


Supplemental Sexual Misconduct

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|  | <p>Policy identification number: To come</p> <p>File: Ethical & Responsible Conduct Policies > Anti-Discrimination Policies</p> <p>Supplemental Sexual Misconduct</p> <p>Policy summary</p> <p>This policy states the expectation that the Fort Lewis College community should be free from sexual misconduct, including sexual harassment, sexual violence, dating violence, domestic violence, and stalking. The policy also explains how to report sexual misconduct committed by Fort Lewis College community members. Complaints managed through the Sexual Misconduct Policy are resolved in accordance with the Fort Lewis College Grievance Procedure.</p> |
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| Policy Owner | Approval Date | Effective Date |
| Associate Vice President for Student Affairs | August 7, 2020 | August 14,2020 |

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| Search Terms | Scheduled for Review |
| s,vpsa, sexual, misconduct | Fall 2022 |

I. Statement of Policy

Notice of Non-Discrimination: Fort Lewis College does not discriminate on the basis of sex in its education programs and activities, as required by Title IX of the Education Amendments of 1972. Inquiries concerning the application of Title IX may be referred to Fort Lewis College's

Title IX Coordinator (hereinafter "Coordinator", or to the U.S. Department of Education's Office of Civil Rights.

The Title IX Coordinator's contact information is:

Kate Suazo

230 Skyhawk Station

Fort Lewis College

Durango, CO 81301

Telephone: 970-822-8728

Email: cmsuazo@fortlewis.edu

Make an appointment to see the Coordinator virtually or in person through the calendar link at www.fortlewis.edu/CARE.

The Office of Civil Rights contact information is:

Denver Office, Office for Civil Rights

U.S. Department of Education

Cesar E. Chavez Memorial Building

1244 Speer Boulevard, Suite 310

Denver, CO 80204-3582

Telephone: 303-844-5695

FAX: 303-844-4303; TDD: 800-877-8339

Email: OCR.Denver@ed.gov

The College's Sexual Misconduct Policy applies to all students and to all employees regardless of their employment classification. All Fort Lewis College community members should expect that they will be free from sexual misconduct, including sexual harassment, gender-based harassment, sexual violence, dating violence, domestic violence, and stalking. Upon becoming aware of sexual misconduct, which creates a hostile environment in the Fort Lewis College

community, the College will take immediate action to eliminate the misconduct, prevent its recurrence, and address its effects.

All employees, regardless of their employment classifications, are required, as a condition of their employment, to abide by the Sexual Misconduct Policy.

Supervisors are required, as a condition of their employment, to enforce this policy by seeking to eliminate sexual misconduct in the workplace they supervise by reporting incidents of sexual misconduct and informing supervised employees about this policy and their obligations thereunder.

All students are required, as a condition of their enrollment and participation in activities of Fort Lewis College, to abide by this Sexual Misconduct Policy. Student Organizations at the College and their members are required to abide by this policy in the conduct of their programs and activities. Student Organizations include Registered Student Organization, club sports, intramurals, and any other Fort Lewis College student groups or programs.

Retaliation Prohibited: If the College is to achieve its goals of preventing sexual harassment and taking prompt corrective action when sexual misconduct is suspected or occurs, members of the College community must feel free to report sexual misconduct and to participate in investigations and disciplinary proceedings. Retaliation against any person who reports sexual misconduct, files a complaint, provided information in connection with a complaint, or participates in a grievance process is prohibited. Retaliation includes, but is not limited to, direct or indirect intimidation, coercion, threats or harassment against any complainant, witness or third party. Any such action shall be grounds for a separate complaint which will be resolved under the Grievance Procedure.

Mandatory Reporting: It is critical that any member of the Fort Lewis College community, except those exempted by law, such as counselors or medical care providers, who believes that they have observed an incident of sexual misconduct in the College's learning and work environment involving a member of the College community or who receives a report of alleged sexual misconduct from a member of the College community immediately refer this information to the Coordinator by filing a report at www.fortlewis.edu/TellSomeone.

II. Definitions and Prohibited Behavior

Attempt. Attempts to engage in any act prohibited by this policy is a violation of this policy.

Complainant. Complainant is an individual or organization filing a complaint regarding sexual misconduct. The victim may or may not be the complainant. The College may initiate a complaint, serve as complainant, and initiate sexual misconduct proceedings under the Grievance Procedure without a formal complaint by the victim of misconduct.

Complaint. A complaint is a request that the College resolve a report through a Fort Lewis College disciplinary procedure. All complaints alleging sexual misconduct will be resolved under the Fort Lewis College Grievance Procedure, unless pre-empted by the Fort Lewis College

Title IX Sexual Harassment Policy. Complaints that fit the definition and jurisdiction requirements of the Title IX Sexual Harassment Policy will be resolved under that policy. Inquiries relating to procedure can be made at any time to the Coordinator; however, a procedural inquiry alone does not constitute a complaint.

