Vermont Studio Center – Sexual Misconduct Policy

I. Introduction

The Vermont Studio Center is committed to providing an environment that is safe and secure for all residents, staff, and others who participate in its programs. Sexual misconduct (including sexual assault), domestic and dating violence, stalking, and related retaliation, as defined by this policy, are strictly prohibited. Vermont Studio Center will take reasonable and appropriate action to respond to sexual misconduct (including sexual assault), domestic and dating violence and misconduct, stalking, and related retaliation where such conduct impacts or has the potential to impact the residential or employment environment of any member of the community. Such action could include discipline for employees such as counseling, written reprimands, or termination of employment, or discipline for residents such as probationary status, suspension, or expulsion from any or all programs in which the resident is enrolled or participating without a refund. It could also entail non-disciplinary measures such as no contact orders, training, and referring individuals to support services or law enforcement, as appropriate.

This policy applies to all residents, staff, and others who participate in Vermont Studio Center programs.

Vermont Studio Center’s process to address cases of alleged sexual misconduct, domestic and dating violence or misconduct, stalking and related retaliation considers the complainant’s rights, the respondent’s rights, the community’s safety, applicable laws and Vermont Studio Center policies. It seeks to protect all parties’ privacy to the extent practical, while balancing the need to comply with applicable law, maintain safety, and provide a safe and nondiscriminatory environment for all residents, staff, and others who participate in Vermont Studio Center Programs. Finally, it seeks to hold all individuals found to have violated Vermont Studio Center’s policies accountable for their actions and provide appropriate remedies to address the effects of sexual misconduct, domestic or dating violence or misconduct, stalking and/or related retaliation on the complainant and others.

All Vermont Studio Center employees shall conduct their proceedings in the spirit of these principles but exceptional circumstances may dictate variation from these procedures if necessary to preserve fundamental fairness or ensure community safety.

II. Definitions

A. Sexual Misconduct

Sexual misconduct violates the rights of others, and demonstrates flagrant disregard for the principles of this community. Vermont Studio Center seeks to prevent all forms of sexual misconduct. Use of alcohol or other drugs does not minimize or excuse a person’s responsibility for conduct that violates this policy.
Sexual misconduct may include sexual assault, sexual harassment, or both. The definitions below are intended to provide clarity, and do not suggest that one behavior is more severe or violating than the other.

**Sexual Assault**

Sexual assault may be either rape, fondling without consent, or statutory rape, as defined 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.

- **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 Harassment**

Harassment may include so-called quid pro quo sexual harassment, meaning unwelcome sexual advances, requests for sexual favors, and other verbal, written, visual or physical conduct of a sexual nature when:

a. submission to that conduct is made either explicitly or implicitly a term or condition of employment or residency status; or

b. submission to or rejection of such conduct is used as a component of or as the basis for employment decisions (such as wages, evaluation, advancement, assigned duties, or shifts) or residency-related or program-related decisions affecting an individual.

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

- touching or grabbing a sexual part of a resident’s or employee’s body;
- touching or grabbing any part of a resident’s or employee’s body after that person has indicated, or it is known or reasonably should be known, that such physical contact was unwelcome;
- continuing to ask a resident or employee to socialize on or off-duty when that person has indicated s/he is not interested;
• displaying or transmitting sexually suggestive pictures, objects, cartoons, or posters if it is known or reasonably should be known that the behavior is unwelcome;
• continuing to write sexually suggestive notes or letters if it is known or reasonably 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 reasonably 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 reasonably should be known that the person does not welcome such behavior;
• derogatory or provoking remarks about or relating to a resident’s or employee’s sex or sexual orientation;
• harassing acts or behavior directed against a person on the basis of his or her sex or sexual orientation.

Note – Vermont Studio Center employees should also refer to the Center’s separate policy prohibiting harassment in the workplace.

Consent

Consent means words or actions, freely and actively given by each party, which a reasonable person would interpret as a willingness to participate in agreed-upon sexual conduct.

Consent is not present or valid when a person is incapable of giving consent because they are incapacitated by drugs or alcohol; because a language or cultural barrier prevents an individual from communicating or being understood effectively; when intimidation, threats, physical force, or other actions that a reasonable person in that person’s circumstances would consider coercive are applied; when that person is placed in fear that any person will suffer imminent bodily injury; when a physical or mental condition is present such that the person cannot knowingly or voluntarily give consent; or when a person is under the age of 16. Silence, non-communication, or a lack of resistance does not necessarily imply consent. Previous relationships or consent do not imply consent to future sexual conduct. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent can be rescinded at any time.

Neither language or cultural barriers, nor the use of alcohol or drugs minimizes or excuses a person’s responsibility for complying with this policy, or that person’s responsibility for determining whether another is capable of giving consent, as described above.

