

**SEXUAL HARASSMENT, SEXUAL MISCONDUCT,  
DOMESTIC VIOLENCE, DATING VIOLENCE,  
AND STALKING POLICY AND PROCEDURES**

**BENNINGTON COLLEGE 2018 – 2019**

At Bennington College we value individual responsibility, self-exploration, and discovery, as well as focused self-direction. Sexual harassment, sexual misconduct, and other acts covered in this policy subvert the fundamental core of our values and the educational mission of Bennington College and threaten the well-being of students, faculty, and staff. The College is committed to take action, and may be required to take action, if it learns of potential violations of this policy, even, in some instances, if the person subjected to such misconduct does not wish to formally file a complaint.

## Consent Policy

At the foundation of this policy is the understanding that in order to engage in behavior of a sexual nature there must be clear, knowing, and voluntary consent prior to and during sexual activity. Under Vermont law, “consent” to sexual activity is defined to mean “words or actions by a person indicating a voluntary agreement to engage in a sexual act.” For purposes of the College’s Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking Policy, the following is true of consent:

- Consent is informed, active, and freely given and is grounded in rational and reasonable judgment. It requires clear communication between all persons involved in the sexual encounter.
- Consent can be communicated verbally or by actions.
- Consent must be mutually understandable by all parties involved in the sexual experience, which a reasonable person would interpret as a willingness to participate in agreed-upon sexual conduct.
- The person initiating the sexual contact is always responsible for obtaining consent from their partner(s). It is not the responsibility of one party to resist or communicate “no” to the sexual advances of another.
- Consent is not the absence of resistance. Silence and/or immobility are inactive behaviors and does not constitute consent. If a partner is inactive (for example, silent or physically still) sexual activity must stop until both partners have communicated clearly with each other about what, if any, sexual activity is mutually desired.
- Consent to one form of sexual activity does not imply consent to another form of sexual activity. Each new sexual act requires new consent.
- Consent can be withdrawn by either party at any time.
- Consent at one time and to one sexual act does not imply consent at any other time to that or any other sexual act at a later date and regardless of previous relations.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.
- Consent may not be given by minors, when a physical or mental condition is present such that the person cannot knowingly or voluntarily give consent, or by incapacitated persons. A person may be incapacitated as a result of alcohol or other drug use. A person who is unconscious, unaware, or otherwise physically helpless cannot give consent to sexual activity.

- A person will be considered unable to give valid consent, for example, if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) or because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing.
- An imbalance of power may lead to confusion about consent.

Consent cannot result from force, or threat of force, coercion, fraud, intimidation, incapacitation (due to use of alcohol for example), or imbalance of power. The College will use an objective standard when determining incapacitation-related questions; that is, the College will determine whether from the standpoint of a reasonable person, the respondent knew or should have known that the complainant could not effectively consent because they were incapacitated.

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

## Notice of Nondiscrimination on the Basis of Sex

Bennington College is committed to providing an environment free from discrimination as defined under applicable state and federal laws, including but not limited to, Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities. Prohibited sex discrimination includes sex-based discrimination and sexual harassment and sexual misconduct as described in this policy. The College does not discriminate on the basis of sex, nor does it tolerate sexual harassment or sexual misconduct in its education programs or in the employment setting.

The College expects all members of the campus community to conduct themselves in a manner that does not infringe upon the rights of others consistent with Title IX, and in accordance with amendments to the Federal Clery Act made by the Violence Against Women Reauthorization Act of 2013. This policy is intended to define community expectations and prohibited conduct regarding issues of sexual harassment, sexual misconduct, domestic violence, dating violence, and stalking; establish a mechanism for determining when those expectations have not been met; define procedures for responding to incidents of such misconduct; provide resources available to those affected by such behavior; and provide for corrective and remedial action where necessary.

The College is committed to educating our community to effectively identify and reduce the existence of sexual harassment, sexual misconduct, domestic violence, dating violence, and stalking/sexual harassment as defined in this policy and all re-

lated laws. This policy reaffirms our commitment to providing a safe and nondiscriminatory working and learning environment.

## **Title IX Coordinator**

The Senior Vice President for Institutional Initiatives is the College's Title IX Coordinator, and is responsible for coordinating the College's efforts to comply with and carry out its responsibilities under Title IX. The Title IX Coordinator's core responsibilities include overseeing the school's response to reports and complaints of misconduct covered by this Policy and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. To accomplish this, subject to the exemption for confidential employees discussed below, the Title IX Coordinator must be informed of all reports and complaints raising issues covered by this Policy, even if the report or complaint was initially filed with another individual or office or if the investigation will be conducted by another individual or office. The Title IX Coordinator is available to respond to inquiries regarding sex-based discrimination, sexual harassment, sexual misconduct, dating violence, domestic violence or stalking, and to meet with students, employees, or third parties regarding Title IX-related issues, such as issues related to the College's compliance with Title IX and the Clery Act, response to covered reports or complaints, related grievance procedures, relevant patterns of conduct, or related education and prevention programs.

### **Title IX Coordinator**

David Rees, Senior Vice President for Institutional Initiatives  
One College Drive, Bennington, VT 05201  
802-440-4300  
rees@bennington.edu

### **Deputy Title IX Coordinator**

Oceana Wilson, Dean of the Library  
One College Drive, Bennington, VT 05201  
802-440-4600  
owilson@bennington.edu

## **General Definitions**

### ***Complainant***

For ease of reference and consistency, the term "complainant" is used in this policy to refer to a person who believes that he or she has been subjected to sexual harassment, sexual misconduct, domestic violence, dating violence or stalking, or who is believed by another to have been subjected to such conduct.

