# University of Colorado Denver | Anschutz Office of Equity Resolution Procedures

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University of Colorado Denver | University of Colorado Anschutz
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# University of Colorado Denver | University of Colorado Anschutz Office of Equity Resolution Procedures

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***The University of Colorado Denver | University of Colorado Anschutz Office of Equity Resolution Procedures do not constitute a contract, whether express or implied, between the University and any person who is subject to its requirements.***

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

## A. Office of Equity Mission Statement

The mission of the Office of Equity (OE) is to foster an inclusive environment for all members of the University of Colorado Denver (CU Denver) and University of Colorado Anschutz (CU Anschutz) community, collectively referred to as "the University." 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, and 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 University of Colorado Administrative Policy Statement 5014, the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy (Sexual Misconduct Policy), University of Colorado Administrative Policy Statement 5065, the Protected Class Nondiscrimination Policy (Nondiscrimination Policy) and University of Colorado Administrative Policy Statement 5015, Consensual Amorous Relationships (Amorous Relationships Policy), collectively referred to as "the Policies."

This document identifies the Resolution Procedures (the Procedures) that the OE follows when it receives a report alleging a violation of the Policies, which should be read alongside the Procedures as they provide further definitions. The OE uses the Procedures to investigate and resolve any such allegations and to impose disciplinary sanctions against individuals found responsible for violating the Policies. The University reserves the right to modify these Procedures at its discretion and without notice.

The OE and the Associate Vice Chancellor/Title IX Coordinator/Title VI Coordinator[1] (AVC/Title IX Coordinator/Title VI Coordinator) is responsible for and may delegate responsibility for overseeing resolution of complaints of Prohibited Conduct under the Policies and identifying and addressing any patterns or systemic problems that arise during review of

[1] Consistent with Colorado law, the university has designated a Title VI Coordinator to oversee compliance with Title VI of the Civil Rights Act of 1964 and applicable state requirements. For allegations implicating Title VI of the Civil Rights Act of 1964, including discrimination or harassment based on race, color, or national origin as covered by APS 5065, the university's designated Title VI Coordinator performs responsibilities designated by applicable federal and state law, including oversight of these Resolution Procedures (the "grievance procedures" under Title VI), review of complaints, compliance monitoring, and reporting obligations. These responsibilities may be carried out in coordination with OE personnel administering these Resolution Procedures along with referrals to other campus administrators and program leaders.

those complaints. The AVC/Title IX Coordinator/Title VI Coordinator or designee must also monitor the University's program or activities for barriers to reporting Prohibited Conduct and take steps reasonably calculated to address such barriers.

For all matters within the scope of the Policies, at a minimum, the AVC/Title IX Coordinator/Title VI Coordinator or designee, shall be specifically responsible and have delegated authority from the Chancellor or President for implementing the Policies and to take actions to promptly and effectively end any Prohibited Conduct in the University's programs or activities, prevent its recurrence, and remedy its effects generally and for any persons subjected to Prohibited Conduct.

# II. Purpose and Scope

## A. Legal Compliance

The Procedures are intended to comply with the requirements of CU Regent law, federal and state laws, their implementing regulations, and related agency guidance specific to sexual misconduct and protected class discrimination and harassment.

## B. Policy Administration

The Procedures apply to the following applicable Policies administered by the OE and the Prohibited Conduct defined in each:

1) Sexual Misconduct, Intimate Partner Violence, and Stalking Policy
   The Sexual Misconduct, Intimate Partner Violence, and Stalking Policy (Sexual Misconduct Policy) prohibits harassment on the basis of sex. Prohibited conduct includes 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.

2) Protected Class Nondiscrimination Policy
   The Protected Class Nondiscrimination Policy (Nondiscrimination Policy) prohibits discrimination on the basis of one or more protected class. Prohibited Conduct includes discrimination or harassment on the basis of race, color, national origin or shared ancestry, sex, age, disability, creed, religion, sexual orientation, gender, gender identity, gender expression, pregnancy and related conditions, veteran status, marital status, political affiliation, and political philosophy. The Nondiscrimination Policy also prohibits retaliation and other related violations.

3) Consensual Amorous Relationships
   The Consensual Amorous Relationships policy (Amorous Relationships Policy) prohibits consensual amorous relationships, either current or that occurred within the last seven

years, between employees (faculty and staff), regents, and/or affiliates and another individual covered by the policy where one teaches, manages, supervises, advises, or evaluates that individual in any way (evaluative authority) unless the person in the position of greater authority or power notifies appropriate university offices and a mitigation plan is in place to remove the evaluative authority.

## III. General Jurisdiction

The Procedures govern all students, faculty, staff, contractors, patients, volunteers, affiliated entities, and other third parties. 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 apply 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, acquittal in a criminal case, or a finding of not liable in a civil case does not prevent the OE from addressing an incident.

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 Procedures and the applicable Policy in effect at the time the alleged Prohibited Conduct occurred.

4) After proper notice as provided for in this document, the failure of an individual to respond to the OE does not prohibit the OE from proceeding with or completing the applicable resolution process.

5) For employees, any matters falling outside the scope of the applicable Policies shall be addressed by the appointing/disciplinary authority. For students at CU Denver**,** the Office of Student Conduct and Community Standards has jurisdiction over all other student conduct matters. For students at CU Anschutz**,** the respondent's school, college, or program has jurisdiction over all other student conduct matters falling outside the scope of the Policies. In the event that there are multiple potential charges involving the Policies, 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 Policies involve 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 entity affiliated with the University. When a violation is alleged by or against University employees or students in those circumstances, the University may, at its discretion, choose to (1) conduct its own resolution process; (2) conduct a joint resolution process with the affiliated entity; (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 AVC/Title IX Coordinator/Title VI Coordinator or designee.

8) University employees may allege that non-students or non-employees at their worksite or program have engaged in Prohibited Conduct under the Policies. Allegations of Prohibited Conduct against a non-student or non-employee will be referred to the appropriate external entity with jurisdictional control over the non-student or non-employee to take appropriate steps to restore or preserve equal access to the University's education appropriate program or activity for students or employees. The University will defer to the findings of a resolution process with the external entity where the University has reviewed the resolution process and is satisfied that it was fairly conducted. At its discretion, the University may also choose to (1) conduct its own resolution process; (2) conduct a joint resolution process with the external entity; (3) use the resolution process and findings of the external entity as a basis for further investigation or adjudication; or (4) take other action as determined appropriate by the AVC/Title IX Coordinator/Title VI Coordinator or designee.

9) Conduct alleged to have occurred before an individual became a student, faculty, staff, contractor, patient, volunteer, or affiliate 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 AVC/Title IX Coordinator/Title VI Coordinator or designee.

# IV. Reporting Requirements and Options

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

## A. Reporting Options

### 1. 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 process, please contact the OE directly via email at equity@ucdenver.edu or via phone at 303.315.2567.

Elizabeth Schrock, Associate Vice Chancellor of Institutional Equity, Title IX Coordinator, and Title VI Coordinator
Office of Equity
CU Denver | CU Anschutz
**Mailing Address for CU Denver:** Lawrence Street Center Campus Box #18
1380 Lawrence Street, 12th Floor, Denver, CO 80204
**Mailing Address for CU Anschutz:** Fitzsimons Building – Suite Q20-NG018
13001 E**.** $17^{th}$ Pl., Ground Floor, Aurora, CO 80045
**Phone:** 303.315.2567
**Email:** elizabeth.schrock@ucdenver.edu or elizabeth.schrock@cuanschutz.edu

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

#### a. 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 Conduct and Community Standards or designee for students at CU Denver**,** within the professional school for students at CU Anschutz, or by 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.

### 2. 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 may also be a criminal offense.

- 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 and the OE, and may result in an OE resolution process subject to applicable state law.

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 a victim in an incident,
- If a weapon is involved, or
- If a Campus Security Authority Report is required to notify law enforcement for review before issuing 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.

#### a. Preservation of Evidence of an Alleged Sexual Assault

Regardless of whether a complainant wants to report an incident(s), it is important to preserve any evidence of 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 (e.g., Facebook, Tinder, Snapchat, Instagram, Grindr, Tinder, etc.), correspondence via other messaging applications (e.g., WhatsApp, Discord, Signal, Telegram, GroupMe, WeChat, etc.).

Regardless of whether an individual wants to report the incident to police, a medical exam can be requested to preserve evidence. Medical Forensic Exams ("MFE"s previously called a Sexual Assault Nurse Exam) conducted by a Forensic Nurse Examiner, are available in 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. Forensic Nurse Examiners are available at these facilities to conduct an MFE, 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 MFE 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 or the provision of supportive measures.

#### b. 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. More information on obtaining a restraining order in Colorado is located online at the Colorado Court Restraining Order Information page.

The Phoenix Center at Auraria (PCA) and Blue Bench (in collaboration with the Phoenix Center at CU Anschutz) can assist individuals free of charge with the process of obtaining a restraining order. CU Denver and 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 AVC/Title IX Coordinator/Title VI Coordinator or designee.

## B. Reporting and Referral Requirements

### 1. All Employees

All employees must provide the following information to any person who discloses to them information about Prohibited Conduct: (1) the contact information of the AVC/Title IX Coordinator/Title VI Coordinator or designee; and (2) information about how to make a complaint of Prohibited Conduct.

Additionally, when a person discloses a pregnancy or related condition to a University employee, that employee must provide that person with the AVC/Title IX Coordinator/Title VI Coordinator's contact information and inform the person that the AVC/Title IX

Coordinator/Title VI Coordinator can coordinate specific actions to ensure that person's equal access to the University's education programs or activities.

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 Anschutz or CU Denver.

### 2. Responsible Employees

Responsible employees must report Prohibited Conduct to the AVC/Title IX Coordinator/Title VI Coordinator. 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 AVC/Title IX Coordinator/Title VI Coordinator or designee.

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 of reporting incidents of sexual violence or any other misconduct by students to the AVC/Title IX Coordinator/Title VI Coordinator or designee.

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 AVC/Title IX Coordinator/Title VI Coordinator 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.

The responsible employee is required to promptly report to the AVC/Title IX Coordinator/Title VI Coordinator or designee all known details about the alleged Prohibited Conduct, including:

- Name(s) of the complainant;
- Name(s) of the respondent;
- 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.

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).

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 must report potential Prohibited Conduct to the AVC/Title IX Coordinator/Title VI Coordinator or designee to allow a Preliminary Inquiry to occur.

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.

