



## TITLE IX POLICY AND PROCEDURE

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### **Policy**

The Blackfeet Community College (BFCC) will address all incidents of sexual misconduct, sex discrimination, and sexual harassment reported to the BFCC Title IX Coordinator in compliance with the Higher Education Opportunity Act, the Clery Act, and Title IX of the Education Amendments of 1972, as amended.

### **Purpose**

This policy informs all prospective students, current students, and all BFCC employees of college policies and procedures regarding sex discrimination and sexual harassment to which all students, members of the faculty, and non-faculty personnel are expected to adhere during their time at BFCC, including BFCC's grievance process for responding to formal complaints of sexual harassment under Title IX. In addition, comprehensive information is provided regarding the reporting of sex discrimination and sexual harassment and avenues to seek immediate assistance.

### **Scope of Policy**

BFCC must respond when sex discrimination and harassment occur in the school's education programs or activities against a person in the United States. Education programs, sports, or activities includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the discrimination or harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off campus, including online instruction.

Any person may report sexual misconduct, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address listed for the Title IX Coordinator.



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Individuals are responsible for immediately reporting any knowledge or information concerning sexual harassment to the BFCC Title IX Coordinator identified in this policy which covers unwelcome conduct of a sexual or gender-based nature, whether committed on-campus, or off-campus where BFCC has control over the respondent or the context of the harassment.

BFCC encourages victims of sexual harassment to talk with a counselor. Different employees within the scope of BFCC's resources such as Counseling (email: [toni.rf@bfcc.edu](mailto:toni.rf@bfcc.edu)) where they have the ability to maintain a victim's confidentiality and offer support services.

BFCC Employees are required to report all the details of an incident (including the identities of both the complainant and respondent) to the Title IX Coordinator. A report to BFCC employees (called "responsible employees") constitutes a report to BFCC and places BFCC on notice to take appropriate steps to address the situation.

Compliance with this policy does not constitute a violation of the Family Educational Rights and Privacy Act (FERPA). For the purpose of this policy, the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex discrimination or sexual harassment offense and any sanction that is imposed against the respondent. This policy also applies to retaliation by BFCC or any person against any other person for the purpose of interfering with Title IX rights, or because the person has participated or refused to participate in any manner in a proceeding under Title IX that is prohibited.

### **Access to Title IX Policy Information**

Title IX reporting information is available on the BFCC website at: <https://www.bfcc.edu/>, in the BFCC Beaver Painted Lodge Building student services information wall at the campus security office with at the human resource department information wall at the campus security office, and with the Student Success Director Office wall in Beaver Painted Lodge Student Commons Area.



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### **Assistance Following an Incident of Sexual Harassment**

Immediate Assistance: Persons who have complaints of sexual harassment may file their complaints with the Title IX Coordinator Daisy Gilham located in Beaver Painted Lodge [d.gilham@bfcc.edu](mailto:d.gilham@bfcc.edu) or 406-338-5441 Blackfeet Community College 504 SE Boundary ST, Browning, MT 59417.

Victims of sexual violence should get to a place of safety and call 911. Obtain necessary medical treatment; time is a critical factor for evidence collection and preservation. An assault should be reported directly to a law enforcement officer, and college officials will aid in facilitating this process. Filing a police report will not obligate the complainant to prosecute, nor will it subject the reporting party to scrutiny or judgmental opinions from officers. Filing a police report will ensure that a complainant of sexual violence receives the necessary medical treatment and tests, at no expense to the complainant to the extent provided for by Montana law, and provide the opportunity for collection of evidence helpful in prosecution, which cannot be obtained later.

COMPLAINANT OR WITNESS: CALL 911 FOR IMMEDIATE ASSISTANCE.

### **Ongoing Assistance:**

In order to ensure the safety and well-being of the complainant, BFCC may take interim measures such as changing living arrangements, work schedules, academic schedules, addressing transportation issues, withdraw from/retake a class without penalty, and access academic support (e.g., tutoring), leaves of absence, campus escort services, or similar measures. In addition, while an investigation is pending BFCC may initiate a “no contact order” between the parties that carries a sanction of expulsion if violated.

BFCC does offer limited internal counseling options, however law enforcement officials and college representatives are available to facilitate access to additional support services, please email: [toni.rf@bfcc.edu](mailto:toni.rf@bfcc.edu).



