

COMMUNITY COLLEGE OF VERMONT

SEXUAL MISCONDUCT AND ASSAULT POLICY

September 15, 2011

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POLICY

See also:

Complaint Resolution policy
Crime Awareness & College Security
policy

Disruptive Person policy

VSC Policy 311

VSC Personnel Handbook

Sexual activity or sexual touching without consent of the other person is prohibited at CCV. The College is committed to providing a safe environment for its students, faculty and staff. Any member of the CCV community who violates this policy may face consequences up to and including dismissal from the College and/or termination of employment.

1. Definition of Sexual Misconduct Including Assault

- a. Sexual misconduct is defined as any uninvited or unwelcome sexual touching, contact, or exploitation that includes but is not limited to sexual assault.
- b. Sexual assault is defined as any sexual act forced on another person without his or her consent.
- c. Sexual misconduct may include sexual contact between persons who know each other or even have a close relationship. Regardless of current or prior relationship, sexual contact should not occur without consent of the individuals involved.
- d. Acts of sexual misconduct that occur at a CCV academic center are covered by this policy. Incidents that occur outside the academic center may also be covered by this policy if the persons involved were participating in a college-sanctioned program or activity or if the incident has jeopardized the safety of the College community or the operations of the College.
- e. Sexual misconduct may constitute sexual harassment or harassment based upon sex, sexual orientation, or gender identity. Please refer to VSC Policy 311 for further definitions and procedures.

2. Obtaining Consent

- a. Effective consent for sexual activity is clear indication, given freely through mutually understandable words and/or actions, that parties are willing and active participants.
- b. Consent must be free of force, threat, intimidation, or coercion.
- c. Consent to some form of sexual activity is not necessarily consent to other forms of sexual activity.
- d. People who have a mental illness or intellectual disability may be incapable of providing consent.
- e. People who are unconscious for any reason or who are physically unable to communicate are assumed to be incapable of consent. Silence or inaction does not by itself constitute consent. Furthermore, alcohol or drug use may impair the ability of persons to give consent.
- f. People who are under the age of 16 may not give consent.
- g. Impairment due to alcohol or drugs is not an excuse for committing sexual misconduct.

3. Reporting Violations

- a. Any student, faculty or staff member who believes s/he is a victim of sexual misconduct by another member of the College community, or a person who has information about alleged incidents, may seek advice or information from designated contact persons or the College's Equity officer/Title IX coordinator (see the public website or Policy 311).
- b. Designated contact persons are persons at each academic center who are trained to advise individuals about the policy and its procedures, assist them in reporting violations, and may participate in informal resolution processes and/or refer them to the Equity officer/Title IX coordinator.
- c. The Equity officer/Title IX coordinator is the person at the College who coordinates the efforts to comply with and carry out the institution's responsibilities under Title IX of the Education Amendments of 1972, which prohibits discrimination and harassment on the basis of sex, including acts of sexual violence.
- d. Acts of sexual misconduct that are reported to a CCV employee may become part of the College's crime statistics (names are not included).
- e. All CCV employees shall report any alleged violation of which they are aware or have been made aware to a designated contact person or the College's Equity officer/Title IX coordinator.
- f. Victims of sexual misconduct are strongly encouraged to report violations to state or local police as soon as possible; College personnel will assist victims who want help in reporting offenses to the proper authorities.
- g. Victims of sexual misconduct decide what, if any, course of action they want to take:
 - 1). Report the sexual misconduct to state or local law enforcement, and/or
 - 2). File an informal/formal complaint about the sexual misconduct to the designated contacts at their academic center and/or the College's Equity officer/Title IX coordinator, and/or
 - 3). File an informal/formal complaint about the sexual misconduct for adjudication under the VSC Policy on Non-Discrimination and Prevention of Harassment and Related Unprofessional Conduct (see VSC Policy 311), or
 - 4). Choose not to request any official action at CCV at this time. This does not preclude requesting action at a future date, though the process becomes more difficult over time. (See the procedures section for more information).
- h. Following an alleged incident of sexual misconduct, student victims may request, through the Dean of Students, reasonably available academic and/or other changes.
- i. The College may report and/or investigate alleged acts of sexual misconduct, of which it is aware, even if a victim chooses not to pursue official action.

4. Prohibiting Retaliation

Retaliation against a student, faculty or staff member who has filed a complaint or made a good faith report under this policy, or cooperated in an investigation, is strictly prohibited and will be considered a violation of this policy.

5. Important Recommendations for Victims of Sexual Misconduct

Acts of sexual misconduct, including sexual assault, often create difficult emotional issues for victims. If you are a victim, consider these important steps:

- a. Get to a safe place as soon as possible.
- b. Contact a trusted person for support. This could include a family member, friend, the local rape crisis line or the sexual violence statewide hotline at 1-800-489-7273.

