



# Title IX Policy for Students and Employees

Effective Date: 09/29/2023

# Contents

1. Introduction	1
1.1. Definitions	2
1.1.1. Complainant	2
1.1.2. Respondent	2
1.1.3. Party	2
1.1.4. Confidential Resources	2
1.1.5. Title IX Coordinator	2
1.1.6. Investigator	3
1.1.7. Decision-Maker	3
1.1.8. Title IX Personnel	3
1.1.9. Responsible Employees	3
1.1.10. Advisor of Choice	3
1.1.11. Clery Act Compliance-CSAs and Statement on Victim Confidentiality	4
1.1.12. Scope and Jurisdiction	4
1.1.13. Sexual Harassment and Title IX at Montana Academy of Salons	5
2. Prohibited Conduct	5
2.1. Definitions of Prohibited Conduct	6
2.1.1. Quid pro quo Sexual harassment	6
2.1.2. Hostile Environment Sexual Harassment	6
2.1.3. Non-Consensual Sexual Penetration	6
2.1.4. Non-Consensual Sexual Contact	6
2.1.5. Incest	6
2.1.6. Statutory Rape	6
2.1.7. Domestic Violence	6
2.1.8. Dating Violence	7
2.1.9. Stalking	7
2.1.10. Retaliation	7
2.2. Definition of Consent	8
3. Reporting	9
3.1 Confidential Reporting options	9
3.2 Law Enforcement	9
3.3 Title IX Coordinator	10
3.4 Other Available Resources	10

3.5	U.S. Department of Education, Office For Civil Rights	12
3.6	Anonymous Report	12
3.7	Mandatory reporting	12
3.8	Privacy and Confidentiality	12
3.9	Supportive Measures	13
3.9.1	Interim Removal	14
3.10	Rights and Options	14
3.11	Amnesty/Immunity	15
3.12	Timely Warning	16
3.13	Options for Proceeding Through the Montana Academy Process	16
3.13.1	Informal and Formal Complaints	16
3.13.2	No Complaint	16
3.13.3	Montana Academy-Initiated Complaints	16
3.13.4	Dismissals	16
3.13.5	Consolidations	17
4.	Formal resolution procedure	17
4.1.	INVESTIGATION	17
4.2.	Live Hearing	18
4.3.	Appeals	20
4	Record-Keeping and Annual Reports	20
5	Education Programs and Training Of Title IX Personnel	21
5.1	Training for Montana Academy Community	21
5.2	Training of Title IX Personnel	21
6	Disability Accommodations and Interpretive Services	22
7	Free Speech and Academic Freedom	22
8	Minors on Campus	22
9	Revision and Interpretation	23
	APPENDIX A: HOW TO CONTACT THE TITLE IX COORDINATOR; DEPUTY	24
	APPENDIX B: *ON AND OFF CAMPUS RESOURCES	25
	APPENDIX C: PROTECTION ORDERS AND MONTANA ACADEMY ISSUED "NO CONTACT" DIRECTIVES	27

## 1. INTRODUCTION

Montana Academy of Salons (“Montana Academy”) is a post-secondary academy dedicated to student success by enriching lives and cultivating professionals through innovative, personalized education in a creative and inspiring environment that prepares graduates in the business skills and fiscal responsibility necessary for success in the workplace, and for licensure. Montana Academy is committed to an environment free from harassment and discrimination. As part of this effort, Montana Academy will respond to sex-based harassment and discrimination and through clear policies and grievance procedures, educational programming, employee training, and sanctioning those who violate this policy, commits itself to maintaining a safe and healthy educational and employment environment. This comprehensive policy is created and implemented by Montana Academy to address allegations of sexual harassment, sexual assault, domestic violence, dating violence, and stalking in addition to other prohibited misconduct as identified and defined herein. This policy and the procedure herein apply to all students, employees, and third parties, including guests, contractors, and vendors of Montana Academy.

Montana Academy of Salons prohibits all forms of sex and gender-based harassment, as well as the offenses of sexual assault, domestic violence, dating violence, and stalking (collectively referred to in this policy as “Sexual Harassment”.) These offenses may also be prohibited by Title IX of the Higher Education Amendments of 1972, 20 U.S. C. § 1681 et seq. (“Title IX”), by the Clery Act and Section 304 of the Violence Against Women Reauthorization Act of 2013 (“VAWA”), Title VII of the Civil Rights Act of 1964, and other applicable statutes. This Policy prohibits a broad continuum of behaviors, some of which are not prohibited under Title IX or other laws. Their inclusion in this Policy reflects Montana Academy’s standards and expectations for a respectful working and learning environment where everyone is free to work and learn safely.

Montana Academy of Salons does not discriminate against employees, students, or applicants on the basis of sex, gender identity, sexual orientation, race, color, religious creed, national origin, physical or mental disability, protected veteran status, age, or any other characteristic protected by law with regard to any employment practices, including recruitment, advertising, job application procedures, hiring, upgrading, training, promotion, transfer, compensation, job assignments, benefits, and/or other terms, conditions, or privileges of employment, provided the individual is qualified, with or without reasonable accommodations, to perform the essential functions of the job. Montana Academy’s good faith efforts and policies are designed to ensure that this commitment is maintained.

When an allegation of sex-based harassment and harassment or discrimination on the basis of another protected class is reported, Montana Academy will use this policy as well as other applicable policies to resolve the complaint. Montana Academy retains the right to conduct one investigation into all allegations and to consolidate complaints, although different procedures may be used to resolve complaints that allege more than one form of prohibited conduct. This is further discussed in sections throughout this document.

Montana Academy will investigate and attempt to resolve all complaints of Sexual Harassment<sup>1</sup> in a prompt, fair and impartial manner. Montana Academy will treat all individuals involved with dignity and respect. All processes are driven by objective fact-finding and approached from a neutral standpoint, including the presumption that a Respondent is not responsible for a violation of this policy prior to a finding that supports that. With this in mind, members of Montana Academy community are expected to conduct themselves in a manner that respects the inherent dignity of all people and refrains from any form of harassment or discriminatory practices, including all forms of Sexual Harassment as defined in this policy. This policy has been developed to reaffirm these principles, to provide explicit information regarding when and how Montana Academy will respond to allegations of Sexual Harassment, and to provide accountability for conduct that violates this policy.

---

<sup>1</sup> Please see Section 2 for the offenses that constitute “Sexual Harassment” under this policy.

Inquiries regarding the application of this policy and the respective grievance procedures used to resolve complaints may be referred to Montana Academy’s Title IX Coordinator or Deputy Title IX Coordinator, to the U.S. Department of Education’s Office for Civil Rights, or both. Further, complaints regarding employment discrimination may also be referred to the Federal and state agencies noted further in this document.

## **1.1. DEFINITIONS**

### **1.1.1. COMPLAINANT**

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment as defined by this policy.

### **1.1.2. RESPONDENT**

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment as defined by this policy.

### **1.1.3. PARTY**

“Party” means either the Complainant(s) or Respondent(s) in an investigation or action relating to a report of Sexual Harassment. “Parties” refers to Complainant and Respondent collectively.

### **1.1.4. CONFIDENTIAL RESOURCES**

“Confidential Resources” are designated by Academy s and Universities to provide Complainants with emergency and ongoing support and to advise the Complainant on options for reporting violations of this policy. Montana Academy of Salons does not have any on-campus confidential resources. Persons seeking confidential resources should seek support off campus (see Appendix B.)

### **1.1.5. TITLE IX COORDINATOR**

The “Title IX Coordinator” is responsible for overseeing Montana Academy’s response to reports of Sexual Harassment on campus and oversees Montana Academy’s centralized response to ensure compliance with Title IX and the Clery Act (VAWA) as it relates to the accurate reporting of and response to sexual harassment and the VAWA offenses. The Title IX Coordinator is also responsible for coordinating the effective implementation of supportive measures and remedies. The Title IX Coordinator may delegate responsibilities under this policy to their Deputy Title IX Coordinator, who will be appropriately trained per the requirements of Title IX and VAWA. For purposes of this policy, any reference to the Title IX Coordinator should be read as the “Title IX Coordinator or other designee.”

How to contact Montana Academy’s Title IX Coordinator:

**Linda McPherson, Title IX Coordinator**

[linda@montanaacademy.edu](mailto:linda@montanaacademy.edu)

**Great Falls Campus:** 501 2<sup>nd</sup> St. S Great Falls, MT 59405 406-771-8772 ext. 3

**Billings Campus: (Rimrock Mall):** 300 South 24<sup>th</sup> Street W, Space B01 Billings, MT 59102 406-998-5900 ext.

103

Reports may generally be made in person when Montana Academy is normally open between 8am and 4pm Monday through Friday and anytime 24 hours a day/7 day a week via email, or by sending written correspondence through the U.S. mail. In an emergency or to receive an immediate response, contact law enforcement by dialing 9-1-1 from wherever you are. \*Correspondence to the Title IX Coordinator via

telephone, email, or the U.S. Mail will not result in an immediate response and will be responded to as promptly as possible and can generally be expected within two business days of the outreach.

#### **1.1.6. INVESTIGATOR**

The “Investigator” is the person assigned to conduct the investigation upon the signing of a Formal Complaint. The Investigator may be a Title IX Coordinator, an employee, or a contracted service provider.

#### **1.1.7. DECISION-MAKER**

The “Decision-Maker” is the person or persons that will make the determination of responsibility for Emergency Removal and at the conclusion of a Formal Resolution Process or following an appeal. The Decision-Maker will provide the determination in writing and cannot be the same person as the Title IX Coordinator or the Investigator on a case arising out of the same facts or circumstances. In the case of an Appeal, the Decision-Maker will be different from the person or persons who made the initial determination. The Decision-Maker may be an employee or a contracted service provider. Montana Academy retains the right to establish a pool of cross-trained individuals who may serve in the capacity as an Investigator or one of the Decision-Makers, however, a decision-maker would never hold more than one position during a particular complaint.

#### **1.1.8. TITLE IX PERSONNEL**

“Title IX Personnel” include all individuals whose duties include resolution of reports and complaints of student and employee violations of this policy. All Title IX personnel shall receive annual training as required by Title IX and the Clery Act as amended by VAWA. Employees falling under this description include without limitation the Title IX Coordinator(s), Deputy Title IX Coordinator, Investigators, Decision-makers, and members of any contracted service providers of Montana Academy with any of the responsibilities outlined herein.

#### **1.1.9. RESPONSIBLE EMPLOYEES**

Every Montana Academy staff member and facilitator must report conduct that could constitute sexual harassment as defined under this policy and are considered “Responsible Employees.” A Responsible Employee must attend required training and take all appropriate action to prevent sexual misconduct, discrimination and harassment, to correct it when it occurs, and must promptly report it to the institution’s Title IX Coordinator.

Montana has both civil and criminal laws to protect children from abuse and neglect. Montana Academy requires all faculty, staff, and volunteers, who in the course of their duties, witness child abuse or neglect on campus or who have information that would lead a reasonable person to believe that a minor on campus faces a substantial threat of such abuse or neglect must immediately contact the local police department. Please see the section entitled “Minors on Campus” in this policy information regarding the protection of children on campus.

#### **1.1.10. ADVISOR OF CHOICE**

An “Advisor of Choice” means the person of the Complainant or Respondent’s choosing who accompanies them to any meeting or disciplinary proceeding in which they are required to be present. This person can provide support, advise and/or counsel. During the investigatory stage of the process, the Advisor is not permitted to act on behalf of their Party with regard to answering questions or providing evidence on behalf of a Party. They may not be disruptive, nor may they unnecessarily delay the investigation due to their personal availability. During the Live Hearing portion of the Title IX process, the Advisor of Choice is responsible for conducting the cross-examination during a live hearing pursuant to the Title IX grievance processes. Cross-examination in this setting is limited to the other Party and witnesses. The Advisor cannot

make opening or closing statements, ask questions of their own advisees, object to questions, or engage in advocacy other than that permitted herein.

Montana Academy will not restrict the choice of an advisor and the advisor can be anyone of the Party's choosing, although Montana Academy may remove an Advisor if they become disruptive or otherwise hinders a fair and equitable process. The involvement of an Advisor may not result in undue delay of any meeting or proceeding. During the Title IX live hearing, if a Party does not have an Advisor, Montana Academy will appoint one on behalf of the Party without fee, i.e., free of charge. In this capacity, the Advisor will be appointed for the sole purpose of conducting cross examination of the other Party and witnesses. Employees of Montana Academy may serve in this capacity, however, are not required to serve as advisors of choice and may choose to decline serving in this capacity.

#### **1.1.11. CLERY ACT COMPLIANCE-CSAS AND STATEMENT ON VICTIM CONFIDENTIALITY**

A "Campus Security Authority" ("CSA") is a designated Academy official who has an obligation to report certain crimes reported to them to the reporting structure of the institution as required by the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). In most cases it is possible for a CSA to fulfill his or her responsibilities while still maintaining victim confidentiality. Except in reference to a report to the Title IX Coordinator, a report to a CSA does not result in a Complaint for the purpose of triggering an investigation or Informal or Formal Resolution Process.

Education records are maintained in accordance with the Family Educational Rights and Privacy Act of 1974 (FERPA). All documentation related to a student's complaint, investigation, and resolution are protected by FERPA and for students, constitutes an educational record. Non-identifying information may be shared with the institution's Clery Compliance Officer (CCO) in order to comply with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act if the CCO is not also the Title IX Coordinator. A Complainant's name will never be publicly published nor does Montana Academy house identifiable information regarding status as a crime victim in the Daily Crime Log or online. Victims may request that directory information on file be removed from public sources by request. To request removal of directory information, employees should contact the Title IX Coordinator.

#### **1.1.12. SCOPE AND JURISDICTION**

This policy governs the conduct of: Montana Academy students; faculty/facilitators; staff; and third Parties (i.e., non-members of Montana Academy community, such as vendors, alumni/ae, visitors, or local residents).

Third Parties are both protected by and subject to this policy. A third party may make a report of a suspected violation of this policy committed by a member of Montana Academy community. A third party may also be permanently restricted from Montana Academy or subject to other restrictions for failing to comply with this policy.

This policy applies to conduct that occurs on Academy property (i.e., on campus). This policy also applies to conduct that occurs off Academy property (i.e., off campus) when the conduct is associated with an Academy -sponsored program or activity, such as activities sponsored by Montana Academy, or when such conduct may have a continuing adverse effect or could create a hostile environment on campus. Judgments about these matters will depend on the facts and circumstances of an individual case. The applicability of this policy will be determined by the Title IX Coordinator.

All actions by a member of Montana Academy community that involve the use of Montana Academy's computing and network resources from a remote location, including but not limited to accessing Montana Academy owned email accounts, will be deemed to have occurred on campus. On-line and/or social media conduct may violate this Policy if it meets the definition of Sexual Harassment. Online postings are in the public sphere and are not private. These postings may subject an individual to allegations of Sexual

Harassment or other misconduct. Montana Academy does not regularly search for this information, nor does it monitor any particular social media site, but it may act if and when such information is brought to our attention. Montana Academy strictly prohibits the misuse of computer/computing resources, and such behavior is in violation of our handbooks. Montana Academy will view any report of online Sexual Harassment with the Respondent's free speech rights in mind.

Individuals are encouraged to report any violation of this policy as soon as possible in order to maximize Montana Academy's ability to respond promptly and effectively. Reports and Complaints may be made at any time without regard to how much time has elapsed since the incident(s) in question.

If the Respondent is no longer a student or employee at the time of the report or Complaint, Montana Academy may not be able to take disciplinary action against the Respondent, but it will still seek to meet its Title IX or other legal obligations by offering supportive measures for the Complainant and taking steps, if necessary and possible, to end the behavior, prevent and address its recurrence, and address its effects.

For Title IX to apply, the incident must be reported while the Parties are all associated with Montana Academy (as current students or employees) and must have occurred on property owned or controlled by Montana Academy, and within the United States. Additionally, during the time the misconduct is reported to have occurred, Montana Academy must have had substantial control of the Respondent and the context of the misconduct.

### **1.1.13. SEXUAL HARASSMENT AND TITLE IX AT MONTANA ACADEMY OF SALONS**

This policy governs behavior that constitutes sex-based harassment and/or sex-based discrimination as defined by Title IX of the Education Amendments of 1972, however, the government defines "sexual harassment" differently in certain settings. For example, sexual harassment that involved an employee as the respondent that is sexually harassing behavior but doesn't meet this threshold will be referred for action under Title VII. For student, this policy and procedure are the only definitions and mechanisms by which to resolve sexual harassment. Montana Academy will determine whether an allegation should proceed utilizing the grievance processes mandated by Title IX based on the constellation of facts and circumstances surrounding the report or Complaint and the following factors:

- a. applicable law
- b. what is reported to have occurred
- c. the status of the Complainant as student, employee, or third-party
- d. the status of the Respondent as student, employee or third-party
- e. the context in which the harassing behavior is reported to have occurred
- f. whether or not the reported behavior occurred within the United States; and/or
- g. whether there are continuing effects of such reported behavior on campus or within Montana Academy's educational programs or associated activities.

**The Title IX Coordinator is Montana Academy's official designated to evaluate reports to determine which law(s) attach, what threshold each law holds under the various laws, and which grievance process to utilize to resolve such reported behavior.**

## **2. PROHIBITED CONDUCT**

For purposes of this policy, all of the following definitions constitute conduct to be "on the basis of sex." Montana Academy will treat attempts to commit any act of Sexual Harassment as if those attempts had been completed when providing notice to a Respondent of the allegations and in the investigation and



resolution process. This, in no way, means Montana Academy is prematurely judging a Respondent's responsibility in the matter and only after determining that the preponderance of the evidence standard has been met, will a finding of responsibility be rendered.

## **2.1. DEFINITIONS OF PROHIBITED CONDUCT**

### **2.1.1. QUID PRO QUO SEXUAL HARASSMENT**

Quid Pro Quo Harassment is when an employee of Montana Academy conditions the provision of an aid, benefit, or service of the Institution on an individual's participation in unwelcome sexual conduct.<sup>2</sup>

### **2.1.2. HOSTILE ENVIRONMENT SEXUAL HARASSMENT**

Hostile Environment Harassment is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Montana Academy's education program or activity.

### **2.1.3. NON-CONSENSUAL SEXUAL PENETRATION**

Penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

### **2.1.4. NON-CONSENSUAL SEXUAL CONTACT**

The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity. Private body parts for purposes of this Policy are breast, buttocks, and groin.<sup>3</sup>

### **2.1.5. INCEST**

For purposes of this Policy, incest means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. In Montana, this includes sexual contact between persons who are brothers and sisters, parents, and children, including stepparents, stepchildren, and adopted persons, as well as aunts/uncles with nieces/nephews and between grandparents and grandchildren.

### **2.1.6. STATUTORY RAPE**

Statutory rape means sexual intercourse with a person who is under the statutory age of consent, which in Montana is 16 years of age. If a person is 18 years of age or older, then it is a crime and a violation of this policy for that person to have sexual contact (including oral sex or sexual touching without penetration) with a person who is under 16 years of age.

### **2.1.7. DOMESTIC VIOLENCE**

A felony or misdemeanor crime of violence committed

- by a current or former spouse or intimate partner of the victim.
- by a person with whom the victim shares a child in common.

---

<sup>2</sup> For purposes of this policy, "volunteers" do not constitute "employees" with regard to allegations of sexual harassment for purposes of Title IX. Complaints alleging "volunteers" committed acts of prohibited conduct will be resolved utilizing the institutions non-Title IX grievance process.

<sup>3</sup> The touching of non-private body parts could constitute "Sexual Harassment". See Sections 2.1.1 and 2.1.2 of this policy.

- by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner.
- by a person similarly situated to the spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

According to Section 16 of title 18 of the United States Code, the term “crime of violence” means

- an offense under Montana State law that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- any other offense that is a felony in Montana and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Domestic violence, as defined by Title IX, is considered relationship violence and must be “on the basis of sex.” If you need information on how to obtain a Protection from Abuse Order in the State of Montana, please see Appendix C of this policy.

#### **2.1.8. DATING VIOLENCE**

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting Party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

#### **2.1.9. STALKING**

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others; or suffer substantial emotional distress.

- i. *For the purposes of this definition—*
  - A. *Course of conduct means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third Parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property.*
  - B. *A reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.*

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

To reach the threshold for a claim under Title IX, the stalking behavior must be determined to be based on sex.

#### **2.1.10. RETALIATION**

Retaliation is any attempt to seek retribution against an individual or group of individuals involved in making a good faith report, filing a Complaint, participating in a disciplinary process, or opposing in a reasonable manner an action believed to constitute a violation of this policy. Retaliation can take many forms, including abuse or violence, threats, coercion, and intimidation. Actions in response to a good faith

report or response under this policy are considered retaliatory if they have a materially adverse effect on the working, academic or Academy controlled environment of an individual or if they hinder or prevent the individual from effectively carrying out their Academy responsibilities. Any individual or group of individuals can engage in retaliation and will be held accountable under this policy.

Allegations of Retaliation will proceed under Student Conduct or the Title VII policy depending on the status of the Respondent as student or employee and may be resolved prior to an allegation of Sexual Harassment.

## **2.2. DEFINITION OF CONSENT**

Voluntary, informed, uncoerced agreement through words and/or actions freely given, which a reasonable person would interpret as a willingness to participate in mutually agreed-upon sexual acts. Consensual sexual activity happens when each partner willingly and affirmatively chooses to participate.

Indications that consent is not present include:

- when physical force is used or there is a reasonable belief of the threat of physical force, including when one person overcomes the physical limitations of another person.
- when coercion is present. Coercion means the improper use of pressure to compel another individual to initiate or continue sexual activity against the individual's will. Coercion may include intimidation, manipulation, and/or blackmail. Words or conduct may constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether to engage in sexual activity.
- when a person is incapable of making an intentional decision to participate in a sexual act, which could include instances in which the person is in a state of incapacitation, which could be permanent or temporary. Evaluations of capacity will be viewed in hindsight using a reasonable person standard.

Important points regarding consent include:

- Consent to one act does not constitute consent to another act.
- Consent on a prior occasion does not constitute consent on a subsequent occasion.
- The existence of a prior or current relationship does not, in itself, constitute consent.
- Consent can be withdrawn or modified at any time.
- Consent is not implicit in a person's manner of dress.
- Accepting a meal, a gift, or an invitation for a date does not imply or constitute consent.
- A person's lack of verbal or physical resistance or submission resulting from the use or threat of force does not constitute consent.
- Silence and passivity do not necessarily constitute consent.
- Initiation by someone who a reasonable person knows or should have known to be deemed incapacitated is not consent.
- A person's consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another.

A person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to circumstances, including without limitation when a person is incapacitated or not of legal age.

A person who is asleep or unconscious is considered incapacitated and unable to consent. Additionally, a person may be incapacitated due to a temporary or permanent mental or physical disability.

In the context of this policy, incapacitation is the state in which a person's perception or judgment is so impaired that he or she lacks the cognitive capacity to make or act on conscious decisions. The use of drugs or alcohol can cause incapacitation, which is a state beyond mere intoxication. An individual who is incapacitated is unable to consent to sexual activity. Engaging in sexual activity with an individual who is incapacitated (and therefore unable to consent), where a person knows or ought reasonably to have understood that the individual is incapacitated, constitutes a violation of this Policy.

### **3. REPORTING**

Any person may report an incident of Sexual Harassment as defined by this policy however employees (including staff members at the front desk areas, in admissions, financial aid officers, and all facilitators) must report. Montana Academy encourages anyone who experiences or becomes aware of Sexual Harassment to immediately contact one of the options listed below including law enforcement, school administrators and off campus confidential options. Reports may be made by the person who experienced the Sexual Harassment or by a third-party, including, but not limited to, a friend, family member, advisor, or facilitator. Reports to the Title IX Coordinator may be made in person, by mail, by telephone, or by electronic mail, using the contact information listed below, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the listed telephone number or electronic mail address, or by physical mail to the office address.

A Complainant may pursue some or all of these reporting options at the same time (e.g., one may simultaneously pursue a Formal Resolution Process with Montana Academy and a criminal complaint). When initiating any report, a Complainant does not need to know whether they wish to request any particular course of action, nor how to label what happened. Before or during any grievance process, Complainants and other reporting persons are encouraged to consult a Confidential Resource.

