

Policy Title: **SEX-BASED HARASSMENT AND NONDISCRIMINATION**

FVTC does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and its regulations, including in admission and employment.

Inquiries about Title IX may be referred to one of FVTC's Title IX Coordinators, the U.S. Department of Education's Office for Civil Rights, or both. FVTC's Title IX Coordinators are; Shannon Gerke Corrigan, Enrollment Services, E110C, Appleton Campus, shannon.gerkecorrigan8969@fvtc.edu, and 920-735-4796 and Therese Izzo Nemec, Room G118D, Appleton Campus, therese.izzonemec2991@fvtc.edu, 920-735-4765.

To view FVTC's nondiscrimination policy and grievance procedures, report information about conduct that may constitute sex discrimination or make a complaint of sex discrimination under Title IX, please refer to www.fvtc.edu/SexualMisconduct.

Fox Valley Technical College is committed to providing an educational and employment environment that is free from sex-based discrimination, harassment, and retaliation for engaging in protected activity.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, FVTC has developed policies and procedures that provide for prompt, fair, and equitable resolution of allegations of sex-based discrimination, harassment or allegations of retaliation. The procedures that accompany this policy are included in the Discrimination/Harassment Resolution Process.

The sections below describe the specific forms of legally prohibited discrimination, harassment, and retaliation that are also prohibited under FVTC Policy.

This 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. See the FVTC Academic Freedom policy for more information.

Violation of any other FVTC policies may constitute discrimination or harassment when motivated by actual or perceived protected characteristic(s), and the result is a limitation or denial of employment or educational access, benefits, or opportunities.

Scope

This Policy is only applicable to alleged incidents of sex discrimination that occur on or after August 1, 2024. For alleged incidents of sex discrimination or sexual harassment occurring prior to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. Applicable versions of those policies and procedures are available from the Title IX Coordinator and at www.fvtc.edu/SexualMisconduct.

This Policy applies to all faculty, employees, students, and other individuals participating in or attempting to participate in FVTC's program or activities, including education and employment.

This Policy prohibits all forms of sex-based discrimination or harassment and may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed in accordance with this Policy.

Jurisdiction

This Policy applies to FVTC's education programs and activities (defined as including locations, events, or circumstances in which FVTC exercises substantial control over both the Respondent and the context in which the conduct occurred and circumstances where FVTC has disciplinary authority). A Complainant does not have to be a member of FVTC community to file a Complaint, at the discretion of the Title IX Coordinator and in accordance with applicable law.

This Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to FVTC's education program or activities. FVTC may also extend jurisdiction to off-campus and/or to online conduct when the conduct affects a substantial FVTC interest.

A substantial FVTC interest includes:

- 1) 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.
- 2) Any situation in which it is determined that the Respondent poses an imminent and serious threat to the health or safety of any student, employee, or other individual.
- 3) Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
- 4) Any situation that substantially interferes with FVTC's educational interests or mission.

Discrimination

Discrimination is adverse treatment with respect to a person's employment or participation in an

education program or activity based, in whole or in part, upon the person's actual or perceived protected characteristic. Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or policy, such as for disability, religion, or creed.

Sex-based Harassment (Applicable under Title IX)

Sex-based Harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex,¹ including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; sexual assault, dating violence, domestic violence, and stalking. All offense definitions below encompass actual and/or attempted offenses.

1) **Quid Pro Quo:**

- an employee agent, or other person authorized by FVTC,
- to provide an aid, benefit, or service under FVTC's education program or activity,
- explicitly or impliedly conditioning the provision of such aid, benefit, or service,
- on a person's participation in unwelcome sexual conduct.

2) **Hostile Environment Harassment:**

- unwelcome sex-based conduct that,
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from FVTC's education program or activity

FVTC reserves the right to address offensive conduct and/or harassment that does not rise to the level of creating a hostile environment. Addressing such conduct may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.

For assistance with Alternative Resolution and other Informal Resolution techniques and approaches, contact the Title IX Coordinator.

3) **Sexual Assault:**²

a. **Rape:**

- Penetration, no matter how slight,
- of the vagina or anus of the Complainant,

¹ Throughout this Policy, "on the basis of sex" means conduct that is sexual in nature, or that is directed to the Complainant because of his/her/their actual or perceived sex or gender identity.

² This would include having another person touch you sexually, forcibly, and/or without their consent.