B. Domestic Violence

Domestic violence is violence committed—

(a) By a current or former spouse or intimate partner of the person subjected to the violence;
(b) By a person with whom the person subjected to the violence shares a child in common;
(c) By a person who is cohabitating with, or has cohabitated with, the person subjected to the violence as a spouse or intimate partner;

(d) 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, or

(e) 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 or have been in a domestic relationship as defined here.

For the purposes of this definition, “violence” means conduct that involves the use or threatened use of physical force against a person, or creates a reasonable belief that physical force may be used against a person in the course of the conduct.

C. Dating Violence

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.

For the purposes of this definition, “violence” means conduct that involves the use or threatened use of physical force against a person, or creates a reasonable belief that physical force may be used against a person in the course of the conduct.

Dating violence does not include acts covered under the definition of domestic violence stated above.

D. Stalking

“Stalking” is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(a) Fear for the person’s safety or the safety of others; or

(b) Suffer substantial emotional distress.

For the purposes of this definition—
(a) 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.

(b) Reasonable person means a reasonable person under similar circumstances and with similar identities to the person subjected to the stalking.

(c) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

E. Complainant

A complainant is usually an individual making a complaint of a violation of Vermont Studio Center policies. In some cases (such as cases in which a person involved in an incident of alleged sexual misconduct, domestic or dating violence, stalking, or related retaliation does not wish to participate in the process but Vermont Studio Center decides that the alleged misconduct needs to be investigated), Vermont Studio Center may pursue an investigation under this policy without a designated complainant.

F. Respondent

A respondent is an individual whose alleged conduct is being investigated to determine if it is in violation of Vermont Studio Center’s Policies.

III. Confidentiality

Vermont Studio Center encourages individuals to report incidents of sexual misconduct, domestic or dating violence, stalking, and related retaliation so it can respond appropriately. In order to ensure fairness to both complainants and respondents, strict confidentiality cannot be guaranteed. However, in all cases, Vermont Studio will handle information in a sensitive manner and will endeavor to protect the privacy of individuals to the extent it can do so while advancing the investigation, as well as balancing the needs of the parties involved and the safety of the entire community.

If an individual discloses an incident of sexual assault, domestic or dating violence, stalking and/or related retaliation but wishes to maintain confidentiality (i.e. requests that no investigation into a particular incident be conducted or further action taken), Vermont Studio Center will make every effort to respect this request and will evaluate the request against its responsibility to provide a safe, non-discriminatory environment for all residents and staff, including the individual who reported the incident. Accordingly, there may be times when Vermont Studio Center may not be able to honor the individual’s request for confidentiality.

In certain circumstances, Vermont Studio Center may need to report an incident to law enforcement authorities. Such circumstances include but are not limited to incidents that warrant
the undertaking of safety and security measures for the protection of the individual and/or the community, or situations in which there is clear and imminent danger and/or a weapon may be involved. Complainants may choose to notify authorities personally and directly with or without Vermont Studio Center’s assistance, or may choose not to notify such authorities personally.

IV. Retaliati**on**

Retaliating directly or indirectly against a person because they have made a report or complaint with Vermont Studio Center, and/or an outside agency, or because they participated in an investigation is prohibited. Retaliation includes but is not limited to creating a hostile or negative environment for the person, pressuring the person to drop or not support the complaint or to provide false or misleading information, engaging in conduct that may reasonably be perceived to affect adversely that person’s living or work environment, threatening, intimidating or coercing the person, or otherwise discriminating against any person for exercising their rights or responsibilities under this policy. Depending on the circumstances, retaliation may also be unlawful. Retaliation under this policy may be found whether or not the underlying complaint is ultimately found to have merit. Complaints of retaliation should be reported under the procedures described below.

V. Emergencies

If the safety of any individual is an immediate concern, involved parties or observers should contact local law enforcement by dialing 911.

VI. Interim Measures

After Vermont Studio Center receives a complaint it may implement interim measures while it conducts an investigation. Interim measures may apply to the complainant, respondent, and/or third parties where appropriate and may include, but are not limited to: mutual orders of no contact, temporary suspension from program activities, or temporary ban from campus.

Law Enforcement

In addition to (or instead of) using Vermont Studio Center’s processes and resources, any resident, employee, or other individual participating in a Vermont Studio Center program who wishes to report a complaint of sexual misconduct, domestic or dating violence, or stalking under this policy may also pursue criminal charges with local, state, or federal law enforcement agencies. Individuals have the option to notify such agencies with or without assistance or involvement from Vermont Studio Center.