For purposes of this policy, a complainant is usually a student, employee, or third party involved in some way in an academic, extracurricular, or residential program of the College ("covered third party") who has allegedly been subjected to conduct in violation of this Policy by a student or employee respondent.

### ***Respondent***

For purposes of this policy, a respondent is an individual (student, faculty, staff, or third party over whom the College has some form of jurisdiction) who is reported to have violated this Policy.

### ***Retaliation***

Any attempt by a member of the College community to penalize, intimidate, or retaliate in any way against a person because he or she makes a report or complaint, in good faith, of unwelcome conduct of a sexual nature, sexual harassment, sexual misconduct, domestic violence, dating violence or stalking, or because they have cooperated in the investigation of a complaint of such conduct is prohibited. Such retaliation violates this policy and may be unlawful. Retaliation includes, but is not limited to, adverse actions that have a substantial adverse effect on the working or educational environment of any individual involved in the complaint or an investigation that is motivated by such involvement, such as: intimidation; reprisal; ostracism; actions altering the person's assignments, assessment of his or her work, or his/her academic environment; threats; coercion; or otherwise discriminating against any individual for exercising his or her rights or responsibilities under this policy.

Any person who believes that he or she has been subjected to such retaliation should immediately contact the Title IX Coordinator. Any person who takes such retaliatory actions will be subject to disciplinary action.

## **Sexual Harassment Policy**

Sexual harassment is a form of sex discrimination, which is illegal under state and federal law, including Title IX of the Education Amendments of 1972, as amended ("Title IX"). Conduct, whether intentional or unintentional, that results in sexual harassment is prohibited and will not be tolerated. This policy applies to the entire College and to the conduct of students, faculty, administration, and staff alike, as well as any third parties participating in the College's programs or activities, regardless of sexual orientation or gender identity.

Bennington encourages members of the College community and covered third parties to report unwelcome conduct of a sexual nature so that the College may investigate reports appropriately, as outlined in the procedures below. If the College determines a respondent's conduct is sufficiently serious – that is, sufficiently severe or pervasive – to deny or limit a student's ability to participate in or benefit from the College's program based on sex and thereby creates a hostile environment, it will take prompt, appropriate, and effective action to eliminate the hostile environment, prevent its recurrence, and address its effects. In the employment context, the College will take prompt, appropriate, and remedial action if it determines that a sexually hostile environment has been created. The College may also choose to take remedial action in cases where conduct is

deemed inappropriate, even if it does not rise to the level of sexual harassment as defined in this policy.

### ***The Definition of Sexual Harassment***

Sexual harassment is unwelcome conduct of a sexual nature, and can include, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, where:

- Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or education
- Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting the individual
- Such conduct has the purpose or effect of substantially interfering with an individual's academic or work performance or creating an intimidating, hostile, or offensive work or educational environment

Examples of sexual harassment include, but are not limited to the following:

- Continuing to ask a student or employee to socialize on or off campus when that person has indicated he or she is not interested
- Displaying or transmitting sexually suggestive pictures, objects, cartoons, electronic messages, attachments or related links, or posters, if it is known or should be known that the behavior is unwelcome
- Continuing to write sexually suggestive notes, messages or letters if it is known or should be known that the person does not welcome such behavior
- Referring to or calling a person a sexualized name if it is known or should be known that the person does not welcome such behavior
- Regularly telling sexual jokes or using sexually vulgar or explicit language in the presence of a person if it is known or should be known that the person does not welcome such behavior
- Communicating derogatory or provoking remarks about or relating to a student or employee's sex, sexual orientation, or gender identity
- Directing harassing acts or behavior against a person on the basis of his or her sex, sexual orientation, or gender identity
- Off campus conduct that falls within the above definition and affects a person's on-campus educational, shared living, or work environment

Sexual harassment prohibited by this policy may occur regardless of the sex, sexual orientation, or gender identity of any individual involved. Sexual harassment may occur in a setting in which the power inherent in a faculty member's or supervisor's relationship to their students or subordinates is exploited.

While sexual harassment most often takes place between persons of unequal power and/or status, it can also occur between equals, i.e., student-student, faculty-faculty, or staff-staff.

In determining whether alleged conduct constitutes sexual harassment, those entrusted with carrying out this policy will look at the record as a whole and at the totality of the circumstances, such as the nature of and the context in which the alleged incidents occurred. Bennington College recognizes that the protection of free and open speech and the open exchange of ideas are important to any academic community. This recognition is therefore an important element in the "reasonable person" standard used in judging whether sexual harassment has occurred. This policy is meant neither to proscribe nor to inhibit discussion, in or out of the classroom, of complex, controversial, or sensitive matters, when in the judgment of a reasonable person they arise appropriately and with respect for the dignity of others. Bennington College 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 free speech or to seek redress under the noted procedure(s) when appropriate.

### **Sexual Misconduct Policy**

Bennington College prohibits conduct by students, faculty, or staff that affects other students, faculty, staff, or covered third parties and that constitutes sexual misconduct, domestic violence, dating violence, or stalking, as defined below. The College is committed to take action, and may be required to take action, if it learns of such misconduct, even, in some instances, if the person subjected to such misconduct does not wish to formally file a complaint.

