



ROCKY
MOUNTAIN
COLLEGE

Sexual Misconduct and Sexual Assault Policy
Reviewed June 2015

Sexual Misconduct & Sexual Assault

Summary This document outlines Rocky Mountain College's policies and procedures regarding sexual misconduct and sexual assault.

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13. SEXUAL MISCONDUCT AND SEXUAL ASSAULT SEXUAL MISCONDUCT/ASSAULT PANEL

1. POLICY STATEMENT

Sexual misconduct, sexual assault, stalking, and dating/domestic violence are unacceptable and will not be tolerated at Rocky Mountain College. The College urges an individual who has been subjected to sexual misconduct, sexual assault, stalking or dating/domestic violence to make a formal complaint. A report of the matter will be dealt with promptly and confidentiality will be maintained to the extent possible. The College is committed to providing information regarding on- and off-campus services and resources to all parties involved. Students, faculty and staff found in violation of this policy will be subject to discipline up to and including termination, expulsion or other appropriate institutional sanctions; affiliates and program participants may be removed from College programs and/or prevented from returning to campus.

2. WHAT IS SEXUAL MISCONDUCT?

Sexual misconduct is the commission of an unwanted sexual act, whether by an acquaintance or by a stranger, that occurs without consent.

3. WHAT IS SEXUAL ASSAULT?

Sexual assault is the actual, attempted or threatened unwanted sexual act, whether by an acquaintance or by a stranger, accomplished (1) without consent by means of force (express or implied), violence, duress, menace, fear or fraud, or (2) when a person is incapacitated or unaware of the nature of the act, due to unconsciousness, sleep and/or intoxicating substances.

4. What IS STALKING?

Stalking is criminal activity consisting of the repeated following and/or harassing of another person. Stalking is a distinctive form of criminal activity composed of a series of actions that taken individually might constitute legal behavior. For example, sending flowers, writing love notes, and waiting for someone outside her or his place of work are actions that, on their own, are not criminal. When these

actions are coupled with an intent to instill fear or injury, however, they may constitute a pattern of behavior that is illegal. Though anti-stalking laws are gender neutral, most stalkers are men and most victims are women.

5. What is Dating/Domestic Violence?

Dating/Domestic violence and emotional abuse are behaviors used by one person in a relationship to control the other. Partners may be married or not married; heterosexual, gay, or lesbian; living together, separated or dating. Violence can be criminal and includes physical assault (hitting, pushing, shoving, etc.), sexual abuse (unwanted or forced sexual activity), and stalking. Although emotional, psychological and financial abuses are not criminal behaviors, they are forms of abuse and can lead to criminal violence.

6. WHAT IS CONSENT?

Consent is informed, freely given, and mutually understood. Consent requires an affirmative act or statement by each participant. If coercion, intimidation, threats and/or physical force are used, there is no consent. If a person is mentally or physically incapacitated or impaired so that the person cannot understand the fact, nature or extent of the sexual situation, there is no consent; this includes conditions due to alcohol or drug consumption or being asleep or unconscious. (NOTE: it is RMC's belief that individuals under the influence of drugs or alcohol are incapable of informed consent, therefore, any sexual activity when either party has been using drugs or alcohol will be considered non-consensual.) Whether one has taken advantage of a position of influence over another may be a factor in determining consent.

7. RETALIATION

It is a violation of College policy to retaliate against any person making a complaint of sexual misconduct or sexual assault, or against any person cooperating in the investigation of (including testifying as a witness to) any allegation of sexual misconduct or sexual assault. For students, retaliation should be reported promptly to the Vice President for Student Life, or Residence Life administrator (RA, RD, Director). For faculty and staff, retaliation should be reported to the Human Resources Office.

8. CONFIDENTIALITY OF INFORMATION

The College will make reasonable and appropriate efforts to preserve an individual's privacy and protect the confidentiality of information. However, because of laws relating to reporting and other state and federal laws, the College cannot guarantee confidentiality to those who report incidents of sexual violence, except where those reports are privileged communications with those in legally protected roles (set forth below). The professional being consulted should, if possible, make these limits clear before any disclosure of facts. An individual can speak confidentially with certain individuals in legally protected roles. They include sexual assault counselors and clergy.

Exceptions to maintaining confidentiality are set by law; for example, physicians and nurses who treat any physical injury sustained during a sexual assault are required to report it to law enforcement. Also, physicians, nurses, psychologists, psychiatrists, teachers and social workers must report a sexual assault committed against a person under age 18. Information shared with other individuals is not legally protected from being disclosed. Considerations with respect to a complainant's request for confidentiality include factors such as the College's ability to respond effectively, to prevent further harassment or to ensure the safety of the College community. For example, a faculty advisor, a Residence Director (RD) or a Resident Assistant (RA) may need to inform other individuals to protect their safety or rights, in fairness to the persons involved, or in response to legal requirements.