- with any body part of the Respondent or by Respondent’s use of an object, or
- oral penetration of the Complainant by a sex organ of Respondent,
- without the consent of the Complainant.

b. Fondling:

- The touching of the private body parts of the Complainant (buttocks, groin, breasts),
- by the Respondent for the purpose of sexual gratification,
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental incapacity.

c. Incest:

- Sexual intercourse,
- between persons who are related to each other,
- within the degrees wherein marriage is prohibited by WI law.

d. Statutory Rape:

- Sexual intercourse,
- with a person who is under the statutory age of consent of 18.

1) Dating Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. 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. For the purposes of this definition—
 - a) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - b) Dating violence does not include acts covered under the definition of domestic violence.

2) Domestic Violence,³ defined as:

³ To categorize an incident as Domestic Violence under this Policy, 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.

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of WI, or
- g. 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 WI.

3) **Stalking**, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at the Complainant, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. suffer substantial emotional distress.

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.

Sexual Misconduct

7) **Sexual Exploitation:**⁴

- A person taking non-consensual or abusive sexual advantage of another, that does not constitute Sex-based Harassment as defined above,

⁴ This offense is not classified under Title IX as "Sex-based harassment," but it is included here in this Policy as a tool to address a wider range of behaviors.

- for their own benefit or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) a person's sexual orientation, gender identity, or gender expression
- Taking pictures, video, or audio recording of another person in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually-related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)

Online Harassment and Misconduct

FVTC policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on FVTC's education program and activities, or when they involve the use of FVTC networks, technology, or equipment.

Although FVTC may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to FVTC, it will endeavor to address and mitigate the effects. This may include use of the Resolution Process to address off-campus conduct whose effects contribute to limiting or denying a person access to FVTC's education program or activity.

Sanction Ranges

FVTC uses a number of interventions to address concerns that are raised about potential violations or violations of this policy, including problem-solving, intervention, confrontation, investigation, and Policy enforcement.

Sanctions for Prohibited Conduct under this policy range from warning, suspension, expulsion, or termination. Sanctions are imposed on a case-by-case basis and can be assigned outside of the specified ranges based on aggravating or mitigating circumstances, or the Respondent's cumulative conduct record.

Consent, Force, and Incapacitation

As used in this Policy, the following definitions and understandings apply:

1) Consent

Consent is defined as:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

2) Force

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.

Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person's consent ineffective, because it is not voluntary.

3) Incapacitation

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person 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, and how" of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented,

helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.

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 substances.

Standard of Proof

FVTC uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that FVTC will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s).

Employee Obligation to Respond

All FVTC faculty and employees (including student-employees), other than those deemed Confidential Employees, are expected to promptly report all known details of actual or suspected discrimination, harassment, retaliation and/or Other Prohibited Conduct to the Title IX Coordinator immediately, although there are some limited exceptions. FVTC trains all employees on their response obligations.

Failure of an Employee to report an incident of discrimination, harassment, or retaliation of which they become aware is a violation of FVTC Policy and can be subject to disciplinary action for failure to comply/failure to report.

An FVTC Faculty or Staff member who is a target of discrimination, harassment, or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

Confidential Employees

FVTC designates only on-campus Licensed Counselors as Confidential Employees. To respect confidentiality, they must be in a confidential relationship with the person reporting, such that they are within the scope of their licensure, professional ethics, or confidential role at the time of receiving Notice (as defined in the Discrimination/Harassment Resolution Process) of the potential allegation. These individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor, elder, or individual with a disability, or when required to disclose by law or court order.

Employees who have confidentiality as described above, and who receive Notice within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act statistical reporting purposes unless they believe it would be harmful to the individual.

Confidential employees, upon receiving notice are still required to inform the reporting party how to contact the FVTC Title IX Coordinator, how to make a complaint under this Policy and that the Title IX Coordinator may be able to offer supportive measures, and/or initiate an informal resolution process.

Reporting Timeline

There is no time limitation on providing Notice/Complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to FVTC's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on Notice/Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy and when the complaining party is not participating or attempting to participate in FVTC's education program and activities) is at the Title IX Coordinator's discretion; they may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

False Allegations and Evidence

Deliberately false and/or malicious accusations made under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a determination of a Policy violation.

Additionally, witnesses and parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official investigation or resolution process can be subject to discipline under appropriate FVTC policies.

