EQUAL OPPORTUNITY GRIEVANCE PROCEDURE

This procedure may be used when a faculty, staff, or student believes there has been a violation of Carroll College’s Equal Opportunity Policy (including discrimination or harassment based on a protected class, sexual misconduct, or retaliation) or other equal opportunity laws by a faculty, staff member, student, or vendor or other non-employee. The procedure also addresses complaints or reports of retaliation against those who have opposed practices prohibited under Carroll’s Equal Opportunity Policy, those who have filed complaints or reports under this policy, and those who have testified or otherwise participated in enforcement of this policy or Carroll’s Equal Opportunity Policy.

REPORTING

There are several avenues for submitting a complaint or report:

1. Equal Opportunity Officer (Director of Human Resources) (“EO”)/Title IX Coordinator
2. Any Vice President
3. Any Department Chair

Complaints and reports can be made through voicemail, email, written letter, or personal conversation. Complaints of sexual misconduct to include sexual harassment, sexual assault, stalking, relationship violence, and sexual exploitation may be made through the secure online reporting form (https://www.carroll.edu/sexual-misconduct/report-sexual-misconduct) or through the mechanisms listed above. All such complaints or reports must be forwarded to the EO/Title IX Coordinator. If there is a complaint or report about the EO or any staff member within the Human Resources Office, the complaint should be filed with the President of the College. The President will appoint another trained individual to take the place of the EO for purposes of administering this policy. If the person who is the subject of the grievance is the Vice President who would otherwise render a decision regarding sanctions for a violation of the Equal Opportunity Policy, the President will assume the responsibilities of the Vice President as described in this policy. If the person who is the subject of the grievance is the President, the Chair of the Board of Trustees will assume the responsibilities of the Vice President as described in this policy.

REPORTING TO LAW ENFORCEMENT

If an individual is in immediate danger or needs immediate medical attention, the first place to report is 911. The individual is also encouraged to make a report of criminal conduct to the Helena Police Department (442-3233) even if he or she is not in immediate danger. Some forms of discrimination and harassment may also be crimes, such as sexual assault, stalking, and rape. It is also important to preserve evidence that may be necessary to the
proof of a sexual crime. Calling local law enforcement can help you obtain emergency and nonemergency medical care; get immediate law enforcement response for your protection; understand how to obtain assistance in a situation that may escalate to more severe criminal behavior; arrange a meeting with victim advocate services; find counseling and support; initiate a criminal investigation; obtain information regarding orders of protection; and answer questions about the criminal process. While the individual is not required to make a criminal report, Carroll’s Victim’s Advocate or Counseling Center or Helena’s Friendship Center is available to assist in notifying law enforcement if the individual chooses to do so.

**ROLE OF THE EQUAL OPPORTUNITY OFFICER**

The Equal Opportunity Officer/Title IX Coordinator at Carroll College is Renee McMahon, Director of Human Resources. This position is responsible for the development, implementation, and management of equal opportunity policies and programs at Carroll College. This position is not an advocate for either the Complainant or the individual accused of a policy violation (“Respondent”). The EO will explain to both parties the informal and formal processes and the confidentiality provisions outlined in this policy. Where appropriate, the EO will provide to both parties written information about options for obtaining medical and counseling services; making a criminal report; receiving advocacy services; confidentiality; how to request interim measures to address the misconduct; and helpful campus and community resources. Both parties will also receive a copy of this policy.

The EO will describe the process of a fair and impartial investigation. The EO will explain the right of the Respondent to review and respond to allegations and evidence against him or her. The EO will explain to both parties their rights to have an advisor of their choice with them during their interviews and during the hearing stage of these procedures. If an individual does not want to pursue a complaint, the EO will inform the individual that the College is limited in the actions it can take without the cooperation of the individual. The EO 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.

**INTERIM MEASURES**

The EO will offer to coordinate with other campus officials, when appropriate, to implement interim remedial measures such as no-contact orders, rearrangement of working arrangements, or accommodations. For students, such measures may include arranging for changes in class schedules or living, working, or transportation arrangements, offering counseling, and modifying test schedules or other class requirements temporarily.

