



Manual of Policy and Procedures

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	Date 10/20/06	

I. POLICY STATEMENT

The Vermont State Colleges (“VSC”) and each member College do not engage in unlawful discrimination based on race, color, creed, ancestry, ethnicity, national origin, place of birth, sex, sexual orientation, disability, age, veteran status, marital status or any other status protected by law. Sexual harassment, racial harassment, and harassment of persons based upon other protected categories are forms of discrimination and will not be tolerated. Also, inappropriate sexual relationships between staff and students, although they may not rise to the level of sexual harassment, are prohibited. Further, the VSC and each member College, in accordance with Vermont law, do not discriminate against any person on the basis of the person having a positive HIV-related blood test.

II. POLICY COVERAGE

Neither the VSC nor any member College discriminates on the basis of the above protected categorizations in application processes for admissions or employment, in academic and residential programs, in employment policies, in scholarship and loan programs, in athletic programs, and in any other programs or facilities.

III. POLICY INTENT AND OVERVIEW

This Policy is intended to be read consistently with, and unless otherwise expressly stated, no broader than, Vermont and federal non-discrimination and harassment prevention laws, regulations and policies. Laws prohibiting discrimination and harassment are many and varied at both the state and federal level and apply with some differing standards and consequences to employees, students and visitors. In the past, VSC non-discrimination and harassment prevention policies have been addressed separately. Because harassment is a form of discrimination, and because these two forms of misconduct are conceptually similar, it is the intent of the VSC to address all prohibitions related to non-discrimination and harassment prevention under one comprehensive policy for ease of access and use. Nonetheless, definitions of different types of discrimination and harassment are necessitated by the underlying legal provisions, including separate definitions for “sexual harassment” against students and employees and separate definitions for “harassment” on the basis of race and on the basis of other categorizations.

Signed by: Robert G. Clarke Chancellor

IV. DEFINITIONS

For the purposes of this Policy, unless the context clearly requires otherwise, the following definitions apply:

Discrimination

“Discrimination” means unlawful discrimination which is the refusal of, withholding from, exclusion from participation in, or denial of any accommodations, advantages, benefits, facilities, privileges, or services of the VSC or its member Colleges on the basis of any of the aforementioned protected categorizations. With respect to definitions of dependents in employee benefit plans, the specific definitions in those plans control.

Harassment

“Harassment,” for the purposes of the definitions of racial harassment and harassment of persons based on other protected categories, means an incident or incidents of verbal, written, visual, or physical conduct or communication based on or motivated by a person's or person's family member's, actual or perceived race, creed, color, national origin, marital status, sex, sexual orientation, or disability that has the purpose or effect of objectively and substantially undermining and detracting from or interfering with a student's educational performance or access to school resources or an employee's performance, or creating an objectively intimidating, hostile, or offensive environment.

The VSC recognizes that the protection of free and open speech and the open exchange of ideas are essential to any academic or artistic community, and crucial for the activity of scholars and artists. It is, therefore, an important element in the "objectivity standard" to be used in judging whether harassment has occurred. This harassment policy statement is meant neither to proscribe nor to inhibit discussions, in or out of the classroom, of complex, controversial, or sensitive matters, including sex, sexual orientation, gender identity or expression, race, ethnicity, religious orientation, age, or physical ability, when in the judgment of a reasonable person they arise appropriately and with respect for the dignity of others. The VSC is a community of learners and as such recognizes and affirms that free, honest intellectual inquiry, debate, and constructive dialogue are vital to the academic mission of the VSC and must be protected even when the views expressed are unpopular or controversial. The VSC 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 redress when appropriate.

Racial Harassment

“Racial harassment” means conduct that meets the above definition of harassment and that is directed at the characteristics of a person's or a person's family member's actual or perceived race or color, and includes the use of epithets, stereotypes, racial slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, and taunts on manner of speech and negative references to racial customs.

