

## **I. PURPOSE**

The purpose of this policy is to maintain a working and learning environment that is free from sexual discrimination, harassment and violence, or other improper or inappropriate behavior that may constitute harassment as defined below.

- Sexual discrimination, harassment and violence are against the law and VLACS policy. Any form of sexual discrimination, harassment or violence is strictly prohibited.
- It is a violation of this policy for any employee or student of VLACS to harass another employee or student of VLACS through conduct or communication of a sexual nature as defined by this policy. It is a violation of this policy for any student or employee of VLACS to be sexually violent toward another employee or student of VLACS.
- For the purposes of this policy, the term “employee” shall include, but not be limited to all VLACS staff, teachers, non-certified personnel, administrators, volunteers, coaches and/or other such personnel whose employment or position is directed by VLACS.
- VLACS will investigate all formal complaints of sexual discrimination, harassment or sexual violence in accordance with the grievance procedures in this policy and will discipline any student or employee who sexually discriminates, harasses or is sexually violent toward another student or employee of VLACS. For all complaints VLACS will offer supportive measures to both complainants and respondents.

## **II. TITLE IX COORDINATOR**

VLACS’s Title IX Coordinator is the Director of Academic and Student Affairs. The Title IX Coordinator’s contact information can be found here: <https://vlacs.org/non-discrimination-notice/>

The Title IX Coordinator is responsible for coordinating VLACS’s efforts to comply with Title IX, including coordinating the effective implementation of supportive measures and effective implementation of remedies.

The Title IX Coordinator’s responsibilities include establishing a process to notify applicants for employment and admission, students, parents or legal guardians, employees, and all unions of the Title IX Coordinator’s name or title, office address, e-mail address and telephone number.

VLACS shall post the Title IX Coordinator’s title or name, office address, e-mail address and telephone number in conspicuous places throughout school buildings, on VLACS’s website, and in each handbook.

## **III. SEXUAL DISCRIMINATION, HARASSMENT/SEXUAL VIOLENCE DEFINED**

Sexual discrimination is discrimination based on sex in VLACS’s education programs or activities and extends to employment and admissions.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature that satisfies one or more of the following:

1. An employee of VLACS conditions the provision of an aid benefit, or service on an individual’s

- participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to VLACS's education program or activity; or
  3. Sexual assault as defined in 20 U.S.C. §1092(f)(6)(A(v)), dating violence as defined in 34 U.S.C. §12291(a)(10), domestic violence as defined in 34 U.S.C. §12291(a)(8) or stalking as defined in 34 U.S.C. §12291(a)(30).

Sexual harassment may include, but is not limited to:

1. Verbal harassment and/or abuse of a sexual nature;
2. Subtle pressure for sexual activity;
3. Inappropriate patting, pinching or other touching;
4. Intentional brushing against an employee's body;
5. Demanding sexual favors accompanied by implied or overt threats;
6. Demanding sexual favors accompanied by implied or overt promises of preferential treatment;
7. Any sexually motivated unwelcome touching; or
8. Sexual violence that is a physical act of aggression that includes a sexual act or sexual purpose.

Throughout this policy, reference to sexual harassment includes sexual discrimination and violence.

#### **IV. REPORTING PROCEDURES**

Any student or employee who believes he or she has been the victim of sexual harassment should report the alleged act(s) immediately to the Director of Academics and Student Affairs. VLACS encourages the reporting individual to use the report form made available by VLACS.

1. The Director of Academics and Student Affairs is the person responsible for receiving oral or written reports of sexual harassment. Upon receipt of a report, the Director of Academics and Student Affairs must notify the Title IX Coordinator immediately without screening or investigating the report. If the report was given verbally, the Director of Academics and Student Affairs shall reduce it to written form within 24 hours and forward it to the Title IX Coordinator. Failure to forward any sexual harassment report or complaint as provided herein will result in disciplinary action. If the complaint involves the Director of Academics and Student Affairs, the complaint shall be filed directly with the Title IX Coordinator.
2. The designated person to receive any report or complaint of sexual harassment is the Title IX Coordinator. If the complaint involves the Title IX Coordinator, the complaint shall be filed directly with the CEO.
3. Any person may also report sexual harassment in person, by mail, telephone or e-mail to the Title IX Coordinator at any time, including non-business hours.
4. Submission of a complaint or report of sexual harassment will not affect the employee's standing in school, future employment, or work assignments.
5. The use of formal reporting forms provided by VLACS is voluntary. Certain students, especially younger children, may not be able to submit a written complaint. In such cases, VLACS will make available alternate methods of filing complaints.