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 AVC/Title IX Coordinator/Title VI Coordinator or designee. These responsible employees must report Prohibited Conduct disclosed to them when they are not serving in the capacity as Ombuds.

A responsible employee does not satisfy the reporting obligation by reporting Prohibited Conduct to a supervisor or University personnel other than the AVC/Title IX Coordinator/Title VI Coordinator or designee.

Responsible employees are not required to report Prohibited Conduct to which they have been personally subjected to the AVC/Title IX Coordinator/Title VI Coordinator or designee, but are nonetheless encouraged to report.

Communications of Prohibited Conduct to a responsible employee are not confidential, and these employees must report Prohibited Conduct to the AVC/Title IX Coordinator/Title VI Coordinator or designee when it is disclosed to them.

### 3. Confidential Employees

Confidential employees are not required to report Prohibited Conduct under the Policies to the AVC/Title IX Coordinator/Title VI Coordinator or designee. Further, *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 AVC/Title IX Coordinator/Title VI Coordinator or designee. However, confidential employees and *responsible employees* who receive information related to Prohibited Conduct in the course of providing professional services within a privileged relationship must explain to an individual alleging Prohibited Conduct: (1) their status as a confidential employee for purposes of the Policies and that they are not responsible employees who report to the

AVC/Title IX Coordinator/Title VI Coordinator or designee; (2) how an individual may contact the AVC/Title IX Coordinator/Title VI Coordinator or designee and make a complaint under this Policy; and (3) that the AVC/Title IX Coordinator/Title VI Coordinator or designee may be able to offer and coordinate supportive measures, as well as initiate an educational policy compliance remedy, informal resolution process (i.e., "participatory resolution" or "adaptable resolution"), or formal grievance process (i.e., "investigative process").

*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.

# V. Privacy, Confidentiality, and Overriding Factors

## *Note: Privacy and Confidentiality have distinct meanings.*

### C. 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. The University will not disclose information about a report of Prohibited Conduct (including identities of the parties and witnesses) except as may be permitted by law, by prior written consent, or to carry out an OE resolution procedure. This may require sharing information, including identification information, between internal University offices.

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 the FERPA. FERPA governs access to University-maintained records, and information from within those records, pertaining to students. Pursuant to FERPA, the University, including OE, may disclose records and information pertaining to a student with the student's written consent or as required by a court order, subpoena, or government agency. More information about FERPA is available at https://www.ucdenver.edu/registrar/student-resources/ferpa. 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 required 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.

**Colorado Open Records Act (CORA)**: The University is subject to the Colorado Open Records Act (CORA), C.R.S. § 24-72-201, et seq. CORA may require, depending on the specific request and whether a CORA exception applies, withholding or producing OE records.[2] As required by the Colorado Open Records Act, the University shall not release any records related to the investigation of Sexual Misconduct or finding of Sexual Misconduct unless otherwise permitted by law. All student education records are generally exempt from CORA.

**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 Nondiscrimination Policy or 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 Policies, subject to applicable state and federal laws (e.g. FERPA) regarding such disclosures. The University may also confirm that an investigation under the Nondiscrimination Policy (but not the Sexual Misconduct Policy) is pending against an employee or that an employee resigned employment while an investigation under the Nondiscrimination Policy was pending, subject to applicable state and federal laws.

## B. Confidentiality

"Confidential" generally means that information an individual shares 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 AVC/Title IX Coordinator/Title VI Coordinator has also designated the Ombuds staff serving in their capacity as a confidential resource for CU Denver and CU Anschutz.[3] 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. An employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies.

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[2] As stated in the Procedures, the complainant and the respondent will have access to investigative records during the course of an investigation.

[3] 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 Policies. A person who is a confidential resource under this 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 a list of confidential resources at CU Denver and CU Anschutz.

## C. Overriding Factors

If a complainant has disclosed an incident falling within the jurisdiction of the Sexual Misconduct or Protected Class Nondiscrimination Policies, but wishes to maintain privacy and does not wish to initiate the grievance process, the AVC/Title IX Coordinator/Title VI Coordinator or designee must discuss the availability of supportive measures with the complainant, describe the process for filing a formal complaint of sexual misconduct, and explain that the University prohibits retaliation. The AVC/Title IX Coordinator/Title VI Coordinator or designee will further explain the steps the University will take to prevent retaliation if the individual participates in a grievance process and 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 complainant would still like to maintain privacy or does not want to file a formal complaint of sexual misconduct initiating the grievance process, the AVC/Title IX Coordinator/Title VI Coordinator 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 AVC/Title IX Coordinator/Title VI Coordinator 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 will commit additional acts of sexual or other violence;
- The seriousness of the alleged sexual misconduct or protected class discrimination, including whether the respondent threatened further sexual or other violence against the complainant or others, whether the alleged Sexual 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 sexual or other violence;
- Whether the alleged sexual misconduct or protected class discrimination 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 sexual misconduct of protected class discrimination (e.g., security cameras or personnel, physical evidence); and
- Whether the alleged sexual misconduct or protected class discrimination reveals a pattern of perpetration at a given location or by a particular group.

The decision to file a formal complaint of sexual misconduct by the AVC/Title IX Coordinator/Title VI Coordinator or designee and initiate the grievance process will be on a case-by-case basis after an individualized and thoughtful review. If after considering relevant factors, the AVC/Title IX Coordinator/Title VI Coordinator or designee determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the individual alleging Prohibited Conduct or the safety of another person, or that the Prohibited Conduct as alleged prevents the University from ensuring equal access on the basis of protected class, the AVC/Title IX Coordinator/Title VI Coordinator or designee may initiate a complaint under the Formal Grievance Process. The decision to file a complaint and initiate a Formal Grievance Process pursuant to the Sexual Misconduct Policy, Nondiscrimination Policy, or Amorous Relationships Policy by the AVC/Title IX Coordinator/Title VI Coordinator or designee will be conducted on a case-by-case basis after an individualized and thoughtful review. If initiating a complaint under this Section, the AVC/Title IX Coordinator/Title VI Coordinator or designee shall document this decision in writing and notify the complainant, if reasonably able to do so, prior to doing so and appropriately address any reasonable concerns about the complainant's safety and the safety of others, including by providing supportive measures.

Nothing in this section limits the AVC/Title IX Coordinator/Title VI Coordinator or designee from responding to the alleged conduct in a manner other than through a Formal Grievance Process that the AVC/Title IX Coordinator/Title VI Coordinator or designee may determine is appropriate under the circumstances. Other options include, but are not limited to, providing supportive measures, conducting an Informal (e.g. Participatory) Resolution Process and Agreement, referring 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 AVC/Title IX Coordinator/Title VI Coordinator or designee may also determine that a report to the campus or community police department may be warranted given the overriding 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. 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 complainant or respondent. Safety measures are designed to protect the safety of all parties or the University's educational or work environment, or deter Prohibited Conduct. Supportive and safety measures should be individualized and appropriate based on the information available to the AVC/Title IX Coordinator/Title VI 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(B) below*.

Whether supportive and safety measures are appropriate is determined after an individualized assessment by the AVC/Title IX Coordinator/Title VI 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 AVC/Title IX Coordinator/Title VI Coordinator or designee. Supportive measures may be provided to complainants or respondents whether or not the OE pursues a Formal Grievance Process. Witnesses or other participants in the Formal Grievance Process may also request supportive and safety measures. The AVC/Title IX Coordinator/Title VI Coordinator or designee will maintain oversight of these requests and the provision of any such measures.

Complainants and respondents may seek a modification or reversal of supportive measures in writing to the Director of Investigations/Deputy Title IX Coordinator/Deputy Title VI Coordinator or designee within ***seven (7) calendar days*** of when the supportive measures were provided. Appeals may seek to provide, deny, modify, or terminate supportive measures applicable to the appealing party. Appeals will be reviewed by someone other than the person that provided the supportive measures and has the authority to provide, deny, modify, or terminate them. The parties may also seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.

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

## A. 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;
- On-campus 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;
- Emergency removals (*see Section VI(B) below*); or
- Other supportive and safety measures deemed appropriate by the OE.

## B. Emergency Removals

The University may remove a respondent from an education program or activity on an emergency basis after 1) the University undertakes an individualized safety and risk analysis; 2) determines that an imminent and serious threat to the physical or mental health or safety of any students, employees, or other individuals arising from the allegations of misconduct under an Applicable Policy justifies removal; and 3) provides the respondent with notice and an opportunity to appeal the decision immediately following the removal.

The OE will initiate the Formal Grievance Process before or within a reasonable timeframe after an emergency removal is initiated by the AVC/Title IX Coordinator/Title VI Coordinator, unless a respondent is no longer affiliated with the University. If a respondent is no longer affiliated with the University, the OE will consider whether to initiate the Formal Grievance Process.

### 1. Types of Emergency Removals may include:

- Interim student suspension:
    - Decisions may be made in consultation with the Academic Program when appropriate.
- Interim exclusion order for parts of or entire campus, for example, residence halls, classes, or buildings:
    - At CU Denver, OE may exclude a respondent and inform the AHEC Police Department of this removal. At CU Anschutz, the OE may recommend an exclusion of a respondent to the CU Anschutz Chief of Police.

- Administrative Leave:
    - Decisions to place a non-student employee on administrative should be made in consultation with the OE AVC/Title IX Coordinator/Title VI Coordinator or designee, Chief Human Resource Officer or designee, and appointing/disciplinary authority.
- Temporary suspension of supervisory or evaluative authority for employees:
    - Decisions to change supervisory or evaluative authority should be made in consultation with the OE AVC/Title IX Coordinator/Title VI Coordinator or designee, Chief Human Resource Officer or designee and appointing/disciplinary authority.

Nothing in the OE's Resolution Procedures limits the authority of a party's disciplinary authority from placing an employee on leave for allegations of unprofessional conduct not in the jurisdiction of the OE as outlined in the Sexual Misconduct Policy and Nondiscrimination Policy.

An appointing/disciplinary authority may make a decision to place an employee on administrative leave during the pendency of a Formal Grievance process without conducting an individualized risk assessment.

### 2. 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 or officials, such as members of the CU Denver and CU Anschutz Campus Assessment, Response, and Evaluation ("CARE") Teams and Faculty and Staff Threat Assessment and Response Teams ("FaST"), 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 alleged respondent has a known history of sexual or other violence;
- The existence of multiple complainants and/or alleged 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 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.
- If the OE performs an individualized safety and risk analysis and determines that the individual will not be removed under these procedures, the OE may refer the case to the CARE Team, FaST Team, or department disciplinary/appointing authority for further consideration. Emergency removals that include campus exclusion decisions will also be provided to all other University of Colorado campuses and the system office, who will make their own determinations about whether the exclusion will or will not apply to their property.

