



**Policy Number:** 100.3

**Policy Title:** Discrimination, Harassment, Sexual Misconduct, Stalking and Retaliation

**Subject:** Section 100 – Governance and Organization

**Date Adopted:** July 25, 2014

**Date(s) Revised:**

**Approved by:**   
\_\_\_\_\_  
Daniel J. Bingham  
Dean/CEO  
Helena College University of Montana

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## **POLICY STATEMENT:**

Helena College University of Montana makes all attempts to ensure its environment is free from harassment and discrimination based upon race, color, religion, national origin, creed, service in the federally and state defined uniform services, veteran status, sex, age, political ideas, martial or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation. Acts of discrimination, harassment, sexual misconduct, stalking and retaliation will be addressed with this policy. Consistent with state and federal law, reasonable accommodation will be provided to persons with disabilities.

The pendency of criminal proceedings will not impact Helena College’s response to reports of discrimination, harassment, sexual misconduct, stalking or retaliation involving college students, employees, or campus guests. Helena College recognizes both men and women as potential perpetrators or victims of harassment or discrimination and can involve two people of the same or different genders, strangers, non-strangers, and/or more than two people, between faculty and student, between two students or between student/employee and guest or applicant. The law prohibits retaliation against any person for opposing, reporting activities, participating in an investigation or resolution, or supporting persons filing a claim prohibited by this policy.

This policy shall not be construed or applied to restrict academic freedom at Helena College, nor shall it be construed to restrict constitutionally protected expression, even though such expression may be offensive, unpleasant, or even hateful.

State and federal laws and regulations prohibit certain kinds of discrimination in employment and in educational services. This policy is intended to comply with the following laws and regulations: Titles IV, VI, and VII of the Civil Rights Act of 1964; 34 C.F.R. pt. 100; Title IX; 28 C.F.R. pt. 54 and 34 C.F.R. pt. 106; Section 504 of the Rehabilitation Act; 34 C.F.R. pt. 104; Age Discrimination Act of 1975; 34 C.F.R. pt. 110; and Titles I and II of the

Americans with Disabilities Act; 28 C.F.R. pt. 35; Montana Human Rights Act and Governmental Code of Fair Practices, Title 49, Montana Code Annotated.

In addition, this Policy is intended to comply with Title IX of the Education Amendments of 1972 and its implementing regulations, at 34 C.F.R. § 106.31 (a), et. seq., which provide that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by the College.

All Helena College policies shall adhere to and be consistent with relevant federal and state laws, rules, and regulations; with Board of Regents' policies and procedures; and with the University of Montana's policies and procedures.

All complaints or any concerns about conduct that may violate this policy and retaliation should be filed with either of the following two College officials:

**For Students:**

**Assistant Dean of Student Affairs/Title IX Coordinator**

Helena College University of Montana

1115 N. Roberts Street

Helena, MT 59601

406.447.6903

[www.umhelena.edu/student\\_services/](http://www.umhelena.edu/student_services/)  
[e.stearnssims@umhelena.edu](mailto:e.stearnssims@umhelena.edu)

**For Employees:**

**Director of Human Resources**

Helena College University of Montana

1115 N. Roberts Street

Helena, MT 59601

406.447.6925

[www.umhelena.edu/hr](http://www.umhelena.edu/hr)  
[kimberly.worthy@umhelena.edu](mailto:kimberly.worthy@umhelena.edu)

Upon receiving a complaint the above-named College official who received the complaint or an appropriately trained designee will follow the procedures described in the Discrimination Grievance Procedures.

**Important Note!** Please do not wait to report conduct of concern until harassment becomes sufficiently serious (i.e., severe, pervasive, or persistent) to create a hostile environment. The above-named campus officials, designees, and other College officials can take proactive steps to prevent harassment from continuing and perhaps escalating and to protect or otherwise assist the person harassed. For example, the College can arrange for no-contact orders, counseling and changes in class schedules, living arrangements, class requirements, and testing schedules as needed. The College Officials and designees can also provide expertise and advice to help identify conduct that might be a warning sign of or constitute sexual harassment or hostile environment harassment prohibited by this policy and address any concerns or complaints appropriately.

## PROCEDURES:

### DEFINITION OF TERMS

The following definitions apply to this policy:

**Discrimination** is conduct that is based upon an individual's race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation that excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in a Helena College program or activity. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities.

**Harassment** is covered under this policy if it is based upon an individual's race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation. Harassing conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Sex-based harassment includes sexual harassment, which is further defined below, and non-sexual harassment based on stereotypical notions of what is female/feminine v. male/masculine or a failure to conform to those gender stereotypes.

