

5000.5C

Sexual Misconduct and Intimate Partner Violence

In support of Wyoming State Law, Title VII of the Civil Rights Act, Title IX, and other applicable federal, state and local laws, and statutes, this procedure outlines definitions and resources available to the Gillette Community College District (GCCD or District) community. For additional information related to this procedure, see *Procedure 5075.2: Student Code of Conduct and the Employee Handbook*.

I. Responsibility, Authority, and Accountability

A. All members of the GCCD community, including students, staff, faculty members, contractors, patients, volunteers, affiliated entities, campus visitors, and other third parties, regardless of sex, gender, sexual orientation, gender expression, or gender identity are required to report acts of discrimination, sexual harassment, and sexual misconduct that occur on-campus or off-campus that occur in the context of an employment or education program or activity of the District or that have continuing adverse effects on campus. This includes in on-line or electronic environments. It is preferred, but may not be likely in all cases of reporting, that the students' first report is made to the Title IX Coordinator, Title IX Deputy Coordinators, or Human Resources. The employees' first report is to Human Resources. In the event the report is made to another GCCD representative, the institution is formally on notice and it is imperative that these individuals report to the Title IX coordinator immediately.

B. The crimes prohibited as outlined in this procedure include crimes of dating violence, domestic violence, sexual assault, and stalking. An officer responding to an incident of domestic violence, dating violence, or stalking shall conduct a thorough investigation and, when the elements of a crime are present, prepare a domestic violence report, in accordance with standard law enforcement procedure. To that end, GCCD issues this statement of policy to inform the campus community of our programs to address domestic violence, dating violence, sexual assault, and stalking as well as the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, which will be followed regardless of whether the incident occurs on or off campus when it is reported to a District official.

C. GCCD is committed to providing a safe environment for our employees and students. As part of this effort, we work to ensure there is no discrimination on the basis of sex/gender in the organization in compliance with Title IX. It is important that our faculty and staff are aware of actions that could violate Title IX and know how to report them.

D. GCCD considers all employees to be responsible employees, except health professionals and those covered by statute (i.e. licensed mental health professional), and must report sexual misconduct within 24 hours to the Title IX Coordinator regardless of whether a formal complaint was filed.

E. Equal Opportunity: Non-Discrimination Clause – Gillette Community College District prohibits discrimination in employment, educational programs, and activities on the GCCD basis of race, national origin, color, creed, religion, sex, pregnancy, age, disability, veteran status, sexual orientation, gender identity, or any other class protected under state and federal law. The District also affirms its

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commitment to providing equal opportunities and equal access to its facilities. Inquiries concerning Title VI, Title VII, Title IX, Section 504, and the Americans with Disabilities Act may be referred to the Assistant Vice President for Human Resources, Jennifer McArthur, GCCD's Title IX and Section 504 Coordinator, Sheridan College, Griffith Memorial Building, Room 141D, 1 Whitney Way, Sheridan, WY 82801; 307-675-0505. Inquiries also may be made to the Office for Civil Rights, U.S. Department of Education, Federal Building, Suite 310, 1244 Speer Boulevard, Denver, CO 80204-3582; 303-844-3417; or TDD 303-844-3417.

F. GCCD may make changes to this procedure on an as-needed basis in order to ensure compliance with federal and/or state regulatory updates, changes, and/or modifications.

II. Definitions of Terms and Concepts

A. For purposes of this Procedure, the various forms of prohibited Sexual Harassment are referred to as "Sexual Misconduct."

B. This Procedure prohibits "Sexual Misconduct" and "Intimate Partner Violence," broad categories encompassing the conduct defined below. Sexual Misconduct and Intimate Partner Violence can be committed by anyone and can occur between people of the same or of a different gender. Sexual misconduct definitions are provided below.

C. Sexual Harassment: Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, in person or electronically when:

a) Employees:

- i. Submission to such conduct is made explicitly or implicitly a term or condition of employment.
- ii. Submission to or rejection of such conduct is used as the basis for decisions affecting an individual's employment.
- iii. Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

b) Students:

- i. Is reasonably perceived as creating an intimidating or hostile work, learning, or living environment.
- ii. Unreasonably interferes with, denies or limits someone's ability to participate in or benefit from any educational program and/or activities.
- iii. Is based on power differentials, the creation of a hostile environment, or retaliation.

D. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the reporting party.

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a) The existence of such a relationship shall be based on the reporting party'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.

b) 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.

c) **Dating Violence** is not defined under Wyoming State Statutes

E. Domestic Violence or Intimate Partner Violence: A felony or misdemeanor crime of violence committed in the following manner:

a) By a current or former spouse or intimate partner of the reporting party;

b) By a person with whom the reporting party shares a child in common;

c) By a person who is cohabitating with, or has cohabitated with, the reporting party as a spouse or intimate partner;

d) By a person similarly situated to a spouse of the reporting party under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or

e) By any other person against an adult or youth reporting party who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

f) Under Wyoming State Statute, domestic violence is divided between two statutes: Domestic Battery and Domestic Assault defined below

a. **6-2-511 Domestic battery:** A household member is guilty of domestic battery if he knowingly or recklessly causes bodily injury to another household member by use of physical force.

b. **6-2-510 Domestic assault:** A household member is guilty of domestic assault if, having the present ability to do so, he unlawfully attempts to cause bodily injury to another household member.

i. **35-24-102 (iv) Household member:**

(a) Persons married to each other;

(b) Persons living with each other as if married;

(c) Persons formerly married to each other;

(d) Persons formerly living with each other as if married;

(e) Parents and their adult children;

(f) Other adults sharing common living quarters;

(g) Persons who are the parents of a child but who are not living with each other; and

(h) Persons who are in, or have been in, a dating relationship.

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F. Sexual Assault: Having or attempting to have sexual intercourse or oral sex, without consent. Sexual intercourse means 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 reporting party. This definition includes any gender of reporting party or perpetrator. This definition also includes instances in which the reporting party is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs and or alcohol). Physical resistance is not required on the part of the reporting party to demonstrate lack of consent. Also included in the Sexual Assault category:

a) Incest – Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

b) Statutory Rape – Sexual intercourse with a person who is under the statutory age of consent.

c) Sexual Assault is defined under Wyoming Statute in 3 degrees in addition to a 4th defined as sexual battery as are defined below.

a. Statute 6-2-302. Sexual assault in the first degree.

(a) Any actor who inflicts sexual intrusion on a victim commits a sexual assault in the first degree if:

(i) The actor causes submission of the victim through the actual application, reasonably calculated to cause submission of the victim, of physical force or forcible confinement;

(ii) The actor causes submission of the victim by threat of death, serious bodily injury, extreme physical pain or kidnapping to be inflicted on anyone and the victim reasonably believes that the actor has the present ability to execute these threats;

(iii) The victim is physically helpless, and the actor knows or reasonably should know that the victim is physically helpless and that the victim has not consented; or

(iv) The actor knows or reasonably should know that the victim through a mental illness, mental deficiency or developmental disability is incapable of appraising the nature of the victims conduct.

b. Statute 6-2-303. Sexual assault in the second degree

(a) Any actor who inflicts sexual intrusion on a victim commits sexual assault in the second degree if, under circumstances not constituting sexual assault in the first degree:

a. The actor causes submission of the victim by threatening to retaliate in the future against the victim or the victim's spouse, parents, brothers, sisters or children, and the victim reasonably believes the actor will execute this threat.

“To retaliate” includes threats of kidnapping, death, serious bodily injury or extreme physical pain;

b. The actor causes submission of the victim by any means that would prevent resistance by a victim of ordinary resolution;

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c. The actor administers, or knows that someone else administered to the victim, without the prior knowledge or consent of the victim, any substance which substantially impairs the victim's power to appraise or control his conduct;

d. The actor knows or should reasonably know that the victim submits erroneously believing the actor to be the victim's spouse;

e. Repealed By Laws 2007, Ch.159, 3.

f. The actor is in a position of authority over the victim and uses this position of authority to cause the victim to submit;

g. The actor is an employee, independent contractor or volunteer of a state, county, city or town, or privately operated adult or juvenile correctional system, including but not limited to jails, penal institutions, detention centers, juvenile residential or rehabilitative facilities, adult community correctional facilities or secure treatment facilities and the victim is known or should be known by the actor to be a resident of such facility or under supervision of the correctional system; or

h. The actor inflicts sexual intrusion in treatment or examination of a victim for purposes or in a manner substantially inconsistent with reasonable medical practices.

(b) A person is guilty of sexual assault in the second degree if he subjects another person to sexual contact and causes serious bodily injury to the victim under any of the circumstances listed in W.S 6-2-302 (a)(i) through (iv) or paragraphs (a)(i) through (vii) of this section.

c. Statute 6-2-304. Sexual assault in the third degree.

(a) An actor commits sexual assault in the third degree if, under circumstances not constituting sexual assault in the first or second degree: The actor subjects a victim to sexual contact under any of the circumstances of W.S. 6-2-302(a) (i) through (iv) or 6-2- 302(a) (i) through (vii) of this section.

d. Statute 6-2-313. Sexual battery.

(a) Except under circumstances constituting a violation of W.S. 6-2-302 through 6-2-304, 6- 2-314 through 6-2-317 or 6-2-502, an actor who unlawfully subjects another person to any sexual contact is guilty of sexual battery.

G. Stalking:

a) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to be impacted in the following manner:

i. Fear for the person's safety or the safety of others; or

ii. Suffer substantial emotional distress.

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b) For the purposes of this definition, course of conduct means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

c) Reasonable person is described in the following manner: a reasonable person under similar circumstances and with similar identities to the victim.

d) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

e) Wyoming Statute 6-2-506: **Stalking** is defined below.

i. "Course of conduct" means a pattern of conduct composed of a series of acts over any period of time evidencing a continuity of purpose;

ii. "Harass" means to engage in a course of conduct, including but not limited to verbal threats, written threats, lewd or obscene statements or images, vandalism or nonconsensual physical contact, directed at a specific person or the family of a specific person. Which the defendant knew or should have known would cause a reasonable person to suffer substantial emotional distress, and which does in fact seriously alarm the person toward whom it is directed.

iii. Unless otherwise provided by law, a person commits the crime of stalking if, with intent to harass another person, the person engages in a course of conduct reasonably likely to harass that person, including but not limited to any combination of the following:

1. Communicating, anonymously or otherwise, or causing a communication with another person by verbal, electronic, mechanical, telegraphic, telephone or written means in a manner that harasses;
2. Following a person, other than within the residence of the defendant;
3. Placing a person under surveillance by remaining present outside his or her school, place of employment, vehicle, other place occupied by the person, or residence other than the residence of the defendant; or
4. Otherwise engaging in a course of conduct that harasses another person.

f) This section does not apply to an otherwise lawful demonstration, assembly or picketing.

H. **Coercion:** The use or attempted use of pressure and/or oppressive behavior, including express or implied threats, intimidation, or physical force such that the application of pressure or oppression causes the recipient of the behavior to engage in unwanted sexual activity. Coercion includes administering or pressuring another to consume a drug, intoxicant, or similar substance with the intent to impair that person's ability to consent prior to engaging in sexual activity.

I. **Complicity:** Assisting, facilitating, or encouraging the commission of a violation of the Sexual Misconduct and Intimate Partner Violence Policy.

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J. Exploitation: An act attempted or committed by a person for sexual gratification, financial gain, or other advancement through the abuse or exploitation of another person's sexuality. Examples of sexual exploitation include, but are not limited to, non-consensual observation of individuals who are undressed or engaging in sexual acts, non-consensual audio- or video recording or streaming of sexual activity, prostituting another person, and allowing others to observe a personal consensual sexual act without the knowledge or consent of all involved parties. Sexual Exploitation is further defined in Wyoming Statute 6-4-303 <https://www.wyoleg.gov/StateStatutes/StatutesConstitution?tab=0>. When a person for any purpose, knowingly: (1) Causes, induces, entices, coerces or permits a child to engage in, or be used for, the making of child pornography; (2) Causes, induces, entices or coerces a child to engage in, or be used for, any explicit sexual conduct; (3) Manufactures, generates, creates, receives, distributes, reproduces, delivers or possesses with the intent to deliver, including through digital or electronic means, whether or not by computer, any child pornography; or (4) Possesses child pornography.

K. Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the reporting party, including instances where the reporting party is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. (This falls under 3rd Degree Sexual Assault under Wyoming Statute 6-2-304.) <https://www.wyoleg.gov/StateStatutes/StatutesConstitution?tab=0>

L. Grooming: An attempt to control a reporting party through a systematic process which takes advantage of an individual's vulnerabilities using a combination of strategies to gain the individual's trust, lower inhibitions and gain cooperation and "consent."

M. Harm to Others: Physical violence including (but not limited to) physical abuse, assault, threats of violence, striking, shoving or subjecting another person to unwanted physical contact. **N. Harassing Conduct:** Intentionally or recklessly endangering, threatening, or causing emotional harm to any person. This may also include causing physical damage to their property.

O. Harassment: Any unwelcome conduct based on actual or perceived status including: sex, gender, race, color, age, creed, national or ethnic origin, physical or mental disability, veteran status, pregnancy status, religion, sexual orientation, or other protected status. Harassment includes any written, verbal or physical acts (including electronically transmitted acts) that are reasonably perceived as creating an intimidating or hostile work, learning or living environment, particularly if questionable behavior is repeated and/or if it continues after the offending party is informed of the objectionable and/or inappropriate nature of the behavior. Harassment can be a single incident, or a series of repeated incidents. Any unwelcome conduct should be reported to campus officials, who will act to resolve reported incidents on behalf of the reporting party and community.

a. Hostile Environment. An environment on campus that, through harassing conduct (e.g., physical, verbal, graphic or written) based on a person's protected status (e.g., sexual orientation, age, etc.), becomes sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from GCCD educational or employment program or activity.

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- a. This policy attempts to balance the need of the community to create a civil climate while also embracing the 1st Amendment protection that attaches to most harassing speech that is simply offensive.

P. Non-Consensual Sexual Contact: Any intentional sexual touching or attempted sexual touching, without consent.

Q. Sexually Inappropriate Behavior: Conduct that is rude, obscene or sexually suggestive in the form of gestures, electronic communication or in person. Public masturbation, disrobing or exposure of one's self to another person without that person's consent is one example. This may be an isolated occurrence.

R. Other Relevant Definitions

o **Reporting Party:** An individual who invokes GCCD's processes to determine whether this Procedure has been violated. The reporting party is typically the alleged reporting party. If an alleged reporting party chooses not to proceed with charges, GCCD may, at its discretion, serve as the reporting party.

o **Responding Party:** Any individual or authorized student organization alleged to have violated this procedure and against whom a complaint has been submitted.

o **Complaint:** The statement submitted by the reporting party to GCCD for the purpose of initiating disciplinary proceedings under this procedure. This includes complaints submitted through on-line and/or anonymous reporting mechanisms.

o **Consent:** The purpose of this definition is to establish the presence or absence of consent. Consent to engage in sexual activity must exist from beginning to end of each instance of sexual activity, and should be affirmative in nature. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness or enthusiastic participation to engage in, and continue to engage in, a specific sexual activity. Effective consent is doing the same thing, at the same time, in the same way. Consent must be informed and voluntary. Consent cannot be implied by attire or inferred from the giving or acceptance of gifts, money or other items. To give consent, a person must be awake, of legal age, and have the capacity to reasonably understand the nature of their actions. Individuals who are physically or mentally incapacitated cannot give consent. Some indicators that an individual is incapacitated due to intoxication may include, but are not limited to; vomiting, unresponsiveness, inability to communicate coherently, inability to dress/undress without assistance, inability to walk without

assistance, slurred speech, loss of coordination, or inability to perform other physical or cognitive tasks without assistance. Silence, without actions evidencing permission, does not demonstrate consent. Where force or coercion is alleged, the absence of resistance does not demonstrate consent. The responsibility of obtaining consent rests with the person initiating sexual activity. Consent to engage in sexual activity may be withdrawn by either person at any time. A previous or current dating or sexual relationship, by itself, is not sufficient to constitute

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consent. Once withdrawal of consent has been expressed, the sexual activity must cease. Consent is automatically withdrawn by a person who is no longer capable of giving consent (due to falling asleep or passing out into a state of unconsciousness, for example).

o **Interim Measures:** During the investigation and prior to the final determination, GCCD may take appropriate interim measures to protect the parties involved. These actions are not a presumption of responsibility. In all cases, the highest level of discretion will be provided to ensure privacy while implementing the protective measure. Interim actions may include support for the reporting party in the form of escorts, special parking arrangements, providing a temporary cellphone, changing classroom location, allowing a student to complete assignments from home, or similar modifications. When a student or staff represents a threat of serious harm to others, is facing allegations of serious criminal activity, to preserve the integrity of an investigation, to preserve GCCD property and/or to prevent disruption of, or interference with, the normal operations of GCCD, interim actions may be imposed on the reporting party. These may include reassignment of residence hall room, denial of access to specific facilities, reassignment of classes or work location, or temporary separation from the institution.

o **Mandatory Reporters:** Mandatory reporters are persons who, as a result of their position, may be aware of cases of abuse or violence. At GCCD, all employees, including faculty, staff, and student staff (with the exception of licensed professional counselors) are designated as mandatory reporters with regard to cases of suspected sexual assault/violence, sexual misconduct, and intimate partner violence. Suspected incidents must be immediately reported to Campus Police and the Title IX Coordinator.

o **Retaliation:** Acts or attempted acts to retaliate or seek retribution against anyone who has reported Sexual Misconduct or Intimate Partner Violence or who has participated (or is expected to participate) in any manner in an investigation, proceeding, or hearing under this Procedure. Prohibited retaliatory acts include, but are not limited to, intimidation, threats, coercion, or discrimination. Retaliation constitutes a violation of this Procedure and is prohibited by GCCD.

III. Reporting Procedures A. If GCCD determines that a student's behavior is in violation of this procedure, disciplinary action will be taken as outlined in Procedure 5075.2: Student Code of Conduct. The Student Code of Conduct includes descriptions of sanctions; interim measures; interim and permanent supports and protective measures for the reporting party; support for the responding party; and the procedures related to written notification throughout the investigation and conduct process.

B. If GCCD determines that an employee's behavior is in violation of this procedure, disciplinary action will be taken, up to and including termination of employment.

C. Students should report incidents that they consider violations of this procedure to the Campus Police, or to the Title IX Coordinator or Deputy, or Director of Human Resources. The staff and GCCD administrators in each of these areas are identified by GCCD as reporting authorities and will initiate GCCD's preliminary investigation process into an incident. Employees of GCCD, including student staff, (with the exception of counselors as identified below) are considered mandatory reporters with regard

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to incidents of sexual assault and sexual misconduct as defined by this procedure. These employees are required to report an incident of sexual assault or sexual misconduct to the Campus Police and/or a Title IX Officer/Deputy even if the reporting party elects not to or is unable to make an official report. Reporting parties have a right to report the incident directly to the Office for Civil Rights (OCR) or the Board Chair of GCCD.

