



2013-14

# VLS STUDENT HANDBOOK

**POLICY AGAINST HARASSMENT, SEXUAL HARASSMENT, DISCRIMINATION AND RETALIATION**

Adopted 10/28/94

Amended 6/7/06

Amended 7/1/13

Effective Date: July 1, 2013. *This policy applies to all complaints of discrimination or harassment made on or after July 1, 2013. The prior Nondiscrimination Policy and Procedures and related provisions apply to complaints made before that date.*

**A. GENERAL PROVISIONS**

1. **Introduction:** This policy applies to all Vermont Law School (VLS) employees, officers, trustees, and students with regard to their actions in connection with the application or admissions process, educational activities, career services, employment, or other law school-related activities when those actions occur on VLS property or in the use of VLS facilities (including the computer network and telephone and email systems). This policy also applies when those actions occur off campus in connection with events sponsored by VLS or VLS-approved organizations, or in connection with official business undertaken for VLS, or when the alleged conduct of concern involves interactions between VLS employees, officers, trustees and/or students, or in other circumstances where an action could have a significant impact on the educational or employment environment or the reputation or integrity of VLS, and/or could pose a threat to the safety or other interests of VLS or members of the VLS community. This policy also applies to the actions of VLS agents and contractors in the circumstances set forth in this paragraph to the extent that VLS can control their conduct. In addition to this Policy, VLS also maintains a Sexual Assault Policy. In some cases, alleged behavior may violate both policies. As a result, the investigative processes for both policies are structured to be coordinated when appropriate.
2. **Notice of Non-Discrimination:** Vermont Law School is committed to promoting an employment and educational environment free from unlawful harassment, sexual harassment, discrimination, and retaliation. Unlawful harassment or discrimination on the basis of age, race, color, creed, ethnicity, national origin, place of birth, ancestry, religion, sex/gender (including gender identity/expression), sexual orientation, marital status of students, service in the armed forces of the United States, HIV-positive status, genetic information, or against qualified individuals with disabilities on the basis of disability, as defined by applicable law, or other characteristics as defined and protected by applicable law ("protected characteristics") is prohibited and will not be tolerated. In compliance with Title IX of the Education Amendments of 1972 ("Title IX") and applicable state law, Vermont Law School does not discriminate on the basis of sex in its education programs and activities or in employment. Discrimination on the basis of sex prohibited by Title IX includes sexual harassment and sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion. The Law School will take all necessary steps to end conduct prohibited by this policy, to prevent its recurrence, and to address its effects.
3. **Title IX Coordinator:** Vermont Law School has designated Shirley Jefferson, Associate Dean for Student Affairs and Diversity, (802) 831-1333, to serve as its Title IX Coordinator. Diane Hayes, Director, Human Resources, (802) 831-1308, will act as Dean Jefferson's alternate Title IX Coordinator when Dean Jefferson is unavailable. The Title IX Coordinator is responsible for coordinating VLS's compliance with Title IX, including overseeing all complaints of sex discrimination and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. Inquiries concerning Title IX may be referred to the Law School's Title IX Coordinator or to the United States Department of Education's Office of Civil Rights.

4. Definitions:

- a. "Unlawful Harassment" is defined as verbal or physical conduct that, on the basis of a protected characteristic, has the purpose or effect, from the point of view of a reasonable person, either of interfering with an individual's employment or educational performance or of creating an intimidating, hostile or offensive employment or educational environment. Unlawful harassment may include, but is not limited to, the following actions if, as isolated acts or as part of a pattern, they have the prohibited purpose or effect on employment or educational performance or environment: jokes, derogatory expressions, or comments; the display of graphics, cartoons, or objects; sending or forwarding electronic mail messages; and other conduct offensive to a reasonable person possessing a particular protected characteristic.
- b. "Sexual Harassment" is a particular type of unlawful harassment. In addition to conduct described in the preceding paragraph that is of a sexual nature, sexual harassment includes conduct that a reasonable person would judge to be unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct explicitly or implicitly affects employment or educational decisions concerning an individual, or when the conduct has the purpose or effect of substantially interfering with an employee's performance or a student's educational experience, or creating an intimidating, hostile or offensive employment or educational environment because of the employee's or student's gender. Sexual harassment specifically includes: (a) statements or threats which imply a link between an individual's sexual conduct and his or her academic or employment status, advancement potential, salary treatment, grading treatment, participation in VLS programs or activities, or other employment or educational actions; (b) basing an employment decision such as hiring, promotion, retention, or compensation, or an educational decision such as admission, a grade, or participation in any VLS program or activity, on whether an employee, a student, or an applicant submits to sexual advances. Sexual harassment may occur regardless of the genders of the individuals involved.
- c. "Discrimination" is defined as making a decision or taking an action that affects the terms or conditions of a person's employment or education at VLS, or participation in or access to the benefits of any VLS program or activity, on the basis of a protected characteristic of that person.
- d. "Retaliation" is defined as an adverse action taken against any person for making a good faith complaint of unlawful harassment, sexual harassment, or discrimination or for having participated in an investigation of such a complaint. Retaliation includes but is not limited to ostracizing the person, pressuring the person to drop or not support the complaint, or adversely altering that person's educational, living, or work environment. Retaliation may be unlawful and may constitute a violation of this policy depending on the circumstances, whether or not the complaint is ultimately found to have merit.