### 3. Opportunity to Challenge an Emergency Removal Decision

In the case of an emergency removal that does *not* include a campus exclusion, the respondent will be provided written notice of the alleged Prohibited Conduct and of the respondent's opportunity to meet with the AVC/Title IX Coordinator/Title VI Coordinator or designee at the respondent's request. If the respondent requests to meet, the AVC/Title IX Coordinator/Title VI Coordinator or designee will ensure that the student is afforded the opportunity to meet within ***seven (7) calendar days*** of their request. This does not preclude additional meetings after the ***seven (7) calendar days*** has passed to review the emergency removal. After providing the respondent with an opportunity to be heard, the AVC/Title IX Coordinator/Title VI Coordinator or designee may decide to lift or continue the emergency removal, potentially until the completion of the Formal Grievance Process. The AVC/Title IX Coordinator/Title VI Coordinator 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 the health and physical safety of the complainant or to campus safety.

At CU Denver, in the case of an emergency removal that *includes* campus exclusion, Procedures outlined in the CU Denver Exclusion of Persons from University Property, Campus Policy 3052D[4] will be concurrently followed, including the right to request a hearing by the Chief of Police or designee withing ***seven (7) calendar days*** and the right to a written appeal within ***thirty (30) calendar days***. Please see the CU Denver Exclusion of Persons from University Property policy for more details.

At CU Anschutz, in the case of a recommendation for an emergency removal that *includes* campus exclusion, the AVC/Title IX Coordinator/Title VI Coordinator will provide the CU Anschutz Chief of Police with a written individualized safety and risk analysis and notice of the alleged Prohibited Conduct. The notice will then be provided to the respondent. The procedures outlined in the CU Anschutz Exclusion of Persons from University Property, Campus Policy 3052A[5] will be followed, including the right to request a hearing by the Chief of Police or

[4] CU Denver Exclusion of Persons from University Policy, Campus Policy 3052D.
[5] CU Anschutz Exclusion of Persons from University Property, Campus Policy 3052A.

designee withing ***seven (7) calendar days*** and the right to a written appeal within ***thirty (30) calendar days***. Please see the CU Anschutz Exclusion of Persons from University Property policy for more details.

# VII. Sexual Misconduct and Nondiscrimination Policy Resolution Procedures

The University does not tolerate and will be responsive to any report or complaint of Prohibited Conduct as outlined in the Sexual Misconduct Policy, Nondiscrimination Policy, and Amorous Relationships Policy. 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 complaints of Prohibited Conduct contained within the Sexual Misconduct and Nondiscrimination Policies, and the Amorous Relationships Policy, as applicable under *Section VIII*.

## A. Prohibited Conduct

As outlined in Section II(A) of the Sexual Misconduct Policy, Prohibited Conduct refers to sexual harassment including but not limited to sexual assault (rape, fondling, statutory rape, and incest), dating and domestic violence, stalking, sexual exploitation, hostile environment sexual harassment, and quid pro quo sexual harassment. The Policy also prohibits retaliation and other related violations.

As outlined in Section II(A) of the Nondiscrimination Policy, Prohibited Conduct also refers to discrimination and harassment on the basis of one or more protected classes of race, color, national origin,[6] 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.

See Section X for full definitions of Prohibited Conduct contained within the Sexual Misconduct and Nondiscrimination Policies.

As outlined in Section VIII, disclosure and removal of evaluative authority is required under the Amorous Relationships Policy.

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[6] Consistent with Colorado law, the university has designated a Title VI Coordinator to oversee compliance with Title VI of the Civil Rights Act of 1964 and applicable state requirements. For allegations implicating Title VI of the Civil Rights Act of 1964, including discrimination or harassment based on race, color, or national origin as covered by APS 5065, the university's designated Title VI Coordinator performs responsibilities designated by applicable federal and state law, including oversight of these Resolution Procedures (the "grievance procedures under Title VI), review of complaints, compliance monitoring, and reporting obligations. These responsibilities may be carried out in coordination with OE personnel administering these Resolution Procedures along with referrals to other campus administrators and program leaders.

## B. Rights of the Parties

During the Resolution Processes, the complainant and the respondent shall each be afforded the following rights as applicable:

- Make a complaint to the OE verbally or in writing;

- Be treated equitably;

- A presumption that the respondent is not responsible for the alleged misconduct until a determination is made at the conclusion of any applicable grievance process;

- Have the University take reasonable steps to protect their privacy, provided the steps do not restrict the parties' ability to obtain and present evidence, including speaking to witnesses, consulting with their family members, confidential resources, or advisors, or otherwise preparing for or participating in the grievance procedure;

- A Formal Grievance Process conducted by trained officials (any person designated as a Title IX Coordinator, investigator(s), or decision maker(s)) who do not have a conflict of interest or bias for or against the individual complainant or respondent or against complainants or respondents generally. The decision maker may be the same person as the Title IX Coordinator or investigator. An official shall recuse themselves from participating in a grievance process in those instances where the official believes that their impartiality might reasonably be questioned by an independent, neutral observer due to the official's personal bias or prejudice against the complainant or respondent, 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 or other role;

- Supportive measures to be provided or modified throughout the resolution process, including before the Formal Grievance Process begins or while the Formal Grievance Process is underway;

- Receive notice before they participate in an interview with sufficient time to prepare for meaningful participation;

- A process with reasonably prompt timeframes, with reasonable extensions of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reasons for the delay;

- Present relevant information to the investigator(s), including inculpatory or exculpatory evidence, and identifying witnesses;

- Have an advisor of their choosing, including an attorney, advocate, or other support person throughout the Formal Grievance Process, including but not limited to being present for any meetings with OE personnel. In order to protect the integrity of the investigation, an advisor may not be a potential witness in the investigation, or individual who could otherwise compromise the investigation. During a meeting with the OE, a party's advisor may not speak on behalf of the party. The advisor, advocate, or other support person may not engage in any conduct that would constitute harassment, threats, or retaliation against any person who has participated in an investigation, including University officials, and may be denied further participation for harassing or retaliatory conduct;

- Timely and equal access to review and respond to the Investigative Report, which will include any relevant information gathered during the investigation, including information provided by complainant, respondent, witnesses, documentation, and relevant evidence, unless the University is legally prohibited from disclosing the information to a party;

- Inspect the full investigative file, which contains all information or evidence, unless prohibited or confidential under law, gathered as part of the investigation, including information the OE does not intend to rely on in reaching a determination, prior to any investigative findings or conclusions;

- An objective evaluation of all evidence that is relevant and not otherwise impermissible (which will be excluded), including both inculpatory and exculpatory evidence, and provide that credibility determinations must not be based on a person's status as a complainant, respondent, or witness;

- Receive concurrent, written notice of the investigation outcome and a copy of the written Determination Regarding Responsibility at the conclusion of the Investigation;

- Provide information about aggravating or mitigating factors prior to any sanction being imposed, if applicable;

- Receive notice of any sanction, if applicable, in writing, including a statement of the basis upon which any sanction was imposed; and

- Appeal the determination regarding responsibility and sanction determination, if applicable.

## C. Timeframes for Complaint Resolution

The OE is committed to providing a prompt, fair, and impartial resolution of all reports and complaints with timelines as follows:

- Preliminary Inquiry Process: 30 days (after request for a preliminary inquiry, typically occurring during intake or via the submission of a Formal Complaint Form)
- Educational Remedies Process: 30 Days (after request for an educational remedy, typically occurring during intake)
- Informal Resolution Process (i.e., Participatory Process): 90 days
- Formal Grievance Process (i.e., Investigative Process):
    - Evidence gathering and report writing: 90 days
    - Hearing process, including virtual, live cross-examination, the Determination Regarding Responsibility, and any associated sanctioning phase: 90 days
    - Appeal process: 30 days

These time frames may be extended for good cause with prior written notice to the complainant and respondent about the delay and reason for the delay. The University will provide the complainant and respondent (as applicable) with regular written updates on the status of resolution throughout the process until conclusion.

Good cause may exist for a variety of factors, including the complexity of the circumstances of each allegation(s), the integrity and completeness of the investigation, compliance with a request by law enforcement, concurrent law enforcement activity likely to produce materially relevant evidence, absences by the parties (e.g., due to medical or mental health needs, etc.), the availability of witnesses, the necessity to provide translation services or accommodations of a disability, University breaks or vacations, the necessity to access relevant and probative documentation that is not immediately available, or other legitimate reasons.

In order to deliver a reasonably prompt resolution, the complainant and the respondent each have an obligation to meet deadlines as requested by OE during a Formal Grievance Process. Extensions of time will only be granted for good cause, and the parties shall be provided with written notice of extensions or any delay, as applicable, and the reasons for any such extensions or delays. Non-participation by any party, and lack of evidence, does not preclude the OE from proceeding to the next stage of the investigation process through to conclusion.

## D. Overview of Resolution Processes

The OE's Resolution Processes include, but are not limited to:

1. Preliminary Inquiry Process: See Section VII(D)(1) below.
2. Educational Remedies Process: See Section VII(D)(2) below.
3. Informal Resolution Process (also called "Participatory" or "Adaptable" Resolution Processes): See Section VII(D)(3) below.
4. Formal Grievance Process (also called "Investigative" Process): See Section VII(D)(4) below.

### 1. Preliminary Inquiry Process

The AVC/Title IX Coordinator/Title VI Coordinator or designee has the authority to conduct a preliminary inquiry upon receiving a complaint or, in cases of allegations under the Sexual Misconduct Policy, a signed Formal Complaint Form[7] alleging Prohibited Conduct that would fall under OE's jurisdiction. A preliminary inquiry is an assessment that may include, but is not limited to, evaluating whether the conduct alleged implicates the Prohibited Conduct defined in the Sexual Misconduct or Nondiscrimination Policy, whether the complaint and parties are within the jurisdiction of the OE, whether the respondent is able to be identified and is currently affiliated with the University, and whether the complaint, if proved, describes conduct that would constitute a violation of the Sexual Misconduct or Nondiscrimination Policies.

