

# Title IX Sexual Harassment

	<p>Policy identification number: File: <b>Ethical &amp; Responsible Conduct Policies &gt; Anti-Discrimination Policies</b></p> <h2 style="text-align: center;">Title IX Sexual Harassment</h2> <p>Policy Summary</p> <p><b>This policy prohibits sexual harassment including rape, fondling, dating and domestic violence, stalking and unwelcome conduct on the basis of sex, requires supportive measures in response to reports, and provides both informal and formal procedures for resolving sexual harassment complaints.</b></p>
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<p>Policy Owner</p> <p><b>Associate Vice President, Student Affairs</b></p>	<p>Approval Date</p> <p><b>August 7, 2020</b></p>	<p>Effective Date</p> <p><b>August 14, 2020</b></p>
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<p>Search Terms</p> <p><b>t, vpsa, title IX, sexual, harassment</b></p>	<p>Scheduled for Review</p> <p><b>Fall 2022</b></p>
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## I. Introduction

1. Fort Lewis College does not discriminate on the basis of sex in the education programs and activities that it operates, and Fort Lewis College is prohibited from such discrimination pursuant to Title IX of the Education Amendments of 1972 (20 U.S.C. §§

1681-88) and implementing regulations (34 C.F.R. Part 106). This prohibition extends to admissions and employment. Inquiries regarding the application of Title IX and implementing regulations may be referred to the Title IX Coordinator identified herein, to the Assistant Secretary of the U.S. Department of Education, or both.

2. Fort Lewis College prohibits Sexual Harassment (see Definitions section for detail.)
3. This Policy is not intended to, nor does it, create a contract between Fort Lewis College and community members.
4. Misconduct that does not meet the definition or jurisdiction requirements of this policy may be resolved under other Fort Lewis College Policies.

## **II. Jurisdiction**

The provisions of this Policy apply to all reported instances of alleged Sexual Harassment that occur while the Complainant is in the United States and is participating in, or attempting to participate in, an Education Program or Activity of the Institution.

## **III. Reports of Alleged Sexual Harassment**

1. At any time, any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of sex discrimination), in person, by mail, by telephone, or by electronic mail to the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report, including:
  1. Filing a report online at [www.fortlewis.edu/TellSomeone](http://www.fortlewis.edu/TellSomeone);
  2. Coming to the Title IX office during office hours at 230 Skyhawk Station;
  3. E-mailing [cmsuazo@fortlewis.edu](mailto:cmsuazo@fortlewis.edu);
  4. Calling the Title IX office at 970-822-8728
2. Any Mandatory Reporter who receives an allegation of Sexual Harassment must promptly provide the report of Sexual Harassment to the Title IX Coordinator.
3. Upon receiving a report of alleged Sexual Harassment, the Title IX Coordinator will promptly:
  1. Inform the Complainant of the method for filing a Formal Complaint.
  2. Inform the Complainant of the availability of Supportive Measures with or without the filing of a formal complaint.
  3. Offer Supportive Measures to the Complainant, the Respondent, or both, as detailed in Section 5 below.
4. 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.