Consent. Consent is affirmative, knowing, and voluntary words or actions that create a mutually understandable and clear agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity. Silence and/or lack of protest or resistance, by themselves, cannot be interpreted as consent. Consent must be ongoing throughout a sexual activity and may be withdrawn at any time, if the withdrawal is communicated clearly. Withdrawal of consent can be communicated in many ways and need not be a verbal withdrawal of consent. The existence of a dating relationship or previous sexual relationship between the persons involved cannot be interpreted as consent. Consent is not effectively given if it results from the use of force, threats, intimidation or coercion, or if a person is incapable of giving consent due to use of drugs or alcohol, or due to intellectual or other disability.

Dating violence. Any act of violence or threatened act of violence committed by a person who is or has been in a romantic or intimate relationship with the victim. The existence of such relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship. Dating violence includes threats, assault, or property damage as a method of coercion, control, punishment, intimidation or revenge.

Domestic violence. Any act of violence or threatened act of violence committed by (1) a current or former spouse or intimate partner of the victim, (2) a person with whom the victim shares a child in common, (3) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, (4) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or (5) any other person, against an adult or youth victim who is protected from that person's acts under the relevant domestic or family violence laws of the jurisdiction.

Fort Lewis College Community: The Fort Lewis College community includes all academic, educational, extracurricular, athletic, and other programs of the school, whether those programs are in Fort Lewis College facilities or at a program sponsored by the school elsewhere. Members of the Fort Lewis College community include any employee, faculty member, student, or authorized volunteer.

Gender Based Harassment is prohibited under the Discriminatory Harassment Policy. It includes conduct (verbal, gestures, written, graphic, physical, cyberbullying) directed against any person or a small group of persons because of basis of actual or perceived gender, sexual orientation, gender identity, gender expression, that has the reasonably foreseeable effect of creating an offensive, demeaning, intimidating, threatening, or hostile environment for that person or a small group of persons.

Hostile Environment Sexual Harassment. Whether an environment is “hostile” is a fact-specific inquiry based on subjective and objective factors. The complainant must have subjectively experienced unwelcome sexual conduct. Objectively, the conduct must have been, from the perspective of a reasonable person in the alleged complainant’s position, sufficiently severe, persistent or pervasive that it unreasonably interferes with, limits or deprives an individual from participating in or benefiting from the College’s education or employment programs and/or activities. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove harassment, particularly if the harassment is physical.

Intimate Partner Violence: Intimate partner violence is a form of sexual misconduct and includes:

Non-consensual sexual intercourse. Any penetration of the anus or vagina, however slight, with any body part or object, by one person upon another person, without consent and/or by force, and includes oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration.

Non-consensual sexual contact. Intentional contact by a person, however slight, with the breasts, buttock, groin, or genitals of another; or touching another with any of these body parts; or a person touching another or themselves with or on any of these body parts; or any other intentional bodily contact in a sexual manner without consent and/or by force.

Parties: Parties are the complainant and the respondent. The victim may be treated as a party for notice purposes, if the victim is not the complainant.

Quid Pro Quo (This for That): Conduct may constitute sexual harassment if an individual’s education, employment, living environment or participation in any College program or activity is (1) explicitly conditioned on submission by an individual to unwelcome sexual behavior or (2) decided in any part based on an individual’s submission or rejection of unwelcome sexual behavior.

Report. Report means an allegation of sexual misconduct. It may be made on the College’s report form at www.fortlewis.edu/tellsomeone. Any member of the College community who has been a victim of sexual misconduct is encouraged to report the matter to the Coordinator.

Respondent: Respondent is the individual against whom a complaint has been filed.

Sexual Harassment: Sexual harassment is defined as unwelcome conduct of a sexual nature, unwelcome sexual advances, requests for sexual favors, and other visual, verbal or physical conduct of a sexual nature.

1. Examples of Sexual Harassment: (1) unwelcome sexual advances, requests for sexual favors, and other visual, verbal or physical conduct of a sexual nature; (2) nonconsensual observation, creation or use of images or audio of another person’s sexual activity, intimate body parts or nakedness in person, electronically, through social media, in person, or through physical public posting.

2. **Forms of Sexual Harassment:** Sexual Harassment may be subtle and indirect or blatant and overt. For example, it may (1) be conduct toward an individual of any gender; (2) occur between peers or between individuals in a hierarchical relationship; (3) be aimed at coercing an individual to participate in an unwanted sexual relationship or have the effect of causing an individual to change behavior; or (4) consist of repeated actions or may arise from a single or isolated incident if sufficiently egregious (such as an incident of sexual violence).

Sexual violence. Sexual violence is a form of sexual misconduct and refers to physical non-consensual sexual acts. Sexual violence includes:

Stalking. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress, including causing a person to respond by altering their activities

III. Title IX Coordinator

The Title IX Coordinator is the individual responsible for receiving and overseeing all sexual misconduct reports and complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. In addition, the Title IX Coordinator shall:

1. Act as a liaison between the parties and the Fort Lewis College community.
2. Act as a facilitator for resolution of sexual misconduct cases or designate another to do so.
3. Coordinate training for the College community, investigators, hearing panelists, decisionmakers and appeal decisionmakers.
4. Communicate regularly with law enforcement and other campus officials investigating cases and provide information to law enforcement regarding Title IX requirements.
5. Determine if law enforcement must be notified of reports of sexual misconduct.

