

FLATHEAD VALLEY COMMUNITY COLLEGE DISCRIMINATION GRIEVANCE PROCEDURES

Purpose

The purpose of these procedures is to provide a prompt and equitable resolution for complaints or reports of 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 at Flathead Valley Community College (College). Any person believing that they have been subjected to discrimination or harassment on any of these basis may file a complaint or report with the College. These procedures address all complaints or reports of alleged discrimination or harassment, including conduct that violates the Board Policy Chapter I Section 60 (hereinafter referred to as “Policy Violations”). The procedures also address complaints or reports of retaliation against those who have opposed practices forbidden under the policy, those who have filed complaints or reports under the policy, and those who have testified or otherwise participated in enforcement of the policy.

College Complaints and Reporting

Complaints and third-party reports of discrimination, including Policy Violations, should be made to the Title IX Coordinator. The Title IX Coordinator and Title IX Liaisons are trained to help you find the resources you might need, to explain all reporting options, and to respond appropriately to conduct of concern. All instances of retaliation should be reported and will be addressed in the same manner. The contact information for the Title IX Coordinator is listed below.

Title IX Coordinator, Vice President of Instruction & Student Services
Flathead Valley Community College
777 Grandview Drive
Kalispell, Montana 59901
406-756-3619

Complaints and reports should be made as soon as possible after an incident. The Title IX Coordinator coordinates and tracks all complaints and reports under this procedure.

There are several avenues available for submitting a complaint or report:

- Leave a private voice message for the Title IX Coordinator;
- File a complaint or report on the designated form;
- Mail a letter to the Title IX Coordinator office;
- Visit one of the Title IX Coordinator staff (it is best to make an appointment first to ensure availability).
- Report to another trusted college official (e.g., faculty, advisor) who will provide information as required under the policy to the Title IX Coordinator

- If there is a complaint about the Title IX Coordinator or any staff member that is part of the Title IX Coordinator Office, or if the Title IX Coordinator or Title IX Coordinator staff has a complaint, that complaint should be filed with the President of the College. The President will appoint another trained individual to take the place of the Title IX Coordinator for purposes of the complaint.

Criminal Reporting

Please remember that if someone is in immediate danger or needs immediate medical attention, the first place to report is 911. You may also report to the Campus Safety Number (406-270-4555) or the Kalispell Police Department. Some forms of discrimination and harassment may also be crimes. For example, sexual assault, stalking and rape are crimes. Criminal reports should be made to law enforcement, even if it is uncertain whether the particular conduct is a crime. Calling local law enforcement can help you obtain emergency and nonemergency medical care; get immediate law enforcement response for your protection; understand how to provide assistance in a situation that may escalate to more severe criminal behavior; arrange a meeting with victim advocate services; find counseling and support; initiate a criminal investigation; and answer questions about the criminal process.

Confidentiality of Complaints and Reports

Parties in these processes, including the Complainant, the individual accused of a Policy Violation (“Respondent”), and witnesses, have privacy rights and reasonable expectations of confidentiality in the investigation of matters subject to this procedure. In addition, the integrity of the process depends on ensuring reasonable expectations of confidentiality. The Title IX Coordinator will keep confidential the complaint, report, witness statements, and any other information provided by the Complainant, Respondent, or witnesses and will disclose this information only to the Complainant, Respondent, or witnesses, as necessary to give fair notice of the allegations and to conduct the investigation; to law enforcement consistent with state and federal law; to other College officials as necessary for coordinating interim measures or for health, welfare, and safety reasons, and to government agencies who review the College’s compliance with federal law. The investigation report and any written decision from the Discrimination Grievance Committee will be disclosed only to the Complainant, Respondent, Title IX Coordinator, Discipline Authority¹ as necessary, and College officials as necessary to prepare for subsequent proceedings (e.g., College President and College Legal Counsel). Members of the Discrimination Grievance Committee have the same strict obligations to keep all information they learn confidential, subject to the limited exception when necessary to protect health, welfare or safety. Information about complaints and reports, absent personally identifiable information, may be reported to College officials and external entities for statistical and analysis purposes pursuant to federal and state law and College policy.