## **IV. Supportive Measures**

1. The Title IX Coordinator will ensure that Supportive Measures are offered to the Complainant and/or the Respondent as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent. Supportive Measures may be offered before or after the filing of a Formal Complaint, or where no Formal Complaint has been filed.
2. The purpose of Supportive Measures is to restore or preserve equal access to the Institution's Education Program or Activity without unreasonably burdening the other Party. Supportive Measures include measures designed to protect the safety of all Parties or the Institution's educational environment, as well as measures designed to deter sexual harassment.
3. Any interim supportive measure may be made permanent with consent of the affected party.
4. Individuals who wish to have a support person present during a report may do so. They may also be present at any stage of informal or formal resolution other than during a hearing. That person may not speak at any proceeding and must maintain the confidentiality of proceedings. The College is not responsible for providing a support person, and parties are responsible for choosing a support person who is available for scheduled events related to the proceedings.
5. Individuals who require a reasonable accommodation for a disability may request such accommodations at any point after a report is made.
6. Supportive Measures do not include disciplinary sanctions. The Formal Resolution Process, as detailed in Section 8 below must be completed before disciplinary sanctions may be imposed on a Respondent.
7. Fort Lewis College will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of Fort Lewis College to provide the Supportive Measures.
8. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures, though measures may be implemented by a variety of individuals and offices. Where supportive measures are implemented by confidential resources such as the Counseling Center or the Health Center, the Coordinator will rely on the professionalism of those offices to properly implement the measures requested.
9. Supportive Measures may include, but are not limited to:
  1. Counseling
  2. Extensions of deadlines or other course-related adjustments
  3. Campus escort services
  4. Increased security and monitoring of certain areas of the campus
  5. Exploration and utilization of academic support services on campus.
  6. Interim and/or mutual restrictions on contact between the Parties
  7. Interim and/or mutual changes in work or housing locations
  8. Interim and/or mutual modifications of work or class schedules
  9. Interim and/or mutual limitations on hours for using campus services.
  10. Interim and/or mutual restriction from campus facilities, events, co-curricular activities, athletics, and/or residential building(s).
  11. Other similar measures
10. Fort Lewis College may remove individuals from its grounds, Education Program or Activity on an emergency basis as follows:

1. A Student Respondent may be removed from a College Education Program or Activity on an emergency basis under the Fort Lewis College Interim Suspension Policy wherein the College
  1. Undertakes an individualized safety and risk analysis;
  2. Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal; and
  3. Provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.
2. Employees may be suspended on an interim basis per the terms of the employee's employment, including relevant handbooks (Faculty or Administrative Employee handbooks) or State of Colorado rules regarding Classified Employees. See [fortlewis.edu/employeehandbooks](http://fortlewis.edu/employeehandbooks).
3. An individual who is not a student or an employee may be restricted from campus grounds and/or activities on an emergency basis or permanently per the [Persona Non Grata](#) policy.
4. Individuals may further be restricted from campus or portions of campus under the terms of a lawful restraining order.

## **V. Fair and Equitable Process**

1. No individual designated as a Title IX Coordinator, Investigator, Decisionmaker, Appeal Decisionmaker, or person designated to facilitate an informal resolution process may have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
2. Fort Lewis College will not make credibility determinations based on a person's status as a Complainant, Respondent, or witness.
3. A Respondent is presumed not responsible for alleged conduct until a determination regarding responsibility is made at the conclusion of the Formal Resolution Process set forth in Section 8 below.
4. Throughout the processes described herein, Fort Lewis College will objectively evaluate all relevant evidence, including both inculpatory (incriminating) and exculpatory (exonerating) evidence.
5. The processes described herein are subject to the reasonably prompt timeframes stated. These timeframes may be extended for good cause upon written notice to the Parties setting forth the reason for such extension. Good cause may include considerations such as the absence of a Party, a Party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

## **VI. Informal Resolution Process**

1. Availability of Informal Resolution Process
  1. Allegations against a Respondent may be resolved through an informal resolution process. The informal resolution process does not involve a full investigation and adjudication. Processes and outcomes may be tailored to the needs of the parties.

Process does not need to involve face to face meetings. Outcomes can involve the supportive measures described in Section 5. Outcomes can also involve (by agreement) remedies and/or sanctions described in Section 8.

