

Policy Title: **SEXUAL MISCONDUCT**

Pursuant to Title IX of the Higher Education Act of 1972 (“Title IX”) Fox Valley Technical College (“FVTC or the “College”) prohibits all forms of illegal gender and sex-based discrimination, examples of which may include, but are not limited to, acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. FVTC has a zero tolerance policy for gender and sex-based discrimination, and seeks to create and maintain a campus free from sexual misconduct. Consistent with Title IX and other applicable laws, FVTC implements this policy to prevent sexual misconduct.

When an allegation of misconduct is brought to the College’s attention, and an accused is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are never repeated. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

Inquiries concerning Title IX may be referred to FVTC’s Title IX Coordinator or to the U.S. Department of Education Office for Civil Rights (“OCR”), which implements Title IX.

**DEFINITIONS**

The following definitions apply to this policy:

**Consent**

In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by words or actions, as long as those words and actions create a clear and mutually understandable permission regarding the conditions of the sexual activity. Silence, in and of itself, cannot be interpreted as consent. Non-verbal consent, such as non-verbal actions, is not as clear as verbally consenting to sexual activity. Therefore, relying solely on non-verbal actions or non-verbal communications can lead to misunderstandings. Persons who want to engage in sexual activity are responsible for obtaining consent. Consent should never be assumed.

Consent to any one form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual activity. Lack of protest or resistance does not constitute consent.

In order to give consent, an individual must be of legal age.

Individuals must be able to understand what they are doing in order to give clear, knowing, and voluntary consent to sexual activity. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Under this policy, “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a “no.”

Sexual activity with someone who one knows to be, or, based on the circumstances, should reasonably know to be, mentally or physically incapacitated by drugs or alcohol constitutes a violation of this policy. Incapacitation results in inability to give knowing consent.

This policy, and the prohibition against engaging in sexual activity with someone who is incapacitated, also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from involuntarily ingesting alcohol or drugs. Possession, use, and/or distribution of “date rape” drugs, including Rohypnol, Ketamine, GHB, and/or Burundanga is prohibited. More information on these drugs can be found at <https://www.womenshealth.gov/a-z-topics/date-rape-drugs>.

Use of alcohol or other drugs will never function as a defense for any behavior that violates this policy.

### **Coercion**

There is a difference between sexual seduction and coercion. Coercion happens when someone is compelled to engage in sexual activity based on harassment, threats, or intimidation, or when someone is pressured unreasonably for sex. When someone makes clear that he or she does not want to engage in sexual conduct, wants it to stop, or does not wish to go past a certain point of sexual interaction, continued pressure beyond that point is coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex.

### **Force**

Force is the use of physical violence and/or imposing on someone physically to gain sexual access or engage in sexual activity. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent.

## **Types of Sexual Misconduct**

Sexual misconduct is a broad term encompassing any non-consensual behavior of a sexual nature that is committed by force, coercion, or intimidation, or that is otherwise unwelcome. Sexual misconduct includes, but is not limited to, the following:

- 1. Sexual Harassment**
- 2. Sexual Assault**
- 3. Domestic Violence**
- 4. Stalking**
- 5. Dating Violence**
- 6. Hostile Environment**
- 7. Other Sex-Based Misconduct Offenses**

### **1. Sexual Harassment**

Sexual Harassment is unwelcome, gender-based verbal or physical conduct that is, sufficiently severe, persistent or pervasive that it unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the College's educational program and/or activities. Sexual harassment can be based on power differentials (quid pro quo harassment, the creation of a hostile environment, or retaliation for a person complaining about or participating in the investigation of sexual misconduct (retaliatory harassment).

This policy prohibits all forms of sexual harassment that would violate applicable federal, state, and local laws. Specific examples of prohibited sexual harassment include, but are not limited to:

- Unwelcome sexual advances or requests for sexual favors. Examples include, but are not limited to:
  - Staring at a person or looking a person up and down.
  - Whistles, catcalls, and sexual references.
  - Repeated pressure on an employee to socialize or date another individual.
- Unwelcome verbal or physical conduct of a sexual nature. These include, but are not limited to:
  - Sexual gestures or hand movements
  - Unnecessary and unwanted touching, grabbing, caressing, pinching or brushing up against a person.
  - Asking personal questions about a person's social or sexual life.
  - Making sexual comments or innuendoes, telling jokes or stories of a sexual, demeaning, offensive or insulting nature.
  - Deliberate display of offensive, sexually graphic material which is not necessary for business purposes.
  - Posters, cartoons, photographs or artwork of a sexual, hostile or degrading nature.
- Making submission to, or rejection of, such conduct a factor in academic or employment decisions affecting a student or employee. Examples may include, but are not limited to: availability of educational opportunities or grades, granting or withholding pay increases, promotions, job offers or other academic or employment issues based on sex or gender.
- Taking adverse educational or employment action against a student or employee because of the person's participation in a complaint or investigation of sexual misconduct.

