

## **Office of Institutional Equity (OIE) Resolution Procedures**

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The information contained within the Office of Institutional Equity (OIE) Resolution Procedures is intended to provide general information to members of the University community and is not intended to, nor does it, create a contract between the OIE or UCCS and community members. The OIE reserves the right to change or eliminate any of the language herein at its discretion and without notice.

**Table of Contents**

Table of Contents ..... 2

Office of Institutional Equity ..... 5

I. Overview and Mission Statement ..... 5

II. Purpose and Scope ..... 5

    A. Legal Compliance ..... 5

    B. Policy Administration ..... 6

III. General Jurisdiction ..... 7

    A. Operations ..... 7

    B. Concurrent Investigations, Proceedings, and Referrals ..... 8

    C. Jurisdictional Requirements ..... 9

IV. Reporting ..... 10

    A. Reporting to OIE ..... 10

    B. Responsible Employees: Required Reporting to OIE ..... 10

    C. Confidential Reporting ..... 12

    D. Reporting to Law Enforcement ..... 14

    E. Protection Orders or Similar Lawful Orders ..... 14

    F. Preservation of evidence ..... 15

V. Privacy, Confidentiality, and Overriding Factors ..... 15

    A. Privacy ..... 15

    B. Confidentiality ..... 17

    C. Overriding Factors (Obligation to Provide a Safe and Nondiscriminatory Environment) ..... 17

VI. Supportive and Safety Measures ..... 19

    A. Supportive Measures ..... 20

    B. Safety Measures (Emergency Removal) ..... 21

VII. Introduction: Case Resolution Procedures ..... 23

    A. Types of Resolution Procedures ..... 23

    B. Resolution Process Officials ..... 23

    C. Participant Rights ..... 23

    D. Investigators ..... 26

    E. Timeframes for Complaint Resolution ..... 26



VIII. Preliminary Inquiry, Dismissal, Appeal of Dismissal, and Referral.....	27
A. Preliminary Inquiry.....	27
B. Dismissal.....	27
C. Referral .....	27
IX. Informational Report (Document Only) .....	28
X. Policy Compliance Education.....	28
XI. Formal Grievance Procedure: Sexual Misconduct (CU APS 5014).....	29
A. Filing and Evaluation of a Formal Complaint .....	29
B. Written Notice of Allegation(s)(s) .....	32
C. Collection and Review of Information, Evidence, and Investigative Reports.....	33
D. Hearing and Determination Regarding Responsibility.....	35
F. Sanctioning Process.....	40
G. Appeals of Formal Grievance Procedure.....	43
XII. Formal Grievance Procedure: Protected Class Nondiscrimination Policy (CU APS 5065).....	45
A. Filing and Evaluation of a Formal Complaint .....	45
B. Written Notice of Allegation(s)(s) .....	47
C. Collection and Review of Information, Evidence, and Investigative Reports.....	48
D. Dismissal After Initiation of Formal Grievance Procedure .....	51
E. Determination Regarding Responsibility .....	52
F. Sanctioning Process.....	54
G. Appeals of Formal Grievance Procedure.....	57
XIII. Adaptable Resolution Process (also known as Informal Resolution).....	59
A. Adaptable Resolution.....	59
B. Referrals to a Sanctioning Authority .....	63
XIV. Compliance with Conflict of Interest in Cases of Amorous Relationships Policy .....	63
A. Removing Direct Evaluative or Supervisory Responsibilities .....	63
B. Recusal and Disclosure in the Direct Line of Report .....	64
C. Procedure for Addressing Allegations of Noncompliance .....	64
XV. Resources .....	64
A. Confidential Resources.....	64
B. Campus Resources .....	65

C. Off-Campus Resources .....	66
D. Legal Services.....	67
E. State and Federal Civil Rights Compliance Offices .....	67
XVI. Definitions for purposes of these Resolution Procedures .....	67
XVII. Appendix 1: Selected Colorado Criminal Definitions .....	69

# Office of Institutional Equity

## I. Overview and Mission Statement

The Office of Institutional Equity (OIE)'s mission is to foster a safe, inclusive, accessible, and nondiscriminatory environment for all members of the UCCS community. To achieve this mission, the OIE promotes equal access to educational and employment activities utilizing a comprehensive and integrated approach and treats everyone with respect and dignity. The OIE supports prevention education, incident reporting, supportive and safety measures, reasonable accommodations (including those related to disability, pregnancy and pregnancy-related conditions, lactation, and religion), and facilitates fair and unbiased case resolutions.