#### **3.1 CONFIDENTIAL REPORTING OPTIONS**

No offices on campus are designated as Confidential Resources. Therefore, an individual who is not prepared to make a report, or who may be unsure how to label what happened, but still seeks information and support, is strongly encouraged to contact an off campus Confidential Resource.

#### **3.2 LAW ENFORCEMENT**

Emergency medical assistance and campus safety/law enforcement assistance are available both on and off campus. Individuals are encouraged to contact law enforcement and seek medical treatment as soon as possible following an incident that poses a threat to safety or physical well-being or following a potential criminal offense.

At the Complainant's request, the Title IX Coordinator will assist the Complainant in contacting campus and/or local law enforcement and will cooperate within the extent permitted by law with law enforcement agencies if a Complainant decides to pursue the criminal process. The Complainant also has the right to decline the notification of law enforcement.

**Immediate Health and Safety: Contact one of the police departments listed below by dialing 9-1-1**

### **Great Falls Campus**

The **Great Falls Police Department** is located at 112 First Street South, Great Falls, MT 59403 (next to the Civic Center.)

Emergency: 9-1-1

NON-Emergency: (406) 455-8599

### **Billings Campus**

The **Billings Police Department** is located at 220 North 27<sup>th</sup> Street Billings, MT 59101

Non-Emergency

(406) 657-8200

### **Online Reporting**

You can report non-emergency, not-in-progress incidents on their **online reporting platform**.

### **3.3 TITLE IX COORDINATOR**

Any individual who may have been subjected to a violation of this policy, and who is considering making a Complaint under this policy, is encouraged to contact the Title IX Coordinator.

In light of Montana Academy 's obligation to make reasonable efforts to investigate and address conduct prohibited by this policy, Academy community members are required to notify the Title IX Coordinator of suspected violations and cannot guarantee the confidentiality of a report under this policy.

#### **Title IX Coordinator:**

**Linda McPherson, Title IX Coordinator**

[linda@montanaacademy.edu](mailto:linda@montanaacademy.edu)

**Dawn Zuris, Deputy Title IX Coordinator**

[admissions@montanaacademy.edu](mailto:admissions@montanaacademy.edu)

**Great Falls Campus:** 501 2<sup>nd</sup> St. S Great Falls, MT 59405 406-771-8772 ext. 3 (The Deputy Title IX Coordinator is at same location, but press extension "5")

**Billings Campus: (Rimrock Mall):** 300 South 24<sup>th</sup> Street W, Space B01 Billings, MT 59102 406-998-5900 ext. 103 (The Deputy Title IX Coordinator is at same location, but press extension "105")

### **3.4 OTHER AVAILABLE RESOURCES**

Any individual may also access resources located in the local community. These organizations can provide crisis intervention services, counseling, medical attention, and assistance in interfacing with the criminal justice system. If accessing these resources, individuals are encouraged to clarify whether the resources are confidential. Please see Appendix B for a list of resources.

## Medical Resources

### Forensic Medical Exams and Physical Health Services

In the State of Montana, evidence may be collected even if you chose not to make a report to law enforcement.<sup>4</sup> It is important that a victim of sexual assault not bathe, douche, smoke, change clothing or clean the bed/linen/area where they were assaulted if the offense occurred within the past 96 hours so that evidence as may be necessary to the proof of criminal activity may be preserved. In circumstances of sexual assault, if victims do not opt for forensic evidence collection, health care providers can still treat injuries and take steps to address concerns of pregnancy and/or sexually transmitted disease. Victims of sexual assault, domestic violence, stalking, and dating violence are encouraged to also preserve evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs and/or other copies of documents, if they have any, that would be useful to Montana Academy administrators/investigators or police. Although Montana Academy strongly encourages all members of its community to report acts of violence to law enforcement, it is the victim's choice whether or not to make such a report and victims have the right to decline involvement with the police. The Title IX Coordinator (or Deputy) will assist any victim with notifying local police if they so desire. Information about how to contact local police may also be located at the rear of this policy under "Off Campus Resources."

As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or obtaining protection from abuse orders related to the incident more difficult. If a victim chooses not to make a complaint regarding an incident, they nevertheless should consider speaking with local law enforcement to preserve evidence in the event that the victim changes her/his mind at a later date.

**\*If you need help and are not sure if you would like to report or are not sure where to go to get forensic services or other help, contact one of the following resources:**

**[YWCA Billings Gateway Shelter Domestic Violence / Sexual Assault Hotline](#)**

Phone 1-406-245-4472

Text 1-406-702-0229

Big Horn County 1-406-679-5145

**[National Domestic Violence Hotline](#)**

1-800-799-SAFE (7233)

1-800-787-3224 (TTY)

Text: START to 88788

**[Teen Dating Violence Hotline](#)**

1-866-331-9474

1-866-331-8453 (TTY)

Text LOVEIS to 22522

You may also call 9-1-1 and ask for the nearest hospital with forensic nurses so that you may receive care or proceed to the nearest emergency room and tell them you need evidence recovered from your body due to sexual or domestic violence. The emergency room will help you by either performing that service within their facility or by directing you to the closest facility with SANE/FNE services.

---

<sup>4</sup> Under the Violence Against Women and Department of Justice Reauthorization Act of 2005, starting in 2009, states must certify that they do not "require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for charges incurred on account of such an exam, or both."

### 3.5 U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS

All members of the Montana Academy community may also contact the Office for Civil Rights (a division of the United States Department of Education) to file a complaint pertaining to Title IX.

<b>OFFICE FOR CIVIL RIGHTS U.S. DEPARTMENT OF EDUCATION</b>
<b>Headquarters</b> 400 Maryland Avenue, SW, Washington, DC 20202-1100 Customer Service Hotline #: (800) 421-3481   Facsimile: (202) 453-6012 TTY#: (800) 877-8339   Email: <a href="mailto:OCR@ed.gov">OCR@ed.gov</a>   Web: <a href="http://www.ed.gov/ocr">http://www.ed.gov/ocr</a>
<b>Regional Office for the State of Montana</b>  Seattle Office Office for Civil Rights U.S. Department of Education 915 Second Avenue Room 3310 Seattle, WA 98174-1099 Telephone: 206-607-1600 FAX: 206-607-1601; TDD: 800-877-8339 Email: <a href="mailto:OCR.Seattle@ed.gov">OCR.Seattle@ed.gov</a>

### 3.6 ANONYMOUS REPORT

An individual may report an incident without disclosing their name, identifying the Respondent, or requesting any action. Please note that choosing to make an anonymous report can significantly limit the ability of Montana Academy to respond. This information will be used for statistical purposes as well as for enhancing understanding of our campus climate so that we may strengthen sexual harassment response and prevention efforts.

### 3.7 MANDATORY REPORTING

Every Montana Academy employee must report conduct that could constitute sexual harassment/sex discrimination/sexual misconduct under this policy to the Title IX Coordinator and are considered “Responsible Employees.”

In emergency situations, if there is a suspected crime in progress, or imminent or serious threats to the safety of anyone, faculty and staff members should immediately dial 911 whenever possible.

Montana Academy is committed to responding to all alleged violations of this policy. Upon receiving a report of Sexual Harassment, the Title IX Coordinator will promptly, within two business days, contact the Complainant to discuss the availability of supportive measures, provide a written explanation of rights and options, and explain to the Complainant the process for filing a Formal Complaint. The Coordinator will also explain if Informal Resolution is an option if a Formal Complaint is filed. \*A Complainant must file a Formal Complaint and ask Montana Academy to take action to access available Informal and Formal Resolution options.

### 3.8 PRIVACY AND CONFIDENTIALITY

Issues of privacy and confidentiality play important roles in this policy and may affect individuals differently. Privacy and confidentiality are related but distinct terms. “Confidentiality” refers to the

circumstances under which information will or will not be disclosed to others. “Privacy” refers to the discretion that will be exercised by Montana Academy in the course of any investigation or disciplinary processes under this policy.

Requests for confidentiality or use of anonymous reporting may limit Montana Academy’s ability to investigate or resolve an allegation using Montana Academy’s disciplinary proceedings.