2. Examples of informal resolution processes that may be used include but are not limited to mediation, facilitated dialogue, conflict coaching, and restorative justice.
  3. The Title IX Coordinator may offer the informal resolution process to the Parties after a formal complaint is filed and only if all Parties voluntarily consent, in writing, to the informal resolution process.
  4. At any time prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and resume the formal resolution process described in Section 8 below.
  5. The informal resolution process is not available to resolve allegations of Sexual Harassment in which the Complainant is a student of Fort Lewis College and the Respondent is an employee of the Institution.
2. The informal resolution process may be implemented any time prior to reaching a determination regarding responsibility.
  3. Confidentiality: Any party or the informal resolution facilitator in an informal resolution shall not voluntarily disclose any information concerning any informal resolution communication or any communication provided in confidence to the informal resolution facilitator, unless and to the extent that:
    1. All parties to the proceeding and the facilitator consent in writing; or
    2. The informal resolution communication reveals the intent to commit a felony, inflict bodily harm, or threaten the safety of a child under the age of eighteen years; or
    3. The informal resolution communication is required by statute to be made public; or
    4. Disclosure of the informal resolution communication is necessary and relevant to an action alleging willful or wanton misconduct of the facilitator.
  4. Nothing in this section shall prevent the gathering of information for research or educational purposes, or for the purpose of evaluating or monitoring the performance of an informal resolution facilitator or program, so long as the parties or the specific circumstances of the parties' controversy are not identified or identifiable.
  5. Notice of Availability of Informal Resolution Process
    1. The Title IX Coordinator will issue written notice to the parties disclosing:
      1. The allegations;
      2. The requirements of the informal resolution process, including the circumstances under which it precludes the Parties from resuming a Formal Complaint arising from the same allegations;
      3. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
      4. That either Party may withdraw from the informal resolution process and resume the formal grievance process prior to agreeing to a resolution.
  6. Timeframe

1. Fort Lewis College will make a good faith effort to complete the informal resolution process within an average of sixty to ninety days, without jeopardizing the rights of a Party.
7. An Informal Resolution Agreement is a written agreement that confirms an agreement to resolve the allegations against the Respondent and records the outcome of that agreement.
8. After the Parties have agreed to a resolution that is accepted by the Title IX Coordinator, neither Party may appeal the resolution.

## **VII. Formal Resolution Process**

1. Formal Complaint
  1. A Formal Complaint may be filed by a Complainant or by the Title IX Coordinator.
  2. A Formal Complaint may be filed online at [www.fortlewis.edu/title9complaint](http://www.fortlewis.edu/title9complaint).
  3. Fort Lewis College will investigate the allegations in a formal complaint.
2. Dismissal
  1. The Title IX Coordinator will dismiss a Formal Complaint under this policy, and no investigation will be conducted under this policy, if:
    1. The conduct alleged in the Formal Complaint would not constitute Sexual Harassment even if proved; or
    2. The conduct alleged in the Formal Complaint did not occur within the Jurisdiction/Applicability of the policy, as described in Section 3 above.
  2. The Title IX Coordinator may dismiss a Formal Complaint, or any allegations therein, at any time during the investigation or hearing, if:
    1. The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
    2. The Respondent is no longer enrolled or employed by the Institution;
    3. Specific circumstances prevent Fort Lewis College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
  3. The dismissal of a Formal Complaint under Section 8.2.1 of this Policy does not preclude Fort Lewis College from investigating or acting under other applicable policies regarding conduct that is not subject to this Policy. Such policies may include but are not limited to the Student Conduct Policy, the Faculty Handbook, and the Administrative Professional Handbook.
  4. Upon dismissal of the Formal Complaint or any allegations therein, the Title IX Coordinator will promptly send written notice of the dismissal and the reasons therefor simultaneously to the Parties.
3. Consolidation
  1. The Title IX Coordinator may consolidate Formal Complaints as to allegations of Sexual Harassment where the allegations of Sexual Harassment arise out of the same facts or circumstances.
4. Timeframe for Conclusion

