

Treasure Valley Community College

Code: GBNB/JBAB
Adopted: 9/15/20

Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking ORS 350.253

Note: TVCC Board Policy GBN/JBA describes sex-based discrimination and harassment that is specifically prohibited by Title IX of the Education Amendments of 1972. According to the Federal Office for Civil Rights, Department of Education, Title IX's reach is limited in scope. However, TVCC's policies (and other laws) prohibit more than Title IX. Board Policy GBNA/JFCF describes other sex-based discrimination and harassment that Title IX does not prohibit.

GBN/JBA-AR (2) sets out the procedures TVCC uses to address "Title IX" offenses described in GBN/JBA. GBNA/JFCF-AR sets out the procedures TVCC uses to address other sex-based discrimination and harassment described in GBNA/JFCF.

Purpose

The purpose of this policy is to clearly establish that Treasure Valley Community College (hereinafter "TVCC" or the "college") has a zero-tolerance policy and is committed to providing an environment free from unlawful sexual harassment and violence.

Members of the TVCC community, guests, and visitors have the right to be free from sexual harassment and violence. The college hereby expressly prohibits sexual harassment and sexual violence. When an allegation of sexual harassment or sexual violence is brought to an employee of the college, the allegation will be handled in accordance with all state and federal laws and serious sanctions may be used to ensure the college is free from such future conduct. In addition, victims of sexual violence will be encouraged to contact law enforcement officials immediately after an assault.

TVCC is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sex-based discrimination, harassment, and retaliation. To ensure compliance with Oregon Revised Statute (ORS) 350.253 and other sexual nondiscrimination laws, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, TVCC has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sex-based discrimination or harassment, and for allegations of retaliation. TVCC values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

Definitions

- **Anti-Oppression:** As used in this policy, anti-oppression means a framework for constructively addressing and changing oppressive dynamics as they play out in our environment.
- **Complainant:** means an individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

- **Complaint (Formal):** A document filed/signed by a complainant or signed by the Title IX Coordinator alleging that a respondent engaged in conduct that violates this policy and requesting that TVCC investigate the allegation.
- **Confidential Resources:** A TVCC employee or TVCC office designated as a “Confidential Resource”; such employees do not have an obligation to notify the EEO/Title IX Coordinator of alleged sex-based discrimination, harassment, or retaliation.
- **Culturally Responsive:** As used in this policy, culturally-responsive means the ability to learn from and relate respectfully with people of your own culture as well as those from other cultures.
- **Day:** A business day when TVCC is open for operations.
- **Education Program or Activity:** locations, events, or circumstances where TVCC exercises substantial control over both the respondent and the context in which the sexual harassment or discrimination occurs; this also includes any building owned or controlled by a student organization that is officially recognized by TVCC.
- **Final Determination:** A conclusion by the preponderance of evidence that the alleged conduct occurred and whether it did or did not violate policy.
- **Finding:** A conclusion by the preponderance of evidence that the conduct did or did not occur as alleged.
- **Formal Grievance Procedure:** Procedure outlined in GBN/JBA-AR(2), which is a method of formal resolution designated by TVCC to address conduct prohibited by this policy.
- **Gender-Responsive:** As used in this policy, gender-responsive means intentionally developing awareness of and considering the differences in life experience of people of all genders (including transgender, cisgender, Two-Spirit, women, men, genderqueer, and non-binary people), and adjusting strategies and practices in ways that appropriately respond to each individual. Gender-responsiveness considers the impacts of gender-based violence and systems of oppression (including sexism and cissexism) and considers whether women and femmes, people of transgender experience, or people whose gender expression is non-conforming face additional and/or different challenges than men and/or cisgender folks. As related to this policy, this approach recognizes the social determinants that may initially lead people of different genders into discriminatory harassment, discrimination, sexual misconduct, and retaliation reports and investigations, both as the Complainant and the Respondent, as well as the specific inequities that are leveled against women, transgender, and gender non-conforming people within institutions.
- **Grievance Process Pool:** A pool of trained personnel who may serve as investigators, hearing officers, and appeal officers (though not at the same time or with respect to the same case).
- **Hearing Decision Makers:** Personnel who have decision making and sanctioning authority within TVCC’s formal grievance process.
- **Investigator:** Personnel charged by TVCC with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- **Notice:** Notice occurs whenever a designated responsible employee has actual knowledge, or in the exercise of reasonable care should know, that a violation of this policy has occurred.
- **Parties:** The complainant(s) and respondent(s), collectively.