The College encourages individuals who believe they are being or have been subjected to such conduct, and others with knowledge of such conduct, to report the conduct to the College through the procedures described below, and to seek the support of the College and/or external resources identified in this policy. The College also encourages individuals affected by such conduct to seek support from the College and the resources identified here, even if they choose not to pursue a formal complaint with the College.

### ***Definitions***

The definitions of sexual assault, domestic violence, dating violence, and stalking used in this policy and stated below are consistent with the Clery Act, as amended effective 2014. In its primary prevention and awareness programs for incoming students and new employees, and its ongoing prevention and awareness programs for students and employees, Bennington College includes the definitions of sexual assault, the definition

of consent in reference to sexual activity, and the definitions of domestic violence, dating violence, and stalking that are used by Vermont criminal laws. However, the College utilizes its own definitions of these prohibited behaviors for purposes of this policy that are consistent with the Clery Act, as amended effective 2014, and determines responsibility for violations of College policy through its own procedures and standards of proof (that is, by a preponderance of the evidence standard), not through the procedures or standards of proof employed in the criminal justice system.

### ***Sexual Misconduct***

Sexual misconduct may include sexual assault, sexual exploitation, or both.

***Sexual assault*** may be either rape, fondling without consent, incest, or statutory rape, as defined in the Clery Act and below. Rape is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent (as defined below) of the victim, including instances where the victim is incapable of giving consent because of their temporary or permanent mental incapacity. Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law in the applicable jurisdiction. Statutory rape is sexual intercourse with a person who is under the statutory age of consent in the applicable jurisdiction. Sexual assault can be committed by any person against any other person, regardless of gender, gender identity, sexual orientation, or past or current relationship status. Sexual assault may occur with or without physical resistance or violence.

***Sexual exploitation*** occurs when a person takes sexual advantage of another person for the benefit of anyone other than that other person without that other person's consent. Examples of behavior that could constitute sexual exploitation include but are not limited to the following:

- Recording or capturing through any means images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nudity without that person's consent
- Distributing images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nudity, if the individual distributing the images or audio knows or should have known that the person(s) depicted in the images or audio did not consent to such disclosure and object(s) or would object to such disclosure
- Viewing another person's sexual activity, intimate body parts, or nudity in a place where that person would have a reasonable expectation of privacy, without that person's

consent, and for the purpose of arousing or gratifying sexual desire, if the individual viewing the other person's or persons' sexual activity, intimate body parts, or nudity in such a place knows or should have known that the person(s) being viewed would object to that

**Exception:** The College's prohibition of sexual exploitation is not intended to prohibit the use of sexually explicit materials that are reasonably related to the College's academic mission. Specifically, this section is not intended to proscribe or inhibit the use of sexually explicit materials, in or out of the classroom, when in the judgment of a reasonable person they arise appropriately to promote genuine discourse, free inquiry, and learning.

***Domestic Violence*** is violence committed by a current or former spouse or intimate partner of the person subjected to the violence;

- By a person with whom the person subjected to the violence shares a child in common
- By a person who is cohabitating with, or has cohabitated with, the person subjected to the violence as a spouse or intimate partner
- By a person similarly situated to a spouse of the person subjected to the violence under the domestic or family violence laws of the jurisdiction in which the violence occurred
- By any other person against an adult or youth who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the violence occurred

For the purposes of this definition, domestic violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse, if involving individuals who are in a relationship as defined above.

***Dating Violence*** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the person subjected to the violence. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse, if involving individuals who are or have been dating as defined here. Dating violence does not include acts covered under the definition of domestic violence stated above.

***Stalking*** is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person's safety or the safety of others
- Suffer substantial emotional distress

For the purposes of this definition:

- *Course of conduct* means two or more acts, including, but not limited to, acts in which the alleged stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the person subjected to the stalking.
- *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Examples of stalking behaviors or activities include, but are not limited to the following, if they occur in the context of stalking as defined above:

- Nonconsensual communication, including face-to-face communication, telephone calls, voice messages, e-mails, text messages, written letters, gifts, or any other communications that are unwelcome
- Pursuing, following, waiting for, or showing up uninvited at or near a residence, workplace, classroom, or other places frequented by the person
- Surveillance or other types of observation including staring or "voyeurism"; gathering information about an individual from friends, family, co-workers; or accessing private information through unauthorized means
- Threats to harm self or others
- Defamation and/or lying to others about the person
- Using a third party or parties to accomplish any of the above

### **Consensual Relationships**

Because of their potential to damage the bonds of mutual trust and responsibility upon which the Bennington community depends, sexual or dating relationships between faculty and students, as well as between staff and students are prohibited at all times and in all circumstances except those described immediately below, even if the relationship is consensual and regardless of the age of the student.

Recent Bennington College graduates who are hired in a staff role and who have an existing dating or sexual relationship with a current student may be exempted from this policy if they have no supervisory or functional staff role with the student and where the College, in its sole discretion, determines that such is not a conflict of interest or in conflict with the best interests of the student; however, they must inform both Human Resources and their hiring manager of the existing relationship before they are hired. Failure to abide by this policy will result in discipline of the faculty or staff member, up to and including dismissal from employment at the College.