D. Official reports can be made using the GCCD's on-line form at the following web address: https://cm.maxient.com/reportingform.php?NorthernWyomingCCD&layout_id=40; by phone to a reporting entity; or in person to a reporting entity as outlined below.

E. Employees should report incidents they consider violation of this procedure to the Assistant Vice President for Human Resources, Jennifer McArthur.

Jennifer McArthur, Assistant Vice President Human Resources 1 Whitney Way Griffith Memorial Building Room 141 Sheridan, WY Phone: 307-675-0571 Email: jmcarthur@sheridan.edu

F. Confidential and Anonymous Reporting for Students

- Members of the Counseling Services staff are confidential resources and do not investigate incidents. In their capacity and function as counselors, they do not make identifiable reports of incidents to the official on-campus resources unless the student specifically requests them to do so. Students may report incidents anonymously using the https://cm.maxient.com/reportingform.php?NorthernWyomingCCD&layout_id=40. The amount of detail provided may cause GCCD to initiate an investigation into the circumstances surrounding the report. Such an investigation may jeopardize the anonymity of the reporting person. Students who become aware of sexual misconduct or relationship violence can make anonymous reports to GCCD via https://cm.maxient.com/reportingform.php?NorthernWyomingCCD&layout_id=40 or speaking with the Counseling Center. GCCD does not provide confidential or anonymous reporting outside of these entities.

G. If the reporting party does not wish to pursue resolution

- In all reported cases of sexual misconduct, GCCD will conduct a fact-finding investigation to the best of its ability. In cases where the Reporting Party chooses to participate, this investigative report is provided to the Title IX Coordinator or Deputy Coordinator for a threshold analysis.
- In cases where the reporting party does not participate, GCCD has two options:
 - 1) GCCD may attempt to resolve the complaint in a manner consistent with the Reporting Party's request. This may include holding the report for action at a later date.
 - 2) GCCD may pursue a resolution procedure based on the status of the reporting party, student or staff/faculty in the investigation. Under these circumstances, GCCD would take into consideration the nature of the assault, the safety of the Reporting Party, and the campus community, as well as the previous disciplinary history and previous allegations of sexual misconduct.

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H. Statement on Confidentiality

- GCCD will protect the identity of persons who report having experienced sexual assault, domestic violence, dating violence, or stalking (to the fullest extent of the law). Additionally, GCCD will take all reasonable steps to investigate and respond to the complaint consistent with any request for confidentiality or request not to pursue an investigation. However, its ability to do so may be limited based on the nature of the request by the reporting party.

- o If the reporting party requests anonymity or that GCCD not pursue an investigation, GCCD must balance this request in the context of its responsibility to provide a safe environment for all GCCD community members. In cases where GCCD cannot respect the wishes of the Reporting party, GCCD will consult with the Reporting party and keep them informed about GCCD’s course of action.

- o If the report of misconduct discloses an immediate threat to the GCCD campus community, where timely notice must be given to protect the health or safety of the community, GCCD may not be able to maintain the confidentiality of the alleged reporting party or alleged offender identities.

- o GCCD will assess any barriers to proceeding, including retaliation, and in cases where informal or formal resolution will take place, GCCD will inform the responding party that Title IX prohibits retaliation and GCCD will take strong responsive action to protect the reporting party.

- o GCCD has designated the following individual(s) to evaluate requests for confidentiality once GCCD is aware of alleged sexual violence: Title IX Coordinator: Jennifer McArthur, Assistant Vice President Human Resources 1 Whitney Way Griffith Memorial Building Room 141 Sheridan, WY Phone: 307-675-0571 Email: jmcarthur@sheridan.edu

SEXUAL ASSAULT & INTIMATE PARTNER VIOLENCE ASSISTANCE & RESOURCE

Community Police	Community Hospital	Community Advocacy
Campus Police	Office for Civil Rights	College Counseling
Title IX Coordinator	Title IX Deputy Coordinators	Additional Campus Resources for Assistance in Reporting

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