1. Fort Lewis College will make a good faith effort to complete the formal resolution process, including the hearing but excluding appeals, within an average of sixty to ninety days, without jeopardizing the rights of a Party. Parties who desire an update on the progress of an investigation may notify the Title IX Coordinator at [tellsomeone@fortlewis.edu](mailto:tellsomeone@fortlewis.edu).
  2. The College may, within its discretion, place a hold on a student account while any investigation or proceeding conducted pursuant to this policy is pending.
5. Written Notice
1. Upon receipt of a Formal Complaint, the Title IX Coordinator will issue written notice of allegations to the Respondent and Complainant, if known. The written notice will be provided to each Party with three days (unless waived by a party) to prepare a response before any initial interview. The notice of allegations will include:
    1. Notice of this policy and the processes within this policy, including the informal resolution process described in Section 7 above;
    2. The identities of the Parties involved, if known;
    3. The conduct allegedly constituting sexual harassment;
    4. The date and location of the incident, if known;
    5. A statement that the Respondent is presumed not responsible for the alleged conduct;
    6. A statement that a determination regarding responsibility is made at the conclusion of the formal resolution process;
    7. A statement that Parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
    8. A statement that Parties may inspect and review evidence;
    9. A statement that, pursuant to the Student Conduct Policy and any similar provisions in employee handbooks or in Fort Lewis College policy, knowingly making false statements or knowingly submitting false information during this process is prohibited. If, during the course of an investigation, Fort Lewis College decides to investigate additional allegations about the Complainant or Respondent relating to the same facts or circumstances but not include in the earlier written notice, Fort Lewis College will provide notice of the additional allegations to the Parties whose identities are known.
6. Advisor
1. Each Party has the right to have an advisor of their choice, but Parties are not required to have an advisor.
  2. It is a party's responsibility to select an advisor whose schedule permits attendance at scheduled interviews,
  3. Parties must either find a free advisor or pay for the advisor themselves, except for purposes of witness examination in Section 8 below.
  4. The advisor may be, but need not be, an attorney. If the advisor is an attorney, the party must notify the Title IX Coordinator 24 hours in advance of the interview or hearing.
  5. The advisor may be present at any proceedings that are part of the formal resolution process. If a Party wishes to have an advisor present at a proceeding,

Fort Lewis College will work within reason to schedule the proceeding so the advisor may attend, without unreasonably delaying the progress of the formal resolution process.

6. Except as described in Section 8.8.4 below, a Party's advisor may not speak on behalf of the Party.
7. Investigation
  1. Fort Lewis College will investigate the allegations in a Formal Complaint.
  2. The investigation will be conducted by a Fort Lewis College selected investigator.
  3. The Institution, and not the Complainant or the Respondent, has the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility.
  4. Fort Lewis College cannot access, consider, disclose, or otherwise use a Party's records that are made or maintained by a health care professional acting in their professional capacity, and which are made or maintained in connection with the provision of treatment to the Party, unless Fort Lewis College obtains that Party's voluntary written consent to do so for the resolution process.
  5. During the investigation, until the Investigation Report is issued, each Party has an opportunity to present witnesses and evidence to the Investigator.
    1. Witnesses will be interviewed without parties present,
    2. Parties may not attempt to influence the statements of witnesses or other parties.
    3. Witnesses are voluntary and may not be coerced into participating.
    4. Witnesses and evidence offered after the Investigation Report is issued will be included as an addendum to the Report if they were not previously available and are relevant.
  6. The Investigator will provide written notice of the date, time, location, participants, and purpose of any investigative interview or other meeting to any Party whose participation is invited or expected, no less than three days in advance (unless waived).
  7. Prior to completion of the investigation report, the Title IX Coordinator will send to each Party and to each Party's advisor, if any, all evidence obtained as part of the investigation, whether or not Fort Lewis College intends to rely on such evidence in reaching a determination regarding responsibility, that is directly related to the allegations raised in the Formal Complaint.
    1. Each Party may submit a written response, which the Investigator will consider prior to conclusion of the investigation and completion of the investigative report.
    2. The written response, if any, must be submitted to the Title IX Coordinator by Investigator within 10 days after the Title IX Coordinator sends the evidence to the Party, unless the deadline is extended for good cause. These written responses will be shared with the parties as well. Parties who have responded in full prior to the elapse of 10 days may waive the remainder of the 10 days permitted for response. They can do this by notifying the Title IX Coordinator at [cmsuazo@fortlewis.edu](mailto:cmsuazo@fortlewis.edu) that their response is complete and they waive the remaining days.