### **Options for Reporting and Confidential Disclosures**

The College encourages individuals who experience sexual harassment, sexual misconduct, domestic violence, dating violence, or stalking to talk to someone about what happened – so they can get the support they need, and so the College can respond appropriately.

There is no such thing as an "unofficial" complaint of sexual harassment, sexual misconduct, domestic violence, dating violence, or stalking. The College takes all complaints seriously and to that end feels it important, and our legal obligation, to address all such complaints appropriately and as practicable given the circumstances of each case, the complainant's wishes regarding the handling of the complaint, and the College's obligation to maintain a safe campus community.

However, the College also recognizes that individuals who have concerns about sexual harassment, sexual misconduct, domestic violence, dating violence, or stalking may wish to speak to someone without making a formal complaint, and therefore look for assurances of confidentiality. Different employees on campus have different abilities to maintain a person's confidentiality. Some individuals are required to maintain near complete confidentiality; talking to them is sometimes called a "privileged communication." Other employees may talk to an individual in confidence, and generally only report to the College that an incident occurred without revealing any personally identifying information. Third, some employees (called "Responsible Employees") are required to report the details of an incident to the Title IX Coordinator.

This policy is intended to make students, faculty, and staff aware of the various reporting and confidential disclosure options available to them – so they can make informed choices about where to turn if they are subjected to conduct that violates this policy. Regardless of whether a victim files a complaint with the College or with local law enforcement, the College will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other available services, both within the College and in the community. Similarly, when a student or employee reports an incident to the College, whether it occurred on or off campus, the College will provide the student or employee with a written explanation of their rights and options.

### **Leniency**

Sometimes, individuals are reluctant to come forward to report perceived violations of this policy out of fear that they may be charged with violations of Student Conduct standards (for example, underage drinking or illegal drug use at the time of the incident). It is of paramount importance to the College that all perceived violations of this policy be reported, so that those affected can receive the support and resources needed. Therefore, in order to facilitate reporting, the College may choose to not

charge students who report violations of this policy with violations of Student Conduct standards.

### **Interim Accommodations**

Regardless of whether a victim of sexual assault decides to report the crime to Campus Security Officers, the Title IX Coordinator, and local law enforcement, the College will take interim measures to promote the safety and general well-being of the parties involved and/or the broader College community, provided the complainant requests them and such protective measures are reasonably available. The College will provide written notification to complainants about options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures, described as follows. These measures will be kept confidential unless maintaining such confidentiality would impair the College's ability to provide accommodations or protective measures. Such interim measures may include one or more of the following or additional accommodations as determined by the College:

- Academic accommodations (i.e., alter academic schedules, withdraw from/retake a class without penalty, access academic support such as tutoring)
- Change in housing
- Changing in dining facilities
- Change in work schedules
- Issue no contact orders
- Change in transportation and/or working situations

### **Confidential Resources | On Campus**

Select staff within the Psychological Services and Health Services Offices are not required to report any information about an incident to the Title IX Coordinator without an individual's permission. These individuals are considered to be "confidential resources." This means that in most cases, these confidential resources will not inform anyone of such communications without a complainant's consent, and the College will not endeavor to take any action in response to such communications. These professionals may have the responsibility to disclose otherwise-privileged information appropriately when they perceive an immediate and/or serious threat to any person or property. In addition, medical and mental health professionals are required by law to report an allegation of sexual assault of a person under age 18. Individuals who wish to talk about sexual harassment, sexual misconduct, domestic violence, dating violence, or stalking-related issues confidentially, with the understanding that the College will not take any action based on such confidential communications, are encouraged to contact one of these confidential resources.

In accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, these confidential resources will not report Clery crimes they learn about through confidential communications for purposes of the College's compilation of campus crime statistics.

In addition, the College's Director of Student Health Promotion, Ali Tartaglia, DrPH (whose contact information is: Barn 113, (802) 440-4755 (office), (802) 440-HOPE (4673) 24/7, [alisontartaglia@bennington.edu](mailto:alisontartaglia@bennington.edu)) has been designated by the College as a confidential resource. This means that she is not required to share detailed information about sexual assault or other issues covered by this policy without the consent of a person reportedly subject to such misconduct with the Title IX Coordinator, unless she perceives an imminent risk of harm or the incident involves an allegation of sexual assault of a person under age 18. Pursuant to the Clery Act, she is required to share only general information with Campus Public Safety so that it can compile campus crime statistics, but this would not involve sharing details or the identity of anyone reportedly involved in an incident.

If an individual who makes a report to a confidential resource insists that his or her name or other identifiable information not be revealed and the College is able to respect that request, the College will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the alleged perpetrator. Even so, these confidential resources will still assist the individual in receiving other necessary protection and support, such as victim advocacy, academic support or accommodations, disability, health or mental health services, and changes to living, working, transportation, or course schedules accommodations, where requested and reasonably available. An individual who at first requests confidentiality may later decide to file a complaint with the College or report the incident to local law enforcement, and thus have the incident fully investigated. These confidential resources will provide the individual with assistance if the individual wishes to pursue those options.

### **Contact information for confidential resources is as follows:**

- Director of Psychological Services  
802-440-4451
- All other clinical staff within Psychological Services  
802-440-4451
- Director of Health Services  
802-440-4426
- All other clinical staff within Health Services  
802-440-4426
- Director of Student Health Promotion  
(802) 440-HOPE (4673)

If you dial x767 (SOS) on campus or 802-447-4250 from any non-campus phone, emergency personnel on campus can arrange for you to speak with the Psychological Services on-call counselor or Health Services on-call clinician.