A preliminary inquiry may also include the AVC/Title IX Coordinator/Title VI Coordinator or designee taking additional steps, such as meeting with individuals and reviewing documents, to evaluate whether the allegations in the complaint appear to be based in fact and would be a violation of the Sexual Misconduct or Nondiscrimination Policies such that it could proceed to an investigation. A preliminary inquiry will typically occur within ***thirty (30) calendar days,*** starting with either the intake meeting with an investigator(s)or written notice of a preliminary inquiry request for complaints under the Nondiscrimination Policy, or submission of the Formal Complaint Form for complaints under the Sexual Misconduct Policy. Reasonable extensions will occur on a case-by-case basis for good cause with notice to the complainant that includes the reasons for the delay.

In cases of preliminary inquiries of Prohibited Conduct under the Sexual Misconduct Policy prior to a complainant submitting a Formal Complaint Form, complainants will be notified in writing about available resolution options based on the information reported up to that point. Complainants may provide additional information before choosing whether or not to submit a Formal Complaint Form. After submitting a Formal Complaint Form, complainants and respondents will be provided a Notice of Allegations.

#### i. Dismissals of Nondiscrimination Complaints

For complaints under the Protected Class Nondiscrimination Policy, after an individualized and thoughtful review, the AVC/Title IX Coordinator/Title VI Coordinator or designee may determine that there is insufficient jurisdiction or cause to proceed with resolving the complaint through the Investigative Process, and therefore the complaint will be dismissed and referred to another University official or office, if applicable.

#### ii. Mandatory Dismissals of Sexual Misconduct Complaints

If a complainant submitted a signed Formal Complaint Form for Prohibited Conduct under the Sexual Misconduct Policy, and the complaint is subject to a mandatory dismissal described in

[7] For formal complaints of sexual misconduct, the OE's Formal Complaint Form must be filled out and signed by the complainant or AVC/Title IX Coordinator/Title VI Coordinator, or designee, before proceeding with a preliminary inquiry.

this section, both the complainant and the respondent will be notified with a written Notice of Complaint and Dismissal. For employee respondents, their supervisory upline may be copied on the Notice of Complaint and Dismissal.

Both parties may appeal a mandatory dismissal of a Formal Complaint on the following bases:

a. To determine whether there were procedural irregularities that affected the dismissal;
b. If new evidence that was not reasonably available at the time of dismissal that could affect the outcome of the matter; or
c. The Title IX Coordinator, investigator(s), or dismissal decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the dismissal.

The decision-maker(s) for the appeal of a dismissal may not be the same decision-maker(s) that reached the determination regarding dismissal, the investigator(s), or the Title IX Coordinator. The decision-maker(s) for the appeal must be trained. In the appeal, both parties must have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome within seven ***(7) days*** of the Notice of Complaint and Dismissal. The parties may request to inspect the investigative file within ***seven (7) days*** of the Notice of Complaint and Dismissal to prepare their written statement, and will be allowed an additional ***seven (7) days*** to inspect the file. The appeal decision-maker(s) will issue a written decision within ***seven (7) days*** of the appeal deadline describing the result of the appeal and the rationale for the result. The appeal decision must be provided simultaneously to both parties. When a mandatory dismissal becomes final, the dismissed allegations may be referred to the relevant disciplinary/appointing authority for adjudication under applicable codes of conduct.

**2. Educational Remedies Process**

The OE may determine that the most prompt and effective way to address a concern is through the Educational Remedies Process, such as by scheduling an educational policy compliance meeting. For example, the OE may resolve a report or complaint through an educational policy compliance meeting with the accused individual.

The primary focus during an Educational Remedies Process 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 Policies have 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 reported concerns.
- Provide targeted or broad-based educational programming or training.

- 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 Policies; (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 (CU Denver), the respondent's School, College, or Program (CU Anschutz), or the respondent's appointing or disciplinary authority of the allegations and responses if necessary. These relevant entities will determine whether any other disciplinary action is appropriate.

The OE retains discretion to conduct an Educational Remedies Process. Additionally, the OE retains discretion to proceed with an Investigation Process for allegations that, if proven true, would violate the Sexual Misconduct or Nondiscrimination Policy. OE will notify the complainant of the need to end the Educational Remedies Process at any time and to commence the Investigative Process.

The OE may determine that the party's disciplinary authority, supervisor, another entity or another office is best situated to efficiently and meaningfully respond to the allegations at issue, and the OE may refer the allegations to the party's disciplinary authority. Nothing in the OE's Resolution Procedures limits the authority of a party's disciplinary authority from initiating or imposing disciplinary actions as necessary.

When the respondent is an employee of the University, the OE will determine if it is appropriate to engage a disciplinary authority, supervisor, or other office in addressing the reported conduct alongside or in addition to the OE by participating in an educational policy compliance meeting. When appropriate, the OE will also collaborate with external entities where the employee works.

### 3. Informal Resolution Process (i.e. "Participatory" or "Adaptable" Resolution Process)

The Participatory Resolution Process is designed to resolve formal complaints while meeting the needs and interests of the parties. The Participatory Resolution Process is provided as an option to complainants and respondents after a Preliminary Inquiry determines that there is reason to believe that the allegations, if true, would rise to the level of a Policy violation. The Participatory Resolution Process is entirely voluntary and will not occur unless complainant and respondent agree in writing to participate.

The Participatory Resolution Process may not be facilitated by the investigator(s)or decision maker within the investigative process and new information provided by the parties during the Participatory Resolution Process will not be used if the complaint is referred back to the grievance process. The AVC/Title IX Coordinator/Title VI Coordinator or designee will oversee the Participatory Resolution process, conduct an initial and on-going assessment as to whether the Participatory Resolution Process should continue, and make the final determination on all Participatory Resolution Agreements 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 AVC/Title IX Coordinator/Title VI Coordinator or designee will not approve a Participatory Resolution Process.

### i. Notice of Agreement to Engage in Participatory Resolution Process

Prior to engaging in a Participatory Resolution Process, the campus will obtain the complainant's and respondent's voluntary, written consent. For employee respondents, the AVC/Title IX Coordinator/Title VI Coordinator will determine if their appointing/disciplinary authority must also provide their voluntary, written consent.

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

- The general allegations;
- The requirements of the Participatory Resolution Process including the circumstances under which the University precludes the parties from resuming a 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 Participatory Resolution Process and resume the grievance process;
- Any consequences resulting from engaging in the Participatory 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 AVC/Title IX Coordinator/Title VI Coordinator or designee; and
- That once the Participatory Resolution Agreement is finalized, neither party is permitted to file another complaint arising from the same allegations.

### ii. Timeframe

The Participatory Resolution Process may take place at any time before a Determination Regarding Responsibility is made, but typically within ***ninety (90) calendar days*** after both parties provide voluntary, written consent to participate in the Participatory Resolution Process, unless the parties and the AVC/Title IX Coordinator/Title VI Coordinator or designee agree to an extension.

### iii. Participatory Resolution Process Options

The Participatory Resolution Process may include:

- Mediation (where available);

- Restorative Justice (where available);
- Shuttle diplomacy;
- Referral to Office of Adaptable Resolution (available only for CU Anschutz);
- Other options as requested and available.

#### iv. Participatory Resolution Outcomes

As agreed to by the parties, the OE, and respondent's appointing/disciplinary authority, if applicable, the Participatory Resolution Process may result in a written agreement that includes:

- Safety and supportive measures;
- Referring the parties to counseling;
- Suggested sanctions;
- Conducting targeted preventive educational and training programs;
- Conducting follow-up review to ensure that the resolution has been implemented effectively; or
- Other agreed upon outcomes not prohibited by these Procedures.

The Participatory Resolution Process and any subsequent Resolution Agreement may not include:

- Admissions of criminal or civil legal liability;
- Monetary payments among the parties;
- Non-disclosure agreements/clauses prohibiting the parties or participants from discussing the allegations, the resolution process, or the Resolution Agreement; or
- Revocation of an earned degree.

#### v. Effect of Resolution Agreement

Any agreed-upon remedies and disciplinary sanctions agreed to in a Participatory Resolution Process, as outlined in a Resolution Agreement, have the same effect as remedies given and sanctions imposed following an investigation or hearing.

#### vi. Final Written Resolution Agreement

The terms of any Resolution Agreement must be in writing and signed by the parties, any appropriate appointing/disciplinary authorities, and the AVC/Title IX Coordinator/Title VI Coordinator or designee. Use of electronic signatures is permitted. A signed agreement to a Resolution Agreement is enforceable, final, and is not appealable by either Party.

### 4. Investigative Process

Complainants may be students, employees, parents/guardians, the AVC/Title IX Coordinator/Title VI Coordinator, or any person allegedly subjected to Prohibited Conduct. A complainant or the AVC/Title IX Coordinator/Title VI Coordinator or designee must make an oral or written complaint alleging Prohibited Conduct under the Nondiscrimination Policy against an individual (referred to as the respondent) for the University to initiate the Investigation. A complainant or the AVC/Title IX Coordinator/Title VI Coordinator or designee must submit a signed Formal Complaint Form to the OE alleging Prohibited Conduct under the Sexual Misconduct Policy against a respondent for the University to initiate the Investigation. OE will conduct a preliminary inquiry upon receiving a report or formal complaint alleging Prohibited Conduct that would fall under OE's jurisdiction (*see Section VII(C)(1) above*).

If the allegations of Prohibited Conduct are not subject to a mandatory dismissal, as described in Section VII(D)(1), the Investigation Process includes: (1) An investigation that commences with a Notice of Allegations; (2) an evidence gathering phase that includes the opportunity for a review and response to the Investigative Summary and investigative file; (3) A determination regarding responsibility, following a hearing if required; (4) sanctions, if applicable; and (5) appeal.

A complainant or respondent may request to resolve the complaint using the Participatory Resolution process (*see Section VII(C)(3)*) at any time during the grievance process. However, both parties, the AVC/Title IX Coordinator/Title VI Coordinator, and the appointing/disciplinary authority, if applicable, must agree to engage in the process and follow the procedures outlined in Section VII(C)(3).

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 AVC/Title IX Coordinator/Title VI Coordinator or designee shall ensure that OE investigator(s)and other members involved in the Investigation Process will receive annual training on issues related to the Prohibited Conduct, including but not limited to sexual assault, intimate partner violence, stalking, sexual harassment, and retaliation. The AVC/Title IX Coordinator/Title VI Coordinator or designee shall determine if one or more investigators shall be assigned to each case depending on the specific circumstances and as warranted.

The AVC/Title IX Coordinator/Title VI 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 that may warrant such outside resolutions include, but are not limited to, conflict of interest, allegations of bias, or workload. The AVC/Title IX Coordinator/Title VI 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 AVC/Title IX Coordinator/Title VI Coordinator or designee, facilitate a prompt, fair, equitable, and impartial resolution. Any outside investigator(s) designated to address an allegation must adhere to the requirements of these Procedures and confer with the AVC/Title IX Coordinator/Title VI Coordinator or designee on a regular basis about the progress of the investigation.

