

FLATHEAD VALLEY COMMUNITY COLLEGE

Policy Manual

CHAPTER I - DOCTRINE

SECTION 60: DISCRIMINATION, HARASSMENT, SEXUAL MISCONDUCT, STALKING, AND RETALIATION POLICY*

STATEMENT OF INSTITUTIONAL COMMITMENT

Flathead Valley Community College (FVCC or College) recognizes the importance of the personal dignity and worth of every member of its community and it is therefore committed to providing an environment that is free from harassment and discrimination on the basis of race, color, religion, creed, political ideas, sex, gender identity, sexual orientation, age, marital status, physical or mental disability, national origin, or ancestry. Acts or allegations of discrimination, harassment, sexual misconduct, domestic violence, stalking, and retaliation will be addressed consistent with this policy and Title IX of the Education Amendments of 1972.

Members of the FVCC community understand that the law does not just prohibit discrimination and harassment of employees by employers. The law also prohibits discrimination and harassment between members of the FVCC community more generally: for example, between an instructor and a student, between two students, or between a student and an applicant or campus guest. The policy applies in all College programs and activities, including, but not limited to, discrimination and harassment in athletics, extracurricular, college sponsored activities, instruction, grading, campus housing, and FVCC employment. In addition, the law prohibits retaliation against an individual for opposing any practices forbidden under this policy, for bringing a complaint of discrimination or harassment, for assisting someone with such a complaint, for attempting to stop such discrimination or harassment, or for participating in any manner in an investigation or resolution of a complaint of discrimination or harassment. It is central to the values of this College that any individual who believes they may have been the target of unlawful discrimination or harassment feel free to report their concerns for appropriate investigation and response, without fear of retaliation or retribution.

All reports or any concerns about conduct that may violate this policy should be reported to the [Title IX Coordinator](#). Contact information is available online on the [Title IX and Sexual Misconduct webpage](#).

REPORTING OF DISCRIMINATION, HARASSMENT AND/OR SEXUAL MISCONDUCT

To enable FVCC to respond proactively and effectively to stop instances of discrimination, harassment and sexual misconduct involving members of the FVCC community, any person

should promptly report information they have about discrimination, harassment and/or sexual misconduct to the Title IX Coordinator. Employees, such as licensed health-care professionals who have a statutory privilege under Montana law, are exempt from this reporting requirement to the extent that the information communicated to them regarding discrimination, harassment or misconduct is privileged as a matter of law.

Upon receiving a report or notice of discrimination, harassment, or sexual misconduct, the Title IX Coordinator, or designee will evaluate the information within a reasonable timeframe and determine what further action should be taken, following the procedures described in the [Discrimination, Harassment, Sexual Misconduct, Stalking and Retaliation Grievance Procedures](#). The Title IX Coordinator will take steps, either directly or through a reporter, to provide information about FVCC's Discrimination, Harassment, Sexual Misconduct, Stalking and Retaliation Grievance Procedures, as well as available health and advocacy resources and options for criminal reporting.

Complaints or notice of discrimination, harassment, and/or retaliation should be made using any of the following options:

- 1) File a complaint with, or give verbal notice to, the [Title IX Coordinator](#). Such a report may be made at any time (including during non-business hours) by using the telephone number 406-756-3812, or email address titleix@fvcc.edu, or by mail to Title IX Coordinator, 777 Grandview Dr. Kalispell MT 59901,
- 2) Report online, using the [reporting form](#).

Anonymous reports are accepted and can give rise to a need to investigate. The College tries to provide supportive measures to all Complainants, which may not be possible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as the College respects Complainant requests to dismiss complaints, unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the College to discuss and/or provide supportive measures.

A formal complaint is a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the College investigate the allegation(s). As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by FVCC) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint. If notice is submitted in a method that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure they are aware of the correct filing procedure.

CONFIDENTIALITY

FVCC will maintain confidentiality of the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sex discrimination, any respondent, and any witness, except as may be

permitted by FERPA statute or as required by law, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

DISCRIMINATORY HARASSMENT

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. FVCC's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under FVCC policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of FVCC policy, though supportive measures will be offered to those impacted.

A. Discriminatory Harassment

Discriminatory harassment constitutes a form of discrimination that is prohibited by FVCC policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

FVCC does not tolerate discriminatory harassment of any employee, student, visitor, or guest. FVCC will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment."

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.¹ This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive *and* objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, FVCC may also impose sanctions on the Respondent through application of the [Discrimination, Harassment, Sexual Misconduct, Stalking and Retaliation Grievance Procedures](#).

B. Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Montana regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

FVCC has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.