8. The Investigator will create an investigative report that fairly summarizes relevant evidence.
  1. The Investigator must conduct an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence. The investigation report shall not include a finding as to responsibility.
9. At least ten days prior to the scheduled hearing, the Title IX Coordinator will send to each Party and to each Party's advisor, if any, the investigative report.
  1. Each Party may submit a written response within five days., Title IX Coordinator will submit responses to the Hearing Panel for consideration at the hearing.
  2. The response deadline may be extended for good cause.

## 8. Hearing

1. General Conduct of the Hearing
  1. A hearing panel serves as the Decisionmaker at the hearing. The hearing will be held by a panel (one or more individuals) selected by Fort Lewis College.
  2. The Decisionmaker will conduct a live hearing. Prior to the hearing, the Decisionmaker will review the investigative report and the written responses provided by the Parties, if any.
  3. The hearing will occur virtually in a manner allowing the participants to simultaneously see and hear the party or witness answering questions. If both parties and the College agree, the hearing may occur in person.
  4. Hearings will be recorded, at least by audio. Recordings or a transcript of the recording will be available to the Parties for inspection and review.
2. Standard of Evidence
  1. The determination of responsibility will be made by the Decisionmaker using the preponderance of the evidence standard. (i.e., the information gathered demonstrates that it is "more likely than not" that the misconduct occurred).
3. Relevant Evidence Considered
  1. In making a determination of responsibility or sanctions, the Decisionmaker may only consider relevant evidence.
  2. Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determinations to be made more probable or less probable than it would be without the evidence.
  3. The Decisionmaker will not consider:
    1. Evidence about the Complainant's sexual predisposition or prior sexual behavior, except that the Decisionmaker may consider:
      1. Evidence about the Complainant's prior sexual behavior, when offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
      2. Evidence concerning specific incidents of the Complainant's prior sexual behavior with respect to the Respondent, when offered to prove consent.

2. Information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
  4. The Decisionmaker must conduct an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
    1. Credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.
4. Witness Examination
  1. Neither parties nor advisors make opening or closing statements.
  2. The Decisionmaker may ask questions on direct examination, cross examination, and redirect. The Decisionmaker will allow each Party's advisor to cross examine witnesses, and to redirect their own party or witnesses after cross examination.
  3. Parties may speak only in response to questions from the Decisionmaker or in response to cross examination or redirect questions.
  4. Cross examination and redirect questions may not be asked by either Party. Cross examination and redirect may only be conducted by one advisor acting on a Party's behalf, or by the Decisionmaker.
  5. Advisors may cross examine opposing parties and witnesses. Those questions must be limited to matters raised in the final investigation report or direct questions by the Decisionmaker.
  6. Redirect: Immediately after an individual has been cross examined, that individual's advisor or the Decisionmaker may ask questions of the same individual to clarify matters covered in the cross examination.
  7. Advisors who wish to ask cross examination questions should submit them in advance to the Decisionmaker if possible, so that relevance questions may be resolved in advance. Non-attorney advisors who will conduct cross examination must complete the Fort Lewis College training for the purpose of performing cross examination.
  8. Any advisor must sign a commitment to the FLC Advisor Rules of Decorum.
  9. If a Party wishes to ask cross examination questions of a Party or witness and does not have an advisor, Fort Lewis College will select and provide an advisor to the Party, free of charge, for the limited purpose of conducting cross examination.
  10. Only relevant questions may be asked of a Party or witness, and they are only relevant the first time they are asked. Cross examination questions are not relevant if they were answered on direct examination.
  11. Before a Party or witness answers a question, the Decisionmaker will determine whether the question is relevant and explain any decision to exclude a question as not relevant.
9. Remedies/Sanctions
  1. Sanctions are decided by the Decisionmaker in consultation with the Title IX Coordinator and are only implemented where Respondent is found responsible.
  2. If the Respondent has a Constitutional due process right to a separate administrative process under the law, sanctions are not imposed until the

