

II. TITLE IX GRIEVANCE POLICY

Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under the Title IX Regulations

A. Introduction

1. What is the purpose of the Title IX Grievance Policy?

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S.

Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- a. Defines the meaning of "sexual harassment" (including forms of sex-based violence)
- b. Addresses how this institution must respond to reports of misconduct falling within that definition of sexual harassment, and
- c. Mandates a grievance process that this institution must follow to comply with the law in these specific covered cases before issuing a disciplinary outcome against a person accused of sexual harassment.

See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf>

Based on the Final Rule, Vassar College will implement the following Title IX Grievance Policy, effective August 14, 2020.

2. How does the Title IX Grievance Policy impact other campus disciplinary policies?

Vassar College remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

In recent years, "Title IX" cases have become a short-hand for any campus disciplinary process involving sex-based discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, Vassar College must narrow both the geographic scope of its authority to act under Title IX and the types of "sexual harassment" that it must subject to its Title IX investigation and adjudication process. Only incidents falling within the Final Rule's definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy defined below.

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, the institution retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the College Regulations through a separate grievance proceeding. <https://deanofthecollege.vassar.edu/documents/college-regulations/>.

The elements established in the Title IX Grievance Policy under the Final Rule have no effect and are not transferable to any other policy of the College for any violation of the Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of the College and may not be cited for or against any right or aspect of any other policy or process.

3. How does the Title IX Grievance Policy impact the handling of complaints?

Our existing Title IX office and reporting structure remains in place. What has changed is the way our Title IX office will handle different types of reports arising from sexual misconduct, as detailed in full throughout Section 2.

B. The Title IX Grievance Policy General Rules of Application

1. Effective Date

The Title IX Grievance Policy will become effective on August 14, 2020, and will only apply to sexual harassment alleged to have occurred on or after August 14, 2020. Incidents of sexual harassment alleged to have occurred before August 14, 2020, will be investigated and adjudicated according to the process in place at the time the incident allegedly occurred.¹

2. Revocation by Operation of Law

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated under the pre-existing Sexual Misconduct Policy.

¹ According to the Department of Education Office for Civil Rights Blog Post of August 5, 2020, “the Rule does not apply to schools’ responses to sexual harassment that allegedly occurred prior to August 14, 2020. The Department will only enforce the Rule as to sexual harassment that allegedly occurred on or after August 14, 2020. With respect to sexual harassment that allegedly occurred prior to August 14, 2020, OCR will judge the school’s Title IX compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sexual harassment occurred. In other words, the Rule governs how schools must respond to sexual harassment that allegedly occurs on or after August 14, 2020.”

3. Non-Discrimination in Application

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

C. Definitions

1. Covered Sexual Harassment

For the purposes of this Title IX Grievance Policy, "covered sexual harassment" includes any conduct on the basis of sex that satisfies one or more of the following:

- a. An employee **conditioning educational benefits** on participation in unwelcome sexual conduct (i.e., **quid pro quo**);
- b. **Unwelcome conduct** that a reasonable person would determine is **so severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the College's education program or activity;
- c. **Sexual assault** (as defined in the Clery Act as rape, fondling, incest, statutory rape), which includes any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent;
 - i. **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.
 - ii. **Fondling** is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
 - iii. **Incest** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - iv. **Statutory Rape** is sexual intercourse with a person who is under the statutory age of consent. The age of consent in New York is 17, but this varies by state.
- d. **Dating violence** (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction

between the persons involved in the relationship.

- i. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - ii. Dating violence does not include acts covered under the definition of domestic violence.
- e. Domestic violence** (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York State domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New York.
- i. Please note that in order for an alleged Domestic Violence incident to be investigated under the policy, the relationship between the Complainant and Respondent must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have a relationship or status as described above.
- f. Stalking** (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress. For the purposes of this definition:
- i. **Course of conduct** means two or more acts, including, but not limited to, acts in which the 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.
 - ii. **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the Complainant.
 - iii. **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
 - iv. **Stalking** as defined above may not always be "on the basis of sex" (for example when an individual stalks an athlete due to celebrity worship rather than sex), but when stalking is "on the basis of sex" (for example, when the stalker desires to date the victim) stalking constitutes "sexual harassment" for purposes of this policy. Stalking that does not constitute sexual harassment because it is not "on the basis of sex" may be addressed under other applicable College policies.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the Vassar College Regulations.

- g. Affirmative Consent** for the purposes of this Title IX Grievance Policy, “affirmative consent” is knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.
- i. **Consent** to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent may be initially given but withdrawn at any time.
 - ii. **Consent** cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity.
 - iii. **Consent** cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. When consent is withdrawn or can no longer be given, sexual activity must stop.
 - iv. In order to give effective **consent**, one must be of legal age; New York State defines 17 years as of legal age.

See Vassar College Regulations: <https://deanofthecollege.vassar.edu/documents/college-regulations/VassarCollegeRegulations.pdf>
2. **Education Program or Activity** for the purposes of this Title IX Grievance Policy, Vassar’s “education program or activity” includes:
- a. Any on-campus premises;
 - b. Any off-campus premises that Vassar has substantial control over. This includes buildings or property owned or controlled by a recognized student organization; and/or
 - c. Any activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Vassar’s programs and activities over which Vassar College has substantial control.
3. **Formal Complaint** for the purposes of this Title IX Grievance Policy, means a document including an electronic submission filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within Vassar’s education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

4. **Complainant** for the purposes of this Title IX Grievance Policy, “Complainant” means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this policy.
5. **Relevant Evidence and Questions** “Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true. “Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:
 - a. Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless, or
 - b. They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - c. They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. §106.45(6)(i), or
 - d. Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege. For example, legally-recognized privileges include attorney-client privilege, and
 - e. Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent. 85Fed.Reg.30026,30294 (May 19, 2020).
6. **Respondent** for the purposes of this Title IX Grievance policy, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.
7. **Privacy vs. Confidentiality** Consistent with the Vassar College Regulations, references made to confidentiality refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to privacy mean Vassar’s offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. Vassar will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.
8. **Disability Accommodations** This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point

before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

D. Making a Report Regarding Covered Sexual Harassment to the College

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Belinda Guthrie,

Assistant Vice President for Institutional Equity & Title IX Coordinator
Vassar College, Box 645
124 Raymond Avenue
Poughkeepsie, New York 12604-0645
Phone: (845) 437-7924
titleIX@vassar.edu

Online Report: https://cm.maxient.com/reportingform.php?VassarCollege&layout_id=1

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

1. Confidential and Private Reporting

- a. The following Officials will provide *privacy*, but not confidentiality, upon receiving a report of conduct prohibited under this policy:
 - i. Student Fellows & House Student Advisors (HSAs)
 - ii. Director of Health Promotion & Education
 - iii. Director of Case Management
 - iv. Support, Advocacy, & Violence Prevention (SAVP) Director and Program Coordinator; (845) 437-7863
 - v. Support, Advocacy, & Violence Prevention (SAVP) Advocates, (845) 437-7333 and ask for an SAVP Advocate