¹ In the case of employees, the Discipline Authority is the College Administrator with the authority to impose sanctions in accordance with applicable employment policies and procedures and collective bargaining agreements. In the case of students, the Discipline Authority is the Dean of Students.

Anonymous and Third Party Reporting

The Title IX Coordinator accepts anonymous and third-party reports of conduct alleged to violate this Policy and will follow up on such reports. The individual making the report (Reporter) is encouraged to provide as much detailed information as possible to allow the Title IX Coordinator to investigate and respond as appropriate. The Title IX Coordinator may be limited in the ability to investigate an anonymous report unless sufficient information is furnished to enable the Title IX Coordinator to conduct a meaningful and fair investigation.

Role of the Title IX Coordinator

The Title IX Coordinator is charged with coordinating the College's compliance with federal civil rights laws, all of which are listed at the end of these Procedures. The Title IX Coordinator is not an advocate for either the Complainant or the Respondent. The Title IX Coordinator will explain to both parties the informal and formal processes outlined below and the confidentiality provisions as outlined above. Where appropriate, the Title IX Coordinator will provide to both parties information about options for obtaining medical and counseling services; information about making a criminal report, information about receiving advocacy services, information about other helpful campus and community resources. The Title IX Coordinator will offer to coordinate with other campus officials, when appropriate, to implement interim remedial measures such as no-contact orders, rearrangement of living arrangements, or academic accommodations. The Title IX Coordinator will describe the process of a fair and impartial investigation. The Title IX Coordinator will explain the right of the Respondent to review and respond to allegations and evidence against him or her. The Title IX Coordinator will explain to both parties their rights to have a person of support, union representative, or attorney, with them during their interviews and during the hearing stage of these procedures. If an individual does not want to pursue a complaint, the Title IX Coordinator will inform the individual that the College is limited in the actions it can take without the cooperation of the individual. The Title IX Coordinator will also explain to parties and witnesses that retaliation for reporting alleged violations of the policy, or participating in an investigation of an alleged violation, is strictly prohibited and that any retaliation should be immediately reported and will be promptly addressed.

Immediate Action and Interim Measures

The College may take interim measures to assist or protect the parties during the grievance process, as necessary and with the Complainant's consent. Such measures for a student Complainant may include arranging for changes in class schedules or living arrangements, issuing a no-contact order, obtaining counseling, and modifying test schedules or other class requirements temporarily. For an employee Complainant, the College may temporarily reassign or place on administrative leave an employee alleged to have violated this policy.

Resolution

If a Complainant chooses to file a complaint, there are two avenues for resolution of an alleged Policy Violation: formal and informal resolution. The Complainant has the option to proceed informally, when permissible. In cases involving allegations of sexual assault, informal

resolution is not appropriate, even if both the Complainant and Respondent indicate a preference for informal resolution.² Title IX Coordinator is available to explain the informal and formal resolution procedures.

A. Informal Process and Resolution

If the Complainant, the Respondent, and the Title IX Coordinator all agree that an informal resolution should be pursued, the Title IX Coordinator (or her/his designee) shall attempt to facilitate a resolution of the conflict that is agreeable to all parties. Under the informal process the Title IX Coordinator shall be required only to conduct such fact-finding as is useful to resolve the conflict and as is necessary to protect the interests of the parties, the College and the community. Typically, an informal investigation will be completed within twenty (20) days of receipt of the complaint. If it becomes necessary to extend the process, both parties will be notified of a revised expected resolution timeframe.

A Complainant or Respondent always has the option to request a formal investigation. The Title IX Coordinator also always has the discretion to initiate a formal investigation. If at any point during the informal process, the Complainant, the Respondent, or the Title IX Coordinator wishes to cease the informal process and to proceed through formal grievance procedures, the formal process outlined below will be invoked.