- c. Avoid washing, going to the bathroom, and changing clothes if possible. This will help to preserve physical evidence should you decide to take legal action. If you must change clothing, all the clothing worn at the time of the assault should be placed in a paper bag (not a plastic one).
- d. Seek medical attention as soon as possible.
- e. Decide what actions you want to take (see reporting violations).

6. Rights of the Accused and Accusers

- a. All persons will be treated with respect by College officials.
- b. If a formal complaint is filed, an investigation will be conducted as promptly as possible without compromising thoroughness. The final investigative report shall be filed within 30 calendar days of the filing of the formal complaint. Where special circumstances are present and documented by College officials, the above timelines may be extended with due notification to all parties.
- c. To the extent permitted by law, both parties will be informed of the outcome of any investigation.

7. Educating the College Community

CCV provides educational resources and activities that work toward the safety of all members of the community and that inform students and employees of how to address incidents of sexual misconduct and harassment when they arise, including the filing of complaints under this Policy and procedures.

- a. Literature promoting safety, risk reduction and College response are available on the public website and at academic centers.
- b. This Policy and the procedures below are included in appropriate publications provided to students and employees.
- c. This Policy and the procedures below are included in appropriate employee trainings.
- d. Trainings are provided for contact persons, investigators, and decision-makers.

PROCEDURES FOR FILING A COMPLAINT OF SEXUAL MISCONDUCT

Victims of sexual misconduct decide what, if any, course of action they want to take. They are strongly encouraged to report violations to state or local police as soon as possible. They may also file a formal or informal complaint with the College. Where a person has filed a complaint, the following procedures apply:

1. Formal and informal complaints

A complaint may be formal or informal as follows:

- a. An informal complaint involves a report to a designated contact person or Equity officer/Title IX coordinator that specifically requests an informal resolution process such as a meeting between a designated contact person or responsible College administrator and the subject of the complaint, a letter to the subject of the complaint requesting that the offending behavior cease, or other informal methods to stop the offending behavior. Participating in the informal complaint resolution process is not a prerequisite to and does not preclude the filing of a formal complaint.

- b. A formal complaint involves the filing of a written, signed and dated complaint; notice of the complaint to the subject of the complaint; an investigation, findings and conclusions; and disciplinary action if warranted.
- c. At no time shall mediation between parties be used by the College to resolve a complaint that includes alleged incidents of sexual misconduct.

2. Who may file a complaint?

Only a person who believes s/he is the victim of such misconduct may file a complaint in accordance with these procedures; however the College may, despite the absence of an informal or formal complaint, report and/or initiate an investigation on its own initiative where information received warrants such investigation and take appropriate disciplinary or other action if warranted.

3. Who may report an incident?

- a. Any member of the CCV community who believes this Policy has been violated may, and should, report incidents of sexual misconduct.
- b. All CCV employees, however, shall report any alleged violation of which they are aware or have been made aware to a designated contact person or the College's Equity officer/Title IX coordinator.

4. When must a complaint be filed?

A complaint should be filed as soon as possible but in no event later than 180 calendar days from the date the misconduct is alleged to have occurred. However, filing may be permitted beyond the 180-day deadline where extraordinary circumstances are present and documented.

5. With whom is a complaint filed?

- a. An informal complaint may be made orally or in writing to a designated contact person or the Equity officer/Title IX coordinator.
- b. A formal complaint shall be written, signed and dated and shall be filed with the Equity officer/Title IX coordinator.

6. What happens when an informal complaint is filed?

- a. The complainant will meet with a designated contact person or the Equity officer/Title IX coordinator to discuss the incident and the options open to him or her, including the filing of a formal complaint and the availability of other legal remedies.
- b. Whenever a designated contact person meets with a complainant about sexual misconduct, s/he shall notify the Equity officer/Title IX coordinator of the details of the incident or behavior.
- c. If the complainant elects to proceed with the informal process and is not satisfied with the result, s/he may file a formal complaint or pursue other legal options.

7. What happens once a formal complaint is filed?

- a. The complainant shall submit the formal complaint to the Equity officer/Title IX coordinator and then meet to discuss the incident or behavior that is of concern.
- b. The Equity officer/Title IX coordinator then shall send the subject of the complaint a letter informing him or her of the receipt of the complaint and the initiation of an investigation.