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### **Additional Support Services:**

National Domestic Violence Hotline - 1-800-799-7233 (SAFE)

Rape, Abuse & Incest National Network Hotline - 1-800-656-4673 (HOPE)

Communication Services for the Deaf (TTY) - 1-800-252-1017 (TTY)

Communication Services for the Deaf (Voice) - 1-866-845-7445 (Voice)

### **Blackfeet Community College Title IX Commission**

#### **Title IX Coordinator**

The Title IX Coordinator has primary responsibility for overseeing the process of coordinating BFCC's compliance efforts, receiving complaints, investigations, hearing, sanctions, appeals, and education and training associated with this policy. To file a complaint or submit questions concerning actions governed by this policy contact the Human Resource Director and Title IX Coordinator (Daisy Gilham) located in the BFCC Beaver Painted Lodge Administration Building, at [d.gilham@bfcc.edu](mailto:d.gilham@bfcc.edu) or 406-338-5441.

Deputy Title IX Officers have the secondary responsibility and assist in the duties of the Title IX Coordinator. Deputy Title IX Officers include Student Services Director located in the Beaver Painted Lodge Commons contact information is 406-338-5441 or [elaine.lp@bfcc.edu](mailto:elaine.lp@bfcc.edu).

#### **Title IX Investigators**

The primary responsibility of the investigator is to collect statements and any evidence directly related to any allegations of a Title IX policy violation as directed by the Title IX Coordinator. Investigators will receive appropriate Title IX and trauma informed training.

The BFCC Title IX Investigator is Campus Chief Security Officer Frank Goings located in the BFCC BPL Building Student Success Center, phone: 406-338-5441, or email: [frank@bfcc.edu](mailto:frank@bfcc.edu). Blackfeet Community College 504 SE Boundary ST Browning, MT 59417

#### **Title IX Hearing Officers**



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The hearing officer may include a BFCC administrator or external legal counsel. The primary responsibility of the hearing officer will be to ensure both parties receive due process in the event allegations of a Title IX policy violation are directed to a hearing by the Title IX Coordinator. Hearing Officers will receive appropriate Title IX and trauma informed training.

### **Title IX Hearing Members**

The hearing members may include BFCC faculty or staff members. The primary responsibility of the hearing member is to listen to both sides of the complaint. Each hearing member will evaluate the information being provided by both parties to make a decision about whether or not a Title IX policy violation took place. Hearing members will receive appropriate Title IX training.

### **Definitions**

BFCC defines sex discrimination and sexual harassment broadly to include any of three types of misconduct on the basis of sex (or gender), all of which jeopardize the equal access to education that Title IX is designed to protect: Any instance of quid pro quo harassment by a school's employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Offenses prohibited under BFCC's policy include, but are not limited to sex discrimination (including sexual orientation discrimination and gender identity or gender expression discrimination), sexual harassment, sexual violence to include non-consensual sexual contact, non-consensual sexual intercourse, sexual coercion, domestic/dating violence, stalking, and sexual exploitation.

- A. Sex Discrimination: includes sexual harassment and is defined as conduct directed at a specific individual or a group of identifiable individuals that subjects the individual or group to treatment that adversely affects their employment or education, or institutional benefits, on account of sex or gender (including sexual orientation, gender identity, and gender expression discrimination). It may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.
- B. Sexual Harassment: is unwelcome and discriminatory speech or conduct undertaken because of an individual's gender or is sexual in nature and is so severe, pervasive, and persistent, means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;



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(2) 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 recipient's education program or activity; or

(3) "Sexual assault" as defined in [20 U.S.C. 1092\(f\)\(6\)\(A\)\(v\)](#), "dating violence" as defined in [34 U.S.C. 12291\(a\)\(10\)](#), "domestic violence" as defined in [34 U.S.C. 12291\(a\)\(8\)](#), or "stalking" as defined in [34 U.S.C. 12291\(a\)\(30\)](#).

Students, employees, and visitors who are subject to or who witness unwelcome conduct of a sexual nature are instructed to report the incident(s) to the Title IX Coordinator or any BFCC employee.