### i. Notice of Allegations

If the Investigative Process is commenced, the respondent and complainant shall receive a written Notice of Allegations.[8] 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 will receive a copy of the written Notice. This may include the Chancellor and the employee's appointing/disciplinary authority, as well as Human Resources.[9]

A respondent must contact the investigator(s) within ***seven (7) calendar days*** of the issuance of the notice to schedule a meeting.[10]

If, in the course of an investigation, a complainant alleges additional violations or the AVC/Title IX Coordinator/Title VI 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 any Amended Notices of Allegations) will include:

1) The identity of the parties involved in the incident, to the extent known and available;
2) The specific section(s) of the Policy allegedly violated;
3) The conduct allegedly constituting Prohibited Conduct;
4) The date(s) and location(s) of the alleged incident(s), to the extent known and available;
5) Information about the available processes, including both the formal grievance and participatory processes;
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 and that prior to that determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;
7) A statement that retaliation is prohibited;
8) Information about the provisions that prohibit knowingly making false statements or knowingly submitting false information during the grievance process;
9) Information that the parties have equal opportunity to inspect and review the relevant and not otherwise impermissible evidence;

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[8] If a Formal Complaint Form is submitted alleging violations of the Sexual Misconduct Policy, and the complaint is subsequently dismissed under the provisions of Section VII(D)(4), complainant and respondent will receive a Notice of Complaint and Dismissal.

[9] If the respondent is a student employee and the alleged misconduct occurs outside their employment context, the OE shall determine whether the respondent's supervisory upline has a legitimate need to know information related to the case resolution.

[10] 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.

10) 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;
11) Information about the availability of supportive measures; and
12) Information about any supportive measures that impact their participation in any University program or activity pending the outcome of the Formal Grievance Process.

The Notice of Allegations may also include information concerning any interim safety measures, which may include no-contact orders or campus exclusions, as well as other supportive measures (*see Section VI*). The OE may also consolidate complaints of Prohibited Conduct when the allegations of Prohibited Conduct arise out of the same facts or circumstances. If one of the complaints to be consolidated involves a complaint by or against a student under the Sexual Misconduct Policy, the determination regarding responsibility must be made in accordance with the hearing procedures (*see Section VII(C)(4)(iii) below*).

<u>*Dismissal after a Notice of Allegations is Issued*</u>

After a Notice of Allegations is issued, the University learns that the conduct alleged in the formal complaint would not constitute Prohibited Conduct, even if proved, the University must dismiss the complaint with regards to that conduct. The University must dismiss a complaint resolved by a Resolution Agreement resulting from the Participatory Resolution Process (*See Section VII(C)(3)*).

After the Notice of Allegations is issued, the University may, but is not required to, discretionarily dismiss a complaint at any time if:

- The complainant or AVC/Title IX Coordinator/Title VI Coordinator, if applicable, voluntarily withdraws any or all of the allegations in the complaint in writing;
- The respondent is not participating in the University's education program or activity or employed at the University;
- Specific circumstances prevent the OE from gathering evidence sufficient to reach a determination as to the allegations therein; or

Prior to dismissing, the OE must make reasonable efforts to clarify the allegations with the complainant. If the University dismisses a complaint, the OE will consider whether the conduct alleged may constitute a violation of any other University or campus policies, procedures, or conduct codes and refer the matter to other appropriate offices.

Except when dismissed pursuant to a signed Resolution Agreement following the Participatory Resolution Process, the dismissal of a complaint does not preclude a complainant or the AVC/Title IX Coordinator/Title VI Coordinator from re-initiating the Investigation Process at a later time.

Except when dismissed pursuant to a signed Resolution Agreement following a Participatory Resolution Process, if the OE dismisses a complaint after a Notice of Allegations is issued, both parties will be notified in writing of the dismissal, the basis for the dismissal, information about the appeal process, and provided supportive measures as applicable.

When applicable, each party may appeal a dismissal in writing. The decision maker for the appeal will be trained and not the investigator(s)of the allegations or the decision maker for the dismissal. To file an appeal of the dismissal, a party must submit a written appeal to the Deputy Title IX Coordinator/Deputy Title VI Coordinator or designee in the OE within ***seven (7) calendar days*** of the notice of dismissal.

An appeal of a dismissal must articulate the basis of the appeal, including why the investigation should continue. Parties may appeal on the following bases only:

- Procedural irregularities that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available at the time of the dismissal (this basis does not prohibit a complainant from "curing" their previous complaint with additional information); or
- The decision-maker(s) for the dismissal of the complaint had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

After the submission of all documentation or the seven-day deadline for response has passed, the AVC/Title IX Coordinator/Title VI Coordinator or designee will appoint a decision maker who has been trained and who did not take part in an investigation of the allegations or dismissal of the complaint/Investigation.

Upon review of the appeal, the decision maker may:

- Uphold the initial decision in its entirety; or
- Overturn the dismissal and direct that the investigation continue.

The decision maker will issue a written decision describing the result of the appeal within ***fourteen (14) calendar days*** and the rationale for the result. The appeal decision must be provided simultaneously to both parties.

#### ii. Evidence Gathering Phase

After the Notice of Allegations 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. The investigators will determine what evidence is relevant and what evidence is impermissible regardless of relevance. Relevant evidence is related to the allegations of Prohibited Conduct under investigation and aids a decision maker in determining whether the alleged prohibited occurred. Impermissible evidence that must be excluded (not be accessed, considered, or maintained, except to determine if it is impermissible) includes:

- Evidence that is protected under privilege or evidence provided to a confidential employee, unless the person holding such privilege has waived the privilege;
- 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 the investigative process; and
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged Prohibited Conduct or preclude determination that Prohibited Conduct occurred.

During the investigation, the investigator(s) will interview the parties 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 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 ***seven (7) days*** of the investigator's request. If a party or witness fails to respond within a reasonable time, the investigator(s)may continue the investigation without the benefit of information the party or witness might have provided.

The OE will provide to a complainant or respondent 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.

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. Neither party is restricted from discussing allegations under investigation or from gathering or presenting relevant evidence. The University will enforce provisions prohibiting harassing or retaliatory conduct.

Both parties may identify witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The investigator(s)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 investigator(s)may decline to contact a witness when the investigator(s)reasonably determines that the witness would not provide 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

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.

### *Review of the Investigative Summary and Investigative File*

When the investigator(s)determines that the investigation is reasonably complete, the investigator(s)will prepare an Investigative Summary that provides a list of the directly related evidence. The evidence subject to inspection and review in an electronic format or a hard copy will be available for review by the complainant,  respondent, and each party's advisor. The Investigative Summary will include:

- A description of the complaint;
- The Notices of Allegations;
- Procedural history and jurisdiction;
- A list of the interviews conducted, including date, time, and whether a transcript, audio, or video recording is included;
- A participant name key including participant identities and brief description of their role at the University and relevance to the investigation; and
- A list and description of all relevant Exhibits.

The investigative file will contain directly related, and not otherwise impermissible evidence, including but not limited to:

- Witness interview audio or video files;
- Witness interview transcripts;
- Documentary evidence; and
- Email communication relevant to the investigation.

The complainant and respondent will have the opportunity to respond in writing to the Investigative Summary and investigative file with further information, and investigator(s)follow-up questions, if applicable, 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 or respondent 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;
- 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(s)can only obtain evidence voluntarily provided by a participant; and,
- Identify any information that they believe was inappropriately included or excluded.

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 ***fourteen (14) calendar days*** to submit a written response to the Investigative Summary and investigative file to the investigator(s). The investigator(s) will consider the parties' responses, if any, prior to completing the final investigative report.

If a complainant or respondent, intending to provide a response to the Investigative Summary, 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 prior to the original deadline for responding to the Investigative Summary, 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, all parties will be notified and provided the same extension.

Where the investigator(s) receives 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 extension, the investigator(s)may issue an amended Investigative Summary 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 AVC/Title IX Coordinator/Title VI Coordinator or designee.

***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 within a reasonable time frame not to exceed ***forty-five (45) calendar days*** and will be provided equally to both parties. Inspection requests must be made in advance by the form available from the investigator.

### iii. Determination Regarding Responsibility

Regardless of the whether the respondent is a student or employee, and 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 the Sexual Misconduct or Nondiscrimination Policies 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 Sexual Misconduct or Nondiscrimination Policies occurred. The written Determination Regarding Responsibility may be made after or without a live hearing for the purpose of cross-examination. The procedures for determinations regarding responsibility with and without a hearing are set forth below.

#### ***Procedures for Protected Class Nondiscrimination Investigations (i.e., Non-Hearing Procedures)***

*Final Investigative Report*

At the conclusion of the Evidence Gathering Phase **in an investigation that does not require a hearing,** 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 the applicable Policies. As previously described, determinations regarding responsibility are based on a preponderance of the evidence standard. 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 investigator(s), not the parties, to make a determination whether or not the preponderance of the evidence standard has been met based on the totality of the available information. Neither party bears a burden of proof.

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

For investigations involving employee respondents, the written Final Investigative Report will include a determination of whether or not the respondent is 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 when the employee respondent is found not responsible for violating the Policies alleged, the OE will refer findings of inappropriate or unprofessional conduct to the appointing/disciplinary authority, who will make the final determination on appropriate action or response.

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

*Notice of Written Determination Regarding Responsibility*

The OE will issue a copy of the written Final Investigative Report and Notice of Written Determination Regarding Responsibility to the complainant and respondent simultaneously. The Notice will also notify the parties about their right to appeal and next step in the process, as applicable. If a policy violation is found, the Notice of Written Determination Regarding Responsibility will notify both parties that they may submit an optional impact statement to the disciplinary authority or Sanctioning Board detailing any aggravating or mitigating circumstances that may impact sanctioning. The optional impact statement should only contain information about the factors considered in sanctioning. The parties will have ***seven (7) calendar days*** of the issuance of the Notice of Written Determination Regarding Responsibility to submit a statement to the disciplinary authority or Sanctioning Board. For investigations involving employee respondents, the respondent's appointing/disciplinary authority will also receive the Notice and may receive the Final Investigative Report. See Section VII(D)(4)(iv) for information about sanctioning and appeals for student respondents. See Section VII(D)(4)(v) for information about sanctioning and appeals for employee respondents.

***Hearing Procedures for Sexual Misconduct Policy Allegations***

A live hearing will be offered for investigations of complaints of Prohibited Conduct under the Sexual Misconduct Policy, including sexual assault, dating and domestic violence, stalking, hostile environment sexual harassment, quid pro quo sexual harassment, sexual exploitation, and related violations.

A hearing waiver will also be offered to complainants and respondents for investigations of Prohibited Conduct under the Sexual Misconduct Policy. Waiving the right to a hearing will be completely voluntary. Both parties must waive their right to a hearing or a live hearing will be held. If the hearing is waived, the hearing officer will issue a determination based on the evidence contained in the investigation file.

A trained hearing officer will preside over the 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.

*Final Investigative Report*

At the conclusion of the response period for the Investigative Summary in an investigation that requires a hearing, the investigator(s) shall prepare a written Final Investigative Report summarizing the evidence available for consideration by the decision maker. The investigator(s)will also prepare the investigative case file containing the information subject to inspection and review in an electronic format or a hard copy. The investigative case file will be available for review by the complainant, the respondent, and each party's advisor. The Final Investigative report will include:

- A description of the complaint;
- The Notices of Allegations;
- Procedural history and jurisdiction;
- A list of the interviews conducted, including date, time, location/modality, and whether a transcript, audio, or video recording is included;
- A witness name key including witness identities and brief description of their role at the University and relevance to the investigation; and
- A list and description of all relevant Exhibits.

The investigative file will contain directly related, and not otherwise impermissible evidence, including but not limited to:

- Witness interview audio or video files;
- Witness interview transcripts;
- Documentary evidence; and
- Email communication relevant to the investigation.

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 complainant and respondent will have the opportunity to submit a written response to the Final Investigative Report and investigative file for the hearing officer's consideration. This written response will be submitted to the investigator(s) within ***fourteen (14) calendar days.***

If a complainant or respondent, intending to provide a response to the final investigative 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 prior to the original deadline for responding to the final investigative 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, all parties will be notified and provided the same extension.

### *Hearing Stage*

#### *Advisors*

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 prior to issuing the Final Investigative Report, without fee or cost.

Though a party may utilize an advisor of their own choosing throughout the hearing process, the role of the University-appointed advisor is limited to conducting cross-examination of parties and witnesses during the live hearing. A party may not personally conduct cross-examination during the hearing. Even if a party declines to work with an advisor, the party will have a University advisor appointed, and the University-provided advisor will be present to conduct cross-examination of the other party and witnesses.

Upon notice that a party needs an advisor for the hearing, the University will endeavor to assign an advisor at least ***fourteen (14) calendar days*** prior to the scheduled pre-hearing conference so the advisor may prepare. The advisor provided by the University to conduct cross-examination on behalf of that party may be, but is not required to be, an attorney.

#### *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; and
- Discussion of evidentiary guidelines.

*Live Hearing for the Purpose of Cross-Examination*

A live hearing will be conducted before a hearing officer (not the investigator) for the purpose of proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses, including questions challenging credibility. The process will allow the hearing officer to ask such questions and allow each party's advisor to ask any party or witness such questions. Such questioning must never be conducted by a party personally. If a party does not have an advisor to ask questions on their behalf, the University will provide a party with an advisor of the University's choice, without charge, for the purpose of advisor-conducted questioning. The University appointed advisor must not be a confidential employee and may be an attorney.

The hearing officer must determine whether a proposed question is relevant and not otherwise impermissible prior to the question being posed and must explain any decision to exclude a question as not relevant or otherwise permissible. The hearing officer must not permit questions that are unclear or harassing of the party or witness being questioned. The decision maker must give a party an opportunity to clarify or revise a question that the hearing officer has determined is unclear or harassing and, if the party sufficiently clarifies or revised a question, the question must be asked. All rules of decorum must apply equally to all parties.

The hearing officer may place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The hearing officer must not draw an inference about whether Prohibited Conduct occurred based solely on a party's or witness's refusal to respond to such questions.

Any individual (complainant, respondent or witnesses) previously identified during the course of the investigation may choose whether or not to participate in the live cross-examination hearing. If a complainant or respondent declines to submit to cross-examination, that party's advisor may still ask questions on their behalf.

Live hearings will be conducted virtually, with parties located in separate locations. Technology will enable the hearing officer and parties to simultaneously see and hear the party or the witness answering questions. Hearings are closed to the public.

The University will create an audio or audiovisual recording, or transcript, of any live hearing. The University must make it available to the parties for inspection and review consistent with federal and state laws, University policies, and these Resolution Procedures.

*Determination Regarding Responsibility*

Consistent with the standard of proof in other conduct proceedings, the hearing officer 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 hearing officer is not persuaded under the preponderance of evidence standard that Prohibited Conduct occurred, whatever the quantity of the evidence is, the hearing officer will not determine that Prohibited Conduct occurred.

In applying the preponderance of the evidence standard, the hearing officer may consider both direct and circumstantial evidence. The hearing 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 determine whether or not the preponderance of the evidence standard 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 a 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;
- Information about the policies and procedures that the University used to evaluate the allegations;
- A statement of, and rationale for, the result as to each allegation, including a Determination Regarding Responsibility;
- Findings of fact based on an evaluation of the relevant and not otherwise impermissible evidence supporting the determination; and
- Conclusions regarding the application of the Policy to the facts.

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 Privilege and Tenure process for respondents who are faculty.

In the event that no 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. The OE may refer the written determination, Final Investigative Report, and/or investigation file to the student or employee respondent's disciplinary authority, when appropriate.

*Notice of Written Determination Regarding Responsibility*[11]

The OE shall advise the complainant and respondent simultaneously in writing of the result or outcome of the grievance process. A copy of the written Determination Regarding Responsibility shall be provided to the complainant and the respondent. In addition, for investigations involving employee respondents, the respondent's supervisory upline, including the appointing/disciplinary authority, also receives the written Determination Regarding Responsibility.[12]

The Notice of Written Determination Regarding Responsibility will also notify the parties as to the next step in the process, as applicable. If a policy violation is found, the Notice of Written Determination Regarding Responsibility will notify both parties that they may submit an optional impact statement to the disciplinary authority or Sanctioning Board detailing any aggravating or mitigating circumstances that may impact sanctioning. The optional impact statement should only contain information about the factors considered in sanctioning. The parties will have ***seven (7) calendar days*** of the issuance of the Notice of Written Determination Regarding Responsibility to submit a statement to the disciplinary authority or Sanctioning Board.

**iv. Sanctioning and Appeals for Student Respondents**

In cases where the grievance process results in a policy violation,[13] the matter will be referred by the AVC/Title IX Coordinator/Title VI Coordinator or designee to the Sanctioning Board. In the event that no policy violation was found, there is no preclusion of discipline for other misconduct under other applicable University policies, procedures, or conduct codes.

***Sanctioning Board for Cases with Student Respondents***

The Sanctioning Board is composed of three (3) members who are collectively authorized to impose disciplinary and educational sanctions for student respondents. The Board shall decide sanctions by unanimous decision and simultaneously notify the complainant and the respondent of any sanctions and whether remedies designed to restore or preserve the complainant's equal access to education programs and activities were provided by the University.

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[11] Findings under the OE Resolution Procedures are not findings pursuant to applicable state and federal legal standards, i.e. a policy violation does not equate to a violation of equal opportunity law.

[12] 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.

[13] For cases in which no policy violation is found, both parties will be notified of their right to appeal, as articulated below in this section.

A representative from the OE is 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 and do not have a conflict of interest to serve on the Sanctioning Board. For cases involving CU Anschutz student respondents**,** one member will be appointed by the Dean or designee from the CU Anschutz school or college that the respondent attends and the other member will be a CU Anschutz employee. University employees who serve on the Sanctioning Board will have received appropriate training regarding the Applicable Policies and factors pertinent to the sanctioning decision.

Factors Considered in Sanctioning for Cases with Student Respondents

The Board members conduct an individualized review of the final written Determination Regarding Responsibility, the optional impact statements from the parties, and the full investigative file. Further, the Board may request to review the Hearing recording and transcript, as well as request to consult with OE staff or any other University staff, as needed, in making a sanctioning determination.

Factors pertinent to a sanctioning decision may include, but are not limited to:

- Severity and/or pervasiveness of conduct;
- The impact of separating a student from their education;
- Relationship between the parties, including degree of control of one party over another;
- Whether the complainant was incapacitated at the time of the conduct;
- 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 applicable Student or Professional Code of Conduct and any active disciplinary sanctions in place at time of the conduct;
- Impact of incident on complainant, if applicable;
- Acceptance of responsibility by respondent; and
- On-going safety risk to complainant or community.

Possible Sanctions for Student Respondents

Sanctions may include but are not limited to:

- **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 AVC/Title IX Coordinator**/Title VI Coordinator **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.

- **Disciplinary Probation:** A student is placed on probation. Probation lasts for a specific period of time and is implemented by semesters. A student on formal disciplinary probation is not in good standing with the University. Loss of good standing may prohibit or impact a responding student from: 1) representing the University at official events; 2) participating in Study Abroad; or 3) serving in a leadership position or on a University committee. 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.

- **Withholding of Official Transcript:** The transcript is withheld for a specified timeframe for those students who have already graduated.

- **Disciplinary Suspension:** The student is separated from the University for a specific period of time. A suspension notation appears on the student's transcript until the period of suspension has expired. The student is required to apply for readmission through the Office of Admissions after their suspension period and cannot be readmitted until all other sanctions are complete. 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, in accordance with CU Regent Policy 7.B.215, Section (IV)(A).

- **Exclusion:** The student is denied access to all or a portion of CU Denver or CU Anschutz 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 AVC/Title IX Coordinator/Title VI Coordinator, or designee, or the Chief of the University Police Department, depending on the specifics of the exclusion. Should the student enter University property without permission, the University Police Department may charge the student with trespass and the student may be charged with additional policy violations. For CU Anschutz Student Sanctioning Boards making recommendations for CU Anschutz respondents, recommendations for exclusions will be made to the Chief of Police, who makes the final determination regarding exclusions. Campus exclusion decisions will also be provided to all other University of Colorado campuses and the system office, who will make their own determinations about whether the exclusion will or will not apply to their property.

- **Disciplinary Expulsion:** The student is permanently separated from the University. A notation of expulsion remains permanently on the student's transcript. Expulsion from the University typically includes an automatic exclusion from University of Colorado property. However, for Student Sanctioning Boards making recommendations for CU Anschutz respondents, an exclusion recommendation shall be made to the Chief of Police, who makes the final determination regarding exclusions. An expulsion decision results in the student being expelled from all campuses in the University of Colorado in accordance with CU Regent Policy 7.B.215, Section (IV)(A).