Harassment Based on Other Protected Categories

“Harassment based on other protected categories” means conduct that meets the above definition of harassment and that is directed at the characteristics of a person's or a person's family member's actual or perceived creed, national origin, marital status, sex, sexual orientation, or disability and includes the use of epithets, stereotypes, slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, taunts on manner of speech, and negative references to customs related to any of these protected categories. With respect to harassment based on sex or sexual orientation, the conduct may also include unwelcome sexual advances, requests for sexual favors, and other verbal, written, visual, or physical conduct of a sexual nature.

Sexual Harassment of a Student

“Sexual harassment of a student,” means (a) an incident or incidents of verbal, written, visual, or physical conduct that has the purpose or effect of objectively and substantially undermining and detracting from or interfering with a student's educational performance or access to school resources or creating an objectively intimidating, hostile, or offensive environment; and (b) includes unwelcome sexual advances, requests for sexual favors and other verbal, written, visual, or physical conduct of a sexual nature when one or both of the following occur:

(1) Submission to that conduct is made either explicitly or implicitly a term or condition of a student's education.

(2) Submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student.

“Sexual harassment of a student” may also include harassment of a student on the basis of sex or sexual orientation as set forth in the definition of “harassment based on other protected categories” in this Policy. It should also be noted that sexual harassment may occur regardless of the gender of the individuals involved.

Sexual Harassment of an Employee

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

(a) submission to that conduct is made either explicitly or implicitly a term or condition of employment; or

(b) submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or

(c) the conduct has the purpose or effect of objectively and substantially interfering with an individual's work performance or creating an objectively intimidating, hostile or offensive work environment.

It should be noted that sexual harassment may occur regardless of the gender of the individuals involved.

Related Unprofessional Conduct

“Related unprofessional conduct” on the part of a VSC employee means the initiation of or participation in an amorous or sexual relationship with a VSC student when the VSC employee is in a position of power and authority with respect to that student, including but not limited to when the VSC employee is an instructor, coach, advisor, work study supervisor or counselor for the student, or a member of a committee having responsibility for decisions that affect students.

V. PROHIBITIONS AND SANCTIONS

VSC students and employees are expressly prohibited from engaging in discrimination, racial harassment of students or employees, harassment of students and employees in other protected categories, and sexual harassment of students and employees. VSC employees are also expressly prohibited from engaging in related unprofessional conduct. Violation of these prohibitions is grounds for discipline up to and including expulsion of a VSC student or termination of a VSC employee.

Neither the VSC nor a member College may request or require any applicant, or prospective or current student to have an HIV-related blood test. Neither the VSC nor a member College may discriminate against an applicant, or prospective or current student on the basis of a person's having a positive test result from an HIV-related blood test.

Neither the VSC nor a member College may request or require an applicant for employment, or prospective employee or employee to have an HIV-related blood test as a condition of employment. Neither the VSC nor a member College may discriminate against an applicant

for employment, prospective employee or employee on the basis of a person's having a positive test result from an HIV-related blood test.

VI. RETALIATION STRICTLY PROHIBITED

Retaliation for an employee or student having filed or made a good faith complaint under this Policy, or for cooperating in an investigation, is strictly prohibited and will be considered a violation of this Policy.

VII. PROCEDURES

The Chancellor shall establish and update procedures for the handling of complaints of discrimination, harassment, and related unprofessional conduct and the initiation of educational programs designed to prevent such conduct. Such procedures shall be consistent with Vermont and federal legal requirements and any collective bargaining agreements governing the rights and responsibilities of the VSC, its member Colleges and employees. The procedures shall ensure that the VSC and any member College, after notice of harassment or discrimination, investigates complaints of discrimination, harassment, and related unprofessional conduct and, where such complaints are substantiated, takes prompt and appropriate remedial action reasonably calculated to stop the misconduct. Employees or students who have concerns about perceived discrimination, harassment, retaliation or related unprofessional conduct are encouraged to report their concerns as soon as possible.

The procedures established by the Chancellor may be adapted as necessary in order to thoroughly and efficiently investigate and resolve complaints of patterns and practices of discrimination.