- **Process Navigator:** A person chosen by the party or at the request of a party appointed by TVCC to accompany the party to meetings related to the resolution process and to advise the party on that process.
- **Reasonable person:** Means viewing the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. Additionally, TVCC recognizes the intersectional nature of the human experience. Due to that intersectionality, an individual’s experience may include aspects of multiple forms of discrimination and harassment. When determining “reasonableness” under this policy, TVCC will consider a reasonable person to have the complainant’s intersectional identities.
- **Remedies:** Actions by TVCC after a finding to address safety of the complainant and/or the community, to prevent future conduct that violates this Policy, and to restore access to TVCC’s educational programs or activities or to the workplace.
- **Resolution:** The final result of an informal or formal grievance process.
- **Respondent:** A person alleged to have engaged in conduct that violates this policy.
- **Responsible Employees:** Are all employees in the human resources, office of compliance, public safety staff, directors, faculty department chairs, Administration and office of student conduct staff and all TVCC employees that hear student appeals including but not limited to financial aid and grading appeals. All responsible employees must report all disclosures of possible unlawful discrimination; harassment including sexual assault, sexual misconduct, interpersonal violence, domestic violence, and stalking; or retaliation to the Title IX Coordinator or director of legal and human resources.
- **Sanction:** A consequence imposed by TVCC on a respondent who is found to have violated this policy.
- **Sex:** For purposes of this policy, “sex” includes gender assigned at birth, gender identity and expression, and sexual orientation.
- **Sexual Harassment:** An umbrella category that includes the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence.
- **Title IX Coordinator:** An official or officials designated by TVCC to ensure compliance with Title IX and TVCC’s Title IX program. References to the coordinator throughout this policy may also include a designee of the coordinator for specific tasks.
- **Title IX Team:** The Title IX Coordinator, any deputy coordinators, and any member of the grievance process pool.
- **Trauma Informed:** As used in this policy trauma informed means a framework that is grounded in an understanding of and responsiveness to the impact of trauma, that emphasizes physical, psychological, and emotional safety for all parties and impacted individuals.

Jurisdiction

This policy applies to conduct that takes place on campus, on property owned or controlled by TVCC, and at institution-sponsored events. It may also apply to off-campus and to online conduct when the Title IX Coordinator and/or their designee determine that the conduct affects a substantial institutional interest.

Regardless of where the alleged conduct occurred, TVCC will determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus program or activity. A substantial institutional interest includes:

- Any action that constitutes a criminal offense as defined by law. This includes but is not limited

- to, single or repeat violations of any local, state, or federal law;
- Any situation in which it appears that the respondent may present danger or threat to the health or safety of self or others;
- Any situation that significantly impinges upon the rights, property, or achievements of self or others or significantly breaches the peace; and/or
- Any action that takes place between management and an employee of TVCC's property.

If the respondent is unknown or is not a member of the TVCC community, the Title IX Coordinator or their designee, will assist the complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local law enforcement if the individual would like to file a police report.

Further, even when the respondent is not a member of TVCC's community, supportive measures, remedies, and resources may be accessible to the complainant by contacting the Title IX Coordinator. When the respondent is enrolled in or works at another Institution, the Title IX Coordinator or their designee, can assist the complainant in liaising with the appropriate individual for that Institution, as it may be possible to allege violations through that Institution's policies. In addition, TVCC may take other actions as appropriate to protect the complainant against third parties, such as barring individuals from TVCC property and/or events, or intervening with the third party's employer, if that employer is a TVCC vendor.

Similarly, the Title IX Coordinator or their designee, may be able to advocate for a student or employee complainant who experiences discrimination in an externship, study abroad program, or other environment external to TVCC where sexual harassment policies and procedures of the facilitating organization may provide recourse.

Prohibited Conduct

This policy prohibits sex-based discrimination and harassment that is specifically prohibited by Title IX of the Education Amendments of 1972, as defined by the Department of Education's Office for Civil Rights in its implementing regulations.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

"Sexual harassment" is an umbrella term which, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. This section describes the definitions of each of those terms.

1. Sexual harassment is conduct on the basis of sex that satisfies one or more of the following:
 - 1.1. Quid Pro Quo sexual harassment occurs when:
 - An employee respondent of TVCC, conditions the provision of an aid, benefit, or service of TVCC, on an individual's participation in unwelcome sexual conduct.
 - 1.2. Hostile environment sexual harassment (under Oregon Law) occurs when:
 - A respondent engages in unwelcome conduct, of a sexual nature, which can include unwelcome sexual advances, requests for sexual favors, or other

Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking ORS 350.253 – GBNB/JBAB

verbal, nonverbal or physical conduct of a sexual nature where such conduct is,

- Sufficiently severe or pervasive,
- That has the effect intended or unintended, of unreasonably interfering with an individual's work or academic performance, or
- It has created an intimidating, hostile or offensive environment and would have such an effect on a reasonable person.¹

1.3. Sexual Assault is defined as any of the following:

1.3.1. A Forcible Sex Offense occurs when:

- A respondent directs any sexual act against a complainant without consent of the complainant, including instances in which the complainant is incapable of giving consent.

