



DISCRIMINATION GRIEVANCE PROCEDURES

Miles Community College

PROCEDURE

Discrimination, Harassment, Sexual Misconduct,
Dating Violence, Domestic Violence, Stalking, and Retaliation

TitleIX@milescc.edu

Table of Contents

INTRODUCTION AND PURPOSE	02
REPORTING TO MCC	02
ANONYMOUS AND THIRD-PARTY REPORTING	03
CRIMINAL REPORTING	03
EVIDENCE PRESERVATION	04
JURISDICTION	04
RELATION TO THE STUDENT CODE OF CONDUCT.....	04
STANDARD OF EVIDENCE	04
CONFIDENTIALITY OF COMPLAINTS AND REPORTS.....	04
IMMEDIATE ACTION AND INTERIM REMEDIAL ACTION	05
REQUESTS FOR NO INVESTIGATION BY THE COMPLAINANT OR THIRD-PARTY REPORTER	06
ROLES	
RESPONSIBLE OFFICIAL (RO)	07
INVESTIGATIVE OFFICER (IO)	08
HEARING DECISION OFFICER(HDO)	08
APPEALS OFFICER (AO)	09
IMMEDIATE ACTION AND INTERIM REMEDIAL ACTION	10
FORMAL GRIEVANCE PROCESS	16
STEP 1: FILING THE COMPLAINT	11
STEP 2: INVESTIGATION	11
STEP 3: PRE-HEARING CONFERENCE.....	12
STEP 4: HEARING.....	12
STEP 5: APPEAL	12
ESTIIMATED TIMELINE	13
ADVISOR OF CHOICE	16
CROSS EXAMINATION IN HEARINGS.....	16
APPEALS PROCESS/FILING AN APPEAL.....	16
TRAINING	16
RECORD RETENTION	16
RETALIATION.....	16
EMPLOYEE PARTICIPATION.....	16
EXTERNAL COMPLAINTS	16

DISCRIMINATION GRIEVANCE PROCEDURES

Miles Community College

Procedure: Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking and Retaliation

Responsible Party: Title IX Coordinator

INTRODUCTION AND PURPOSE

The purpose of these procedures is to provide a prompt and equitable resolution of reports of discrimination based upon race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation. Any person believing that he or she has been subjected to discrimination or harassment on any of these bases may report any potential violation of policy to Miles Community College (MCC). These procedures address all reports of alleged discrimination or harassment, including conduct that violates the Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking and Retaliation Policy (hereinafter referred to as "***Policy Violations***"). The procedures also address 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.

REPORTING TO MCC

Reports of ***Policy Violations***, whether by recipients of unwelcome behavior (referred to as "***Complainants***") or by third-parties (referred to as "Reporters"), should be made to the Responsible Official stated below. The Responsible Official, staff members, and designees (collectively referred to in this Procedure as "the ***RO***") 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 shall be addressed in the same manner. The contact information for the ***RO*** is listed below.

The MCC Responsible Official (RO) and Title IX Coordinator is:

Kylene Phipps
Title IX Coordinator
Office 218
2715 Dickinson
Miles City, MT 59301
Phone: (406)874-6292
TitleIX@milescc.edu

Deputy Title IX Coordinators:

Richard DeShields
Deputy Title IX Coordinator
Student Services Office
Miles City, MT 59301
Phone: (406)874-6226
deshieldsr@milescc.edu

Jessica Lofland
Deputy Title IX Coordinator
Student Services Office
Miles City, MT 59301
Phone: (406)874-6480
loflandj@milescc.edu

Erin Niedege
Deputy Title IX Coordinator
Student Services Office
Miles City, MT 59301
Phone: (406)874-6211
niedgee@milescc.edu

Reports should be made as soon as possible after an incident and there are several avenues available for submitting a report [based on the contact information above]:

- Leave a voice message for the **RO**;
- File a report on the forms found on the Campus Safety website at the link- <https://www.milesc.edu/AboutUs/CampusSafety/> under Report Harassment or Sexual Assault or Report a Student Conduct Code Violation;
- Send a private email to the **RO**;
- Mail a letter to the **RO** office;
- Visit one of the **RO** staff (you may wish to make an appointment first to ensure availability).
- Report to another trusted MCC official (e.g., Resident Assistant, Instructor, Coach, Advisor) who will provide information to the **RO** as required under the policy.

