



Office of Equity  
UNIVERSITY OF COLORADO  
**DENVER | ANSCHUTZ MEDICAL CAMPUS**

University of Colorado  
Denver | Anschutz Medical Campus  
Office of Equity  
Resolution Procedures

*Effective August 24, 2023*

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# I. Overview and Mission Statement of the Office of Equity

## A. Office of Equity Mission Statement

The Office of Equity's (OE) mission is to foster an inclusive environment for all members of the University of Colorado Denver | Anschutz Medical Campus (CU Denver | CU Anschutz) community. Utilizing a comprehensive, integrated approach, the OE facilitates equal access to education and employment by engaging in transparent case resolutions, conducting impartial investigations, offering supportive and safety measures, and providing prevention education.

The OE is committed to preventing discrimination and harassment based on race, color, national origin, pregnancy, sex, age, disability, creed, religion, sexual orientation, gender identity, gender expression, veteran status, marital status, political affiliation, or political philosophy. The OE is also committed to preventing any form of related retaliation as prohibited by University Policies and state and federal laws.

## B. Office of Equity Overview

The OE implements and enforces [CU Administrative Policy Statement 5014, the University of Colorado Sexual Misconduct, Intimate Partner Violence, and Stalking Policy](#) ("Sexual Misconduct Policy"), the [CU Denver | CU Anschutz Campus Administrative Policy 3054, the Nondiscrimination Policy](#) ("Nondiscrimination Policy") and [CU Administrative Policy Statement 5015, the University of Colorado Policy on Conflicts in Cases of Amorous Relationships](#) ("Amorous Relationships Policy").

This document identifies the OE Resolution Procedures ("Procedures") the OE follows when it receives a report alleging a violation of these University Policies, which should be read alongside these Procedures as they provide further definitions.

The OE uses these Procedures to investigate and resolve any such allegations and to impose disciplinary sanctions against individuals found responsible for violating the Policies. The Procedures do not constitute a contract, whether express or implied, between the University and any person who is subject to requirements. The University reserves the right to modify these Procedures at its discretion and without notice.

The OE and Title IX Coordinator are responsible for, and may delegate responsibility and authority for, the following operations:

- Ensuring that reports of Prohibited Conduct are being handled appropriately and in a timely manner;
- Overseeing adequate, reliable, and impartial investigations of reports of Prohibited Conduct;
- Evaluating whether a Formal Complaint should proceed over a *complainant*'s decision to not move forward due to the University's obligation to provide a safe and nondiscriminatory environment;
- Evaluating whether a Formal Complaint must be dismissed for jurisdictional bases;
- Referring matters for further action or discipline for inappropriate or unprofessional conduct under other applicable policies or Procedures even if a Policy violation is not found. No provisions of the Policy shall be construed as a limitation upon the authority of the

- appointing/disciplinary authority to initiate disciplinary action for inappropriate or unprofessional conduct;
- Ensuring facilitation of supportive measures for all parties;
- Ensuring broad publication of the campus complaint processes and Procedures, including posting the process and the Procedures on an appropriate campus website;
- Providing an annual report to the President and the appropriate campus Chancellor documenting:
  - (a) the number of reports or Formal Complaints of alleged violations the Policies; (b) the categories (i.e., student, employee, or other) of the parties involved; (c) the number of Policy violations found; (d) the number of appeals taken and the outcomes of those appeals; and (e) examples of sanctions imposed for Policy violations;
- Reviewing and confirming that the relevant Policy statements of the campus Annual Security Report pursuant to the Clery Act are consistent with the Policy and campus complaint process and Procedures;
- Monitoring campus compliance with this Policy;
- Ensuring there is ongoing training and education regarding reporting and preventing Sexual Misconduct for all students, faculty and staff;
- Ensuring that Title IX Coordinators, investigators, and decision-makers are thoroughly trained.
- Maintaining records and related documentation of compliance with the Policy, including, but not limited to, retaining copies of any training documentation, tracking student and employee training participation, documenting each step of the campus complaint process and Procedures, including supportive measures, investigation, hearing, sanctioning, and appeal; and
- Ensuring broad dissemination of the statement that the University shall not discriminate in employment or in its education programs and activities on the basis of protected classes as stated herein, including sex, pursuant to Title IX.

## **II. Purpose and Scope**

### **A. Legal Compliance**

The Procedures are intended to comply with the requirements of the following federal and state laws, their implementing regulations, and related agency guidance, including but not limited to:

- Equal Pay Act of 1963;
- Civil Rights Act of 1964, including Title IV, Title VI, and Title VII;
- Title IX of the Education Amendments of 1972 (“Title IX”);
- Rehabilitation Act of 1973 (Sections 503 and 504);
- Vietnam Era Veterans Readjustment Assistance Act of 1974;
- Family Educational Right and Privacy Act (“FERPA”) of 1974 (as amended by the Higher Education Amendments of 1998);
- Age Discrimination Act of 1975;
- Age Discrimination in Employment Act of 1976;
- Pregnancy Discrimination Act of 1978 (“PDA”);
- Americans with Disabilities act of 1990 and Amendments Act of 2008 (“ADA”);
- The Jeanne Clery Disclosure of the Campus Security Policy and Crime Statistics Act of 1991 (“Clery Act”);
- Violence Against Women Act of 1994 and Violence Against Women Reauthorization Act of 2013 (“VAWA”);
- Uniformed Services Employment and Reemployment Act of 1994;
- Pregnant Workers Fairness Act of 2023 (“PWFA”);
- Colorado Anti-Discrimination Act of 1979 (“CADA”);
- Colorado Creating a Respectful and Open World for Natural Hair Act of 2020;
- Colorado Equal Pay for Equal Work Act of 2021 (“EPEWA”);
- Colorado Revised Statutes § 8-5-101, et. seq.;
- Colorado Revised Statutes § 24-34-402, et. seq.;
- Colorado Revised Statutes § 23-5-146 and § 23-5-147; and
- Article 8 of the Laws of the Regents.

### **B. Policy Administration**

The Procedures apply to the following applicable Policies administered by the OE:

1) [Sexual Misconduct, Intimate Partner Violence, and Stalking Policy](#)

The Sexual Misconduct Policy prohibits Sexual Misconduct prohibited by Title IX as well as conduct that falls outside of Title IX’s jurisdiction. Specifically, this Policy prohibits sexual assault (rape, fondling, statutory rape, and incest), dating violence, domestic violence, Title IX stalking; stalking, sexual exploitation, Title IX hostile environment, hostile environment, Title IX quid pro quo sexual harassment, and quid pro quo sexual harassment. The Policy also prohibits retaliation and other related violations.

2) [Nondiscrimination Policy](#)

The Nondiscrimination Policy prohibits discriminating and harassment on the basis of one or more protected classes of race, color, national origin, sex, age, disability, creed, religion, sexual orientation, gender identity, gender expression, pregnancy, veteran status, marital status, political affiliation, and political philosophy. The Policy also prohibits retaliation and other related violations.

3) [Conflict of Interest in Cases of Amorous Relationships Policy](#)

The Amorous Relationships Policy requires that direct evaluative authority not be exercised in cases where amorous relationships exist or have existed within the last seven (7) years between two individuals, whether faculty members, students, administrators, or staff.

### **III. General Jurisdiction**

The Procedures govern all students, faculty, staff, contractors, patients, volunteers, affiliated entities, and other third parties, regardless of sex, gender, sexual orientation, gender expression, or gender identity. Subject to any rights of appeal, any person found responsible for engaging in Prohibited Conduct may be subject to disciplinary action, up to and including expulsion or termination of employment. The University will consider what potential actions should be taken, including contract termination and/or property exclusion, regarding third-party conduct alleged to have violated the applicable Policies, but those options may be limited depending on the circumstances of the arrangement.

The applicable Policies applies to conduct that occurs within an education program or activity of the University, or if the *complainant* or *respondent* are affiliated with the University community. This includes off-campus conduct, including online or electronic conduct. The following provides additional information about the general jurisdiction of the Procedures:

- 1) The University has an obligation and jurisdiction to conduct at least a Preliminary Inquiry to determine whether the alleged conduct occurred in the context of, or has continuing effects on, employment or an education program or activity.
- 2) Actions taken under the Procedures are separate and apart from any law enforcement or other court process or proceeding, such as a civil lawsuit or criminal prosecution, that may relate to the same underlying factual incident. OE's jurisdiction does not depend on whether criminal charges are filed. Formal investigations or other case resolutions conducted by the OE are not postponed while criminal or civil proceedings are pending unless there are extenuating circumstances, as determined by the OE. Dismissal of criminal or civil charges or acquittal in a criminal or civil case does not prevent the OE from addressing an incident. There is no time limitation for reporting a concern to the OE or for the OE to address matters described in this document. If the alleged conduct is reported to have occurred prior to the effective date of the current Policy, the OE will apply the Policy that was in effect at the time the alleged conduct reportedly occurred, to the extent that the policies differ in defining Prohibited Conduct. However, regardless of the Policy in force at the time the conduct is alleged to have occurred, the OE's procedural response to the report will be governed by the current Procedures.
- 3) There is no time limitation for reporting a concern to the OE. However, the OE's ability to address concerns is dependent upon the University's degree of control over a *respondent* at the time that the matter is reported. The OE's response to the report will be governed by the current Resolution Procedures and applicable Policies.
- 4) After proper notice as provided for in this document, the failure of an individual to appear or respond to the OE does not prohibit the OE from proceeding with or completing the applicable Resolution Procedure.
- 5) For employees, any matters falling outside the scope of the Policy shall be addressed by the appointing/disciplinary authority. For students on the CU Denver campus, the Office of Student Conduct and Community Standards (SCCS) has jurisdiction over all other student conduct

matters. For students on the CU Anschutz campus, the *respondent*'s school, college, or program has jurisdiction over all other student conduct matters falling outside the scope of this Policy. In the event that there are multiple potential charges involving the Policy, the Student Code of Conduct, or the school, college, or program policies, the OE and related conduct authority shall have the discretion to jointly determine the most appropriate way to proceed. Options include, but are not limited to, concurrent investigations, joint investigations, deferring to the findings of one office or using the investigation and findings of one office as the basis of further investigation by the other.

- 6) When the alleged violation of the Policy involves more than one CU campus, the complaint shall be resolved by the campus with the disciplinary authority over the *respondent*. The campus responsible for the investigation may request involvement or cooperation of any other affected campus and should advise appropriate officials of the affected campus of the progress and results of the resolution process.
- 7) University employees and students may work or study at the worksite or program of another organization affiliated with the University. When a violation is alleged by or against University employees or students in those circumstances, the complaint shall be addressed as provided in the affiliation agreement between the University and the other entity. In the absence of an affiliation agreement or a provision addressing this issue, the University may, at its discretion, choose to (1) conduct its own resolution process; (2) conduct a joint resolution process with the affiliated party; (3) defer to the findings of a resolution process with the affiliated entity where the University has reviewed the resolution process and is satisfied that it was fairly conducted; (4) use the resolution process and findings of the affiliated entity as a basis for further investigation or adjudication; or (5) take other action as determined appropriate by the Assistant Vice Chancellor of the OE or designee.
- 8) Conduct alleged to have occurred before an individual became a student, faculty, staff, contractor, patient, volunteer, or affiliated entity with the University may be addressed through applicable remedial, protective, and/or educational measures, if the alleged conduct interferes with or impedes upon equal access to employment or education program or activity for any current University community members, as determined by the Assistant Vice Chancellor of the OE or designee.

## **IV. Reporting Options**

***Note: Call 911 in an Emergency or if you have an immediate safety concern.***

### **A. University/Office of Equity**

To notify the University of any Prohibited Conduct under the Sexual Misconduct Policy, Nondiscrimination Policy, or Amorous Relationships Policy, as well as to request supportive measures related to such conduct, or to initiate an OE Resolution Procedures, please contact the OE directly via email at [equity@ucdenver.edu](mailto:equity@ucdenver.edu) or via phone at 303.315.2567.

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CU Denver | CU Anschutz Office of Equity  
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1380 Lawrence Street, 12th Floor, Denver, CO 80204  
**Phone:** 303.315.2567  
**Email:** [elizabeth.schrock@cuanschutz.edu](mailto:elizabeth.schrock@cuanschutz.edu)

For a full list of reporting options, please refer to the OE's website (<https://www.ucdenver.edu/offices/equity/resolutions/make-a-report>).

#### **1. Amnesty Provisions**

To encourage and remove potential barriers to reporting and/or participation in the University's response to Prohibited Conduct, personal consumption of alcohol or other drugs by the *complainant*, *respondent*, or witnesses will not be subject to disciplinary action. Similarly, minor infractions related to a failure to comply with public health and safety provisions in the Student Code of Conduct will not be subject to disciplinary action. However, final jurisdiction and decision-making regarding any conduct not covered by the Policies will be made by the Director of Student Code Conduct and Community Standards (for students) or the appointing/disciplinary authority (for employees).

Even if a *complainant* chooses not to report formally and/or chooses not to participate in an adjudicative process (through OE or law enforcement), the *complainant* can contact the OE for information and assistance accessing on- or off-campus supportive services as set forth in Section IX and/or accessing available supportive and safety measures as set forth in Section VI(C) (under the Sexual Misconduct Procedures) and VII(C) (under the Nondiscrimination Procedures).

### **B. Law Enforcement**

*Complainants* are not required, but do have the right, to file a criminal complaint with law enforcement and the University/OE simultaneously. The OE can assist in reporting to law enforcement for *complainants* alleging misconduct that is also a criminal offense.

In some instances, the OE is obligated to report the alleged conduct to the appropriate law enforcement agency. These instances may include, but are not limited to:

- If there is an imminent threat to self or others,
- If a minor is involved in an incident,
- If a weapon is involved, or
- If a Clery Report is required and/or law enforcement needs to send an emergency notification to campus (identifying information may be omitted).

In those instances, the OE will make reasonable effort to notify potential *complainants* prior to reporting to law enforcement.

- 911 (for emergencies)
- Auraria Police for CU Denver (for non-emergencies): 303.556.5000
- CU Anschutz Campus Police (for non-emergencies): 303.724.4444
- City of Denver Police (for non-emergencies): 720.913.2000
- City of Aurora Police (for non-emergencies): 303.739.6000

Reporting to the University Police will constitute notice to the University/OE and may result in an OE resolution process subject to applicable state law.

## **1. Preservation of Evidence**

Regardless of whether a *complainant* wants to report an incident(s), it is important to preserve any evidence of the sexual assault, so that if a *complainant* decides at any point in time to report the incident, that evidence is still available. Examples of evidence to preserve include, but are not limited to: the clothing the individual was wearing, bedding, text message correspondence discussing the incident (either with the *respondent* or with friends or family), photographs, screenshots, emails, social media correspondence/posts (Facebook, Tinder, Snapchat, Instagram, Grindr, etc.), correspondence via other messaging applications (Whatsapp, Kik, GroupMe, WeChat, etc.).

Regardless of whether an individual wants to report the incident to the police, a medical exam can be requested to preserve evidence. Sex Assault Nurse Examiner (SANE) programs at the Emergency Department at Denver Health Medical Center, University of Colorado Hospital, Children's Hospital, Porter Adventist Hospital, Medical Center of Aurora – South Campus, Saint Anthony North Hospital, Saint Anthony Hospital 84th Avenue Location, Littleton Adventist Hospital, are available to conduct a SANE exam, ideally within five (5) days of the sexual assault. It is best if an individual does not bathe, shower, eat, drink, douche, or change clothes. However, evidence can be collected if an individual has done any or all of these things. Contact information and addresses for available SANE program/exam sites within the state of Colorado can be found on the OE website under [Sexual Misconduct Resources](#).

Please note that if some or all evidence is unavailable or does not exist, making a report of sexual assault is still encouraged. The lack of evidence does not preclude an investigation from taking place.

## **C. Confidential Reporting Options**

The University offers access to confidential resources for individuals who are unsure about whether to report Prohibited Conduct or are seeking counseling or other emotional support in addition to (or without) making a report to the University.

- Phoenix Center of Auraria at CU Denver Campus: 303.315.7250
- Phoenix Center at CU Anschutz Campus: 303.724.9120
- 24/7 Helpline: 303.556.2255 (both campuses)

See Section IX of these Procedures and the OE's website for additional resources available both at the University and in the surrounding community.

## **D. Supportive Services and Assistance including Protective Orders**

When an individual notifies the OE (either directly or through a responsible employee, advocate, third party, or other) that they have experienced conduct prohibited by the Policy, the OE will provide referral information as needed (whether or not there is a Formal Complaint or participation in a Formal Grievance Process, Formal Adjudication Process, or other resolution process) in accessing on- and off-campus services, including but not limited to counseling, academic assistance, housing, mental health services, victim advocacy, legal assistance, visa and immigration services, assessments for no contact orders, and/or forensic Sexual Assault Nurse Examiner (SANE) exams.

Additional options and resources available to any person reporting Prohibited Conduct, may be found on the OE website: <https://www.ucdenver.edu/offices/equity>

## **E. Orders of Protection, Restraining Orders, or Similar Lawful Orders**

*Complainants* who are interested in obtaining an Order of Protection, or any other court order, must pursue those options on their own behalf. Restraining orders are obtained through the court with applicable jurisdiction.<sup>1</sup> More information on obtaining a restraining order in Colorado is located in the [State of Colorado County Court Restraining Order Brochure](#).

The Phoenix Center at Auraria (PCA) can assist individuals free of charge with the process of obtaining a Restraining Order. CU Denver | CU Anschutz complies with Colorado law in recognizing Orders of Protection. Any person who obtains an Order of Protection from Colorado, or any other state, should provide a copy to the Auraria Police Department (for those on the CU Denver Campus) and/or the Anschutz Police Department (for those on the CU Anschutz Campus), in addition to the Assistant Vice Chancellor of the OE or designee.

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<sup>1</sup> For additional assistance you may contact Project Safeguard: <https://psghelps.org/>

## **V. Privacy, Confidentiality, and the University's Obligation to Provide a Safe and Nondiscriminatory Environment**

*Note: Privacy and Confidentiality have distinct meanings.*

### **A. Privacy**

“Private” generally means that information related to a report of Prohibited Conduct will be shared with a limited number of individuals on a “need to know” basis in order to assist in the active review, investigation, resolution of the report, and related issues. All University employees who are involved in potential response to a report receive specific training and guidance about safeguarding private information in accordance with applicable laws. Access to personnel records is restricted in accordance with University policy and applicable laws.

Family Educational Rights and Privacy Act (FERPA): The privacy of student education records will be protected in accordance with FERPA, University policy, and applicable state laws.

The Family Educational Rights and Privacy Act of 1974 (FERPA), as amended by the Higher Education Amendments of 1998, governs access to records, and information from within those records, pertaining to students that are maintained by the University, including OE. Pursuant to FERPA, the University may disclose records and information pertaining to a student with the student’s written consent.

Even in absence of student consent, FERPA authorizes University officials who demonstrate a legitimate educational need to have access to relevant OE records and information pertaining to students that are necessary to perform their duties for the University.

Even in absence of written consent or a request otherwise from a student, FERPA authorizes the University to provide student records and information to parent(s) if proof is provided that their child student is a dependent as defined under the Internal Revenue Code. A copy of the last federal income tax return listing the student as a dependent may serve as proof of dependency and allow the University to provide parent(s) with access to such records maintained by OE, to the extent determined appropriate by the OE’s Assistant Vice Chancellor of the OE or designee.

Except as otherwise specified in this document or a pending health or safety emergency as defined under FERPA, student records and information are private and the OE will not disclose student records or information to any entity or person outside the University without proper written authorization from the student, a court order, subpoena, or as otherwise required by law or authorized government agency.

Under FERPA, students have a right to review and inspect records that directly pertain to them. Students who would like to review such records maintained by the OE must complete and submit the OE’s records inspection form. The OE will comply with a properly submitted student request within a reasonable time period not to exceed 45 days, as provided by FERPA, unless otherwise authorized by law. Additional requests to inspect a file may be limited to only allow the inspection of records once every 45 days.