At any time during the grievance process, the EO may make a recommendation to the appropriate Vice President regarding immediate remedial action if necessary to protect a
party or maintain the status quo pending completion of the grievance process. Such measures may include offering alternative work schedules, escorts, parking, or changes in reporting relationships or work location.

**RESOLUTION**

A faculty, staff, or student who believes there has been a violation of the Equal Opportunity Policy or other equal opportunity laws has two avenues for resolution of the alleged violation: formal and informal. Regardless of which avenue the individual chooses, the alleged violation should be reported as soon as possible after the incident or action occurs. Early reporting is encouraged because the College’s ability to investigate an act or report diminishes with time.

**A. Informal Process and Resolution**

A Complainant has the option to proceed informally, when permissible. In cases involving allegations of sexual assault, informal resolution is not appropriate, even if both the Complainant and Respondent indicate a preference for informal resolution.

Except in cases involving sexual assault, if the Complainant, the Respondent and the EO all agree that an informal resolution should be pursued, the EO shall attempt to facilitate a resolution of the conflict that is agreeable to all parties as soon as feasibly possible. Under the informal process, the EO shall be required only to conduct such fact-finding as is useful to resolve the conflict and is necessary to protect the interests of the parties, the College and the community. Typically, the informal process will be completed within twenty days of receipt of the report. If there is good cause to extend the deadline, both parties will be notified in writing of a revised expected resolution timeframe.

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

Any informal resolution must adequately address the concerns of the Complainant, as well as the rights of the Respondent and the overall intent of the College to stop, remedy, and prevent policy violations. Informal actions might include, but are not limited to, providing training to an individual or work unit; having an informal discussion with an individual whose conduct, if not stopped, could rise to the level of discrimination or hostile work environment; or having a confidential conversation with a student, supervisor, staff member, or faculty member.

**B. Formal Process and Resolution**

If the complaint is not resolved informally or if any of the parties or EO wish to move to a formal process, a grievance may be filed with the EO. The grievance should be in writing
and describe the nature of the problem and the desired solution. In addition, a list of the names of the person(s) who have knowledge about the grievance and copies of any relevant documents should also be submitted.

A. **Formal Process**

**Step 1:** EO discusses the grievance with the individual who filed the grievance ("Complainant"), and the Respondent as appropriate, including providing information about the policy and procedures and other helpful resources. EO also considers whether immediate or interim actions or involvement of other Carroll College offices is appropriate. EO determines whether the office has jurisdiction to investigate the matter. The EO only has jurisdiction to investigate complaints alleging discrimination, harassment, sexual misconduct, stalking, and retaliation in violation of the Equal Opportunity policy.

Option 1: If the EO determines that there is no jurisdiction, the EO will offer to assist the Complainant and, as appropriate, the Respondent, in finding appropriate campus and off-campus resources for addressing the issue of concern.

Option 2: If the EO determines that there is jurisdiction, the EO will proceed to Step 2.

**Step 2:** EO conducts or oversees the conducting of a fair and impartial investigation of the grievance. During the investigation, both the Complainant and Respondent may identify witnesses and submit documents. Typically an investigation will be completed within twenty (20) days of receipt of the grievance. If there is good cause to extend the deadline, both parties will be notified of a revised expected resolution timeframe.

Only a trained investigator will conduct an investigation. Respondents will have the opportunity to review and respond to evidence considered against them.

**Step 3:** EO or designated investigator determines whether there is a preponderance of the evidence to believe that an individual violated the Equal Opportunity Policy. This means that individuals are presumed not to have engaged in the alleged conduct unless a "preponderance of the evidence" supports a finding that the conduct has occurred. This "preponderance of the evidence" standard requires that the evidence supporting each finding be more convincing than the evidence in opposition to it.