The Chancellor, for the Office of the Chancellor, and the President of each member College for his or her College, shall appoint an individual to coordinate efforts to carry out and comply with Section 504 of the Rehabilitation Act of 1973 and Title IX of the Education Amendments of 1972 and shall publicize contact information for the coordinators.

VIII. DUTY TO COOPERATE

All students and employees have a duty to cooperate in investigations undertaken pursuant to this Policy. Failure to cooperate could result in discipline up to and including expulsion or termination.

IX. POLICY DISTRIBUTION AND EDUCATION

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

Legal Authority: 16 V.S.A. §2182(a)

Legal References: 9 V.S.A. §§4500 *et seq.* (Vermont Public Accommodations Act)
16 V.S.A. §§11(a)(26), 14, and 565 (Vermont Harassment
Definitions and Standards)
18 V.S.A. §1127 (HIV Discrimination and Testing)

21 V.S.A. §495 (Fair Employment Practices Act)
21 V.S.A. §495h (Fair Employment Practices Act)
34 C.F.R. Part 99 (FERPA Regulations)
34 C.F.R. Part 106 (Nondiscrimination on the Basis of Sex in
Education Programs)
20 U.S.C. §1232g (FERPA Statute)
20 U.S.C. §1681 *et seq.* (Title IX of the Education Amendments
of 1972)
42 U.S.C. §2000d (Title VI of the Civil Rights Act of 1964)

Cross References: Policy 312 (Family Educational Rights and Privacy Act)

Date Adopted by Trustees: October 20, 2006

Chancellor's Procedures for Implementation of Policy 311: Non-Discrimination and Prevention of Harassment and Related Unprofessional Conduct

Introduction

The following procedures are established to help Vermont State Colleges ("VSC") students and employees address concerns regarding discrimination, harassment (including sexual harassment), and related unprofessional conduct as those terms are defined in Policy 311. These procedures incorporate by reference the terms and conditions of Policy 311 and are to be read consistently with the requirements of any state or federal non-discrimination or harassment prevention laws and regulations and any collective bargaining agreements governing the rights and responsibilities of the VSC, its member Colleges and its employees. The procedures established by the Chancellor may be adapted as necessary in order to thoroughly and efficiently investigate and resolve complaints of patterns and practices of discrimination.

Definitions

"Dean of Students" means the Dean of Students at a member College or any person carrying out that function, however named.

"Designated contact person" means persons designated at each College and the Office of the Chancellor by the President or Chancellor and trained to advise individuals with regard to behaviors that may violate Policy 311 and to inform persons of the informal and formal complaint processes to address any incidents. Designated contact persons may be students or employees. Contact persons may participate in informal resolution processes and/or may refer individuals to other contact persons or the Policy 311 coordinator. The names of the contact persons at each institution shall be published and available at the office of the Dean of Students, the office of the member College Human Resources Administrator and the office of the Director of Human Resources at the Office of the Chancellor.

"Responsible College Administrator" means the President or Dean of Students from the member College where the violation is alleged to have occurred.

"Policy 311 coordinator" means the administrator at each College selected by the President, and the person at the Office of the Chancellor selected by the Chancellor, who is responsible for coordinating the institution's responses to formal complaints and for maintaining records on complaints. The Policy 311 coordinator also prepares annual reports on the nature and outcome of complaints at the institution, which are to be used for satisfying any VSC or member College legal reporting requirements and for planning and assessment of progress toward elimination of discrimination, harassment and related unprofessional conduct.

Advice and Information

Any person who believes she or he is the victim of discrimination, harassment or related unprofessional conduct, or a person who has information about alleged incidents, may seek advice or information from the member College's Policy 311 coordinator, designated contact persons, or responsible College administrators.

Complaints of Discrimination, Harassment and Related Unprofessional Conduct

(a) Formal and informal complaints

A complaint may be formal or informal as follows:

- (1) An informal complaint involves a report to a designated contact person or Policy 311 coordinator that specifically requests an informal resolution process such as a meeting between the parties to the complaint, 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.
- (2) 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.