### **Partially-Confidential Resources | On Campus**

While certain staff may be able to maintain an individual's confidentiality, these individuals have an obligation to provide select details to the College including the nature, date, time, and general location of an incident.

The following are considered to be partially-confidential resources:

- All non-clinical staff within Health Services
- All non-clinical staff within Psychological Services

### **Non-Confidential Resources | On Campus (also called "Responsible Employees")**

Most faculty and staff at the College are considered to be "responsible employees." A responsible employee is a College employee who has the authority to address incidents of sexual harassment, sexual violence, domestic violence, dating violence, or stalking and is obligated to report such incidents, or whom an individual could reasonably believe has this authority or duty.

**Responsible employees are respectful of a complainant's wishes to the extent appropriate and are discreet, but they are not able to maintain confidentiality.** Responsible employees include all College faculty and staff employees, except as defined above in confidential or partially-confidential resources, and all student employees other than Resident Assistants, who are considered to be responsible employees. General inquiries or questions about the Sexual Harassment, Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking Policy and Procedures do not have to be reported, may remain private, and the College will strive to protect the privacy interests of individuals to the extent it can while maintaining its obligations to uphold relevant policies and regulations and/or to take reasonable steps to promote the safety of members of the College community. Otherwise, once any responsible employee learns of an incident of sexual misconduct, sexual harassment, dating violence, domestic violence, or stalking, written or unwritten, the responsible employee must immediately notify the Title IX Coordinator of such complaint. The responsible employee must report all relevant details about the incident (such as the name of the complainant and respondent, any witnesses, and other relevant facts, such as the date, time, and specific location of the alleged incident). Such notice to the College generally obligates the College to investigate the incident and take appropriate steps to address the situation. Within the requirements of applicable laws and policy, confidentiality will be observed as practicable.

If a complainant discloses an incident to a responsible employee but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the College must weigh that request against the College's obligation to provide a safe, nondiscriminatory environment for all individuals, including the com-

plainant. If the College honors the request for confidentiality, a complainant must understand that the College will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the alleged perpetrator. Although rare, there are times when the College may not be able to honor a victim's request in order to provide a safe, nondiscriminatory environment for all individuals.

The College will protect the confidentiality of individuals allegedly subjected to sexual harassment, sexual misconduct, domestic violence, dating violence, and/or stalking to the extent practicable in light of the need to do investigations and conduct disciplinary proceedings. Campus security authorities who become aware of Clery crimes will report them to the College's Office of Public Safety so that they may be included in the College's compilation of campus crime statistics. The College will not include the names of complainants or other identifying information in publicly available reports that are compiled as required by the Clery Act.

### **Additional Resources | Off Campus**

There are a number of local and national agencies available to provide support to individuals who have experienced sexual harassment, sexual misconduct, dating violence, domestic violence, or stalking. The College can assist an individual with accessing these, and other, resources.

- National Sexual Assault Hotline, 800-656-HOPE
- National Domestic Violence Hotline, 800-799-7233
- Project Against Violent Encounters (PAVE), 802-442-2111
- Southwestern Vermont Medical Center, 802-442-6361
- United Counseling Services (UCS), 802-442-5491

**Note:** Individuals are not obligated to notify or utilize any of these resources.

### **External Reporting Options**

In addition to the off-campus resources noted above, complainants may also seek assistance through other external organizations. Making a complaint pursuant to the College's Sexual Harassment, Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking Policy does not foreclose either civil or criminal legal action by the complainant, and a complainant who wishes to consider pursuing such action should seek legal advice. A complainant may simultaneously pursue a criminal complaint and a complaint under these procedures.

A complainant may also file a complaint by writing or calling the following state or federal agencies, as applicable:

- Bennington Police, 118 South Street, Bennington, VT, 05201, phone: 802-442-1030
- Vermont Attorney General's Office, Civil Rights Unit, 109 State Street, Montpelier, VT 05602, phone: 802-828-3171 (voice/TDD).

- Equal Employment Opportunity Commission, 1 Congress Street, Boston, MA 02114, phone: 617-565-3200 (voice), 617-565-3204 (TDD).
- Vermont Human Rights Commission, 133 State Street, Montpelier, VT 05633-6301, phone: 802-828-2480 (voice/ TDD).
- Office for Civil Rights (OCR), U.S. Department of Education, 8th Floor, 5 Post Office Square, Boston, MA 02109, phone: 617-289-0111 (voice), 800-877-8339 (TDD).

These agencies can conduct impartial investigations, facilitate conciliation, and, if it is found that there is probable cause or reasonable grounds to believe sexual misconduct or harassment occurred, they may file a charge or a complaint. The Office of the Dean of Students, the Title IX Coordinator, or the Office of Campus Safety will offer to, and will upon request, assist students or employees in contacting law enforcement agencies. This action may be taken regardless of whether an individual chooses to file a complaint with the College. For their own part, a complainant may choose to notify such agencies with or without assistance from the College, or may choose not to notify such authorities.

Individuals who are being or who may have been subjected to domestic violence, dating violence, or stalking may have the right to obtain orders of protection, restraining orders and/or relief from abuse orders from Vermont courts. The College will support complainants if they wish to have the College's assistance in making contact with law enforcement authorities and other external resources to seek such orders. The College will respect such orders to the extent applicable. In addition, the College can also impose no-contact conditions on students, employees, and third parties over which it has some measure of control. The College will inform complainants of their options in this regard.

