

## Montana Tech Discrimination Grievance Procedures

### Purpose

Any person believing that he/she has been subjected to discrimination or harassment on any of these bases may file a complaint or report with Montana Tech. These procedures address all complaints or reports of alleged discrimination or harassment, including conduct that violates the Montana Tech 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. 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.

### Complaints and Reporting

Complaints and third-party reports of discrimination, including Policy Violations, should be made to the Title IX /Equal Employment Opportunity /Affirmative Action Coordinator ("EEO-AA"). The EEO-AA staff members 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 EEO-AA is listed below.

Title IX/Equal Employment Opportunity/Affirmative Action Coordinator  
Montana Tech  
MG211  
Butte, Montana 59701  
406-496-4322  
[vvandyk@mtech.edu](mailto:vvandyk@mtech.edu)

[EEO-AA](#)

[Title IX Issues, Reports and Complaints](#)

[Sexual Assault Reporting Options](#)

**(EEO-AA refers to the EEO-AA or trained designee.)**

Complaints and reports should be made as soon as possible after an incident. The EEO-AA coordinates and tracks 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 [EEO-AA](#) or Dean of Students;
- File a discrimination complaint or report on the *Discrimination Grievance Intake Form* located on the [EEO-AA website](#);
- File a harassment, hazing, stalking, sexual assault, sexual misconduct complaint or report on the Harassment, Hazing, Sexual Assault Intake Form located on the [EEO-AA website](#);
- Send a confidential email to one of the EEO-AA staff or Dean of Students;
- Mail a letter to the EEO-AA or Dean of Students' office;
- Visit one of the EEO-AA staff or Dean of Students (it is best to make an appointment first to ensure availability).
- Report to another trusted Montana Tech official (e.g., Resident Assistant, Professor, Coach, Advisor) who will provide information as required under the policy to the EEO-AA.

### **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 Montana Tech Security Office (406-496-4357), or to the Butte –Silver Bow Law Enforcement Department (406-497-1120). Some forms of discrimination and harassment may also be crimes. For example, sexual assault, stalking and rape are crimes. 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 confidentiality rights and reasonable expectations of privacy in the investigation of matters subject to this procedure. In addition, the integrity of the process depends on ensuring reasonable expectations of privacy. The EEO-AA 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 Montana Tech officials as necessary for coordinating interim measures or for health, welfare, and safety reasons, and to government agencies who review the Montana Tech's compliance with federal law. The investigation report and any written decision from the Discrimination Grievance Committee will be disclosed only to the Complainant, Respondent, EEO-AA, Discipline Authority<sup>1</sup> as necessary, and Montana Tech officials as necessary to prepare for subsequent proceedings (e.g., Legal Counsel). Members of the Discrimination Grievance Committee 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 Montana Tech officials and external entities for statistical and analysis purposes pursuant to federal and state law and Montana Tech policy.

### **Anonymous and Third Party Reporting**

The EEO-AA 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 EEO-AA to investigate and respond as appropriate. The EEO-AA may be limited in the ability to investigate an anonymous report unless sufficient information is furnished to enable the EEO-AA to conduct a meaningful and fair investigation.

### **Role of the EEO-AA**

The EEO-AA is not an advocate for either the Complainant or the Respondent. The EEO-AA will explain to both parties the informal and formal processes outlined below and the confidentiality provisions as outlined above. Where appropriate, the EEO-AA 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, information about other helpful campus and community resources. The EEO-AA will offer to coordinate with other campus officials, when appropriate, to implement interim remedial measures such as no-contact orders, rearrangement of living arrangements, or academic accommodations. The EEO-AA will describe the process of a fair and impartial investigation. The EEO-AA will explain the right of the Respondent to review and respond to allegations and evidence against him or her. The EEO-AA will explain to both parties their rights to have a person of support, union representative, or attorney, with them during their interviews and during the hearing stage of these procedures. If an individual does not want to pursue a complaint, the EEO-AA will inform the individual that Montana Tech is limited in the actions it

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<sup>1</sup> In the case of employees, the Discipline Authority is the university administrator with the authority to impose sanctions in accordance with applicable employment policies and procedures and collective bargaining agreements. In the case of students, the Discipline Authority is the Dean of Students.

can take without the cooperation of the individual. The EEO-AA 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**

Montana Tech 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 or living arrangements, issuing a no-contact order, obtaining counseling, and modifying test schedules or other class requirements temporarily. For an employee Complainant, Montana Tech 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 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.<sup>2</sup> The EEO-AA is available to explain the informal and formal resolution procedures.

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

If the Complainant, the Respondent, and the EEO-AA all agree that an informal resolution should be pursued, the EEO-AA (or her/his designee) shall attempt to facilitate a resolution of the conflict that is agreeable to all parties. Under the informal process the EEO-AA 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, Montana Tech and the community. Typically, an informal investigation will be completed within twenty (20) 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.

A Complainant or Respondent always has the option to request a formal investigation. The EEO-AA also always has the discretion to initiate a formal investigation. If at any point during the informal process, the Complainant, the Respondent, or the EO wishes to cease the informal process and to proceed through formal grievance procedures, the formal process outlined below will be invoked.

