

Title IX Sexual Harassment 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 Sexual Harassment as protected by Title IX of the Education Amendments of 1972 ("Title IX"). 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 Sexual Harassment as defined in this Policy. 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 Sexual Harassment. The College will respond promptly and equitably to such reports.

II. Definitions

- (A) **Complainant:** The person who is reported to have been subjected to conduct that could constitute Sexual Harassment. A Complainant must be participating or attempting to participate in a College Program or Activity when the Formal Complaint is signed.
- (B) **Consent:** An informed, voluntary, and mutual agreement to engage in sexual activity. In assessing whether consent was present, the College will evaluate all relevant facts and circumstances that the Respondent knew—or reasonably should have known—at the time. This includes whether there were mutually understandable words or actions that clearly communicated agreement between the parties.
- (C) **Confidential Resources:** Employees and clinic students who receive information about Sexual Harassment in their confidential capacities are Confidential Resources.
- (D) **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.
- (E) **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.
- (F) **Sexual Harassment:** Conduct on the basis of sex that satisfies one or more of the following:
 - (1) **Hostile Environment Harassment:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a college program or activity;
 - (2) **Quid Pro Quo Harassment:** An employee of the College conditions the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
 - (3) **Sexual Assault:**
 - (i) Non-consensual touching, coercing, or forcing another to touch a person's intimate body parts (such as genital area, buttock, groin, inner thigh, or breast);

- (ii) Penetration, no matter how slight, of a person's vagina or anus, by any body part or object, or oral penetration by a sex organ of another person without consent;
- (iii) Sexual intercourse between persons who are related to each other to the degree they cannot marry under state law; or
- (iv) Sexual intercourse with a person who is below the legal age of consent, even if the interaction appears to be voluntary;

(4) Dating Violence: Violence (including, but not limited to, sexual or physical abuse or the threat of such abuse) committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant;

(5) Domestic Violence: Violence (including, but not limited to sexual or physical abuse or the threat of such abuse) or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a person (including, verbal, psychological, economic, or technological abuse) committed by a current or former spouse of the Complainant; a person with whom the Complainant shares a child in common; a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner; a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Montana; or any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Montana;

(6) Stalking: A course of conduct (two or more acts) directed at a specific person that would cause a reasonable person to fear for that person's safety, the safety of others, or suffer substantial emotional distress; or

(7) Sex-Based Exploitation: An instance in which a person takes, or attempts to take, sex-based advantage of another for any person's benefit other than the person subjected to the conduct.

(G) Respondent: An individual who is alleged to have engaged in Sexual Harassment.

(H) Retaliation: An adverse action against an individual based on:

- (1) Their report or other disclosure of alleged Sexual Harassment to the any College official;
- (2) Their opposition to any practices prohibited by this Policy; or
- (3) Their participation in or refusal to participate in, or assistance with, an investigation, proceeding, or hearing provided for in this Policy.

III. Policy Applicability

This Sexual Harassment Policy ("Policy") prohibits members of the College community, including employees, students, affiliates, and visitors, from engaging in Sexual Harassment within the College's adjudicatory jurisdiction. This Policy incorporates Helena College's Sexual Harassment Grievance

Procedures (“Procedures”), by reference, which set forth the College’s resolution processes for reported violations of this Policy.

Adjudicatory jurisdiction describes the circumstances under which the College is empowered to formally address reported misconduct. Adjudicatory jurisdiction under this Policy extends to Sexual Harassment that is reported to have occurred within a College Program or Activity. A College Program or Activity includes locations, events, or circumstances where the College exercises substantial control over both the Respondent and the context in which the conduct occurs, and any buildings, owned or controlled, and events hosted or facilitated by formally or informally College-affiliated student groups or organizations.

Jurisdiction is determined by the Title IX Coordinator in conjunction with the Clery Officer

While the College may not have adjudicatory jurisdiction of a matter (e.g., the incident occurred separate from a College Program or Activity, or the conduct has not become sufficiently severe to constitute a Policy violation), the Student Conduct Officer may offer and coordinate supportive measures; provide guidance; and, in some cases, take non-punitive preventive action to address conflict in the interest of maintaining a safe and equitable campus environment.

IV. Protection of Complainants, Respondents, and Witnesses

The College prohibits Retaliation against someone for reporting possible Sexual Harassment 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 Sexual Harassment, the College keeps confidential the identity of parties, witnesses and those who report Sexual Harassment 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. Free Expression and Academic Freedom

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

VI. Reporting

The College encourages prompt reporting of conduct that may violate this Policy. Reports of Sexual Harassment should be made directly to the Title IX Coordinator. Anybody may report concerns of Sexual Harassment to the Title IX Coordinator. While prompt reporting is highly encouraged, there is no time limit on reporting.

VII. 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 Sexual Harassment, the Mandatory Reporter must promptly provide the Title IX Coordinator 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.

VIII. Supportive and Protective Measures.

The Title IX Coordinator will assist with supportive 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 Title IX Coordinator, in consultation with applicable campus partners. For students, the campus partners most commonly include: Director of Student Wellbeing and Engagement, Helena Police Department (“HPD”), course-specific Faculty, Executive Directors of Education, or Registrar’s Office. For employees, the Title IX Coordinator 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, as defined in Section III of the Procedures.

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 of Sexual Harassment; 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 Title IX Coordinator. The conclusion of such processes will also be maintained by the HRS (for cases involving Employee Respondents) or the

Title IX Coordinator (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.

Meetings or proceedings are not recorded, with the exception of the Live Hearing, as described in the corresponding Procedures. 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 of the individuals involved in the proceedings may not be disclosed.