For the purpose of these procedures, the term “**Respondent**” will be used for those individuals who are reported as having alleged violations of discrimination, harassment, sexual misconduct, dating violence, domestic violence, stalking, or retaliation due to one of these areas.

If there is a complaint about the **RO** or any staff member that is part of the **RO** office, or if the **RO** or **RO** staff has a complaint, that complaint should be made to the President. The President will appoint another trained individual to take the place of the **RO** for purposes of the complaint.

ANONYMOUS AND THIRD-PARTY REPORTING

The **RO** accepts anonymous and third-party reports of conduct alleged to violate this Policy and the College will follow up on such reports, to the extent possible. The individual making the report is encouraged to provide as much detailed information as possible and allow the **RO** and Investigative Officer (**IO**) to investigate and respond as appropriate. The **RO** and **IO** may be limited in the ability to follow-up or investigate an anonymous report unless sufficient information is furnished to enable the **RO** to identify support measures or contact appropriate individuals to remedy the situation. Additionally, the **IO** may not be able to conduct a meaningful and fair investigation.

CRIMINAL REPORTING

If someone is in immediate danger or needs immediate medical attention, the first place to report is 911. You may also report to the city/county police department at (406)232-3411.

Some forms of discrimination and harassment may also be crimes. For example, sexual assault, domestic violence, stalking, and rape are crimes. **Complainants** and witnesses should consider making criminal reports 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 non-emergency medical care;
- Get immediate law enforcement response for your protection;
- Assist in preventing a possible escalation to a more severe criminal behavior;
- Arrange a meeting with a Victim Advocate Service or Sexual Assault Nurse Examiner;
- Find counseling and support
- Preserve evidence (important in a criminal case);
- Initiate a criminal investigation; and,
- Answer questions about the criminal process.

Appropriate campus officials are available to assist you in reporting to local law enforcement, if you so choose. You may also decline to report to law enforcement officials. However, if a health or safety emergency, as defined by state or federal law, is found by the College to exist, the College is required to report alleged criminal incidents to appropriate law enforcement authorities.

EVIDENCE PRESERVATION

If a crime of dating violence, domestic violence, sexual assault, or stalking has occurred, it is important for individuals to consider preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order. The **RO** will provide information to the **Complainant** regarding resources available in the community including information regarding an off-campus sexual assault nurse examiner that is independent of the College.

JURISDICTION

The **RO** is limited to reports of **policy violations** that have/has occurred in the College's education program or activity where the College has substantial control over the context of the alleged harassment and the person accused of committing sexual harassment. While confined to this jurisdiction, the **RO** may still be able to provide support measures for individuals outside of the jurisdiction.

RELATION TO THE STUDENT CODE OF CONDUCT

The Hearing Decision Officer (**HDO**) is authorized to impose sanctions on students who are found to have violated the policy. The sanctions for discrimination, harassment, dating violence, domestic violence, sexual assault, sexual misconduct, stalking, or retaliation may include a suspension or disciplinary warning, conduct probation, eviction from campus housing, deferred suspension, suspension, expulsion, or any other sanction set forth in the Student Conduct Code, such as work requirements or restrictions, limitation of access to certain areas of campus and College property, imposition of mandatory educational or counseling requirements, and other supportive measures. The type and length of the sanction will be determined on a case by case basis. Reinstatement requirements are determined by the Dean of Student Engagement & Auxiliary Services in consultation with the **RO**. Disciplinary records for policy violations are maintained in the same manner as other disciplinary records.

STANDARD OF EVIDENCE

If a complaint moves forward to a formal hearing, the Hearing Decision Officer (**HDO**) will utilize the "Preponderance of the Evidence" standard in determining complaints whether the individuals are students or employees. This standard requires that the evidence supporting each finding be more convincing than the evidence in opposition to it; that is, it is more likely than not that the alleged conduct occurred.