## **V. VLACS'S RESPONSE TO ALL COMPLAINTS OF SEXUAL HARASSMENT**

VLACS will respond promptly and in a manner that is reasonable in light of the known circumstances when it has actual knowledge of sexual harassment in its education programs or activities. Actual knowledge means notice to any employee of VLACS. Education programs or activities are locations, events, or circumstances over which VLACS exercised substantial control over both the alleged perpetrator of sexual harassment (the respondent) and the context in which the sexual harassment occurs.

VLACS will treat complainants and respondents equitably by offering supportive measures and following the grievance process before the imposition of any disciplinary sanctions or other non-supportive measures against the respondent. VLACS may place an employee on administrative leave during the pendency of the grievance process.

VLACS may also remove a respondent from its education programs or activities on an emergency basis based upon an individualized safety and risk analysis that determines that the respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment. VLACS shall provide the respondent with notice (including a copy of this policy) and an opportunity to challenge the decision immediately upon removal.

When the complainant and/or respondent are a minor student, notices shall be provided to the student's parent or legal guardian.

The 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.

These provisions do not modify rights under the IDEA, Section 504, or the ADA.

VLACS's response shall not restrict rights protected by the United States Constitution including the First, Fifth, and Fourteenth Amendments.

## **VI. SUPPORTIVE MEASURES**

Supportive measures are 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 which are designed to restore or preserve equal access to VLACS's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or VLACS'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, shadowing, mutual restrictions on contact between parties, changes in work or school locations, leaves of absence, increased security and monitoring of certain areas of the school, and other similar measures.

VLACS 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 VLACS to provide the supportive measures.

## **VII. FORMAL COMPLAINTS**

A formal complaint is a document filed by a person who is alleged to be the victim of conduct that could constitute sexual harassment (the complainant) or signed by the Title IX Coordinator and requesting that VLACS investigate the allegation of sexual harassment. The formal complaint may be filed with the Title IX Coordinator in person, by mail, or e-mail and must contain the complainant's physical or digital signature or otherwise indicate that the complainant is the person filing the formal complaint.

Parents, legal guardians, or an authorized legal representative may file complaints on behalf of a complainant student (filing of a complaint on behalf of a student does not cause the third party to become the complainant for the purposes of this policy). The Title IX coordinator may also file a complaint when deemed appropriate by the Title IX coordinator.

The complainant's wishes with respect to investigating a complaint should be respected unless the Title IX Coordinator determines that the Title IX Coordinator's signing a formal complaint over the complainant's wishes is not clearly unreasonable in light of the known circumstances.

The Title IX Coordinator may in his/her discretion consolidate formal complaints where the allegations arise out of the same facts.

In response to a formal complaint, VLACS will follow the grievance procedures in this policy.

## **VIII. GRIEVANCE PROCEDURE FOR FORMAL COMPLAINTS**

### **A. Notice of Allegations**

The Title IX Coordinator upon receipt of a formal complaint shall provide written notice to the complainant and respondent of the following:

1. The allegations including the date and location of the alleged incident, if known;
2. A statement that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the conclusion of the grievance process;
3. The complainant and respondent may have an advisor of their choice who may but is not required to be an attorney and may inspect and review evidence during the investigation;
4. Provisions in VLACS's code of conduct that prohibit knowingly making false statements or knowingly submitting false information;
5. A copy of this Title IX policy.

### **B. Grievance Procedure Requirements**

1. Both the complainant and respondent shall have an equal opportunity to submit and review evidence throughout the investigation;
2. VLACS will use trained Title IX personnel to objectively evaluate all relevant evidence without prejudice of the facts at issue and free from conflicts of interest or bias for or against either party.
3. VLACS will protect the parties' privacy by requiring a party's written consent before using the

party's medical, psychological or similar treatment records during a grievance process.

