

# SEXUAL HARASSMENT, DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING PROHIBITED BY TITLE IX POLICY

## I. ARTICLE I. POLICY OVERVIEW

This policy sets forth Vermont Law and Graduate School's obligations under the 2020 Title IX Regulations.

Our Title IX Coordinator is:

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802-831-1274  
164 Chelsea Street, P.O. Box 96, South Royalton, VT, 05068

Our Deputy Title IX Coordinator is:

Jessica Brown, Associate Director Center for Justice Reform and Professor of Law  
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802-831-1101  
164 Chelsea Street, P.O. Box 96, South Royalton, VT 05068

Questions about Title IX may be referred to the Title IX Coordinator, Deputy Title IX Coordinator, or to the assistant secretary for civil rights through the Boston office:

Office for Civil Rights  
Boston Office  
U.S. Department of Education  
8th Floor  
5 Post Office Square  
Boston, MA 02109-3921  
617-289-0111  
[OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)

Any person may report conduct prohibited by this policy to the Title IX Coordinator/Deputy or to: the Associate Dean for Diversity, Equity, and Inclusion, the Vice Dean for Students, the Vice President of Finance, the Vice Dean for Faculty, the Dean of the Law School, or the Dean of the Graduate School. These are the only individuals with authority to institute corrective measures on behalf of VLGS under this policy.

A complaint about the Title IX Coordinator or Deputy Coordinator may be made to the Vice Dean for Faculty or to the Dean of the Law School or the Dean of the Graduate School.

## II. ARTICLE II. STATEMENT OF NON-DISCRIMINATION

VLGS does not discriminate on the basis of sex in its educational programs and activities, including employment and admission. Complaints of discrimination on the basis of sex will be handled under VLGS's Policy Against Harassment, Sexual Harassment, Discrimination, and Related Retaliation ("HSHDR Policy"), which applies to all employees, officers, trustees, and students. The HSHDR Policy is available in our Student Handbook.

## III. ARTICLE III. SCOPE

This policy applies to all students, faculty, and staff who experience prohibited sexual harassment in VLGS's education programs or activities. This includes locations, events, or circumstances over which VLGS exercised substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by VLGS. VLGS has other policies and procedures that may be applicable if the conduct does not meet the definition of prohibited sexual harassment under this policy or otherwise fall within the scope of this policy, including the HSHDR Policy available in the Student Handbook and the Code of Conduct.

Conduct that meets the definition of prohibited sexual harassment under this policy will be handled under this policy.

#### IV. ARTICLE IV. PROHIBITED SEXUAL HARASSMENT

In accordance with its obligations under the Title IX Regulations of 2020, VLGS prohibits sexual harassment, which is conduct on the basis of sex, including gender identity, gender expression, or sexual orientation, that satisfies one or more of the following definitions:

**A. QUID PRO QUO CONDUCT.** An employee conditions the provision of an aid, benefit, or service of VLGS on an individual's participation in unwelcome sexual conduct;

**B. UNWELCOME CONDUCT.** Unwelcome conduct that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to VLGS's education program or activity; or

**C. SEXUAL ASSAULT.** An offense classified as a forcible or nonforcible sex offense. This category of prohibited conduct includes the following:

**1. Sex Offenses**—Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent. Sexual act is defined as conduct between persons consisting of: a. Contact between the penis and the vulva; b. Contact between the penis and the anus; c. Contact between the mouth and the penis; d. Contact between the mouth and the vulva; e. Any intrusion, however slight, by any part of a person's body or any object in the genital or anal opening of another.

**2. Non-Consensual Penetration**—Actual or attempted penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This includes forcible penetration and/or penetration against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of their temporary or permanent mental or physical incapacity.

**3. Fondling**—The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity.

**4. Incest**—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**5. Statutory Rape**—Nonforcible sexual intercourse with a person who is under the statutory age of consent.

**D. DATING VIOLENCE.** Violence committed by a person—(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

**E. DOMESTIC VIOLENCE.** A felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Vermont or 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 state of Vermont.

Under Vermont law, it is unlawful to attempt to cause or to willfully or recklessly cause bodily injury to a family or household member, or to willfully cause a family or household member to fear imminent serious bodily injury. "Household" members are defined as those persons who, for any period of time, are living or have lived together, are sharing or have shared occupancy of a dwelling, and are engaged in or have engaged in a sexual relationship, or minors or adults who are dating or have dated.