CONFIDENTIALITY OF COMPLAINTS AND REPORTS

Parties in these processes, including the **Complainant**, the **Respondent**, and witnesses, have privacy rights and reasonable expectations of confidentiality in the investigation of matters subject to this procedure. In addition, the integrity of the process depends on ensuring reasonable expectations of confidentiality.

The **RO** will keep confidential the complaint, report, witness statements, and any other information provided by the **Complainant**, **Respondent**, or witnesses to the extent possible, but may disclose information as follows:

- To the **Complainant, Respondent**, an advisor of choice for the both **Complainant** and **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 and MCC Policy;
- To other College officials who have a need to know in performing their official college business, including taking interim, remedial, or disciplinary action;
- To government agencies who review the College's compliance with federal law;
- To Miles Community College Board of Trustees as necessary to perform their duties; and,
- As necessary to respond to litigation or formal investigation of a complaint filed or appealed to the Miles Community Board of trustees, state and federal agencies, and the court, or to respond to lawfully issued subpoenas.

The investigation Report of Findings and any written decision resulting from the appeals process will be disclosed only to the **Complainant, Respondent** and their advisor of choice, **RO**, and Discipline Authorities¹ subject to the protection of confidentiality as may be appropriate under the circumstances and in accordance with the requirements of FERPA. It will also be provided to College officials as necessary to prepare for subsequent proceedings (e.g., President and College attorneys). If otherwise required by law or legal process, the Report may be provided to other entities subject to the requirements of FERPA.

Information about complaints and reports, absent personally identifiable information, may be reported to College Officials and external entities for statistical and analysis purposes pursuant to federal and state law and College policy.

No information protected by a legal privilege or doctor-patient privilege may be used in an investigation unless the person holding the privilege has waived it.

If a **Complainant** or Reporter desires full confidentiality, he/she should speak to mental health counselors or health service providers, or victim advocate counselors who can maintain confidentiality. Counselors are available to students free of charge and can be seen on an emergency basis. Please contact the Dean of Student Engagement to set up an appointment with a counselor or for counselor contact information. You do not have to disclose full reasons for an appointment with a counselor. The **RO** may also assist you in contact information for local services that provide confidential support.

IMMEDIATE ACTION AND INTERIM REMEDIAL ACTION

MCC may take interim measures to assist or protect the parties during the grievance process. Remedial action taken does not imply involved parties are responsible or not responsible. Such remedies are put in place to ensure the integrity of the process. The College reserves the right to place the remedies on the **Complainant** and/or **Respondent** based on available options.

¹ In the case of employees, the Discipline Authority is the MCC 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 will be assigned by the Dean of Student Engagement or designee.

Remedial Actions are administrative steps on an interim basis taken to remedy a situation that has led to a complaint. The purpose of remedial action is to:

- Prevent serious and immediate harm to the **Complainant** and others;
- Prevent retaliation against any party;
- End discriminating or harassing behavior and prevent its recurrence; and
- Provide appropriate training in preventing discrimination.

Remedial action may include, but shall not be limited to:

- Altering the **Complainant's** or **Respondent's** work or academic environment;
- Providing training on discrimination or harassment;
- Meeting with **Respondent** and his/her supervisor to discuss changes of behavior;
- Reassignment or transfer;
- Changes in residence hall assignments;
- Changing advisors, mentors, supervisors or evaluators;
- Providing academic support services such as tutoring;
- Obtaining counseling or medical services;
- Providing escort service for a party's safety in moving about campus;
- Arranging for re-taking or course withdrawal without penalty;
- Issuance of a no-contact order; and
- Suspending an employee pending investigation.

The **RO** notifies the **Complainant** of immediate measures that are available such as a no contact order, no trespassing order, an order of protection, a restraining order or a similar lawful order issued by a criminal, civil or tribal court or the by the institution. No contact orders and no trespassing orders are issued by the institution and are issued by the **RO**, Discipline Authority, or designee. The college does not issue orders of protection or restraining orders; inquiries about these and other similar lawful orders should be directed to the Miles City Police Department at 406-232-3411.

A **Respondent** may be removed from the school's education program or activity if the **Respondent** poses an immediate threat to anyone's physical health or safety. If the **Respondent** is a College employee, the College is not prevented from placing that employee on administrative leave during the investigation.

The **RO** may also provide additional support measures for both parties.

REQUESTS FOR NO INVESTIGATION BY THE COMPLAINANT OR THIRD-PARTY REPORTER

If a **Complainant** or a third-party Reporter requests that no follow-up or investigation of an incident be conducted, the **RO** will consider the reasons for the request, including concerns about continued safety of the person reportedly harmed and members of the campus community. The **RO** must also balance considerations about the continued health and safety of members of the community against the **Complainant's** or third-party Reporters' desire not to have the report investigated.

The **RO** retains the right to initiate a formal or informal investigation based on the information provided. The **RO** may consult with appropriate campus officials, but the **RO** 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 stated above. All sexual misconduct reports will be conducted as a formal investigation.

The **RO** may provide supportive measures regardless if a case moves forward or is dismissed.

Should the **RO** be made aware or is able to easily identify the **Respondent** and a formal complaint is filed, the **RO** must inform all parties involved of the complaint.

Additionally, if the **RO** initiates an investigation in these circumstances, this Discrimination Grievance Procedure shall be followed to the extent reasonably applicable.

Role of the Responsible Official (RO)

The **RO** is charged with coordinating the MCC's compliance with federal civil rights laws, all of which are listed at the end of these procedures. The **RO** is not an advocate for either the **Complainant** or the **Respondent**. The **RO** will discuss the formal complaint process with the **Complainant** and ascertain whether or not the **Complainant** wants to file a formal complaint that will initiate a formal investigation.

The **RO** will explain to both parties the processes outlined below and the confidentiality provisions as outlined above. Where appropriate, the **RO** will provide to both parties the following information:

- A written grievance process that includes the process that occurs with a formal complaint;
- Explanation of rights and options to all parties involved;
- Options for obtaining medical and counseling services;
- Process to file a criminal report;
- Explanation of advocacy services and other confidential resources;
- Options for changing academic, living, transportation, and working situations;
- Other helpful campus and community resources;
- Other supportive measures with or without filing a formal complaint; and,
- Remind all parties that the **Respondent** is presumed not responsible at the onset of the process and can only be found responsible after the grievance process concludes if that is the determination.

The **RO** will offer to coordinate with other campus officials, when appropriate, to implement supportive measures and interim remedial measures described below. The **RO** will describe the process of a fair and impartial investigation. The **RO** will explain the right of the **Respondent** to review and respond to allegations and evidence against him or her. The **RO** will explain to both parties their rights to have an advisor of choice, with them during their interviews and during any stage of these procedures. If the report moves to a hearing, both parties should identify an advisor of choice. If either party does not identify an advisor of choice, one will be appointed.

If an individual does not want to pursue a complaint and the **RO** proceeds with an investigation, the **RO** will inform the individual that MCC is limited in the actions it can take without the cooperation of the individual. The **RO** 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.

The **RO** will provide to any student or employee who reports that he/she has been a victim of sexual misconduct, domestic violence, or stalking, whether occurring on or off campus, a written explanation of the student or employee's rights and options under this Discrimination Grievance Procedure, as well as support measures including counseling, consideration of extension of deadlines, possible modification of work or class

schedules, campus escort services, changing housing locations, mutual restrictions on contact between parties, and other measures.

The **RO** ensures that any remedies identified through the grievance process are provided and followed through.

ROLE OF THE INVESTIGATIVE OFFICER (IO)

The Investigative Officer (**IO**) is appointed by the **RO** once a formal complaint has been filed and the case moves forward to investigation. The **IO** must:

- Provide all parties equal rights and protections;
- Identify that the **Complainant** and **Respondent** are entitled to an advisor of choice for any meetings or hearings;
- Identify that the parties can request to inspect and review evidence equally;
- Communicate code of conduct policies pertaining to knowingly providing false information or statements during the grievance process;
- Confirm that the parties have received copies of the grievance process;
- Allow equal opportunity for the parties to present witnesses and evidence;
- Provide written notice of the date, time, location, participants and purpose of all interviews and meeting, with sufficient time for the parties to prepare; and,
- Identify the process that will be used if the case moves to a hearing.

