

# FLATHEAD VALLEY COMMUNITY COLLEGE

## Policy Manual

### CHAPTER I - DOCTRINE

#### SECTION 60: DISCRIMINATION & SEXUAL HARASSMENT POLICY\*

Approved: October 27, 2014

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#### I. STATEMENT OF INSTITUTIONAL COMMITMENT

Flathead Valley Community College FVCC recognizes the importance of the personal dignity and worth of every member of its community and is therefore committed to providing an environment that is free from harassment and discrimination based upon race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation. Acts of discrimination, harassment, sexual misconduct, domestic violence, stalking, and retaliation will be addressed consistent with this policy.

#### II. DISABILITY DISCRIMINATION

FVCC is committed to preventing disability-based discrimination against persons with disabilities and making reasonable accommodation for any known disability that interferes with an applicant's ability to compete in a selection process, an employee's ability to perform the essential functions of a job, a student's ability to meet the essential requirements of an academic program, or a person's ability to benefit from a FVCC service or participate in a FVCC sponsored or hosted event. Applicants, employees, students or participants with a disability seeking an accommodation should contact the appropriate person identified below:

Students or student applicants: Disabilities Coordinator, Learning Resource Center 129 or at: (406)756-3881

Employees, employment applicants or participants: Executive Director, Human Resources, Blake Hall 152 or at: (406)756-3841.

#### III. RETALIATION PROHIBITED

Retaliation against an individual for taking any of the actions in support of this policy as defined in Section VII is prohibited. It is central to the values of FVCC 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.

#### IV. OFF CAMPUS CONDUCT

Conduct that occurs off campus can be the subject of a complaint or report and will be evaluated to determine whether it violates this policy, e.g., if off-campus harassment has continuing effects that create a hostile environment on campus. Allegations of off-campus sexual misconduct are of particular concern and should be brought to FVCC's attention.

#### V. APPLICABILITY

This policy prohibits discrimination and harassment of employees by the employer and 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 FVCC programs and activities, including, but not limited to, discrimination in instruction, grading, FVCC housing, and FVCC employment.

#### VI. REPORTING VIOLATIONS OF THIS POLICY

All reports or any concerns about conduct that may violate this policy and retaliation should be reported to the Responsible Official. The FVCC Responsible Official is:

Title IX Coordinator, Vice President of Instruction & Student Services  
Blake Hall 137 Phone: (406) 756-3894

Reports may be made to any Title IX liaisons. A list of the Title IX Coordinator's liaisons is available from the Executive Assistant to the Vice President of Instruction and Student Services, the Information Desk in Blake Hall and/or in each building on campus.

Guidance concerning means and methods of reporting, criminal reporting, confidentiality and anonymous reporting are found in the Discrimination Grievance Procedure.

Upon receiving a report, the Title IX Coordinator will follow the procedures described in the Discrimination Grievance Procedure available at the college website under student policies and employment policies.

Conduct of concern or harassment shall be reported promptly. The Title IX Coordinator can take proactive steps to prevent harassment from continuing and perhaps escalating and to protect or otherwise assist the person harassed. For example, in the case of a student experiencing harassment, FVCC can arrange for no-contact orders, counseling and changes in class schedules, living arrangements, class requirements, and testing schedules as needed. The Title IX Coordinator can also provide expertise and advice to help identify conduct that might be a warning sign of or constitute sexual harassment or hostile environment harassment prohibited by this policy and address concerns appropriately.

#### A. Mandatory Employee Reporting of Sexual Harassment and Sexual Misconduct Involving Students.

To enable FVCC to respond effectively and to stop instances of sexual harassment and sexual misconduct involving students at FVCC proactively, all FVCC employees must promptly (normally within 24 hours) report information they have about alleged or possible sexual harassment and sexual misconduct involving students to the Title IX Coordinator. Employees, such as licensed health-care professionals and victim advocates who have a statutory privilege under Montana law, are exempt from these reporting requirements.

Upon receiving a report of alleged or possible sexual harassment, or sexual misconduct, the Title IX Coordinator will evaluate the information and determine what further action should be taken, following the procedures described in the Discrimination Grievance Procedures. The Title IX Coordinator will take steps, either directly or through a reporting employee, to provide information about the FVCC's Discrimination Grievance Procedures, as well as available health and advocacy resources and options for criminal reporting.

### VII. DISCRIMINATORY CONDUCT DEFINED

A. Discrimination is conduct that is based upon an individual's race, color, religion, , creed, political ideas, sex, gender identity, sexual orientation, age, marital status, veteran's status, service in the uniformed services as defined by state and federal law, physical or mental disability, national origin or ancestry except as authorized by law that excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in a FVCC program. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities.

B. Harassment is covered under this policy if it is based upon an individual's race, color, religion, creed, political ideas, sex, gender identity, sexual orientation, age, marital status, veteran's status, service in the uniformed services as defined by state and federal law, physical or mental disability, national origin or ancestry except as authorized by law. Harassing conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones, social media, or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Sex-based harassment includes sexual harassment, which is further defined below, and non-sexual harassment based on stereotypical notions of what is female/feminine v. male/masculine or a failure to conform to those gender stereotypes.