- 1). The letter shall include a copy of the written complaint along with a copy of the sexual misconduct policy and its implementing procedures and shall instruct the person not to engage in any retaliatory behavior.
 - 2). This letter, unless special circumstances are present and documented, shall be hand-delivered or sent to the person's mailing address by registered mail and marked "CONFIDENTIAL" within seven working days of receipt of the complaint.
 - 3). Copies of the letter and attachments shall be sent to the complainant, the Equity officer/Title IX coordinator, the investigators, the President and the VSC general counsel.
- c. Appointment of investigators. Where a complaint is made by a student against another student, the Dean of Students shall appoint two investigators. Where a complaint is made by an employee, or by a student against an employee, the President shall appoint two impartial investigators who may or may not be employees of the College.
- 1). The investigators generally shall include one male and one female.
 - 2). The complainant or the subject of the complaint may raise an objection to the selection of a particular investigator if he or she believes there is demonstrable or perceived bias on the part of the investigator.
 - 3). Any such objections must be raised upon receipt of notice of the appointments. The Dean of Students has final authority in the appointment of investigators in complaints made by students. The President has final authority in the appointment of investigators in complaints made by employees or by a student against an employee.

8. How is an investigation conducted?

- a. The investigators shall meet separately with the complainant and the subject of the complaint.
- b. The investigators shall request information concerning the complaint and shall seek information from others who might know about the incident or behavior or who have information that may be helpful to the investigation.
- c. If in the course of the investigation other allegations surface against the subject of the complaint which may, by themselves, constitute a violation of this policy or other College policy, the investigators shall inform him or her of these allegations, in writing, and s/he shall be given an opportunity to respond to these allegations before the investigators submit their report and statement of findings.
- d. Notes shall be taken by the investigators on meetings they have with principals and witnesses.
- e. In order for there to be a finding of sexual misconduct, investigators must find that it is more likely than not that sexual misconduct occurred (i.e., there is a preponderance of the evidence) when developing their report.
- f. At the conclusion of the investigation, the investigators shall prepare findings and recommendations and send them to the Equity officer/Title IX coordinator and the Dean of Students or President.
- g. If the report and findings are accepted, to the extent permitted by law, a summary of the report and findings shall be sent concurrently to both the complainant and the subject of the complaint.
- h. The investigation will be conducted as promptly as possible without compromising thoroughness. The report shall be filed within 30 calendar days of the filing of the formal complaint. Where special circumstances are present and documented by College officials, the above timelines may be extended with due notification to all parties.

9. How is an investigation concluded?

- a. *No finding of violation.* If there is no finding of a violation of this policy and if the responsible administrator, the Dean of Students or President, concurs with this finding, the alleged violator shall receive a letter informing her or him of this finding. No materials pertaining to the complaint will be placed in the personnel or student file in such an instance unless the investigation revealed misconduct on the part of the student or employee that would otherwise be grounds for discipline under other policies.
 - 1). Under such circumstances the report may form the basis for either further investigation or disciplinary action on the part of the College.
 - 2). The Equity officer/Title IX coordinator shall keep a confidential record of the formal complaint for reporting purposes only.
- b. *Incomplete or unsatisfactory report.* If the responsible administrator, the Dean of Students or President, finds the report to be incomplete or does not concur with the findings, s/he may send the report back for further investigation, may appoint new or additional investigators, or may overturn the findings.
- c. *Finding of violation.* If the report concludes there is a finding of a violation of this policy and the responsible administrator, the Dean of Students or President, concurs with the findings, s/he shall send the violator a letter outlining the discipline being contemplated, if any.
 - 1). If the violator is a student, the Dean of Students shall initiate procedures related to policy violation by students.
 - 2). If the violator is an employee, the President shall initiate procedures set forth in the VSC personnel handbook.
 - 3). Violators may face disciplinary sanctions up to and including dismissal from the College and/or termination of employment.
- d. Upon receipt of the report, if the complainant or the subject of the complaint is a student, s/he may request an informal meeting with the Dean of Students to discuss the findings. S/he may appeal the Dean of Student's decision by submitting a letter of appeal to the President within 10 working days of the report being issued.
- e. If the complainant or the subject of a complaint is an employee, s/he may request an informal meeting with the President to discuss the findings. S/he may appeal the President's decision by submitting a letter of appeal to the Chancellor within 10 working days of the report being issued.
- f. Decision-makers must use a preponderance of the evidence standard when considering any and all appeals involving determination of fact.
- g. All decisions rendered in response to appeals are considered final.

10. Confidentiality

The College will handle the matter as confidentially as possible given the requirements of the investigation and as permitted by law.

11. Other Remedies

Nothing herein shall be construed to preclude a student or employee from seeking other remedies through state and federal resources to redress grievances related to sexual misconduct. An individual, at any time permitted under state or federal law, may elect to file a complaint with the Equal Employment Opportunity Commission, the United States Department of Education Office for Civil Rights, the Office of the Vermont Attorney General, the Vermont Human Rights Commission, or any other entity charged with receiving complaints of sexual harassment and/or sexual violence.