As required by law, all disclosures to any College employee of an on-campus sexual assault must be reported for statistical purposes only (without personal identifiers) to the Rocky Mountain College

Campus Safety Office, which has the responsibility for tabulating and annually publishing sexual assault and other crime statistics. Such reports are for statistical purposes and do not include individual identities. State law permits law enforcement authorities to keep confidential the identity of a person officially reporting a sexual assault. The Rocky Mountain College Campus Safety Office policy is to maintain such confidentiality. However, if the City Attorney files a criminal charge, confidentiality may not be maintained. If a complaint is filed through the Student Conduct system, then the accused student must be provided with the name of the alleged victim and witnesses, if applicable.

9. EDUCATION AND PREVENTION

Resources — Rocky Mountain College provides resources for education about and prevention of sexual misconduct and assault. Students, faculty and staff are urged to take advantage of on-campus prevention and educational resources (both College-supported and student-led) and are encouraged to participate actively in prevention and risk reduction efforts. The Campus Safety and Residence Life Offices provide comprehensive educational programming designed to promote campus safety, wellness and address sexual and relationship violence to the campus community.

The following link to the Rape Abuse and Incest National Network (RAINN) contains recommendations on ways to reduce the risk of sexual assault including, avoiding dangerous situations, personal safety planning, dealing with pressure, computer safety and tips for “what men can do.”

<https://www.rainn.org/get-information/sexual-assault-prevention>

Rocky Mountain College provides case consultation to students and staff, case management for reported assaults, and provides information and referrals to services on and off campus. The College also assists with educational outreach and training to increase awareness, sensitivity and community accountability in the prevention of these acts. The Human Resources Department provides training programs regarding sexual harassment for the campus community. Some programs are required for faculty, staff supervisors, instructors and newly hired staff. Information is available by contacting the Human Resources Office at 406.657.1043. The Rocky Mountain College Department of Residence Life and the Campus Safety Office conducts educational programs and distributes educational literature to students, faculty and staff.

10. RESOURCES FOLLOWING AN ACT OF SEXUAL MISCONDUCT OR SEXUAL ASSAULT

Whether a victim of sexual misconduct or sexual assault chooses to make a formal complaint, he or she is urged to seek appropriate help. There are numerous resources available to faculty, staff, student and visitors to campus (see list below). Specific resources, either on or off campus, for medical treatment, legal evidence collection, obtaining information, support and counseling and officially reporting a sexual misconduct or sexual assault are listed below. Each resource can assist a person to access the full range of services available.

a. Services Available 24 Hours a Day

Emergency medical and police services, call 911 (or 8-911 from campus). Individuals may also go to the nearest hospital emergency department (Saint Vincent’s Hospital or Billings Clinic).

The YWCA Gateway House in Billings has a 24-hour telephone line at 406.259.8100.

Sexual Assault Services (formerly Rape Task Force), 406.259.8100.

Billings Community Crisis Center, 406.259.8800.

RMC students may contact an RA and request that the on-call Residence Director be contacted.

b. Medical Treatment — An individual who has been sexually assaulted is urged to seek appropriate medical evaluation as promptly as possible.

- For life-threatening conditions, call 911 (or from a campus phone, call 8-911).
- For treatment of less serious injuries, students can use the Rocky Mountain College Health Center 406.657.1068) or the nearest hospital emergency department (Saint Vincent's Hospital or Billings Clinic). Faculty and staff should consult their primary care physician.
- For evaluation and prevention of sexually transmitted diseases and pregnancy, as well as consultation for other health issues, students can use the Rocky Mountain College Health Center. Faculty and staff should consult their primary care physician.

c. Medical-Legal Evidence Collection — An individual who has been sexually assaulted is encouraged to request collection of medical-legal evidence. Prompt collection of physical evidence is essential should a person later decide to pursue criminal prosecution and/or a civil action (see 9.d., Legal Options).

Federal law provides for free medical-legal exams to victims of sexual assault. See the Violence Against Women Act of 2005 42 U.S.C. § 3796gg-4(d). For assistance in seeking such an exam, contact the YWCA 406.259.8100, Billings Police Department 406.657.8460. RMC community members are strongly urged to contact the YWCA as early as possible because it provides immediate support and advocacy and will coordinate services with other agencies if requested. The YWCA Sexual Violence Victims Services 24-hour telephone line is 406.259.8100. An individual seeking an exam is encouraged to request police escort to the St. Vincent or Billings Clinic Emergency Department.