**F. STALKING.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—(A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

## V. ARTICLE V. DEFINITIONS

**A. CONSENT** is defined under Vermont law as “words or actions by a person indicating a voluntary agreement to engage in a sexual act.” At the foundation of this policy is the understanding that in order to engage in behavior of a sexual nature there must be clear, knowing, and voluntary consent prior to and during sexual activity. For the purposes of this policy the following is true of consent:

- Consent is informed, active, and freely given and is grounded in rational and reasonable judgment. It requires clear communication between all persons involved in the sexual encounter.
- Consent can be communicated verbally or by action(s). Consent must be mutually understandable by all parties involved in the sexual experience, which a reasonable person would interpret as a willingness to participate in agreed-upon sexual conduct.
- The person initiating the sexual contact is always responsible for obtaining consent from their partner(s). It is not the responsibility of one party to resist or communicate “no” to the sexual advances of another.
- Consent is not the absence of resistance. Silence is an inactive behavior and does not constitute consent. If a partner is inactive (for example, silent or physically still) sexual activity must stop until both partners have communicated clearly with each other about what, if any, sexual activity is mutually desired.
- Consent to one form of sexual activity does not imply consent to another form of sexual activity. Each new sexual act requires new consent. Consent can be rescinded at any time.
- Consent at one time and to one sexual act does not imply consent at any other time to that or any other sexual act at a later date and regardless of previous relations.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.
- Consent cannot be given by minors, mentally disabled individuals, or by incapacitated persons. A person may be incapacitated as a result of alcohol or other drug use. A person who is unconscious, unaware, or otherwise physically helpless cannot give consent to sexual activity.
- A person will be considered unable to give valid consent, for example, if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing.
- Imbalance of power (supervisor-supervisee, faculty member-student, etc.) may lead to confusion about consent.
- Consent cannot result from force, or threat of force, coercion, fraud, intimidation, incapacitation (due to drunkenness, for example) or imbalance of power. VLGS will use an objective standard when determining incapacitation-related questions; that is, VLGS will determine whether from the standpoint of a reasonable person, the Respondent knew or should have known that the Complainant could not effectively consent because the Complainant was incapacitated.

It should be noted that ignorance of the policy noted above, or the intoxication of the Respondent will not (particularly given VLGS’s objective standard) be considered an excuse for violating this policy.

**A. COMPLAINANT** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment under this policy.

**B. FORMAL COMPLAINT** means a document filed by a Complainant or signed by the Title IX Coordinator/Deputy alleging sexual harassment against a Respondent and requesting that VLGS investigate the allegation of sexual harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of VLGS with which the Formal Complaint is filed.

**C. GRIEVANCE PROCESS** means the fact-finding process from the time of the filing of the Formal Complaint through the final determination of an appeal (if any).

**D. RESPONDENT** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under this policy.

**E. SUPPORTIVE MEASURES** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to VLGS's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or VLGS's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive measures may also include written notification about available services both within the institution and the community and options for available assistance as required by the Clery Act. Supportive measures are not disciplinary measures.

## VI. ARTICLE VI. REPORTING PROHIBITED SEXUAL HARASSMENT

**A. NOTICE OF ALLEGATIONS.** VLGS has notice of sexual harassment or allegations of sexual harassment when such conduct is reported to the Title IX Coordinator, Deputy Title IX Coordinator, or any official of VLGS who has authority to institute corrective measures on behalf of VLGS. The Associate Dean for Diversity, Equity, and Inclusion, the Vice Dean for Students, the Vice President of Finance, the Vice Dean for Faculty, the Dean of the Law School, or the Dean of the Graduate School are the only individuals with authority to institute corrective measures on behalf of VLGS under this policy.

However, all employees are encouraged to report sexual harassment, as defined and prohibited by this policy, to the Title IX Coordinator or Deputy Title IX Coordinator, consistent with the requests of the Complainant.

**B. RESPONSE TO A REPORT.** With or without a Formal Complaint, upon a report of sexual harassment, the Title IX Coordinator or Deputy Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures, consider the Complainant's wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint.

**A. INFORMATION PACKET.** Upon a receipt of a report of sexual assault, dating violence, domestic violence or stalking, VLGS shall provide information that contains procedures to follow if a sex offense, domestic violence, dating violence, sexual assault, or stalking has occurred, including information in writing about—

- a. The importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order;
- b. How and to whom the alleged offense should be reported;
- c. Options regarding law enforcement and campus authorities, including notification of the option to: notify proper law enforcement authorities, including on-campus and local police; be assisted by campus authorities in voluntarily notifying law enforcement authorities; and decline to notify such authorities;
- d. Where applicable, their rights and the institution's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court;
- e. Information about appropriate and available services both at the institution and in the community; and
- f. Options for, available reasonably available assistance and accommodations and how to request them.