### Medical Care

Whether or not a person decides to pursue criminal charges or a complaint at the College, individuals are encouraged to immediately seek any necessary medical care after an incident of sexual misconduct, domestic violence, or dating violence, and to seek help from appropriate law enforcement, medical, or College personnel.

### Preservation of Evidence

Even if a person is unsure initially whether they will want to pursue criminal charges or seek a protection order, it is important to preserve all possible evidence in case an individual later decides to do so. Therefore, a person should refrain from changing clothes, showering, or otherwise changing his or her physical state after an incident, until after they have consulted with medical personnel about how to best preserve evidence. Any such individual should also consult with College officials, law enforcement officers, or health care professionals regard-

ing their ability to have evidence collected by a Sexual Assault Nurse Examiner ("SANE"). Individuals should also endeavor to preserve other evidence that may be relevant to a case of sexual harassment, sexual misconduct, domestic violence, or dating violence, or stalking, such as text messages, email messages, other electronically stored information, and other physical evidence. Anyone with questions about how to do this should consult with College officials.

## College Procedures for Reviewing/ Handling Complaints

Any member of the Bennington College community or covered third party who believes that they have been subjected to sexual harassment, sexual misconduct, domestic violence, dating violence, or stalking by any member(s) of the Bennington College community may, depending on the nature of the alleged misconduct, make use of some or all of these three options: (1) **informal resolution**, (2) **mediation**, or (3) **administrative investigation**. Whichever option(s) the complainant utilizes, Bennington College endeavors to ensure the complainant and respondent are treated in an unbiased manner with dignity, respect, and sensitivity. A complainant may use all three options (subject to limitations noted below), or may bypass the first two options and proceed directly to an administrative investigation. Even where the College does not appear to have a measure of control over a third party who is believed to have engaged in or who is believed to be engaging in such behavior, the College encourages reporting so that the College can at least refer the complainant to supportive resources.

The complaint process begins by the complainant or other reporting person's making a written or oral complaint with the Title IX coordinator. As explained below, while an initial complaint need not be in writing, a written complaint will have to be submitted if the complainant wishes to have an administrative investigation conducted. The complaint may be written by the complainant, or dictated to a College official and approved by the complainant. For cases involving complaints against the President, the complainant must file a request with the Office of the Provost and Dean of the College who will transmit the request to the Board of Trustees. The board will proceed from that point in a manner to be determined in its sole discretion.

There is no time limit for the filing complaints. However, prolonged delays in reporting may limit the College's ability to conduct a full and fair investigation. Every effort will be made to investigate and resolve complaints of sexual harassment, sexual misconduct, domestic violence, dating violence, or stalking within a reasonable period of time, which will not exceed sixty (60) calendar days except in extraordinary circumstances, in which event the complainant and the person charged will be notified of the reason and expected duration of the delay.

The College may take any interim emergency measures it deems fit pending the resolution of a complaint, including such

measures as are necessary to protect the complainant, the respondent, or third parties.

A person should contact the Title IX Coordinator if:

- As a visitor to the College (e.g., a guest of another student a prospective student, or an alumnus or alumna), they believe that they have been subjected to conduct in violation of this policy by a member or former member of the College community.
- As a member or former member of the College community they believe that, while a member of the College community, they have been subjected to conduct in violation of this policy by a vendor, contractor, visitor, or other third party.

The College will investigate and respond as appropriate and practicable, given the nature of its relationship to the parties. In some cases (such as, for example, cases in which a student, employee, or covered third party involved in an alleged incident of sexual harassment, sexual misconduct, domestic violence, dating violence, or stalking does not wish to participate in the process but the College decides that the alleged misconduct needs to be investigated and addressed), the College may move forward with an investigation and/or related disciplinary proceedings. In such cases, the College may extend the full rights of a complainant as defined in this policy to affected parties as deemed appropriate by the College.

### Sanctions

Sanctions for violations of this policy may include one or more of the following:

- Expulsion
- Suspension
- Written Reprimand or Warning
- Verbal Reprimand or Warning
- Separation from employment
- Disciplinary Probation
- Employee or Faculty Probation
- Nonrenewal of contract
- Revocation of honors, awards, or degrees
- Restricted access to College facilities or activities, including student organizations or athletic or intramural participation
- Community Service
- Issuance of a “No Trespass” or “No Contact” Order
- Removal from student housing

In addition, the College may determine that additional remedies are warranted, such as education or training for some or all members of the College community. Although sanctions for violation(s) of this policy can include any form of discipline as stated above, students found to have engaged in rape as defined in this policy will most likely receive a sanction of suspension or expulsion.