Please note that St. Vincent and Billings Clinic are mandated assault reporters under state law and may have legal obligations to provide a report of an assault to a police agency.

d. Obtaining Information, Support and Counseling — Whether one chooses to make a formal complaint, an individual who has suffered an act of sexual misconduct or sexual assault is encouraged to obtain information, support and counseling. Counselors at a variety of agencies, both on and off campus, can help that person decide what steps to take, such as seeking medical attention, preserving evidence, obtaining counseling or reporting to authorities. Information, support and advice are available (see resources below) for anyone in the RMC community who wishes to discuss issues related to sexual misconduct or sexual assault, whether sexual misconduct or sexual assault has actually occurred and whether the person seeking information has been assaulted, has been accused of sexual misconduct or sexual assault, or is a third party. The degree to which confidentiality can be protected depends upon the professional role of the person being consulted and should be addressed with that person before specific facts are disclosed, if possible (see section 6, Confidentiality of Information).

Students may consult:

YWCA Gateway House—406.259.8100

Campus Counselor—406.657.1049

RMC Health Center—406.657.1068

Campus Chaplain—406.657.1098
Campus Safety Office—406.238.7293
Vice President for Student Life—406.657.1018

e. Officially Reporting an act of Sexual Misconduct or Sexual Assault — A member of the College community who has suffered an act of sexual misconduct or sexual assault is encouraged to make a formal complaint as soon as possible, whether he/she intends, at that time, to seek criminal or civil redress or pursue internal disciplinary measures. Even when a victim of sexual misconduct or sexual assault is not willing to bring forward a disciplinary case, a victim may benefit from appropriate academic and housing accommodations from the College through Residence Life staff or the Campus Safety Office.

For a sexual assault that occurs on the campus, contact the Residence Life Staff (RA, RD, Director of Residence Life), 406.657.1051 or Campus Safety Office, 406.238.7293. In addition, victims of sexual misconduct or sexual assault are encouraged to contact local law enforcement officials by calling 911 or 406.657-.8460.

For an off-campus incident, call the police, call 911 or 406.657.8460. If the accused is a Rocky Mountain College student, students should contact the Vice President for Student Life at 406.657.1018 or the Campus Safety Office at 406.238.7293.

Faculty and staff should contact the Human Resources Office.

Upon request, College personnel will assist students to notify campus and law enforcement authorities of any incident of sexual misconduct or sexual assault.

11. POLICY ENFORCEMENT

This policy was authorized and approved by the President of Rocky Mountain College and is enforced under the authority of the Vice President for Student Life. In addition to institutional consequences, an individual who violates this policy may be subject to criminal prosecution and/or civil litigation. For all complaints of alleged sexual misconduct or sexual assault, regardless of what type of resolution the complainant wishes to pursue, the College may, in its discretion, undertake appropriate inquiry and take such prompt and effective action as is reasonably practicable under the circumstances to support and protect the complainant. Including, but not limited to, taking appropriate interim measures (such as removing or banning an alleged assailant from campus, no contact and protective orders, and academic schedule and housing accommodations; as requested and available) before the final outcome of the investigation and/or hearing, if any.

a. Disciplinary and Other Administrative Actions for Students —An act of sexual misconduct or sexual assault is a violation of the Fundamental Standard governing student behavior. The process and procedures governing student disciplinary cases involving sexual misconduct and sexual assault are found on the Student Conduct website, <http://www.rocky.edu/student-life/dean-student-life/StudentConduct.php>.

The Office of Student Life 406.657.1018 investigates all formal complaints of student misconduct, including allegations of sexual misconduct and sexual assault, and initiates formal disciplinary procedures if the evidence supports the allegation. Sanctions may include, but are not limited to, an oral reprimand, a written reprimand, a warning added to the accused person's file or the probation,

suspension or expulsion of a student. Mediation between parties is not available in cases of sexual assault or misconduct.

