merit.

e. "Complainant" is defined as a student, employee, or third party involved in some way in an academic or extracurricular program of the Law School who has allegedly been subjected to conduct in violation of this policy by a student or employee respondent. For ease of reference and consistency, the term "complainant" is used hereafter in this policy to refer to a person who believes that he or she has been subjected to harassment, sexual harassment, discrimination or retaliation, or who is believed by another to have been subjected to such conduct.

f. "Respondent" is defined as an individual (student, faculty, staff, or third party over whom the Law School has some form of jurisdiction) who is reported to have violated the Law School's Harassment, Sexual Harassment, Discrimination, and Retaliation Policy.

g. "Responsible Employee" is defined as a Law School employee who has the authority to address conduct that violates this policy, or whom an individual could reasonably believe has this authority or duty. Law School administrators, staff, and student employees whose job responsibilities include working with students, and Law School faculty, are considered to be "responsible employees," as are (where the complainant is an employee) supervisors, administrators, and individuals working in Human Resources.* Responsible employees are respectful of an individual's wishes to the extent appropriate and are discreet, but they need to convey information about reported conduct in violation of this policy to the Law School's Title IX Coordinator.

General inquiries or questions about this policy may remain private, do not have to be reported, and the Law School will strive to protect the privacy interests of individuals to the extent it can while maintaining its obligations to uphold relevant policies and regulations and/or to take reasonable steps to promote the safety of members of the Law School community. Otherwise, once any responsible employee learns of an incident that may violate this policy, written or unwritten, the responsible employee must immediately notify the Title IX Coordinator of such complaint. The responsible employee must report all relevant details about the incident (such as the name of the complainant and respondent, any witnesses, and other relevant

facts, such as the date, time and specific location of the alleged incident). Such notice to the Law School generally obligates the Law School to investigate the incident and take appropriate steps to address the situation.

*“Responsible employee” does not include the confidential resources as defined in the Law School’s Sexual Misconduct, Domestic Violence, Dating Violence and Stalking Policy.

5. **ACADEMIC FREEDOM:** In the establishment and enforcement of this policy against unlawful harassment, VLS recognizes and affirms that free, honest intellectual inquiry, debate, constructive dialogue, and the open exchange of ideas are essential to the Law School’s academic mission and must be respected even when the views expressed are unpopular or controversial. Respect for speech in all its forms is, therefore, an important element in the “reasonable person” standard to be used in judging whether harassment has occurred. This policy is meant neither to proscribe nor to inhibit discussions or presentations of differing points of view, in or out of the classroom, concerning complex, controversial, or sensitive matters, including sex, sexual orientation, gender identity or expression, race, ethnicity, religious orientation, age, physical ability, or other protected characteristics, when in the judgment of a reasonable person, those discussions or presentations are conducted appropriately and with respect for the dignity of others. VLS also recognizes, however, that verbal conduct can be used specifically to intimidate or coerce and to inhibit genuine discourse, free inquiry, and learning. Such abuses are unacceptable. If someone believes that another’s speech or writing is offensive, wrong, or hurtful, he or she is encouraged to express that judgment in the exercise of his or her own freedom of speech or to seek an appropriate remedy under the Law School’s procedures for enforcing this policy.

6. **OUTSIDE AGENCIES:** All members of the VLS community have the right to pursue discrimination and harassment complaints, including sexual harassment and sexual misconduct complaints, and complaints of retaliation, beyond the Law School. Such outside agencies include local, state and federal enforcement agencies, including local and state police as appropriate, as set forth below. Complainants may pursue an internal complaint under this policy or with an external agency, or pursue both at the same time.

The following agencies have jurisdiction over student complaints:

- Vermont Human Rights Commission, 14-16 Baldwin Street, Montpelier, Vt. 05633-6301, Tel: 800-426-2010 ext. 25 (voice), TTY: 877-294-9200, Fax: 802-828-2481, Email: human.rights@state.vt.us
- United States Department of Education, Office of Civil Rights, 8th Floor, 5 Post Office Square, Boston, Mass. 02109-3921, Tel: 617-289-0111, Fax: 617-289-0150, Email: OCR.Boston@ed.gov

Employees may contact the following agencies:

- Vermont Attorney General's Office, Civil Rights Unit, 109 State Street, Montpelier, Vt. 05609-1001; Tel: 802-828-3171 or 888-745-9195, TTY: 802-828-3665, Fax: 802-828-3187, Email: civilrights@atg.state.vt.us
- Equal Employment Opportunity Commission (EEOC), Boston Area Office, John F. Kennedy Federal Building, Government Center, Room 475, Boston, Mass. 02203, Tel: 617-565-3200, TTY: 617-565-3204, Email: info@ask.eeoc.gov

The Vermont Attorney General's Office and the EEOC can conduct investigations, facilitate conciliation, and, if either finds that there are reasonable grounds to believe that unlawful conduct has occurred, take the case to court. There are certain time deadlines for filing complaints with these state and federal agencies and/or in state or federal court.