### Option 1 – Informal Resolution

1. Any member of the Bennington College community or covered third party who believes that they have been subjected to conduct in violation of this policy by any member(s) of the Bennington College community may pursue a complaint through **informal resolution, except that informal resolution will not be used to resolve complaints of sexual assault.**
2. Complaints may be written or oral. Once a complaint is made, the Title IX Coordinator will appoint an investigator to investigate the complaint, and, in consultation with the investigator, will determine whether continuing with the informal resolution procedure is appropriate.
3. If the Title IX Coordinator determines that continuing with informal resolution is not appropriate, they will notify the complainant in writing. If the complainant wishes to pursue the complaint, they may request to proceed with mediation or administrative investigation and review as outlined below. If the Title IX Coordinator decides that continuing with informal resolution is appropriate, then the complainant and the Title IX Coordinator may agree to adopt one of the following courses of action, to be completed within 10 working days of that agreement:
  - The Title IX Coordinator will attempt an informal resolution of the complaint directly and privately with the respondent.
  - The Title IX Coordinator and the complainant will seek an informal resolution of the complaint by meeting together with the respondent.
  - The Title IX Coordinator will appoint someone from the College community who will seek to resolve the complaint informally. This person will meet with both parties, either separately or together.
4. Each party may be accompanied by an advisor of their choice in any stage of this informal procedure.
5. A complaint pursued through informal resolution will be considered to have been resolved when both parties have signed a statement indicating their acceptance of the outcome of the process, and the Title IX Coordinator (or appointee who has directed the procedure) has also approved and signed the statement. A complaint that has been resolved through informal resolution may not be filed as a formal complaint.
6. If a complaint cannot be resolved through informal resolution, or if the Title IX Coordinator determines at any point that the case is not appropriate for informal resolution, the Title IX Coordinator will refer the case to mediation or administrative investigation and review as described below.

## **Option 2 – Mediation**

1. Any member of the Bennington College community or covered third party who believes that they have been subjected by any other member(s) of the Bennington College community to conduct in violation of this policy may pursue a complaint through a mediation procedure. Mediation is generally defined as intervention between parties to promote reconciliation, settlement, or compromise. Mediation is different from the “Informal Resolution” procedure outlined above because a neutral person other than the Title IX coordinator will meet with the complainant and respondent, either separately or together, in order to understand the parties’ respective positions, and then attempt to help the parties come to a mutual understanding. Mediation will not be used to resolve complaints of sexual assault.
2. A complaint may be written or oral. Once a complaint is made, the Title IX Coordinator will appoint an investigator to investigate the complaint, and, in consultation with the investigator, will determine whether there are grounds for continuing with the mediation procedure. If the Title IX Coordinator determines that mediation is not appropriate, they will notify the complainant in writing. If the complainant wishes to pursue the complaint, they may request to proceed with administrative investigation and review as outlined below. If the Title IX Coordinator decides that mediation is appropriate, then the Title IX Coordinator will appoint a mediator who will seek to resolve the complaint using mediation. This person will meet with both parties, either separately or together. Both parties must consent in order for the mediator to meet with both parties together.
3. Each party may be accompanied by an advisor of their choice any stage of this mediation procedure.
4. A complaint pursued through mediation will be considered to have been resolved when both parties have signed a statement indicating their acceptance of the outcome of the mediation procedure, and the Title IX Coordinator (or appointee who has directed the procedure) has also approved and signed the statement. A complaint that has been resolved through mediation may not be pursued through administrative investigation.
5. If the complaint cannot be resolved through mediation, or if the Title IX Coordinator determines that the case is not appropriate for mediation, the Title IX Coordinator will refer the case to administrative investigation and review as described below.

## **Option 3 – Administrative Investigation and Review**

Any member of the Bennington College community or covered third party who believes that they have been subjected to conduct in violation of this policy by any other member(s) of the Bennington College community or covered third parties may pursue a complaint through an administrative investigation. All

proceedings will include a prompt, fair, and impartial process from the initial investigation to the final result. As required by the Clery Act, the investigation and decision-making process will be conducted by officials who, at a minimum, receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking, and on how to conduct an investigation process that protects the safety of victims and promotes accountability.

Throughout the process, the College will provide the complainant and the respondent with the same opportunities to have others present during the institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice. While the College will not limit the choice of advisor or presence for either the complainant or the respondent in any meeting or institutional disciplinary proceeding, the College has established restrictions regarding the extent to which the advisor may participate in the proceedings, as described below.

A written complaint must be filed with the Title IX Coordinator in order to initiate an administrative investigation. This could be prepared in writing by the complainant, or dictated by the complainant to the Deputy Title IX Coordinator, Director of Campus Safety, or the Title IX Coordinator and approved by the complainant. Once a written complaint is filed, the Title IX Coordinator will appoint an investigator to investigate the charges. The Title IX Coordinator, in consultation with the investigator, will determine whether an investigation should proceed based on the allegations in the complaint. If it is determined that an investigation should proceed, the College will handle the case in the manner described below. Otherwise the Title IX Coordinator will issue a notice of dismissal.

A complaint may also be filed (to be handled through the administrative investigation procedure) by the Provost and Dean of the College, the Associate Provost and Dean of Studies, or the Vice President for Finance and Administration, if it has come to such person’s attention that a member of the Bennington College community may have been subjected to conduct in violation of this policy by any other member of the College community or a covered third party.

In all cases, the final decision of whether to conduct an investigation rests with the Title IX Coordinator. The issuance of a notice of dismissal cannot be appealed. The complainant is free at any time to pursue civil or criminal action against the respondent.

If an investigation will be conducted, both parties will receive written notice of that. The written notice will include a copy of this policy.

A “No Contact Order” is normally issued to restrict contact and communication between a complainant and respondent for the duration of the investigation. No contact orders are not disciplinary in nature (though violation of them could result in College discipline). This is in addition to other measures that

may be taken as previously outlined, such as changing the living accommodations for one of the parties.