1. Hostile Environment: Sexual Harassment includes 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 recipient's education program or activity
2. Whether conduct is harassing is based upon examining a totality of circumstances, including but not limited to:
  - The frequency of the conduct;
  - The nature and severity of the conduct;
  - Whether the conduct was physically threatening;
  - Whether the conduct was deliberate, repeated humiliation based upon sex;
  - The effect of the conduct on the alleged victim's mental or emotional state from the perspective of a reasonable person;
  - Whether the conduct was directed at more than one person;
  - Whether the conduct arose in the context of other discriminatory conduct;
  - Continued or repeated verbal abuse of a sexual nature, such as gratuitous suggestive comments and sexually explicit jokes; and
  - Whether the speech or conduct deserves constitutional protections.
3. Quid Pro Quo Sexual Harassment exists when individuals in positions of authority over the complainant:
  - Make unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and
  - Indicate, explicitly or implicitly, that failure to submit to or the rejection of such conduct will result in adverse educational or employment action or where participation in an educational program or institutional activity or benefit is conditioned upon the complainant's submission to such activity.

Examples of Harassment:



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- An instructor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student agrees to the request.
- A student repeatedly sends sexually oriented jokes around in an email list he or she created, even when asked to stop, causing one recipient to avoid the sender on campus and in the dorms in which they both live.
- The instructor probes for explicit details, and demands that students respond to him or her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to his clear discomfort.

C. Sexual Violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties.

1. Non-Consensual Sexual Contact is any intentional touching, however slight, whether clothed or unclothed, of the victim's intimate body parts (primarily genital area, groin, inner thigh, buttock or breast) with any object or body part, without consent and/or by force. It also includes the touching of any part of a victim's body using the perpetrator's genitalia and/or forcing the victim to touch the intimate areas of the perpetrator or any contact in a sexual manner even if not involving contact of or by breasts, buttocks, groin, genitals, mouth or other orifice. This definition includes sexual battery and sexual misconduct.
2. Non-Consensual Sexual Intercourse is defined as any sexual intercourse or penetration of the anal, oral, vaginal, genital opening of the victim, including sexual intercourse or penetration by any part of a person's body or by the use of an object, however slight, by one person to another without consent or against the victim's will. This definition includes rape and sexual assault, sexual misconduct, and sexual violence.
  - a) Rape: 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. This definition includes any gender of victim or perpetrator. Sexual penetration means the 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. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.



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3. Sexual Coercion is the act of using pressure (including physical pressure, verbal pressure or emotional pressure), alcohol, medications, drugs, or force to have sexual contact against someone's will or with someone who has already refused. This includes rape, sexual assault, sexual exploitation and sexual misconduct.

4. Dating violence is violence between individuals in the following circumstances: The party is or has been in a social relationship of a romantic or intimate nature with the victim; and

- The existence of such a relationship shall be determined based on a consideration of the following factors:
- Length of the relationship
- Type of relationship
- Frequency of interaction between the persons involved in the relationship.

5. Domestic Violence under this policy means violence committed by a current or former spouse of the victim;

- A person with whom the victim shares a child in common;
- A person who is cohabitating with or has cohabitated with the victim as a spouse;
- A person similarly situated to a spouse of the victim under MT domestic or family violence laws;
- Any other person against an adult or youth victim who is protected from that person's acts under MT domestic or family violence laws.

D. Advisor: A person who has agreed to assist a complainant or respondent during the Title IX process. The advisor may be a person of the student's choosing, including but not limited to a BFCC faculty or staff member, a friend or an attorney.

E. Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

F. Respondent: an individual who has been reported to be the perpetrator of conduct that could constitute sex discrimination or sexual harassment.

G. Formal complaint: a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sex harassment and stating the date, time, place, name(s) of person(s) involved (e.g. the accused, witnesses) and sufficient detail to make a determination regarding basic elements of the formal complaint process.

H. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which a formal complaint is



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filed.

I. Supportive measures - individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

### **Consent**

Consent is the act of willingly agreeing to engage in sexual contact or conduct. Individuals who consent to sex must be able to understand what they are doing. Under this policy, “No” always means “No,” and the absence of “No” may not mean “Yes”.

A. Consent is informed, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding the conditions of sexual activity.

B. Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.

C. Previous relationships or consent does not imply consent to future sexual acts.

D. Consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or coercion. Coercion is unreasonable pressure for sexual activity.

E. In order to give effective consent, one must be of legal age and have the capacity to consent. Incapacity may result from mental disability, intellectual disability, unconsciousness/sleep, age, or use of alcohol, drugs, medication, and/or other substances. Consent given by someone who one should know to be, or based on the circumstances, reasonably should have known to be, mentally or physically incapacitated, is a policy violation. Incapacitation is a state where someone cannot make rational, reasonable decisions because he or she lacks the capacity to give knowing consent. Note: indications of consent are irrelevant if the initiator knows or should reasonably have known of the incapacity of the other person.