7. OTHER RESOURCES: There are many resources available to individuals affected by sexual harassment, inappropriate sexual misconduct, and/or sexual assault. A list of these resources is set forth in the Sexual Misconduct, Domestic Violence, Dating Violence and Stalking Policy.

8. QUESTIONS: If any person has questions or concerns regarding this policy, he or she should talk with the VLS Title IX Coordinator, Director of Human Resources, the Associate Dean for Students Affairs and Diversity, and/or the Associate Dean for Academic Affairs.

B. PROCEDURES FOR HANDLING COMPLAINTS OF HARASSMENT, SEXUAL HARASSMENT, DISCRIMINATION, OR RETALIATION

All information in the following sections applies to students, staff or faculty of Vermont Law School or covered third parties* who wish to report a complaint of harassment, sexual harassment, discrimination, or retaliation. Vermont Law School is committed, and required by law, to take action when it learns of potential harassment or discrimination. The Law School will take all necessary steps to ensure that complaints are promptly investigated and addressed, so it is important that such complaints or concerns be presented in a timely fashion. A person who feels harassed or discriminated against is primarily responsible for bringing these concerns to the Law School's attention, but employees and students are also encouraged, and supervisors and all other responsible employees are required, to

report incidents or patterns of prohibited harassment or discrimination to appropriate Law School personnel.

1. COMPLAINTS. Any Vermont Law School student, faculty member or staff member who has reasonable cause to believe that a student, faculty member, staff member, officer, trustee, agent, or contractor of Vermont Law School has engaged in conduct prohibited by this policy or who believes that he or she has been subjected to retaliation for having brought or supported a good faith complaint covered by this policy, or for having participated in an investigation of such a complaint, is encouraged to bring this information to the immediate attention of the Title IX Coordinator, an employee's supervisor, the Director of Human Resources, any Dean or Vice President, or the President and Dean of the Law School (President and Dean). The complainant will be encouraged, though not required, to provide a written statement of the factual basis for the complaint and requested remedial action (if any). Any supervisor or responsible employee having first-hand knowledge of conduct prohibited by this policy shall immediately make such a complaint.

2. HANDLING OF COMPLAINT. When a complaint is made, the person receiving the complaint should assure the complainant that the complaint will be investigated promptly by the Law School, that appropriate corrective action will be taken, and that the complainant will not suffer retaliation as a result of making a good faith complaint of unlawful harassment, sexual harassment, discrimination or related retaliation. The person to whom a complaint has been made shall immediately inform the Associate Dean for Academic Affairs of the complaint and transmit the written complaint or other material concerning the matter to the Associate Dean for Academic Affairs. The Associate Dean for Academic Affairs will inform the Title IX Coordinator of complaints that involve reports of sexual harassment, sex discrimination or related retaliation. The Associate Dean for Academic Affairs will appoint a Vice President, Associate Dean, or Director to undertake the investigatory responsibilities set forth in paragraph 3. If a complaint involves the Associate Dean for Academic Affairs, the person to whom it is made shall inform the President and Dean, who will appoint another dean or director to undertake those responsibilities. If a complaint involves the President and Dean or another officer or Trustee, the Associate Dean for Academic Affairs shall inform the Chair of the Board of Trustees, who will appoint a Trustee to undertake those responsibilities. If a complaint involves the Chair, the Vice Chair will appoint a Trustee to undertake those responsibilities. With the approval of the President and Dean, or the Chair or Vice Chair of the Board of Trustees if appropriate, a qualified individual from outside the Law School community may be appointed to undertake or assist in those responsibilities.

The Title IX Coordinator's responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. The Title IX Coordinator or her or his designee will be available to meet with students as needed.

3. INVESTIGATION. The person appointed by the Associate Dean for Academic Affairs under paragraph 2 (the “Investigator”) will promptly make an initial determination as to whether the complaint alleges conduct prohibited by this policy. Absent extenuating circumstances, this initial determination will occur within five business days of receipt of the complaint. The complainant and respondent will be provided with notice of the identity of the appointed Investigator, and will be informed that any objections to the service of the appointed Investigator on grounds of conflict of interest or a lack of impartiality should be submitted in writing to the Associate Dean for Academic Affairs within three days of notice of the appointment. The Associate Dean for Academic Affairs will decide promptly whether the appointed Investigator will or will not continue to conduct the investigation. Any materials collected or notes prepared by the Investigator during the objection period will be turned over to any replacement Investigator. The replacement Investigator will decide whether to use such materials or not. If the Investigator determines that the complaint falls within this policy, he or she will, individually or in conjunction with other Law School officers or individuals (including, if warranted, outside investigators), promptly and equitably conduct or supervise an investigation of the complaint, as appropriate under the circumstances. The investigation will be conducted in a thorough, impartial and expeditious manner. The parties will not be permitted to question or cross-examine each other directly during the course of the investigation. The nature and scope of the investigation is within the discretion of the Investigator. Absent extenuating circumstances, the investigation of a complaint under this policy will ordinarily be completed within 30 calendar days. If the complainant or respondent requests an extension of this general 30 day period, he or she should make a written request for an extension to the Investigator, who will make a decision on the request after having provided the other party notice of the request and an opportunity to respond.