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<sup>2</sup> The U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter, dated April 4, 2011, p. 8, states: [I]n cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis.

The informal resolution must adequately address the concerns of the Complainant, as well as the rights of the Respondent and the overall intent of Montana Tech 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:** EEO-AA discusses concerns with Complainant, and the Respondent as appropriate, including providing information about the policy and procedures and other helpful resources. EEO-AA also considers whether immediate or interim actions or involvement of other Montana Tech offices is appropriate. EEO-AA determines whether the office has jurisdiction to investigate the matter. The EEO-AA only has jurisdiction to investigate complaints alleging discrimination, harassment, sexual misconduct, stalking, and retaliation.

Option 1: If the EEO-AA determines that there is no jurisdiction, the EEO-AA 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 EEO-AA determines that there is jurisdiction, the EEO-AA will proceed to Step 2.

**Step 2:** EEO-AA conducts or oversees the conducting of a fair and impartial investigation of the alleged Policy Violation and proceeds to Step 3. Typically an investigation will be completed within twenty (20) 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.

Only a trained investigator will conduct an investigation. Respondents will have the opportunity to review and respond to evidence considered against them. Both parties will have the opportunity to review and provide comments to the investigator about the written investigation report before it is finalized.

**Step 3:** EEO-AA 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 EEO-AA will consider not only whether the conduct was unwelcome to the Complainant, but also how a reasonable person in the Complainant’s situation would have perceived the conduct. The EEO-

AA's findings will be in writing and will be provided to both the Complainant and to the Respondent(s).

**Option 1:** If EEO-AA 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 Discrimination Grievance Committee.

**Option 2:** If EEO-AA finds that a preponderance of the evidence of a policy violation exists, the EEO-AA's 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 Discrimination Grievance Committee. 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 Dean of Students. In the case of employees, the Discipline Authority is the Montana Tech 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 EEO-AA of the ultimate sanctions imposed upon a Respondent. The EEO-AA will inform the Complainant of the sanctions as permitted by applicable Title IX and privacy laws.

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

The Dean of Students is charged with imposing sanctions on students who are found to have violated the policy. Sanctions may include eviction from campus housing, suspension, expulsion, probation, a warning, or any other sanction set forth in the [Community Expectations Program](#). Disciplinary records for policy violations are maintained in the same manner as other disciplinary records.

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

If a reporter or Complainant requests that an investigation not be conducted, the EEO-AA will consider the reasons for the request, including concerns about continued safety of the person reportedly harmed and members of the campus community. The EEO-AA 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 EEO-AA has concerns that not taking formal or informal action will endanger the health or safety of members of the campus community, the EEO-AA will initiate confidential consultation with appropriate individuals to analyze the situation and assist in determining appropriate measures to take. Consultation may occur with the Dean of Students, chair(s) of the Behavioral Intervention Team (BIT), Environmental, Health and Safety Officer, psychological health professional, Director of Residence Life, and legal counsel. The EEO-AA 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.

## **Appeals to the Discrimination Grievance Committee**

### **Composition of the Committee**

The committee shall have four (4) regular members including the Chair. Of the four regular members, one shall be a student, one shall be a member of the faculty, one shall be a member of the non-academic staff, and one shall be a representative of the administration.

### **Selection of Members**

Each of the four groups listed above will nominate one (1) candidate with the approval of the Chancellor. In the absence of a nomination from any group, the Chancellor will select and appoint the member from that group.

### **Appointment of Chair**

The Chancellor shall appoint the Chair.

### **Term of Appointment**

To assure cumulative experience and development of expertise as well as continuity and uniformity of decisions, the terms of regular members will be of extended duration. The student shall be appointed for two (2) years. Members of each of the other groups (faculty, non-academic staff, and administrators) shall be appointed for five (5) years. Any member whose term has expired and who is willing to continue to serve on the committee may be reappointed by the Chancellor of Montana Tech.

The Chancellor may appoint one or more persons to serve temporarily as a member of the committee to fill a vacancy or ensure a quorum, or in response to a request from the Chair to avoid delay in proceedings. The term of temporary appointment continues for the duration of the proceedings or until the temporary appointee is replaced by a regular member.

### **Removal of Members**

The Committee Chair may either permanently or temporarily remove or replace any regular member of the committee under the following circumstances:

- a. In response to a request from those responsible for the nomination of the member;
- b. In response to a request from a majority of the committee members;
- c. In response to a request from the Title IX/EEO/AA Officer;

- d. In response to a request from a committee member that he/she be excused;
- e. In response to a request from a party who raises a legitimate concern regarding a conflict of interest.

If any person or group other than the member requests removal, that member will have an opportunity to rebut any evidence presented in support of the request for removal. If a concern as enumerated above is raised about the Chair, the Chancellor of Montana Tech will make the determination about either permanently or temporarily removal from the committee.