(b) Who may file a complaint?

Any member of the VSC community who believes that Policy 311 has been violated may, and should, report incidents of discrimination, harassment or related unprofessional conduct. All VSC employees, however, shall report any alleged violation of which they are aware or have been made aware. However, only a person who believes she or he is the victim of such misconduct may file a complaint in accordance with the procedures set forth herein. Nothing herein shall be construed to prevent the VSC or a member College, despite the absence of an informal or formal complaint, from initiating an investigation on its own initiative where information received warrants such investigation and taking appropriate disciplinary or other action if warranted.

(c) 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 discrimination, harassment or related unprofessional conduct occurred or is alleged to have occurred. However, filing may be permitted beyond the 180-day deadline where extraordinary circumstances are present and documented.

(d) With whom is a complaint filed?

- (1) An informal complaint may be made orally or in writing to a designated contact person, the Policy 311 coordinator or to a member College administrator.
- (2) A formal complaint shall be written, signed and dated and shall be filed with the Policy 311 coordinator.

(e) What happens when an informal complaint is filed?

- (1) Unless the complaint is made to the Policy 311 coordinator or a responsible College administrator, upon receipt of an informal complaint orally or in writing, the designated contact person shall meet with the complainant to discuss the incident or behavior that is of concern and the informal dispute resolution options open to the complainant, including the filing of a formal complaint and the availability of other legal remedies. The contact person shall notify the Policy 311 coordinator of the details of the incident or behavior prior to advising the complainant. If the complainant elects to proceed with the informal process and is not satisfied with the result, the complainant may file a formal complaint or pursue other legal options. If the complaint is made to a Policy 311 coordinator or to a responsible College administrator, the coordinator or administrator may handle the matter personally or assign it to a designated contact person.
- (2) In the event the complaint involves an employee of the Chancellor's Office, the Chancellor shall assume the responsibilities of a member College President as set forth above. If the Chancellor is the subject of a complaint, the Board of Trustees has the above responsibilities. In addition, the Office of the Chancellor can be an alternative to the member College process. Any student or employee may choose to discuss a concern or file a complaint with the Director of Human Resources at the Office of the Chancellor, rather than use the member College channels. Upon request of either the complainant or the subject of the complaint, and for good cause shown, the Chancellor may appoint an outside investigator to act in place of an investigator appointed by a responsible administrator. The Chancellor or designee shall also hear appeals from administrators and administrative staff as described in the Personnel Handbook.

(f) What happens once a formal complaint is filed?

- (1) The complainant shall meet with the Policy 311 coordinator to discuss the incident or behavior that is of concern. The Policy 311 coordinator shall inform the complainant that the subject of the complaint will receive a copy thereof. The Policy 311 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. The letter shall include a copy of the written complaint along with a copy of Policy 311 and its implementing procedures and shall instruct the person not to engage in any retaliatory behavior. 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. Copies of the letter and attachments shall be sent to the complainant, the responsible College administrator, the investigators and the VSC general counsel.

- (2) 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 member College. In complaints involving sexual harassment, the investigators generally shall include one male and one female. 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. Any such objections must be raised upon receipt of notice of the appointments. The responsible administrator has final authority in the appointment of investigators.
- (3) Conduct of the investigation.
 - (A) The investigators shall meet separately with the complainant and the subject of the complaint. 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.
 - (B) 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 member College policy, the investigators shall inform him or her of these allegations, in writing, and he or she shall be given an opportunity to respond to these allegations before the investigators submit their report and statement of findings. Any investigation or resolution of such additional disciplinary matters shall be consistent with the procedures set forth in the applicable collective bargaining agreement.
 - (C) Notes shall be taken by the investigators on meetings they have with principals and witnesses. Principals may elect to have counsel or an advisor present at these meetings, if they notify the member College or Office of the Chancellor in advance.
 - (D) At the conclusion of the investigation, the investigators shall prepare findings and recommendations and send them to the Policy 311 coordinator and the responsible administrator. If the

report and findings are accepted, to the extent permitted by law, a summary of the report and findings shall be sent to the complainant and the alleged violator.