1.3.1.1. Forcible Rape:

- Penetration, no matter how slight, of the complainant's vagina or anus with any body part or object, or,
- Oral penetration of the complainant by a sex organ of the respondent without the consent of the complainant.

1.3.1.2. Forcible Sodomy:

- Oral or anal sexual intercourse with the complainant by a respondent, forcibly,
- And/or against the complainant's will or if the complainant is incapable of giving consent because of age² or because of temporary or permanent mental or physical incapacity.

1.3.1.3. Sexual Assault with an Object:

- The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the complainant's body forcibly, and/or against the complainant's will, or not forcibly or against the person's will if the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

1.3.1.4. Forcible Fondling:

- The touching of the private body parts of a complainant (buttocks, groin, breasts, etc.), for the purpose of sexual gratification forcibly, and/or against the complainant's will, or not forcibly or against the complainant's will if the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

1.3.2. Sex Offenses, Non-Forcible

1.3.2.1. Incest:

¹ Unwelcomeness is subjective and determined by the complainant (except when the complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. Additionally, TVCC recognizes the intersectional nature of the human experience. Due to that intersectionality, an individual's experience may include aspects of multiple forms of discrimination and harassment. When determining "reasonableness" under this policy, TVCC will consider a reasonable person to have the complainant's intersectional identities.

² Per State law

- Non-forcible sexual intercourse between a complainant and a respondent who are related to each other, within the degrees wherein marriage is prohibited by Oregon state law.
- 1.3.2.2. Statutory Rape:
- Non-forcible sexual intercourse with a complainant who is under the statutory age of consent in Oregon.
- 1.4. Dating Violence:
- Violence, on the basis of sex, committed by a respondent, who is in or has been in a social relationship of a romantic or intimate nature with the complainant.
 - The existence of such a relationship shall be determined based on the complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
 - For the purposes of this definition-
 - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of domestic violence.
- 1.5. Domestic Violence:
- Violence, on the basis of sex,
 - Committed by a current or former spouse or intimate partner of the complainant,
 - By a person whom the complainant shares a child in common, or
 - By a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner, or
 - By a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Oregon, or
 - By any other person against an adult or youth complainant who is protected from that person’s acts under the domestic or family violence laws of Oregon.³
- 1.6. Stalking:
- Engaging in a course of conduct, on the basis of sex, directed at a complainant, that
 - Would cause a reasonable person to fear for the person’s safety, or
 - The safety of others, or
 - Suffer substantial emotional distress.
 - For the purpose of this definition-
 - “Course of conduct” means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a complainant, or interferes with a complainant’s property.
 - “Substantial emotional distress” means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

³ To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have a current or former intimate relationship.

2. Force, Coercion, Consent, and Incapacitation

1.7. Force:

- Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g. “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).
- Sexual activity that is forced is, by definition, non-consensual. However, non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

1.8. Coercion:

- Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

1.9. Consent:

- Consent is knowing, voluntary, and clear permission by word or action to engage in sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.
- If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.
- For consent to be valid, there must be a clear expression in words or actions that the other individual has consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, it is reasonable to kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.
- Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease. For example, if you kiss someone back, but they indicate that they do not want you to kiss them back, you must stop.
- Consent to one kind of sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

1.9.1. How TVCC Evaluates Consent:

Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking ORS 350.253 – GBNB/JBAB

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on TVCC to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so TVCC’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships are the default.

1.10. Incapacitation:

- A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including by alcohol or other drugs. A person violates this policy if they engage in sexual activity with someone they know to be, or should know to be, physically or mentally incapacitated.
- Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g. to understand the “who, what, when, where, why, or how” of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. For consent to be valid, there must be a clear expression in words or actions that the other individual has consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.

1.10.1. Intoxication of the Responding Party:

- It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the complainant. The question of whether the responding party should have known of the incapacity is an objective question about what a reasonable person, exercising sober, good judgment, would have known, in the same or similar circumstances.

Violations

Potential violations of this policy can be reported using the procedures in GBNA/JFCF-AR. The complaint will be processed under the appropriate grievance procedure as determined by the Title IX Coordinator or the director of legal and human resources or their designee.

END OF POLICY

Legal Reference(s):

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106; Part 106, Subpart E; § 106.38; § 106.8(a) (2016).