In making the determination of whether harassment has created a hostile environment in violation of the Equal Opportunity Policy, the EO or designated investigator will consider not only whether the conduct was unwelcome to the Complainant, but also whether a reasonable person in the Complainant’s situation would have perceived the conduct as objectively offensive. The EO’s findings will be in writing and will be provided to both the Complainant and to the Respondent(s).

Option 1: If EO or designated investigator cannot determine by a preponderance of evidence that the alleged violation of the Equal Opportunity Policy occurred, the
matter is documented, communicated to both the Complainant and Respondent, and closed; in this case the Complainant may appeal the finding to the Equal Opportunity Grievance Committee, as described below.

Option 2: If EO or designated investigator finds that a preponderance of the evidence of a policy violation exists, the EO’s or investigator’s written report will include recommendations for steps to take to prevent recurrence of any such violation, and as appropriate, remedies for the Complainant. The written finding will be provided to the Vice President with jurisdiction over the Respondent for a determination of appropriate sanctions. The College will take prompt and effective remedial action if the Equal Opportunity Policy has been violated. The action taken must be commensurate with the severity of the offense. The appropriate Vice President will communicate his or her decision regarding sanctions to the Respondent and the EO. The EO will inform the Complainant of the sanctions as permitted by state and federal law.

Appeals to the Equal Opportunity Grievance Committee

Filing an Appeal

An appeal to the Equal Opportunity Grievance Committee must be filed within five (5) working days of the receipt of the Vice President’s decision, or the EO’s or designated investigator’s decision, as applicable, unless good cause can be shown for an extension of time. The appeal must be filed with the EO. The appeal must be in writing and must describe the appellant’s desired outcome; as well as describe how the appellant believes: (1) there is new information sufficient to alter a decision, but only if the new information was not known to the appellant during the investigation and could not have been discovered by the appellant if sought with reasonable diligence; (2) there is reason to believe that a procedural error occurred during the grievance process; or (3) the sanctions imposed are not appropriate for the violation which the Respondent was found to have committed.

Training

All Carroll College officials who are involved in the equal opportunity grievance process, including the EO, designated investigators, Equal Opportunity Grievance Committee members, and Vice Presidents, will have adequate training. Training will be conducted annually and will include, but is not limited to, recognizing and appropriately responding to allegations of discrimination, harassment, sexual misconduct, and retaliation, protecting confidentiality, recognizing the link between alcohol and drug use and sexual assault and sexual harassment, and how to conduct an investigation and grievance process that protects the safety of victims and promotes accountability.
Composition of the Committee

The Equal Opportunity Grievance Committee shall have five (5) members. Of the five members, two shall be members of the faculty, and two shall be members of the non-academic staff. If the Complainant is a faculty member, the fifth member of the Committee shall be an additional faculty member. If the Complainant is a staff member, the fifth member of the Committee shall be an additional staff member. If the Complainant is a student, the fifth member shall be a student chosen from the pool of Student Conduct Board members.

Selection of Members

At the beginning of each fall semester, each Vice President (Enrollment, Finance & Administration, Community Relations, Academic Affairs, Student Life, and Institutional Advancement) will invite two benefit-eligible staff members from their respective divisions to serve in an Equal Opportunity Grievance Committee member pool. Additionally, the Vice President for Academic Affairs will invite four faculty from each of the three divisions (Science, Social Science, and Humanities) to serve in the Equal Opportunity Grievance Committee member pool. Students are solicited to serve on the Equal Opportunity Grievance Committee. No more than 12 students will be considered for serving in the pool after a letter of recommendation from a faculty or staff member has been submitted to the Director of Community Living, he/she has approved the student's application, and the required training has been completed.

Members of the Equal Opportunity Grievance Committee pool must agree to undergo annual training, as described above, and agree to serve on an Equal Opportunity Grievance Committee if one is convened.