Examples of when a person should know the other is incapacitated include, but are not limited to:

- The amount of alcohol, medication or drugs consumed,
- Imbalance or stumbling,
- Slurred speech,
- Lack of consciousness or inability to control bodily functions or movements, or
- vomiting, or



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- Mental disability or incapacity.

F. Use of alcohol, medications, or other drugs will not excuse behavior that violates this policy.

### Reporting

#### Mandatory Reporting

All BFCC employees are responsible for taking all appropriate action to prevent sex discrimination or sexual harassment, to correct it when it occurs, and must promptly report it to the Title IX Coordinator. Failure to do so may result in disciplinary action up to and including termination. All BFCC employees are considered responsible employees with a duty to report any incident to the Title IX Coordinator.

#### Confidential Reporting

Resources are available through Montana Family Violence Prevention. Family Violence Prevention staff, counselors, victims' advocates are available to speak with any person who wishes to report an incident and remain anonymous. All forms of sexual harassment should be reported, no matter the severity. In addition, BFCC should be made aware of possible threats to the campus community in order to issue timely warnings.

#### Reporting to the Police

BFCC strongly encourages anyone to report sexual violence and any other criminal offenses to the police. This does not commit a person to prosecution, but will allow the gathering of information and evidence. The information and evidence preserve future options regarding criminal prosecution, College disciplinary actions and/or civil actions against the respondent.

If an incident happens, whether on campus or off campus, report the incident to 911.

Reporting for Faculty and Staff (Non-Student) Instances: Faculty and staff shall report any instances of sexual harassment by another faculty or staff member to the Title IX Coordinator. As stated above, BFCC also strongly encourages reporting any instances to the police.

Employee Obligation to Report (Student Instances): In compliance with Title IX, employees who become aware of a student instance of sexual harassment shall immediately report such instance to the Title IX Coordinator, including the name of the persons involved.



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### Reporting of Student Instances

Students shall report any instances of sex discrimination or sexual harassment to any BFCC employee and/or the Title IX Coordinator. A complaint should be filed as soon as possible. If either the complainant or the respondent is a student, the incident will be addressed through the Title IX process. The report can be made in person, by phone, mail, or email using the contact information listed for the Title IX Coordinator or by any other means that results in the Coordinator receiving the report. The report can be made any time, even during non-business hours.

After receiving a report or notice of an incident, the Title IX Coordinator will promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. A complainant's wishes with respect to whether the BFCC investigates should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

BFCC will promptly take necessary steps to protect the complainant and ensure safety as necessary, including taking interim steps before the final outcome of any investigation once a report or knowledge of sex discrimination or sexual harassment has occurred. Periodic updates on the status of the investigation will be provided to the complainant. If the school determines that the sexual violence occurred, BFCC will continue to take these steps to protect the complainant and ensure his or her safety, as necessary. BFCC will provide the complainant with any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, and assistance in reporting a crime to local law enforcement.



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### **Written Notice of Complaint**

Upon receipt of a formal complaint, BFCC will provide written notice to all known parties in sufficient time to give the respondent time to prepare a response before an initial interview. Written notice includes:

Notice of the grievance process, including any informal resolution process;

Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the conduct, if known) to allow the respondent to prepare a response;

A statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;

Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and

Notice that knowingly making false statements or providing false information in the grievance process is a violation of the code of conduct and subject to disciplinary action.

If BFCC receives a complaint Supportive measures will be offered to all parties as non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The recipient must 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 the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.



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### Investigation

The Title IX Coordinator will make a determination to begin a formal investigation of sex discrimination or a sexual harassment incident which will lead to an institutional action. The coordinator will be available to explain to both parties the process and to notify in writing of the receipt of a complaint and the actions BFCC will take. The burden of gathering evidence and the burden of proof must remain on BFCC, not on the parties.

An investigation will be conducted by a BFCC Title IX official. This investigation will include:

- Meeting personally with the complainant, (unless extraordinary circumstances prevent a personal meeting),
- Meeting personally with the respondent, (unless extraordinary circumstances prevent a personal meeting),
- Presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made,
- Collecting any physical evidence,
- Meeting personally with any witnesses, (unless extraordinary circumstances prevent a personal meeting with one or more witnesses), and
- Reviewing any documentary evidence.