**Disclosure of Policy Violations or Pending Investigations:** The University recognizes that third parties may have a legitimate interest in knowing whether a University employee or student has been found responsible for engaging in a violation of University Policies. In the event that, after a Formal Grievance Process and any rights of appeal have been completed, an employee or student has been found responsible for engaging in a violation of the Sexual Misconduct Policy, the University may confirm upon inquiry from a third party, including but not limited to a potential employer, licensing or credentialing agency, or institution that the employee or student has been found responsible for violating the Sexual Misconduct Policy, subject to applicable state and federal laws (e.g. FERPA) regarding such disclosures.

Similarly, the University recognizes that third parties may have a legitimate interest in knowing whether a University employee has been found responsible for engaging in protected-class discrimination or harassment, or a related violation. In the event that, after a Formal Grievance Process including any rights of appeal has been completed, an employee has been found responsible for engaging in protected class discrimination or harassment, or related violations, the University may confirm upon inquiry from a third party, including but not limited to a potential employer or licensing or credentialing agency that the employee has been found responsible for a violation of the University Nondiscrimination Policy. The University may also confirm that an investigation under the Nondiscrimination Policy is pending against an employee or that an employee resigned employment while an investigation under the Nondiscrimination Policy was pending.

**Colorado Open Records Act:** The Colorado Open Records Act requires that the University shall release any records related to the investigation regarding allegations of protected class discrimination and harassment. However, the Colorado Open Records Act provides that the University shall not release any records related to the investigation of Sexual Misconduct or finding of Sexual Misconduct, subject to limited exceptions, or unless otherwise required by law.<sup>2</sup>

## B. Confidentiality

“Confidential” generally means that information shared by an individual with designated campus or community professionals cannot be revealed to any other person without the expressed permission of the individual, or as otherwise permitted or required by law. Those campus and community professionals who have the ability to maintain confidential relationships include health care providers, mental health professionals, the sexual assault or domestic violence *complainant* advocate, attorneys, and ordained clergy, all of whom normally have legally privileged confidentiality that is recognized by Colorado state law. The Assistant Vice Chancellor of the OE has also designated the Ombuds staff serving in their capacity as a confidential resource for CU Denver and CU Anschutz.<sup>3</sup> These individuals are prohibited from breaking confidentiality unless (i) given permission to do so by the person who disclosed the information; (ii) there is an imminent threat of harm to self or others; (iii) the conduct involves suspected abuse of a minor under the age of 18; or (iv) as otherwise required or permitted by law or court order.

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<sup>2</sup> As stated in the Procedures, the *complainant* and *respondent* have a right to access all records associated with the investigation.

<sup>3</sup> Ombuds staff do not have legally privileged confidentiality recognized by Colorado state law.

The University supports the use of confidential resources for all parties, for any reason, including support for medical assistance, counseling, crisis intervention, advocacy, and assistance with legal, housing, and financial matters. Information shared with confidential resources is not disclosed to any party outside of the resource(s) with limited exceptions as defined by law or policy of the resource.

Employees who are confidential resources are not required to report Prohibited Conduct under the Policy. A person who is a confidential resource under the Policy may have an independent obligation to report some forms of criminal conduct to law enforcement officials. Any person who is a confidential resource may consult with campus legal counsel to determine whether an independent reporting obligation exists.

See Section IX for CU Denver | CU Anschutz resources.

## **C. Responsible Employees**

All members of the University community may report Prohibited Conduct. Reporting allows the University to undertake investigations when appropriate, but also allows the University to inform those who have been involved of supportive measures and to facilitate access to those services. Reporting also allows the University to identify institutional risks, increase the effectiveness of its training programs, and identify the need for additional services that will protect the University community from harm. The University views reporting of Prohibited Conduct as fundamental to its ability to provide a campus environment that allows equal access to educational and employment opportunities.

### **2. Reporting Requirements**

- 1) *Responsible employees* must report Prohibited Conduct. Many members of the University community, generally including faculty and members of the administration with supervisory responsibilities, are *responsible employees*, who must promptly report Prohibited Conduct as set forth in the Sexual Misconduct and Nondiscrimination Policies and these Procedures to the Assistant Vice Chancellor of the OE or designee.
- 2) *Responsible employees* are defined as any employee who: (1) has the authority to hire, promote, discipline, evaluate, grade, formally advise or direct faculty, staff, or students; (2) has the authority to take action to redress Prohibited Conduct; or (3) has been given the duty or reporting incidents of sexual violence or any other misconduct by students to the Assistant Vice Chancellor of the OE or designee.
- 3) Any *responsible employee* who witnesses or receives a written or oral report alleging that a member of the University community has been subjected to or has committed an act of Prohibited Conduct must promptly report the allegations to the Assistant Vice Chancellor of the OE or designee. Members of the University community include students, faculty, staff, contractors, patients, visitors to campus, volunteers, and employees of affiliated entities. Because the University may have the ability to address or prevent future Prohibited Conduct, the obligation to report exists independently of whether the individual who was subjected to or committed an act of Prohibited Conduct is currently enrolled or employed at the University.

- 4) The *responsible employee* is required to promptly report to the Assistant Vice Chancellor of the OE or designee all known details about the alleged Prohibited Conduct, including:
  - Name(s) of the *complainant*(s);
  - Name(s) of the *respondent*(s);
  - Name(s) of any alleged witnesses; and
  - Any other relevant facts, including the date, time, and specific location of the alleged incident.
  - If the *responsible employee* does not know all of the above details, the *responsible employee* must still make a report with the available information. If the *responsible employee* is unable to provide this information at the time of making an initial report, but later becomes aware of additional information, the *responsible employee* must supplement the prior report.
- 5) *Responsible employees* employed by University law enforcement are required to report pursuant to this section unless the information is otherwise excluded by state or federal law (for example, identifying information for the *complainant* and/or information related to juveniles).
- 6) In many instances, it may not be immediately apparent whether a person is a member of the University community or whether the alleged Prohibited Conduct occurred in the course of an educational program or activity of the University. Rather than conduct their own inquiries to determine whether these conditions exist, *responsible employees* should report potential Prohibited Conduct to the Assistant Vice Chancellor of the OE or designee to allow a Preliminary Inquiry to occur.
- 7) *Responsible employees* are not required to report information disclosed during an individual's participation as a subject in an Institutional Review Board-approved human subjects research protocol. Institutional Review Boards (IRB) may, in appropriate cases, require researchers to provide reporting information to all subjects of IRB research.
- 8) *Responsible employees* who receive information related to Prohibited Conduct in the course of serving in the capacity as Ombuds, as designated by the University, are not required to report to the Assistant Vice Chancellor of the OE or designee. These *responsible employees* must report Prohibited Conduct disclosed to them when they are not serving in the capacity as Ombuds.
- 9) *Responsible employees* who receive information related to Prohibited Conduct in the course of providing professional services within a privileged relationship, such as health care providers or counselors, are not required to report to the Assistant Vice Chancellor of the OE or designee. These *responsible employees* must report Prohibited Conduct disclosed to them when they are not providing professional services within a privileged relationship. These *responsible employees* may also have independent professional obligations to report some forms of criminal conduct to law enforcement officials. Any *responsible employee* may consult with campus legal counsel to determine whether an independent reporting obligation exists.
- 10) A *responsible employee* does not satisfy the reporting obligation by reporting Prohibited Conduct to a supervisor or University personnel other than the Assistant Vice Chancellor of the OE or designee.

- 11) *Responsible employees* are not required to report Prohibited Conduct to which they have been personally subjected to the Assistant Vice Chancellor of the OE or designee, but are nonetheless encouraged to report.
- 12) Communications of Prohibited Conduct to a *responsible employee* are not confidential, and these employees must report Prohibited Conduct to the Assistant Vice Chancellor of the OE or designee when it is disclosed to them.
- 13) The University encourages all members of the University community, even those who are not defined as *responsible employees*, to report Prohibited Conduct to the Assistant Vice Chancellor of the OE or designee.
- 14) Those persons who are Campus Security Authorities for purposes of crime reporting under the Clery Act may find a summary of their obligations at the following links for [CU Denver](#) or [CU Anschutz](#).

#### **D. Determination Regarding Obligation to Provide a Safe and Nondiscriminatory Environment and Consideration of Override Factors**

If an individual has disclosed an incident of misconduct, but wishes to maintain privacy or requests that no investigation or grievance process be conducted or disciplinary action taken, the Assistant Vice Chancellor of the OE or designee will discuss the availability of supportive measures, describe the process for filing a Formal Complaint, discuss resolution options, explain that the University prohibits retaliation, and explain the steps the University will take to prevent retaliation if the individual participates in a resolution process and that the University will take responsive action if it occurs.

If, having been informed of the University's prohibition of retaliation and its obligations to prevent and respond to retaliation, the individual would still like to maintain privacy or requests that no investigation or grievance process be conducted or no disciplinary action be taken, the Assistant Vice Chancellor of the OE or designee will weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all students, faculty, and staff.

In making that determination, the Assistant Vice Chancellor of the OE or designee will consider a range of potentially overriding factors that would cause the campus to commence an investigation or grievance process, or take disciplinary action after an investigation of misconduct occurred, including the following:

- The risk that the *respondent* (the person accused of the misconduct) will commit additional acts of misconduct or other violence;
- The seriousness of the alleged misconduct, including whether the *respondent* threatened further misconduct or other violence against the *complainant* or others, whether the alleged misconduct was facilitated by the incapacitation of the *complainant*, or whether the *respondent* has been found responsible in legal or other disciplinary proceedings for acts of misconduct or other violence;
- Whether the alleged misconduct was perpetrated with a weapon;
- Whether the *complainant* is a minor;

- Whether the University possesses means other than the *complainant*'s testimony to obtain relevant evidence of the alleged misconduct (e.g., security cameras or personnel, physical evidence); or
- Whether the alleged misconduct reveals a pattern of perpetration at a given location or by a particular group.

The decision to file a Formal Complaint and initiate a Formal Grievance Process pursuant to the Sexual Misconduct Policy, Nondiscrimination Policy, or Amorous Relationships Policy by the Assistant Vice Chancellor of the OE or designee will be conducted on a case-by-case basis after an individualized and thoughtful review.

Nothing in this section limits the Assistant Vice Chancellor of the OE or designee from responding to the alleged conduct in a manner other than through a Formal Grievance Process or Formal Adjudication Process that the Assistant Vice Chancellor of the OE or designee may determine is appropriate under the circumstances. Other options include, but are not limited to, providing supportive measures, conducting an Informal Resolution, referral to other offices, providing targeted or broad-based educational programming or training, or consulting with other University officials as appropriate. Additionally, nothing in the override analysis limits the ability of a disciplinary authority to initiate or impose disciplinary action as necessary.

If the University honors the individual's request for privacy, the University's ability to meaningfully investigate the incident may be limited and disciplinary action may not be possible.

The Assistant Vice Chancellor of the OE or designee may also determine that a report to the police may be warranted given the factors above despite an individual's request for privacy. The OE will consider the range of factors listed above in making the determination to report to law enforcement. In those instances, the OE will make a reasonable effort to notify potential *complainants* prior to reporting to law enforcement.

## **VI. Sexual Misconduct, Intimate Partner Violence, and Stalking Policy Resolution Procedures**

The University does not tolerate and will be responsive to any report or complaint of Prohibited Conduct listed below and is committed to providing prompt, fair, impartial, and equitable resolutions of any complaint that the University knows, or in the exercise of reasonable care should have known, about. The primary concern is the safety of all University community members. The University, through the OE, will take steps to prevent the recurrence of any Prohibited Conduct and remedy any discriminatory effects on the *complainant* and others if appropriate. The following Procedures will apply to resolution of all reported complaints of Prohibited Conduct related to the CU Sexual Misconduct Policy.

### **A. Prohibited Conduct**

The CU Sexual Misconduct Policy ([APS 5014](#)) prohibits “Sexual Misconduct,” meaning both conduct on the basis of sex specifically prohibited by Title IX as well as conduct that falls outside of Title IX’s jurisdiction. Specifically, the Sexual Misconduct Policy prohibits sexual assault (rape, fondling, statutory rape, and incest), dating violence, domestic violence, Title IX stalking, stalking, sexual exploitation, Title IX hostile environment, hostile environment, Title IX quid pro quo sexual harassment, and quid pro quo sexual harassment. The Sexual Misconduct Policy also prohibits retaliation and other related violations. See Section III, Section VIII, and Section IX of the Sexual Misconduct Policy for definitions.

### **B. Policy Jurisdiction Procedures**

The Sexual Misconduct Policy applies to all students, faculty, staff, contractors, patients, volunteers, affiliated entities, and other third parties, regardless of sex, gender, sexual orientation, gender expression or gender identity. Subject to any rights of appeal, any person found responsible for engaging in Sexual Misconduct may be subject to disciplinary action, up to and including expulsion or termination of employment. The University will consider what potential actions should be taken, including contract termination and/or property exclusion, regarding third-party conduct alleged to have violated the Sexual Misconduct Policy, but those options may be limited depending on the circumstances of the arrangement.

The Sexual Misconduct Policy applies to conduct that occurs within an educational program or activity of the University, or if the *complainant* or *respondent* are affiliated with the University community. This includes off-campus conduct, including online or electronic conduct.

The Title IX Coordinator or designee is authorized to determine whether the Sexual Misconduct Policy applies to alleged Prohibited Conduct and whether the University has jurisdiction to take any action pursuant to the Sexual Misconduct Policy.

Alleged conduct may be considered either Title IX Sexual Misconduct or Sexual Misconduct, depending on the following jurisdictional requirements:

#### **1. Title IX Sexual Misconduct**

Title IX Sexual Misconduct applies to conduct that occurs in an education program or activity against a person in the United States. If the Prohibited Conduct falls under Title IX Sexual Misconduct jurisdiction and definitions, the Title IX Coordinator or designee must utilize the Title IX Sexual Misconduct Procedures as prescribed by the Title IX Regulations.

## **2. Sexual Misconduct (A)**

Sexual Misconduct applies to conduct that does not otherwise meet the jurisdictional standard or definition of Title IX Sexual Misconduct, but where the conduct occurred in the context of an employment or education program or activity of the University or where both the *complainant* and *respondent* are affiliated with the University.

## **3. Sexual Misconduct (B)**

For all allegations of Sexual Misconduct not falling under Sexual Misconduct (A) in Section VI(B)(2), the Title IX Coordinator or designee will consider the degree of the University's control over the *respondent* and the relationship between the *complainant* and *respondent*, and assess the surrounding circumstances of the alleged conduct for the presence of the following factors:

- Targets or causes harm to an individual connected with the University;
- Threatens further sexual or other violence against the *complainant* or others and there is reasonable fear that such further conduct could target or cause harm to someone connected to the University;
- Is of a violent nature or was frequent or severe;
- Prior or current similar, misconduct complaints about the *respondent*, or if the *respondent* has a known history of records from a prior school indicating a history of sexual or other violence;
- Use of, or threat to use, a weapon, access to or attempts to access weapons, or a history of bringing weapons to the University;
- Multiple alleged *complainants* or *respondents*;
- Facilitation by the incapacitation of the *complainant* through alcohol, drugs, disability, unconsciousness, or other means;
- The *complainant* is a minor;
- Whether the alleged Sexual Misconduct reveals a pattern of perpetration at a given location or by a particular group; or
- Any other signs of predatory behavior.

If the Title IX Coordinator or designee determines that at least one of the above factors is present, then the Title IX Coordinator or designee may determine that the University may exercise jurisdiction, and the Sexual Misconduct Policy standards apply.

The Title IX Coordinator or designee is authorized to determine whether the Sexual Misconduct Policy applies to alleged Prohibited Conduct and whether the University has jurisdiction to take any action pursuant to the Sexual Misconduct Policy.

## **C. Supportive and Safety Measures**

Supportive measures are non-disciplinary, non-punitive individualized services offered as, as reasonably available, and without fee or charge to the *complainant* or the *respondent* that are designed to restore or preserve equal access to the University's education appropriate program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational or work environment, or deter Prohibited Conduct. Supportive measures should be individualized and appropriate based on the information available to the Title IX Coordinator or designee.

Some safety measures involve restricting a *respondent*'s access to University programs and activities and may not become available until after the completion of Formal Grievance Process unless emergency removal action is determined appropriate. See Section VI(C)(2) below.

Whether supportive and safety measures are appropriate is determined after an individualized assessment by the Title IX Coordinator or designee and every effort should be made to avoid depriving any student of educational access. Supportive or safety measures may be kept in place, lifted, or modified as additional information is obtained, or may be extended permanently, as appropriate.

*Complainants* and *respondents* may request supportive and safety measures from the Title IX Coordinator or designee. Supportive measures should be provided to *complainants* or *respondents* whether or not the *complainant* files a Formal Complaint or engages in another resolution process. Witnesses or other participants in a Formal Grievance Process may also request supportive and safety measures. The Title IX Coordinator or designee will maintain oversight of these requests and the provision of any such measures.

The University will keep confidential any supportive measures provided to the *complainant* or *respondent*, to the extent that maintaining such confidentiality will not impair the University's ability to provide the supportive measures.

## **1. Types of Supportive and Safety Measures**

- Academic support measures (arranging for a party to retake a course, excusing related absences, requesting extensions on assignments or exams, changing sections when available, or withdrawing from a class without penalty);
- Assistance accessing medical services;
- Assistance accessing counseling services;
- Employment modifications;
- Transportation/parking changes;
- Campus safety escort services and/or increasing security and monitoring of certain areas of campus;
- No Contact Orders enforced by the University;
- Discussing options for obtaining criminal or civil Orders of Protection or Restraining Orders;
- Residential relocations in CU Denver Housing and Dining and/or offering resources for off-campus housing; or
- Emergency removals (see Section VI(C)(2) below).

### **a. Emergency Removals**

The OE may remove a *respondent* from an educational program or activity on an emergency basis after the University: (1) undertakes an individualized safety and risk analysis, (2) determines that an immediate threat to the physical health or safety of any students or other individuals arising from the allegations of Sexual Misconduct justifies removal, and (3) provides the *respondent* with notice and an opportunity to challenge the decision immediately following the removal.

The OE must initiate the Formal Grievance Procedures before or within a reasonable timeframe after an emergency removal is initiated.

### **b. Types of Emergency Removals**

- Interim student suspension
- Interim exclusion order for parts of or entire campus, residence halls, classes, etc.
- Administrative Leave (Decisions to place a non-student employee on administrative leave during the pendency of a Formal Grievance Process are made in consultation with Assistant Vice Chancellor of the OE or designee and Chief Human Resource Officer or designee and appointing/disciplinary authority.)
- Temporary suspension of supervisory or evaluative authority for employees in consultation with Associate Vice Chancellor and Chief Human Resource Officer or designee and appointing/disciplinary authority.

### **c. Individualized Safety and Risk Analysis**

When considering an emergency removal, the OE will conduct an individualized safety and risk analysis and may consult with other University offices, such as the CARE Team and FaST Team, when conducting the individualized safety and risk analysis. The factors considered in an emergency removal decision include:

- Seriousness of the alleged conduct;
- Location of alleged incident(s);
- The risk that the alleged *respondent* will commit additional acts of sexual or other violence;
- Whether the alleged *respondent* threatened further sexual or other violence against the alleged *complainant* or others;
- Whether there have been other misconduct complaints about the same alleged *respondent*
- or whether the *respondent* has a known history of sexual or other violence;
- The existence of multiple alleged *complainants* and/or *respondents*;
- Whether the conduct was facilitated by the incapacitation of the *complainant* (through alcohol, drugs, disability, unconsciousness, or other means);
- Whether the alleged conduct was perpetrated with force, violence, or weapons;
- Whether the alleged *complainant* is a minor;
- Whether the alleged conduct reveals a pattern of perpetration (by the alleged *respondent* or group or organization, around a particular recurring event or activity, and/or a particular location); and/or
- Whether any other aggravating circumstances or signs of predatory behavior are present.