- **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.

### ***Appeals for Cases with Student Respondents***

In the event that no policy violation is found, either party may appeal the Determination Regarding Responsibility within ***seven (7) calendar days of*** its issuance. In the event that a policy violation is found, either party may appeal the Determination Regarding Responsibility within ***seven (7) calendar days*** of the issuance of the Notice of Sanction.

Appeals must be submitted in writing to the AVC/Title IX Coordinator/Title VI Coordinator or designee. The appeal should indicate the specific basis for the appeal (see below), supporting arguments, and any applicable documentation.

All appeals are documentary reviews, and no interviews are conducted. 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. Generally, appeals are determined solely on the merits of the claims, arguments, and documents submitted. Appeal documents therefore should be as complete and succinct as possible.

Basis for Appeals for Cases with Student Respondents

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

- To determine whether there were procedural irregularities that affected the outcome of the matter;
- There is 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; or
- The AVC/Title IX Coordinator/Title VI Coordinator, investigators, and/or other decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Student Appeal Process and Appeal Officer(s)

If an appeal is received, the AVC/Title IX Coordinator/Title VI Coordinator or designee will notify the other party to the original complaint (complainant or respondent) in writing, and the party will be provided ***seven (7) calendar days*** to respond in writing to the appeal to support or challenge the outcome. The response should be sent to the AVC/Title IX Coordinator/Title VI 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 or the seven-day deadline for response has passed, the campus AVC/Title IX Coordinator/Title VI Coordinator, CU System Title IX Coordinator/Title VI Coordinator, or designee will appoint a CU employee or employees (who may include staff from any CU campus or the system office) who is not otherwise affiliated with the OE to serve as the Appeal Officer(s). The Appeal Officer appointees will have received appropriate training on the Policies and appeal procedures.

Upon review of the appeal, the Appeal Officer(s) may:

- Uphold the initial decision in its entirety; or
- Send the case back to the decision-maker(s) or sanctioning authority for reconsideration and potentially re-investigation (by the same or different investigator(s)).

The Appeal Officer(s) shall not make new findings of fact. The Appeal Officer(s) shall review all documentation submitted, make the final decision upon appeal, and concurrently provide the parties with a written Notice of Appeal Decision within ***thirty (30) calendar days*** of receipt of all documents associated with the appeal.

**v. Sanctioning and Appeals for Employee Respondents**

For employee respondents, the disciplinary authority is provided the written Determination Regarding Responsibility and notified of policy violations or inappropriate or unprofessional conduct. Neither this notification nor the OE Formal Grievance Process replaces any additional process or meetings that may be required under other applicable personnel processes (*e.g*., State Personnel Board Rules for classified employees; Privilege and Tenure process for faculty).

If a policy violation is found, the Notice of Written Determination Regarding Responsibility will notify both parties that they may submit an optional impact statement to the disciplinary authority or Sanctioning Board detailing any aggravating or mitigating circumstances that may impact sanctioning. The optional impact statement should only contain information about the factors considered in sanctioning. The parties will have ***seven (7) calendar days*** of the issuance of the Notice of Written Determination Regarding Responsibility to submit a statement to the disciplinary authority or Sanctioning Board.

### *Employee Sanction Required and Potential Sanctions*

In order to remediate the effects of misconduct, the disciplinary authority will impose sanctions. The disciplinary authority will determine the sanction(s) in consultation with the Chief Human Resources Office or designee and with a written recommendation from the AVC/Title IX Coordinator/Title VI Coordinator or designee, and any other administrative staff with a need to know pursuant to any other process applicable to the employee.

The disciplinary authority may have access to the investigative records in order to determine action. Additionally, the OE can provide redacted information to the disciplinary authority related to similarly situated investigations and sanctioning outcomes to ensure consistency and equity in sanctioning.

Potential sanctions may include:

- **Letter of Expectation/Letter of Discipline/Letter of Reprimand:** A warning/written letter of expectation, discipline, 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. For CU Anschutz respondents, an exclusion recommendation shall be made to the Chief of Police, who makes the final determination regarding exclusions. Campus exclusion decisions will also be provided to all other University of Colorado campuses and the system office, who will make their own determinations about whether the exclusion will or will not apply to their property.

- **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.

Notice of Sanction for Cases with Employee Respondents

The AVC/Title IX Coordinator/Title VI Coordinator 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 sexual misconduct to the extent permitted by law. Regardless of the OE findings, there is no preclusion of discipline by the disciplinary authority for other misconduct or for inappropriate or unprofessional conduct.

The OE will also provide notice of the final outcome 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 Privilege and Tenure process, if applicable, for respondents who are faculty.

### ***Appeals for Cases with Employee Respondents***

Either party may appeal the Determination Regarding Responsibility and Sanctions within ***seven (7) calendar days*** of its issuance under these procedures and does not preclude other University proceedings as required for employee respondents, including as applicable State Personnel Board Rules or Regent Law, Article 5.D.

Appeals must be submitted in writing to the AVC/Title IX Coordinator/Title VI Coordinator or designee. The appeal should indicate the specific basis for the appeal (see below), supporting arguments, and any applicable documentation.

All appeals are documentary reviews, and no interviews are conducted. 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. Generally, appeals are determined solely on the merits of the claims, arguments, and documents submitted. Appeal documents therefore should be as complete and succinct as possible.

<u>Basis for Appeals for Cases with Employee Respondents</u>

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

- To determine whether there were procedural irregularities that affected the outcome of the matter;
- There is 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; or
- The AVC/Title IX Coordinator/Title VI Coordinator, investigators, and/or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or *responden*t that affected the outcome of the matter.

<u>Appeal Process and Appeal Officer(s) for Cases with Employee Respondents</u>

If an appeal is received, the AVC/Title IX Coordinator/Title VI Coordinator or designee will notify the other party to the original complaint (complainant or respondent) in writing, and the party will be provided ***seven (7) calendar days*** to respond in writing to the appeal in support of or challenging the outcome. The response should be sent to the AVC/Title IX Coordinator/Title VI 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 or the seven-day deadline for response has passed, the campus AVC/Title IX Coordinator/Title VI Coordinator, CU System Title IX Coordinator/Title VI Coordinator, or designee will appoint a CU employee or employees (who may include staff from any CU campus or the system office) who are not otherwise affiliated with the OE to serve as the Appeal Officer(s. The Appeal Officer(s) appointees will have received appropriate training on the Policies and appeal procedures.

Upon review of the appeal, the Appeal Officer(s) will:

- Uphold the initial decision in its entirety; or
- Send the case back to the decision-maker(s)(s) for reconsideration and potentially re-investigation (by the same or different investigator(s)).

The Appeal Officer(s) shall not make new findings of fact. The Appeal Officer(s) shall review all documentation submitted, make the final decision upon appeal, and concurrently provide the parties with a written Notice of Appeal Decision within ***thirty (30) calendar days*** of receipt of the appeal.

# VIII. Consensual Amorous Relationships Resolution Procedures

The Amorous Relationships Policy is intended to establish: (1) clear prohibitions for certain consensual amorous relationships between individuals with evaluative authority as defined in the Amorous Relationships Policy; and (2) protocol for how to disclose and mitigate permitted consensual amorous relationships that are occurring or occurred within the last seven years to remove any concerns regarding favoritism, abuses of power or perceived or real conflicts of interest.

To disclose a consensual amorous relationship, report an alleged violation, or otherwise seek guidance about this policy, contact the OE.

## A. Disclosing Consensual Amorous Relationships

For relationships described in section II of the Amorous Relationships Policy, the following steps must be followed by the person in the position of greater authority or power prior to that person accepting a role that would create a conflict of interest:

- disclose the consensual amorous relationship to the OE, who will notify the appointing/disciplinary authority and Human Resources as applicable;
- disclose any consensual amorous relationship that existed prior to the effective date of Amorous Relationships Policy to the OE as soon as possible and cooperate in the development of a mitigation plan as outlined below; and
- cooperate in the development of a mitigation plan designed to reduce or eliminate the conflict of interest.

## B. Mitigation Plans

If the conflict of interest can be successfully mitigated and managed for relationships described in the Amorous Relationships Policy, a written mitigation plan will be produced within fourteen business days by Human Resources in collaboration with both parties to the consensual amorous relationship, the appointing/disciplinary authority, and the OE. The fourteen-day deadline may be extended for good cause.

If the mitigation plan is not agreed to by all parties to the plan, resolution of the disagreement will be handled by Human Resources through consultation with the appointing/disciplinary authority and the OE.

If the real or perceived conflict of interest, potential for abuse, or the appearance of abuse or favoritism created by the consensual amorous relationship cannot be successfully mitigated and managed, then the consensual amorous relationship is prohibited.

The mitigation plan will:

- provide an alternative means for managing, supervising, teaching, evaluating and/or advising the supervisee or otherwise mitigate the conflict;
- give priority to the interest of the supervisee;
- consider the extent to which the plan should be disclosed to additional employees with a legitimate need to know as related only to the plan's implementation and as determined by Human Resources;
- be in writing and signed by both parties to the consensual amorous relationship;
- provide notice of the Sexual Misconduct Policy, and
- be reassessed on an annual basis (or sooner if circumstances warrant) by the person in the position of greater authority, and the applicable department/unit for necessary modification.

### C. Investigations of Alleged Violations

If investigation by the OE is required, including for noncompliance with disclosure requirements or related violations as defined in the Consensual Amorous Relationships Policy, the OE will follow the Resolution Procedures described in Section VII for allegations of Prohibited Conduct under the Nondiscrimination Policy, including the non-hearing procedures for the written Determination Regarding Responsibility. If the allegations of noncompliance under the Consensual Amorous Relationships Policy are related to additional allegations under the Sexual Misconduct Policy, the OE may consolidate the allegations and proceed under the hearing procedures as described in Section VII.