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

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

Students may contact the following agencies:

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

Employees may contact the following agencies:

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

Each of these agencies can conduct investigations, facilitate conciliation, and, if it finds that, there are reasonable grounds to believe that unlawful conduct has occurred, take the case to court. There are certain time deadlines for filing complaints with state and federal agencies and/or in state or federal court.

7. Other Resources: There are many resources available to individuals affected by sexual harassment, inappropriate sexual misconduct, and/or sexual assault. A list of these resources is set forth in the Sexual Assault Policy.
8. Questions: If any person has questions or concerns regarding this policy, he or she should talk with the VLS Director of Human Resources, the Associate Dean for Students Affairs and Diversity, and/or the Vice Dean for Academic Affairs.

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

All information in the following sections applies to student, staff or faculty of Vermont Law School who wish to report a complaint of harassment, sexual harassment, discrimination, or retaliation.<sup>41</sup> Vermont Law School is committed, and required by law, to take action when it learns of potential harassment or discrimination. The Law School will take all necessary steps to ensure that complaints are promptly investigated and addressed, so it is important that such complaints or concerns be presented in a timely fashion. A person who feels harassed or discriminated against is primarily responsible for bringing these concerns to the Law School's attention, but employees and students are also encouraged, and supervisors and all other responsible employees are required, to report incidents or patterns of prohibited harassment or discrimination to appropriate Law School personnel.

1. Complaints. Any Vermont Law School student, faculty member or staff member who has reasonable cause to believe that a student, faculty member, staff member, officer, trustee, agent, or contractor of Vermont Law School has engaged in conduct prohibited by this policy or who believes that he or she

<sup>41</sup> Under Title IX, third parties are protected from sexual harassment and/or sexual violence arising out of the Law School's programs or activities. Accordingly, any third party who participates in any Vermont Law School program or activity may report a complaint of sexual harassment and/or sexual violence under this Policy. Also, the Law School will take appropriate action, to the extent practicable, in response to a report or complaint of sexual harassment and/or sexual violence by a student, faculty member or staff member against a third party.

has been subjected to retaliation for having brought or supported a good faith complaint covered by this policy, or for having participated in an investigation of such a complaint, is encouraged to bring this information to the immediate attention of the Title IX Coordinator, an employee's supervisor, the Director of Human Resources, any Dean or Vice President, or the President and Dean of the Law School (President and Dean). The complainant will be encouraged, though not required, to provide a written statement of the factual basis for the complaint and requested remedial action (if any). Any supervisor or responsible employee having first-hand knowledge of conduct prohibited by this policy shall immediately make such a complaint.