### **d. Opportunity to Challenge an Emergency Removal Decision**

In the case of an emergency removal, the *respondent* will be provided written notice of the alleged Prohibited Conduct and the opportunity to meet, if the *respondent* chooses, with the Assistant Vice Chancellor of the OE or designee. The Assistant Vice Chancellor of the OE or designee will ensure that the student is afforded the opportunity to meet within ***ten (10) business days*** of the notice of emergency removal. This does not preclude additional meetings after the ***ten (10) business days*** has passed to review the emergency removal.

It is the responsibility of the *respondent* to schedule the meeting if requested. After providing the *respondent* with notice of the allegations and an opportunity to be heard, the Assistant Vice Chancellor of the OE or designee may decide to lift or continue the emergency removal, potentially until the completion of the Formal Investigation. The Assistant Vice Chancellor of the OE or designee may also determine whether any exceptions may be appropriate. The emergency removal may be re-evaluated during the course of the Formal Grievance Process if new information is presented that mitigates the threat to health and physical safety of the *complainant* or campus safety.

In the case of an emergency removal that includes campus exclusion, Procedures outlined in the CU Denver | Anschutz Exclusion of Persons from University Property<sup>4</sup> will be concurrently followed, including the right to a hearing by the Chief of Police or designee within five (5) business days and the right to a written Appeal within thirty (30) calendar days. Please see the Exclusion of Persons from University Property policy for more details.

## **D. Overview of Resolution Procedures and Options**

The University has authority to and will conduct at least a Preliminary Inquiry upon receiving a report or complaint alleging Prohibited Conduct. A Preliminary Inquiry may include, but is not limited to, evaluating whether the report or complaint implicates a policy enforced by the OE, whether the complaint and parties are within the jurisdiction of the OE, and whether the report or complaint presents a safety threat such that the OE must report the concern to law enforcement. After a Preliminary Inquiry is conducted, the OE shall then determine the most appropriate means for addressing the report or complaint. Options include, but are not limited to:

- 1) **Educational Policy Compliance Remedies:** See Section VI(D)(1) below.
- 2) **Informal Resolution Process:** See Section VI(D)(2) below.
- 3) **Formal Grievance Process:** See Section VI(D)(3) below.
- 4) **No Limitation on Existing Authority:** Referring the matter to an employee's appointing/disciplinary authority or supervisor. These Procedures do not limit the authority of a disciplinary authority to initiate or impose disciplinary action as necessary.
- 5) **Other Referral:** Determining a complaint does not fall within the jurisdiction of the Policy and referring the complaint to appropriate office(s) on campus best suited to address the reported concerns.

### **1. Educational Policy Compliance Remedies**

The OE may determine that the most prompt and effective way to address a concern is through an Educational Policy Compliance Meeting. For example, the OE may resolve a report or complaint

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<sup>4</sup> See CU Denver | Anschutz [Exclusion of Persons from University Property policy](#).

through an Educational Policy Compliance Meeting if the alleged conduct, even if true, would not be considered Prohibited Conduct under the Policy.

The primary focus during an Educational Policy Compliance Meeting remains the welfare of the parties and the safety of the campus community, but this process does not involve a written report or a determination as to whether the Policy has been violated. This type of approach provides the University with a “remedies-based” resolution option that allows the University to tailor responses to the unique facts and circumstances of an incident, particularly in cases where there is not a broader threat to individual or campus safety. In these cases, the OE may do one or more of the following:

- Provide interim or long-term supportive measures to the *complainant* and the *respondent*;
- Provide a referral to other campus-based resolution processes as appropriate based on the specific facts of the complaint;
- Provide targeted or broad-based educational programming or training; and/or
- Conduct an Educational Policy Compliance Meeting with the *respondent* to (1) discuss the behavior as alleged and provide an opportunity to respond; (2) review Prohibited Conduct under the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy; (3) identify and discuss appropriate future conduct and behavior as well as how to avoid behavior that could be interpreted as retaliatory; (4) inform the *complainant* of the *respondent*'s responses if appropriate; and (5) notify Student Conduct and Community Standards or the *respondent*'s appointing or disciplinary authority of the allegations and responses if necessary, who will determine whether any other disciplinary action is appropriate.

The OE retains discretion to conduct an Educational Policy Compliance Meeting. Additionally, the OE retains discretion to proceed with a Formal Grievance Process for allegations that, if proven true, would violate the Sexual Misconduct Policy. OE will notify the *complainant* of the need to end the Educational Policy Compliance Meeting process at any time and to commence or resume a Formal Grievance Process.

## **2. Informal Resolution Process**

After a Preliminary Inquiry, the Assistant Vice Chancellor of the OE, or designee, may initiate the Informal Resolution Process instead of the Formal Grievance Process. The Informal Resolution Process is designed to resolve complaints while meeting the needs and interests of the parties. The Information Resolution Process is entirely voluntary and will not occur unless *complainant* and *respondent* agree in writing to participate. A *complainant* or the Title IX Coordinator or designee must file a document alleging a violation of misconduct under the Sexual Misconduct Policy against the *respondent* for the University to initiate the Informal Resolution Process. The Formal Complaint must contain the *complainant*'s or the Title IX Coordinator or designee's physical or digital signature. The Formal Complaint form is available upon request.

The Informal Resolution Process may not be facilitated by the investigator of the Formal Complaint within the Formal Grievance Process and new information provided by the parties during the Informal Resolution Process will not be used if the complaint is referred back to the Formal Grievance Process. The Assistant Vice Chancellor of the OE or designee will oversee the Informal Resolution process, conduct an initial and on-going assessment as to whether the Informal Resolution Process should continue, and make the final determination on all Informal Resolutions facilitated by the OE regarding

whether the terms agreed to by the *complainant* and *respondent* are appropriate in light of all of the circumstances of the complaint.

In some circumstances, depending on the nature and/or severity of the allegations, an Informal Resolution may not be appropriate, and the Assistant Vice Chancellor of the OE or designee will not approve an Informal Resolution. The Informal Resolution Process is not available when a complaint alleges that a University employee sexually harassed a student.

#### **a. Notice of Agreement to Engage in Informal Resolution**

Prior to engaging in an Informal Resolution Process, the campus will obtain the *complainant's* and *respondent's* voluntary, written consent. For employee *respondents*, their appointing/disciplinary authority must also provide their voluntary, written consent.

Parties who choose to participate in the voluntary Informal Resolution Process will be sent a Notice of Agreement to Engage in Informal Resolution. The Notice will include the following:

- The allegations;
- The requirements of the Informal Resolution Process including the circumstances under which it precludes the parties from resuming a Formal Grievance Process arising from the same allegations, provided however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution Process and resume the Formal Grievance Process;
- Any consequences resulting from participating in the Informal Resolution Process, including the records that will be maintained or could be shared;
- The parties' right to consult with an advisor;
- That any resolution must be in writing and signed by both parties and the Assistant Vice Chancellor of the OE or designee; and
- That once the Informal Resolution process is finalized, neither party is permitted to file another complaint arising from the same allegations.

#### **b. Timeframe**

The Informal Resolution Process may take place at any time before a determination of responsibility is made, but typically within **90 days** after both parties provide voluntary, written consent to participate in the Informal Resolution Process, unless the parties and the Assistant Vice Chancellor of the OE or designee agree to an extension.

#### **c. Informal Resolution Options**

The Informal Resolution Process may include:

- Mediation;
- Restorative Justice (when available);
- Referral to Adaptable Resolution (available only for CU Anschutz);
- Separating the parties;
- Safety and supportive measures;

- Referring the parties to counseling;
- Disciplinary sanctions;
- Conducting targeted preventive educational and training programs; or
- Conducting a follow-up review to ensure that the resolution has been implemented effectively.

#### **d. Effect of Informal Resolution**

Any agreed-upon remedies and disciplinary sanctions agreed to in an Informal Resolution have the same effect as Remedies given and sanctions imposed following an investigation or hearing.

#### **e. Final Written Agreement**

The terms of any Informal Resolution must be in writing and signed by the parties, any appropriate appointing/disciplinary authorities, and the Assistant Vice Chancellor of the OE or designee. Use of electronic signatures is permitted. A signed agreement to an Informal Resolution is enforceable, final, and is not appealable by either Party.

### **3. Formal Grievance Process**

An individual (referred to as the *complainant*) or Title IX Coordinator or designee must file a Formal Complaint document alleging a violation of misconduct under the Policy against an individual (referred to as the *respondent*) for the University to initiate a formal grievance. The Formal Complaint must contain the *complainant's* or Title IX Coordinator's physical or digital signature. The Formal Complaint form is available upon request.

A *complainant* who reports allegations of misconduct with or without filing a Formal Complaint may receive supportive measures. See Section IV(D).

#### **a. Who May File a Formal Complaint**

To initiate the grievance process under the Policy, either the *complainant* or the Title IX Coordinator or designee must file and sign a Formal Complaint.

- 1) **Title IX Sexual Misconduct:** To file a Formal Complaint, a *complainant* must be participating in or attempting to participate in the University's education program or activity. "Attempting to participate" can include a *complainant* who (1) is applying for admission or employment; (2) has graduated from one program but intends to apply to another program and/or intends to remain involved with the University's alumni programs or activities; or (3) has left school because of Sexual Misconduct but expresses a desire to re-enroll. A *complainant* who is on a "leave of absence" may also be participating or attempting to participate in a University education program or activity.
- 2) **Sexual Misconduct:** To file a Formal Complaint, a *complainant* may or may not be a member of the University community who alleges to be a victim of conduct that would violate the Policy.

*Complainants* are encouraged to meet with an investigator(s) prior to filing a Formal Complaint, but are not required to do so.

## **b. Evaluation of a Formal Complaint**

Once a Formal Complaint has been filed, the Title IX Coordinator or designee will evaluate whether the conduct alleged in the Formal Complaint, if proved, would constitute a violation of the Policy. If additional information is needed to evaluate jurisdiction, the Title IX Coordinator or designee will make reasonable efforts to obtain that information.

The Title IX Coordinator or designee will notify the *complainant* if additional time is needed to consider the complaint, such as when gathering additional information is necessary to determine whether dismissal is appropriate.

The OE may, but is not required to, dismiss a Formal Complaint at any time during the investigation if the *complainant* notifies the Title IX Coordinator in writing that the *complainant* would like to withdraw the Formal Complaint or any allegations therein, if the *respondent* is no longer enrolled or employed at the University, or if specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or the allegations therein (discretionary dismissal).

- 1) **Title IX Sexual Misconduct:** The Title IX Coordinator or designee must dismiss a Formal Complaint, subject to appeal, if the alleged conduct would not constitute Title IX Sexual Misconduct or the University lacks jurisdiction under the requirements of Title IX. If the Title IX Coordinator or designee dismisses a Formal Complaint pursuant to these Procedures, the Title IX Coordinator or designee will consider whether the conduct alleged in the Formal Complaint violates other provisions of the Policy and any other University or campus policies, Procedures, or conduct codes.
- 2) **Sexual Misconduct:** The Title IX Coordinator or designee must dismiss a Formal Complaint, subject to appeal, if the alleged conduct would not constitute Sexual Misconduct or the University lacks jurisdiction to pursue the matter. If the Title IX Coordinator or designee dismisses a Formal Complaint pursuant to these Procedures, the Title IX Coordinator or designee will consider whether the conduct alleged in the Formal Complaint constitutes a violation of any other University or campus policies, Procedures, or conduct codes.

If the alleged conduct would not violate the Policy, the Title IX Coordinator or designee will dismiss the Formal Complaint with regard to that conduct (mandatory dismissal).

The Title IX Coordinator or designee will notify both the *complainant* and the *respondent* of the complaint either by issuing a Notice of Allegations and Investigation (see Section VI(D)(3)(d) below) or a Notice of Complaint and Dismissal, which will include a summary of the allegations reported and an explanation as to the reason for the dismissal from the Formal Grievance Process.

## **c. Appeal of Dismissal of Formal Complaint**

If a Formal Complaint is dismissed, either party may appeal. To file an appeal of the dismissal, the *complainant* or *respondent* must submit the written appeal to the Title IX Coordinator or designee within **five (5) business days** of the Notice of Complaint and Dismissal. The appeal must include an

explanation as to why the alleged misconduct, if true, would violate the Sexual Misconduct Policy and why the Formal Complaint should not be dismissed.

An administrator within the OE, separate from the Title IX Coordinator or decision-maker for the initial dismissal, will consider the appeal and issue a determination in writing to both parties either upholding the appeal or overturning the dismissal within five (5) **business days**.<sup>5</sup>

#### **d. Notice of Allegations and Investigation**

If a Formal Grievance Process is commenced, the *respondent* and *complainant* shall receive a Notice of Allegations and Investigation. The written notice may be sent to the *respondent* and *complainant* by email or via U.S. mail to the permanent address appearing in the University's information system or the address appearing in a police report, or may be physically delivered. Notice will be considered furnished on the date of physical delivery or on the date emailed. For employee *respondents*, the employee's supervisory upline may receive a copy of the written Notice of Allegations and Investigation. This may include the Chancellor and the employee's appointing/disciplinary authority, as well as Human Resources.<sup>6</sup>

The OE requests that the *respondent* contact the investigator(s) within *five (5) business days* of the issuance of the notice to schedule a meeting.<sup>7</sup>

If, in the course of an investigation, a *complainant* alleges additional violations or the Title IX Coordinator or designee decides to investigate additional allegations about the *complainant* or *respondent* that are not included in the initial Notice of Allegations, the OE will issue an Amended Notice of Allegations to both parties.

The Notice of Allegations and Investigation (and any Amended Notices of Allegations and Investigation) will include:

- 1) The identity of the parties involved in the incident;
- 2) The specific section(s) of the Policy allegedly violated;
- 3) The conduct allegedly constituting Prohibited Conduct;
- 4) The date and location of the alleged incident, to the extent known and available;
- 5) Information about the University's grievance process;
- 6) A statement that the *respondent* is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- 7) Information about the provisions that prohibit knowingly making false statements or knowingly submitting false information during the grievance process;
- 8) Information that the parties have equal opportunity to inspect and review evidence; and

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<sup>5</sup> An external administrator, outside of the OE may also be appointed to review and decide the appeal.

<sup>6</sup> If the *respondent* is a student employee and the alleged misconduct occurs outside the employment capacity, the OE may determine that the *respondent*'s supervisory upline has a legitimate need to know information related to the case resolution.

<sup>7</sup> All parties will be provided with written notice of the date, time, location, and purpose of their own investigative interviews, or other meetings, with sufficient time to prepare in order to participate.

- 9) Information that the *complainant* and *respondent* may have an advisor of their choice, including an attorney. The advisor may not engage in any conduct that would constitute harassment or retaliation against any person who has participated in an investigation and may be denied further participation for harassing or retaliatory conduct.

The Notice of Allegations and Investigation may also include information concerning any interim protective measures, which may include no-contact orders or location or campus exclusions, as well as other supportive measures.

#### **e. General Investigation Process**

The OE's Formal Grievance Process and Procedures provide for equitable resolution of any Formal Complaint of Prohibited Conduct within an average of **90 days**, except that such time frame may be extended for good cause<sup>8</sup> with prior written notice to the *complainant* and *respondent* of the delay and reason for the delay. The OE will also provide the *complainant* and *respondent* with regular written updates on the status of the investigation throughout the process until conclusion.

A Formal Grievance Process includes four major stages: (1) filing and evaluation of the Formal Complaint, (2) investigation, investigative report, (3) hearing and determination regarding responsibility (including sanctions, if applicable), and (4) appeal, if applicable and described below.

A *complainant* or *respondent* may request to informally resolve the complaint using the Informal Resolution process at any time during the Formal Grievance Process. However, both parties, the Title IX Coordinator, and appointing/disciplinary authority as appropriate must agree to engage in the process and follow the Procedures outlined in Section VI(D)(2).

#### **f. Investigators**

The investigative process will be conducted by trained officials who do not have a conflict of interest or bias for or against *complainants* or *respondents*. An official shall recuse themselves from any role in the grievance process in those instances where the official believes that their impartiality might be reasonably questioned by an independent, neutral observer due to the official's personal bias or prejudice against the *complainant* or *respondent*, or against *complainants* or *respondents* generally, or where the official has a personal or professional relationship with one of the parties that would adversely affect the official's ability to serve as an impartial finder of fact.

Investigations will be conducted by staff who are appropriately trained and have qualifications and experience that will facilitate a prompt, fair, equitable and impartial resolution. The Title IX Coordinator or designee shall ensure that OE Investigators and other members involved in the Formal

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<sup>8</sup> Good cause may exist for a variety of reasons, including the complexity of the circumstances of each allegation, the integrity and completeness of the investigation, compliance with a request by law enforcement, the availability of witnesses, the necessity to provide translation services, University breaks or vacations, the necessity to access relevant and probative documentation that is not immediately available, or other legitimate reasons.

Grievance Process will receive annual training on issues related to sexual assault, intimate partner abuse, stalking, sexual harassment, and retaliation. The Title IX Coordinator or designee shall determine if one or more Investigators shall be assigned to each case depending on the specific circumstances and as warranted.

*i. Outside Investigators*

The Title IX Coordinator or designee may also designate other individuals (either from within the University, including an administrator, or from outside the University) to conduct or assist with an investigation. Circumstances which may warrant such outside resolutions include, but are not limited to, conflict of interest, allegations of bias, or workload. The Title IX Coordinator or designee retains the discretion to determine whether the use of outside investigator(s) is warranted and reasonable given the circumstances and information known at the time.

Outside investigator(s) shall have adequate training, qualifications, and experience that will, in the judgment of the Title IX Coordinator or designee, facilitate a prompt, fair, and impartial resolution. Any outside investigator(s) designated to address an allegation must adhere to the requirements of these Procedures and confer with the Title IX Coordinator or designee on a regular basis about the progress of the investigation.

**g. Formal Investigative Process**

The formal Investigative process is the procedure the OE uses to investigate allegations of Prohibited Conduct and to determine whether an individual more likely than not engaged in conduct that violates the Sexual Misconduct Policy. Individuals found responsible for violating the Sexual Misconduct Policy are subject to sanction, up to and including expulsion or termination of employment.

*i. Information Gathering During Investigation*

After the Notice of Allegations and Investigation has been issued to the parties, the OE's investigator(s) will seek to obtain all available evidence directly related to the allegations at issue.

During the course of the investigation, investigator(s) interview the *complainant(s)*, *respondent(s)*, and witnesses separately.

The parties and witnesses may have an advisor of their choosing, including an attorney, advocate, or other person, to provide support and advice throughout the Formal Grievance Process, including but not limited to, being present for any meetings with the OE personnel. The advisor is not authorized to participate instead of the *complainant* or *respondent*. The advisor may not engage in any conduct that is disruptive to the meeting or interview, or that would constitute harassment or retaliation against any person who has participated in an investigation. Advisors may be denied further participation for harassing or retaliatory conduct.

The *complainant*, *respondent*, and witnesses are expected to respond to the investigator(s) request to schedule an interview or to provide other evidentiary materials within a timely manner, generally within **five (5) business days** of the investigator's request. If a party or witness fails to respond within a

reasonable time, the investigator may continue the investigation without the benefit of information the party or witness might have provided.

The OE will provide, to a *complainant*, *respondent*, or witness whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of their own investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

Parties may suggest questions to be posed by the investigator(s) during interviews to other parties and/or witnesses during the course of the investigation. The investigator(s) may decline to ask a question when the question is not reasonably calculated to lead to the discovery of probative evidence, when the probative value is outweighed by the danger of unfair prejudice, or in consideration of undue delay or needless presentation of cumulative evidence.

Questions about a *complainant*'s prior sexual history are normally not probative and will be asked only when directly relevant to the incident where the alleged Prohibited Conduct occurred.

The University, and not the parties, holds both the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility for Prohibited Conduct.

Both parties may present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Neither party is restricted from discussing the allegation under investigation or from gathering or presenting relevant evidence. The OE will also contact individuals who may have potentially relevant information related to allegations under investigation even if these individuals are not proposed by the parties.

The OE will not use any party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so for a grievance process.