## II. Purpose and Scope

### A. Legal Compliance

The OIE Resolution Procedures ("Resolution Procedures") are intended to comply with the requirements of the following federal and state laws, their implementing regulations, and related agency guidance, including:

- The Constitution of the United States (and Amendments), the State of Colorado Constitution (and Amendments), and Colorado Revised Statutes (CRS), including Title 23 (re: University of Colorado), and Article 8: Laws of the Regents
- Equal Pay for Equal Work Act (CRS § 8-5-101, et. seq.)
- Publication of Change (Name changes) (CRS § 8-13.5-102, et. seq.)
- Civil Rights Act of 1964, including Titles VI, and VII; and the Colorado Anti-discrimination Act of 1979 (CADA) (C.R.S. § 24-34-301, et seq.)
- Creating a Respectful and Open World for Natural Hair Act (CROWN) (2020 and Amendment 2024)
- Title IX of the Education Amendments (1972)
- Rehabilitation Act (1973) Sections 503 and 504
- Vietnam Era Veterans Readjustment Assistance Act (1974)
- Uniformed Services Employment and Reemployment Rights Act (1994)
- Family Educational Rights and Privacy Act (FERPA) of 1974 (and the Higher Education Amendments of 1998)
- Age Discrimination Act (1975), and Age Discrimination in Employment Act (1976)
- Discriminatory or unfair employment practices (CRS § 24-34-402, et. seq.)
- Pregnancy Discrimination Act (1978), Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act (2022), Colorado Workplace Accommodation for Nursing Mothers Act (2008), Colorado Pregnant Workers Fairness Act (2016), Pregnant Workers



- Fairness Act (2023), and Right of Nursing Mothers to Express Breastmilk in Workplace – Private Location – Discrimination Prohibited (CRS § 8-13.5-104, et. seq.)
- Americans with Disabilities Act of 1990 (Amendments Act of 2008)
  - The Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act (1991)
  - Violence Against Women Act (1994) and Reauthorization Act of 2022
  - Colorado Anti-Discrimination Act (1979), and Protecting Opportunities and Workers’ Rights Act (POWR Act, 2023)

## B. Policy Administration

The Resolution Procedures apply to the following policies (“Applicable Policies”):

### 1. [Protected Class Nondiscrimination Policy](#)<sup>1</sup>

This policy Prohibits protected class discrimination on the basis of race, color, national origin, sex, age, disability, creed, religion, veteran status, marital status, political affiliation, political philosophy, pregnancy or related conditions, sexual orientation, gender identity and gender expression and related violations (failure to report, providing false or misleading information, interference with reporting, failing to comply with orders or sanctions and related retaliation).

### 2. [Sexual Misconduct, Intimate Partner Violence, and Stalking Policy](#)<sup>2</sup>

This policy prohibits discrimination and harassment on the basis of sex. Specifically, this Policy prohibits sexual assault (rape, fondling, statutory rape, and incest), dating violence, domestic violence, Title IX stalking, stalking, sexual exploitation, Title IX hostile environment, hostile environment, Title IX quid pro quo sexual harassment, and quid pro quo sexual harassment. The Policy also prohibits retaliation and other related violations.

### 3. [Conflict of Interest in Cases of Amorous Relationships Policy](#)<sup>3</sup>

This policy requires that direct evaluative authority not be exercised in cases where amorous relationships exist or existed within the last seven years between two individuals, whether faculty members, Students, administrators, or staff.

The Applicable Policies prohibit discriminatory and harassing conduct,<sup>4</sup> as well as conflicts of interest in amorous relationships.