VLGS's information for victims of sexual assault, dating violence, domestic violence and stalking is located in our student handbook or in the student services office, or available from the Title IX Coordinator or Deputy Title IX Coordinator.

**D. IMPLEMENTATION OF SUPPORTIVE MEASURES.** VLGS shall treat parties equitably by offering Supportive Measures to the Complainant, and by following a grievance process that complies with this policy before the imposition of any disciplinary sanctions or other actions that are not

Supportive Measures as against the Respondent. VLGS will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of VLGS to provide the Supportive Measures. The Title IX Coordinator/Deputy is responsible for coordinating the effective implementation of Supportive Measures. The Title IX Coordinator/Deputy should record and retain records regarding requests and provision of Supportive Measure in accordance with the requirements set out at XIV. Record Keeping, below.

- E. EMERGENCY REMOVAL.** Nothing in this policy precludes VLGS from removing a Respondent from VLGS's education program or activity on an emergency basis, provided that VLGS undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.
- F. ADMINISTRATIVE LEAVE.** VLGS reserves the right to place a non-student employee Respondent on paid or unpaid administrative leave during the pendency of a grievance process.
- G. LENIENCY.** Sometimes, individuals are reluctant to come forward to report perceived violations of this policy out of fear that they may be charged with violations of Code of Conduct standards (for example, because they engaged in illegal drug use at the time of the incident). It is of paramount importance to VLGS that all perceived violations of this policy are reported so that those affected can receive the support and resources needed. Therefore, in order to facilitate reporting, VLGS may choose not to charge students who report violations of this policy with violations of Code of Conduct standards.

## VII. ARTICLE VII. PROCEDURES FOR RESOLVING COMPLAINTS OF PROHIBITED SEXUAL HARASSMENT

### A. INFORMAL RESOLUTION

Consistent with the requirements of this section, at any time prior to reaching a determination regarding responsibility VLGS may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that VLGS

1. Provides to the parties a written notice disclosing:
  - i. The allegations,
  - ii. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint, and
  - iii. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
2. Obtains the parties' voluntary, written consent to the informal resolution process; and
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
4. Completes the informal resolution process within 60 days of receiving the Formal Complaint, unless unusual or complex circumstances exist.

VLGS does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints of sexual harassment under this policy. VLGS shall not require the parties to participate in an informal resolution process and will not offer an informal resolution process unless a Formal Complaint is filed.

## **B. FORMAL COMPLAINT AND THE GRIEVANCE PROCESS**

- 1. FILING A FORMAL COMPLAINT.** A Formal Complaint may be filed with the Title IX Coordinator or Deputy Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator/Deputy Title IX Coordinator above. A “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by VLGS) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator/Deputy signs a Formal Complaint, the Title IX Coordinator/Deputy is not a Complainant or otherwise a party. A Formal Complaint shall trigger an investigation except as specified below. The Formal Complaint should include the date(s) of the alleged incident(s), the name of the Respondent, and should describe the circumstances of the incident(s), where known.
  
- 2. DISMISSAL OF A FORMAL COMPLAINT.** VLGS shall investigate the allegations in a Formal Complaint, except as follows:
  - a. **Mandatory Dismissal.** VLGS shall dismiss the Formal Complaint if the conduct alleged in the Formal Complaint
    - i. would not constitute sexual harassment as defined by this policy, even if proved,
    - ii. did not occur in VLGS’s education program or activity,
    - iii. or did not occur against a person in the United States.
    - iv. This dismissal does not preclude action under another policy or procedure of VLGS, including but not limited to the Code of Conduct and HSHDR Policy.
  - b. **Discretionary Dismissal.** VLGS may dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing:
    - i. A Complainant notifies the Title IX Coordinator or Deputy Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
    - i. The Respondent is no longer enrolled in or employed by VLGS; or
    - i. Specific circumstances prevent VLGS from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
    - i. Occurred prior to August 14, 2020, in which case VLGS’s Sexual Misconduct, Domestic Violence, Dating Violence and Stalking Policy adopted May 8, 2015 shall be used.
  - c. Upon a dismissal required or permitted under this section, VLGS will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
  
- 3. CONSOLIDATION OF FORMAL COMPLAINTS.** VLGS may consolidate Formal Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable.
  