Individuals involved in investigations or disciplinary proceedings under this policy are encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation. While discretion regarding the process is important, Complainants and Respondents are not restricted from discussing and sharing information with others who may support or assist them in presenting their case.

**In some circumstances, the reporting responsibilities of Montana Academy employees, or Montana Academy’s responsibility to investigate, may conflict with the preferences of the Complainant and/or Respondent with regard to privacy and confidentiality. Therefore, all individuals are encouraged to familiarize themselves with their options and responsibilities, and make use of off-campus Confidential Resources, if applicable, in determining their preferred course of action.**

Medical and counseling records are privileged and confidential documents that the Parties will not be required to disclose.

Montana Academy has an obligation to make reasonable efforts to investigate and address Complaints or reports of violations of this policy. In all such proceedings, Montana Academy will take into consideration the privacy of the Parties to the extent possible.

In cases involving students, the Title IX Coordinator may notify other Montana Academy employees of the existence of the Complaint for the purpose of overseeing compliance with this policy and addressing any concerns related to educational and Montana Academy sponsored events. While not bound by confidentiality, these individuals will be discreet and will respect the privacy of those involved in the process.

Any additional disclosure of information related to the Complaint or report may be made if consistent with the Family Educational Rights and Privacy Act (FERPA), or the Title IX requirements.

### **3.9 SUPPORTIVE MEASURES**

Upon receipt of a complaint or report of a suspected violation of this policy, Montana Academy will provide reasonable and appropriate supportive measures. Supportive measures mean individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a complaint or where no complaint has been filed. Such measures are designed to restore or preserve equal access to Montana Academy’s program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or Montana Academy’s educational environment, or deter sexual harassment.

Supportive measures may include:

- Referral to external counseling services and assistance in arranging an initial appointment.
- Rescheduling of exams and assignments.
- Change in class schedule, including the ability to withdraw from a course.
- Change in work schedule or job assignment.



- Imposition of a mutual on-campus "no contact order," which is an administrative remedy designed to curtail contact and communications between two or more individuals; and/or
- Any other remedy that can be used to achieve the goals of this policy.

Montana Academy will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. In cases that meet the definition and jurisdiction of Title IX, Supportive Measures will also be non-punitive and non-disciplinary.

Any supportive measures will not disproportionately impact the Respondent. Requests for supportive measures may be made by or on behalf of the Complainant to the Title IX Coordinator. The Title IX Coordinator is responsible for ensuring the implementation of supportive measures and coordinating Montana Academy's response with the appropriate persons on campus.

All individuals are encouraged to report concerns about the failure of another to abide by any restrictions imposed by a Supportive Measure. Montana Academy will take immediate action to enforce a previously implemented measure and disciplinary penalties can be imposed for failing to abide by an Academy - imposed measure utilizing the disciplinary process deemed appropriate by the Title IX Coordinator.

### **3.9.1 INTERIM REMOVAL**

In connection with this policy, in circumstances seriously affecting the health or well-being of any person, or where physical safety is seriously threatened, or where the ability of Montana Academy to carry out its essential operations is seriously threatened or impaired, an authorized representative may summarily suspend, dismiss, or restrict any person from Montana Academy. Prior to acting against a student in response to an allegation that arises from a complaint under the jurisdiction of Title IX, Montana Academy will undertake an individualized safety and risk analysis and provide written notice to the Party. In all such cases involving students, actions taken will be reviewed promptly, typically within one week, by the appropriate Montana Academy authority and removals subject to Title IX will include an opportunity for redress (appeal) by the Respondent. Complaints involving employees as the Respondent will be subject to the leave provisions that rest within employment policies and could involve placing the employee on administrative leave (with or without pay) depending on the nature of the reported offense, the determination of an ongoing risk to public safety, and/or other factors as determined by Montana Academy officials.

### **3.10 RIGHTS AND OPTIONS**

The Title IX Coordinator will ensure that the Complainant receives an explanation of rights and options written in plain language with concise information. The written notification of rights and options will include the following:

- The importance of obtaining and preserving forensic and other evidence.
- The right to report or not report the alleged incident to Montana Academy, law enforcement or both, including information about the survivor's right to privacy and which reporting methods are confidential.
- The right to request and receive assistance from campus authorities in notifying law enforcement.
- The right to request and receive assistance in obtaining and enforcing a campus-issued order of protection or no contact order.
- The right to speak to and receive assistance from on and off campus Confidential Resources and other organizations that provide support and services to victims and survivors.

- The right to assistance from Montana Academy in accessing and navigating campus and local health and mental health services, counseling, advocacy services, legal assistance, financial aid services and immigration/Visa assistance.
- The right to Supportive Measures with or without the filing of a formal Complainant, no matter where the incident is reported to have occurred and that Montana Academy will consider the Complainant's wishes with respect to available supportive measures including without limitation changes to academic, living, dining, working, and transportation situations.
- The right to request a Formal or Informal Resolution Process if cause is found to proceed under this Policy and a summary of the appropriate complaint resolution procedures.
- Contact information for all of the people and organizations listed herein; and
- Complainants have the right to request an end to the process except as set forth in this Policy.

In the event that a Complaint is filed, the Complainant and the Respondent will receive a written notification of rights and options regarding the adjudication process, to include the following:

- The right for Complainants and Respondents to be treated equitably by Montana Academy which includes providing remedies to a Complainant where a determination of responsibility for sexual harassment has been made against the Respondent, and by following a grievance process that complies with this policy.
- The right to a fair, impartial proceeding that begins promptly and is completed within reasonably prompt timeframes.
- The right to a resolution process that is consistent with Montana Academy's policies, transparent to the Complainant and Respondent, and in which the burden of proof and of gathering evidence rests with Montana Academy and not the Parties.
- The right to an Advisor of the Party's choosing during the grievance process and to an Advisor of the Party's choosing for any hearing under the Title IX Grievance process. If a Party does not have an Advisor present at the hearing, Montana Academy will provide without fee or charge, an advisor of Montana Academy's choice for purposes of conducting cross examination.
- The right to reasonable accommodations during any hearing, such as not being in the same room as the other Party.
- The right to an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
- The right to a determination regarding responsibility made at the conclusion of the resolution process and that Montana Academy makes no prior presumption of responsibility; and
- The right not to be retaliated against for filing a Complaint and/or for participating in an Informal or Formal Resolution Process.

### **3.11 AMNESTY/IMMUNITY**

In order to encourage reports of conduct that is prohibited under this policy, Montana Academy may offer leniency with respect to other violations which may come to light as a result of such reports, depending on the circumstances involved. The Title IX Coordinator will make the determination on behalf of Montana Academy.

### **3.12 TIMELY WARNING**

If Montana Academy receives a report of a Clery reportable crime that has occurred within the institution's Clery reportable geography, the institution will assess the report for purposes of sending a Timely Warning Notice (TWN). A TWN will be sent for reports that constitute a serious and continuing threat to the campus community and Montana Academy officials will issue these according to policy as is reflected in the institution's Annual Security Report. In all cases of sexual harassment, the Title IX Coordinator will be notified. In addition, Montana Academy may also share non-identifying information, including data about outcomes and penalties, in aggregate form. At no time will Montana Academy release the name or other personally identifiable information of the Complainant to the general public without the express consent of the Complainant or as otherwise permitted or required by law.

### **3.13 OPTIONS FOR PROCEEDING THROUGH THE MONTANA ACADEMY PROCESS**

#### **3.13.1 INFORMAL AND FORMAL COMPLAINTS**

To initiate the informal resolution process or formal resolution process, a Complainant must file a Formal Complaint. A Formal Complaint means a written statement filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting resolution of the alleged behavior. A Formal Complaint may be completed by the Complainant in person or submitted by email, mail or by US Mail to the Title IX Coordinator.

#### **3.13.2 NO COMPLAINT**

Complainants have the right not to file a complaint, yet they are highly encouraged to seek medical attention and counseling, if applicable. Complainants who wish to file a complaint at a later date, may do so by utilizing any of the options outlined in this policy. However, please note that a delay in reporting could create obstacles to Montana Academy's process for stopping harassment and/or discrimination, remedying its effects, and preventing recurrence as well as potentially weakening evidence that could be useful in determining whether Prohibited Conduct occurred, in obtaining an order of protection or for the State in being able to proceed with a criminal proceeding external to Montana Academy.

#### **3.13.3 MONTANA ACADEMY-INITIATED COMPLAINTS**

In limited cases, the Title IX Coordinator may initiate a complaint without a request by the Complainant upon receipt of a report of Sexual Harassment. The Title IX Coordinator will initiate the complaint when the Title IX Coordinator, in their discretion, determines that a grievance process is warranted given the reported behavior. A Complainant retains standing as a Complainant even in cases where the Title IX Coordinator initiates the complaint. If the Title IX Coordinator initiates a complaint, they will advise the Complainant that they have done so and will provide the rationale to the Complainant regarding why they proceeded.

#### **3.13.4 DISMISSALS**

If the Title IX Coordinator determines that the complaint, even if substantiated, would not rise to the level of a violation of this policy, the Title IX Coordinator may dismiss the complaint or refer the complaint to another policy for review. A case may also be dismissed for not meeting the threshold and jurisdictional requirements for Title IX, however, a dismissal of a case for purposes of Title IX, does not preclude Montana Academy from utilizing its student or employee handbooks to resolve the matter, if applicable.

If at any time during the investigation or hearing a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal resolution process or withdraw any allegations therein; the Respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations, Montana Academy may dismiss the complaint and end the formal resolution process. The

decision as to whether to dismiss the complaint will be determined by the Title IX Coordinator based on the stated goals of this policy. Upon a dismissal permitted pursuant to this section, Montana Academy will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the Parties.

Either party may appeal Montana Academy's dismissal of a Complaint or any allegations by submitting a written appeal within 5 business days of the dismissal. Appeals may follow the grounds outlined in the Appeals section of this policy. If the appeal is denied, the dismissal of the complaint will remain in effect.

### **3.13.5 CONSOLIDATIONS**

The Title IX Coordinator has the discretion to consolidate multiple complaints or reports into a single investigation if evidence relevant to one incident might be relevant to the others. Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular "Party," "Complainant," or "Respondent" include the plural, as applicable.

If a case involves violations of other Academy policies, the Title IX Coordinator, in consultation with other school administrators, will determine which grievance process to use or if different grievance processes would be more appropriate.

## **4. FORMAL RESOLUTION PROCEDURE**

### **4.1. INVESTIGATION**

If the complaint could constitute a violation of this policy and the complainant has requested a formal resolution process, the complainant and respondent will receive written notice from the Title IX Coordinator of the allegations of sexual harassment, including sufficient details known at the time with sufficient time to prepare before any initial interview. The parties will receive written simultaneous notification of additional allegations as appropriate.

A fair and impartial investigation will be conducted by at least one trained investigator appointed by the Title IX Coordinator. Montana Academy reserves the right to employ external investigators if it determines that the investigation would be best conducted in this way. The parties will be provided with the name(s) of the investigator(s) and allowed three business days to request the removal and replacement of an investigator based on bias or conflict of interest. Any request for a change in an investigator must be accompanied by supporting information and the decision to assign a new investigator will be made at the sole discretion of the Title IX Coordinator based on information provided by the party.

Throughout the grievance process, the Title IX Coordinator will provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of meetings, investigative interviews, and hearings, with sufficient time for the party to prepare to participate as well as advise the party of the opportunity to present evidence and witness information, if applicable.

A complainant and respondent have the right to an advisor of choice to be present at any meeting or disciplinary proceeding in which either party is required to be present. Montana Academy will not restrict who this advisor is, although the advisor can only have one role in the process (i.e., the advisor cannot be a witness and an advisor.) Montana Academy can and will restrict the role the advisor plays within the meeting or proceeding and will do so equally for both parties.

The investigation will typically include interviewing all involved parties (respondent, complainant, witnesses) and the collecting of any documentation or evidence relevant to the allegation. The Academy will not restrict either party from discussing allegations under investigation or from presenting relevant evidence or identifying relevant witnesses.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant and will not be requested by the investigator or allowed at the hearing, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. Additionally, the investigation and the hearing will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

At the conclusion of the investigation, the investigator and the Title IX Coordinator or Deputy Title IX Coordinator shall meet to determine if the preliminary investigation is complete. If the preliminary investigation is complete, the Title IX Coordinator will send to each party and the party's advisor, if any, a preliminary investigative report containing any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint.

The parties will be given 10 days to correct any information that is factually inaccurate or to present any new information to the investigator at this time. If new information is presented that prompts the need for further investigation, the investigator will complete the investigation based on the new information shared. At the conclusion of the supplemental investigation or if no further investigation needs to occur, the investigator will provide the final investigative report to the Title IX Coordinator who will distribute it to the respective parties and the parties' advisors, if any, at least 10 days prior to the hearing. The Investigator will include in the final investigative report a summary of relevant evidence.

#### **4.2. LIVE HEARING**

Upon completion of the final investigative report, the case will be assigned to a hearing. The Title IX Coordinator will appoint a trained decision-maker to adjudicate the matter who is not the Title IX Coordinator, a Deputy Title IX Coordinator who was in some way involved in the case, or the investigator for that complaint. The parties will be provided with the name of the decision-maker and will be allowed 5 days to request the removal and replacement of the decision-maker based on bias or conflict of interest. Any request for a change in a decision-maker must be accompanied by supporting information and the decision to assign a new decision-maker will be made by the Title IX Coordinator.

Hearings will be conducted via an online platform with video and audio capability, rather than in person.

At the live hearing each party's advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including questions that challenge credibility. If a party does not have an advisor, the Montana Academy will appoint one on behalf of the party free of charge. In this capacity, the advisor will be appointed for the sole purpose of conducting cross examination of the other party and witnesses. If any advisor violates the rules or engages in behavior or advocacy that harasses, abuses, or intimidates either party, a witness, or the decision-maker, that advisor may be prohibited from further participation and another advisor will be assigned.

At the hearing, the decision-maker is responsible for maintaining an orderly, fair, impartial, and respectful hearing. The decision-maker has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding any offending person. The decision-maker will determine the method for questioning at the hearing. Only relevant cross examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination question, the decision-maker must first determine whether the question is relevant and will explain any decision to exclude a question as not relevant. The decision-maker may also ask questions of the parties and witnesses.

In the absence of good cause, as determined by the decision-maker, information, witnesses, and other evidence discoverable through the exercise of due diligence that is not provided to the investigator during the investigation will not be considered at the hearing.

All hearings are closed to the public. A recording will be made by the Academy in accordance with law, but all other recordings are prohibited.

A complainant, respondent, or witness may decline to participate in the hearing. If a party does not appear at the hearing, the decision-maker may still rely on any previous statement of that party or witness to reach a determination as to responsibility. The decision-maker will not draw an inference about the responsibility determination based solely on a party's or witness's absence from the hearing or refusal to submit to questions. If a party does not attend the hearing, their advisor must still attend.

At the conclusion of the hearing, the decision-maker will make a determination regarding responsibility. If the decision-maker has determined that it is more likely than not that sex-based harassment and discrimination occurred in violation of this policy, the decision-maker will decide on the appropriate sanctions and remedies. After making a finding, the decision-maker will issue the determination, to include the reason for the finding and the associated sanctions and remedies, if any, in writing and simultaneously to the complainant and respondent. The decision maker will issue their finding and any associated sanctions within 5 business days of the hearing.

The Title IX Coordinator and Deputy Coordinator will routinely confer on cases to ensure consistent application of this policy. The Deputy Title IX Coordinator may be intentionally left out of conferment if the Title IX Coordinator believes they may be able to serve as the decision maker at the live hearing.

The standard of proof used to determine whether or not a violation of this policy has occurred is the *preponderance of evidence*, which means it is more likely than not the misconduct occurred.

Typically, the investigation, resolution, and appeal will not exceed 60 days although Montana Academy reserves the right to exceed this timeframe in order to conduct a thorough investigation. If the grievance process does or is anticipated to exceed 60 days, Montana Academy will notify the complainant and respondent in writing and will advise them of the reason for the delay and the anticipated timeframe for the completion of the investigation.