The investigator(s) will prepare a written summary of each interview taken as part of the investigation, including *complainant*(s), *respondent*(s), and witnesses. The investigator will send the summarized interview to the individual party or witness for a review of accuracy. Unless the *complainant*(s), *respondent*(s), and witness requests additional time, the summarized interview will be deemed accurate if the party or witness does not provide feedback on the statement within **two (2) business days** of the investigator emailing it to the party or witness.

Information may be developed during the course of the investigation that indicates additional Policy violations to those initially identified in the Notice of Allegations and Investigation. In such circumstances, the investigator shall review such additional potential violations with the Title IX Coordinator or designee, who shall assess whether reasonable cause exists to believe the *respondent* engaged in the newly discovered Prohibited Conduct. If so, the Title IX Coordinator or designee shall send a written Amended Notice of Investigation which includes relevant additional information.

Preliminary and Final Investigation Reports may be submitted to the Office of University Counsel to review for legal sufficiency.

## *ii. Preliminary Investigation Report*

When the investigator determines that the investigation is reasonably complete, the investigator will prepare a preliminary investigation report that includes the directly related evidence. The investigator will also prepare the full investigative file that includes the evidence. The evidence subject to inspection and review in an electronic or a hard copy, along with the preliminary investigation report will be available for review by the *complainant(s)*, the *respondent(s)*, and each party's advisor.

The preliminary investigation report will include:

- A description of the allegations;
- Procedural history and jurisdiction;
- Factual agreements and disputes;
- Summaries of the interviews conducted;
- Summaries of other relevant evidence and information;
- A list of all relevant Exhibits; and
- Witness identities via a witness name key.

The full investigative file will include:

- Interview notes and summaries;
- Documentary evidence; and
- Email communication relevant to the investigation.

The *complainant(s)* and *respondent(s)* will have the opportunity to respond to the information in the preliminary investigation report with further information, but only as it pertains to factual disputes or clarifying information they provided. Parties are unable to change the information provided by other parties or witnesses; rather, they may respond to the information. If either the *complainant(s)* or *respondent(s)* are reminded of further evidence they have, they may provide this to the investigator(s). Additionally, the parties may:

- Provide any additional information that they believe is relevant to the investigation or to seek clarification from the investigator on aspects of the draft investigation report;
- Identify any new witnesses who should be interviewed (including a description of what topics/issues the witness should be asked to address and why this is necessary for the investigation);
- Identify any additional evidentiary materials that should be collected and reviewed to the extent that such items are reasonably available (e.g., text messages, social media postings, etc.), understanding that the investigator lacks the power to subpoena evidence; and,
- Identify any information that they believe was inappropriately included or excluded in the draft report.

While the University will not restrict the ability of the parties to discuss the allegations or gather evidence, the University will seek to ensure that the parties and their respective advisors, advocates or support persons as applicable maintain the privacy of disclosed information, particularly in electronic and/or hard copy format. Parties receiving such private information should only distribute it to those

individuals with a legitimate need to know. The University will continue to enforce prohibitions against harassment and retaliation.

The parties will have at least ***ten (10) business days*** to submit a written response to the preliminary investigation report to the investigator(s). The investigator(s) will consider the parties' responses, if any, prior to completing the final investigative report.

Where the investigator(s) receive information that warrants further investigation or review, the investigator(s) may extend the investigation in order to collect additional information. If an investigation is extended for this purpose, the parties will be notified in writing. Following such an extended investigation, the investigator(s) will issue an amended preliminary investigation report to include newly gathered information being considered.

The decision to extend the investigation shall be at the discretion of the investigator(s) and made in consultation with the Title IX Coordinator or designee.

### ***iii. Extension Request – Response to Preliminary Investigation Report***

Should a *complainant* or *respondent*, intending to provide a response to the preliminary investigation report, believe they do not have adequate time to prepare their written response, a written request for extension of time may be submitted to the investigator(s). The request must be submitted within the ***ten (10) business day*** deadline for responding to the preliminary investigation report, and should include the rationale for requesting the extension along with the proposed date by which all response documents will be submitted. Requests for extension of time will be considered on their merits and will not automatically be granted. When an extension is granted, other parties will be notified and provided the same extension, if granted.

### ***iv. Requests to Inspect the Investigative File***

Requests to inspect directly related information gathered by the investigator(s) can be made at any time during the investigative process. The opportunity to inspect the investigative file will be provided equally to both parties. Requests must be made in advance and in writing (via email) to the investigator(s). The investigator(s) will arrange for the viewing of information contained in the file within a reasonable amount of time following receipt of such a request. Access to information contained in the investigative file shall be made available in person or via electronic means.

### ***v. Final Investigation Report***

After the preliminary investigation report has been reviewed by the parties, and following the completion of any additional investigation if applicable, the investigator(s) will incorporate any responses to the preliminary investigation report to create the final investigation report. This report will fairly summarize relevant evidence without reaching any findings of fact or conclusions.

The final investigation report will be provided to each party and their advisor and shared with the Title IX Coordinator and Hearing Officer at least ***ten (10) business days*** prior to the hearing for the parties' review and written response.

The parties will have at least ***ten (10) business days*** to submit a written response to the final investigation report to the investigator(s). The written response will be provided to the Hearing Officer for the purpose of the live hearing and there is no opportunity to provide additional written responses.

### ***h. Hearing and Determination Regarding Responsibility***

A trained Hearing Officer will preside over a live hearing. Nothing precludes the OE from utilizing a single decision-maker (Hearing Officer) or a panel of decision-makers (including the Hearing Officer) for the hearing and determining responsibility.

Each party may bring one advisor of their choosing to the live hearing to conduct cross- examination, with prior notice to the OE that the advisor will attend and the advisor's name. The OE will inform both parties of the identity of the other party's advisor. If a party does not have an advisor present at the live hearing, the OE will provide that party an advisor, without fee or cost.

Upon notice that a party needs an advisor, the OE will endeavor to assign an advisor at least ***ten (10) business days*** prior to the scheduled pre-hearing conference so the advisor may prepare. The advisor provided by the OE to conduct cross-examination on behalf of that party may be, but is not required to be, an attorney.

Live hearings will be conducted virtually, with parties (and their respective advisors) located in separate locations. Technology will enable the Hearing Officer or panel of decision-makers and parties to simultaneously see and hear the party or witnesses answering questions. Hearings are closed to the public.

The Hearing Officer must create an audio or audiovisual recording, or transcript, of any live hearing and the University must make it available to the parties for inspection and review.

#### ***i. Pre-Hearing Conference***

To effectuate an orderly, fair, and respectful hearing, the Hearing Officer will convene a pre- hearing conference with each party and party's advisor to plan for the hearing. Attendance is required, at minimum, by each party's advisor. The parties will be provided the name(s) of the Hearing Officer and panelists, if applicable, prior to the pre-hearing conference.

Prior to the pre-hearing conference, the parties will provide the Hearing Officer with a list of witnesses they may call and evidence they may use during the hearing.

At the pre-hearing conference, the Hearing Officer and the advisors will discuss, at minimum, the following topics:

- Identification of each party's advisor who will be attending the live hearing;
- The Procedures to be followed at the hearing;
- Identification of witnesses who will appear at the hearing;
- Identification of exhibits that will be presented for the cross-examination process.

#### ***ii. Hearing Decorum***

The Hearing Officer is responsible for maintaining an orderly, fair, and respectful hearing. The Hearing Officer will direct the order of the proceeding and may engage in direct questioning of parties and witnesses during the hearing.

The Hearing Officer has broad discretion and authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual. The following rules apply:

- Advisors must be respectful of all participants and the hearing process. Abusive, intimidating, and harassing conduct will not be tolerated;
- Advisors may only make objections to questions on the grounds of relevance or to assert a privilege. Advisors must signal for the Hearing Officer's attention, calmly state their objection, and wait for a determination;
- Repetitive or redundant questioning may be deemed both lacking in relevancy and harassing;
- Should an advisor need to confer with their party, they may request that the Hearing Officer grant them a recess. A mid-hearing conferral may not exceed 10 minutes. Every effort should be made to conduct conferrals privately and to not be overly disruptive;
- Parties and advisors may not create audio or audiovisual recordings of the hearing;
- Advisors and parties must acknowledge the rules of decorum in advance of a hearing, including an acknowledgement that failure to abide by the rules may result in adjournment of the hearing and a postponement until the party whose advisor failed to abide by the rules may secure a new advisor.

### *iii. Cross-Examination Procedure*

At the live hearing, the Hearing Officer must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Each party's advisor must ask questions directly, orally, and in real time. A party's advisor may only ask a party or witness relevant questions.

A relevant question seeks information that has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the information sought in the question.

Before a *complainant*, *respondent*, or witness answers a cross-examination or other question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Questions and evidence about the *complainant*'s sexual predisposition or prior sexual behavior are not relevant, 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.

#### ***iv. Submission to Cross-Examination***

Any individual (*complainant*, *respondent* or witnesses) may choose to not participate in the live cross-examination hearing. If a *complainant* or *respondent* declines to submit to cross-examination, the party's advisor may still ask questions on their behalf. The Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. The Hearing Officer may consider any relevant prior statement of a party or witness, whether or not they submit to cross-examination at the live hearing. The Hearing Officer may decide how much weight to give the prior statements, considering all the evidence in the case and the issues to be decided.

#### ***v. Determination Regarding Responsibility***

Consistent with the standard of proof in other conduct proceedings, the Hearing Officer and panelists, if applicable, must apply the preponderance of the evidence standard when making findings and conclusions as to whether a Sexual Misconduct Policy violation has occurred. A preponderance of the evidence exists when the totality of the evidence demonstrates that an allegation of Prohibited Conduct is more probably true than not. If the evidence weighs so evenly that the Hearing Officer and panelists, if applicable, is unable to say that there is preponderance on either side, the Hearing Officer and panelists, if applicable, must determine that there is insufficient evidence to conclude there has been a violation of the Sexual Misconduct Policy.

In applying the preponderance of the evidence standard, the Hearing Officer and panelists, if applicable, may consider both direct and circumstantial evidence. The Hearing Officer and panelists, if applicable, may determine the credibility of parties and witnesses and the weight to be given their statements, taking into consideration their means of knowledge, strength of memory and opportunities for observation, the reasonableness or unreasonableness of their statements, the consistency or lack of consistency of their statements, their motives, whether their statements are contradicted or supported by other evidence, any evidence of bias, prejudice or conflict of interest, and the person's manner and demeanor when providing statements.

It is the responsibility of the Hearing Officer, not the parties or the investigators, to make a determination based on the totality of the available information to determine whether or not the preponderance of the evidence has been met. Neither party bears a burden of proof. The ultimate determination of factual findings and responsibility rests with the Hearing Officer after full consideration of all available evidence.

The Hearing Officer must issue a written determination regarding responsibility that will be sent to the OE. The written determination regarding responsibility may be submitted to the Office of University Counsel to review for legal sufficiency prior to being issued to the parties.

The written determination must include:

- Identification of the allegations potentially constituting Prohibited Conduct;

- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the Sexual Misconduct Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the *respondent*, and whether remedies designed to restore or preserve equal access to the education program or activity will be provided by the University to the *complainant*; and
- The University's Procedures and permissible bases for the *complainant* and *respondent* to appeal.

In cases resulting in no Sexual Misconduct Policy violation, the OE will provide the written determination to the parties simultaneously after it is prepared by the Hearing Officer. Both parties have the opportunity to appeal the written determination regarding responsibility. See Section VI(D)(3)(i) and VI(D)(3)(j) below.

In cases resulting in a Sexual Misconduct Policy violation, prior to the issuance of the written determination to the parties, the Hearing Officer will refer the matter to the appropriate sanctioning authorities (for either a student or employee *respondent*) for a disciplinary sanction to be determined. See Section VI(D)(3)(i) and VI(D)(3)(j) below. After the sanction has been incorporated into the written determination regarding responsibility, the OE will provide the written determination and sanction to the parties simultaneously. Both parties have the opportunity to appeal the written determination, including the sanction, if applicable. See Section VI(D)(3)(k) below.

If the *respondent* is a student employee and the alleged misconduct occurs outside the employment capacity, the OE may determine that the *respondent's* supervisory upline has a legitimate need to know information related to the grievance process.

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The OE will also provide any applicable notices to the *complainant* following the conclusion of any subsequent corrective or disciplinary action pursuant to the State Personnel Board Rules for *respondents* who are classified employees and the Professional Rights and Duties procedure and Privilege and Tenure process for *respondents* who are faculty.

In the event that no Sexual Misconduct Policy violation is found, there is no preclusion of discipline for other student or employee misconduct under applicable University policies, Procedures, or codes of conduct.

#### *vi. Opportunity for Optional Impact Statement*

Following the hearing, but prior to the issuance of the determination regarding responsibility, both parties will be separately invited by the Title IX Coordinator or designee to submit an optional impact statement for the sanctioning decision maker(s) to consider regarding the incident(s) under

investigation. This opportunity will be made available to both parties regardless of whether either party participated in the live cross-examination process. The Title IX Coordinator will review any submitted information and include it in the case file but will not share this information with the Hearing Officer as it does not have any bearing on the factual findings. Optional impact statements will only be shared with the sanctioning decision maker(s) if the Hearing Officer determines that a policy violation has occurred so that the sanctioning decision maker(s) may consider it in making the sanctioning determination.

The optional impact statement should contain information about the factors considered in sanctioning. The optional impact statement may include reasons why the sanction should be increased (aggravating circumstances) or decreased (mitigating circumstances).

### **i. Sanctioning Process for Student Respondents**

In cases where the Formal Grievance Process results in a determination that a student *respondent* is responsible for a Sexual Misconduct Policy violation, the matter will be referred, with the written determination (prior to the inclusion of the sanction), to the Sanctioning Board prior to the issuance of a final written determination.

#### *i. Student Sanctioning Board*

The Sanctioning Board is composed of three members who are collectively authorized to impose sanctions for student *respondents* and to remedy the effects of the Prohibited Conduct. The Board shall decide by majority decision. For the grievance process, the Board will notify the Hearing Officer of the determined sanctions so that the Hearing Officer can include them within the written determination.

Staff in the Office of Equity or a designee will serve as a member and the Chair of the Sanctioning Board for student *respondents* and will appoint two additional University employees who are not affiliated with the OE to serve on the Sanctioning Board. University employees who serve on the Sanctioning Board will have received appropriate training regarding the applicable policies and factors pertinent to the sanctioning decision.

#### *ii. Factors Considered in Sanctioning*

The Sanctioning Board members conduct an individualized review, including review of the Hearing Officer's written Determination Regarding Responsibility, similarly situated cases, assessment of the factors below, and may review the entire file and consult as necessary with OE staff, Student Conduct and Community Standards, or any other University staff as needed in making a sanctioning determination.

Factors pertinent to a sanctioning decision may include, as applicable:

- Severity and/or pervasiveness of conduct and whether it escalated during the incident;
- The impact of separating a student from their education;
- Whether the *complainant* was incapacitated at the time of the conduct;
- Relationship between the parties, including degree of control of one party over another;
- Whether there was force/violence, weapons, or threats of force/violence;

- Any prior history of related criminal, conduct, or policy violations; including but not limited to the University Code of Conduct and any active disciplinary sanctions in place at time of the conduct;
- Impact of incident on *complainants*;
- Acceptance of responsibility by *respondent*; and
- On-going safety risk to *complainant* or community.

### *iii. Possible sanctions*

Sanctions may include one or more of the following:

- **Warning/Written Reprimand:** A warning/written reprimand is a written statement from the Board or designee that the behavior was inappropriate and that more serious action will be taken should subsequent infractions occur.
- **Educational Sanctions:** The student may be required to attend a class, evaluation, or program (e.g., alcohol or anger management classes or training on Sexual Misconduct or protected-class discrimination and harassment). This is not an exhaustive list but should serve as a reference for the types of educational sanctions that may be imposed.
- **Meeting with the Assistant Vice Chancellor of the OE or designee:** The student may be required to meet with a University official to review the terms of the sanction and ensure compliance prior to eligibility to apply for readmission, as applicable.
- **Residence Hall Reassignment:** A student who resides in a residence hall is assigned to a different residence hall room or floor.
- **Residence Hall Termination:** A student's residence hall agreement is terminated through the OE process, and the student is prohibited from residing in any University residence on either a permanent or temporary basis. Specific exclusion from the residence halls may also be imposed.
- **Probation:** A student is placed on probation. Probation lasts for a specific period of time, and is implemented by semesters. Any violation of University policies or the conditions of probation committed during the probationary period will result in further disciplinary action.
- **Restriction or Denial of University Services:** The student is restricted from using or is denied specified University services, including participation in University activities.
- **Suspension:** The student is required to leave the University for a specific period of time. A suspension notation appears on the student's transcript until the period of suspension has expired and all other sanctions are complete. The student is required to apply for readmission through the Office of Admissions after their suspension period. Suspension from the University includes an exclusion from University property during the period of suspension. A suspension decision results in the student being suspended from all campuses of the University of Colorado system.

- **Exclusion:** The student is denied access to all or a portion of University property. When a student is excluded from University property, that student may be permitted on University property for limited periods and specific activities with the permission of the Assistant Vice Chancellor of the OE or designee. Should the student enter University property without permission, the police may charge the student with trespass and the student may be charged with additional policy violations.
- **Expulsion:** The student is required to permanently leave the University. A notation of expulsion remains permanently on the student's transcript. Expulsion from the University includes an automatic exclusion from University of Colorado property. An expulsion decision results in the student being expelled from all campuses in the University of Colorado.
- **Disciplinary Hold:** A disciplinary hold shall be placed on a student's record if they are suspended as the outcome of the OE proceedings. A disciplinary hold is honored by all University of Colorado campuses and prohibits a student from being admitted to any of the campuses and from registering for classes until the suspension period is over and the student has reapplied and has been re-admitted. A disciplinary hold may also be placed if a student fails to complete assigned sanctions, which has the same impact on a student's records and registration as described above. The disciplinary hold will not be removed until all sanctions are completed.
- **Additional Sanctions:** The Board has the discretion to impose any additional sanctions that may be warranted and appropriate given the circumstances of the case.

#### **j. Sanctioning Process for Employee Respondents**

In cases where the Formal Grievance Process results in a determination that an employee *respondent* is responsible for a Sexual Misconduct Policy violation or acted inappropriately or unprofessionally, the matter will be referred, with the written determination (prior to the inclusion of the sanction), to the appointing/disciplinary authority. If the *respondent* is a student employee and the alleged misconduct occurs outside the employment capacity, the OE may determine that the *respondent*'s supervisory upline has a legitimate need to know information related to the case resolution.

Any applicable sanctioning meeting pursuant to these Resolution Procedures does not replace any additional meetings that may be required under other applicable personnel processes (e.g., State Personnel Board Rules for classified employees; Professional Rights and Duties procedure and Privilege and Tenure process for faculty).

##### **i. OE's Formal Recommendation to Disciplinary Authority**

The Assistant Vice Chancellor of the OE or designee will provide a formal recommendation to the appointing/disciplinary authority as to applicable sanctions. A formal recommendation will be consistent with the factors set forth below.

##### **ii. Factors Considered in Sanctioning**

Factors pertinent to a sanctioning decision may include, as applicable:

- Severity and/or pervasiveness of conduct and whether it escalated during the incident;
- Whether the *complainant* was incapacitated at the time of the conduct;
- Relationship between the parties, including degree of control of one party over another;
- Whether there was force/violence, weapons, or threats of force/violence;
- Any prior history of related criminal, conduct, or policy violations; including but not limited to the University Code of Conduct and any active disciplinary sanctions in place at time of the conduct;
- Impact of incident on *complainants*;
- Acceptance of responsibility by *respondent*; and
- On-going safety risk to *complainant* or community.

### *iii. Sanction Required*

In order to remediate the effects of Prohibited Conduct, the appointing/disciplinary authority will impose sanctions. Sanctions for classified staff in the written determination may include either a corrective action or a notice of disciplinary action, issued pursuant to the State Personnel Rules.