## 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:**
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 include 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: 1201 Larimer Street, Suite 2007

**CU Denver Office for People and Culture**
https://www.ucdenver.edu/offices/people-culture/
Services, resources, and guidance to enhance belonging across the university.
Phone: 303.315.2123
Location: 1380 Lawrence Street

## CU Denver Employee Resources

**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)**
Provides safety and support for employees who are referred.
Phone: 303-315-3278
Email: FastDenver@ucdenver.edu

**CU Denver Human Resources**
https://www.ucdenver.edu/offices/human-resources
Employee relations, performance concerns, ADA accommodations, parental leave, and other resources.
Email: workplaceengagement@ucdenver.edu
Contact HR's ADA Coordinator at workplaceengagement@ucdenver.edu or fill out the ADA accommodations request on their website:
https://www.ucdenver.edu/offices/human-resources/employee-relations-performance/ada-compliance

## CU Anschutz Student and Employee Resources

**Blue Bench in collaboration with the Phoenix Center at Anschutz***
24/7 Helpline: 303.322.7273 (English) or 303.329.0031 (Spanish)
https://www.cuanschutz.edu/student/support/phoenix-center
Phone: 303-724-2866

**The Ombuds Office***
https://www.cuanschutz.edu/offices/evc-academic-student-affairs/affiliated-units/associate-vice-chancellor-of-academic-resources/ombuds-office
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: 303.724.3489

**CU Anschutz Police Department**
https://www.cuanschutz.edu/police
24/7 Emergency Line: 9-1-1 or 303.724.4444
Phone: 303-724-2000
Location: 13309 E 17th 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: Anschutz Health Sciences Building, Suite 5040

**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
Location: Education 2 North, Suite 3200

**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: 303-724-5640
Location: Strauss Health Sciences Library, V23-1409

## 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: 303.724.4987
Location: Anschutz Health Sciences Building, Suite 5003

Professional excellence, Accountability, Trust, and Humanism **(formerly Office of Faculty Relations)**
https://medschool.cuanschutz.edu/faculty-affairs (report an incident at this site)
The CU Anschutz office of Professional excellence, Accountability, Trust, and Humanism (PATH, formerly Office of Faculty Relations) is a resource for all matters pertaining to professionalism concerns regarding residents, fellows, staff members, and faculty in the School of Medicine at CU Anschutz.
Phone: 303.724.5375
Email: PATH@cuanschutz.edu

**CU Anschutz Faculty and Staff Threat Assessment and Response Team (FaST)**
https://www.cuanschutz.edu/offices/human-resources/faculty-and-staff-threat-assessment-response-team
Provides safety and support for employees who are referred.
Phone: 303.724.6814

**CU Anschutz Human Resources**
https://www.cuanschutz.edu/offices/human-resources/
Employee relations, performance concerns, reasonable ADA accommodations, parental leave, and other resources
Phone: 303.724.6813
Contact HR's ADA Coordinator at HR.ADAcoordinator@cuanschutz.edu or via phone at 303-724-6813.

**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/
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
Email: hotline@deafdove.org

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://www.211colorado.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 or (866) 760-6489 toll free

**Colorado Legal Services**
https://www.coloradolegalservices.org/
Legal help for low-income Coloradans seeking assistance with civil legal needs.
Phone: 303.837.1313

**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
Text: “Help” to 720-999-9724

**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

**Identity-Based Crisis Resources:**

- BlackLine BIPOC support line: 1-800-604-5841 call/text
- Crisis Text Line for the Spanish-language LatinX community: text “HOLA” to 741741
- Trevor Project LGBTQIA+ Crisis Line: 1-866-488-7386 or text 678678
- Veteran or Military Crisis Line: text 838255 or dial 988, then press ‘1’
- WeRNative Native Crisis Line: text “NATIVE” to 741741

## 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
Voicemail: 800.262.4845
TTD – Relay: 711
Email: dora_ccrd@state.co.us

**Colorado Department of Regulatory Agencies (DORA), Division of Professional and Occupations (DPO)**
https://apps2.colorado.gov/dora/licensing/activities/complaint.aspx (file a complaint at this site)
If you believe a professional has violated the law or regulation overseen by DORA, you may file a complaint with the DPO.
Phone: 303.894.7800
Email: dora_dpo_licensing@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

**U. S. Department of Education, Office for Civil Rights (OCR)**
https://www.ed.gov/about/ed-offices/ocr (file a complaint at this site)
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

**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: 202.514.3847, or 1.855.856-1247 toll free
TTY: 202.517.0716

**U.S. Department of Health and Human Services (DHHS) Office for Civil Rights (OCR)**
https://www.hhs.gov/civil-rights/filing-a-complaint/index.html (file a complaint at this site)
If you believe that you have been discriminated against because of your race, color, national origin, disability, age, sex, or religion in programs or activities that HHS directly operates or to which HHS provides federal financial assistance, you may file a complaint with OCR.
Phone: 1.877.696.6775 toll free call center

# X. Prohibited Conduct Definitions

**Conduct prohibited by the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy ("Sexual Misconduct Policy")**

- **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.

- **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.

- **Hostile Environment**: 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

- **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.

- **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 Sexual Misconduct or participating in an investigation of Sexual Misconduct.

- **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.

- **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.

- **Stalking**: Means engaging in a course of conduct 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.

- **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.

- **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.

- **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.

- **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.

## Conduct prohibited by the Protected Class Nondiscrimination Policy ("Nondiscrimination Policy"):

- **Discrimination on the basis of protected class**: When an individual suffers an adverse consequence on the basis of a protected class. Examples include, but are not limited to, failure to be hired or promoted; denial of admission to an academic program; or failure to provide or implement legally required accommodations (for example accommodations approved by the campus ADA Coordinator, Disability Services Office or other designated office) as related to an individual's disability, pregnancy/pregnancy related conditions or religion.

- **Harassment on the basis of protected class**: Unwelcome verbal, written, or physical conduct based on 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** is a form of harassment. Whether a hostile environment exists is determined by evaluating whether or not an individual experienced unwelcome conduct and whether or not the unwelcome conduct was, from the perspective of a reasonable person in the alleged individual's position, sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the campus's education or employment programs and/or activities. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a single or isolated incident of conduct based on protected class may be sufficient.

- **Failure to Comply with Orders or Sanctions**: Not complying with orders of the Equity Office or other appropriate university officials related to this Policy, including but not limited to No-Contact Orders, Exclusion Orders, and Orders for Interim Suspension. Members of the university community must abide by and complete sanctions related to prohibited conduct.

- **Failure to Report**: When (1) the Responsible Employee received information that a member of the university community was subjected to or committed an act of alleged prohibited conduct and (2) the Responsible Employee intentionally, knowingly, or recklessly disregarded the obligation to report, thus resulting in harm to a member of the university community. A Responsible Employee is defined below in Section IV(B)(2) of the Procedures. This provision will be applied in a manner that promotes the reporting of prohibited conduct and avoids disciplinary actions when Respondent Employees conscientiously discharge their reporting obligations.

- **Interference with Reporting**: Prohibiting or interfering with a Responsible Employee or any other person's reporting to the Equity Office. A Responsible Employee is defined in Section IV(B)(2) of the Procedures.

- **Providing False or Misleading Information:** When a person knowingly or recklessly provides false or misleading information to an Equity Office in the course of a resolution process. Making a report or providing information in good faith, even if the information reported is not later substantiated, will not constitute a violation of this Policy.

- **Retaliation**: Adverse educational or employment actions, including direct or indirect intimidation, threats, and harassment, taken against an individual because of their involvement in a complaint of prohibited conduct. An adverse educational or employment action is any conduct that would dissuade a reasonable person from reporting an allegation of, or participating in, an investigation of prohibited conduct.

## XI. Selected Definitions from the Resolution Procedures

**Advisor**: An individual designated by the complainant or respondent to be present at interviews and/or conduct cross-examination. Advisors may be, but do not have to be, attorneys. If a party does not designate an advisor, the OE will appoint an advisor for cross-examination in cases of alleged Sexual Misconduct.

**Aggravating Factor**: Relevant circumstances accompanying the commission of misconduct or occurring prior to the misconduct as specified in Prohibited Conduct that add to its seriousness. Examples may include the use of violence or force, violation of a trust or duty, premeditation of an incident, and the existence of a previous conduct violation.

**Appointing/Disciplinary Authority**: An appointing authority is the individual with the authority or designated authority to make ultimate personnel decisions concerning a particular employee. A disciplinary authority is the individual or office that has the authority or delegated authority to impose discipline upon a particular employee or student.

**Complainant**: An individual who is alleged to be the victim of Prohibited Conduct under any applicable policy.

**Day**: For purposes of calculating timeframes pursuant to these policies and procedures, a day is a calendar day. However, the OE will not require parties to submit documents or responses or participate in any meetings on a weekend, holiday, or any other campus closure. In the event that a scheduled meeting or deadline falls on a weekend, holiday, or any other campus closure, the OE will extend a deadline to the next business day or promptly reschedule a meeting. (Please refer to the CU Denver and CU Anschutz campus holiday schedule online.)

**Employee**: Anyone under the University's control (excluding independent contractors) who receives payment from the University for work performed, including but not limited to regular faculty, research faculty, University staff, classified staff, undergraduate and graduate student employees, or temporary employees.

**Emergency Removal**: Immediate and temporary suspension from classes or any other University building, activity, or program. This could include an interim suspension from all University activities and programs, and exclusions from all University buildings.

**Mitigating Factor**: Relevant circumstances accompanying the commission of misconduct or other extenuating circumstances that may be taken into account to reduce a sanction. These factors do not constitute a justification or excuse for the behavior in question.

**Participants**: complainant, respondent, and any witnesses or other third parties participating in an OE resolution process.

**Party**: Complainant or respondent and collectively referred to as "parties."

**Prohibited Conduct:** Misconduct proscribed by the Sexual Misconduct Policy, Nondiscrimination Policy, or Amorous Relationships Policy (*See Section X*).

**Respondent**: An individual who has been reported to be the perpetrator of alleged Prohibited Conduct under any applicable policy.

**Sanction**: Refers to the discipline imposed as a result of a policy violation.

**Student**: The term student includes all persons taking courses at the University, either full time or part time, pursuing undergraduate, graduate, or professional studies, as well as non-degree seeking students. This includes individuals who confirm their intent to enroll in programs, those attending new student welcome or orientation sessions, students between academic terms, and those that were enrolled at the date of an alleged incident. This also includes persons who are eligible to enroll but are not enrolled at the University, persons who are suspended from the University, and persons participating in a leave of absence. Persons who withdraw after allegedly violating University policies or who are not officially enrolled for a particular term but who have a continuing relationship, as determined by Academic Advising, with the University are considered students.

**University**: The University of Colorado Denver and University of Colorado Anschutz.

**University Official**: A University employee working in the performance of their duly authorized duties.

**University Property**: University owned or controlled property.

**Witness**: Any individual who may have information relating to a matter being investigated by OE.

# 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.

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

***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)

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

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.