Conflict of Interest

If a matter is appealed to the Equal Opportunity Grievance Committee, the EO will ask the Complainant and Respondent if they feel anyone in the Equal Opportunity Grievance Committee pool would have a conflict of interest if asked to serve on a Committee considering the matter. A conflict of interest may exist when personal considerations, including without limitation a financial interest or personal relationship, may compromise or may have the appearance of compromising an individual's ability to exercise judgment in a particular matter. If a member of the Committee pool is identified by either the Complainant or the Respondent as having a conflict of interest, the identified pool member will not be considered for service on the Committee considering that particular matter.

Following the initial conflict of interest inquiry, the EO will solicit volunteers from the remaining pool to serve on an Equal Opportunity Grievance Committee to consider a particular matter. The EO will then select five members from among the volunteers and provide them with preliminary information regarding the matter, including the names of the parties and the nature of the grievance. The EO will ask the five members if they believe
a conflict of interest exists. If any member believes they have a conflict of interest, the member will be removed from consideration for service on the particular Equal Opportunity Grievance Committee, and the EO will invite another person from the list of volunteers to serve on the Committee. This process will be repeated, if necessary, until all five members of the Committee confirm that they do not have a conflict of interest in considering the particular matter. When that occurs, the Equal Opportunity Grievance Committee is established.

Appointment of Chair

The established Equal Opportunity Grievance Committee members shall appoint the Chair from among themselves.

Standard of Review

The Equal Opportunity Grievance Committee reviews the findings and recommendations of the EO. The committee may approve, overturn, or modify the findings and recommendations of the EO if it finds that (1) there is new information sufficient to alter a decision, but only if the new information was not known to the appellant during the EO’s investigation and could not have been discovered by the appellant if sought with reasonable diligence; (2) there is reason to believe that a procedural error occurred during the grievance process; or (3) the sanctions imposed are not appropriate for the violation which the Respondent was found to have committed.

Notice of Hearing

Within ten (10) working days of receipt of the appeal, the EO will notify the Complainant and the Respondent of the time and place of the hearing before the Equal Opportunity Grievance Committee. This process might be extended during periods between academic semesters when a quorum of the committee cannot be convened. The hearing will normally be scheduled within thirty (30) days of receipt of the written appeal. If such an appeal causes a significant delay, the EO will consider interim measures, as described above, to continue to protect the parties during the process.

Preparation for and Conduct of the Hearing

Written Statements on Appeal

Within ten (10) working days of filing the appeal, the party appealing the decision must submit to the EO the following information:

(a) detailed statement regarding the grounds for appeal; (b) names and addresses and anticipated testimony from witnesses to be called who can testify regarding the grounds for appeal; (c) copies of any documents offered as evidence in support of the grounds for appeal; (d) additional materials the party believes the committee should obtain prior to the hearing and relating to the grounds for appeal; (e) reference to the portion of the Equal
Opportunity policy alleged to be violated; (f) specific remedy(ies) requested; and (g) whether the party will be represented at the hearing by an advisor of the party's choice and the identity of the advisor.

The EO will forward the information received to the non-appealing party within three working days of receipt. The non-appealing party may also submit the information described in (a) through (g), above, within five working days after receipt of the appealing party's information. This information will be forwarded to the other party within three working days of receipt.

**Representation by Advisor**

Both parties have a right to be represented by an advisor of their choosing. The role of a party's advisor shall be limited to consultation with their party and their party's witnesses. The EO will inform each party and the Grievance Committee of the advisor(s) should there be any.

**Forwarding Appeal Documents**

The EO will forward copies of the EO's or investigator's written investigation report; the Vice President's decision and any sanctions; the above-listed materials; and any additional evidence relevant to the matter to the members of the Equal Opportunity Grievance Committee at least five (5) days prior to the hearing.

**Pre-hearing Conference**

Prior to the date of the formal hearing the Chairperson of the Equal Opportunity Grievance Committee may call a pre-hearing conference. Topics discussed at a pre-hearing conference may include, but are not limited to: (a) whether the evidence presented is complete; (b) whether additional investigation is required; (c) whether additional witness should be called; and (d) time limits and order of presentation of evidence at the hearing. At the request of any party, the Committee will conduct separate meetings with the appellant and the respondent for purposes of the pre-hearing conference. Both parties must have timely and equal access to any information that will be used during the hearing.