Harassment violates this policy when it creates a hostile environment, as defined below.

**Sexual Harassment** can include unwelcome: sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, including sexual assault. Sexual harassment, including sexual assault, can involve persons of the same or opposite sex. Consistent with the law, this policy prohibits two types of sexual harassment:

1. Tangible Employment or Educational Action (Quid Pro Quo)

This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, or participation in College activity is conditioned upon either explicitly or implicitly submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, or participation in a College program or activity. Generally, perpetrators will be agents or employees with some authority from the College.

2. Hostile Environment

Sexual Harassment may create a hostile environment as defined below.

#### **Hostile Environment Harassment**

A *Hostile Environment* based on race, color, religion, national origin, creed, service in the uniformed services, veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation exists when harassment:

- is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to deny or limit a person's ability to participate in or benefit from the College's programs, services, opportunities, or activities; or
- when such conduct has the purpose or effect of unreasonably interfering with an individual's employment.

A hostile environment can be created by anyone involved in a College program or activity (e.g., administrators, faculty members, students, and even campus guests). Offensiveness is not enough to create a hostile

environment although repeated incidents increase the likelihood that harassment has created a hostile environment. A serious incident, even once, such as sexual assault, can be sufficient.

In determining whether harassment has created a hostile environment, consideration will be made not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive. Additionally, the following factors will be considered:

1. The degree to which the conduct affected one or more person's education or individual's employment;
2. The nature, score, frequency, duration, and location of the incident or incidents;
3. The identity, number and repetitiousness of the person(s) involved;
4. The nature contextual delivery of higher education.

**Sexual Misconduct** includes, sexual assault, inducing incapacitation for sexual purposes, sexual exploitation, and relationship violence.

**Sexual Assault** means an actual or attempted sexual contact with another person without that person's consent. Sexual assault includes, but is not limited to:

1. Involvement in any sexual contact when the victim is unable to give consent;
2. Intentional and unwelcome touching of, or coercing, forcing, or attempting to coerce or force another to touch a person's intimate parts (defined as genital area, groin, inner thigh, buttocks, or breast);
3. Sexual intercourse without consent, including acts commonly referred to as "rape."

**Inducing incapacitation for sexual purposes** includes using drugs, alcohol, or other means with the intent to or having an actual effect on the ability of an individual to consent or refuse to consent (as "consent" is defined in this policy) to sexual contact.

**Sexual Exploitation** occurs when a person takes non-consensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses. Examples of behavior that could rise to the level of sexual exploitation include:

- Prostituting another person;
- Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
- Non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
- Going beyond the bounds of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- Engaging in non-consensual voyeurism;
- Knowingly transmitting an STI, such as HIV, to another without disclosing your STI status;
- Exposing one's genitals in non-consensual circumstances, or inducing another to expose his or her genitals;
- Possessing, distributing, viewing or forcing others to view illegal pornography.

**Consent** is informed, freely given, and mutual. If coercion, intimidation, threats, or physical force are used there is no consent. If a person is mentally or physically incapacitated or impaired so that such 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. Silence does not necessarily constitute consent. Past consent to sexual activities does not imply ongoing future consent. Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent. There is no consent when there is force, expressed or implied, or use of duress or deception upon the victim.

**Relationship Violence** is abuse or violence between partners or former partners involving one or more of the following elements:

- Battering that causes bodily injury;
- Purposely or knowingly causing reasonable apprehension of bodily injury;
- Emotional abuse creating apprehension of bodily injury or property damage;
- Repeated telephonic, electronic, or other forms of communication, directly or anonymously, made with the intent to intimidate, terrify, harass, or threaten.

**Stalking** includes repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device or method that purposely or knowingly causes substantial emotional distress or reasonable fear of bodily injury or death.

**Retaliation** is action taken by an accused individual or an action taken by a third party, toward or against any person because such person has opposed any practices forbidden under this policy or because such person has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this policy. This includes action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment, or sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices forbidden under this policy.

**Preponderance of the evidence** is the greater weight of the evidence, or evidence which is more credible and convincing to the mind. It is the degree of proof which is more probable than not.

**Responsible Employee** is a Helena College employee who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students described in this policy to the Title IX Coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty. A specific list of Responsible Employees may be found on Helena College's website utilizing the search "Responsible Employee."