completion of that process, or waiver thereof. Sanctions are not stayed for a criminal proceeding to resolve, however.

3. Remedies are designed to restore or preserve equal access to the Institution's Education Program or Activity. Remedies may be disciplinary or punitive and need not avoid burdening the Respondent. The Title IX Coordinator is responsible for the effective implementation of remedies.
4. Procedure: When the Decisionmaker notifies the Coordinator that a finding of responsibility has been reached, the Title IX Coordinator will invite parties to provide input about the sanction.
  1. The Decisionmaker may elect to have a separate remote sanctioning hearing particularly in cases where termination, suspension or expulsion was a possible sanction, no later than one week after the close of the hearing that resulted in a finding of responsibility. Parties will be notified in writing of any finding of responsibility, and of the date, time and manner of any sanctioning hearing. Both parties may make a statement up to 15 minutes in length at such a sanctioning hearing.
5. Because statements regarding sanctioning are submitted after a determination of responsibility has been made, they are not evidence. The complainant's written or remote hearing statement will not be shown to the respondent unless the complainant requests otherwise. The complainant, however, may see and hear the respondent's statement, or review it after it is made.
6. If a Respondent is found responsible for Sexual Harassment under this Policy, potential remedies and/or sanctions include but are not limited to imposition of the following measures, potentially permanently:
  1. Remedies
  2. Extensions of deadlines or other course-related adjustments
  3. Campus escort services
  4. Increased security and monitoring of certain areas of the campus
  5. Exploration and utilization of academic support services on campus.
  6. Restriction from enrollment in courses with complainant.
  7. Counseling
  8. Changes in housing assignment location.
  9. Change in class schedules.
  10. Limitations on hours for using campus services.
  11. Restriction from campus facilities, events, co-curricular activities, athletics, and/or residential building(s).
  12. Restriction from leadership role and campus employment.
  13. Restriction from enrollment in classes with a victim.
  14. Change in work schedule.
  15. Change in work location.
7. Sanctions:
  1. Permanent no contact directive(s), including unilateral
  2. Referrals for behavioral assessments from the Counseling Center and/or community-based resources and required compliance with the results of those assessments.
  3. Housing assignment change or housing removal.

4. Restriction on use of housing, including but not limited to hosting guests.
5. Payment of restitution.
6. Campus or community service.
7. Required educational program(s).
8. Written reflection, written apology.
9. Disciplinary warning.
10. Disciplinary probation.
11. Disciplinary suspension, including suspension from an academic program or discipline.
12. Delayed conferral of degree.
13. Revocation of admission.
14. Letter of Expectation/Reprimand.
15. Mandatory Training.
16. Ineligibility for Promotion.
17. Job Duty Modification.
18. Reduction in Salary.
19. Ineligibility for Merit Increases.
20. Restriction from all or portions of campus.
21. Termination of Employment.
22. Ineligibility for Future Employment,

#### 10. Written Determination

1. After considering the investigative report, including any Party's written response to the investigative report, and all relevant evidence presented at the hearing, and after considering party statements regarding sanctioning, the Decisionmaker will issue a written determination.
2. The Title IX Coordinator will provide the written determination simultaneously to the Parties.
3. The written determination will include:
  1. Identification of the allegations potentially constituting Sexual Harassment;
  2. A description of the procedural steps from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews, site visits, methods used to gather other evidence, and hearings held;
  3. Findings of fact supporting the determination;
  4. Conclusions regarding the application of [applicable policy] to the facts;
  5. A statement of, and rationale for, the result as to each allegation, including:
  6. A determination regarding responsibility;
  7. Any disciplinary sanctions imposed on the Respondent (may be provided separately after any sanctioning proceeding);
  8. Whether remedies will be provided to the Complainant;
4. Procedures and permissible bases for the Parties to appeal.
5. The written determination becomes final 3 days after it is sent to the Parties, unless an appeal is filed.