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<sup>1</sup> University of Colorado Protected Class Nondiscrimination Policy (APS 5065), online at [APS 5065 - Protected Class Nondiscrimination | University of Colorado \(cu.edu\)](#)

<sup>2</sup> University of Colorado Sexual Misconduct, Intimate Partner Violence and Stalking Policy (APS 5014), online at <https://www.cu.edu/ope/aps/5014>

<sup>3</sup> University of Colorado Conflict of Interest in Cases of Amorous Relationships Policy (APS 5015), online at <https://www.cu.edu/ope/aps/5015>

<sup>4</sup> Conduct in violation of a University policy is considered “misconduct” and may also be referred to as “prohibited conduct.”

### III. General Jurisdiction

The Applicable Policies apply to all Students, faculty, staff, contractors, patients, volunteers, affiliated entities, and other third Parties. 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. Refer to [Section VII.A.](#)

For the purposes of these Resolution Procedures, refer to [Section XVI](#) for a list of other defined terms. The following are key terms referenced throughout:

- **Complainant:** an individual who is alleged to be subjected to prohibited conduct under any Applicable Policy.
- **Respondent:** An individual who is accused of prohibited conduct under any Applicable Policy.
- **Witness:** Any individual who may have information relating to a matter being investigated by OIE.
- **Participants:** Complainant, Respondent, and any Witnesses or other third Parties participating in an OIE resolution process.
- **Party:** Complainant or Respondent and collectively referred to as “Parties.”

#### A. Operations

In accordance with the Applicable Policies, the OIE and Title IX Coordinator is responsible for, and may delegate responsibility and authority for, the following operations:

- 1) Ensuring that formal complaints and reports of misconduct under the Applicable Policies are handled appropriately and in a timely manner.  
Overseeing adequate, reliable, and impartial resolution of reports and formal complaints of misconduct under the Applicable Policies.
- 2) Evaluating whether a Formal Complaint should proceed over a Complainant’s decision to not move forward due to the University’s obligation to provide a safe and nondiscriminatory environment.
- 3) Evaluating whether a Formal Complaint must be dismissed for jurisdictional bases.
- 4) Referring matters for further action or discipline for inappropriate or unprofessional conduct under other applicable policies or procedures, even if a policy violation is not found. No provision of the Applicable Policies shall be construed as a limitation upon the authority of the Sanctioning Authority to initiate disciplinary action for inappropriate or unprofessional conduct.
- 5) Facilitation of reasonable supportive measures for all Parties.
- 6) Ensuring broad publication of the campus complaint process and procedures, including posting on an appropriate campus website and maintaining a current procedure.
- 7) Providing an annual report to the President and the appropriate campus Chancellor documenting:
  - (a) the number of reports and formal complaints of alleged violations of Applicable Policies;



- (b) the categories (i.e., Student, Employee, or other) of the Parties involved;
  - (c) the number of policy violations found;
  - (d) the number of appeals taken and the outcomes of those appeals; and
  - (e) examples of sanctions imposed for policy violations.
- 8) Reviewing and confirming that the relevant policy statements of the campus Annual Security Report<sup>5</sup> pursuant to the Clery Act are consistent with Applicable Policies and campus report or formal complaint process and procedures.
  - 9) Monitoring campus compliance with the Applicable Policies and these Procedures.
  - 10) Ensuring there is ongoing training and education regarding reporting and preventing sexual and other discriminatory misconduct, for all Students, faculty, and staff.
  - 11) Ensuring that Title IX Coordinators, investigators, and decision-makers are thoroughly trained.
  - 12) Maintaining records and related documentation of compliance with Applicable Policies, including, but not limited to:
    - (a) retaining copies of any training documentation;
    - (b) tracking Student and Employee training participation;
    - (c) documenting each step of the campus reporting and resolution procedures.
  - 13) Ensuring broad dissemination of the statement that the university shall not discriminate in employment or in its education programs and activities on the basis of protected classes as stated herein (including sex, pursuant to Title IX).