4. VLACS will obtain the parties' voluntary written consent before using any kind of informal resolution process, such as mediation or restorative justice, and not use an informal process where an employee allegedly sexually harassed a student.
5. VLACS will apply a presumption that the respondent is not responsible during the grievance process so that VLACS bears the burden of proof and the standard of evidence is applied correctly.
6. VLACS will use the preponderance of the evidence standard for formal complaints against students and employees.
7. VLACS will ensure the decision-maker for determining responsibility is not the same person as the investigator or the Title IX Coordinator.
8. VLACS will permit the parties to submit written questions for the other parties and witnesses to answer before determining responsibility.
9. VLACS will protect all complainants from inappropriately being asked about prior sexual history.
10. VLACS will not restrict the parties' ability to discuss the allegations under investigation or to gather and produce relevant evidence.
11. VLACS will send both parties a written determination regarding responsibility explaining how and why the decision-maker reached conclusions.
12. VLACS will effectively implement remedies for a complainant if a respondent is found responsible for sexual harassment.
13. VLACS will offer both parties an equal opportunity to appeal.
14. VLACS will protect all individuals, including complainants, respondents, and witnesses, from retaliation for reporting sexual harassment, or participating or refusing to participate in any Title IX grievance process.
15. VLACS will make all materials used to train Title IX personnel publicly available on VLACS's website.
16. VLACS will document and keep records of all sexual harassment complaints, investigations, and training for seven (7) years.
17. The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by VLACS to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:
  - a. Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
  - b. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless [ABC School] obtains that

- party's or witness's voluntary, written consent for use in its grievance procedures; and
- c. Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

## **IX. INVESTIGATION**

The Title IX Coordinator, (or the CEO, if the Title IX Coordinator is the subject of the complaint) upon receipt of a formal complaint alleging sexual harassment shall immediately authorize an investigation. This investigation may be conducted by VLACS officials or by a third party designated by VLACS.

The investigating party shall provide a written report of the status of the investigation within ten (10) working days to the Title IX Coordinator. If the Title IX Coordinator is the subject of the complaint, the report shall be submitted to the CEO.

In determining whether alleged conduct constitutes sexual harassment, VLACS should consider the surrounding circumstances, the nature of the sexual advances, relationships between the parties involved and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes sexual harassment or sexual violence requires a determination based on all the facts and surrounding circumstances.

The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator. Students who are interviewed may have a parent present during the interview.

If during the investigation, VLACS decides to investigate allegations not in the formal complaint, the Title IX Coordinator shall provide written notice to the parties of the additional allegations.

VLACS shall provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purposes of all investigative interviews, other meetings or hearings with sufficient time for the party to prepare to participate.

Prior to the conclusion of the investigation, the investigator shall 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 in the formal complaint including evidence that the investigator does not intend to rely upon. Each party shall have an opportunity to respond to the evidence.

Prior to the completion of the investigation report, the investigator must send to each party and the party's advisor, if any, either in electronic format or hard copy, the evidence subject to inspection and review. The parties shall have at least ten (10) days to submit a written response.

The investigator shall create an investigation report fairly summarizing the relevant evidence. The investigator shall send each party and the party's advisor, if any, a copy of the investigation report either in electronic format or hard copy. The parties have ten (10) days to review the investigation report and file a written response.

## **X. DETERMINING RESPONSIBILITY**

A decision-maker who is not the Title IX Coordinator or investigator must issue a written determination regarding responsibility based on a preponderance of evidence.

Before reaching a determination, the decision-maker must provide each party the opportunity to submit written, relevant questions of any party or witness, provide both parties with the answers, and allow for additional, limited follow-up questions. If the decision-maker determines a question is not relevant, the decision-maker must provide a written explanation to the party proposing the question.

## **XI. WRITTEN DETERMINATION OF RESPONSIBILITY**

The decision-maker's written determination must include:

1. An identification of the allegations potentially constituting sexual harassment;
2. A description of the procedural steps taken by VLACS from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of VLACS's code of conduct to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions VLACS imposes on the respondent, and whether remedies designed to restore or preserve equal access to VLACS's education program or activity will be provided by VLACS to the complainant; and
6. VLACS's procedures and permissible bases for the complainant and respondent to appeal.

VLACS must provide the written determination to the parties simultaneously.

The responsibility determination becomes final either on the date that VLACS 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.

## **XII. DISMISSAL OF FORMAL COMPLAINT**

### **A. Mandatory Dismissal**

If the allegations in the formal complaint are not sexual harassment even if proved; or did not occur in VLACS's education program or activity; or did not occur against a person in the United States, VLACS will dismiss the formal complaint for the purposes of Title IX. VLACS reserves the right to address a complaint dismissed for these reasons as deemed appropriate pursuant to any other applicable policies.

