

FLATHEAD VALLEY COMMUNITY COLLEGE
Policy Manual

CHAPTER I - DOCTRINE

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

Approved: March 20, 2017

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 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.

It is important that 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](#) or to any [Title IX liaisons](#). Contact information is available online at <http://www.fvcc.edu/campus-guide/campus-safety/title-ix/>.

Upon receiving a complaint, the Title IX Coordinator will follow the procedures described in the [Discrimination, Harassment, Sexual Misconduct, Stalking and Retaliation Grievance Procedures](#).

DISCRIMINATORY CONDUCT

- 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, physical or mental disability, national origin, or ancestry except as authorized by law, that excludes an individual from participation in, or denies the individual the benefits of, or treats the individual differently from or otherwise adversely affects a term or condition of an individual's employment, education, campus living environment or participation in a FVCC program or activity. 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, 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.

Harassment violates this policy when it creates a hostile environment, as defined below.

A. Sexual Harassment

Sexual Harassment can include unwelcome: sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, including sexual assault. Sexual harassment, including sexual assault, 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 (*Quid Pro Quo*) occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, campus living environment or participation in a College program or activity 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, student housing, or participation in a College program or activity. Generally, this type of sexual harassment will involve agents or employees with some authority from FVCC.

2. Hostile Environment

Sexual harassment may create a hostile environment as defined below.

B. Hostile Environment Harassment

A hostile environment exists when harassment is based on an individual's race, color, religion, creed, political ideas, sex, gender identity, sexual orientation, age, marital status, physical or mental disability, national origin, or ancestry except as authorized by law, and:

- is sufficiently serious (i.e., severe, pervasive, or persistent) and offensive so as to deny or limit a person's ability to participate in or benefit from 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 College program or activity (e.g., administrators, staff, 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, consideration will be made as to whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive. Also, the following factors will be considered:

1. The degree to which the conduct affected one or more student's education or individual's employment;
2. The nature, scope, frequency, duration, and location of incident or incidents;
3. The identity, number, and relationships of persons involved;
4. The nature of higher education.

C. Sexual Misconduct includes sexual assault, inducing incapacitation for sexual purposes, sexual exploitation, and dating violence.

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:
 - a. Involvement in any sexual contact when it is unwanted or the victim is unable to or unwilling to consent.
 - b. Intentional and unwelcome touching of or coercing, forcing or attempting to coerce or force another to touch a person's intimate parts (defined as genital area, groin, inner thigh, buttocks, or breast). 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).
 - c. Sexual intercourse without consent, including acts commonly referred to as "rape."

Consent is a freely given agreement to the conduct at issue by a competent person. If coercion, intimidation, threats, or physical force are used there is no consent. If a person is mentally or physically incapacitated or impaired so that such person cannot understand

the fact, nature or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to 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 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. Consent may not be given by minors less than 16 years old.

2. *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.
3. *Sexual Exploitation/Coercion* occurs when a person takes non-consensual or abusive sexual advantage of another for anyone’s advantage or benefit and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses. Examples of sexual exploitation include but are not limited to:
 - 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 herpes, chlamydia or HIV, to another without first disclosing your status;
 - Exposing one’s genitals in non-consensual circumstances, or inducing another to expose his or her genitals; and
 - Coercing others to possess, distribute, or to view pornography.
4. *Relationship Violence* is abuse or violence between partners or former partners involving one or more of the following elements:
 - Battering that causes bodily injury;
 - Purposely or knowingly causing reasonable apprehension of 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.
5. *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.

D. 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.

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 the College's attention.

MANDATORY EMPLOYEE REPORTING OF SEX-BASED DISCRIMINATION, SEXUAL HARASSMENT AND/OR SEXUAL MISCONDUCT INVOLVING STUDENTS

To enable FVCC to respond proactively and effectively to stop instances of sex-based discrimination, sexual harassment and sexual misconduct involving students at FVCC, all FVCC employees must promptly report information they have about sex-based discrimination, sexual harassment and/or sexual misconduct involving students 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 of sex-based discrimination, sexual 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.

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.

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. Therefore, students who provide information about sex-based discrimination, sexual harassment or sexual misconduct involving students 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.

FREE SPEECH AND ACADEMIC FREEDOM

This policy shall not be construed or applied to restrict academic freedom at the campuses 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, the College will take all permissible actions to ensure the safety of students and employees while complying with free speech requirements for students and employees.

FALSE REPORTING

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

EXTERNAL RESOURCES

Student or employees who filed a complaint with the Title IX Coordinator and believe the College's response was inadequate or discriminatory on the basis of a legally protected status may file a complaint with:

Unlawful Discrimination - [Montana Human Rights Bureau](#)

Education Discrimination - [Office for Civil Rights](#) (OCR) of the U.S. Department of Education

Education Discrimination - [Educational Opportunities Section](#) of the Civil Rights Division of the U.S. Justice Department

Religious Discrimination - [Civil Rights Division](#) of the U.S. Justice Department.

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.

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