Both parties and their advisor of choice shall be provided equal time to inspect and review the evidence obtained by the College as part of its investigation if the information is directly related to the allegations (regardless if the information may not be used to reaching a determination.) The evidence will also be provided at any hearing if one occurs.

The **IO** will also create an investigative report that fairly summarizes the evidence that the College has gathered about the alleged incident. The report will be shared with both parties at the same time with an opportunity to respond to items in the report in writing. If a response is submitted, the College must consider that response before finalizing the report and submitting to the parties before a hearing happens.

The **RO** will receive the final investigative report and appoint a Hearing Decision Officer (**HDO**).

ROLE OF THE HEARING DECISION OFFICER (HDO)

The Hearing Decision Officer (**HDO**) is appointed by the **RO** once an investigative report has been filed by the **IO** and serves as the decision maker for the case. The **HDO** is the individual who facilitates a live hearing that is an opportunity for both parties to tell their side of the story in front of the decision maker. The **HDO** must objectively evaluate the relevant evidence and reach conclusions about whether the **Respondent** is responsible for the alleged discrimination or harassment. The **HDO** cannot be the **RO** or the **IO**.

The **HDO** will schedule the live hearing location. If either party requests it, the entire live hearing will be held with the parties located in separate rooms with technology enabling everyone to see and hear each other. All hearings will be recorded in either audio, audiovisual, or in transcript form.

The **HDO** will:

- Utilize the “Preponderance of Evidence Standard” described below;
- Ensure that both parties have an advisor of choice. If a party arrives without an advisor of choice, the College will provide that party with an advisor, of the school’s choosing for the purpose of conducting cross examination on the party’s behalf (information about cross examination is explained below);
- Determine relevance, prior to witnesses or either party answers cross examination questions;
- Ensure all parties have the right to refuse to answer questions in the live hearing; however, if any party is not present or refuses to answer cross examination questions, the decision maker will exclude that party’s or witness’s statements and evaluates any evidence that doesn’t involve those statements (the **HDO** must never make inferences about the determination regarding responsibility based on the fact that a party or witness didn’t come to the hearing); and,
- Provide information to both parties about the right to appeal and permissible bases for appeal at the conclusion of the hearing.

Once the hearing is concluded, the **HDO** will make an ultimate decision of responsibility and any applicable sanctions or remedies in a written format and will issue this simultaneously to both parties.

The following information must be provided in the letter of determination:

- Identification of any portion of the College policies that were violated;
- Description of procedural steps taken by the College to get to the decision including all notices and interviews that took place, and site visits that occurred, and the hearing itself;
- A section that includes a finding of facts that introduced in the hearing;
- A section that includes conclusions after applying the facts to the College policies as they apply. For each allegation made in the formal complaint, there will be a written determination to each allegation;
- A statement and rationale for the ultimate determination of responsibility or not;
- Include any disciplinary sanctions or remedies the College will impose on the **Respondent** (if found Responsible) and how these remedies will restore or preserve equal access; and,
- A statement of the college procedures and rights to appeal and permissible bases.

ROLE OF THE APPEALS OFFICER (AO)

The Appeals Officer (**AO**) is appointed by the **RO** once a written appeal is submitted and identifies a basis for appeal stated in the appeals section below. The **AO** cannot be the **RO**, **IO**, or **HDO**.

The **AO** will notify both parties in writing of the appeal and provide a copy of the written appeal to the non-appealing party. The **AO** will allow both parties to submit a written statement supporting or challenging information provided in the appeal.

The **AO** will review the statements by both parties, along with the recordings or transcript of the hearing, and decides if there were conflicts, missing information not included in the hearing, or if the outcome and remedy result in substantial injustice. The **AO** will then issue a written decision and send it to both parties simultaneously. The written decision will include the purpose for the appeal, the procedures the **AO** took in reviewing records in the appeal, and a conclusion.

The **AO** may uphold, reverse, or amend the decisions of the **HDO** based on his/her review of the statements provided through the appeals process and review of the hearing.

IMMEDIATE ACTION AND INTERIM REMEDIAL ACTION

MCC may take interim measures to assist or protect the parties during the grievance process. Remedial Actions such as those described below under “Remedial Actions” may be taken on an interim basis.

The **RO** notifies the **complainant** of immediate measures that are available such as a no contact order, no trespassing order, an order of protection, a restraining order or a similar lawful order issued by a criminal, civil or tribal court or the by the institution. No contact orders and no trespassing orders are issued by the institution and are issued by the **RO**, Discipline Authority, or designee. The college does not issue orders of protection or restraining orders; inquiries about these and other similar lawful orders should be directed to the Miles City Police Department at 406-232-3411. The College may issue interim actions to both parties to ensure equal protection.

A **Respondent** may be removed from the school’s education program or activity if the **Respondent** poses an immediate threat to anyone’s physical health or safety. If the **Respondent** is a College employee, the College is not prevented from placing that employee on administrative leave during the investigation.

The **RO** may also provide additional support measures for both parties.

FORMAL GRIEVANCE PROCESS

Step 1: The **RO** may receive a report of alleged discrimination or sexual harassment or may have actual knowledge of above described **policy violations**. The **RO** will confer with and interview the **Complainant** to clarify the allegations, identify desired outcomes and obtain detailed information about the allegations.

The **RO** will discuss allegations with the **Complainant** and the **Respondent** and include written information about the grievance procedures and appropriate campus policy, as well as other helpful resources.

RO also considers whether immediate or interim actions or involvement of other MCC offices is appropriate.

RO determines whether the office has jurisdiction to investigate the matter. The **RO's** jurisdiction is limited to reports of **Policy Violations** that have/has occurred in a school's education program or activity where the school has substantial control over the context of the alleged harassment and the person accused of committing sexual harassment.

The **RO** will notify and update both parties of the timeframe for investigation, their right to an advisor of choice and to identify witnesses, provide any supporting evidence at any time during the investigation, and the opportunity for appeal.

Option 1: If the **RO** determines that there is no jurisdiction, the **RO** 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. This can be appealed (see "Appeals Process" below.)

Option 2: If the **RO** determines that there is jurisdiction, the **RO** will request a formal complaint from the **Complainant** (an official document alleging sexual harassment, discrimination and other alleged **policy violations**), and then proceed to Step 2.

Step 2: The formal complaint will then move into an investigative phase. The **RO** will assign the formal complaint to an Investigative Officer (**IO**) within ten (10) working days from submission of the complaint to conduct a fair and impartial investigation of the alleged **policy violations**.

Each party has the right to present witnesses and evidence. The **Complainant** and **Respondent** both have equal access to an advisor of choice for any meeting or hearing (see "Advisor of Choice" section below).

Typically, an investigation will be completed within thirty (30) working days of receipt of the complaint unless good cause is shown for delay.

The **IO** will collect and review written documents, interview the **Complainant**, the **Respondent**, identify and interview witnesses, and collect such other evidence as may be relevant to the investigation.

The **IO** will create an investigative report that fairly summarizes the evidence that has been gathered regarding the formal complaint. A report cannot be finalized until the evidence sharing happens and both parties have ten (10) working days to respond to the evidence in writing. These responses may be considered by the **IO** before finalizing the investigative report. The report will then be circulated to the parties at least ten (10) working days before a hearing, if a hearing occurs.

Step 3: At any time within five (5) working days prior to the date of the hearing, the **HDO** may call a pre-hearing conference. Topics discussed 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(es) should be called; and (d) time limits and order of presentation of evidence at the hearing. At the request of any party, the **HDO** will conduct separate meetings with the **Complainant** and the **Respondent** for purposes of the pre-hearing conference. The **HDO** may decide to set aside the hearing date for any period up to ten (10) working days to obtain additional witnesses or to resolve items brought up in the pre-hearing conference.

Step 4: The formal complaint will now move into a live formal hearing. The role of the **HDO** is to determine whether there is a preponderance of the evidence to believe that an individual engaged in a policy violation. This “preponderance of the evidence” standard requires that the evidence supporting each finding be more convincing than the evidence in opposition to it; that is, it is more likely than not that the alleged conduct occurred. The hearing will be recorded in either an audio or audiovisual format, or a transcript of any live hearing. Each party has the right to inspect these recordings/transcriptions.

The **HDO’s** decision shall be presented in the form of a written letter of determination (report of findings) within ten (10) working days of the conclusion of the hearing.