*Under Title IX, third parties are protected from sexual harassment arising out of the Law School’s programs or activities. Accordingly, any third party who participates in any Vermont Law School program or activity (“covered third party”) may report a complaint of sexual harassment and/or sexual violence under this Policy. Also, the Law School will take appropriate action, to the extent practicable, in response to a report or complaint that a third party has engaged in sexual harassment toward a VLS student, faculty member, or staff member.

4. INTERMEDIATE REMEDIAL ACTION. The Title IX Coordinator, Investigator or other school official may take interim remedial action, including by way of example only, issuance of no contact orders or temporary changes in assignment of duties, classes or housing (where requested and reasonably available), as deemed necessary and appropriate to protect complainants on an interim basis.

5. INFORMAL RESOLUTION. The Investigator may recommend and participate in voluntary alternative dispute resolution such as informal meetings or mediation sessions with the parties. A complainant will not be required to participate in alternative dispute resolution and may end

the alternate dispute resolution process at any time. The Law School may also decide, at its discretion, not to pursue or to discontinue informal resolution. Mediation between the complainant and the respondent will not be pursued in cases involving allegations of sexual assault (addressed below).

6. INVESTIGATOR'S REPORT. After the investigation is completed, the Investigator shall issue a report to the Associate Dean for Academic Affairs together with recommended findings, based upon the preponderance of the evidence standard, i.e., whether it is more likely than not that the policy was violated. The report may be issued orally or in writing, depending upon the nature and complexity of the information. The Investigator's report is advisory in nature.

7. DETERMINATION. The Associate Dean for Academic Affairs is not bound by the Investigator's report and may accept or reject the Investigator's recommended finding in whole or in part, and/or may request additional relevant information before making a final determination. The Associate Dean for Academic Affairs should avoid duplicating the efforts of the Investigator and should not accept the Investigator's recommended findings without first conducting a careful review of all of the evidence. Either party may choose to meet individually with the Associate Dean for Academic Affairs prior to his/her final determination. Equally, the Associate Dean for Academic Affairs may request an individual meeting with either party or any other person(s) as appropriate. After reviewing the Investigator's report and recommended finding, the Associate Dean for Academic Affairs shall issue a final determination as to whether conduct prohibited under this policy occurred. The final determination will be based on a preponderance of the evidence standard. Absent extenuating circumstances, the Associate Dean for Academic Affairs will issue the final determination within 10 business days after receipt of the Investigator's report. The complainant and respondent will ordinarily be notified of the final determination of the Associate Dean for Academic Affairs as to whether this policy was violated. In sexual harassment or sexual misconduct cases involving student-complainants, both parties will be notified of the final determination concurrently in writing, to the extent permitted by law. However, information regarding discipline or sanctions will not be shared with any complainant under this policy except as required and/or permitted by law.

8. ADJUDICATION. The Associate Dean for Academic Affairs will work with those Law School officials who have authority over the individuals involved in the matter and the Law School will promptly take any necessary and remedial action to prevent recurrence of any harassment, discrimination or retaliation and to correct its discriminatory effects on the complainant and others, as appropriate. If the Associate Dean for Academic Affairs determines that a staff or faculty member has engaged in conduct in violation of this policy, he/she will report the determination to the appropriate supervisory authority, in accordance with the applicable provisions of §§ II.G and H of the Vermont Law School Staff Handbook (July 1, 2005) and § V.F of the Vermont Law School Faculty Handbook (October 2013). The appropriate supervisory authority shall consider the initiation of disciplinary proceedings and/or action up to and including termination of employment. If the Associate Dean for Academic Affairs determines that the President and Dean, another officer or Trustee, or an agent or contractor of the Law

School engaged in conduct in violation of this policy, he/she will make recommendations for action appropriate in the circumstances to the Chair or Vice Chair of the Board of Trustees, or to the administrative officer responsible for the relevant agency or contractual relationship. If the Associate Dean for Academic Affairs determines that a student has engaged in conduct in violation of this policy, he/she will refer the matter to the Associate Dean for Student Affairs and Diversity for disciplinary action, up to and including expulsion. The hearing procedures followed will be the same as the hearing procedures set forth in the "Sexual Misconduct, Domestic Violence, Dating Violence and Stalking Policy, Resources and Procedures" at Article IV, Section C, §§ 7-11.