The investigator will conduct a thorough fact-finding investigation. The investigation will include meetings with the complainant and the respondent separately, as well as any witnesses to the events that are the basis of the complaint. The investigator may also collect and examine any physical evidence or documents, emails, text messages, etc. that may be relevant to the events in question. At any time during the investigation, the complainant and respondent may provide written statements or other supporting materials that may be helpful to the investigator.

Once the investigator has gathered all of the information that they determine should be gathered as an initial matter, they will prepare preliminary findings of fact that will, together with any notes or other information gathered by the investigator, be made available to the parties for their review. The parties will have a period of 5 calendar days to review such information and, if they choose, to, they may: 1) suggest additional investigation by the investigator, including but not limited to interviews of additional witnesses; and/or 2) suggest questions to be posed by the investigator of the other party or witnesses. The investigator will determine in their discretion whether and to what extent to pursue some or all of the additional investigation and questioning requested by the parties, and will frame any resulting investigation and questioning at their discretion.

Once any additional investigation is completed, the investigator will create a final investigation report that will contain any updated findings of fact, any additional evidence gathered, and the investigator's analysis, rationale and recommendation regarding whether a preponderance of the evidence establishes a violation of any of the College policies under investigation. The parties will then have 3 days to provide a written response to the final investigation report. Each party will be allowed to review the other party's written response. The final investigation report, its attachments, and the parties' written responses will be provided to a Review Panel, for its consideration as provided below.

The complainant and respondent are entitled to be accompanied by an advisor of their choice whenever meeting with the investigator. Advisors can confer privately with their advisee, but cannot question the process nor address the investigator. At no point will the parties be required to be in contact or in the same room with each other. The parties will be given periodic status updates throughout the investigation.

Should a respondent who has been notified of an investigation/adjudication fail to cooperate with the investigator, the investigation may proceed, a finding may be reached, and a sanction may be imposed based on the information available.

The complainant may request that the investigation be stopped at any time. Bennington College, in coordination with the Title IX coordinator and the investigator will determine whether the investigation can be terminated, or whether, due to countervailing concerns of Campus Safety, it is unable to honor the complainant's request to terminate the investigation.

### **Making a Determination**

As noted above, the investigator's final investigation report, its attachments, and the parties' written responses will be provided to the Review Panel for its consideration. The Review Panel is a three person panel consisting of the Title IX Coordinator, who will serve as chair, the Dean of Students, the Deputy Title IX Coordinator and/or designees.

After careful review of the final investigation report, its attachments, and the parties' written responses, the Review Panel will make the determination of whether any Bennington College policy under investigation has been violated. The Review Panel's determination will also be based on a preponderance of the evidence standard, i.e., whether it is more likely than not that a policy was violated. The Review Panel is not bound by the investigator's report (rather, it serves to advise) and may accept or reject the investigator's recommended finding in whole or in part, and/or may request the collection of additional relevant information before making a determination. The Review Panel may consult with the investigator, and/or other persons at the discretion of the Review Panel.

If the Panel does not find that a violation of this policy has occurred, it will so inform the parties, simultaneously and in writing. In such cases, the complainant may appeal the decision within 5 working days on the grounds, and pursuant to the procedures, set forth below.

If the Review Panel finds that a violation of this policy has occurred, it may impose an appropriate sanction, up to and including expulsion from the College. The Panel will send the complainant and the respondent simultaneous written notice of the finding and decision, and the option to appeal within 5 working days on the grounds, and pursuant to the procedures, set forth below.

If either the complainant or the respondent are faculty or staff employees the Title IX Coordinator will schedule the case for administrative review following receipt of the investigator's report. An administrative review of the case will be conducted by the Provost and Dean of the College (for cases involving faculty) and conducted by the Director of Human Resources (for cases involving staff) to determine the appropriate sanction.

Where formal disciplinary action is to be taken against a faculty or staff member, appropriate sanctions may range from a verbal warning up to and including discharge from employment. The complainant and the respondent will receive simultaneous written notice of the outcome of the complaint and the option to appeal. The complainant or the respondent may appeal the decision within 5 working days to the President (in the case of faculty members) or to the Vice President for Finance and Administration (in the case of staff employees) on the grounds, and pursuant to the procedures, set forth in the Appeals section below.

## **Appeals**

Either the complainant or the respondent may appeal the determination of a case and/or the sanctions. The right to appeal is contingent upon participation in the administrative investigation process. Appeals by students must be filed with the Provost and Dean of the College within 5 working days of the case determination. Appeals by faculty must be filed with the President within 5 working days of the case determination. Appeals by staff employees must be filed with the Vice President for Finance and Administration within 5 working days of the case determination.

The President, Provost and Dean of the College, and Vice President for Finance and Administration will determine, in their sole discretion, the format of appeals. The President, Provost and Dean of the College, or Vice President for Finance and Administration may implement, modify, increase, or suspend the sanctions recommended or imposed and will send his or her appeal decision letter to the appellant. A notice of the appeal decision letter will also be sent simultaneously to the complainant and to the individual who conducted the administrative review. The decision of the President, Dean of the College, or Vice President for Finance and Administration is final in all cases.

Appeals may be based only upon the following:

1. Newly discovered evidence that could not have been discovered at the time of the hearing and would have had a significant effect on the outcome
2. A violation of the procedures under this Policy that had a significant effect on the outcomes
3. An appeal of the sanction(s) imposed