The appointing/disciplinary authority will determine the type of sanctions in consultation with the Chief Human Resources Officer or designee, the Assistant Vice Chancellor of OE or designee, and any other administrative staff with a need to know.

The appointing/disciplinary authority may have access to the Formal Grievance Process records and may consult with the adjudicative staff in order to determine action.

The Title IX Coordinator or designee will notify the hearing facilitators of the determined sanctions so that the facilitators can include the sanction with the written determination.

Potential sanctions include:

- **Letter of Expectation/Reprimand:** A warning/written letter of expectation or reprimand is a statement from the disciplinary authority that the behavior was inappropriate and that more serious disciplinary action will be taken should subsequent infractions occur.
- **Mandatory Training:** The employee may be required to attend a training, class, or program as relevant to the misconduct.
- **Demotion:** The employee is demoted from their current position.
- **Job Duty Modifications:** The disciplinary authority may modify the employment responsibilities of the employee.
- **Reduction in Salary/Ineligibility for Merit Increases:** The employee's salary is reduced either permanently or temporarily, or the employee is not eligible for merit increases either permanently or temporarily.
- **Ineligibility for Rehire:** The employee is no longer eligible for employment at the University.

- **Exclusion:** The employee is denied access to all or a portion of University property. When an employee is excluded from University property, that employee may be permitted on University property for limited periods and specific activities with the permission of the University official or designee who imposed the exclusion. Should the employee enter University property without permission, police may charge the employee with trespass and the employee may be charged with additional policy violations.
- **Termination of Employment Contract or Termination of Employment:** Pursuant to applicable laws and policies specific to the employee's status, the disciplinary authority recommends or terminates employment.
- **Additional Sanctions:** The disciplinary authority has the discretion to impose any additional sanctions that may be warranted and appropriate given the circumstances of the case.

#### **k. Appeals**

Either the *complainant* or *respondent* may file a written appeal of the determination regarding responsibility. All appeals must be made in accordance with the Procedures outlined in this section.

Basis for appeal of a determination regarding responsibility:

- To determine whether there were procedural irregularities that affected the outcome of the matter;
- If 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/or
- The Title IX Coordinator, investigators, or Hearing Officer, and panelists, if applicable, 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.

In the appeal, both parties must have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

The decision-maker(s) for the appeal (Appeal Board) may not be the same Hearing Officer that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator. All Appeal Board members must be trained.

The Appeal Board will issue a written decision describing the result of the appeal and the rationale for the result. The appeal decision must be provided simultaneously to both parties.

##### *i. How to File an Appeal and Timeframe*

Appeals must be submitted in writing to the Title IX Coordinator or designee within ***ten (10) business days*** after the determination regarding responsibility is issued. The appeal should indicate the specific basis for the appeal (see above), supporting arguments and documentation, and any other relevant information the appealing party wishes to include. The appealing party should be aware that all appeals

are documentary reviews, and no interviews are conducted. Generally, appeals are determined solely on the merits of the documents submitted. Appeal documents therefore should be as complete and succinct as possible. All sanctions imposed in the case will not go into effect until either the deadline for filing an appeal passes and no appeal is filed or, if a timely appeal is filed, the appeal is decided, whichever comes first.

The appealing party may not present any new evidence unless the party can demonstrate that it could not, with reasonable diligence, have been discovered or produced during the course of the investigation.

#### *ii. Extension Request*

Should an appealing party, intending to provide a response to the appeal believe they do not have adequate time to prepare their written response, a written request for extension of time may be submitted to the Title IX Coordinator or designee. The request must be submitted within the ***ten (10) business day*** deadline for responding to the appeal, and should include the rationale for requesting the extension along with the proposed date by which all response documents will be submitted. Requests for extension of time will be considered on their merits and will not automatically be granted. When an extension is granted, other parties will be notified and provided the same extension, if granted.

#### *iii. Appeal Process and Appeal Board*

The Title IX Coordinator or designee will notify the other party to the original complaint (*complainant* or *respondent*) in writing, and the party will be provided ***five (5) business days*** to respond in writing to the appeal. The response should be sent to the Title IX Coordinator or designee. Neither party is required to respond to an appeal. Not responding to an appeal does not imply agreement with the appeal.

After the submission of all documentation related to the appeal, or the passage of the five-day deadline for response has passed, the Title IX Coordinator or designee will appoint University employees (who may include staff from the CU Boulder and Colorado Springs campuses) who are not otherwise affiliated with the OE at CU Denver | CU Anschutz to serve on the Appeal Board.

#### *iv. Appeal Decisions*

Upon review of the appeal, the Appeal Board may:

- Uphold the initial decision in its entirety;
- Direct that there be reconsideration by the Hearing Officer (or a new Hearing Officer) based on the existing evidence; or
- Direct that there be re-investigation (by the same or different investigators) followed by a second live cross-examination hearing process conducted in accordance with the process outlined above.

The Board members shall not make new findings of fact. The Board shall review all documentation submitted, make the final decision upon appeal, and concurrently provide the parties with a written

Notice of Appeal Decision within ***fifteen (15) business days*** of its receipt of all final documentation.  
This deadline may be extended upon good cause by the Board and upon notification to the parties.

## **VII. Nondiscrimination Policy Resolution Procedures**

The University does not tolerate and will be responsive to any report or complaint of Prohibited Conduct listed in below and is committed to providing prompt, fair, impartial, and equitable resolutions of any complaint that the University knows, or in the exercise of reasonable care should have known, about. The primary concern is the safety of all University community members. The University, through the OE, will take steps to prevent the recurrence of any Prohibited Conduct and remedy any discriminatory effects on the *complainant* and others if appropriate. The following Procedures will apply to resolution of all reports of complaints of Prohibited Conduct in the CU Denver | CU Anschutz Nondiscrimination Policy.

### **A. Prohibited Conduct**

The CU Denver | CU Anschutz Nondiscrimination Policy (CAP 3054) prohibits all protected class discrimination. Specifically, the Nondiscrimination Policy prohibits discrimination and harassment on the basis of race, color, national origin, pregnancy, sex, age, disability, creed, religion, sexual orientation, gender identity, gender expression, veteran status, marital status, political affiliation, or political philosophy in admission and access to, and treatment and employment in, its educational programs and activities. The Nondiscrimination Policy further prohibits associated retaliation and false complaints. See Section C of the Nondiscrimination Policy for definitions.

### **B. Policy Jurisdiction Procedures**

The Nondiscrimination Policy applies to all students, faculty, staff, contractors, patients, volunteers, affiliated entities, and other third parties. For specific jurisdiction provisions, please see the Nondiscrimination Policy.

### **C. Supportive and Safety Measures**

Supportive measures are non-disciplinary, non-punitive individualized services offered, as reasonably available, and without fee or charge to the *complainant* or the *respondent* that are designed to restore or preserve equal access to the University's education appropriate program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational or work environment, or deter Prohibited Conduct. Supportive measures should be individualized and appropriate based on the information available to the Title IX Coordinator or designee.

Safety measures may include supportive measures and/or may involve restricting a *respondent*'s access to University programs and activities (emergency removals). See Section VII(C)(6)(a) below.

Whether supportive and safety measures are appropriate is determined after an individualized assessment by the Assistant Vice Chancellor of the OE or designee and every effort should be made to avoid depriving any student of educational access. Supportive or safety measures may be kept in place, lifted, or modified as additional information is obtained, or may be extended permanently, as appropriate.

*Complainants* and *respondents* may request supportive and safety measures from the Assistant Vice Chancellor of the OE or designee. Supportive measures should be provided to *complainants* or *respondents* whether or not the *complainant* files a Formal Complaint or engages in another resolution process. Witnesses or other participants in a Formal Grievance Process may also request supportive and safety measures. The Assistant Vice Chancellor of the OE or designee will maintain oversight of these requests and the provision of any such measures.

The University will keep confidential any supportive measures provided to the *complainant* or *respondent*, to the extent that maintaining such confidentiality will not impair the University's ability to provide the supportive measures.

## **1. Types of Supportive and Safety Measures**

- Academic support measures (arranging for a party to retake a course, excusing related absences, requesting extensions on assignments or exams, changing sections when available, or withdrawing from a class without penalty);
- Assistance accessing medical services;
- Assistance accessing counseling services;
- Employment modifications;
- Transportation/parking changes;
- Campus safety escort services and/or increasing security and monitoring of certain areas of campus;
- No Contact Orders enforced by the University;
- Discussing options for obtaining criminal or civil Orders of Protection or Restraining Orders;
- Residential relocations in CU Denver Housing and Dining and/or offering resources for off-campus housing; or
- Emergency removals (see Section VII(C)(1)(a)below).

### **a. Emergency Removals**

OE may remove a *respondent* from an educational program or activity on an emergency basis after the University: (1) undertakes an individualized safety and risk analysis, (2) determines that an immediate threat to the physical health or safety of any students or other individuals arising from the allegations of violations of the Nondiscrimination Policy justifies removal, and (3) provides the *respondent* with notice and an opportunity to challenge the decision immediately following the removal.

The OE must initiate the formal grievance Procedures before or within a reasonable timeframe after an emergency removal is initiated.

### **b. Types of Emergency Removals**

- 1) Interim student suspension
- 2) Interim exclusion order for parts of or entire campus, residence halls, classes, etc.
- 3) Administrative Leave (Decisions to place a non-student employee on administrative leave during the pendency of a Formal Grievance Process are made in consultation with Associate Vice Chancellor and Chief Human Resource Officer or designee and appointing/disciplinary authority.)

- 4) Temporary suspension of supervisory or evaluative authority for employees in consultation with Associate Vice Chancellor and Chief Human Resource Officer or designee and appointing/disciplinary authority.

**c. Individualized Safety and Risk Analysis**

The OE will conduct an individualized safety and risk analysis and may consult with other University offices, such as the CARE Team and FAST Team, when conducting the individualized safety and risk analysis. The factors considered in an emergency removal decision include:

- Seriousness of the alleged conduct;
- Location of alleged incident(s);
- The risk that the alleged *respondent* will commit acts of violence;
- Whether the alleged *respondent* threatened further violence against the alleged *complainant* or others;
- Whether there have been other misconduct complaints about the same alleged *respondent* or whether the *respondent* has a known history of violence;
- The existence of multiple alleged *complainants* and/or *respondents*;
- Whether the conduct was facilitated by the incapacitation of the *complainant* (through alcohol, drugs, disability, unconsciousness, or other means);
- Whether the alleged conduct was perpetrated with force, violence, or weapons;
- Whether the alleged *complainant* is a minor;
- Whether the alleged conduct reveals a pattern of perpetration (by the alleged *respondent* or group or organization, around a particular recurring event or activity, and/or a particular location); and/or
- Whether any other aggravating circumstances or signs of predatory behavior are present.

**d. Opportunity to Challenge an Emergency Removal Decision**

In the case of an emergency removal, the *respondent* will be provided written notice of the alleged Prohibited Conduct and the opportunity to meet, if the *respondent* chooses, with the Assistant Vice Chancellor of the OE or designee. The Assistant Vice Chancellor of the OE or designee will ensure that the student is afforded the opportunity to meet within ***ten (10) business days*** of the notice of emergency removal. This does not preclude additional meetings after the ***ten (10) business days*** has passed to review the emergency removal.

It is the responsibility of the *respondent* to schedule the meeting if requested. After providing the *respondent* with notice of the allegations and an opportunity to be heard, the Assistant Vice Chancellor of the OE or designee may decide to lift or continue the emergency removal, potentially until the completion of the Formal Investigation. The Assistant Vice Chancellor of the OE or designee may also determine whether any exceptions may be appropriate. The emergency removal may be re-evaluated during the course of the Formal Grievance Process if new information is presented that mitigates the threat to health and physical safety of the *complainant* or campus safety.

In the case of an emergency removal that includes campus exclusion, Procedures outlined in the CU Denver | CU Anschutz Exclusion of Persons from University Property will be concurrently followed<sup>9</sup>, including the right to a hearing by the Chief of Police or designee within five (5) business days and the right to a written Appeal within thirty (30) calendar days. Please see the Exclusion of Persons from University Property policy for more details

## D. Overview of Resolution Procedures and Options

The University has authority to and will conduct at least a Preliminary Inquiry upon receiving a report or complaint alleging Prohibited Conduct. A Preliminary Inquiry may include, but is not limited to, evaluating whether the report or complaint implicates a policy enforced by the OE, whether the complaint and parties are within the jurisdiction of the OE, and whether the report or complaint presents a safety threat such that the OE must report the concern to law enforcement. After a Preliminary Inquiry is conducted, the OE shall then determine the most appropriate means for addressing the report or complaint. Options include, but are not limited to:

- 1) **Preliminary Inquiry:** Determining if facts of the complaint or report, even if true, would or would not constitute a violation of the Nondiscrimination Policy. See Section VII(D)(1) below.
- 2) **Educational Policy Compliance Remedies:** See Section VII(D)(2) below.
- 3) **Informal Resolution.** See Section VII(D)(3) below.
- 4) **Formal Grievance Process.** See VII(D)(4) below.
- 5) **No Limitation on Existing Authority:** Referring the matter to an employee's appointing/disciplinary authority or supervisor. These Procedures do not limit the authority of a disciplinary authority to initiate or impose disciplinary action as necessary.
- 6) **Other Referral:** Determining a complaint does not fall within the jurisdiction of the Nondiscrimination Policy and referring the complaint to appropriate office(s) on campus best suited to address the reported concerns.

### 1. Preliminary Inquiry

A Preliminary Inquiry may or may not include a written analysis of the facts to determine if the complaint, if true, would or would not constitute a violation of the Nondiscrimination Policy. If it is determined that the facts of the complaint would not constitute a violation of the Nondiscrimination Policy, the OE may decline to pursue the Formal Grievance Process (i.e., further investigation) and the matter will be closed and/or referred to another University process or office. If new evidence or information is provided, the matter will be re-opened.

A Preliminary Inquiry does not usually pause or stop other University processes, such as ongoing disciplinary, conduct, professionalism, or dismissal processes.

### 2. Educational Policy Compliance Remedies

The OE may determine that the most prompt and effective way to address a concern is through an Educational Policy Compliance Meeting. For example, the OE may resolve a report or complaint

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<sup>9</sup> See CU Denver | CU Anschutz [Exclusion of Persons from University Property Policy](#).

through an Educational Policy Compliance Meeting if the alleged conduct, even if true, would not be considered Prohibited Conduct under the Nondiscrimination Policy.

The primary focus during an Educational Policy Compliance Meeting remains the welfare of the parties and the safety of the campus community, but this process does not involve a written report or a determination as to whether the Nondiscrimination Policy has been violated. This type of approach provides the University with a “remedies-based” resolution option that allows the University to tailor responses to the unique facts and circumstances of an incident, particularly in cases where there is not a broader threat to individual or campus safety. In these cases, the OE may do one or more of the following:

- Provide interim or long-term supportive measures to the *complainant* and the *respondent*;
- Provide a referral to other campus-based resolution processes as appropriate based on the specific facts of the complaint;
- Provide targeted or broad-based educational programming or training; and/or
- Conduct an Educational Policy Compliance Meeting with the *respondent* to (1) discuss the behavior as alleged and provide an opportunity to respond; (2) review Prohibited Conduct under the Nondiscrimination Policy; (3) identify and discuss appropriate future conduct and behavior as well as how to avoid behavior that could be interpreted as retaliatory; (4) inform the *complainant* of the *respondent*’s responses if appropriate; and (5) notify Student Conduct and Community Standards or the *respondent*’s appointing or disciplinary authority of the allegations and responses if necessary, who will determine whether any other disciplinary action is appropriate.

The OE retains discretion to conduct an Educational Policy Compliance Meeting. Additionally, the OE retains discretion to proceed with a Formal Grievance Process for allegations that, if proven true, would violate the Nondiscrimination Policy. OE will notify the *complainant* of the need to end the Educational Policy Compliance Meeting process at any time and to commence or resume a Formal Grievance Process.

### **3. Informal Resolution Process**

After a Preliminary Inquiry, the Assistant Vice Chancellor of the OE or designee may initiate the Informal Resolution Process instead of the Formal Grievance Process. The Informal Resolution Process is designed to resolve complaints while meeting the needs and interests of the parties. It is entirely voluntary and will not occur unless *complainant* and *respondent* agree in writing to participate in the Informal Resolution Process.

The Informal Resolution Process may not be facilitated by the investigator of the Formal Complaint within the Formal Grievance Process and new information provided by the parties during the Informal Resolution Process will not be used if the Complaint is referred back to the Formal Grievance Process. The Assistant Vice Chancellor of the OE or designee will oversee the Informal Resolution process, conduct an initial and on-going assessment as to whether the Informal Resolution Process should continue, and make the final determination on all Informal Resolutions facilitated by the OE regarding whether the terms agreed to by the *complainant* and *respondent* are appropriate in light of all of the circumstances of the complaint.

In some circumstances, depending on the nature and/or severity of the allegations, an Informal Resolution may not be appropriate, and the Assistant Vice Chancellor of the OE or designee will not approve an Informal Resolution.

#### **a. Notice of Agreement to Engage in Informal Resolution**

Prior to engaging in an Informal Resolution Process, the campus will obtain the *complainant's* and *respondent's* voluntary, written consent. For employee *respondents*, their appointing/disciplinary authority must also provide their voluntary, written consent.

Parties who choose to participate in the voluntary Informal Resolution Process will be sent a Notice of Agreement to Engage in Informal Resolution. The Notice will include the following:

- The allegations;
- The requirements of the Informal Resolution Process including the circumstances under which it precludes the parties from resuming a Formal Grievance Process arising from the same allegations, provided however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution Process and resume the Formal Grievance Process;
- Any consequences resulting from participating in the Informal Resolution Process, including the records that will be maintained or could be shared;
- The party's right to consult with an advisor;
- That any resolution must be in writing and signed by both parties and the Assistant Vice Chancellor of the OE or designee; and
- That once the Informal Resolution Process is finalized, neither party is permitted to file another complaint arising from the same allegations.

#### **b. Timeframe**

The Informal Resolution Process may take place at any time before a determination of responsibility is made and after both parties provide voluntary, written consent to participate in the Informal Resolution Process.

#### **c. Informal Resolution Options**

The Informal Resolution Process may include:

- Mediation;
- Restorative Justice (when available);
- Referral to Adaptable Resolution (available only to CU Anschutz);
- Separating the parties;
- Safety and supportive measures;
- Referring the parties to counseling;
- Disciplinary sanctions;
- Conducting targeted preventive educational and training programs; or
- Conducting a follow-up review to ensure that the resolution has been implemented effectively.

#### **d. Effect of Informal Resolution**

Any agreed-upon remedies and disciplinary sanctions agreed to in an Informal Resolution have the same effect as Remedies given and sanctions imposed following an investigation or hearing.

#### **e. Final Written Agreement**

The terms of any Informal Resolution must be in writing and signed by the parties, any appropriate appointing/disciplinary authorities, and the Assistant Vice Chancellor of the OE or designee. Use of electronic signatures is permitted. A signed agreement to an Informal Resolution is enforceable, final, and is not appealable by either Party.

### **4. Formal Grievance Process**

The OE may resolve a report of alleged misconduct through the Formal Grievance Process when the alleged misconduct, if true, would be prohibited under the Nondiscrimination Policy.

#### **a. Timeframes**

The University will use its best efforts to complete its investigation and impose sanctions when applicable within a reasonable timeframe. Timeframes may be extended for good cause<sup>10</sup> with prior written notice to the *complainant* and *respondent* of the delay and reason for the delay. The OE will also provide the *complainant* and *respondent* with regular written updates on the status of the investigation throughout the process until conclusion.

In order to deliver a reasonably prompt process, the *complainant* and the *respondent* each have an obligation to meet deadlines, including participating in interviews or providing relevant documentation or other evidence in a timely manner during the evidence gathering phase of the investigation, as requested by OE during the Formal Grievance Process. If an individual does not participate in the evidence gathering phase of the investigation, whether by participating in an interview, providing a written statement, or submitting other evidence for consideration, in a reasonable timeframe, the OE may move to the next stage of the Formal Grievance Process. Extensions of time shall only be granted for good cause shown, and the parties shall be provided written notice of extensions or any delay, as applicable, and the reasons for any such extensions or delays.