The investigation of complaints will be adequate, reliable and impartial. The investigation process can take up to 60 days. When investigating a complaint and throughout the complaint process, BFCC must: (1) ensure that the burden of proof and of gathering evidence rests on BFCC rather than the parties; (2) provide an equal opportunity for the parties to present witnesses and evidence (3) not restrict either party's ability to discuss the allegations or gather and present evidence; (4) provide the parties with the same opportunities to have others present during interviews or related proceedings, including an advisor; (5) provide, to a party who is invited or expected to attend, written notice of the date, time, participants, purpose, and location of any investigative interview, hearing or other meeting with enough time to allow the party to prepare and participate; (6) provide both parties and their advisors an equal opportunity to review all evidence directly related to the allegations in the formal complaint (both exculpatory and inculpatory) at least 10 days prior to the completion of the final investigation; and (7) prepare a written investigation report that fairly summarizes the relevant evidence and provide the report to both parties and their advisors for review and written response at least 10 days before a hearing or determination of responsibility. BFCC will hold a Title IX live hearing and the complainant and the respondent will be notified in writing of the hearing date.



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### **Mandatory of Permissive Dismissal**

Mandatory dismissal of the complaint must occur when it is determined in the course of the investigation that allegation in a formal complaint: (1) did not occur in BFCC's program or activity; (2) did not constitute sexual harassment as defined; or (3) did not occur against a person within the U.S. Both parties must receive written notice of a mandatory dismissal and reasons.

Permissive dismissal of the complaint may occur at any time during the investigation or hearing when: (1) a complainant notifies the Title IX Coordinator in writing that they would like to withdraw; or (2) the respondent is no longer enrolled or employed by BFCC; or (3) specific circumstances prevent BFCC from gathering evidence sufficient to reach a determination. Both parties must receive written notice of a permissive dismissal and reasons.

BFCC may still address allegations of misconduct under the Student Code of Conduct.

### **Institutional Action**

#### Formal Versus Informal Resolution

At any time before the notice of hearing is delivered, the alleged victim may elect to resolve his or her Complaint through the informal resolution (mediation) process, provided that:

- Both the Respondent and the Complainant agree to such resolution;
- The alleged victim and the Respondent are both students or are both employees of the College;
- The Title IX Coordinator determines that informal resolution is an appropriate mechanism for resolving the complaint; and;
- The Complaint does not involve Sexual Assault or Domestic Violence.

Otherwise, a Complaint will proceed to formal resolution in accordance with this Policy.

#### **Informal resolution (Mediation):**

Informal resolution is only appropriate if (1) the alleged victim requests it, (2) Both the Respondent and the Complainant agree to such resolution, (3) the alleged victim and the Respondent are both students or are both employees of BFCC, (4) the Title IX Coordinator determines that informal resolution is an appropriate mechanism for resolving the Complaint, and (5) the Complaint does not involve Sexual Assault. Informal Resolution is not a



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prerequisite to pursuit of a formal resolution.

Informal resolution may not be selected for less than all of the misconduct alleged in the Complaint (for example the parties may not choose to resolve a claim of Sexual Assault according to the formal resolution process but mediate all other claims). If the parties agree to informal resolution (and informal resolution is appropriate for all of the claims at issue), then all of the claims must be resolved according to the informal resolution process. The alleged victim has the right to terminate the informal resolution process at any time and proceed with formal resolution. Furthermore, the Title IX Coordinator may, where appropriate, terminate or decline to initiate informal resolution, and proceed with formal resolution instead. In such cases, statements or disclosure made by the parties in the course of the informal resolution process may be considered in the subsequent formal resolution proceeding. Because the outcomes of voluntary resolution conversations are mutually developed and agreed upon by parties involved, an appeal of the process and its result is not permitted.

Blackfeet Community College will document any informal resolution. The documentation will be retained by the Title IX Coordinator. The documentation will be kept confidential to the extent permitted by law and so long as maintaining confidentiality does not impede protecting the safety and well-being of BFCC students. If a complaint is filed in a faculty or staff's permanent record, the faculty or staff member must be notified. An informal resolution meeting is not a precondition for filing a formal written complaint.

### **Formal Resolution:**

In the case of formal resolution, the Title IX Hearing Board will conduct a hearing in which it will question the Complainant, the alleged victim (if not the Complainant), the Respondent, and any witnesses or other third parties whose testimony the Hearing Board deems relevant. The Title IX Hearing Board will determine whether there has been a violation of the Sexual Harassment Policy, and if there has been, will determine the sanction to be imposed on the Respondent.