11. If an employee respondent is found not to be responsible for violating the policy, the investigation report and/or the hearing panel may, if applicable, include a determination that the employee respondent engaged in conduct that was inappropriate or unprofessional. In such cases, the matter will be referred to Human Resources, which will determine an appropriate action or response.

## 12. Appeal

### 1. Appealable Issues

#### 1. Either Party may appeal:

1. Dismissal of a Formal Complaint or any allegations therein; or
2. A determination regarding responsibility.

#### 2. No other issue may be appealed.

### 2. Bases for Appeal

#### 1. A Party may only appeal on one or more of the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;

1. This basis for appeal is not satisfied simply because evidence was not presented during the proceedings, if the evidence was reasonably available at the time the determination was made.

3. The Title IX Coordinator, Investigator, or Decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, that affected the outcome of the matter.

## 13. Filing an Appeal

1. Parties who wish to file an appeal must notify the Title IX Coordinator in writing at [cmsuazo@fortlewis.edu](mailto:cmsuazo@fortlewis.edu) no later than 3 days after the conclusion of a case. A case concludes with either the notice of dismissal, written determination with a finding of “Not Responsible”, or issuance of any disciplinary sanction is sent to the Party.

### 2. The Appeal Decisionmaker is

1. An Associate Vice President of Student Affairs (or designee), for students;
2. The President (or designee) for faculty;
3. The Appointing Authority or designee for classified staff;

3. The individual’s Vice President, Associate Vice President, or President, for administrative staff. The written appeal must state with specificity:

1. The issues being appealed; and
2. The bases for the appeal (see 8.12.2).

### 4. Timeframe for Completion of Appeal

1. Fort Lewis College will make a good faith effort to complete the appeal within 7 days.
2. The timeframe for completion of appeal may be extended for good cause. If the timeframe for completion of appeal is extended, the Title IX Coordinator will notify both Parties in writing of the delay or extension and the reasons for the delay or extension.

5. Appeal Procedure
  1. After receiving a timely written appeal, the Title IX Coordinator will notify the Parties in writing:
    1. That the appeal was filed;
    2. The process for submitting a written statement in support of, or challenging, the issues being appealed.
  2. The appeal, including any written statements submitted by the Parties, will be considered by the Appeal Decisionmaker. The Appeal Decisionmaker may also consider the investigative report, including any Party's written response to the investigative report, all relevant evidence presented at the hearing, and the recording of the hearing. Information provided exclusively for the purposes of sanctioning is not relevant to an appeal unless the sanctioning outcome or process is clearly being appealed.
  3. The Appeal Decisionmaker will issue a written determination of appeal, which will describe the result of the appeal and the rationale for the result.
  4. The Title IX Coordinator will provide the written determination of appeal simultaneously to the Parties.
6. The result of the appeal is final.

## **VIII. Retaliation**

1. Retaliation is prohibited.
2. A report of alleged Retaliation may be made to the Title IX Coordinator in person, by mail, by telephone, or by electronic mail. The Title IX Coordinator is Kate Suazo. She may be contacted at 230 Skyhawk Station, (970) 822-8728, and/or [cmsuazo@fortlewis.edu](mailto:cmsuazo@fortlewis.edu).
3. Any Mandatory Reporter who receives a report of alleged Retaliation must promptly report the alleged Retaliation to the Title IX Coordinator.
4. Allegations of Retaliation may be investigated and adjudicated under the Fort Lewis College Grievance Procedure.