The informal resolution must adequately address the concerns of the Complainant, as well as the rights of the Respondent and the overall intent of the College to stop, remedy and prevent Policy Violations. (Informal actions might include, but are not limited to: providing training to a work unit; having an informal discussion with an individual whose conduct, if not stopped, could rise to the level of discrimination, or hostile environment harassment; or having a confidential conversation with a supervisor or instructor).

B. Formal Process

Step 1: Title IX Coordinator or trained designee discusses concerns with Complainant, and the Respondent as appropriate, including providing information about the policy and procedures and other helpful resources. Title IX Coordinator also considers whether immediate or interim actions or involvement of other College offices is appropriate. Title IX Coordinator determines whether the office has jurisdiction to investigate the matter. The Title IX Coordinator only has jurisdiction to investigate complaints alleging discrimination, harassment, sexual misconduct, stalking, and retaliation.

Option 1: If the Title IX Coordinator determines that there is no jurisdiction, the Title IX Coordinator will offer to assist the Complainant and, as appropriate, the Respondent, in finding appropriate campus and off-campus resources for addressing the issue of concern.

Option 2: If the Title IX Coordinator determines that there is jurisdiction, the Title IX Coordinator will proceed to Step 2.

² The U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter, dated April 4, 2011, p. 8, states: [I]n cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis.

Step 2: Title IX Coordinator conducts or oversees the conducting of a fair and impartial investigation of the alleged Policy Violation and proceeds to Step 3. Typically an investigation will be completed within twenty (20) days of receipt of the complaint. If it becomes necessary to extend the process, both parties will be notified of a revised expected resolution timeframe.

Only a trained investigator will conduct an investigation. Respondents will have the opportunity to review and respond to evidence considered against them. Both parties will have the opportunity to review and provide comments to the investigator about the written investigation report before it is finalized.

Step 3: Title IX Coordinator determines whether there is a preponderance of the evidence to believe that an individual engaged in a Policy Violation. This means that individuals are presumed not to have engaged in alleged conduct unless a “preponderance of the evidence” supports a finding that the conduct has occurred. This “preponderance of the evidence” standard requires that the evidence supporting each finding be more convincing than the evidence in opposition to it.

In making the determination of whether harassment has created a hostile environment, the Title IX Coordinator will consider not only whether the conduct was unwelcome to the Complainant, but also whether a reasonable person in the Complainant’s situation would have perceived the conduct as objectively offensive. The Title IX Coordinator’s findings will be in writing and will be provided to both the Complainant and to the Respondent(s).

Option 1: If Title IX Coordinator finds a preponderance of the evidence of a Policy Violation does not exist, the matter is documented and closed; in this case the Complainant may appeal the finding to the Discrimination Grievance Committee.

Option 2: If Title IX Coordinator finds that a preponderance of the evidence of a policy violation exists, the Title IX Coordinator’s written report will include recommendations for steps to take to prevent recurrence of any such violation, and as appropriate, remedies for the Complainant. The Respondent may appeal the finding to the Discrimination Grievance Committee. If the Respondent does not contest the finding, the Respondent will be required to sign the written finding and the written finding will be provided to the Discipline Authority for a determination of appropriate sanctions. In the case of student Respondents, the Discipline Authority will be the Dean of Students. In the case of employees, the Discipline Authority is the College Administrator with the authority to impose sanctions in accordance with applicable employment policies and procedures and collective bargaining agreements. The Discipline Authority must inform the Title IX Coordinator of the ultimate sanctions imposed upon a Respondent. The Title IX Coordinator will inform the Complainant of the sanctions as permitted by applicable Title IX and privacy laws.

Relation to the Student Code of Conduct

The Dean of Students is charged with imposing sanctions on students who are found to have violated the policy. Sanctions may include eviction from campus housing, suspension, expulsion, probation, a warning, or any other sanction set forth in the Student Conduct Code.