Option 1: If the **HDO** finds a **Policy Violation** did not occur, the matter is documented and the investigation is complete; in this case the **Complainant** may file an appeal of the finding in accordance with the Appeal Procedure.

Option 2: If the **HDO** finds that a **Policy Violation** did occur, disciplinary sanctions may be imposed by the College. The **Complainant** or **Respondent** may appeal the findings as provided below.

The decision is final if the parties don’t appeal or if at the conclusion of the appeal if one is filed. The **RO** will ensure that any remedies or sanctions are followed through.

Step 5: If an appeal is filed, it must be done within five (5) working days of the receipt of the **HDO’s** letter of determination/report of findings (see the appeals process below). The **RO** will appoint an Appeals Officer (**AO**) to consider the appeal. The AO will notify both parties of the appeal.

The **Complainant** and the **Respondent** will have ten (10) working days from notification of the appeal to submit written statements supporting or challenging the letter of determination/report of findings and the outcome of the case with supportive reasons.

The **AO** will review the statements by both parties, along with the recordings or transcript of the hearing, and issue a written decision and send it to both parties simultaneously within ten (10) working days from the deadline of submitting appeal statements.

Option 1: The **AO** upholds the report of findings in the letter of determination and that information provided through the appeals process did not affect the overall decision of the hearing. Sanctions, remedies, and outcomes remain the same.

Option 2: The **AO** reverses or amends the decision of the **HDO** based on his/her review of the statements provided through the appeals process and review of the hearing. The **AO** may also amend sanctions or remedies identified by the **HDO** in the original letter of determination and/or add additional sanctions and remedies.

Once the statement is issued by the **AO**, the appeal has been decided and the decision becomes final.

ESTIMATED TIMELINE

The formal grievance process has defined timelines for reporting, investigations, hearings, and appeals. These timelines are estimates based on the complexity and severity of the allegation and the amount of witnesses that must be followed up with. This timeline is a guide but should there be good cause shown for a delay, both parties will be notified of any expected resolution timeframe.

- Report Filed and the RO will appoint IO
- IO will notify all parties of investigation within 10 working days
- IO investigation that will last no more than 30 working days
- IO will submit investigative report to all parties
- Parties have 10 working days to review investigative report and submit response to evidence if needed
- IO will finalize investigative report and submit to both parties at least 10 working days prior to hearing
- Pre-Hearing Meeting may be scheduled up to 5 working days prior to hearing
- Hearing may vary based on cross-examination and number of witnesses called
- HDO will issue a letter of determination/report of findings within 10 working days from the completion of the hearing
- Any appeal must be submitted 5 working days from the issuance of the letter of determination/report of findings
- The AO will notify parties of the appeal and allow for 10 working days to submit written support or challenge to the letter of determination on approved grounds.
- The AO will then have 10 days to review all documentation to make final determination.

ADVISOR OF CHOICE

The Complainant and Respondent may each have an advisor of choice throughout the grievance process. Any party with an advisor of choice, will be asked to complete a release of information giving the College authority to release information to their advisor of choice. Both parties' advisor of choice has equal access to any meeting or hearing and may inspect and review records or evidence throughout the process where the evidence obtained by the College is directly related to the allegations raised in the formal complaint. The advisor of choice is not an active participant through the initial phases of the grievance procedure or the investigation. Their role is merely to advise the **Complainant** and **Respondent**. If either party has an advisor of choice serving as legal counsel, the College may have its legal counsel present to ensure that the rights of all interested person and MCC are respected. The advisor of choice may be a union representative for union employees. During a formal hearing, each participant must have an advisor of choice present. If either party does not have one, the College will appoint one at no cost to the individual. During the formal hearing, the advisor of choice may be an active part of the cross-examination of all parties and witnesses. The **HO** has the responsibility to determine if the cross-examination is relevant prior to answers being provided by either party or witnesses.