C. Sexual Harassment can include unwelcome: sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, including sexual

misconduct. Sexual harassment, including sexual misconduct, can involve persons of the same or opposite sex.

Consistent with the law, this policy prohibits two types of sexual harassment:

1. Tangible Employment or Educational Action

This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a FVCC program is conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a FVCC program. Generally, this type of sexual harassment will involve agents or employees with some authority from the FVCC.

2. Hostile Environment [as defined in Section D below]

D. Hostile Environment Harassment. A *Hostile Environment* based on race, color, religion, creed, political ideas, sex, gender identity, sexual orientation, age, marital status, veteran's status, service in the uniformed services as defined by state and federal law, physical or mental disability, national origin or ancestry except as authorized by law exists when harassment:

- is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to deny or limit a person's ability to participate in or benefit from the FVCC's programs, services, opportunities, or activities ; or
- when such conduct has the purpose or effect of unreasonably interfering with an individual's employment or academic performance.

A hostile environment can be created by anyone involved in a FVCC program or activity (e.g., administrators, faculty members, students, and even campus guests). Mere offensiveness is not enough to create a hostile environment. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a serious incident, such as a sexual assault, even if isolated, can be sufficient.

In determining whether harassment creates a hostile environment, the harassment will be considered not only from the perspective of the individual who feels harassed, but also from the perspective of a reasonable person in a similar situation. Also, the following factors will be considered:

- The degree to which the conduct affected one or more students' education or individual's employment;
- The nature, scope, frequency, duration, and location of incident or incidents;
- The identity, number, and relationships of persons involved;
- The perspective of a "reasonable person" in the same situation as the person harassed; and

- The nature of higher education.

E. Sexual Misconduct includes sexual assault, inducing incapacitation for sexual purposes, sexual exploitation, and dating violence.<sup>1</sup>

1. *Sexual Assault* means an actual or attempted sexual contact with another person without that person's consent. Sexual assault includes, but is not limited to:
  - Involvement in any sexual contact when the victim is unable to consent.
  - Intentional and unwelcome contact with the breasts, buttock, groin or genitals or touching another with any of these body parts or coercing or forcing or attempting to coerce or force another to touch the perpetrator or themselves with or on any of these body parts.
  - Any other intentional bodily contact in a sexual manner, including contact by a penis, tongue or finger, and oral copulation (mouth to genital contact or genital to mouth contact).
  - Sexual intercourse without consent, including acts commonly referred to as "rape."
2. *Consent* is an understandable exchange of affirmative words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. Consent must be informed, freely and actively given. If coercion, intimidation, threats, or physical force are used there is no consent.

There is no consent if a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact of, or make a reasonable judgment as to the nature or harmfulness of the conduct, or extent of the sexual situation. This includes impairment or incapacitation due to mental disability, alcohol or drug consumption, or being asleep or unconscious. There is no consent when there is force, expressed or implied, or use of duress or deception upon the victim. Silence does not necessarily constitute consent. Past consent to sexual activities does not imply ongoing future consent. Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent. Effective consent may not be given by minors less than 16 years old.

3. *Inducing incapacitation for sexual purposes* includes using drugs, alcohol, or other means with the intent to affect or having an actual effect on the ability of an individual to consent or refuse to consent (as "consent" is defined in this policy) to sexual contact.
4. *Sexual Exploitation/coercion* occurs when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of

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<sup>1</sup> While sexual assault and other sexual misconduct is often considered a subset of "sexual harassment," for purposes of this policy and the consequences that may result from violating this policy, the terms are distinct.

the preceding sexual misconduct offenses. Examples of sexual exploitation include:

- Prostituting another person;
- Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
- Non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
- Going beyond the bounds of consent (such as letting friends hide in the closet to watch you having consensual sex);
- Engaging in non-consensual voyeurism;
- Knowingly transmitting a sexually transmitted disease, such as HIV to another;
- Exposing one's genitals in non-consensual circumstances, or inducing another to expose his or her genitals; and
- Possessing, distributing, viewing or forcing others to view illegal pornography.

5. *Dating Violence* is abuse or violence between, partners or persons in a social relationship of an intimate or romantic nature involving one or more of the following elements:

- Battering that causes bodily injury;
- Emotional abuse creating apprehension of bodily injury or property damage;
- Repeated telephonic, electronic, or other forms of communication -- anonymously or directly -- made with the intent to intimidate, terrify, harass, or threaten.

The existence of such a relationship shall be determined based on consideration of the following factors:

- The length of the relationship;
- The type of relationship; and
- The frequency of interaction.

F. Stalking includes repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device or method that purposely or knowingly causes substantial emotional distress or reasonable fear of bodily injury or death. To the extent applicable as provided in the sections above, allegations of stalking, regardless of whether they are based on discrimination, shall be addressed and considered in accordance with this Policy and the Discrimination Grievance Procedure.

G. Domestic Violence is an act of partner or family member assault (as defined in Section 45-2-206 Montana Code Annotated) A person "commits . . . partner or family member assault if the person

- i. purposely or knowingly causes bodily injury to a partner or family member;
- ii. negligently causes bodily injury to a partner or family member with a weapon; or
- iii. purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.”