Disciplinary records for policy violations are maintained in the same manner as other disciplinary records.

Reporter or Complainant Requests No Investigation

If a reporter or Complainant requests that an investigation not be conducted, the Title IX Coordinator will consider the reasons for the request, including concerns about continued safety of the person reportedly harmed and members of the campus community. The Title IX Coordinator must also balance considerations about the continued health and safety of members of the community against a reporter's or Complainant's desire not to have the report investigated. In cases when a reporter or Complainant does not want to have a report investigated, but the Title IX Coordinator has concerns that not taking formal or informal action might endanger the health or safety of members of the campus community, the Title IX Coordinator will initiate confidential consultation with appropriate individuals to analyze the situation and assist in determining appropriate measures to take. Consultation may occur with the Dean of Students, chair of the Behavioral Intervention Team (BIT), Campus Safety Officer, Director of Human Resources, and legal counsel. The Title IX Coordinator will make the ultimate decision about whether to conduct a formal investigation or respond to the report in another manner, including taking informal actions, such as those described above.

Appeals to the Discrimination Grievance Committee

Composition of the Committee

The committee shall have four (4) regular members including the Chair. Of the four regular members, one shall be a student, one shall be a member of the faculty, one shall be a member of the non-academic staff, and one shall be a representative of the administration.

Selection of Members

Members shall be appointed by the President of the College. Each of the four groups listed below will nominate four (4) candidates. The President of the College will appoint one member from each pool of four (4) candidates. The President of the College shall also designate one (1) alternate from each of these groups:

1. The Executive Committee of the Faculty Senate
2. Professional or Classified Staff
3. The Executive Staff
4. The President of Student Government with the approval of Student Government officers.

Appointment of Chair

The President of the College shall appoint the Chair.

Term of Appointment

To assure cumulative experience and development of expertise as well as continuity and uniformity of decisions, the terms of regular members will be of extended duration. The student shall be appointed for one (1) year. Members of each of the other groups (faculty, non-academic staff, and administrators) shall be appointed for three (3) years. Any member whose term has expired and who is willing to continue to serve on the committee may be reappointed by the President of the College.

The President of the College may appoint one or more persons to serve temporarily as a member of the committee to fill a vacancy or ensure a quorum, or in response to a request from the Chair to avoid delay in proceedings. The term of temporary appointment continues for the duration of the proceedings or until the temporary appointee is replaced by a regular member.

Removal of Members

The Committee Chair may either permanently or temporarily remove or replace any regular member of the committee under the following circumstances:

- a. In response to a request from those responsible for the nomination of the member;
- b. In response to a request from a majority of the committee members;
- c. In response to a request from the Human Resources Director;
- d. In response to a request from a committee member that he/she be excused;
- e. In response to a request from a party who raises a legitimate concern regarding a conflict of interest.

If any person or group other than the member requests removal, that member will have an opportunity to rebut any evidence presented in support of the request for removal. If a concern as enumerated above is raised about the Chair, the President of the College will make the determination about either permanently or temporarily removal from the committee.

Quorum

There must be a member from each of the four constituent groups specified above to constitute a quorum.

Authority of the Committee

The committee may: (1) call student and employee witnesses to testify or to be present during a hearing, and obtain other evidence held by the College or any student or College employee; (2) arrange with the College Title IX Coordinator for appropriate funding and staff support to facilitate hearings; (3) hold pre-hearing conferences; (4) issue hearing orders; (5) hold formal hearings and control conduct of such hearings; and (6) make decisions, findings of fact, and recommendations, including recommended sanctions, to the President of the College by vote of a majority of the regular members involved in the hearing process.