#### **A. Respondent's Acknowledgment of Responsibility Prior to Hearing**

At any time prior to the date of his or her designated hearing, the Respondent may elect to acknowledge his or her actions and take responsibility for the alleged Sexual Harassment. In such a situation, the Title IX Coordinator will propose sanction(s). If the victim and the Respondent agree to such proposed sanction(s), then the Complaint will be resolved without a hearing and without any further rights of appeal by any party. If either the victim or the Respondent objects to such proposed sanction(s), then the Sexual Harassment Hearing Board will convene for the exclusive purpose of determining a sanction, which determination may be subject to appeal.

#### **B. The Title IX Hearing Board**



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The Title IX Hearing Board shall have three members. The composition of the Hearing Board will be two faculty/staff members and will be chaired by someone other than the Title IX Coordinator. The Human Resources Director shall appoint faculty and staff members to serve as Title IX Hearing Board members for a period of one year. Each member of the Hearing Board will receive training annually.

### **Hearing Policies and Procedures**

Mediation is never appropriate in sexual violence cases. BFCC will proceed with a live hearing, the complainant and the respondent will be notified in writing of the hearing date, the alleged policy violation and issued a notice to appear at the hearing. The written notice will be hand delivered directly to the student(s) or mailed to the local address as filed in the Registrar's Office. Students are responsible for providing and maintaining a current local address in the Registrar's Office.

The hearing members shall include at least one trauma trained individual in sex discrimination or sexual harassment adjudication to include a trained hearing members. The Selection of the hearing members will be made by the Human Resources Director. Criteria for the hearing committee will include: 1) have received all appropriate training, 2) not a current instructor or have a familial or close personal connection of either party involved, 3) have no previous substantive or direct knowledge of the incident, and 4) have no other perceived conflict of interest as determined by interview process with the Title IX Coordinator.

Description of the duties of the Title IX Hearing Members will include but not limited to the following:

- Read and understand the Title IX Policy and Procedures, which include the hearing process.
- Read and understand all of the information of the Title IX case provided by the Coordinator prior to the hearing as part of a hearing packet.
- Read and understand the procedures of the Title IX hearing provided by the Coordinator prior to the hearing as part of a hearing packet.
- Have a clear understanding of the incident in question before going into deliberations for a decision.
- Decide the outcome (majority vote) and sanctions if needed based on the information presented, hearing notes, and the BFCC Title IX Policy.
- Provide copies of notes, if made, to the hearing officer. The hearing officer will inform the parties of the decision at the hearing and send a letter as described in this policy.



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### Complainant's Rights:

- Be given a written explanation of the allegations and the hearing process;
- Have access to evidentiary material in advance of the hearing;
- Be present during the entire hearing;
- Be accompanied by an Advisor during the hearing. The Advisor is limited to advising the student and may not present the case, or make statements during the proceedings. Students must provide BFCC with the name and contact information of the student's Advisor as soon as practical but at least three (3) days prior to the hearing (if the advisor is an attorney, BFCC's attorney will also be present for the hearing in a capacity similar to that of the Advisor);
- Be given a timely hearing;
- Exclude evidence of the victim's past sexual history from discussion during the hearing. The past sexual history of the victim with persons other than the respondent shall be presumed irrelevant;
- Clarifying that evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual harassment;
- Written notification of the outcome of the hearing including any sanctions; remedies/accommodations for the complainant; additional remedies for the school community;
- Written notification of any external counseling services that may be available;
- Written notification of options for changing academic, living, transportation, and work site situations if reasonable;
- Written notification of an avenue for appeal.

### Respondent's Rights:

- Be given written notice of the allegations and the hearing process;
- Have access to evidentiary material in advance of the hearing;
- Be present during the entire hearing;
- Have no violation presumed until found responsible;
- Be given a timely hearing;
- Be accompanied by an advisor during the hearing. The advisor is limited to advising the student and may not present the case, or make statements during the proceedings. Students must provide BFCC with the name and contact information for the student's advisor as soon as practical but at least three (3) days prior to the hearing (if the advisor is an attorney BFCC's attorney will also be present for the hearing in a capacity similar to that of the Advisor);
- Written notification of the outcome of the hearing including any sanctions;
- remedies/accommodations for the complainant; additional remedies for the school



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- community;
- Written notification of any external counseling services that may be available;
  - Written notification of options for changing academic, living, transportation, and work site situations, if reasonable;
  - Written notification of an avenue for appeal.

### Live Hearing

At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the recipient under [34 CFR 106.45\(b\)\(5\)\(iv\)](#) of [the Title IX regulations](#) to otherwise restrict the extent to which advisors may participate in the proceedings. At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, the recipient must provide, without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the recipient's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.