#### **b. Major Stages of the Investigation**

The OE is committed to providing a prompt, fair and impartial resolution of all matters referred to the Formal Grievance Process. The Formal Grievance Process can include three stages: Investigation, Sanction, and Appeal, as applicable and described below.

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<sup>10</sup> Good cause may exist for a variety of reasons, including the complexity of the circumstances of each allegation, the integrity and completeness of the investigation, compliance with a request by law enforcement, the availability of witnesses, the necessity to provide translation services, University breaks or vacations, the necessity to access relevant and probative documentation that is not immediately available, or other legitimate reasons.

A *complainant* or *respondent* may request to informally resolve the complaint using the Informal Resolution process at any time during the Formal Grievance Process. However, both parties, the Assistant Vice Chancellor of the OE or designee, and appointing/disciplinary authority as appropriate must agree to engage in the Informal Resolution Process and follow the Procedures outlined in Section VI(D)(3) above.

*i. Notice of Allegations*

If a Formal Grievance Process is commenced, the *respondent* and *complainant* shall receive a Notice of Allegations and Investigation. The written notice may be sent to the *respondent* and *complainant* by email or via U.S. mail to the permanent address appearing in the University's information system or the address appearing in a police report, or may be physically delivered. Notice will be considered furnished on the date of physical delivery or on the date emailed. For employee *respondents*, the employee's supervisory upline may receive a copy of the written Notice of Allegations and Investigation. This may include the Chancellor and the employee's appointing/disciplinary authority, as well as Human Resources.

The OE requests that the *respondent* contact the investigator(s) within **five (5) business days** of the issuance of the notice to schedule a meeting.

If, in the course of an investigation, a *complainant* alleges additional violations or the Assistant Vice Chancellor of the OE or designee decides to investigate additional allegations about the *complainant* or *respondent* that are not included in the initial Notice of Allegations, the OE will issue an Amended Notice of Allegations to both parties.

The written Notice of Allegations (and any Amended Notices of Allegations) will:

- Provide a copy of the OE Resolution Procedures;
- Identify the *complainant* and *respondent*;
- Identify the Investigator(s) who will conduct the investigation;
- Identify the conduct allegedly constituting the potential violation, including the date and location of the alleged incident to the extent known and available;
- Identify the specific section of the Nondiscrimination Policy alleged to have been violated;
- Include a statement that no determinations have been or will be made until the conclusion of the investigation;
- Notify the parties of the availability of supportive and safety measures; and
- Require that the *respondent* contact the OE within **five (5) business days** to schedule a meeting. If the *respondent* chooses not to participate in the Formal Grievance Process, the OE may complete the Formal Grievance Process based on the totality of information obtained during the Investigation, which may include police investigation reports and other relevant documents or information, and Sanctioning and Appeal stages, if applicable.

The Notice of Allegations and Investigation may also include information concerning any interim protective measures, which may include no-contact orders or location or campus exclusions, as well as other supportive measures.

## *ii. Evidence Gathering Phase of Investigation*

After the Notice of Allegations and Investigation has been issued to the parties, the OE's investigator(s) will seek to obtain all available evidence directly related to the allegations at issue.

During the course of the investigation, investigator(s) interview the *complainant(s)*, *respondent(s)*, and witnesses separately.

The parties and witnesses may have an advisor of their choosing, including an attorney, advocate, or other person, to provide support and advice throughout the Formal Grievance Process, including but not limited to, being present for any meetings with the OE personnel. The advisor is not authorized to participate instead of the *complainant* or *respondent*. The advisor may not engage in any conduct that is disruptive to the meeting or interview, or that would constitute harassment or retaliation against any person who has participated in an investigation. Advisors may be denied further participation for harassing or retaliatory conduct.

The *complainant*, *respondent*, and witnesses are expected to respond to the investigator(s) request to schedule an interview or to provide other evidentiary materials within a timely manner, generally within **five (5) business days** of the investigator's request. If a party or witness fails to respond within a reasonable time, the investigator may continue the investigation without the benefit of information the party or witness might have provided.

The OE will provide, to a *complainant*, *respondent*, or witness whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of their own investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

Parties may suggest questions to be posed by the investigator(s) during interviews to other parties and/or witnesses during the course of the investigation. The investigator(s) may decline to ask a question when the question is not reasonably calculated to lead to the discovery of probative evidence, when the probative value is outweighed by the danger of unfair prejudice, or in consideration of undue delay or needless presentation of cumulative evidence.

The University, and not the parties, holds both the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility for Prohibited Conduct.

Both parties may present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Neither party is restricted from discussing the allegation under investigation or from gathering or presenting relevant evidence. The OE will also contact individuals who may have potentially relevant information related to allegations under investigation even if these individuals are not proposed by the parties.

The OE will not use any party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so for a grievance process.

The investigator(s) will prepare a written summary of each interview taken to include *complainant(s)*, *respondent(s)*, and witnesses. The investigator will send the summarized interview to the individual

party or witness for a review of accuracy. Unless the *complainant(s)*, *respondent(s)*, and witness requests additional time, the summarized interview will be deemed accurate if the party or witness does not provide feedback on the statement within ***two (2) business days*** of the investigator emailing it to the party or witness.

Information may be developed during the course of the investigation that indicates additional Nondiscrimination or other Policy violations to those initially identified in the Notice of Allegations and Investigation. In such circumstances, the investigator shall review such additional potential violations with the Assistant Vice Chancellor of the OE or designee, who shall assess whether reasonable cause exists to believe the *respondent* engaged in the newly-discovered Prohibited Conduct. If so, the Assistant Vice Chancellor of the OE or designee shall send a written Amended Notice of Investigation which includes relevant additional information.

Preliminary and Final Investigation Reports may be submitted to the Office of University Counsel to review for legal sufficiency.

### *iii. Preliminary Investigative Report*

When the investigator determines that the investigation is reasonably complete, the investigator will prepare a preliminary investigation report that includes the directly related evidence. The investigator will also prepare the full investigative file, which will be provided upon request for review by the *complainant(s)*, the *respondent(s)*, and each party's advisor.

The preliminary investigation report will include:

- A description of the allegations;
- Procedural history and jurisdiction;
- Summaries of the interviews conducted;
- Summaries of other relevant information; and
- Witness identities via a witness name key.

The full investigative file will include:

- A list of all relevant exhibits;
- Interview notes and summaries;
- Documentary evidence; and
- Email communication relevant to the investigation.

The *complainant(s)* and *respondent(s)* will have the opportunity to respond to the information in the preliminary investigation report with further information, but only as it pertains to factual disputes or clarifying information they provided. Parties are unable to change the information provided by other parties or witnesses; rather, they may respond to the information. If either the *complainant(s)* or *respondent(s)* are reminded of further evidence they have, they may provide this to the investigator(s). Additionally, the parties may:

- Provide any additional information that they believe is relevant to the investigation or to seek clarification from the investigator on aspects of the draft investigation report;

- Identify any new witnesses who should be interviewed (including a description of what topics/issues the witness should be asked to address and why this is necessary for the investigation);
- Submit questions for the investigator(s) to ask of the other party and of witnesses. The investigator(s) may determine a question is irrelevant and decline to ask it when the question is not reasonably calculated to lead to the discovery of probative evidence, when the probative value of the information is outweighed by the danger of unfair prejudice or confusion of the issues, or in consideration of undue delay or needless presentation of cumulative evidence;
- Identify any additional evidentiary materials that should be collected and reviewed to the extent that such items are reasonably available (e.g., text messages, social media postings, etc.), understanding that the investigator lacks the power to subpoena evidence; and,
- Identify any information that they believe was inappropriately included or excluded in the draft report.

While the University will not restrict the ability of the parties to discuss the allegations or gather evidence, the University will seek to ensure that the parties and their respective advisors, advocates or support persons as applicable maintain the privacy of disclosed information, particularly in electronic and/or hard copy format. Parties receiving such private information should only distribute it to those individuals with a legitimate need to know. The University will continue to enforce prohibitions against harassment and retaliation.

The parties will have at least ***ten (10) business days*** to submit any written response to the preliminary investigation report to the investigator(s). The investigator(s) will consider the parties' responses, if any, prior to completing the final investigative report.

Where the investigator(s) receive information that warrants further investigation or review, the investigator(s) may extend the investigation in order to collect additional information. If an investigation is extended for this purpose, the parties will be notified in writing. Following such an extended investigation, the investigator(s) will issue an amended preliminary investigation report to include newly gathered information being considered.

The decision to extend the investigation, including any new witnesses or documents, shall be at the discretion of the investigator(s) and made in consultation with the Assistant Vice Chancellor of the OE or designee.

#### ***iv. Final Investigative Report and Determination Regarding Responsibility***

At the conclusion of the evidence gathering phase, including any relevant information or questions submitted in response to the Preliminary Investigative Report and investigative file subsequent follow-up investigation, as appropriate, the investigator(s) shall prepare a written Final Investigative Report including an analysis of the facts and a determination as to whether or not there was a violation of Nondiscrimination Policy based on the application of the factual findings to the Nondiscrimination Policy.

Regardless of the whether the *respondent* is a student or employee, consistent with the standard of proof in other conduct proceedings, the OE applies the “preponderance of the evidence” standard when making findings of fact and conclusions as to whether violations of Nondiscrimination Policy occurred. A preponderance of the evidence exists when the totality of the evidence demonstrates that an allegation

of misconduct is more probably true than not. If the evidence weighs so evenly that the investigator(s) is unable to say there is a preponderance on either side, the investigator(s) must determine that there is insufficient evidence to conclude that a violation of the Nondiscrimination Policy occurred.

In applying the preponderance of the evidence standard, the investigator(s) may consider both direct and circumstantial evidence. The investigator(s) may determine the credibility of parties and witnesses and the weight to be given their statements, taking into consideration their means of knowledge, strength of memory and opportunities for observation, the reasonableness or unreasonableness of their statements, the consistency or lack of consistency of their statements, their motives, whether their statements are contradicted or supported by other evidence, any evidence of bias, prejudice or interest, and the person's manner and demeanor when providing statements.

It is the responsibility of the OE, not the parties, to make a determination based on the totality of the available information whether or not the preponderance of the evidence has been met. Neither party bears a burden of proof.

For investigations involving student *respondents*, the Final Investigative Report will include a determination of whether the *respondent* is found responsible for violating the Nondiscrimination Policy or not.

For investigations involving employee *respondents*, the written Final Investigative Report will include a determination of whether the *respondent* is found responsible for violating the Nondiscrimination Policy or not. If an employee *respondent* is found not to be responsible for violating the Nondiscrimination Policy, the written Final Investigative Report may, if applicable, include a determination that the employee *respondent* engaged in conduct that was inappropriate or unprofessional. In such cases, the OE will refer such matters to the appointing/disciplinary authority, who will make the final determination on appropriate action or response.

The written Final Investigative Report may be submitted to the Office of University Counsel to review for legal sufficiency.

#### *v. Notice of Determination Regarding Responsibility*

The OE will issue a copy of the written Final Investigative Report and Notice of Determination Regarding Responsibility to the *complainant* and *respondent* simultaneously. For investigations involving employee respondents, the *respondent's* appointing/disciplinary authority may also receive the Notice. The Notice will also notify the parties about the next step in the process, as applicable.

### **5. Opportunity for Optional Impact Statement**

Upon the conclusion of the investigation and receipt of the Notice of Determination Regarding Responsibility and if there is a finding of responsibility, both parties will be separately invited by the Assistant Vice Chancellor of the OE or designee to submit an optional impact statement for the sanctioning decision maker(s) to consider regarding the incident(s) under investigation. The optional impact statement should contain information about the factors considered in sanctioning. The optional impact statement may include reasons why the sanction should be increased (aggravating circumstances) or decreased (mitigating circumstances).

## **6. Student Appeals of the Determination Regarding Responsibility**

Upon the conclusion of the investigation and receipt of the written Notice of Determination Regarding Responsibility, either the *complainant* or *respondent* may file a written appeal. All appeals must be made in accordance with the Procedures outlined in this section.

### **a. How to File an Appeal and Timeline**

Appeals must be submitted in writing to the Assistant Vice Chancellor of the OE or designee within **ten (10) business days** after the Notice of the written determination is issued. The appeal should indicate the specific basis for the appeal (see below), supporting arguments and documentation, and any other relevant information the appealing party wishes to include. The appealing party should be aware that all appeals are documentary reviews, and no interviews are conducted. Generally, appeals are determined solely on the merits of the documents submitted. Appeal documents therefore should be as complete and succinct as possible. Unless any applicable Notice of Sanction specifies otherwise based on safety considerations, all sanctions imposed in the case will not go into effect until either the deadline for filing an appeal passes and no appeal is filed or, if a timely appeal is filed, the appeal is decided, whichever comes first.

Appeals must state one or more of the following criteria as the reason for appeal:

- To determine whether there were procedural irregularities that affected the outcome of the matter; or
- The Investigator had a conflict of interest or bias for or against the *complainant* or *respondent* that affected the outcome of the matter.

The appealing party may not present any new evidence unless the party can demonstrate that it could not, with reasonable diligence, have been discovered or produced during the course of the investigation.

### **b. Extension of Appeal Filing**

Should a *complainant* or *respondent*, intending to appeal, believe they do not have adequate time to prepare their written documents, a written request for extension of time may be submitted to the OE. The request must be submitted in writing within the **ten (10) business day** appeal period, and should include the rationale for requesting the extension along with the proposed date by which all appeal documents will be submitted. Requests for extension of time will be considered on their merits and will not be granted automatically. When an extension is granted, opposing parties to the appeal review may be notified.

### **c. Appeal Review**

Upon receipt of the written appeal, the other principal party to the original complaint (*complainant* or *respondent*) will be notified in writing and provided **ten (10) business days** to respond in writing to the appeal. The response should be sent to the Assistant Vice Chancellor of the OE or designee. Neither party is required to respond to an appeal. Not responding to an appeal does not imply agreement with the appeal.

After reviewing all documentation submitted, the reviewing official(s) (who will be appointed by the Assistant Vice Chancellor of the OE or designee) shall make the decision on the appeal and will notify both parties. The reviewing official(s) will receive appropriate training on the Nondiscrimination Policy and Procedures. Upon review of the appeal, the reviewing official(s) may:

- 1) Uphold the initial decision in its entirety;
- 2) Send the case back to the investigator for re-investigation (by the same or different officials); or
- 3) Reduce or increase a disproportionate sanction.

The reviewing official(s) will not make new findings of fact. The reviewing official(s) will review all documentation submitted, make the final decision upon appeal, and concurrently provide the parties with a written Notice of Appeal Decision within **fifteen (15) business days** of receipt of all final documentation.

## **7. Employee Appeals of the Determination Regarding Responsibility**

Upon the conclusion of the investigation and receipt of the written Notice of Determination Regarding Responsibility, either the *complainant* or *respondent* may file a written appeal. All appeals must be made in accordance with the Procedures outlined in this section.

### **a. How to File an Appeal and Timeline**

Appeals must be submitted in writing to the Assistant Vice Chancellor of the OE or designee within **ten (10) business days** after the Notice of Finding is issued. The appeal should indicate the specific basis for the appeal (see below), supporting arguments and documentation, and any other relevant information the appealing party wishes to include. The appealing party should be aware that all appeals are documentary reviews, and no interviews are conducted. Generally, appeals are determined solely on the merits of the documents submitted. Appeal documents therefore should be as complete and succinct as possible. Appeals must state one or more of the following criteria as the reason for appeal:

- 1) To determine whether there were procedural irregularities that affected the outcome of the matter; or
- 2) The Investigator had a conflict of interest or bias for or against the *complainant* or *respondent* that affected the outcome of the matter.

The appealing party may not present any new evidence unless the party can demonstrate that it could not, with reasonable diligence, have been discovered or produced during the course of the investigation.

### **b. Extension of Appeal Filing**

Should a *complainant* or *respondent*, intending to appeal, believe they do not have adequate time to prepare their written documents, a written request for extension of time may be submitted to the OE. The request must be submitted in writing within the **ten (10) business day** appeal period, and should include the rationale for requesting the extension along with the proposed date by which all appeal documents will be submitted. Requests for extension of time will be considered on their merits and will not be granted automatically. When an extension is granted, opposing parties to the appeal review may be notified.

### **c. Appeal Review**

Upon receipt of the written appeal, the other principal party to the original complaint (*complainant* or *respondent*) will be notified in writing and provided ***ten (10) business days*** to respond in writing to the appeal. The response should be sent to the Assistant Vice Chancellor of the OE or designee. Neither party is required to respond to an appeal. Not responding to an appeal does not imply agreement with the appeal.

After reviewing all documentation submitted, the reviewing official(s) (who will be appointed by the Assistant Vice Chancellor of the OE or designee) shall make the decision on the appeal and will notify both parties. The reviewing official(s) will receive appropriate training on the Nondiscrimination Policy and Procedures. Upon review of the appeal, the reviewing official(s) may:

- 1) Uphold the initial decision in its entirety; or
- 2) Send the case back to the investigator for re-investigation (by the same or different officials).

The reviewing official(s) will not make new findings of fact. The reviewing official(s) will review all documentation submitted, make the final decision upon appeal, and concurrently provide the parties with a written Notice of Appeal Decision within ***fifteen (15) business days*** of receipt of all final documentation.

## **8. Sanctioning Process for Student *Respondents***

In cases where the Formal Grievance Process results in a determination that a student *respondent* is responsible for a Nondiscrimination Policy violation, the matter will be referred, with the written determination, to the Sanctioning Board after the opportunity to Appeal the written Determination Regarding Responsibility has expired.

### **a. Student Sanctioning Board**

The Sanctioning Board is composed of three members who are collectively authorized to impose sanctions for student *respondents* and to remedy the effects of the Prohibited Conduct. The Board shall decide by majority decision.

Staff in the OE or designee will serve as a member and the Chair of the Sanctioning Board for student *respondents* and will appoint two additional University employees who are not affiliated with the OE to serve on the Sanctioning Board. University employees who serve on the Sanctioning Board will have received appropriate training regarding the applicable policies and factors pertinent to the sanctioning decision.

### **b. Factors Considered in Sanctioning**

The Sanctioning Board members conduct an individualized review of the Final Investigative Report including determination regarding responsibility and may review the entire investigative file and consult with OE staff, Student Conduct and Community standards, or any other University staff, as needed, in making a sanctioning determination.

Factors pertinent to a sanctioning decision may include, as applicable:

- Severity and/or pervasiveness of conduct and whether it escalated during the incident;
- The impact of separating a student from their education;
- Relationship between the parties, including degree of control of one party over another;
- Whether there was force/violence, weapons, or threats of force/violence;
- Any prior history of related criminal, conduct, or policy violations including but not limited to the University of Colorado Code of Conduct and any active disciplinary sanctions in place at time of the conduct;
- Impact of incident on *complainant*;
- Acceptance of responsibility by *respondent*; and
- On-going safety risk to *complainant* or community.

Sanctions may include one or more of the following:

- **Warning/Written Reprimand:** A warning/written reprimand is a written statement from the Board or designee that the behavior was inappropriate and that more serious action will be taken should subsequent infractions occur.
- **Educational Sanctions:** The student may be required to attend a class, evaluation, or program (e.g., alcohol or anger management classes or training on Sexual Misconduct or protected-class discrimination and harassment). This is not an exhaustive list but should serve as a reference for the types of educational sanctions that may be imposed.
- **Meeting with the Assistant Vice Chancellor of the OE or designee:** The student may be required to meet with a University official to review the terms of the sanction and ensure compliance prior to eligibility to apply for readmission, as applicable.
- **Residence Hall Reassignment:** A student who resides in a residence hall is assigned to a different residence hall room or floor.
- **Residence Hall Termination:** A student's residence hall agreement is terminated through the OE process, and the student is prohibited from residing in any University residence on either a permanent or temporary basis. Specific exclusion from the residence halls may also be imposed.
- **Probation:** A student is placed on probation. Probation lasts for a specific period of time, and is implemented by semesters. Any violation of University policies or the conditions of probation committed during the probationary period will result in further disciplinary action.
- **Restriction or Denial of University Services:** The student is restricted from using or is denied specified University services, including participation in University activities.
- **Suspension:** The student is required to leave the University for a specific period of time. A suspension notation appears on the student's transcript until the period of suspension has expired and all other sanctions are complete. The student is required to apply for readmission through the

Office of Admissions after their suspension period. Suspension from the University includes an exclusion from University property during the period of suspension.