## **MANDATORY EMPLOYEE REPORTING OF SEX-BASED DISCRIMINATION, SEXUAL HARASSMENT AND SEXUAL MISCONDUCT INVOLVING STUDENTS**

In order to enable Helena College to respond effectively and to proactively stop instances of sex-based discrimination, sexual harassment and sexual misconduct at the College, all employees of Helena College are required to report information they have about alleged or possible sex-based discrimination, sexual harassment, and sexual misconduct involving students to the Title IX Coordinator, who is also known as the Assistant Dean of Student Affairs (Title IX Coordinator). Employees must report all relevant details they have that the College will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time and location. Employees who are exempt from these reporting requirements include health care professionals and any other employees who are statutorily prohibited from reporting.

Upon receiving a report of sex-based discrimination, sexual harassment and/or sexual misconduct, the Title IX Coordinator will evaluate the information received and determine what further action should be taken and will follow the procedures accompanying this policy. The Title IX Coordinator or a trained and appropriate designee will take steps either directly or through a reporting employee to inform a victim of Helena College's Discrimination Grievance Procedures, as well as provide information about available health and advocacy resources, and options for criminal reporting.

## **OFF-CAMPUS CONDUCT**

Conduct that occurs off campus can be the subject of a complaint or report and will be evaluated to determine whether it violates this policy, *e.g.* if off-campus harassment has continuing effects that create a hostile

environment on campus. Allegations of off-campus sexual misconduct are of particular concern and should be brought to the College's attention.

### **SANCTIONS AND CORRECTIVE ACTION**

Violations of this policy will be addressed through the Discrimination Grievance Procedures. Consequences for violating this policy will depend upon the facts and circumstances of each particular situation. Sanctions and Corrective Action could include: a requirement not to repeat or continue the discriminatory, harassing, or retaliatory conduct, a reprimand, a no-contact order, denial of merit pay increase, reassignment, suspension, or termination. The severity of sanctions or corrective action will depend on the frequency and severity of the offense and any history of past discrimination, harassing, or retaliatory conduct. A finding of discrimination or harassment that creates a hostile environment or results in a tangible employment or educational action, or sexual misconduct may be cause for disciplinary action, up to and including the discharge of employees and the expulsion of students, in accordance with applicable Helena College procedures and collective bargaining agreements.

Regardless of the outcome of an investigation or sanction proceeding, Helena College is committed to taking proactive steps to prevent discrimination, sexual harassment and sexual misconduct.

### **AMNESTY FOR DRUG OR ALCOHOL POSSESSION AND CONSUMPTION VIOLATIONS**

Helena College strongly encourages students and employees to report instances of sex-based discrimination, sexual harassment, and sexual misconduct involving students. Therefore, students who report information about sex-based discrimination, sexual harassment, or sexual misconduct involving students will not be disciplined by the College for any violation of Helena College's drug or alcohol possession or consumption policies in which they might have engaged in connection with the reported incident.

### **FREE SPEECH AND ACADEMIC FREEDOM**

Helena College has a deep commitment to academic freedom. The welfare and strength of the College and of society at large depends upon the ability to engage in free expression in the search of meaning. To this end, Helena College recognizes and protects full freedom of inquiry, teaching, research, discussion, study, and publication without hindrance, restriction, equivocation or reprisal. This right extends to other facets of campus life to include the right of a faculty, staff and students to speak on general educational questions or about the Administration and operation of his/her own institution and the Montana University System.

Constitutionally protected speech and traditional notions of academic freedom are valued in higher education. These ideals help to create the stimulating and challenging learning environment that should characterize higher education. In the spirit of a true college environment, individuals are encouraged to invite, rather than inhibit, discourse on ideas. In addressing all complaints and reports under this policy, the College will take all permissible actions to ensure the safety of students and employees while complying with free speech

requirements for students and employees.<sup>1</sup> While the College will vigilantly protect students' and employees' rights against sex discrimination under this policy, this policy does not apply to curriculum or in any way prohibit or abridge the use of particular textbooks or curricular materials

### **EXTERNAL COMPLAINTS**

If you filed a complaint with the College and believe the College's response was inadequate, or you otherwise believe you have been discriminated against by the College on the basis of race, color, national origin, sex, including sexual harassment, disability, age, or retaliation, you may file a complaint with the Office for Civil Rights (OCR) of the U.S. Department of Education based in Seattle or the Educational Opportunities Section (EOS) of the Civil Rights Division of the U.S. Justice Department of Justice, and a complaint based on religion with EOS of the U.S. Justice Department.