Acts of sexual harassment may be committed by any person upon any other person, regardless of

the sex, sexual orientation, and/or gender identity of those involved. Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

- 1) Quid Pro Quo: an employee of the recipient, conditions the provision of an aid, benefit, or service of the recipient, on an individual's participation in unwelcome sexual conduct; and/or
- 2) Sexual Harassment: unwelcome conduct, determined by a reasonable person, to be so severe, pervasive, and, objectively offensive, that it effectively denies a person equal access to the FVCC's education program or activity.
- 3) Sexual assault, defined as:
 - a) Sex Offenses, Forcible: Any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
 - b) Forcible Rape: 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 Complainant.
 - c) Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age² or because of temporary or permanent mental or physical incapacity.
 - d) Sexual Assault with an Object: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - e) Forcible Fondling: The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - f) Sex Offenses, Non-forcible:
 - i) Incest: Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Montana law.
 - ii) Statutory Rape: Non-forcible sexual intercourse, with a person who is under the statutory age of consent of sixteen.

- 4) Dating Violence, defined as: violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant'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.
 - a. For the purposes of this definition—Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

- 5) Domestic Violence, defined as: violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Montana or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Montana.
 - a. To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- 6) Stalking, defined as: engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a reasonable person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress.
 - a. For the purposes of this definition— Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent 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 Complainant. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

C. Force, Coercion, Consent, and Incapacitation

As used in the offenses above, the following definitions and understandings apply:

1. **Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.").
 - a. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

2. **Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
3. **Consent is:** knowing, and voluntary, and clear permission by word or action to engage in sexual activity.
 - a. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.
 - b. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.
 - c. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.
4. **Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent. It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.
 - a. Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).
 - b. Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.
 - c. This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

RETALIATION

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. FVCC is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for the College or any member of FVCC's community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report of that nature, for the purpose of interfering with any Title IX right or privilege, constitutes retaliation. The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

FALSE REPORTING

Intentionally submitting a deliberately false report or providing false information is prohibited and is grounds for disciplinary action.

JURISDICTION

This policy applies to conduct that takes place in the education program and activities of FVCC, on the campus or on property owned or controlled by FVCC, or at College-sponsored events. The Respondent must be affiliated with the FVCC's community in order for its policies to apply.

This policy can be applicable to the effects of off-campus misconduct that effectively deprives someone of access to FVCC's educational programs. The College may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial college interest.

Regardless of where the conduct occurred, the college will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial college interest may include:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of the college.

This may include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the college's education program and activities or use FVCC networks, technology, or equipment.

While FVCC may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the Title IX Coordinator, the College will engage in a variety of means to address and mitigate the effects.

Members of the College community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via Snaps or other social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the FVCC community.

Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the college's control (e.g., not on FVCC networks, websites, or between FVCC email accounts) will be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the college when such speech is made when such speech is shown to cause substantial in-program disruption.

AMNESTY FOR DRUG OR ALCOHOL POSSESSION AND CONSUMPTION

The College strongly encourages students to report instances of sex-based discrimination, sexual harassment, and sexual misconduct involving students or staff. Therefore, students who provide information in good faith about sex-based discrimination, sexual harassment or sexual misconduct involving students or staff will not be disciplined by the College for any violation of FVCC's drug or alcohol possession or consumption policies in which they might have engaged in connection with the reported incident.

CONSENSUAL RELATIONSHIPS

There are inherent risks in any personal or sexual relationship between individuals in unequal positions (such as faculty and student, supervisor and employee). These relationships may be less consensual than perceived by the person whose position confers power. A consensual romantic relationship in which one party has a supervisory, evaluative, or probable evaluative

responsibilities for the other is a conflict of interest (COI), and the party in the evaluative or supervisory position must promptly disclose the relationship to his or her supervisor and to the Executive Director of Human Resources. The supervisor and the Executive Director of Human Resources shall take steps to ensure that the situation is appropriately managed. This could result in the removal of the employee or student from the supervisory or evaluative responsibilities by their romantic partner. An employee's failure to promptly disclose a conflict of interest may result in discipline.

SANCTIONS

Violations of this policy will be addressed through the [Discrimination, Harassment, Sexual Misconduct, Stalking and Retaliation Grievance Procedures](#). Consequences for violating this policy will depend upon the facts and circumstances of each particular situation.

The severity of sanctions or corrective action will depend on the frequency and severity of the offense and any history of past discriminatory, harassing or retaliatory conduct. A finding of discrimination, harassment that creates a hostile environment or results in a tangible employment or educational action, or sexual misconduct may be cause for disciplinary action up to and including the discharge of employees and the expulsion of students, in accordance with applicable FVCC policies, procedures and collective bargaining agreements. The College may also take appropriate action if it does not find discrimination or harassment that creates a hostile environment or results in a tangible employment or educational action, but (a) the College found that the respondent engaged in disruptive behavior or (b) to prevent the creation of a hostile environment.