- 4. NOTICE OF CHARGES**
  - a. **Initial Notice of Charges.** Upon receipt of a Formal Complaint, prior to commencing the investigation, VLGS shall provide the following written notice to the parties who are known. This notice shall include:
    - i. This policy (as a link or attachment).
    - ii. Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in this policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under this policy, and the date and location of the alleged incident, if known.

- iii. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
  - iv. Notification to the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney.
  - v. Notification to the parties that they may inspect and review evidence, as set forth in this policy.
  - vi. Any provision in VLGS's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
  - vii. Describes the standard of evidence that will be used.
  - viii. Lists all possible sanctions the institution may impose.
- b. Amended Notice of Charges. If, in the course of an investigation, VLGS decides to investigate allegations about the Complainant or Respondent that are not included in the initial notice of charge, VLGS must provide notice of the additional allegations to the parties whose identities are known.

## **5. PRINCIPLES FOR THE GRIEVANCE PROCESS**

Under this grievance process, VLGS shall:

- a. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on VLGS and not on the parties provided that VLGS cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless VLGS obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then VLGS must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3).
- b. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- c. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- d. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or grievance proceeding; however, VLGS may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties. For the purposes of this policy, the role of the advisor is limited to the following: the advisor may attend any interview of meeting connected with the grievance process, but may not actively participate in interviews nor provide testimony or argument on behalf of the party. The advisor may attend the live hearing and may conduct cross-examination of the other party and any witness at the hearing; otherwise the advisor may not actively participate in the hearing.
- e. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

- f. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence— and provide that credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.
- g. Require that any individual designated as a Title IX Coordinator, investigator, decision-maker, or any person to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent. VLGS may use internal personnel or external parties in the informal resolution process or the grievance process, provided that they meet this requirement.
- h. Include a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- i. Use the following standard of evidence to determine responsibility for allegations in a Formal Complaint of sexual harassment: the preponderance of the evidence standard. The standard of evidence shall be the same for Formal Complaints against students as for Formal Complaints against faculty and staff.
- j. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

## **6. EXTENSIONS OF THE GRIEVANCE PROCESS**

The Title IX Coordinator/Deputy may grant or deny requests from either party to temporarily delay the grievance process or may issue the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action.

Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

## **7. INVESTIGATION OF FORMAL COMPLAINTS**

If not serving as the Investigator, the Title IX Coordinator/Deputy will appoint an Investigator, who may be an employee or official of VLGS or may be an external investigator with appropriate experience or expertise. The parties 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 Title IX Coordinator/Deputy within three days of notice of the appointment. The Title IX Coordinator/Deputy 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.

When investigating a Formal Complaint VLGS shall, through the Investigator within 60 calendar days of receiving the Formal Complaint, unless unusual or complex circumstances exist:

- a. Engage in fact-gathering of all relevant facts. Credibility resolutions and fact-finding shall be conducted in the live hearing phase of the grievance process.
- b. Provide both parties an equal opportunity to inspect and review



any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which VLGS does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

- c. Prior to completion of the investigative report, send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- d. Make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
- e. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, the Title IX Coordinator/Deputy shall send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. Upon finalization of the investigative report, the Title IX Coordinator/Deputy shall provide it to the decision-maker(s).

## **VIII. ARTICLE VIII. LIVE HEARINGS UNDER THE GRIEVANCE PROCESS**

### **A. REQUIREMENT OF A LIVE HEARING FOR FACT-FINDING AND DETERMINING RESPONSIBILITY.**

1. Following the investigation, within 30 days of sending the final investigative report to the parties, unless unusual or complex circumstances exist, VLGS shall conduct a live hearing for the purposes of determining responsibility for allegations of sexual harassment in the Formal Complaint. The decision-maker(s) cannot be the same person(s) as the Title IX Coordinator/Deputy or the investigator(s). The Title IX Coordinator/Deputy will convene a Review Panel. This Panel will ordinarily consist of five members drawn from a pool. The pool includes five faculty members selected by the Vice Dean for Faculty, five staff members selected by the Director of Human Resources, and five students appointed by the President of the Student Bar Association. The Title IX Coordinator/Deputy will choose five panel members from its pool to attend the hearing and make determinations. Each panel will have at least one member from each of the three groups listed and, if possible, gender diversity will be considered when selecting the panel. All pool members will receive annual training as specified by this policy. The parties each may challenge the participation of any member of the review panel for conflict of interest or other good cause. The Title IX Coordinator/Deputy will make the final decision whether to select an alternate upon a challenge from a party
2. The Title IX Coordinator/Deputy will appoint a member of the Review Panel to be Chair of the Panel.
3. The live hearing will be closed and will occur within fifteen days of completion of the investigative report. The only individuals permitted to participate in the hearing are as follows: the Complainant and Respondent, the decision-maker(s), the advisor for each party, any witnesses (only while being questioned), and any individual providing authorized accommodations or assistive services.
4. If a party does not have an advisor present at the live hearing, VLGS shall provide without fee or charge to that party, an advisor of VLGS's choice, who may be, but is not required to be, an attorney, to conduct cross examination on behalf of that party. VLGS is obligated