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### Outcome

a. The Decision of the Hearing Board. Following the conclusion of the hearing, the Hearing Board will confer and by majority vote determine whether the evidence establishes that it is more likely than not that the Respondent violated the Sexual Harassment Policy. The Deliberation portion of the hearing is closed to all but the Hearing Board members.

b. Sanctions

1. Generally. Sanctions for a finding of responsibility depend upon the nature and gravity of the misconduct. Sanctions may include expulsion or suspension from the College, disciplinary probation, expulsion from campus, mandated counseling, and/or educational sanctions deemed appropriate by the Hearing Board or Human Resources Office. The Hearing Board will determine sanctions, giving consideration to whether a given sanction will (a) bring an end to the violation in question, (b) reasonably prevent recurrence of a similar violation, and (c) remedy the discriminatory effects of the violation of the Complainant, and if applicable, the BFCC community at large.

2. Implementation of Sanctions. Sanctions imposed do not take effect until the resolution of any timely appeal below. However, if it is advisable that in order to protect the welfare of the victim or the BFCC Community, the Hearing Board may recommend that any precautionary sanctions be effective immediately and continue in effect until such time as the appeal process is exhausted.

c. Final Outcome Letter. Within seven (7) business days following the conclusion of the hearing, the Hearing Board will issue a written decision letter to the Respondent, the Complainant, and the Title IX Coordinator.

The written determination must include—

(A) Identification of the allegations potentially constituting sexual harassment as defined in [§ 106.30](#);

(B) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;



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(C) Findings of fact supporting the determination;

(D) Conclusions regarding the application of the recipient's code of conduct to the facts;

(E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and

(F) The recipient's procedures and permissible bases for the complainant and respondent to appeal.

(iii) The recipient must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

(iv) The Title IX Coordinator is responsible for effective implementation of any remedies.

### **E. Appeals**

The Complainant or the Respondent may appeal, in writing, the decision of the President And/or the sanction imposed on the Respondent within seven (7) business days from the date of the Final Outcome Letter. The decision of the Hearing Board and the sanction imposed on the Respondent may be appealed simultaneously. The only basis for appeal shall be:

A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient's dismissal of a formal complaint or any allegations therein, on the following bases:

(A) Procedural irregularity that affected the outcome of the matter;

(B) 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; and

(C) The Title IX Coordinator, investigator(s), or decision-maker(s) 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.

### **Report of Findings and Recommendation**



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Both parties will be notified of the outcome in writing by certified mail or other agreed upon form of notice within five business days after the hearing at the same time. Both parties have the right to appeal the decision reached through the hearing proceedings within seven days after the hearing.

### **Filing of a False Complaint**

Individuals whose complaint is found to be both false and to have been made with malicious intent will be subject to disciplinary action, which may include, but not limited to, demotion, transfer, suspension, expulsion, or termination of employment.

### **Prevention and Education**

A. Education - BFCC requires all employees to take an educational- training courses on an annual basis. Employees may be required to be recertified on demand. Failure to have a certification of this required training may result in appropriate disciplinary action. Additional in-person training is also offered periodically and on request.

B. Bystander Intervention - If you witness a policy violation, or behaviors that may lead to a policy violation, there are a variety of things you can do as a bystander:

- Divert the intended victim (e.g. “help me out of here; I don’t feel well”)
- Distract the perpetrator (e.g. “looks like your car is being towed”)
- Delegate to a person of authority (e.g. if at a nightclub let the bartender/bouncer know of the situation)
- Direct, confront the perpetrator (e.g. “don’t speak to him/her in that manner; you are going to get yourself into trouble”)
- Call 911 for law enforcement assistance.

C. Risk Reduction Tips - Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to blame victims, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you reduce your risk of experiencing a nonconsensual sexual act.

- Make your limits known as early as possible.
- Be aware of your alcohol intake. Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Take care of your friends or colleagues and ask that they take care of you.



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### D. Potential Aggressor

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go; or about whether they are physically and/or mentally able to consent.
- If there are any questions or ambiguity, then you DO NOT have consent.

Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. You must respect the timeline for sexual behaviors with which they are comfortable.

- Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size or your relationship (instructor, supervisor, etc.).
- Don't abuse that power. Understand that consent to one form of sexual behavior does not automatically imply consent to other forms of sexual behavior.
- Silence and passivity cannot be interpreted as an indication of consent.
- Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.