### **Quorum**

There must be a member from three of the four constituent groups specified above to constitute a quorum

### **Authority of the Committee**

The committee may: (1) call student and employee witnesses to testify or to be present during a hearing, and obtain other evidence held by Montana Tech or any student or Montana Tech employee; (2) arrange with the Montana Tech EEO-AA for appropriate funding and staff support to facilitate hearings; (3) hold pre-hearing conferences; (4) issue hearing orders; (5) hold formal hearings and control conduct of such hearings; and (6) make decisions, findings of fact, and recommendations, including recommended sanctions, to the Chancellor by vote of a majority of the regular members involved in the hearing process.

### **Filing an Appeal**

A request for a hearing before the Montana Tech Discrimination Grievance Committee must be filed within five (5) working days, of the receipt of the EEO-AA's decision, unless good cause can be shown for an extension of time. The request for a hearing must be filed with the EEO-AA. 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 EEO-AA: (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, the EEO-AA will provide the non-appealing party and the Chair of the Montana Tech Discrimination Grievance Committee with a copy of the written appeal.

### **Standard of Review**

The committee reviews the findings and recommendations of the EEO-AA. The committee may approve, overturn, or modify the findings and recommendations of the EEO-AA. The committee may overturn or modify the EEO-AA's findings and recommendations if it finds that the EEO-AA:



(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 ten (10) working days of receipt of the written request for a hearing, the EEO-AA will notify the Complainant and the Respondent of the time and place of the formal hearing before the Montana Tech Discrimination Grievance Committee. This process might be extended during periods between academic semesters when a quorum of the committee cannot be convened. The hearing will normally be scheduled within thirty (30) days of receipt of the written appeal. If such an appeal causes a significant delay, the EEO-AA 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

At least ten (10) working days of filing the appeal, the party appealing the decision must submit to the EEO-AA 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; (c) copies of any documents which will be submitted as evidence; (d) additional materials the party believes the committee should obtain prior to the hearing; (e) reference to the portion of the policy alleged to be violated; (f) specific remedy(ies) requested; and (g) 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 EEO-AA 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 EEO-AA will provide to the Montana Tech Discrimination Grievance Committee, in addition to the written investigation report, any additional documents or other materials, and names and addresses of any witnesses the EEO-AA believes should provide information to the Committee 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, University Legal Counsel will be present to ensure that the rights of all interested persons and Montana Tech 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 EEO-AA will forward copies of the EEO-AA's written investigation report; the above-listed materials; and any additional evidence relevant to the matter to the members of the Discrimination Grievance Committee 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 Chair of the Montana Tech Discrimination Grievance Committee may call a pre-hearing conference. 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. At the request of any party, the Committee Chair will conduct separate meetings with the reporter and the respondent for purposes of the pre-hearing conference.

With concurrence of a majority of the Montana Tech Discrimination Grievance Committee, the Chair may decide to: set aside the hearing date for any period up to ten (10) days for additional investigation, to obtain additional witnesses or evidence.

### The Hearing

The Chair of the Montana Tech Discrimination Grievance Committee will conduct the hearing. The hearing will be a non-adversarial proceeding and strict rules of evidence will not be applied. However, the Chair of the Committee 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 members of the Committee rather than each other. The Chair will be the final arbiter of all matters of procedure. All hearings are closed to the public.

### The Decision

Within ten (10) working days of the conclusion of the formal hearing the Montana Tech Discrimination Grievance Committee will submit a decision in writing to the parties, the EEO-AA and to the Chancellor. A finding of discrimination, hostile environment harassment, sexual misconduct, stalking, and/or retaliation and recommendation for redress must be supported by a majority of the committee members voting. The determination for each finding will be based on a preponderance of the evidence. 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 EEO-AA, if applicable;
- d. Specific reference to the portion(s) of the policy(ies) alleged to have been violated;
- e. Analysis of whether the EEO-AA: (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.

#### Action on Decision

The Chancellor will review the Committee's decision. The Chancellor's review is limited to determining: (1) Whether the evidence provides a reasonable basis for the resulting decision; and (2) whether specified procedural errors were so substantial as to deny a fair hearing to either party. Within ten (10) days of receipt of the Committee's decision, the Chancellor will notify the Committee Chair, the Equal Opportunity Officer, and the parties, in writing, of the decision relative to each of the findings and recommendations forwarded by the Montana Tech Discrimination Grievance Committee. The Equal Opportunity Officer will distribute copies to Committee members and to the parties.

#### Appeal to Regents

Within twenty (20) days of receipt of the Chancellor's decision either party may appeal the Chancellor'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 EEO-AA will consider interim measures, as described above, to continue to protect the parties during the process.

#### **Conflict of Interest and Training**

All Montana Tech officials who are involved in the discrimination grievance process, including the EEO-AA, designated investigators, Discrimination Grievance Committee, 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 names of the investigator and the individuals who will serve on the Discrimination Grievance Committee for a particular matter 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, or member of the Discrimination Grievance Committee, that conflict must be disclosed to both parties.

### **External Complaints**

If you are a student and filed a complaint with the EEO-AA and believe the Montana Tech's response was inadequate, or as a student, you otherwise believe you have been discriminated against by the Montana Tech 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 EEO-AA and believe Montana Tech's response was inadequate, or you otherwise believe you have been discriminated against by Montana Tech 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; [montanadiscrimination.org](http://montanadiscrimination.org), 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](#).