to ensure each party has an advisor, either of the party's or VLGS's choice regardless of whether or not the party is present at the hearing. To ensure timely proceedings, a party shall alert the Title IX Coordinator/Deputy as soon as practicable if the party will need an advisor. If a party's selected advisor is unavailable for a hearing date, the live hearing date may be postponed for good cause.

Many advisors may also be licensed attorneys. It is the policy of VLGS that when providing an advisor to a party under this policy, no attorney-client relationship shall be created that results solely from the designation of an advisor for a party. Further, the parties should be aware that an advisor provided by VLGS is not a confidential resource. An advisor is not required to report to the Title IX Coordinator any information learned while advising a party. However, an advisor may be legally compelled to testify in external proceedings absent a legal privilege or may be required to report externally in the case of child or elder abuse or otherwise required by law.

5. Live hearings may be conducted with all parties physically present in the same geographic location or, at VLGS's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
6. At the request of either party, VLGS shall provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
7. VLGS shall create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. Any other recording is prohibited and violations may result in discipline.

## **B. QUESTIONING AT THE LIVE HEARING**

- i. At the live hearing, the Review Panel must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- ii. The members of the Review Panel also have the right to question a party or witness.
- iii. Only relevant cross examination and other questions may be asked of a party or witness.
- iv. Cross examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding VLGS's ability to otherwise restrict the extent to which advisors may participate in the proceedings.
- v. Before the Complainant, Respondent, or witness answers a cross-examination or other question, the Chair must first determine whether the question is relevant. The Chair must explain to the party or individual proposing the questions any decision to exclude a question as not relevant.
- vi. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

## **C. USE OF WITNESS STATEMENTS**

1. If a party or witness does not submit to cross examination at the live hearing, the Review Panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility but may reach a determination based on evidence that does not constitute a statement by the party.

2. The Review Panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.

#### **D. WRITTEN DETERMINATION OF THE REVIEW PANEL**

1. The Review Panel shall issue a written determination regarding responsibility, which the Chair shall have primary responsibility for drafting. To reach this determination, the Review Panel must apply the standard of evidence required by this policy (i.e. the preponderance of the evidence standard).
2. A majority of the Panel members must find that a policy violation occurred for a finding of responsibility and a majority of the Panel members must assent to the sanction(s) imposed, if any.
3. The written determination must include:
  - a. Identification of the allegations potentially constituting sexual harassment as defined by this policy;
  - b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - c. Findings of fact supporting the determination;
  - d. Conclusions regarding the application of VLGS's policy to the facts;
  - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve equal access to VLGS's education program or activity will be provided to the complainant; and
  - f. The procedures and permissible bases for the Complainant and Respondent to appeal, as set forth in this policy.
4. VLGS shall provide the written determination to the parties simultaneously.
5. The determination regarding responsibility becomes final either on the date that VLGS provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

### **IX. ARTICLE IX. APPEALS**

Within five days of receiving the written determination, either party may appeal from a determination regarding responsibility, and from VLGS's dismissal of a Formal Complaint or any allegations therein, on the following grounds:

- |           |   |
|-----------|---|
| Ground 1: | Procedural irregularity that affected the outcome of the matter;  |
| Ground 2: | New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and |
| Ground 3: | The Title IX Coordinator/Deputy, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally                |

or the individual complainant or respondent that affected the outcome of the matter.

An appeal must be made in writing to the Title IX Coordinator/Deputy within five days of receipt of the written determination. An appeal must include the ground(s) for the appeal and describe the supporting evidence.

As to all appeals, the Title IX Coordinator/Deputy (or designee) shall:

- A. Notify the other party in writing immediately when an appeal is filed and implement appeal procedures equally for both parties;
- B. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator/Deputy;
- C. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in this policy;
- D. Give the non-appealing party an opportunity to submit a written statement in response to the appeal within five days of receiving the appeal, which shall be transmitted within 2 business days to the Appeal Officer, who may be either the Dean of the Law School, or Dean of the Graduate School.