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

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

3. **Investigation.** The person appointed by the Vice Dean for Academic Affairs (the Vice Dean) under paragraph 2 (the "Investigator"), will promptly make an initial determination as to whether the complaint alleges conduct prohibited by this policy. Absent extenuating circumstances, this initial determination will occur within five business days of receipt of the complaint. The complainant and respondent will be provided with notice of the identity of the appointed Investigator, and will be informed that any objections to the service of the appointed Investigator on grounds of conflict of interest or a lack of impartiality should be submitted in writing to the Vice Dean within 3 days of notice of the appointment. The Vice Dean will decide promptly whether the appointed Investigator will or will not continue to conduct the investigation. Any materials collected or notes prepared by the Investigator during the objection period will be turned over to any replacement Investigator. The replacement Investigator will decide whether to use such materials or not. If the Investigator determines that the complaint falls within this policy, he or she will, individually or in conjunction with other Law School officers or individuals (including, if warranted, outside investigators), promptly and equitably conduct or supervise an investigation of the complaint, as appropriate under the circumstances. The investigation will be conducted in a thorough, impartial and expeditious manner. The parties will not be permitted to question or cross-examine each other directly during the course of the investigation. The nature and scope of the investigation is within the discretion of the Investigator. Absent extenuating circumstances, the investigation of a complaint under this policy will ordinarily be completed within 45 calendar days. If the complainant or respondent requests an extension of this general 45 day period, he or she should make a written request for an extension to the Investigator, who will make a decision on the request after having provided the other party notice of the request and an opportunity to respond.
4. **Intermediate Remedial Action.** The Investigator or other school official may take interim remedial action, including by way of example only, issuance of no contact orders or temporary changes in assignment of duties, classes or housing (where requested and reasonably available), to protect complainants on an interim basis.

5. Informal Resolution. The Investigator may recommend and participate in voluntary alternative dispute resolution such as informal meetings or mediation sessions with the parties. A complainant will not be required to participate in alternative dispute resolution and may end the alternate dispute resolution process at any time. The Law School may also decide, at its discretion, not to pursue or to discontinue informal resolution. Mediation between the complainant and the respondent will not be pursued in cases involving allegations of sexual assault.
6. Investigator's Report. After the investigation is completed, the Investigator shall issue a report to the Vice Dean, together with recommended findings, based upon the preponderance of the evidence standard, *i.e.*, whether it is more likely than not that the policy was violated. The report may be issued orally or in writing, depending upon the nature and complexity of the information. The Investigator's report is advisory in nature.
7. Determination. The Vice Dean is not bound by the Investigator's report and may accept or reject the Investigator's recommended finding in whole or in part, and/or may request additional relevant information before making a final determination. The Vice Dean should avoid duplicating the efforts of the Investigator and should not accept the Investigator's recommended findings without first conducting a careful review of all of the evidence. Either party may choose to meet individually with the Vice Dean prior to his/her final determination. Equally, the Vice Dean may request an individual meeting with either party or any other person(s) as appropriate. After reviewing the Investigator's report and recommended finding, the Vice Dean shall issue a final determination as to whether conduct prohibited under this policy occurred. The final determination will be based on a preponderance of the evidence standard. Absent extenuating circumstances, the Vice Dean will issue the final determination within ten business days after receipt of the Investigator's report. The complainant and respondent will ordinarily be notified of the final determination of the Vice Dean as to whether this policy was violated. In sexual harassment or sexual assault cases involving student-complainants, both parties will be notified of the final determination concurrently in writing, to the extent permitted by law. However, information regarding discipline or sanctions will not be shared with any complainant under this policy except as required and/or permitted by law.
8. Adjudication. The Vice Dean will work with those Law School officials who have authority over the individuals involved in the matter and the Law School will promptly take any necessary and remedial action to prevent recurrence of any harassment, discrimination or retaliation and to correct its discriminatory effects on the complainant and others, as appropriate. If the Vice Dean determines that a staff or faculty member has engaged in conduct in violation of this policy, he/she will report the determination to the appropriate supervisory authority, in accordance with the applicable provisions of §§ II.G and H of the Vermont Law School Staff Handbook (July 1, 2005) and § V.F of the Vermont Law School Faculty Handbook (January 2011). The appropriate supervisory authority shall consider the initiation of disciplinary proceedings and/or action up to and including termination of employment. If the Vice Dean determines that the President and Dean, another officer or Trustee, or an agent or contractor of the Law School engaged in conduct in violation of this policy, he/she will make recommendations for action appropriate in the circumstances to the Chair or Vice Chair of the Board of Trustees, or to the administrative officer responsible for the relevant agency or contractual relationship. If the Vice Dean determines that a student has engaged in conduct in violation of this policy, he/she will refer the matter to the Associate Dean for Student Affairs and Diversity for disciplinary action, up to and including expulsion, in accordance with the hearing procedures set forth in the "Sexual Assault Policy, Resources, and Procedures" at Article IV, Section C, §§ 7-11.