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### **Training**

Training on sexual misconduct: discrimination, harassment, and violence is included in BFCC's education program located at [bfcc.edu/compliance](http://bfcc.edu/compliance).

In-person training for student groups and students will be conducted through a variety of presentations, student orientation, and online Vector training. In-person training for Active Bystander Intervention skills may include: On-going campus campaigns and information at a variety of events concerning the policy and appropriate behaviors, including Bystander Intervention. Informational websites and brochures devoted to educating students will be presented at prevention workshops. When in-person training is neither practical nor safe, alternative modes of training shall be utilized.

Mandatory training for employees will be provided through in-person training and online on sexual misconduct: discrimination, harassment, and violence and mandatory reporting through new employee orientations and other periodic training opportunities and upon request. In-person training for Active Bystander Intervention skills may include: ongoing campus campaigns and information at a variety of events, concerning the policy and appropriate behaviors, including Bystander Intervention. Informational website and brochures devoted to educating employees. When in-person training is neither practical nor safe, alternative modes of training shall be utilized.

### **Retaliation**

The Federal civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. This means that if an individual brings concerns about possible civil rights problems to a school's attention, including publicly opposing sexual harassment or filing a sexual harassment complaint with the school or any State or Federal agency, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she testified, or participated in any manner, in an Office for Civil Rights (OCR)



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or school's investigation or proceeding. Therefore, if a student, parent, teacher, sponsor coach, or other individual complains formally or informally about sexual harassment or participates in an OCR or school's investigation or proceedings related to sexual harassment, the school is prohibited from retaliating (including intimidating, threatening, coercing, or in any way discriminating against the individual) because of the individual's complaint or participation. Individuals who, apart from official associations with BFCC, engage in retaliatory activities will also be subject to BFCC's policies insofar as they are applicable to third party actions.

BFCC will take steps to prevent retaliation against an individual who filed a complaint either on his or her own behalf or on behalf of another individual, or against those who provided information as witnesses. Complaints of retaliation will follow the same process of investigation, hearing, and appeal.

If it is determined under the preponderance of the evidence standard (more likely than not to have occurred) that a student is responsible for retaliation the following sanction will be imposed.

Suspension – Exclusion from enrollment in classes and other privileges or activities for a definite period of time not to exceed three years and until the conditions which are set forth in the hearing outcome letter are met. Students who are suspended from BFCC are not permitted on campus or in campus buildings, facilities or activities at any time for any reason during the period of suspension, unless otherwise directed by the Student Success Director. Conditions to conclude a suspension and reinstatement process will be stated in the written notification. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student's record. Any refund of tuition or fees will be subject to BFCC's normal withdrawal policy.

If it is determined under the preponderance of the evidence standard (more likely than not to have occurred) that an BFCC employee is responsible for retaliation, will be subject to the BFCC Personnel Policy Manual related to retaliation.

### **Freedom Speech and Academic Freedom**

Members of the BFCC community enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution. This policy is intended to protect members of the BFCC community from discrimination and is not designed to regulate protected speech. No provision of this policy shall be interpreted to prohibit conduct that is legitimately related to course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic or literary expression of students in classrooms and public forums. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.



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### Availability of other Complaint Procedures

In addition to seeking criminal charges through local law enforcement, members of the BFCC community who believe they may have been the subject of discrimination prohibited by state and/or federal law(s) may contact one or more of the following agencies for advice, assistance, and explanation of filing deadlines:

Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100

Customer Service Hotline: (800) 421-3481 Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Office of Civil Rights:  
U.S. Department of Education  
Seattle Office 915 Second Ave, Room 3310 Seattle, WA 98174-1099  
Phone: 206-607-1600  
<http://www.ed.gov/ocr/complaintprocess.html>

Equal Employment Opportunity Commission  
Seattle Field Office, Federal Office Building 909 First Avenue, Suite 400 Seattle, WA 98104-1061  
Phone: 1-800-669-4000 TTY: 1-800-669-6820 <http://www.eeoc.gov/contact/>

Washington State Human Rights Commission  
711 South Capitol Way, Suite 402, P.O. Box 42490 Olympia, WA 98504-2490  
Phone: 1-800-233-3247 <http://www.hum.wa.gov/discrimination-complaint>

RELATED INFORMATION BFCC Student Handbook BFCC Employee Policy and Procedure

**REVIEW DATE:** This policy will be reviewed every three (3) years or when changes are required

**Approval: April 3, 2024 Special Board Meeting**