Within 20 days of receiving the appeal and the response, the Appeal Officer shall issue a written decision describing the result of the appeal and the rationale for the result; and provide the written decision simultaneously to both parties. The Reviewing Officer may deny the appeal or, if the appeal ground(s) has or have been met, may return the case to the Review Panel for reconsideration, or convene a new Review Panel. If the Review Panel case is returned to the Review Panel, the Review Officer shall identify which aspects merit further review.

## **X. ARTICLE X. REMEDIES AND SANCTIONS**

Remedies must be designed to restore or preserve equal access to VLGS's education program or activity. A student found responsible for a violation of this policy will be subject to sanction(s) regardless of whether legal proceedings involving the same incident or underway or anticipated. An employee of VLGS found responsible for a violation of this policy will be subject to sanction(s) up to and including termination of employment.

Possible sanctions and remedies VLGS may implement following any determination of responsibility include: expulsion, withdrawal of an awarded degree, written warning, suspension, a fine, restitution, community service, probation, reference to counseling, termination of employment, and notation in the Respondent's official student or personnel file of the fact of a violation and the sanction.

The Title IX Coordinator/Deputy is responsible for effective implementation of any remedies.

## **XI. ARTICLE XI. RETALIATION PROHIBITED**

No one may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right established by 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 under this policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right under this Policy constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this section.

Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination in the HSHDR Policy available in the Student Handbook.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation prohibited under of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

## **XII. ARTICLE XII. CONFIDENTIALITY**

Consistent with the requirements of this policy, VLGS shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Confidentiality is not absolute, however. Where criminal conduct has occurred, or where the health and/or safety of others in the community may be in danger, it may be necessary for VLGS to take appropriate steps to protect the safety of its students and employees, including the person who has reported the misconduct. Please do not be discouraged to come forward. Your reporting of misconduct covered by this policy may help prevent other misconduct, and information will be shared only to the extent necessary to protect our community's safety and facilitate investigations and adjudications.

Counselors and medical providers are confidential resources. This means that, in most cases, these confidential resources will not share the substance of any such communications or that such communications occurred without the Complainant's consent. Individuals who wish to talk about issues related to sexual harassment or sexual misconduct confidentially, with the understanding that VLGS will not take any action based on such confidential communications, are encouraged to contact one of these confidential resources.

Confidential resources may, however, have an obligation to disclose otherwise-privileged information where they perceive an immediate and/or serious threat to a person and/or property. This is a limited exception to the privileged nature of communications with confidential resources. Reports or records maintained by VLGS (including Counseling Service records), and other confidential, non-privileged records may, however, be subject to subpoena if civil or criminal charges are filed in court.

In accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, these confidential resources will not report Clery crimes they learn about through confidential communications for purposes of VLGS's compilation of campus crime statistics. Even if a student wishes to maintain confidentiality, the confidential resources can assist the individual in receiving Supportive Measures. In addition, when appropriate and legally permissible, VLGS shall conduct record-keeping on reports of dating violence, domestic violence, stalking and sexual assault, such as that collected for legally required disclosures, that excludes personally-identifiable information of any Complainants.

## **XIII. ARTICLE XIII. REQUIRED TRAININGS**

The Title IX Coordinator/Deputy, investigators, decision-makers, and any person who facilitates an informal resolution process (whether internal or external) shall receive training on the definition of sexual harassment under this policy, the scope of VLGS's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. These individuals shall receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

Decision-makers shall receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

Investigators shall receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of sexual harassment.

#### **XIV. ARTICLE XIV. RECORDKEEPING**

VLGS shall maintain for a period of seven years records of— (A) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under this policy, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to VLGS's education programs or activities; (B) Any appeal and the result therefrom; (C) Any informal resolution and the result therefrom; and (D) All materials used to train Title IX Coordinators, investigators, decisionmakers, and any person who facilitates an informal resolution process. VLGS shall make these training materials publicly available on its website.

VLGS shall create, and maintain for a period of seven years, records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of sexual harassment. In each instance, VLGS will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to VLGS's education program or activity. If VLGS does not provide a complainant with Supportive Measures, then VLGS must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit VLGS in the future from providing additional explanations or detailing additional measures taken.

#### **XV. EFFECTIVE DATE; REVISIONS.**

This policy is effective as of August 14, 2020.