The outcome/finding, the rationalization for the finding, and the sanctions imposed, if any, shall be conveyed to the complainant and respondent simultaneously and in writing as noted above via the email system. If a party is no longer affiliated with Montana Academy, the outcome/finding will be delivered via certified US Mail.

### **Student Sanctions**

The Decision-maker is responsible for determining sanctions and remedies. The following sanctions and remedies may be imposed, individually or in any combination, when a student respondent is found responsible for violating this policy:

- Education/Training Requirement
- Loss of Privileges
- Permanent Supportive Measures
- Restitution

- Probation
- Suspension
- Expulsion

### **Employee (Staff and Facilitator) Sanctions**

The Decision-maker is responsible for determining sanctions and remedies. The following sanctions and remedies may be imposed, individually or in any combination, when an employee respondent is found responsible for violating this policy:

- Education/Training Requirement
- Permanent Supportive Measures
- Restitution
- Verbal Counseling
- Written Counseling
- Suspension in employment
- Termination of employment

### **4.3. APPEALS**

Both the complainant and the respondent have a right to appeal the finding or non-finding of responsibility or the dismissal of the case. Appeals must be on one of the following grounds:

- Procedural irregularity that affected the outcome of the matter.
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, a Deputy Title IX Coordinator directly involved in the matter, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Both parties will have five business days from notification to appeal in writing. The decision-maker on appeal will not have been involved in the process up to the point of appeal. Both individuals will be informed in writing and simultaneously of any change to the results that occur prior to the time that such results become final and when such results become final.

## **4 RECORD-KEEPING AND ANNUAL REPORTS**

Montana Academy will keep for 7 years the following:

- All information obtained as part of each Sexual Harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript; any disciplinary sanctions and/or remedies; any appeal, including the result of the appeal; and any informal resolution and the result therefrom.
- All information regarding any action taken, including supportive measures, and a rationale as to why a Complaint was not filed. If a Complainant was not provided supportive measures, a rationale must be provided as to why supportive measures were not provided.
- All training materials used to train Title IX Coordinators, Investigators, Decision Makers, and those who facilitate the informal resolution process.

Generally, information from a student's discipline file is not released without the written consent of the student. However, certain information may be provided to individuals within or outside Montana Academy who have a legitimate legal or educational interest in obtaining it. Typically, the information that is released to those outside of Montana Academy is limited to information associated with findings of "in violation" which resulted in a suspension or expulsion (discipline file). Please refer to the federal Family Educational Rights and Privacy Act of 1974 (FERPA).

Personnel files are the property of Montana Academy and will not be shared without a subpoena.

## **5 EDUCATION PROGRAMS AND TRAINING OF TITLE IX PERSONNEL**

### **5.1 TRAINING FOR MONTANA ACADEMY COMMUNITY**

Montana Academy engages in comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to reduce and eliminate sexual misconduct or other forms of prohibited conduct which:

- are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research, or assessed for value, effectiveness, or outcome.
- consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community and societal levels; and
- include primary prevention and awareness programs directed at incoming students and ongoing prevention and awareness campaigns directed at current students.

Risk Reduction means options designed to decrease perpetration and bystander action, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence. Experiencing Sexual Misconduct or other forms of prohibited conduct is never the victim's fault. Only abusers are responsible for the abuse they perpetrate. However, the following are some strategies to reduce the risk of victimization. For example, The [Rape, Abuse, & Incest National Network](https://www.rainn.org/safety-prevention) (RAINN) has created a list which can be found by clicking here: <https://www.rainn.org/safety-prevention>.

Bystanders play a critical role in the prevention of sexual and relationship violence. Montana Academy promotes a culture of community accountability where bystanders are actively engaged in the prevention of violence without causing further harm. Individuals may not always know what to do even if they want to help. Below is a list of some ways to be an active bystander. If you or someone else is in immediate danger, dial 911, if a person is yelling at or being physically abusive towards another and it is not safe for you to interrupt.

- Watch out for your friends and fellow students/employees. If you see someone who looks like he or she could be in trouble or need help, ask if he or she is ok.
- Confront people who seclude, hit on, attempt to make out with, or have sex with people who are incapacitated.
- Speak up when someone discusses plans to take sexual advantage of another person.
- Believe someone who discloses sexual assault, abusive behavior, or experience with stalking.
- Refer people to on or off campus resources listed in this policy for support in health, counseling, or with legal assistance.

### **5.2 TRAINING OF TITLE IX PERSONNEL**



Montana Academy will require that the Title IX Coordinator, Investigators, and Decision-Makers and any person who facilitates an informal resolution process receive annual training per the requirements of Title IX and the Clery Act-VAWA, and do not have a conflict of interest or bias for or against Complainants or Respondents generally, or an individual Complainant or Respondent.

The annual training provided includes but is not limited to the following: the definition of sexual harassment, including an understanding of educational program or activity; how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes; how to serve impartially, including avoiding prejudgment about the facts at issue, conflicts of interest, and bias; the technology to be used at a live hearing; issues of relevance, including questioning, and investigative reports.

## **6 DISABILITY ACCOMMODATIONS AND INTERPRETIVE SERVICES**

Montana Academy makes every reasonable effort to accommodate individuals with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973 (504) and the Americans with Disabilities Act Amendments Act of 2008 (ADAAA). In compliance with this commitment, Montana Academy employs a compliance department to determine reasonable and appropriate accommodations and auxiliary aides for access and participation in Montana Academy sponsored classes, services, and programs.

Students with a disability who desire an accommodation regarding this Policy must request an accommodation with the Title IX Coordinator. The Title IX Coordinator will make a determination regarding the request and notify the appropriate Parties. An Individual will not be considered to have a disability allowing for an accommodation unless and until the student has met with the required compliance officer or the Title IX Coordinator (if these are different people) and been noted as a person to whom accommodations should be provided.

Employees with a disability should provide the required documentation to the Title IX Coordinator or owner of the Montana Academy.

Any employee or student who is party to a complaint of sexual harassment who is a non-native English speaker and who requires interpretive assistance, please make a request to the Title IX Coordinator so an interpreter may be arranged.

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

Montana Academy is committed to providing a safe, anti-harassing, and nondiscriminatory environment that protects the civil rights of individuals, and Montana Academy recognizes the protection of academic freedom in the classroom.

This policy is not intended to restrict serious discussion of controversial issues in a training or academic situation. In order to prevent claims that course content is discriminatory, harassing, or offensive, it is recommended that participants in such discussions are provided with a disclosure that the content may be controversial.

## **8 MINORS ON CAMPUS**

Montana Academy is committed to providing a safe and secure learning environment for minors. Faculty/facilitators, staff, students, and volunteers are therefore expected to hold themselves to the highest standards of conduct when interacting with minors.

Montana Academy requires all faculty/facilitators, staff, adult students, and volunteers, who in the course of their duties, witnesses child abuse or neglect on campus or who have information that would lead a reasonable person to believe that a minor on campus faces a substantial threat of such abuse or neglect must immediately take the following actions:

1. Call 911 if abuse is occurring now, if a child is injured (including bruising or complaining of pain), or if you believe there is an immediate risk of such abuse occurring in the near future (including a child discloses they are being abused by someone in the home or by a family member, caregiver, coach, or other trusted adult.) Also call the appropriate police department and ask them to respond for a child you believe is being abused/neglected.
2. If you do not believe there is an imminent threat, call the Montana Department of Child and Family Services, which is a 24-hour, 7 day a week toll free child abuse hotline. That number is 1 (866) 820-5437.
3. If in doubt as to what to do, call the Hotline listed in number two as well as 9-1-1.

If consultation is needed regarding reporting, or if there are questions on the process or other support needed, please contact the Title IX Coordinator.

## **9 REVISION AND INTERPRETATION**

The Policy is maintained by the Title IX Coordinator and was most recently approved by the Montana Academy of Salons owners on **DATE**. The Montana Academy reserves the right to review and update the Policy in accordance with changing legal requirements and specific needs of the Montana Academy.

Any questions of interpretation regarding the Policy shall be referred to the Title IX Coordinator. The Title IX Coordinator's determination is final.

All reports received by Montana Academy after this date will be administered in accordance with the procedures described under this Policy.