Filing an Appeal

A request for a hearing before the College Discrimination Grievance Committee must be filed within five (5) working days, of the receipt of the Title IX Coordinator's decision, unless good cause can be shown for an extension of time. The request for a hearing must be filed with the Title IX Coordinator. The request for a hearing must be in writing and must describe the appellant's desired outcome; as well as describe how the appellant believes the Title IX Coordinator: (1) exhibited unfair bias which influenced the result of the investigation; (2) failed to conduct a thorough investigation; (3) issued arbitrary findings and recommendations; (4) had a conflict of interest; or (5) issued findings and recommendations that if adopted would result in substantial injustice. As soon as practicable, the Title IX Coordinator will provide the non-appelling party and the Chair of the Discrimination Grievance Committee with a copy of the written appeal.

Standard of Review

The committee reviews the findings and recommendations of the Title IX Coordinator. The committee may approve, overturn, or modify the findings and recommendations of the Title IX Coordinator. The committee may overturn or modify the Title IX Coordinator's findings and recommendations if it finds that the Title IX Coordinator: (1) exhibited unfair bias which influenced the result of the investigation; (2) failed to conduct a thorough investigation; (3) issued arbitrary findings and recommendations; (4) had a conflict of interest; or (5) issued findings and recommendations that if adopted would result in substantial injustice.

Notice of Hearing

Within ten (10) working days of receipt of the written request for a hearing, the Title IX Coordinator will notify the Complainant and the Respondent of the time and place of the formal hearing before the Discrimination Grievance Committee. This process might be extended during periods between academic semesters when a quorum of the committee cannot be convened. The hearing will normally be scheduled within thirty (30) days of receipt of the written appeal. If such an appeal causes a significant delay, the Title IX Coordinator will consider interim measures, as described above, to continue to protect the parties during the process.

Preparation for and Conduct of the Hearing

Written Statements on Appeal

Within ten (10) working days of filing the appeal, the party appealing the decision must submit to the Title IX Coordinator the following information:

(a) detailed statement of facts relevant to the complaint or report of discrimination, hostile environment harassment, sexual misconduct, stalking, or retaliation; (b) names and addresses and anticipated testimony from witnesses to be called; (c) copies of any documents which will be submitted as evidence; (d) additional materials the party believes the committee should obtain prior to the hearing; (e) reference to the portion of the policy alleged to be violated; (f) specific remedy(ies) requested; and (g) whether the party will be represented by legal counsel and the identity of the counsel.

The non-appealing party may also submit the information described in (a) through (f), above. If the non-appealing party will participate in the hearing, that party must notify the Title IX Coordinator as described above at (g) whether he or she will be represented by legal counsel. In cases in which the non-appealing party chooses not to participate in the hearing, the Title IX Coordinator will provide to the Discrimination Grievance Committee, in addition to the written investigation report, any additional documents or other materials, and names and addresses of any witnesses the Title IX Coordinator believes should provide information to the Committee at the hearing.

Forwarding Appeal Documents

The Title IX Coordinator will forward copies of the Title IX Coordinator's written investigation report; the above-listed materials; and any additional evidence relevant to the matter to the members of the Discrimination Grievance Committee at least five (5) days prior to the hearing.

Pre-hearing Conference

At any time within five (5) days prior to the date of the formal hearing the Chairperson of the College Discrimination Grievance Committee may call a pre-hearing conference. Topics discussed at a pre-hearing conference may include, but are not limited to: (a) whether the evidence presented is complete; (b) whether additional investigation is required; (c) whether additional witness should be called; and (d) time limits and order of presentation of evidence at the hearing. At the request of any party, the Committee Chairperson will conduct separate meetings with the appellant and the respondent for purposes of the pre-hearing conference.

With concurrence of a majority of the College Discrimination Grievance Committee, the Chair may decide to: set aside the hearing date for any period up to ten (10) days for additional investigation, to obtain additional witnesses or evidence.

The Hearing

The Chair of the College Discrimination Grievance Committee will conduct the hearing. The hearing will be a non-adversarial proceeding and strict rules of evidence will not be applied. However, the Chair of the Committee may limit or refuse to allow evidence or testimony that is not reasonably related to a determination of whether a violation of the policy occurred.