As a student or employee, if you filed a complaint with the College and believe the College's response was inadequate, or you otherwise believe you have been discriminated against by the College on the basis of race, color, national origin, sex, including sexual harassment, disability, age, religion, creed, pregnancy, marital status, familial status (housing only), or political beliefs, or retaliation, you may file a complaint with the Montana Human Rights Bureau: <http://erd.dli.mt.gov/human-rights-bureau.html>, 406-444-4356.

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<sup>1</sup> For more information about free speech requirements in the context of sexual harassment complaints, please see U.S. Department of Education, Office for Civil Rights, 2001, Revised Sexual Harassment Guidance at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html> at section XI.

## DISCRIMINATION, HARASSMENT, SEXUAL MISCONDUCT, STALKING AND RETALIATION GRIEVANCE PROCEDURES

### Purpose

The purpose of these procedures is to provide a prompt and equitable resolution for complaints or reports of discrimination based upon race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation. Any person believing that she or he has been subjected to discrimination or harassment on any of these bases may file a complaint or report with Helena College University of Montana. These procedures address all complaints or reports of alleged discrimination or harassment, including conduct that violates the Discrimination, Harassment, Sexual Misconduct, Stalking and Retaliation Policy (hereinafter referred to as "Policy Violations"). The procedures also address complaints or reports of retaliation against those who have opposed practices forbidden under the policy, those who have filed complaints or reports under the policy, and those who have testified or otherwise participated in enforcement of the policy.

### Complaints and Reporting

Complaints and third-party reporting of discrimination, including Policy Violations should be made to either of the two College Agents listed below (Assistant Dean of Student Affairs/Title IX Coordinator or the Director of Human Resources). Both of these College Agents are trained to help you find the resources you might need to explain all reporting options and to respond appropriately to conduct of concern. All instances of retaliation should be reported and will be addressed in the same manner. The contact information for the College Agents is listed below.

#### For Students:

##### Assistant Dean of Student Affairs/Title IX Coordinator

Helena College University of Montana

1115 N. Roberts Street

Helena, MT 59601

406.447.6903

[www.umhelena.edu/student\\_services/e.stearnssims@umhelena.edu](http://www.umhelena.edu/student_services/e.stearnssims@umhelena.edu)

#### For Employees:

##### Director of Human Resources

Helena College University of Montana

1115 N. Roberts Street

Helena, MT 59601

406.447.6925

[www.umhelena.edu/hr/kimberly.worthy@umhelena.edu](http://www.umhelena.edu/hr/kimberly.worthy@umhelena.edu)

Complaints and reports should be made as soon as possible after an incident. The College Agents coordinate and track all complaints and reports under this procedure.

There are several avenues available for submitting a complaint or report:

- Leave a private voice message for the appropriate College Agent;
- File a complaint or report on the form contained on the website at: [http://www.umhelena.edu/hr/docs/HC\\_Discrimination\\_Complaint\\_Form.pdf](http://www.umhelena.edu/hr/docs/HC_Discrimination_Complaint_Form.pdf);
- Send a private email to the appropriate College Agent;
- Mail a letter to one of the College Agents;
- Visit one of the College agents (it is best to make an appointment first to ensure availability).
- Make or submit a report to a 'Responsible Employee' as identified in the Policy, who will provide information as required under the policy to the appropriate College Agent. This individual is required under policy to report the incident.

If there is a complaint about the Assistant Dean of Student Affairs or the Director of Human Resources that complaint should be filed with the Dean/CEO of Helena College. The Dean/CEO will appoint another trained individual to respond to the complaint in accordance with these procedures.

## **Criminal Reporting**

Please remember that if someone is in immediate danger or needs immediate medical attention, the first place to report is 911. You may also report to the Helena Police Department (406-447-3233). Some forms of discrimination and harassment may also be crimes. For example, sexual assault, stalking and rape are crimes. Criminal reports should be made to law enforcement, even if it is uncertain whether the particular conduct is a crime. Calling local law enforcement can help you: obtain emergency and nonemergency medical care; get immediate law enforcement response for your protection; understand how to provide assistance in a situation that may escalate to more severe criminal behavior; arrange a meeting with victim advocate services; find counseling and support; initiate a criminal investigation; and answer questions about the criminal process.

## **Confidentiality of Complaints and Reports**

Parties in these processes, including the Complainant, the individual accused of a Policy Violation (“Respondent”), and witnesses, have privacy rights and reasonable expectations of confidentiality in the investigation of matters subject to this procedure. In addition, the integrity of the process depends on ensuring reasonable expectations of confidentiality. The appropriate college agent will keep confidential the complaint, report, witness statements, and any other information provided by the Complainant, Respondent, or witnesses and will disclose this information only to the Complainant, Respondent, or witnesses, as necessary to give fair notice of the allegations and to conduct the investigation; to law enforcement consistent with state and federal law; to other Helena College officials as necessary for coordinating interim measures or for health, welfare, and safety reasons, and to government agencies who review the Helena College’s compliance with federal law. The investigation report and any written decision from the investigation will be disclosed only to the Complainant, Respondent, Discipline Authority<sup>2</sup> as necessary, and Helena College officials as necessary to prepare for subsequent proceedings (e.g., Helena College Dean/CEO, University of Montana President and UM Legal Counsel). Individuals investigating or adjudicating the complaint have the same strict obligations to keep all information they learn confidential, subject to the limited exception when necessary to protect health, welfare or safety. Information about complaints and reports, absent personally identifiable information, may be reported to Helena College officials and external entities for statistical and analysis purposes pursuant to federal and state law and college policy.

## **Anonymous and Third Party Reporting**

The Assistant Dean of Student Affairs/Title IX Coordinator and the Director of Human Resources accepts anonymous and third-party reports of conduct alleged to violate this Policy and will follow up on such reports. The individual making the report (Reporter) is encouraged to provide as much detailed information as possible to allow the college agent to investigate and respond as appropriate. Helena College may be limited in the ability

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<sup>2</sup> In the case of employees, the Discipline Authority is the Helena College Administrator with the authority to impose sanctions in accordance with applicable employment policies, procedures and collective bargaining agreements. In the case of students, the Discipline Authority is the Assistant Dean of Student Services.

to investigate an anonymous report unless sufficient information is furnished to conduct a meaningful and fair investigation.

### **Roles of the Assistant Dean of Student Affairs/Title IX Coordinator and Director of Human Resources**

The Assistant Dean of Student Affairs/Title IX Coordinator and Director of Human Resources, collectively referred to as “College Agents” are charged with coordinating Helena College’s compliance with federal civil rights laws, all of which are listed at the end of these Procedures. The College Agent not advocates for either the Complainant or the Respondent. The College Agent will explain to both parties the informal and formal processes outlined below and the confidentiality provisions as outlined above. Where appropriate, the College Agent will provide to both parties information about options for obtaining medical and counseling services; information about making a criminal report, information about receiving advocacy services, and information about other helpful campus and community resources. The College Agent will offer to coordinate with other campus administration, when appropriate, to implement interim remedial measures such as no-contact orders or academic accommodations. The College Agent will describe the process of a fair and impartial investigation and the right of the Respondent to review and respond to allegations and evidence against him or her. The College Agent will explain to both parties their rights to have a person of support, union representative, or attorney with them during their interviews and or any subsequent meetings or appeals of these procedures. If an individual does not want to pursue a complaint, the College Agent will inform the individual that Helena College is limited in the actions it can take without the cooperation of the individual. The College Agent will also explain to parties and witnesses that retaliation for reporting alleged violations of the policy, or participating in an investigation of an alleged violation, is strictly prohibited and that any retaliation should be immediately reported and will be promptly addressed.

### **Immediate Action and Interim Measures**

Helena College may take interim measures to assist or protect the parties during the grievance process, as necessary and with the Complainant’s consent. Such measures for a student Complainant may include arranging for changes in class schedules, issuing a no-contact order, obtaining counseling, and modifying test schedules or other class requirements temporarily. For an employee Complainant, the college may temporarily reassign or place on administrative leave an employee alleged to have violated this policy.

### **Resolution**

If a Complainant chooses to file a complaint, there are two (2) avenues for resolution of an alleged Policy Violation: formal and informal resolution. The Complainant has the option to proceed informally, when permissible. In cases involving allegations of sexual assault, informal resolution is not appropriate, even if both the Complainant and Respondent indicate a preference for informal resolution. The College Agent is available to explain the informal and formal resolution procedures.

#### **A. Informal Process and Resolution**

If the Complainant, the Respondent, and the college agent all agree that an *informal resolution* should be pursued, the college agent (or her/his designee) shall attempt to facilitate a resolution of the conflict that is agreeable to all parties. Under the informal process, the college agent shall be required only to conduct such fact-finding as is useful to resolve the conflict and as is necessary to protect the interests of the parties, Helena College, and the Helena community. Typically, an informal investigation will be completed within 10 working days after receipt of the complaint. If it becomes necessary to extend the process, both parties will be notified of a revised expected resolution timeframe.

A Complainant or Respondent always has the option to request a formal investigation. The College Agent also always has the discretion to initiate a formal investigation. If at any point during the informal process, the Complainant, the Respondent, or the College Agent wishes to cease the informal process

and to proceed through formal grievance procedures, the formal process outlined below will be invoked.

The informal resolution must adequately address the concerns of the Complainant, as well as the rights of the Respondent and the overall intent of the College to stop, remedy, and prevent Policy Violations. (Informal actions might include, but are not limited to: providing training to a work unit; having an informal discussion with an individual whose conduct, if not stopped, could rise to the level of discrimination or hostile environment harassment; or having a confidential conversation with a supervisor or instructor).

## **B. Formal Process**

**Step 1:** The College Agent discusses concerns with Complainant, and the Respondent as appropriate, including providing information about the policy and procedures and other helpful resources. The College Agent also considers whether immediate or interim actions or involvement of other Helena College offices is appropriate. The College Agent determines whether the office has jurisdiction to investigate the matter under the discrimination, harassment, sexual misconduct, stalking, and retaliation policy.

Option 1: If the College Agent determines that there is no jurisdiction, the College Agent will offer to assist the Complainant and, as appropriate, the Respondent, in finding appropriate campus and off-campus resources for addressing the issue of concern.

Option 2: If the College Agent determines that there is jurisdiction, the College Agent will proceed to Step 2.

**Step 2:** The College Agent conducts a fair and impartial investigation of the alleged Policy Violation and proceeds to Step 3. Typically an investigation will be completed within fifteen (15) working days of receipt of the complaint. If it becomes necessary to extend the process, both parties will be notified of a revised expected resolution timeframe.

Respondents will have the opportunity to review and respond to evidence considered against them. Both parties will have the opportunity to provide information to the investigator.

**Step 3:** The College Agent determines whether there is a preponderance of the evidence to believe that an individual engaged in a Policy Violation. This means that individuals are presumed not to have engaged in alleged conduct unless a “preponderance of the evidence” supports a finding that the conduct has occurred. This “preponderance of the evidence” standard requires that the evidence supporting each finding be more convincing than the evidence in opposition to it.

In making the determination of whether harassment has created a hostile environment, the College Agent will consider not only whether the conduct was unwelcome to the Complainant, but also whether a reasonable person in the Complainant’s situation would have perceived the conduct as objectively offensive. The College Agent’s findings will be in writing and will be provided to both the Complainant and to the Respondent(s).

Option 1: If College Agent finds a preponderance of the evidence of a Policy Violation does not exist, the matter is documented and closed; in this case the Complainant may appeal the finding to the Campus Dean/CEO.

Option 2: If College Agent finds that a preponderance of the evidence of a policy violation exists, the written report will include recommendations for steps to take to prevent recurrence of any such violation, and as appropriate, remedies for the Complainant. The Respondent may appeal the finding to the Campus Dean/CEO. Please refer to ‘Filing and Appeal’ to learn of the process. If the Respondent does not contest the finding, the written finding will be provided to the discipline authority for a determination of appropriate sanctions. In the case

of student Respondents, the discipline authority will be the Assistant Dean of Student Affairs. In the case of employees, the discipline authority is the college administrator with the authority to impose sanctions in accordance with applicable employment policies and procedures and collective bargaining agreements. The discipline authority must inform the College Agent of the ultimate sanctions imposed upon a Respondent. The College Agent will inform the Complainant of the sanctions as permitted by applicable Title IX, privacy laws and those permitted by the appropriate collective bargaining agreement.

### **Relation to the Student Code of Conduct**

The Assistant Dean of Student Affairs is charged with imposing sanctions on students who are found to have violated the policy. Sanctions may include suspension, expulsion, probation, a warning, or any other sanction set forth in the Student Conduct Code under sanctions. Disciplinary records for policy violations are maintained in the same manner as other disciplinary records, as described in the Student Handbook.

### **Reporter or Complainant Requests No Investigation**

If a reporter or Complainant requests that an investigation not be conducted, the College Agent will consider the reasons for the request, including concerns about continued safety of the person reportedly harmed and members of the campus community. The College Agent must also balance considerations about the continued health and safety of members of the community against a reporter's or Complainant's desire not to have the report investigated. In cases when a reporter or Complainant does not want to have a report investigated, but the College Agent has concerns that not taking formal or informal action might endanger the health or safety of members of the campus community, the College Agent will initiate confidential consultation with appropriate individuals to analyze the situation and assist in determining appropriate measures to take. Consultation may occur with the Assistant Dean of Student Affairs, members of the Behavioral Intervention Team (BIT), Director of Student Success Center, psychological health professional, Director of Human Resources, and legal counsel. The College Agent will make the ultimate decision about whether to conduct a formal investigation or respond to the report in another manner, including taking informal actions, such as those described above.

### **Filing an Appeal**

A request for a hearing before the Campus Dean/CEO must be filed within five (5) working days, of the receipt of the College Agent's decision, unless good cause can be shown for an extension of time. The request for a hearing must be filed with the College Agent. The request for a hearing must be in writing and must describe the appellant's desired outcome; as well as describe how the appellant believes the College Agent: (1) exhibited unfair bias which influenced the result of the investigation; (2) failed to conduct a thorough investigation; (3) issued arbitrary findings and recommendations; (4) had a conflict of interest; or (5) issued findings and recommendations that if adopted would result in substantial injustice. As soon as practicable, traditionally five (5) business days after receipt, the College Agent will provide the non-appealing party and the Campus Dean/CEO with a copy of the written appeal.

### **Standard of Review**

The Campus Dean/CEO reviews the findings and recommendations of the College Agent. The Campus Dean/CEO may approve, overturn, or modify the findings and recommendations of the College Agent. The Campus Dean/CEO may overturn or modify the College Agent's findings and recommendations if it finds that the College Agent: (1) exhibited unfair bias which influenced the result of the investigation; (2) failed to conduct a thorough investigation; (3) issued arbitrary findings and recommendations; (4) had a conflict of interest; or (5) issued findings and recommendations that if adopted would result in substantial injustice.

## **Notice of Hearing**

Within five (5) working days of receipt of the written request for a hearing, the College Agent will notify the Complainant and the Respondent of the time and place of the formal hearing before the Campus Dean/CEO. This process might be extended during periods between academic semesters when individuals may be unavailable. The hearing will normally be scheduled within fifteen (15) working days of receipt of the written appeal. If such an appeal causes a significant delay, the appropriate college agent will consider interim measures, as described above, to continue to protect the parties during the process.

## **PREPARATION FOR AND CONDUCT OF THE HEARING**

### **Written Statements on Appeal**

Within five (5) working days of filing the appeal, the party appealing the decision must submit to the College Agent the following information:

- a. detailed statement of facts relevant to the complaint or report of discrimination, hostile environment harassment, sexual misconduct, stalking, or retaliation;(b) names and addresses and anticipated testimony from witnesses to be called;
- b. copies of any documents which will be submitted as evidence;
- c. additional materials the party believes the committee should obtain prior to the hearing;
- d. reference to the portion of the policy alleged to be violated;
- e. specific remedy(ies) requested; and
- f. whether the party will be represented by legal counsel and the identity of the counsel.

The non-appealing party may also submit the information described in (a) through (f), above. If the non-appealing party will participate in the hearing, that party must notify the College Agent as described above at (g) whether he or she will be represented by legal counsel. In cases in which the non-appealing party chooses not to participate in the hearing, the College Agent will provide to the Campus Dean/CEO, in addition to the written investigation report, any additional documents or other materials and names and addresses of any witnesses the College Agent believes should provide information to the Campus Dean/CEO at the hearing.

### **Legal Counsel Representation**

Both parties have a right to be represented by legal counsel. If either party chooses to be represented by legal counsel, Helena College has the right to have UM Legal Counsel present to ensure that the rights of all interested persons and Helena College are respected. The role of a party's attorney shall be limited to consultation with the attorney's client and client witnesses.

### **Forwarding Appeal Documents**

The College Agent will forward copies of written investigation report; the above-listed materials, and any additional evidence relevant to the matter to the Campus Dean/CEO at least five (5) days prior to the hearing.

### **Pre-hearing Conference**

At any time within five (5) days prior to the date of the formal hearing the Campus Dean/CEO may call a pre-hearing conference to include any campus individual which may provide information pertaining to the complaint. Topics discussed at a pre-hearing conference may include, but are not limited to: (a) whether the evidence presented is complete; (b) whether additional investigation is required; (c) whether additional witness should be called; and (d) time limits and order of presentation of evidence at the hearing.

The Campus Dean/CEO may decide to: set aside the hearing date for any period up to ten (10) days for additional investigation, or to obtain additional witnesses or evidence.

## **The Hearing**

The Campus Dean/CEO will conduct the hearing. The hearing will be a non-adversarial proceeding and strict rules of evidence will not be applied. However, the Campus Dean/CEO may limit or refuse to allow evidence or testimony that is not reasonably related to a determination of whether a violation of the Policy occurred.

The hearing will be conducted to assure fairness and accuracy in fact-finding. The parties and witnesses will address the Campus Dean/CEO rather than each other. The Campus Dean/CEO will be the final arbiter of all matters of procedure. All hearings are closed to the public.

## **The Decision**

Within five (5) working days of the conclusion of the formal hearing the Campus Dean/CEO will submit a decision in writing to the parties, the College Agent and to the University of Montana President. The written decision will contain the following:

- a) A summary of the allegations including a description of the harm alleged to have been caused;
- b) A summary of the response to the allegations;
- c) A statement of the relief sought by the Complainant if known, or of the recommendation of the College Agent, if applicable;
- d) Specific reference to the portion(s) of the policy(ies) alleged to have been violated;
- e) Analysis of whether the appropriate college agent: (1) exhibited unfair bias which influenced the result of the investigation; (2) failed to conduct a thorough investigation; (3) issued arbitrary findings and recommendations; (4) had a conflict of interest; or (5) issued findings and recommendations that if adopted would result in substantial injustice; and
- f) Recommendations, if any, regarding redress of the complaint as well as any other recommendations, as applicable, for precluding further policy violations.

## **Appeal to the University of Montana President**

Within twenty (20) days of receipt of the Campus Dean/CEO decision either party may appeal the Campus Dean/CEO decision to the President of the University of Montana. The process followed will be that which is listed above in 'Hearing' and 'Decision'. If such an appeal causes a significant delay, the College Agent will consider interim measures, as described above, to continue to protect the parties during the process.

## **Appeal to Board of Regents**

Within twenty (20) days of receipt of the President's decision either party may appeal the President's decision to the Commissioner of Higher Education of the Montana University System. (See [Board policy on appeals No. 203.5.2](#)). If such an appeal causes a significant delay, the appropriate college agent will consider interim measures, as described above, to continue to protect the parties during the process.

## **CONFLICT OF INTEREST AND TRAINING**

All College officials who are involved in the discrimination grievance process, designated investigators, Campus Dean/CEO and discipline authorities, will have adequate training. Training will address, but is not limited to, recognizing and appropriately responding to allegations of discrimination, harassment, including hostile environment harassment, sexual misconduct, and retaliation, conducting investigations, protecting confidentiality, and recognizing the link between alcohol and drug use and sexual assault and sexual harassment.

The name(s) of the investigator will be readily accessible. These individuals must promptly disclose any potential conflict of interest they might have in a particular case. In the rare situation in which an actual or perceived conflict of interest arises between an Investigator, the College Agent or the Campus Dean/CEO, that conflict must be disclosed to both parties.

## EXTERNAL COMPLAINTS

If you filed a complaint with the College Agent and believe Helena College's response was inadequate, or you otherwise believe you have been discriminated against by Helena College University of Montana on the basis of race, color, national origin, sex, including sexual harassment, disability, age, or retaliation, you may file a complaint with the [Office for Civil Rights](#) (OCR) of the U.S. Department of Education based in Seattle or the [Educational Opportunities Section](#) (EOS) of the Civil Rights Division of the U.S. Justice Department of Justice, and a complaint based on religion with EOS of the U.S. Justice Department.

As a student or employee, if you filed a complaint with the College Agent and believe the Helena College's response was inadequate, or you otherwise believe you have been discriminated against by Helena College University of Montana on the basis of race, color, national origin, sex, including sexual harassment, disability, age, religion, creed, pregnancy, marital status, familial status (housing only), or political beliefs, or retaliation, you may file a complaint with the Montana Human Rights Bureau: <http://erd.dli.mt.gov/human-rights-bureau.html>, 406-444-4356.

## REFERENCES

Titles [IV](#), [VI](#), and [VII](#) of the Civil Rights Act of 1964; [34 C.F.R. pt. 100](#); [Title IX of the Education Amendments of 1972](#); [28 C.F.R. pt. 54](#) and [34 C.F.R. pt. 106](#); [Section 504 of the Rehabilitation Act](#); [34 C.F.R. pt. 104](#); [Age Discrimination Act of 1975](#); [34 C.F.R. pt. 110](#); and [Titles I and II of the Americans with Disabilities Act](#); [28 C.F.R. pt. 35](#); [Montana Human Rights Act and Governmental Code of Fair Practices, Title 49, Montana Code Annotated](#); [Board of Regents Policy 507](#).