### **B. Permissive Dismissal**

VLACS may dismiss the formal complaint, or any allegations, if at any time during the investigation a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint, or any allegations therein; or the respondent is no longer enrolled or employed by VLACS; or specific circumstances prevent VLACS from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

VLACS shall promptly send to the parties simultaneously written notice of the dismissal and the

reasons for the dismissal.

### **XIII. APPEALS**

Within ten (10) days of the receipt of the written determination, the complainant and respondent may appeal to the CEO the dismissal of a formal complaint or any allegations; or the determination of responsibility for the following reasons:

1. Procedural irregularity that affected the outcome of the matter;
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; or
3. The Title IX Coordinator, investigator, or decision-maker 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.

The CEO shall inform the parties of their right to an appeal at the time that the written determination is provided to the parties.

The CEO shall notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.

In the appeal, both parties shall have a reasonable, equal opportunity to submit a written statement in support of, or challenging the outcome. The CEO shall issue a written decision describing the result of the appeal, the rationale for the result, and provide the written decision simultaneously to both parties within ten (10) days of receiving all information submitted by the parties.

### **XIV. REPRISAL/RETALIATION**

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, 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 part. 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 or privilege secured by Title IX, constitutes retaliation.

VLACS will keep confidential the identity of 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, or as required by law, or to carry out Title IX, including the conduct of any investigation, hearing of judicial proceeding arising thereunder.

Complaints alleging retaliation may be filed according to these grievance procedures for sex discrimination.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in a Title IX grievance proceeding is not retaliation provided, however, that a determination



regarding responsibility alone is not sufficient to conclude that any party made a materially false statement in bad faith.

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

#### **XV. ALLEGED CONDUCT NOT PROHIBITED UNDER TITLE IX**

Allegations of conduct that are not prohibited by Title IX may be investigated under VLACS's other policies and rules of conduct.

#### **XVI. SEXUAL HARASSMENT OR SEXUAL VIOLENCE AS CHILD ABUSE OR SEXUAL ABUSE**

Under certain circumstances, sexual harassment or sexual violence may constitute child abuse or sexual abuse under New Hampshire law. In such situations, VLACS shall comply with those laws, including any reporting obligations.

#### **XVII. DISCIPLINE**

VLACS will take such disciplinary action it deems necessary and appropriate, including warning, suspension, expulsion, or immediate discharge.

#### **XVIII. ALTERNATIVE COMPLAINT PROCEDURES, LEGAL REMEDIES, AND INQUIRIES ABOUT TITLE IX**

At any time, whether or not an individual files a complaint or report under this policy, an individual may file a complaint with the Office for Civil Rights ("OCR"), of the United States Department of Education, or with the New Hampshire Commission for Human Rights.

1. Office for Civil Rights, U.S. Department of Education, 5 Post Office Square, 8<sup>th</sup> Floor, Boston, MA 02019-3921; Telephone number (617) 289-0111; Fax number (617) 289-0150; E-mail [OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov).
2. U.S. Equal Employment Opportunity Commission, JFK Federal Building, 15 New Sudbury St., Room 475, Boston, MA 02203; Telephone number (800) 669-4000; E-mail [infor@eeoc.gov](mailto:infor@eeoc.gov).
3. New Hampshire Commission for Human Rights, 2 Industrial Park Drive, Concord, NH 03301; Telephone number (603) 271-2767; E-mail [humanrights@nh.gov](mailto:humanrights@nh.gov).

Notwithstanding any other remedy, any person may contact the police or pursue a criminal prosecution under state or federal criminal law.

Inquiries about the application of Title IX may be referred to the Title IX Coordinator, the Assistant Secretary of the United States Department of Education, or both.

## **XIX. RECORD KEEPING**

VLACS must maintain all records relating to a sexual harassment complaint, investigation, and training for seven (7) years.

### References:

Title IX

NH Code of Administrative Rules, Section Ed. 303.01(j), Substantive Duties of School Boards; Sexual Harassment Policy

NH Code of Administrative Rules, Section 306.04(a)(8), Student Harassment

NH Code of Administrative Rules, Section 306.04(a)(9), Sexual Harassment

RSA 354-A:7, Unlawful Discriminatory Practices

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