The hearing will be conducted to assure fairness and accuracy in fact-finding. The parties and witnesses will address the members of the Committee rather than each other. The Chair will be the final arbiter of all matters of procedure. All hearings are closed to the public.

The Decision

Within ten (10) working days of the conclusion of the formal hearing the College Discrimination Grievance Committee will submit a decision in writing to the parties, the Title IX Coordinator and to the President of the College. The written decision will contain the following:

- a. A summary of the allegations including a description of the harm alleged to have been caused;
- b. A summary of the response to the allegations;

- c. A statement of the relief sought by the Complainant if known, or of the recommendation of the Title IX Coordinator, if applicable;
- d. Specific reference to the portion(s) of the policy(ies) alleged to have been violated;
- e. Analysis of whether the Title IX Coordinator: (1) exhibited unfair bias which influenced the result of the investigation; (2) failed to conduct a thorough investigation; (3) issued arbitrary findings and recommendations; (4) had a conflict of interest; or (5) issued findings and recommendations that if adopted would result in substantial injustice; and
- f. Recommendations, if any, regarding redress of the complaint as well as any other recommendations, as applicable, for precluding further policy violations.

Action on Decision

The President of the College will review the Committee's decision. The President's review is limited to determining: (1) Whether the evidence provides a reasonable basis for the resulting decision; and (2) Whether specified procedural errors were so substantial as to deny a fair hearing to either party. Within ten (10) days of receipt of the Committee's decision, the President will notify the Committee Chair, the Title IX Coordinator, and the parties, in writing, of the decision relative to each of the findings and recommendations forwarded by the College Discrimination Grievance Committee. The Title IX Coordinator will distribute copies to Committee members and to the parties.

Conflict of Interest and Training

All College officials who are involved in the discrimination grievance process, including the Title IX Coordinator, designated investigators, Discrimination Grievance Committee, and Discipline Authorities, will have adequate training. Training will address, but is not limited to, recognizing and appropriately responding to allegations of discrimination, harassment, including hostile environment harassment, sexual misconduct, and retaliation, conducting investigations, protecting confidentiality, and recognizing the link between alcohol and drug use and sexual assault and sexual harassment.

The names of the investigator and the individuals who will serve on the Discrimination Grievance Committee for a particular matter will be readily accessible. These individuals must promptly disclose any potential conflict of interest they might have in a particular case. In the rare situation in which an actual or perceived conflict of interest arises between an Investigator, or member of the Discrimination Grievance Committee, that conflict must be disclosed to both parties.

External Complaints

If you filed a complaint with the Title IX Coordinator and believe the College's response was inadequate, or you otherwise believe you have been discriminated against by the College 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](#) of the Civil Rights Division of the U.S. Justice Department of Justice, and a complaint based on religion with the Civil Rights Division of the U.S. Justice Department.

As a student or employee, if you filed a complaint with the Title IX Coordinator and believe the College's response was inadequate, or you otherwise believe you have been discriminated against by the College on the basis of 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, you may file a complaint with the Montana Human Rights Bureau: <http://erd.dli.mt.gov/human-rights-bureau.html>, 406-444-4356.

References: Titles [IV](#), [VI](#), and [VII](#) of the Civil Rights Act of 1964; [34 C.F.R. pt. 100](#); [Title IX of the Education Amendments of 1972](#); [28 C.F.R. pt. 54](#) and [34 C.F.R. pt. 106](#); [Section 504 of the Rehabilitation Act](#); [34 C.F.R. pt. 104](#); [Age Discrimination Act of 1975](#); [34 C.F.R. pt. 110](#); and [Titles I and II of the Americans with Disabilities Act](#); [28 C.F.R. pt. 35](#); [Montana Human Rights Act and Governmental Code of Fair Practices, Title 49, Montana Code Annotated](#); [Board of Regents Policy 507](#).