IV. Amnesty

The College's primary concern is safety. The use of drugs or alcohol never makes the victim at fault for sexual misconduct. Complainants and witnesses will receive amnesty for drug or alcohol use that occurs in the same incident where sexual misconduct is alleged. In addition, a respondent's voluntary use of drugs or alcohol will never function as a defense to a violation of this policy.

V. Privacy and Confidentiality

The initial discussion regarding a concern will be kept confidential to the full extent permitted by law. The College will honor requests for confidentiality to the extent permitted by law. While all efforts will be made to protect privacy, confidentiality cannot be guaranteed when other members of the College community may be at risk, or when the Coordinator has reason to

believe a crime has been committed. In some cases, the College may be required to report information to law enforcement, and/or investigate and take action on the basis of the facts it discovers.

1. Anonymity: Anonymous reports may be made by leaving out the reporter's name on the College's reporting form at www.fortlewis.edu/tellsomeone.
2. Confidential Support Options: Confidential support is available through the College's Counseling Center and/or Health Center (for students only), as well as Sexual Assault Services Organization (SASO) in Durango and/or Alternative Horizons. These and other support resources are listed online at <https://www.fortlewis.edu/CareSheet>. This includes information concerning (1) the option to report to law enforcement authorities and the importance of preserving evidence as necessary to prove criminal sexual misconduct; (2) assistance with obtaining a civil protection order; and (3) options for, and assistance in, changing academic, living, transportation and working situations.

VI. Reporting Requirement

Most Fort Lewis College employees are required to report sexual misconduct to the Coordinator if they know or have reason to know of an incident of sexual misconduct in the College's learning and working environment involving a member of the College community. Counseling Center and Health Center employees are not required to report sexual misconduct to the Title IX Coordinator. Employees who are not sure whether they are required to report sexual misconduct should contact the Title IX Coordinator.

VII. Training

Fort Lewis College offers training online and/or in person regarding prevention of sexual misconduct, reporting of sexual misconduct, bystander intervention, and sexual consent.

Employees, including supervisors, are required, as a condition of their employment, to complete sexual misconduct prevention and reporting training, at a minimum. See www.fortlewis.edu/employeetraining. Supervisors are responsible for ensuring that supervisees complete this training.

Students are required, as a condition of enrollment, to complete online sexual misconduct training.

VIII. Reason for Policy

To initiate operating procedures for handling complaints of sexual misconduct on campus and supporting students who have experienced sexual misconduct off campus.

IX. Responsibilities

For following policy: All students and employees regardless of their employment classification

For enforcement of policy: Title IX Coordinator, Deputy Title IX Coordinators

For oversight of policy: Associate Vice President for Student Affairs

For notification: Policy Librarian

For procedures implementing policy: Title IX Coordinator, Deputy Title IX Coordinators

Cross Referenced Policies

[Fort Lewis College Grievance Procedure](#)

[Fort Lewis College Title IX Sexual Harassment Policy](#)

Fort Lewis College Anti-Discrimination Policies

[Equal Opportunity and Affirmative Action Policy](#)

[Discriminatory Harassment Policy](#)

Revision History

This policy supersedes Sexual Misconduct Policy approved Dec. 6, 2013. This revised policy was approved by the Board of Trustees on February 13, 2015 to bring the policy in alignment with the Violence Against Women Reauthorization Act ("VAWA"), which amended the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), and imposed new obligations on colleges and universities under its Campus Sexual Violence Act ("SaVE Act") provision, Section 304, for which the U.S. Department of Education issued final regulations on October 20, 2014. Among other things, these regulations require prevention programs, reporting, and definitions regarding Dating Violence, Domestic Violence, Sexual Assault, and Stalking. This revised policy addresses those regulations, defines additional terms, and brings the policy into alignment with the College's Equal Opportunity and Affirmative Action policy approved by the Board of Trustees on October 17, 2014.

This revised policy was approved by the President's Cabinet on August 24, 2016 and the Board of Trustees on October 7, 2016. Revisions include (1) conflation of the two "Harassment" definitions of "Sexual Harassment" and "Hostile Environment Sexual Harassment" into one; (2) waiving adjudication of substance abuse conduct violations for victims or witnesses who wish to make a complaint; (3) expansion of confidential reporting options; (4) articulation of "Interim Remedies" for victims; and (5) articulation of the requirement that responsible employees must report sexual misconduct.

July 2018 - technical change removing the Consensual Relationships section as this section is replaced by the Amorous Relationships policy.

October 2018 - minor changes reorganization and wording changes made to policy

August 2020 - Changes were made to the title and contents to indicate that it is supplemental to the Title IX Sexual Misconduct Policy. Prohibited behaviors listed in the introduction were amended to correspond to the defined behaviors. Added clarification that gender-based harassment is prohibited under separate policies.