Amnesty

FVTC community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to give Notice to FVTC officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of FVTC community that Complainants choose to give Notice of misconduct to FVTC officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, FVTC may offer parties and witnesses amnesty from other minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident. Granting amnesty is a discretionary decision made by

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FVTC, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

Students

FVTC also maintains an amnesty policy for students in addition to witnesses who offer help to others in need.

Employees

Sometimes, employees are hesitant to report discrimination, harassment, or retaliation they have experienced for fear of getting in trouble themselves. FVTC may, at its discretion, offer employee Complainants amnesty from such other minor policy violations related to the incident.

Independence and Conflicts of Interest

The Title IX Coordinator manages the Nondiscrimination Team and acts with independence and authority, free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and these procedures. The members of the Nondiscrimination Team are vetted and trained to ensure they are not biased for or against any party in a specific Complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact the FVTC Vice President - Student Success or the Vice President - Administration. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other Nondiscrimination Team member must be promptly raised with the Title IX Coordinator.

Confidentiality/Privacy

FVTC makes reasonable efforts to preserve the parties' privacy. FVTC will not share the identity of any individual who has made a Complaint of discrimination, harassment, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of discrimination, harassment, or retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act ("FERPA") and its implementing regulations; as required by law, including any investigation, or resolution proceeding arising under these policies and procedures; or court order. Additional information regarding confidentiality and privacy can be found in the Discrimination/Harassment Resolution Process.

Unauthorized Disclosure of Information

Parties and their advisors are prohibited from disclosing information (except as part of the grievance procedures) obtained by FVTC through the Resolution Process, to the extent that information is the work product of FVTC (meaning it has been produced, compiled, or written

by FVTC for purposes of its investigation and resolution of a Complaint), without authorization. It is also a violation of FVTC Policy to publicly disclose institutional work product that contains a party or witness's personally identifiable information without authorization or consent. Violation of this Policy is subject to significant sanctions.

Emergency Removal/Interim Actions/Leaves

FVTC can act to remove a Respondent accused of Sex Discrimination or Sex-based Harassment from its education program or activities, partially or entirely, on an emergency basis when an individualized safety and risk analysis has determined that an imminent and serious threat to the health or safety of any student or other individual justifies removal.

Clery Act/VAWA related Obligations

The following provisions address FVTC's obligations under the Clery Act and the Violence Against Women Act ("VAWA").

Federal Timely Warning Obligations

FVTC will issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of FVTC community.

FVTC will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

Preservation of Evidence

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining/protective orders, and it is particularly time sensitive. FVTC will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

Sexual Assault

- Seek forensic medical assistance at the nearest hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or a secure evidence container (if provided one by law enforcement)
- Seeking medical treatment can be essential, even if it is not for the purposes of collecting forensic evidence.

Stalking/Dating Violence/Domestic Violence/Sex-Based Harassment

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- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
 - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
 - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of email and social media correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence, including notes, gifts, etc., in place when possible.
- Save copies of any messages, including those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be discussed, if timely.

Federal Statistical Reporting Obligations

Certain institutional officials (those deemed Campus Security Authorities) have a duty to report the following for federal statistical reporting purposes (Clery Act):

- 1) All “primary crimes,” which include criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson
- 2) Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property
- 3) VAWA-based crimes, which include sexual assault, domestic violence, dating violence, and stalking
- 4) Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations

All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on- or off-campus or in the surrounding area, but no addresses are given) must be shared with Clery Act Coordinator for publication in the Annual Security Report and daily campus crime log. Campus Security Authorities include student affairs/student conduct staff, campus law enforcement/public safety/security, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

Revision of this Policy

This Policy supersedes FVTC’s previous Sexual Misconduct policy and Title IX Procedures, though previous policies and procedures remain in force for incidents occurring before August

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1, 2024. The Title IX Coordinator reviews and updates these policies and procedures regularly. FVTC reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

This policy will take effect August 1, 2024, and will remain in effect unless the 2024 Title IX/Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance regulations are enjoined or otherwise determined to be unlawful by a court of competent jurisdiction. Should the underlying law or regulations on which this policy is built cease to remain enforceable, the appropriate sex-based discrimination/harassment college policies and procedures will apply.

This policy does not create legally enforceable protections beyond the protections of the background state and federal laws that frame such policies and codes, generally.

This Policy is effective 08-01-2024.

Adopted: 08/01/24
Reviewed: 07/16/24
Revised: