

## **Discrimination, Harassment, & Retaliation Policy**

### **I. Policy Summary**

In recognition of the dignity and worth of every member of its community, Helena College University of Montana pursues a campus that is free from discrimination, harassment, and retaliation on the basis upon race, religion, color, national or ethnic origin, shared ancestry, creed, sex (including pregnancy, childbirth, lactation or related medical conditions), gender (including gender identity, gender expression, and gender transition), sexual orientation, physical or mental disability (including having a history of a disability or being regarded as having a disability), marital or family status, genetic characteristics or information, age, veteran or military status, political ideas (taken together, generally, “protected-status harm”). An inclusive environment is necessary for a healthy and productive College community where all members are empowered to reach their full potential. This Policy addresses the College’s responsibilities and procedures related to Discrimination, Harassment and Retaliation (together “Prohibited Conduct”) as defined in this Policy. The College will respond promptly and equitably to reports of Prohibited Conduct. This includes action to stop, prevent, correct, and as appropriate lead to discipline for behavior that violates this Policy. Any individual may report conduct that may be Prohibited Conduct.

### **II. Definitions**

- A. Complainant:** An individual alleged, in a report to the Conflict, Resolution & Policy Office, to have experienced Prohibited Conduct.
- B. Confidential Resources:** Employees and clinic students who receive information about Prohibited Conduct in their confidential capacities are Confidential Resources. These include licensed counselors in their official capacity as counselors along with their clinic students; medical staff in Curry Health Center; advocates in the Student Advocacy Resource Center.
- C. Mandatory Reporters:** All College employees, including student employees in their employee capacity, who are not Confidential Resources as defined in this Policy are Mandatory Reporters.
- D. Preponderance of Evidence:** A standard of proof that requires that a fact be found when its occurrence, based on evidence, is more likely than not.
- E. Prohibited Conduct**
  - 1. Discrimination:** Adverse conduct or unequal treatment based, in full or in part, on an individual’s actual or perceived Protected Status that unreasonably denies, unreasonably limits, or materially interferes with an individual’s ability to participate in programs, activities, or employment of the University, and/or receive the benefits, or aid of the College, unless required or authorized by law. Discrimination can also occur when a College policy or practice, although neutral on its face, results in adverse and material disproportionate impact on individuals within a Protected Status and when there are less discriminatory alternatives and unless the policy or practice has a substantial justification.

Failure to provide reasonable accommodations on the basis of disability, pregnancy, or religion may constitute discrimination in certain instances.<sup>1</sup>

2. **Harassment:** Unwelcome conduct based on an individual's actual or perceived Protected Status that is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, denies, or adversely limits an individual's participation in or benefit from the education, employment, or other programs or activities of the College, and creates an environment that a reasonable person would find to be intimidating or offensive.

In evaluating whether conduct is harassment, the totality of the circumstances will be considered, including, but not limited to the following factors:

- The frequency, nature, and severity of the conduct;
- Whether the conduct was threatening;
- Whether the conduct arose in the context of other discriminatory conduct or other misconduct;
- The effect of the conduct;
- Whether the conduct would be objectively viewed as intimidating or offensive by a reasonable person; and
- Whether the conduct may be protected by academic freedom or freedom of speech. When the investigation implicates academic freedom, the appropriate academic officer may be consulted for relevant academic expertise.

This Policy addresses Harassment that is not covered under the College's Policy on Sexual Harassment.

3. **Retaliation:** An adverse action against an individual based on:
- A. Their report or other disclosure of alleged Discrimination and/or Harassment to the College's Student Conduct Officer;
  - B. Their opposition to any practices prohibited by this Policy; or
  - C. Their participation in, or assistance with, the investigative process, reporting, remedial, or corrective action/disciplinary processes provided for in this Policy.

- F. **Protected Status:** An identity protected by federal or state law, including the following: race, religion, color, national or ethnic origin, shared ancestry, creed, sex (including pregnancy, childbirth, lactation or related medical conditions), gender (including gender identity, gender expression, and gender transition), sexual orientation, physical or mental disability (including having a history of a disability or being regarded as having a disability), marital or family status, genetic characteristics or information, age, veteran or military status, political ideas.

- G. **Respondent:** An individual who is alleged to have engaged in Prohibited Conduct.

### III. Policy Applicability

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<sup>1</sup> Individuals must first exhaust the appeal or grievance procedures outlined in the College's Disability Accommodation Policy, Religious Accommodation Policy, or Pregnancy Accommodation, as applicable, before pursuing a discrimination complaint based on the alleged failure to provide a reasonable accommodation.

This Discrimination, Harassment, & Retaliation Policy ("Policy") prohibits members of the College community including employees, students (as defined by the Student Code of Conduct), affiliates, and visitors from engaging in Prohibited Conduct. This Policy addresses Prohibited Conduct that is not covered under the College's Policy on Sexual Harassment. It covers acts of Prohibited Conduct that: (1) is reported to have occurred within a College Program or Activity, as described below; or (2) has an adverse effect on an individual's participation or attempted participation in a College Program or Activity, the College Community, and/or the pursuit of its objectives.

A College Program or Activity includes locations, events, or circumstances where the College exercises substantial control over the context in which the conduct occurs, including:

1. On College property; or
2. In connection with College employment (including remote work environments); or
3. In the context of a College program or activity (including, but not limited to College sponsored study abroad, online courses, clinic programs, internship programs, research);
4. During events hosted or facilitated by formally or informally College-affiliated student groups or organizations.

Not every report of Prohibited Conduct will result in implementation of the Grievance Procedures, even if it is covered by this Policy. The Procedures describe the process used by the Student Conduct Officer to conduct an initial assessment and determine the appropriate response to a report.

#### **IV. Protection of Complainants, Respondents, and Witnesses**

The College prohibits Retaliation against someone for reporting possible Prohibited Conduct or for participating in a process under this Policy.

To the extent possible and permitted by applicable law, and consistent with conducting a fair process to stop, prevent and remedy Prohibited Conduct, the College keeps confidential the identity of parties, witnesses and those who report Prohibited Conduct and protects their personally identifiable information. The College strives to appropriately balance the need to gather information and ensure a fair process with the privacy interests of all parties and witnesses involved.

#### **V. Academic Freedom and Free Speech**

The College will interpret this policy in the context of academic freedom and free speech in the College environment.

#### **VI. Mandatory Reporting**

If a Mandatory Reporter as defined in this Policy learns or observes, in the course of employment, that any student, as defined by the Student Code of Conduct, may have experienced Prohibited Conduct, as defined in this Policy, the Mandatory Reporter must promptly provide the Student Conduct Officer with all information directly related to the incident, including: names of people involved; date(s); time(s); location(s); and description of the conduct. Employees should not conduct their own investigations or engage in fact-finding, but as described above, should report all directly related information.

#### **VII. Reporting**

The College encourages prompt reporting of conduct that may violate this Policy. Reports of Prohibited Conduct should be made directly to the Student Conduct Officer. Anybody may report concerns of prohibited conduct to the Student Conduct Officer. While prompt reporting is highly encouraged, there is no time limit on reporting. |

#### **VIII. Supportive and Protective Measures.**

The Student Conduct Officer will assist with supportive and protective measures which are individualized tools and services offered as appropriate, reasonably available, and without fee or charge for the purpose of preserving or restoring access to a College Program or Activity and providing support during and in connection with reports made pursuant to this Policy. Supportive measures are non-disciplinary; non-punitive; not unreasonably burdensome; and should not fundamentally alter the nature of instruction, undermine the rigor of coursework, or otherwise compromise programmatic standards. Supportive measures are available regardless of whether a formal investigation is conducted or not.

Supportive Measures are facilitated and implemented by the Student Conduct Officer, in consultation with applicable campus partners. For students, the campus partners most commonly include: the Director of Student Wellbeing and Engagement, course-specific Faculty, academic senior leadership personnel, or Registrar's Office. For employees, the Student Conduct Officer may consult with the employee's supervisor, and Human Resource Services ("HRS"). A party's Supportive Measures will only be shared to the extent necessary to effectuate their purpose(s).

Supportive Measures may include such things as a counseling referral, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, changes in work location, leaves of absence, increased security and monitoring of certain areas of campus, safety planning, referrals to on and off-campus services, training and education programs, restrictions on contact, and other similar measures.

Violations of restrictions on contact or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as Collateral Misconduct allegations to an ongoing formal Complaint.

#### **IX. Records and Confidentiality**

Helena College complies with the principles of privacy described in the Montana Constitution, the Montana Code Annotated, the federal Family Educational Rights and Privacy Act (FERPA), and other applicable state and federal laws. As such, an individual involved in any resolution process under this Policy has the following rights related to privacy and confidentiality:

##### **(A) Records**

Under this Policy and corresponding Procedures, a record means any documentation or correspondence directly related to a report and any subsequent resolution processes. Such records include, but are not limited to: any initial Report(s) of Prohibited Conduct; documentation of any initial assessment efforts made; documentation of Supportive Measures offered or provided; correspondence, documentation, or evidence submitted related to Grievance Proceedings, including the Formal Complaint, Investigation File and Determination File; and Adaptive Resolution documentation.

Records of applicable resolution processes are maintained by the Student Conduct Officer. The conclusion of such processes will also be maintained by the Office of Human Resource Services (for cases involving Employee Respondents) or the Student Conduct Officer (for cases involving Student Respondents). Records are maintained in accordance with the MUS records retention policy.

If a party authorizes the release of their student or employment records while there is a pending proceeding, it is with the understanding that if that party is found to have violated the Policy in a manner that would require that the previously released records be altered, the College may notify the recipient and forward a corrected copy.

### **(B) Confidentiality**

The College will take reasonable steps to protect the privacy of the parties and witnesses to any resolution process, provided that the steps do not restrict the ability of the Parties to discuss the reported conduct under investigation or to gather and present relevant evidence.

Parties, either directly or indirectly and their respective advisors, support persons or other representatives, and witnesses are prohibited from printing, posting, copying, or sharing any information, in any form, that they obtained solely through the applicable resolution process without the College's written permission. Unauthorized disclosure or dissemination of confidential information may constitute a violation of this Policy as well as of the Student Conduct Code or condition of employment.

All resolution processes are closed to the public.

The CRP Office does not record meetings or proceedings. Any outside recordings or transcriptions are not permitted.

The College will disclose information related to resolution processes, including the results of the resolution process (i.e., sanctions or terms of Adaptive Resolution), only to the extent necessary to effectuate such process or to comply with federal or state laws and grant reporting obligations. The fact that a resolution process is underway or has concluded and appropriate action has been taken may be disclosed; however, the identity(ies) of the individuals involved in the proceedings may not be disclosed.