## **2. Sexual Assault**

Sexual Assault is defined very broadly by criminal law, and thus also by this policy. Sexual assault includes a wide variety of both non-consensual sexual contact as well as non-consensual sexual intercourse.

Non-consensual sexual contact is any intentional sexual touching, however slight, with any object, by a man or a woman upon a man or a woman that is without consent and/or by force. Examples of sexual contact include, but are not limited to: Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

Non-consensual sexual intercourse is any sexual intercourse however slight, with any object, by a man or woman upon a man or a woman that is without consent and/or by force. Examples of sexual intercourse includes, but are not limited to: vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

## **3. Domestic Violence**

Includes misdemeanor and felony crimes of violence committed against a victim when the offender is the spouse of the victim, a former spouse of the victim, cohabitant of the victim, an intimate partner of the victim, or has a child in common with the victim. Domestic violence also includes misdemeanor or felony crimes of violence when the victim is a minor subject to the control of the offender, or is an incapacitated individual subject to the control of the offender.

According to Wisconsin State Statute, Domestic Abuse means any of the following, when engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

- Intentional infliction of physical pain, physical injury or illness.
- Intentional impairment of physical condition.
- First, second, or third degree sexual assault (according to WI State Statute).
- Physical act that may cause the other person reasonably to fear imminent engagement in the conduct above.

## **4. Stalking**

Involves a course of conduct, including harassment, intimidation, or surveillance, directed at a specific person that would cause a reasonable person to fear for her, his, or other's safety, or to suffer substantial emotional distress, serious physical injury, or death. Stalking can also be a form of sexual harassment, and/or it can involve a total stranger. The physical location of the course of conduct or portions of it does not matter.

According to Wisconsin State Statutes, a “course of conduct” means a series of 2 or more acts carried out over time, however short or long, that show a continuity of purpose, including any of the following:

- Maintaining a visual or physical proximity to the victim.
- Approaching or confronting the victim.
- Appearing at the victim’s workplace or contacting the victim’s employ or coworkers.
- Appearing at the victim’s home or contact the victim’s neighbors.
- Entering property owned, leased, or occupied by the victim.
- Contacting the victim by telephone or causing the victim’s telephone or any other person’s telephone to ring repeatedly or continuously, regardless of whether a conversation ensues.
- Photographing, videotaping, audiotaping, or, through any other electronic means, monitoring or recording the activities of the victim. This subdivision applies regardless of where the act occurs.
- Sending material by any means to the victim or, for the purpose of obtaining information about, disseminating information about, or communicating with the victim, to a member of the victim’s family or household or an employer, coworker, or friend of the victim.
- Placing an object on or delivering an object to property owned, leased, or occupied by the victim.
- Delivering an object to a member of the victim’s family or household or an employer, coworker, or friend of the victim or placing an object on, or delivering an object to, property owned, leased, or occupied by such a person with the intent that the object be delivered to the victim.
- Causing a person to engage in any of acts described above.

### **5. Dating Violence**

Means violence by a person who is or has been in a romantic or intimate relationship with the victim. Whether a romantic or intimate relationship exists will be gauged by its length, type, and frequency of interaction between the offender and the victim.

### **6. Hostile Environment**

A hostile environment includes any situation in which there is harassing conduct that is sufficiently severe, persistent or pervasive such that it alters the conditions of employment or limits, interferes with or denies educational benefits or opportunities, from both a subjective (the alleged victim’s) and an objective (reasonable person’s) viewpoint.

### **7. Other Sex-Based Misconduct Offenses**

The following additional misconduct offenses, when gender-based, violate this policy:

- Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person.
- Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits, or opportunities on the basis of gender or sex.

- Intimidation, as defined as implied threats or acts that cause an unreasonable fear of harm in another.
- Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally.

### **PROHIBITION AGAINST RETALIATION**

This policy prohibits retaliation, whether direct or indirect, against any person who has, in good faith, filed, supported, or participated in an investigation of a complaint under this policy. Retaliation includes, but is not limited to, ostracizing the person, pressuring the person to drop or not support the complaint, or engaging in conduct that may reasonably be perceived to adversely affect the person's educational, living, or work environment.

Any act of retaliation shall be grounds for disciplinary action, up to and including expulsion and/or termination. Retaliation is prohibited, even if the underlying complaint under this policy is ultimately found to have no merit.

### **CONFIDENTIALITY**

To the extent permitted by law, the confidentiality of all parties involved in the resolution of alleged or suspected violations of this policy will be observed, provided that it does not interfere with the College's ability to conduct an investigation and take any corrective action deemed appropriate. While confidentiality cannot be guaranteed, care will be taken to keep investigation discussions appropriately limited to protect the complainant's identity when requested and consistent with the procedures.

### **Related Policies:**

Sexual Misconduct, Health and Safety

*Adopted: 06/18/1994*

*Reviewed: 06/04/2015*

*Revised: 07/14/2015*