- (E) 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.
- (4) Action by responsible administrator.
- (A) *No finding of violation.* If there is no finding of a violation of this policy and if the President, Dean of Students, or Chancellor concurs with this finding, the alleged violator shall receive a letter from the responsible administrator 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 the student or employee conduct policies of the member College. Under such circumstances the report may form the basis for either further investigation or disciplinary action on the part of the member College. The Policy 311 Coordinator shall keep a confidential record of the formal complaint for reporting purposes only. The policy coordinator shall destroy the confidential record of the formal complaint after a six year period.
 - (B) *Incomplete or unsatisfactory report.* If the President, the Dean of Students or Chancellor finds the report to be incomplete or does not concur with the findings, she or 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 President, Dean, or Chancellor concurs with the findings, she or he shall send the violator a letter outlining the discipline being contemplated, if any. If the violator is a student, the Dean shall initiate procedures related to policy violation by the students. If the violator is an employee, the President shall initiate procedures set forth in the relevant employee collective bargaining agreement or, in the case of employees not covered by a collective bargaining agreement, the VSC personnel handbook.
 - (D) Upon receipt of the report, the complainant or the subject of the complaint may request an informal meeting with the responsible administrator to discuss the findings.

Confidentiality

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

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 discrimination, harassment and related unprofessional conduct. 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 discrimination, harassment and related unprofessional conduct. See Appendix for contact information.

Education

The member Colleges and the Office of the Chancellor shall provide educational programs and activities that work toward the elimination of discrimination and harassment and that inform students and employees of how to address incidents of discrimination, harassment and related unprofessional conduct when they arise, including the filing of complaints under Policy 311 and these procedures. These programs and activities shall include:

- the availability on the VSC web site of the complete VSC Policy and Procedures Manual, including Policy 311 and its implementing procedures as well as contact information for VSC policy 311 coordinators and state and federal agencies designated to receive complaints of discrimination and harassment;
- inclusion of Policy 311 and these procedures in appropriate publications provided to students and employees;
- the availability of materials to students and employees containing educational information on discrimination and harassment and on the rights and responsibilities of individuals under Policy 311 and these procedures;
- provision of information and learning experiences to incoming students, faculty and staff to heighten awareness of the issues and of the College's expectations;
- the selection and training of designated contact people; and
- the training of persons who may be appointed as Policy 311 investigators.

The member Colleges and the Office of the Chancellor shall continue to support, monitor and revise the educational programs as they work toward the goals of eliminating discrimination, harassment and related unprofessional conduct and enhancing mutual trust and respect.

Policy 311: Appendix A
VSC Policy 311 Coordinators
Updated April 2011

Office of the Chancellor: Nancy Shaw, shawn@quark.vsc.edu

Castleton State College: Lyn Sawyer, lyn.sawyer@castleton.edu
Victoria Angis, Victoria.angis@castleton.edu

Community College of Vermont: Deborah Stewart, deborah.stewart@ccv.edu

Johnson State College: Jo Ann Lamore, lamoreja@jsc.vsc.edu

Lyndon State College: Deb Hale, haled@lyndonstate.edu

Vermont Technical College: Michael Van Dyke, mvandyke@vtc.vsc.edu

Policy 311: Appendix B
State and Federal Agencies Designated to Receive
Complaints of Discrimination and Harassment

Vermont Human Rights Commission
135 State Street
Montpelier, VT 05633-6301
Phone: (802) 828-2480

Vermont Attorney General's Office
Office of Civil Rights
109 State Street
Montpelier, VT 05609-1001
Phone: (802) 828-3657

Equal Employment Opportunity Commission
1 Congress Street
10th Floor, Room 1001
Boston, MA 02114
Phone: (617) 565-3200
TTY: (617) 565-3204

U.S. Department of Education's Office for Civil Rights
Region I
John W. McCormack Post Office and Courthouse, Room 222
Post Office Square
Boston, MA 02109
Phone: (617) 223-9667