- **Exclusion:** The student is denied access to all or a portion of University property. When a student is excluded from University property, that student may be permitted on University property for limited periods and specific activities with the permission of the Assistant Vice Chancellor of the OE or designee. Should the student enter University property without permission, the police may charge the student with trespass and the student may be charged with additional policy violations.
- **Expulsion:** The student is required to permanently leave the University. A notation of expulsion remains permanently on the student's transcript. Expulsion from the University includes an automatic exclusion from University of Colorado property. An expulsion decision results in the student being expelled from all campuses in the University of Colorado.
- **Disciplinary and Disciplinary Hold:** A disciplinary hold shall be placed on a student's record if they are suspended as the outcome of the OE proceedings. A disciplinary hold is honored by all University of Colorado campuses and prohibits a student from being admitted to any of the campuses and from registering for classes until the suspension period is over and the student has reapplied and has been re-admitted. A disciplinary hold may also be placed if a student fails to complete assigned sanctions, which has the same impact on a student's records and registration as described above. The disciplinary hold will not be removed until all sanctions are completed.
- **Additional Sanctions:** The Board has the discretion to impose any additional sanctions that may be warranted and appropriate given the circumstances of the case.

## 9. Student Sanction Appeals

Upon receipt of the Notice of Sanctions, either the *complainant* or *respondent* may file a written appeal. All appeals must be made in accordance with the Procedures outlined in this section.

### a. How to File a Sanction Appeal and Timeline

Appeals must be submitted in writing to the Assistant Vice Chancellor of the OE or designee within **ten (10) business days** after the Notice of the written determination is issued. The appeal should indicate the specific basis for the appeal (see below), supporting arguments and documentation, and any other relevant information the appealing party wishes to include. The appealing party should be aware that all appeals are documentary reviews, and no interviews are conducted. Generally, appeals are determined solely on the merits of the documents submitted. Appeal documents therefore should be as complete and succinct as possible. Unless any applicable Notice of Sanction specifies otherwise based on safety considerations, all sanctions imposed in the case will not go into effect until either the deadline for filing an appeal passes and no appeal is filed or, if a timely appeal is filed, the appeal is decided, whichever comes first.

Appeals must state one or more of the following criteria as the reason for appeal:

- The Sanctioning Board had a conflict of interest or bias for or against the *complainant* or *respondent* that affected the outcome of the matter; or

- A sanction was disproportionate to the violation of the Nondiscrimination Policy.

### **b. Extension of Sanction Appeal Filing**

Should a *complainant* or *respondent*, intending to appeal, believe they do not have adequate time to prepare their written documents, a written request for extension of time may be submitted to the OE. The request must be submitted in writing within the **ten (10) business day** appeal period, and should include the rationale for requesting the extension along with the proposed date by which all appeal documents will be submitted. Requests for extension of time will be considered on their merits and will not be granted automatically. When an extension is granted, opposing parties to the appeal review may be notified.

### **c. Sanction Appeal Review**

Upon receipt of the written appeal, the other principal party to the original complaint (*complainant* or *respondent*) will be notified in writing and provided **ten (10) business days** to respond in writing to the appeal. The response should be sent to the Assistant Vice Chancellor of the OE or designee. Neither party is required to respond to an appeal. Not responding to an appeal does not imply agreement with the appeal.

After reviewing all documentation submitted, the reviewing official(s) (who will be appointed by the Assistant Vice Chancellor of the OE or designee) shall make the decision on the appeal and will notify both parties. The reviewing official(s) will receive appropriate training on the Nondiscrimination Policy and Procedures. Upon review of the appeal, the reviewing official(s) may reduce or increase a disproportionate sanction or uphold the decision in its entirety.

The reviewing official(s) will not make new findings of fact. The reviewing official(s) will review all documentation submitted, make the final decision upon appeal, and concurrently provide the parties with a written Notice of Sanction Appeal Decision within **fifteen (15) business days** of receipt of all final documentation.

## **10. Sanctioning Process for Employee Respondents**

In cases where the Formal Grievance Process results in a determination that an employee *respondent* is responsible for a Nondiscrimination Policy violation or acted inappropriately or unprofessionally, the matter will be referred, with the written determination (prior to the inclusion of the sanction), to the appointing/disciplinary authority. If the *respondent* is a student employee and the alleged misconduct occurs outside the employment capacity, the OE may determine that the *respondent's* supervisory upline has a legitimate need to know information related to the case resolution.

Any applicable sanctioning meeting pursuant to these Resolution Procedures does not replace any additional meetings that may be required under other applicable personnel processes (e.g., State Personnel Board Rules for classified employees; Professional Rights and Duties procedure and Privilege and Tenure process for faculty).

### **a. OE's Formal Recommendation to Disciplinary Authority**

The Assistant Vice Chancellor of the OE or designee will provide a formal recommendation to the appointing/disciplinary authority as to applicable sanctions. A formal recommendation will be consistent with the factors set forth below.

### **b. Factors Considered in Sanctioning**

Factors pertinent to a sanctioning decision may include, as applicable:

- Severity and/or pervasiveness of conduct and whether it escalated during the incident;
- Whether the *complainant* was incapacitated at the time of the conduct;
- Relationship between the parties, including degree of control of one party over another;
- Whether there was force/violence, weapons, or threats of force/violence;
- Any prior history of related criminal, conduct, or policy violations; including but not limited to the University Code of Conduct and any active disciplinary sanctions in place at time of the conduct;
- Impact of incident on *complainants*;
- Acceptance of responsibility by *respondent*; and
- On-going safety risk to *complainant* or community.

### **c. Sanction Required**

In order to remediate the effects of Prohibited Conduct, the appointing/disciplinary authority will impose sanctions. Sanctions for classified staff in the written determination may include either a corrective action or a notice of disciplinary action, issued pursuant to the State Personnel Rules.

The appointing/disciplinary authority will determine the type of sanctions in consultation with the Chief Human Resources Officer or designee, the Assistant Vice Chancellor of the OE or designee, and any other administrative staff with a need to know.

The appointing/disciplinary authority may have access to the Formal Grievance Process records and may consult with the adjudicative staff in order to determine action.

Potential sanctions include:

- **Letter of Expectation/Reprimand:** A warning/written letter of expectation or reprimand is a statement from the disciplinary authority that the behavior was inappropriate and that more serious disciplinary action will be taken should subsequent infractions occur.
- **Mandatory Training:** The employee may be required to attend a training, class, or program as relevant to the misconduct.
- **Demotion:** The employee is demoted from their current position.
- **Job Duty Modifications:** The disciplinary authority may modify the employment responsibilities of the employee.

- **Reduction in Salary/Ineligibility for Merit Increases:** The employee's salary is reduced either permanently or temporarily, or the employee is not eligible for merit increases either permanently or temporarily.
- **Ineligibility for Rehire:** The employee is no longer eligible for employment at the University.
- **Exclusion:** The employee is denied access to all or a portion of University property. When an employee is excluded from University property, that employee may be permitted on University property for limited periods and specific activities with the permission of the University official or designee who imposed the exclusion. Should the employee enter University property without permission, police may charge the employee with trespass and the employee may be charged with additional policy violations.
- **Termination of Employment Contract or Termination of Employment:** Pursuant to applicable laws and policies specific to the employee's status, the disciplinary authority recommends or terminates employment.
- **Additional Sanctions:** The disciplinary authority has the discretion to impose any additional sanctions that may be warranted and appropriate given the circumstances of the case.

#### **d. Notice to the Parties**

The Assistant Vice Chancellor of the OE or designee will ensure to the extent possible that both parties simultaneously receive notice of any sanctions imposed and any other steps taken by the campus to remedy the discrimination and/or harassment to the extent permitted by law. Regardless of the OE findings, there is no preclusion of discipline by the appointing authority/disciplinary authority for other misconduct or for inappropriate or unprofessional conduct.

## **VIII. Conflict of Interest in Cases of Amorous Relationships Policy Resolution Procedures**

The CU Amorous Relationships Policy requires that direct evaluative authority not be exercised in cases where amorous relationships exist or existed within the last seven years between two individuals.

Problems often arise with amorous relationships in situations where one party is the supervisor and the other the supervisee. In such situations the integrity of academic or employment decisions may either be compromised or appear to be compromised. Further, amorous relationships between parties of unequal power greatly increase the possibility that the individual with the evaluative responsibility, typically a supervisor or a faculty member, will abuse their power and sexually exploit the student or employee. A relationship which began as consensual, may in retrospect be seen as something else by one or both of the parties. Moreover, others may be adversely affected by such behavior because it places the faculty member or supervisor in a position to favor or advance one student's or employee's interest at the expense of others and implicitly makes obtaining preferences contingent upon romantic or sexual favors. The Amorous Relationships Policy, consequently, is intended to:

- Establish a reporting structure to protect participants in these relationships from violations of University conflict of interest guidelines; and
- Provide direction concerning how to terminate evaluative responsibilities between the two parties in the reported relationship.

If the individuals do not report the relationship, and the evaluative authority continues, the OE will conduct a formal inquiry or investigation into a potential violation of the Amorous Relationships Policy. The OE will utilize the Nondiscrimination Resolution Procedures contained in Section VII.

### **A. Removing Direct Evaluative or Supervisory Responsibilities**

There is a conflict of interest when a direct evaluative relationship exists between two employees or between an employee and a student, either during the time that the amorous relationship is occurring or within seven years after it has occurred. In such circumstances the following Procedures will be used to resolve the conflict of interest.

- v. If the amorous relationship exists in a faculty member/student direct evaluative relationship, a faculty member/faculty member direct evaluative relationship, or a faculty member/staff direct evaluative relationship, the relationship must be disclosed to the faculty member's unit head(s) (department chair, dean, or head of the primary unit) with all parties present (the parties in the relationship and the unit head). The individual in the evaluative position shall recuse themselves from all future evaluative actions involving the other person. The parties involved may choose to have this disclosure in written form placed in their own personnel files.
- vi. If the amorous relationship exists in a form of supervisor/supervisee direct evaluative relationship other than those enumerated above, it must be disclosed to the supervisor's unit head, typically the appointing authority/disciplinary authority, with all parties present. The parties involved may choose to have this disclosure in written form placed in their own personnel files. In either of these sets of circumstances, the responsibility to disclose rests with the person in the evaluative position. The individual to whom the disclosure is made is

responsible for requiring that actions be taken to resolve the conflict by terminating the evaluative relationship.

- vii. If such actions are outside that individual's authority, the matter shall be referred to the individual with the authority to take such actions.

In any of the circumstances described above, the individual to whom disclosure is made bears responsibility for keeping this information confidential to the fullest extent possible.

The OE is the designated office to report compliance with the Policy for CU Denver | CU Anschutz.

## **B. Recusal and Disclosure in the Direct Line of Report**

When an amorous relationship, either current or within the last seven years, exists between an individual and an employee who, although not their direct supervisor, is in the direct line of report (e.g., a dean who is involved with a faculty member in their college, or a second or higher level supervisor who has a relationship with a staff member in their unit), the higher level employee may not act in an evaluative capacity in relation to the other individual. Specifically, when the individual at the higher level of evaluative authority and the other individual in the relationship are parties to a personnel action as defined in the Amorous Relationships Policy, the evaluative authority must recuse themselves from participating in that action. In this circumstance, either the individual at the higher level or their supervisor must report the action taken to resolve the conflict to the Chancellor or the Chancellor's designee, the OE.

If the Chancellor or the OE should find that the actions do not adequately resolve the conflict, the Chancellor or the OE may require other action, which may include further investigation. If further investigation is required, the OE will follow the Procedures described in the Nondiscrimination Resolution Procedures.

## **IX. Resources**

*Note: Confidential resources are identified by an asterisk.\**

*Resources in this list are organized by location (CU Denver, CU Anschutz, and Off-Campus) and by the community that the resource serves (Students and Employees, Students only, and Employees only).*

### **CU Denver Student and Employee Resources:**

#### **The Phoenix Center at Auraria\***

<https://www.thepca.org/>

The Phoenix Center at Auraria (PCA) provides free and confidential advocacy to survivors of interpersonal violence and their families and friends.

**24/7 Helpline:** 303.556.2255

**Office Phone:** 303.315.7250

**Location:** Tivoli Student Union, Room 227

#### **The Ombuds Office (CU Denver and CU Anschutz)\***

<https://www.ucdenver.edu/offices/ombudsoffice>

The Ombuds Office is an independent resource, which will provide informal, confidential, and neutral services to members of the University community in resolving conflicts, complaints, and disputes.

**Phone:** 303.315.0046

**Location:** Lawrence Street Center, Room 1003

#### **Auraria Police Department**

<https://www.ahec.edu/services-departments/police>

**24/7 Emergency Line:** 9-1-1 or 303-556-5000

**Text-a-Tip:** 720-593-TIPS (8477)

**Campus Information Hotline:** 1-877-556-EMER (3637)

**Location:** Administration Building, 1201 5th Street, Suite 110, Denver, CO 80217

### **CU Denver Student Resources:**

#### **Student and Community Counseling Center\***

<https://www.ucdenver.edu/counseling-center>

The CU Denver Student and Community Counseling Center provides mental health counseling services to CU Denver students

**Phone:** 303.315.7270

**Location:** Tivoli Student Union, Room 454

#### **CARE (Campus Assessment, Response, and Evaluation) Team**

<https://www.ucdenver.edu/student/wellness/care-team> (submit a concern at this site)

The CU Denver CARE Team provides a preventative approach to risk assessment by offering resources, referrals, and support to both concerning individuals and those impacted by their behavior.

**Phone:** 303.315.7306

## **Office of Case Management**

<https://www.ucdenver.edu/student/wellness/case-management>

The CU Denver Office of Case Management services includes providing intervention, advocacy, resources and referrals for CU Denver Students.

Phone: 303.315.7306

Location: Tivoli Student Union, Room 309

## **Student Conduct and Community Standards**

<https://www.ucdenver.edu/student/wellness/student-conduct> (report an incident at this site)

The CU Denver Office of Student Conduct and Community Standards serves as a resource to the entire University community through its efforts to meet the developmental and educational needs of students related to community expectations, civility and respect for self and others. They function to support community members with conflict management and resolution, and responding to inappropriate and threatening behaviors.

Phone: 303.315.7311

Location: Tivoli Student Union, Room 309

## **CU Denver Affinity Services and Centers**

- Center for Identity and Inclusion: <https://www.ucdenver.edu/offices/diversity-and-inclusion/our-offices/center-for-identity-inclusion>; 303.315.1877
- American Indian Student Services: 303.315.1882
- Asian American Student Services: 303.315.1879
- Black Student Services: 303.315.1881
- Latinx Student Services: 303.315.1878
- Undocumented Student Services: 303.315.1883
- Women and Gender Center: 303.315.7262
- Disability Resources and Services: <https://www.ucdenver.edu/offices/disability-resources-and-services>; 303-315-3510
- LGBTQ Student Resource Center of Auraria: <https://www.msudenver.edu/lgbtq/>; 303.615.0515
- International Student & Scholar Services: <https://www.ucdenver.edu/services/international-student-and-scholar-services>; 303.315.2230

## **CU Denver Employee Resources:**

### **Employee Real Help Hotline\***

The Real Help Hotline gives you access to professional counselors who can offer assistance finding local resources or provide immediate crisis counseling.

**24/7 Hotline:** 833-493-8255

### **State Employee Assistance Program CSEAP\***

**24/7 Emergency Line:** 303-866-4314

**Request an Appointment:** <https://cseap.colorado.gov/contact-us>

## **CU Denver Faculty and Staff Threat Assessment and Response Team (FaST)**

<https://www.ucdenver.edu/offices/human-resources>

Provides safety and support for employees who are referred.

**Phone:** 303-315-0182

**Email:** [FacultyStaff.Assessment@ucdenver.edu](mailto:FacultyStaff.Assessment@ucdenver.edu)

### **CU Anschutz Student and Employee Resources:**

#### **The Phoenix Center at Anschutz\***

<https://www.thepca.org/>

The Phoenix Center at Anschutz (PCA) provides free and confidential advocacy to survivors of interpersonal violence and their families and friends.

24/7 Helpline: 303.556.2255

Phone: 303.724.9120

Location: Education 2 North, Room 3101

#### **The Ombuds Office (CU Anschutz and CU Denver)\***

<https://www.ucdenver.edu/offices/ombudsoffice>

The Ombuds Office is an independent resource, which will provide informal, confidential and neutral services to members of the University community in resolving conflicts, complaints, and disputes.

Phone: 303.724.2950

Location: Fitzsimons Building, Room 7005C

#### **Anschutz Police Department**

<https://www.cuanschutz.edu/police>

24/7 Emergency Line: 9-1-1 or 303.724.4444

Location: Building 407, 12454 E. 19th Place

### **CU Anschutz Student Resources:**

#### **Student and Resident Mental Health Service\***

<https://medschool.cuanschutz.edu/psychiatry/programs/student-resident-mental-health>

CU Anschutz provides comprehensive and confidential mental health services for all students enrolled in the schools located at the CU Anschutz, as well as Graduate Medical Education (GME) residents and fellows (including Denver Health residents and fellows).

**Phone:** 303.724.4716; for acute crisis care after-hours, on weekends or during holidays call

1.844.8255, or text “TALK” to 38255

**Location:** Fitzsimons Building, Level 2

#### **CARE (Campus Assessment, Response, and Evaluation) Team**

<https://www.cuanschutz.edu/student/support/care-team> (refer a student at this site)

The CU Anschutz CARE team coordinates with students, faculty, and staff as well as concerned others to identify, assess, and intervene with individuals of concern.

**Phone:** 303.724.8488

#### **Student Outreach and Support Office (Case Management)**

<https://www.cuanschutz.edu/student/support/case-management>

The Student Outreach and Support Office collaborates with all CU Anschutz schools and colleges to ensure students have access to resources that help them navigate challenging experience

**Phone:** 303.724.8488

**Location:** Education 2 North, Room 3200

### **Office of Disability, Access, and Inclusion**

<https://www.cuanschutz.edu/offices/office-of-disability-access-and-inclusion>

The Office of Disability, Access, and Inclusion partners with students and programs to identify opportunities to create and promote meaningful access.

**Phone:** 303.724.8488

**Location:** Strauss Health Sciences Library, V23

### **LGBTQ+ Hub**

<https://www.cuanschutz.edu/offices/diversity-equity-inclusion-community/programs-and-initiatives/lgbtq-hub>

The LGBTQ+ Hub (formerly Women and Gender Center) creates and maintains an inclusive campus environment for LGBTQ+ and allied students, faculty, staff, patients, and visitors on campus and within the Aurora.

**Location:** Education 2 North, Room 2101

## **CU Anschutz Employee Resources:**

### **CU Anschutz Faculty and Staff Mental Health Clinic\***

<https://medschool.cuanschutz.edu/psychiatry/PatientCare/faculty-and-staff-mental-health>

The Faculty and Staff Mental Health Clinic provides CU Anschutz faculty, staff and postdocs with comprehensive and confidential mental health services that are readily and easily accessible.

Phone: 303.724.4940

Location: Fitzsimons Building

### **Office of Faculty Relationship (formerly Office of Professional Excellence)**

<https://www.cuanschutz.edu/offices/professionalism> (report an incident at this site)

The CU Anschutz Office of Professionalism is a resource for all matters pertaining to professionalism concerns regarding residents, fellows, staff members, and faculty in any school or college on the CU Anschutz.