## **IX. Reason for Policy**

The College has a responsibility to respond properly to sexual harassment so as to provide equal access to its educational programs, regardless of gender.

## **X Responsibilities**

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

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

**For oversight of the policy:** Associate Vice President, Student Affairs

**For notification of policy:** Policy Librarian

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

## **XI. Definitions**

**Complainant.** An individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

**Consent.** 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 he or she has the affirmative consent of the other or others to engage in the sexual activity. Silence, lack of protest, or resistance, by themselves, cannot be interpreted as consent. Consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, by itself cannot be interpreted as consent. Consent is not effectively given if force, threats, intimidation or coercion were involved, or if a person is incapable of giving consent due to use of drugs or alcohol, or due to intellectual or other disability.

**Days.** Calendar days (Sunday through Saturday), not business days.

**Education Program or Activity.** Locations, events, or circumstances over which Fort Lewis College exercised substantial control over both the Respondent and the context in which the Sexual Harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the Institution.

**Formal Complaint.** A document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that Fort Lewis College investigate the allegation of Sexual Harassment. (See Section 8, below).

**Mandatory Reporter.** An employee who has the obligation to report alleged Sexual Harassment and alleged Retaliation to the Title IX Coordinator.

**Party.** Complainant or Respondent.

**Report.** An allegation of sexual harassment provided to a mandated reporter or to the Title IX Coordinator directly, which is not a Formal Complaint. Reports may be made for purposes of obtaining supportive measures, to get guidance on handling the incident independently, or simply to make a record of the allegation (See section 4).

**Respondent.** An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

**Retaliation.** Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing

regulation, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

**Sexual Harassment.** Conduct on the basis of sex that satisfies one or more of the following:

- An employee of Fort Lewis College conditioning the provision of an aid, benefit, or service of Fort Lewis College on an individual's participation in unwelcome sexual conduct;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Institution's Education Program or Activity; or
- Sexual assault as defined in 20 U.S.C. § 1092(f)(6)(A)(v), dating violence as defined in 34 U.S.C. § 12291(a)(1), domestic violence as defined in 34 U.S.C. § 12291(a)(8), or stalking as defined in 34 U.S.C. 12291(a)(30). As of 6/2020 these are defined as follows:
- Sexual assault means:
  - Rape, which is penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
  - Fondling, which is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity;
  - Incest, which is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; OR
  - Statutory Rape, which is sexual intercourse with a person who is under the statutory age of consent.
  - Dating violence means violence committed by a person—(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship, (ii) The type of relationship, (iii) The frequency of interaction between the persons involved in the relationship.
  - Domestic Violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Colorado or applicable jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
  - Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to— A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.
  - Attempts to engage in any act prohibited by this policy are also a violation of this policy

**Supportive Measures.** Non-disciplinary, non-punitive individualized services offered to the Complainant or Respondent. Supportive Measures are discussed in further detail in Section 5 below.

**Title IX Coordinator,** Kate Suazo, 230 Skyhawk Station, (970) 822-8728, and/or [cmsuazo@fortlewis.edu](mailto:cmsuazo@fortlewis.edu). For the purpose of this Policy, actions to be taken by the Title IX Coordinator may be completed by the Title IX Coordinator's designee.

## **XII. Cross-Referenced Policies**

[Fort Lewis College Grievance Procedure](#)

[Fort Lewis College Supplemental Sexual Misconduct Policy](#)

Fort Lewis College Anti-Discrimination Policies

[Equal Opportunity and Affirmative Action Policy](#)

[Discriminatory Harassment Policy](#)

[Disability Anti-Discrimination Policy](#)

[Fort Lewis College Interim Suspension Policy](#)

[Faculty Handbook](#)

[Exempt Staff Handbook](#)

[Classified Employee Handbook](#)

[Student Conduct Policy](#)