CROSS EXAMINATION IN HEARINGS

The **Complainant's** and **Respondent's** advisor of choice is allowed to cross examine other parties and witnesses during the formal hearing of the grievance process, with real time back and forth questions that challenge credibility. The parties themselves may never personally question or cross-examine anyone. Cross examination means that the party's advisor of choice asks questions that might challenge the other party's denials or allegations. Questions must be relevant and the **HDO** must decide if a question is relevant before the party or witness answers it. A **Complainant's** privacy must be protected by only allowing questions or evidence about prior sexual history if it is used to show that someone other than the

Respondent committed the alleged **policy violation**, or it relates to sexual behavior between the **Complainant** and the **Respondent** and is offered to prove consent.

APPEALS PROCESS/FILING AN APPEAL

A request for an appeal must be filed within five (5) working days of the receipt of the **RO**'s dismissal of a complaint prior to a formal hearing or the **HDO**'s letter of determination or report of findings. The request for an appeal shall be submitted to the **RO** or **HDO**. The **RO** will appoint an **AO** who shall immediately provide a copy of the appeal to the non-appealing party.

The request for an appeal must be in writing and must describe the appellant's desired outcome and a statement of how the appellant believes the case should continue to a hearing or to appeal the ultimate findings, outcomes, and sanctions of the formal hearing when:

- Procedural irregularities exist(ed) that may have affected the outcome of the case;
- New evidence has been discovered that was not reasonably available at the time of the determination or dismissal of the case;
- A conflict of interest or bias on the part of the **RO**, **IO**, or **HDO** exist(ed) that affected the outcome;
- Findings or recommendations were arbitrary; or
- Issued findings and recommendations that if adopted would result in substantial injustice.

The **RO** or **AO** may continue to impose interim remedial measures during the appeal, as required by the circumstances.

Once the appeal is filed by either party, the **Complainant** and **Respondent** will be requested to submit written statements supporting or challenging the outcome of the case with supportive reasons and the **AO** will use those statements, the letter of appeal and the letter of determination or report of findings, to make a final decision.

Notification of any change to the result of findings or disciplinary sanctions will be communicated to both parties. Once the appeal is determined by the **AO**, the decision is final.

TRAINING

All MCC officials who are involved in the discrimination grievance process, including the **RO**, **IO**, **HDO**, **AO**, 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, domestic violence, stalking, and retaliation, conducting investigations, protecting confidentiality, and recognizing the link between alcohol and drug use and sexual assault and sexual harassment.

The **RO**, **IO**, **HDO**, and Title IX Deputies shall receive annual training on sexual misconduct, domestic violence, and stalking and on how to conduct investigations and appeal processes that protect the safety of victims and promote accountability.

Upon their assignment to an investigation or appeal, the names of the **RO** and **IO** will be provided to the parties. 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 the **RO** and **IO**, that conflict must be disclosed to both parties. In some instances, the College may have to procure outside Investigators.

Materials used to train will be updated on the Title IX page at www.milesc.edu

Other training items may include technology use, evidentiary and cross-examination relevance, how to create reports, etc.

RECORD RETENTION

Information presented in the grievance procedure shall be retained for seven years. Information retained includes:

- Record of the College's investigation and any determinations regarding responsibility;
- Any appeal materials associated with an appeal such as written statements submitted;
- Audio, audiovisual, or transcript records of any formal hearing;
- Any record of any discipline against a Respondent or remedies provided;
- Any supportive measures taken in response to a report or complaint (and documentation of those offered to which party, and where the Complainant opts not to proceed with a formal complaint) to show that the College was not deliberately indifferent to take measures designed to restore or preserve equal access to the education program or activity; and,
- All materials used to train Title IX Coordinators, Investigators, and Hearing Officers.

RETALIATION

Retaliation against an individual for taking any of the actions in support of the grievance procedure is prohibited. It is central to the values of the College that any individual who believes that they may have been the target of unlawful discrimination or harassment feel free to report their concerns for appropriate investigation and response, without fear of retaliation or retribution.

Retaliation is action taken by an accused individual or an action taken by a third party against any person because that person has opposed any practices forbidden under campus policy. This includes action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment, or sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of an individual's complaint or participation in the grievance procedure. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by campus policy.

EMPLOYEE PARTICIPATION

Employees shall participate in this Grievance Procedure as required and failure to participate as requested may be grounds for discipline.

EXTERNAL COMPLAINTS

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

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