VII. Reporting Requirements for Staff

Any staff member who learns of an incident of alleged sexual misconduct, domestic or dating violence or misconduct, stalking or related retaliation involving a resident or other individual participating in a Vermont Studio Center program must report this information to Christy Slate, Accounting and HR Assistant, 635-2727 x229; christy@vermontstudiocenter.org.
VIII. Complaint Investigation and Resolution Procedures

All Vermont Studio Center residents, staff members, and other individuals participating in a Vermont Studio Center program have the right to pursue sexual misconduct, domestic or dating violence, and stalking complaints beyond Vermont Studio Center, and are encouraged to use local, state, or federal enforcement agencies, including local police, as applicable, regardless of whether they choose to file a complaint on campus.

Vermont Studio Center will not wait for the conclusion of a criminal investigation or proceeding to begin its own investigation and resolve complaints under this policy. Vermont Studio Center will, however, comply with valid law enforcement requests in a criminal investigation. As such, Vermont Studio Center may need to delay temporarily an investigation under this policy while law enforcement is in the process of gathering evidence. Once law enforcement has completed its gathering of evidence, Vermont Studio Center will promptly resume and complete its investigation. Vermont Studio Center may also take interim measures to promote the safety and well-being of the complainant and the community while law enforcement is gathering evidence.

A complaint may be made verbally (in person or by phone) or in writing (via mail or email) and will ultimately need to be recorded in written form by the complainant or a member of the staff involved with the investigation.

A complaint must be made to Christy Slate, Accounting and HR Assistant, 635-2727 x229; christy@vermontstudiocenter.org.

Once a complaint is made, a designated investigator will evaluate whether the conduct complained of, if true, would constitute sexual misconduct, domestic and dating violence, stalking, and/or related retaliation prohibited under this policy. If so, an investigator will begin an investigation into the conduct. The nature and scope of the investigation will depend on the complaint. In all cases, the investigator will contact both the complainant and respondent and interview them. The investigator may also interview other individuals who may have been involved in the alleged prohibited conduct or are alleged to have witnessed it or events related to it. Decisions regarding whom to interview beyond the complainant and respondent, if anyone, will be made in the sole discretion of the investigator.

If an individual wishes to complain about a person designated to receive complaints or an investigator, that person should make the complaint to Ellen McCulloch-Lovell, Interim Director: 635-2727 x231; ellen@vermontstudiocenter.org

Vermont Studio Center may choose to discontinue an investigation at any time. The complainant may request that an investigation be discontinued at any time. Vermont Studio Center will attempt to honor the wishes of the complainant. However, to accommodate cases where compelling evidence suggests significant individual or community safety concerns, the decision to discontinue an investigation is within the sole discretion of Vermont Studio Center.

Both the respondent and complainant may request an informal resolution at any point after a complaint is made. Vermont Studio Center retains full discretion to determine whether an
informal resolution such as a mediation is appropriate under the circumstances. If the respondent acknowledges doing harm to the complainant and accepts responsibility for doing harm to the complainant, and/or Vermont Studio Center determines that the matter is otherwise appropriate for informal resolution, the investigator will present to the respondent the complainant’s complaint and desired resolution. Either the complainant or respondent may opt out of this procedure at any point, and Vermont Studio Center may determine at any point that the matter is not appropriate for informal resolution. The investigator may elect to offer other or additional alternative dispute resolution procedures to the parties such as a third-party mediator in the investigator’s discretion.

In the event no informal resolution is reached and after Vermont Studio Center completes its investigation, the investigator will determine whether the respondent violated the policy. If so, the investigator will determine the appropriate sanction. Potential sanctions include: discipline for employees such as counseling, written reprimands, or termination of employment, or discipline for residents such as probationary status, suspension, or expulsion from any or all programs in which the resident is enrolled or participating without a refund. It could also entail non-disciplinary measures such as no contact orders, training, and referring individuals to support services or law enforcement, as appropriate.

IX. Admission of Responsibility

If at any point a respondent chooses to accept responsibility for violating all policies under investigation, the investigator will issue an appropriate sanction and/or take other action that is reasonably calculated to address the prohibited conduct and prevent its recurrence.

X. Community & Emergency Resources

Complainants and respondents may want to take advantage of the following community resources:

Lamoille County Sheriff’s Department
162 Commonwealth Ave.
Hyde Park, VT 05655
(802) 888-3502 (802) 888-3502

Copley Hospital Emergency Room
528 Washington Hwy.
Morrisville, VT 05661
(802) 888-8888

Clarina Howard Nichols Center
(domestic and sexual violence)
Morrisville, VT, (802) 888-5256, www.clarina.org

Vermont 211
Dial 2-1-1 for information and referrals to available VT services (24/7)
www.vermont211.org