Rocky Mountain College processes guarantee that the rights of students, including those of the accused, are protected. The College will maintain the confidentiality of students involved in disciplinary cases; in situations involving an allegation of sexual misconduct and/or sexual assault; however, the reporting individual and the accused student may each choose to be accompanied by a person of his or her choice at all stages of the disciplinary process. Each student will be kept informed of the status of an investigation and its outcome. For more information go to <http://www.rocky.edu/student-life/dean-student-life/StudentConduct.php>.

b. Disciplinary Action for Faculty and Staff — Violations of this policy are addressed according to applicable faculty and staff personnel policies. When violations are found, possible sanctions range from censure to dismissal from the College.

c. When Complainant does not want to pursue resolution or requests confidentiality

If a complainant does not want to pursue a formal resolution or requests that the complaint be kept confidential, Title IX requires the College to investigate and take reasonable action in response to the complainant's information. The complainant will be informed that the College's ability to respond may be limited if confidentiality is requested. The College may conduct a preliminary investigation into the alleged misconduct or assault and weigh the request for confidentiality against the following factors: the seriousness of the alleged misconduct, whether there have been other complaints against the same accused and the accused's right to receive information about the allegations.

d. Legal Options — In addition to College disciplinary actions, a person who engages in a sexual assault may be the subject of criminal prosecution and/or civil litigation. A police report must be made before a criminal prosecution can be considered by the City Attorney's Office. The chances of successful prosecution are greater if the report to the police is timely and is supported by the collection of medical-legal evidence (see 8.c., Medical Legal Evidence Collection). Because the standards for finding a violation of criminal law are different from the standards for finding a violation of the Sexual Misconduct and Sexual Assault Policy, criminal investigations or reports are not determinative of whether sexual misconduct or sexual assault, for purposes of this policy, has occurred. Conduct may constitute sexual misconduct under this policy even if law enforcement agencies lack sufficient evidence of a crime and therefore decline to prosecute. Moreover, the filing of a complaint of sexual misconduct or sexual assault with the College is independent of any criminal investigation or proceeding. The College will not wait for the conclusion of any criminal investigation proceeding to commence its own investigation and/or to take interim measures to protect the complainant and College community.

A person who wishes specific information about legal options should consult a private attorney or the YWCA Sexual Violence Victims Services program, 406.259.8100.

12. INSTITUTIONAL RESPONSES

a. Public Information — Requests for information concerning an incident of sexual misconduct or sexual assault should be directed to the Rocky Mountain College Communications Department 406.657.1104 or the Rocky Mountain College Campus Safety Office 406.238.7293.

b. Public Notification of Incidents — As required by state and federal law, the Rocky Mountain College Campus Safety Office must collect and report annual statistical information concerning sexual assaults

occurring on campus. To promote public safety, the Campus Safety Office also alerts the campus community to incidents and trends of immediate concern.

13. SEXUAL MISCONDUCT & SEXUAL ASSAULT SEXUAL MISCONDUCT/ASSAULT PANEL

a. General Policies

Sexual misconduct and sexual assault are unacceptable and will not be tolerated at Rocky Mountain College. The College urges an individual who has been subjected to sexual misconduct or sexual assault to make a formal complaint. A report of the matter will be dealt with promptly. Confidentiality will be maintained to the extent possible. The College is committed to providing information regarding on- and off-campus services and resources to all parties involved. Students, faculty and staff found to be in violation of this policy will be subject to discipline up to and including termination, expulsion or other appropriate institutional sanctions; affiliates and program participants may be removed from College programs and/or prevented from returning to campus.

All formal complaints alleging sexual misconduct and/or assault will be referred to the Sexual Misconduct/Assault Panel for adjudication.

Any student who has a question or concern that he or she is being or has been a victim of sexual misconduct or sexual assault should contact the Vice President for Student Life 406.657.1018 or one of the liaisons listed below. The liaisons can assist in determining an appropriate response to an alleged incident.

Vice President for Student Life 406.657.1018
Campus Counselor406.657.1049
Office of Human Resources 406.657.1043

b. Student Complaint Resolution Procedure

The following represents the procedure for resolving incidents where sexual misconduct and/or assault has been alleged.

c. Formal Complaint

- Students may bring formal complaints to the Vice President for Student Life (VPSL).
- The complainant may have another person present information at discussions of the complaint.
- After discussion with the Vice President for Student Life, an official investigative officer will be appointed to formally review the complaint. The complainant submits a signed complaint describing the incident and requesting a formal investigation. In some cases it may be appropriate for the designated officer to draft the complaint. Additional investigative officers may be designated by the president of the College as needed (see item #7, Complaint process).
- The complaint will be shown to the accused person, who may then file a written response within five (5) working days.

The proceedings described here are not those of a court of law and the participation of legal counsel is not permitted during these discussions.

d. The Formal Complaint Process

The timetable set forth below is approximate. The Vice President for Student Life, in consultation with the investigative officer may, at his or her discretion, allow additional time for any of the steps noted.