“Partners” are spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship. “Family member” means mothers, fathers, children, brothers, sisters, and other past or present family members of a household.

To the extent applicable as provided in the sections above, allegations of domestic violence, regardless of whether they are based on discrimination, shall be addressed and considered in accordance with this Policy and the Discrimination Grievance Procedure.

H. Retaliation is action taken by an accused individual or an action taken by a third party against any person because that person has opposed any practices forbidden under this policy or because that person has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this policy. This includes action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment, or sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual’s complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy.

## VIII. SANCTIONS AND CORRECTIVE ACTION

Violations of this policy will be addressed through the Discrimination Grievance Procedures. Consequences for violating this policy will depend upon the facts and circumstances of each particular situation.

In determining the severity of sanctions or corrective actions, factors such as the frequency and severity of the offense and any history of past discriminatory, harassing or retaliatory conduct are relevant. 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 and procedures and collective bargaining agreements.

## IX. AMNESTY FOR DRUG OR ALCOHOL POSSESSION AND CONSUMPTION VIOLATIONS

The FVCC strongly encourages students to report instances of sex-based discrimination, sexual harassment, and sexual misconduct involving students. Therefore, students who provide information about sex-based discrimination, sexual harassment, sexual misconduct, domestic

violence, or stalking involving students will not be disciplined by the FVCC for any violation of the FVCC's drug or alcohol possession or consumption policies in which they might have engaged in connection with the reported incident.

## X. FREE SPEECH AND ACADEMIC FREEDOM

This policy shall not be construed or applied to restrict academic freedom at the campus of FVCC, nor shall it be construed to restrict constitutionally protected expression, even though such expression may be offensive, unpleasant, or even hateful.

In addressing all complaints and reports under this policy, FVCC will take all permissible actions to ensure the safety of students and employees while complying with free speech requirements for students and employees.<sup>2</sup>

## XVI. EXTERNAL COMPLAINTS

If you are a student or employee and filed a complaint with the Title IX Coordinator and believe FVCC's response was inadequate, or as a student or an employee, you otherwise believe you have been discriminated against by FVCC on the basis of race, color, national origin, sex, including sexual harassment, disability, age, or retaliation, you may file a complaint with the Office for Civil Rights (OCR) of the U.S. Department of Education based in Seattle or the Educational Opportunities Section (EOS) of the Civil Rights Division of the U.S. Justice Department of Justice, and a complaint based on religion with EOS of the U.S. Justice Department. Contact information for the Office for Civil Rights is as follows:

### U.S. Department of Education Office for Civil Rights

Seattle Office

915 Second Avenue, Room 3310

Seattle, WA 98174-1099

[OCR.Seattle@ed.gov](mailto:OCR.Seattle@ed.gov)

Voice: 206-607-1600

Fax: 206-607-1601

TDD: 206-607-1647

As a student or employee, if you filed a complaint with the Title IX Coordinator and believe FVCC's response was inadequate, or you otherwise believe you have been discriminated against by FVCC on the basis of race, color, national origin, sex, including sexual harassment, disability, age, religion, creed, pregnancy, marital status, familial status (housing only), or political beliefs, or retaliation, you may file a complaint with the Montana Human Rights Bureau. Contact Information is as follows:

### Montana Human Rights Commission

1625 11th Ave.

PO Box 1728

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<sup>2</sup> For more information about free speech requirements in the context of sexual harassment complaints, please see U.S. Department of Education, Office for Civil Rights, 2001 Revised Sexual Harassment Guidance at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html> at section XI.



Helena, MT 59624-1728

Voice: 406-444-2884

Toll free: 800-542-0807

<http://erd.dli.mt.gov/human-rights/human-rights-commission/human-rights-commission>

## XVII. DISCRIMINATION, HARASSMENT, AND TITLE IX TRAINING

To educate staff and faculty on the importance of non-discrimination and the prevention of sexual harassment in the work environment and classroom, FVCC requires all employees (faculty, administrators, and staff members) to:

- complete discrimination and harassment prevention training on a biennial basis; and
- complete Title IX training.

New hires, temporary employees and student employees are required to complete training at the discretion of the Title IX Coordinator or Human Resources and/or in conjunction with the department of hire.

Supervisors shall support the employee in providing a reasonable amount of work time for the employee to complete the training program. Training programs shall be pre-approved by the responsible FVCC Officials.

FVCC shall provide ongoing primary prevention, risk reduction, and awareness campaigns concerning sexual misconduct, domestic violence, and stalking for students and employees.

All students will complete mandatory sexual assault awareness and prevention training as required by the federal Campus SaVE Act.

## XVIII. CONSENSUAL RELATIONSHIPS

There are inherent risks in any romantic 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 or 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 FVCC official responsible for COI reporting. The supervisor and the FVCC official responsible for COI management 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.

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\*History: Adopted November 12, 1986; Revised January 8, 1991; Revised February 18, 1992; Revised September 27, 1999; Revised March 22, 2010; Revised October 27, 2014