With concurrence of a majority of the Equal Opportunity Grievance Committee, the hearing date may be postponed up to ten (10) days for additional investigation or to obtain additional witnesses or evidence.

**The Hearing**

The Chair of the Equal Opportunity Grievance Committee will conduct the hearing. The hearing will be a non-adversarial proceeding and strict rules of evidence will not be applied. However, the Chair of the Committee may limit or refuse to allow evidence or testimony that is not reasonably related to the grounds for appeal.
The hearing will be conducted to assure fairness. The parties and witnesses will address the members of the Committee rather than each other. The Chair will be the final arbiter of all matters of procedure. All hearings are closed to the public.

The Decision

Within ten (10) working days of the conclusion of the hearing, the Equal Opportunity Grievance Committee will issue a written recommendation to the parties, the EO and to the Vice President with authority over the Respondent. The written recommendation will contain an analysis of whether (1) there was new information sufficient to alter a decision, but only if the new information was not known to the appellant during the EO's investigation and could not have been discovered by the appellant if sought with reasonable diligence; (2) there was reason to believe that a procedural error occurred during the grievance process; and (3) the sanctions imposed were not appropriate for the violation which the Respondent was found to have committed. The written recommendation will also contain the Equal Opportunity Grievance Committee's recommendation to approve, overturn, or modify the EO's or investigator's decision. The President will then review the EO's report, the vice president's decision regarding sanctions, and the Equal Opportunity Grievance Committee's recommendation. Within ten (10) calendar days of receiving the Equal Opportunity Grievance Committee’s recommendation, the President will approve the Equal Opportunity Grievance Committee’s recommendation unless 1) there was new information sufficient to alter a decision, but only if the new information was not known to the appellant during the Grievance Committee's investigation, 2) there was reason to believe that a procedural error occurred during the grievance process; or 3) the sanctions imposed were not appropriate for the violation which the Respondent was found to have committed. If it is determined that one of the aforementioned factors exist, within ten (10) days of receiving the Grievance Committee’s recommendation, the President will request that the Equal Opportunity Grievance Committee reevaluate their recommendation by addressing the factor(s) identified by the President. Within ten (10) calendar days of the request for reconsideration, the Grievance Committee will submit their final written recommendation to the President. The President will analyze the final recommendation on whether (1) there was new information sufficient to alter a decision, but only if the new information was not known to the appellant during the EO’s investigation and could not have been discovered by the appellant if sought with reasonable diligence; (2) there was reason to believe that a procedural error occurred during the grievance process; and (3) the sanctions imposed were not appropriate for the violation which the Respondent was found to have committed. Based on these factors, within ten (10) calendar days of receiving the final recommendation, the President will render a written decision that will modify, overturn, or approve the Grievance Committee's final recommendation. The President's decision is the final step of the Equal Opportunity Grievance Procedure.

The EO will communicate the final decision to the Equal Opportunity Grievance Committee, the Respondent, and the Vice President with jurisdiction over the Respondent. The EO will inform the Complainant of the sanctions as permitted by state and federal law.
CONFIDENTIALITY

The integrity of the grievance process depends on ensuring reasonable expectations of confidentiality. The EO will keep confidential the complaint, report, witness statements, accommodations provided to the Complainant (if possible), and any other information provided by the Complainant, Respondent, or witnesses, and will disclose this information only to the Complainant, Respondent, or witnesses, as necessary to give fair notice of the allegations and to conduct the investigation; to law enforcement consistent with state and federal law and College policy; to other College officials as necessary for coordinating interim measures or for health, welfare, and safety reasons or for subsequent proceedings under this policy (e.g. the appropriate vice president, the President, and legal counsel); and to government agencies who review the College’s compliance with federal law. Information about complaints and reports, absent personally identifiable information, may be reported to College officials and external entities for statistical and analytical purposes pursuant to state and federal law and College policy.