- Within three (3) working days of receiving the written complaint, the investigative officer will consult with the relevant parties, including the complainant and the accused, in order to ascertain the facts and views of both parties.
- In order to protect the safety and welfare of both parties, it may be necessary to implement restrictions and/or behavioral expectations on individuals during the investigative and hearing process. Restrictions will be outlined, in writing, to each party immediately following the initial consultations.
- When a formal complaint is received, the Vice President for Student Life will convene the Sexual Misconduct/Assault Panel—a five person panel composed of two (2) students and three (3) members of the faculty and/or administrative staff. All members of the Sexual Misconduct/Assault Panel have received formal adjudicatory training as well as training relative to the issues of sexual harassment, misconduct and assault.
- Within fourteen (14) working days from the filing of the complaint, the investigative officer will conduct an inquiry and prepare a report summarizing the relevant evidence. Note: hearsay evidence related by a witness that is not based on first-hand information will be identified as such.
- The report of the investigative officer will be sent to the complainant and to the accused by the Vice President for Student Life. Within five (5) working days thereafter, the complainant and the respondent may each submit a final statement to the Vice President for Student Life concerning the report.
- The Vice President for Student Life, in consultation with the Sexual Misconduct/Assault Panel, may at any point dismiss a complaint if it is found to be clearly without merit. The complainant may appeal this determination to the Academic Vice President (AVP).
- Within five (5) working days after the submission of any final statements from the complainant and the accused, the Sexual Misconduct/Assault Panel will decide whether a violation of this policy has occurred, and if so, what the consequences shall be. These may range from reprimand, suspension or probation, to a recommendation of termination or expulsion.

e. Sexual Misconduct/Assault Panel Hearing Procedure

- The Vice President for Student Life will convene the Sexual Misconduct/Assault Panel for a preliminary hearing and will present members with the investigative officer's report, final statements, witness statements, physical evidence and relevant reports.
- Panel members will review all materials in the preliminary hearing. Based on their review the panel may elect to interview witnesses (including the investigative officer), request additional information and/or interview the complainant and the accused (note: if the panel elects to interview either party, both the complainant and accused must be provided an opportunity to appear).
- A formal hearing will be scheduled at the panel members' earliest possible convenience. During the formal hearing panelists will consider the evidence, conduct interviews if applicable and debate the merits of the complaint.
- In accordance with federal law, the Sexual Misconduct/Assault Sexual Misconduct/Assault

Panel will use the “preponderance of the evidence” standard to adjudicate complaints.

- The panel will make a final determination in the case and the Vice President for Student Life will draft a formal letter of notification. Upon approval of the letter, by the panelists, both parties will be notified simultaneously of the decision within two (2) business days.

f. Sanctions

Sanctions for sexual misconduct or sexual assault will be appropriate to the nature and severity of the offense and will be consistent with relevant College policy guidelines. Sanctions may include, but are not limited to, an oral reprimand, a written reprimand, a warning added to the accused person's file or the probation, suspension or expulsion of a student.

g. Protection of Rights

Both parties will be informed of the facts developed in the course of the investigation and will be promptly informed about the final outcome of the proceedings. To the extent reasonably possible, all proceedings will be conducted in a way calculated to protect the confidentiality interests of both parties. Moreover, all reasonable action will be taken to ensure that the complainant and those testifying on behalf of either party will suffer no retaliation as a result of their actions. In the event that the allegations are not substantiated, all reasonable steps will be taken to restore the accused if she or he may have been damaged by the proceedings. If a complainant is found to have been intentionally dishonest in making the allegations or to have made allegations maliciously, the complainant is subject to institutional discipline.

h. Appeals Related to Sexual Misconduct and Assault

In accordance with Federal law both the accused and accuser retain the right to appeal the panel's decision. If either party wishes to appeal, she or he must submit a statement to the Academic Vice President within ten (10) working days stating, with specificity, the reasons for her or his dissatisfaction and the grounds for thinking the case deserves further hearing. ***Please note, appeals may be considered for a variety of reasons (new evidence, procedural error, sanction not in accord with the offense, etc...); however, the appellant's disagreement with the panel's finding does not constitute grounds for an appeal.*** The AVP, within 30 days of submission of such a request, shall either affirm or overturn the decision. Appeals will be based upon the record made before the AVP and will not constitute a rehearing of the evidence. The person accused will be given the opportunity to present oral argument on such review provided, however, that nothing in the foregoing will be construed to prevent the reviewing committee in its discretion from hearing newly discovered evidence. The written response of the AVP will constitute the final determination of the complaint.