Phone: 303.724.4776

Location: Fitzsimons Building, 1st floor

### **CU Anschutz Faculty and Staff Threat Assessment and Response Team (FaST)**

<https://www.ucdenver.edu/offices/human-resources>

Provides safety and support for employees who are referred.

Phone: 303-724-9687

### **Employee ADA Accommodations**

The University of Colorado CU Anschutz is required to provide accommodations to qualified individuals with disabilities who are employees or applicants for employment, and for persons who participate in or apply for participation in the University's program and activities

Contact HR ADA Coordinator at [HR.ADAcoordinator@cuanschutz.edu](mailto:HR.ADAcoordinator@cuanschutz.edu) or via phone at 303-724-6813.

### **Employee Real Help Hotline\***

The Real Help Hotline gives you access to professional counselors who can offer assistance finding local resources or provide immediate crisis counseling.

24/7 Help Hotline: 833-493-8255

### **State Employee Assistance Program CSEAP\***

24/7 Emergency Line: 303-866-4314

Request an Appointment: <https://cseap.colorado.gov/contact-us>

## **Off-Campus Sexual Assault Resources:**

### **The Blue Bench\***

<https://thebluebench.org/about-us/who-we-are/overview.html>

Denver-area comprehensive sexual assault prevention and survivor support center providing low to no-cost client services including a 24-hour hotline, individual and group therapy, and case management.

Phone: 303-329-9922

24/7 Sexual Assault Hotline: 303.322.7273

### **WINGS Foundation\***

<https://www.wingsfound.org/>

Wings supports adult survivors of childhood sexual abuse to transcend trauma and lead their fullest, healthiest lives.

Phone: 303.238.8660

### **Sexual Assault Nurse Examination (SANE) Programs**

Sexual Assault Nurse Examiner (SANE) and Medical Forensic Exam (MFE) programs have medical professionals trained in sexual assault response and care. These programs provide medical care and evidence collection, if desired, for sexual assault victims.

Individuals can receive a forensic/SANE without first talking to the University or a confidential resource by calling the police directly and telling the dispatcher that they want to report a sexual assault and would like to preserve evidence. The police can provide transportation to the hospital.

View a list of all SANE Locations in Colorado:

<https://cdpsdocs.state.co.us/ovp/SARP/SANELocations2016.pdf>

### **Deaf Overcoming Violence Through Empowerment (DOVE)\***

<https://deafdove.org/>

DOVE works with Deaf, DeafBlind, DeafDisabled, and Hard of Hearing (DDBDDHH) people of all ages and backgrounds who have experienced abuse. Abuse includes: domestic violence, family violence, sexual assault, child abuse, adult survivors of childhood sexual abuse, bullying, stalking, and teen dating violence.

24/7 Crisis Line: 303.831.7874

### **RAINN: National Sexual Assault Hotline\***

<https://www.rainn.org/resources>

Phone: 800.656.HOPE (4673)

Chat online at: <https://hotline.rainn.org/online>

## **Off-Campus Dating and Domestic Violence Resources:**

### **Rose Andom Center\***

<https://roseandomcenter.org/>

The Rose Andom Center is a place for domestic violence victims to find the safety, support, and services needed to rebuild their lives and heal their families.

Physical Location: 1330 Fox St. Denver, CO 80204

Phone: 720.337.4400

### **Deaf Overcoming Violence Through Empowerment (DOVE)\***

<https://deafdove.org/>

DOVE works with Deaf, DeafBlind, DeafDisabled, and Hard of Hearing (DDBDDHH) people of all ages and backgrounds who have experienced abuse. Abuse includes: domestic violence, family violence, sexual assault, child abuse, adult survivors of childhood sexual abuse, bullying, stalking, and teen dating violence.

24/7 Crisis Line: 303.831.7874

### **National Domestic Violence Hotline\***

<https://www.thehotline.org/>

Phone: 800.799.SAFE (7233)

Chat online: <https://www.thehotline.org/#>

## **Additional Off-Campus Resources:**

### **211**

<https://unitedwaydenver.org/>

211 is a multilingual and confidential service that connects individuals to critical resources including food, shelter, rental assistance, childcare, and more.

24/7 Phone: 2-1-1

### **Colorado Legal Services**

<https://www.coloradollegalservices.org/>

Legal help for low-income Coloradans seeking assistance with civil legal needs.

Phone: 303.866.1019

### **The Center for Trauma and Resilience**

<http://traumahealth.org/>

The Center for Trauma & Resilience provides culturally and linguistically responsive programs, health promotion and crime prevention education. Translation and interpretation services available.

Phone (English): 303.894.8000 (ENG)

Phone (Spanish): 303.718.8289 (ESP)

Phone (Deaf/Hard of Hearing): 711 for Relay Colorado Access

### **Colorado Network to End Human Trafficking**

<https://combathumantrafficking.org/hotline/>

24/7 Phone: 866.455.5075

**Cyber Civil Rights Initiative**

<https://cybercivilrights.org/>

CCRI's mission is to combat online abuses that threaten civil rights and civil liberties, such as image-based sexual abuse.

Phone: 844-878-2274

**State and Federal Civil Rights Compliance Offices (for reports or complaints of harassment or discrimination):****Colorado Civil Rights Division (CCRD)**

<https://ccrd.colorado.gov/>

CCRD is charged with enforcement of the Colorado Anti-Discrimination Act (CADA).

Local Phone: 303.894.2997

Voice-mail: 800.262.4845

TTD – Relay: 711

Email: [dora\\_ccrd@state.co.us](mailto:dora_ccrd@state.co.us)

**U.S. Equal Employment Opportunity Commission (EEOC)**

<https://www.eeoc.gov/>

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy and related conditions, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information.

Phone: 800.669.4000

TTY: 800.669/6820

ASL Video: 844.234.5122

Email: [info@eeoc.gov](mailto:info@eeoc.gov)

**U. S. Department of Education, Office for Civil Rights (OCR)**

<https://www2.ed.gov/about/offices/list/ocr/index.html>

OCR's mission is to ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in our nation's schools.

Phone: 800.421.3481

Fax: 202.245.8392

Email: [OCR@ed.gov](mailto:OCR@ed.gov)

**U.S. Department of Justice Civil Rights Division**

<https://civilrights.justice.gov/> (file a complaint at this site)

The Civil Rights Division enforces federal laws that protect you from discrimination based on your race, color, national origin, disability status, sex, religion, familial status, or loss of other constitutional rights.

Phone: 202.514.2000

## X. Sexual Misconduct, Intimate Partner Violence, and Stalking Policy Definitions

*Note: Terms, including italics, are taken directly from the definitions section of APS 5014.*

A. **Consent:** Means **affirmative consent**, which is unambiguous and voluntary agreement to engage in a specific sexual activity. *Consent* is clear, knowing, and voluntary words or actions that create mutually understandable clear permission of willingness to engage in, and the conditions of, sexual activity. *Consent* must be active; silence by itself cannot be interpreted as *consent*.

*Consent* is not effectively given if it results from the use of force, including threats, or intimidation, or if it is from someone who is incapacitated:

- **Force** is the use of physical violence or imposing on someone physically to gain sexual access.
- **Threats** exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual contact she or he would not otherwise have given. For example, threats to kill or harm someone, kill or harm themselves, or to kill or harm someone for whom a person cares constitute threats.
- **Intimidation** occurs when someone uses physical presence to menace another, although no physical contact occurs, or where knowledge of prior violent behavior by an assailant, coupled with menacing behavior, places someone in fear as an implied threat.

*Consent* will be determined using both objective and subjective standards. The objective standard is met when a reasonable person would consider the words or actions of the parties to have manifested an agreement between them to do the same thing, in the same way, at the same time, with one another. The subjective standard is met when a party believes in good faith that the words or actions of the parties manifested an agreement between them to do the same thing, in the same way, at the same time, with one another.

- A person who does not want to *consent* to sex is not required to resist.
- *Consent* to some forms of sexual activity does not automatically imply *consent* to other forms of sexual activity.
- Silence, previous sexual relationships, or the existence of a current relationship do not imply *consent*.
- *Consent* cannot be implied by attire or inferred from the giving or acceptance of gifts, money, or other items.
- *Consent* to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly.

- Withdrawal of *consent* can be manifested through conduct and need not be a verbal withdrawal of consent.
  - In order to give effective *consent*, the person giving *consent* must be of legal age under Colorado law for the purposes of determining whether there was a sexual assault.
  - A *respondent's* intoxication resulting from intentional use of alcohol/drugs will not function as a defense to engaging in sexual activity without an individual's *consent*.
- B. Complainant:** Within the context of this Policy, means an individual who is alleged to be the victim of conduct that could constitute Prohibited Conduct, *retaliation*, or other conduct in violation of this Policy.
- C. Dating violence:** means violence committed by a person, on the basis of sex—
  1. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  2. where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - a. The length of the relationship;
    - b. The type of relationship; and
    - c. The frequency of interaction between the persons involved in the relationship.
- D. Domestic violence:** The term “domestic violence” includes felony or misdemeanor crimes of violence, on the basis of sex, 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, 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 a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or 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.
- E. Education program or activity:** Includes locations, events, or circumstances over which the University exercises substantial control over both the *respondent* and the context in which the Prohibited Conduct occurs. This includes any building owned or controlled by a student organization that is officially recognized by the University.
- F. Formal Complaint:** means a document filed by a *complainant* or signed by the Title IX Coordinator or designee alleging Prohibited Conduct against a *respondent* and requesting that the University investigate the allegation of Prohibited Conduct. A *Formal Complaint* may be filed with the Title IX Coordinator or designee in person, by mail, or by electronic mail. If the *complainant* files the *Formal Complaint*, the document must contain the *complainant's* physical or digital signature, or otherwise indicate that the *complainant* is the person filing the *Formal Complaint*.
- G. Hostile Environment (Sexual Misconduct):** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, or objectively offensive that it effectively denies a person equal access to the University’s *education program or activity*. Mere offensive nonsexual conduct is not enough to create a *hostile environment*. Although repeated incidents

increase the likelihood that harassment has created a *hostile environment*, a single or isolated incident of *sexual assault* may be sufficient. This definition governs allegations of *hostile environment* related to Sexual Misconduct that fall outside Title IX's jurisdiction, including allegations of student and employee Sexual Misconduct as described in Section IV(2)(b) of the Sexual Misconduct Policy.<sup>12</sup>

- H. Incapacitation:** *Incapacitation* may result from alcohol or other drug use, unconsciousness, or other factors. The use of alcohol or drugs, in and of itself does not render a person incapacitated. *Incapacitation* is a state beyond drunkenness or intoxication. The impact of alcohol and drugs varies from person to person. *Incapacitation* is a state where a person cannot make a rational, reasonable decision because they lack the capacity to give *consent* (to understand the who, what, when, where, why or how of sexual interaction). Incapacity can also result from illness, sleep, mental disability and other circumstances. Engaging in sexual activity with a person whom you know to be mentally or physically incapacitated, or reasonably should know to be incapacitated, violates this Policy.
- I. Investigative Report:** A written report of relevant and material evidence distributed to both parties after gathering facts from both parties, witnesses, and any other available evidence. The *investigative report* does not contain responsibility determinations or analysis and is intended to objectively present relevant evidence.
- J. Quid Pro Quo Sexual Harassment:** A member of the University community conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.
- K. Respondent:** Within the context of this Policy, means an individual who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct, *retaliation*, or other conduct in violation of this Policy.
- L. Responsible employee:** Means any employee who: (1) has the authority to hire, promote, discipline, evaluate, grade, formally advise or direct faculty, staff, or students; (2) has the authority to take action to redress Prohibited Conduct; or (3) has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX Coordinator. A Title IX Coordinator may designate in campus Procedures that certain individuals who might otherwise not be considered *responsible employees* are subject to mandatory reporting requirements.

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<sup>12</sup> The following examples of non-Title IX Sexual Misconduct are offered for illustrative purposes only and are not an exhaustive list: alleged conduct that occurs in off-campus housing that does not have a nexus to an employment or educational program; and alleged conduct that occurs in study-abroad programs.

**M. Retaliation:** Means any adverse action threatened or taken against a person because an individual has filed, supported, or provided information in connection with a complaint of Sexual Misconduct, including, but not limited to, direct and indirect intimidation, threats and harassment. An “adverse action” is any conduct or action that would dissuade a reasonable person from reporting an allegation of Prohibited Conduct or participating in an investigation of Prohibited Conduct.

**N. Sexual assault:** Means any attempted or actual sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving *consent*. This includes:

1. Rape: the 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. This offense includes the rape of all persons, and is properly applied regardless of the age of the victim if the victim did not consent or if the victim was incapable of giving *consent*.
2. Fondling: 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 the victim’s age or because of the victim’s temporary or permanent mental incapacity.
3. Statutory Rape: sexual intercourse with a person who is under the statutory age of *consent* if the victim consented and the offender did not force or threaten the victim.
4. Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**O. Sexual exploitation:** Means conduct that takes sexual advantage of another person without that person’s *consent*. Examples of behavior that could rise to the level of *sexual exploitation* include, but are not limited to:

1. prostituting another person;
2. taking possession of the intimate personal property of another person without that person’s *consent*;
3. recording images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness without that person’s *consent*;
4. distributing images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not *consent* to such disclosure; and
5. viewing or listening to another person’s sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person’s *consent*.

If *sexual exploitation* is severe, pervasive, and objectively offensive, it may meet the definition of Title IX Hostile Environment; otherwise, it may constitute *Sexual Misconduct*.

**P. Stalking:** Means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—(A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

**Q. Title IX Sexual Harassment:** means unwelcome conduct on the basis of sex that satisfies one or more of the following:

1. “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30);
2. Hostile Environment: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s *education program or activity*; or
3. Quid Pro Quo Sexual Harassment: An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct.

**R. Title IX Hostile Environment:** Unwelcome conduct, on the basis of sex, determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s *education program or activity*. Mere offensive nonsexual conduct is not enough to create a *hostile environment*. Although repeated incidents increase the likelihood that harassment has created a *hostile environment*, a single or isolated incident of *sexual assault* may be sufficient.

**S. Title IX Quid Pro Quo Sexual Harassment:** An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct.

**T. Title IX Stalking:** Means engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to—

1. fear for their safety or the safety of others; or
2. suffer substantial emotional distress.

## XI. Nondiscrimination Policy Definitions

**Note:** Terms, including *italics*, are taken directly from the Prohibited Conduct section of CAP 3054.

The conduct listed below is prohibited, as are attempts to commit and aiding, abetting, or inciting others to commit them. Prohibited Conduct also includes conduct engaged in by electronic means including, but not limited to, computers, any type of phone, or any other means of electronic communication.

**Discrimination** occurs when an individual suffers an adverse consequence on the basis of a protected class. Examples include failure to be hired or promoted or denial of admission to an academic program based on protected class status.

**Harassment** means verbal or physical conduct related to one's protected class that unreasonably interferes with an individual's work or academic performance or creates an intimidating or hostile work or educational environment.

**Hostile Environment.** Whether a hostile environment exists is determined from both a subjective and an objective perspective. The subjective perspective evaluates whether or not the reporting party experienced unwelcome conduct based on a protected characteristic. The objective perspective evaluates whether or not the unwelcome conduct was, from the perspective of a reasonable person in the alleged reporting party's position, sufficiently severe, persistent or pervasive that it unreasonably interferes with, limits or deprives an individual from participating in or benefiting from the University's education or employment programs and/or activities. Harassment becomes prohibited by this policy where enduring the offensive conduct becomes a condition of continued participation or receipt of benefits from the University's education or employment programs and/or activities. Mere offensive conduct, such as petty slights and annoyances, such as stray negative comments in an otherwise neutral evaluation, "snubbing a colleague," or negative comments that are justified by an individual's poor performance or history are not enough to create a Hostile Environment. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a single or isolated incident of discrimination or harassment may be sufficient.

**Retaliation.** Means any adverse action threatened or taken against a person because an individual has filed, supported or provided information in connection with a complaint of *discrimination*, including but not limited to direct and indirect *intimidation, threats* and harassment. An "adverse action" is any conduct or action that would dissuade a reasonable person from reporting an allegation of *discrimination* or participating in an investigation of *discrimination*.

## **XII. Appendix: Selected Colorado Criminal Definitions**

In Colorado, the criminal definitions of sexual assault, domestic violence (which also includes dating violence) and stalking are distinctly different from some of the definitions outlined in University Policy. Below are the relevant sections of the Colorado Criminal Code that demonstrate these differences.

### Definition of Consent – Colorado Revised Statute § 18-3-401

- (1.5) “**Consent**” for sexual activity means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. A current or previous relationship shall not be sufficient to constitute consent. Submission under the influence of fear shall not constitute consent.

### Definition of Sexual Assault – Colorado Revised Statute § 18-3-402

- (1) Any actor who knowingly inflicts sexual intrusion or sexual penetration on a victim commits **sexual assault** if:
- (a) The actor causes submission of the victim by means of sufficient consequences reasonably calculated to cause submission against the victim’s will; or
  - (b) The actor knows that the victim is incapable of appraising the nature of the victim’s conduct; or
  - (c) The actor knows that the victim submits erroneously, believing the actor to be the victim’s spouse; or
  - (d) At the time of the commission of the act, the victim is less than fifteen years of age and the actor is at least four years older than the victim and is not the spouse of the victim; or
  - (e) At the time of the commission of the act, the victim is at least fifteen years of age but less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim; or
  - (f) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or appointing/disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, unless incident to a lawful search, or
  - (g) The actor, while purporting to offer a medical service, engages in treatment or examination of a victim for other than a bona fide medical purpose or in a manner substantially inconsistent with reasonable medical practices; or
  - (h) The victim is physically helpless and the actor knows the victim is physically helpless and the victim has not consented.

### Definition of Unlawful Sexual Contact – Colorado Revised Statute § 18-3-404

- (1) Any actor who knowingly subjects a victim to any sexual contact commits unlawful sexual contact if:
- (a) The actor knows that the victim does not consent; or
  - (b) The actor knows that the victim is incapable of appraising the nature of the victim’s conduct; or
  - (c) The victim is physically helpless and the actor knows that the victim is physically helpless and the victim has not consented; or
  - (d) The actor has substantially impaired the victim’s power to appraise or control the victim’s conduct by employing, without the victim’s consent, any drug, intoxicant, or

- other means for the purpose of causing submission; or
- (e) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or appointing/disciplinary authority over the victim and uses this position of authority, unless incident to a lawful search, to coerce the victim to submit; or
- (f) The actor engages in treatment or examination of a victim for other than bona fide medical purposes or in a manner substantially inconsistent with reasonable medical practices.
- (1.5) Any person who knowingly, with or without sexual contact, induces or coerces a child by any of the means set forth in section 18-3-402 to expose intimate parts or to engage in any sexual contact, intrusion, or penetration with another person, for the purpose of the actor's own sexual gratification, commits unlawful sexual contact. For the purposes of this subsection (1.5), the term "child" means any person under the age of eighteen years.

Definition of Domestic Violence – Colorado Revised Statute § 18-6-800.3 (1)-(2)

**Domestic violence** means an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship. Intimate relationship means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

**Domestic violence** also includes any other crime against a person, or against property, including an animal, or any municipal ordinance violation against a person, or against property, including an animal, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

(Note that "dating violence" in Colorado is included with the broader definition of domestic

violence)

Definition of Stalking – Colorado Revised Statute § 18-3-602 (1)(a)-(c)

A person commits **stalking** if directly, or indirectly through another person, the person knowingly:

- (a) Makes a credible threat to another person and, in connection with the threat, repeatedly follows, approaches, contacts, or places under surveillance that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship; or
- (b) Makes a credible threat to another person and, in connection with the threat, repeatedly makes any form of communication with that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship, regardless of whether a conversation ensues; or
- (c) Repeatedly follows, approaches, contacts, places under surveillance, or makes any form of communication with another person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship in a manner that would cause a reasonable person to suffer serious emotional distress and does cause that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship to suffer serious emotional distress. For purposes of this paragraph (c), a victim need not show that he or she received professional treatment or counseling to show that he or she suffered serious emotional distress.