COMPLAINANT REQUESTS NO INVESTIGATION

If a Complainant requests confidentiality or that the complaint not be pursued, the college will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a Complainant insists that his or her name or other identifiable information not be disclosed to the Respondent, Carroll will inform the Complainant that its ability to respond may be limited. The college will also inform the Complainant that Carroll prohibits retaliation against him or her for reporting a violation of the Equal Opportunity policy and that the college will not only take steps to prevent retaliation but will also take strong responsive action if it occurs.

Carroll College will evaluate Complainant’s request that his or her name or other identifiable information not be revealed in the context of the college’s responsibility to provide a safe and nondiscriminatory working environment. The EO will initiate confidential consultation with appropriate individuals to analyze the situation and assist in determining appropriate measures to take. Consultation will occur with the Vice President for Student Life, the Vice President for Administration, the Associate Vice President for Academic Affairs, and legal counsel. This group will weigh the request for confidentiality against the seriousness of the alleged conduct, whether there have been other complaints involving the same Respondent, and concerns about continued safety of the person reportedly harmed and members of the campus community. The group will decide whether a formal investigation should be conducted or whether the College should respond to the report in another manner, including taking informal actions such as those described in this policy.

ANONYMOUS AND THIRD PARTY REPORTING

The EO accepts anonymous and third-party reports of conduct alleged to violate the Equal Opportunity Policy for purposes of compiling statistics of reported crimes. The individual
making the report (Reporter) is encouraged to provide as much detailed information as possible to allow the EO to investigate and respond as appropriate, including the date, location, and the type of incident. The EO may be limited in the ability to investigate an anonymous report unless sufficient information is furnished to enable the EO to conduct a meaningful and fair investigation.

**COOPERATION**

If an individual is not personally a victim of harassment or discrimination, but observes actions against others which the individual believes to be unlawful harassment or discrimination, the individual is required to notify the Equal Opportunity Officer/Title IX Coordinator. Exceptions to this include health care and mental health care professionals, victim advocates, and priests within the context of the sacrament of confession.

As a condition of their employment, employees are expected to cooperate in investigations of complaints filed under this policy. Employees’ failure to cooperate may result in discipline, up to and including termination. The college prohibits retaliation against any individual because he or she has filed a grievance under this policy, or against anyone who has testified, assisted, or participated in any manner in an investigation or a report of alleged harassment or discrimination.

**EXTERNAL COMPLAINTS**

Employees who believe that Carroll College has discriminated on the basis of race, color, national origin, sex, including sexual harassment, disability, age or retaliation may file a complaint with the Office for Civil Rights (OCR) of the U.S. Department of Education based in Seattle, Washington or the Educational Opportunities Section (EOS) of the Civil Rights Division of the U.S. Department of Justice, and a complaint based on religion with EOS of the U.S. Department of Justice.

Complaints based on discrimination or harassment in employment on the basis of race, color, national origin, sex, including sexual harassment, disability, religion, creed, pregnancy, marital status, or retaliation may be filed with the Montana Human Rights Bureau: [http://erd.dli.mt.gov/human-rights-bureau.html](http://erd.dli.mt.gov/human-rights-bureau.html), 406-444-4356, or the U.S. Equal Employment Opportunity Commission: [http://www.eeoc.gov/employees/charge.cfm](http://www.eeoc.gov/employees/charge.cfm), 800-669-4000. The filing deadlines and the date from which they run may vary, depending on the type of discrimination or harassment alleged, whether the complaint is filed under state or federal law or both, and whether the complaint is first filed under this policy. The filing deadline may be as short as 180 days, or it might be longer, in some cases up to 300 days. Due to the complexity of the varying filing deadlines and the consequences of an untimely filing, an employee who is considering filing a complaint with a public agency is encouraged to seek legal advice regarding applicable filing deadlines or to contact the Montana Human Rights Bureau, the EEOC, or the U.S. Department of Education for further information.