## **APPENDIX A: HOW TO CONTACT THE TITLE IX COORDINATOR; DEPUTY**

How to contact Montana Academy's Title IX Coordinator:

**Linda McPherson, Title IX Coordinator**

[linda@montanaacademy.edu](mailto:linda@montanaacademy.edu)

**Dawn Zuris, Deputy Title IX Coordinator**

[admissions@montanaacademy.edu](mailto:admissions@montanaacademy.edu)

**Great Falls Campus:** 501 2<sup>nd</sup> St. S Great Falls, MT 59405 406-771-8772 ext. 3 (The Deputy Title IX Coordinator is at same location, but press extension "5")

**Billings Campus: (Rimrock Mall):** 300 South 24<sup>th</sup> Street W, Space B01 Billings, MT 59102 406-998-5900 ext. 103 (The Deputy Title IX Coordinator is at same location, but press extension "105")

Reports may generally be made in person when Montana Academy is normally open between 8am and 4pm Monday through Friday and anytime 24 hours a day/7 day a week via email, or by sending written correspondence through the U.S. mail. In an emergency or to receive an immediate response, contact law enforcement by dialing 9-1-1 from wherever you are. \*Correspondence to the Title IX Coordinator via telephone, email, or the U.S. Mail will not result in an immediate response and will be responded to as promptly as possible and can generally be expected within two business days of the outreach.

**APPENDIX B: \*ON AND OFF CAMPUS RESOURCES**

Upon receipt of a report of domestic violence, dating violence, sexual assault or stalking, Montana Academy will provide written notification to students and employees about existing assistance with and/or information about obtaining resources and services including counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid and assistance in notifying appropriate local law enforcement. These resources include the following on and off campus as noted below **(\*Neither campus location has on campus resources—see the off-campus charts below by campus.)**

**Great Falls Location**

**EMERGENCY PHONE NUMBERS:**

Immediate Help (Fire, Police, Rescue Squad)	9-1-1
Montana Academy Administrative Offices	(406) 771-8771
Cascade Fire Department	(406) 454-6978
Cascade Ambulance Department	(406) 454-6978
Great Falls City Police Department	(406) 454-6978
Cascade Sheriff Department	(406 )454-6978
City-County Health Department	(406) 454-6950

**MENTAL HEALTH/COUNSELING AGENCIES:**

Aware Inc	(406) 727-5633
Center For Mental Health, (Open 24 hours)	(406) 727-1314
Families In Transition	(406) 452-1171
Front Range Counseling, LLC	(406) 453-4356
Intermountain Family Support	(406) 452-0388
Youth Dynamics Inc	(406) 453-5592

**HEALTH/HOSPITALS:**

Benefis Health System	(406) 455-5000
Great Falls Clinic Medical Center	(406) 216-8000
Benefis Health System-West Campus	(406) 455-2130
Community Health Care Center	(406) 454-6973
VA Great Falls Clinic	(406) 454-8070

**Billings Location**

**EMERGENCY PHONE NUMBERS**

Immediate Help (Fire, Police, Rescue Squad)	9-1-1
Montana Academy Administrative Offices	(406) 771-8771
Yellowstone Fire Department	(406) 657-8423
Yellowstone Ambulance Department	(406) 259-6713

Billings City Police Department	(406)	657-8200
Yellowstone Sheriff Department	(406)	256-2929
Yellowstone County Health Department	(406)	662-3740

**COUNSELING/MENTAL HEALTH AGENCIES**

Aware Inc.	(406)	245-0694
Center For Mental Health	(406)	252-5658
NAMI	(406)	256-2001
Childrens Mental Health (Trish)	(406)	329-1330
Family Support Services	(406)	256-7738

**HOSPITALS:**

St Vincent Hospital	(406)	237-7000
Billings Clinic Hospital	(406)	238-2500
Riverstone Health Department (Medical & Dental)	(406)	256-2770
VA Billings Clinic	(406)	373-3500

**VISA AND IMMIGRATION ASSISTANCE**

U.S. Department of Homeland Security 1-888-373-7888  
 Infographic for Crime Victims who hold visas/non citizens Text “info” or “help” to 233733  
[Federal Immigration Protections for Victims of Human Trafficking Infographic \(dhs.gov\)](https://www.dhs.gov/federal-immigration-protections-for-victims-of-human-trafficking-infographic)

**Both locations**

**VISA AND IMMIGRATION ASSISTANCE**

U.S. Department of Homeland Security 1-888-373-7888  
 Infographic for Crime Victims who hold visas/non citizens Text “info” or “help” to 233733  
[Federal Immigration Protections for Victims of Human Trafficking Infographic \(dhs.gov\)](https://www.dhs.gov/federal-immigration-protections-for-victims-of-human-trafficking-infographic)

**LEGAL ASSISTANCE**

Montana Legal Services Association provides free civil legal assistance to eligible individuals, including victims of crime. If you need assistance, you can call the HelpLine, **1-800-666-6899** Monday through Friday from 9:00 am – 1:00 pm. MLSA's intake specialists will walk you through the application. You can also apply for assistance online. [MT Victim Legal Assistance Network - Montana Legal Services Association \(mtlsa.org\)](https://www.mtlsa.org)

**VICTIM ADVOCACY**

For Sexual Assault-Call 800.656.HOPE (4673) to be connected with a trained staff member from a sexual assault service provider in your area.

For Domestic Violence-Text “Start” to 88788, call 1-800-799-SAFE, or chat here: [www.thehotline.org](https://www.thehotline.org)  
[Domestic Violence Support | National Domestic Violence Hotline \(thehotline.org\)](https://www.thehotline.org)

**FINANCIAL AID**

U.S. Department of Education Federal Student Aid [www.studentaid.gov](https://www.studentaid.gov) 1-800-433-3243  
[Contact Us | Federal Student Aid](https://www.studentaid.gov)

## APPENDIX C: PROTECTION ORDERS AND MONTANA ACADEMY ISSUED “NO CONTACT” DIRECTIVES

### C-1 No Contact Directives

Often times, a no contact letter will be given to the Complainant and Respondent by Montana Academy until the conclusion of the investigation. This will prohibit communication between the parties, including contact verbally, in writing, through technology or third parties. If you have been the victim of domestic or dating violence, stalking or sexual abuse, you may also want to consider obtaining an order of protection from the State of Montana. Violations of institutional no contact directives will be handled as a separate violation of the Student or Employee Handbooks and Montana Academy reserves the right to resolve those charges prior to the completion of the investigation into the Sexual Harassment claim. Montana Academy encourages Complainants to contact law enforcement for violations of orders of protection issued anywhere in the United States.

### C-2 Protection Orders

Montana Academy complies with Montana law by recognizing court orders that mandate protection from abuse. For example, any person who obtains an order of protection from Montana or any state in the U.S. should provide a copy to the Title IX Coordinator. A Complainant may then meet with the Title IX Coordinator (or designee) to develop a Safety Action Plan, which is a plan for the victim and the school to reduce risk of harm while on campus or coming and going from campus. This plan may include, but is not limited to walking escorts, providing a temporary cellphone, changing classroom location, or allowing a student or employee to complete assignments/work from home as able, etc.

Montana Academy cannot apply for a legal order of protection, no contact order or restraining order for a victim from the applicable jurisdiction(s). The victim is required to apply directly for these services through Montana Courts or with the help of law enforcement. Montana Academy can and does issue institutional “No Contact” directives to prevent contact between parties, which are enforceable as a violation of policy. Any Complainant may request an institutional directive by contacting the Title IX Coordinator or investigator assigned to their complaint.

A Protection Order is granted by a Judge and orders the defendant (Respondent) to stay away from you. The defendant should not enter your home or approach you at your place of work or school. If the defendant violates the protection order, a new charge could be filed, and the defendant could be arrested.

Although the Judge may grant the Protection Order, it does not guarantee your safety. It is important for you to be careful and take steps to ensure your safety as much as possible. Montana Academy can assist you with creating a Safety Action Plan, which is a plan to provide for your safety while on campus. You may contact off campus service providers, including the National Domestic Violence Hotline, by dialing 1-800-799-SAFE (7233), 1-800-787-3224 (TTY), or Text: START to 88788.

For complete information about the protection orders in Montana, click the link:

[OVS-Getting-an-Order-of-Protection.pdf \(dojmt.gov\)](#)