## **B. Concurrent Investigations, Proceedings, and Referrals**

Actions taken under the OIE Resolution 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(s). The OIE's jurisdiction does not depend on whether criminal charges are filed. The OIE will not postpone resolving an allegation(s) pursuant to these Resolution Procedures despite a simultaneous criminal or civil proceeding unless there are extenuating circumstances, as determined by the OIE. Dismissal of criminal charges or acquittal in a criminal case does not prevent the OIE from resolving an allegation(s) of misconduct related to the Applicable Policies.

For Employees, any matters outside the jurisdiction of the Applicable Policies shall be referred to the Sanctioning Authority. For Students, the Office of the Dean of Students (DOS) is the Sanctioning Authority and has jurisdiction for all other Student conduct matters not listed herein. In the event that there are multiple potential charges or alternative investigation/resolution options, the OIE and the Sanctioning Authority shall have the discretion to jointly determine the most appropriate way to proceed. Options include 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.

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<sup>5</sup> The Annual Security Report is published by the UCCS Police Department: <https://asr.uccs.edu/annual-security-and-fire-safety-report>



The University will consider what potential actions should be taken, including potential 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.

When an alleged violation involves more than one University of Colorado campus, the complaint shall be resolved by the campus with the Sanctioning Authority over the Respondent. The campus responsible for the resolution process may request the 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.

University Employees and Students sometimes work or study at the worksite or program of another organization affiliated with the University. When a violation is alleged by or against University Employees or Students in those circumstances, the complaint shall be addressed as provided in the affiliation agreement between the University and the other entity. In the absence of an affiliation agreement or a provision addressing this issue, the University may, at its discretion, choose to 1) conduct its own resolution process; 2) conduct a joint resolution process with the affiliated entity; 3) defer to the findings of a resolution process by 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 Associate Vice Chancellor (AVC)/Title IX Coordinator or designee. In all circumstances, Students and University Employees are welcome to contact the OIE to request or discuss campus and community resources.

### **C. Jurisdictional Requirements**

There is no time limitation for reporting a concern or making a complaint to the OIE; however, the OIE's ability to address the reported concern may be limited by the University's degree of control over a Respondent at the time the report is received. The OIE will address the alleged prohibited conduct in accordance with the policy that was in effect at the time of the alleged incident, and under the Resolution Procedures in effect when the report of the alleged prohibited conduct is received by the OIE.

Prohibited conduct alleged to have occurred before an individual became a Student, faculty, staff, contractor, patient, volunteer, or affiliated entity with UCCS may be addressed through applicable supportive and safety measures, educational or adaptable measures, and resolution procedures as determined by the AVC/Title IX Coordinator or designee. The AVC/Title IX Coordinator or designee will consider whether the alleged prohibited conduct adversely affects the safety of, or equal access to, employment or education for any current UCCS community members.

After proper notice as provided for in this document, the failure of an individual to appear or respond to the OIE does not prevent the OIE from proceeding with or completing the investigation.

## IV. Reporting

**Call 911 in an emergency or if you have an immediate safety concern!**

Prohibited conduct may be reported to the OIE by anyone, and should be reported to the OIE as soon as possible.

*Participation in an OIE resolution process is not required for anyone to request or receive information about resources or services that may help with their experience or circumstances.*

The most up-to-date information on reporting prohibited conduct, accessing confidential resources, maintaining evidence, and getting medical attention can be found at:

<https://equity.uccs.edu/reporting-oie>

### A. Reporting to OIE

To notify the OIE of alleged conduct prohibited by the Applicable Policies, to request supportive measures related to such conduct, or to initiate an OIE resolution process, contact the OIE directly.

#### **Office of Institutional Equity (OIE)**

1420 Austin Bluffs Pkwy., Main Hall 312

Colorado Springs, CO 80918

Office phone: 719-255-4324

E-mail: [equity@uccs.edu](mailto:equity@uccs.edu)

Website: <https://equity.uccs.edu>

Online reporting form: <https://equity.uccs.edu/reporting-oie>

#### **AVC of Institutional Equity/Title IX Coordinator**

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E-mail: [lemmot@uccs.edu](mailto:lemmot@uccs.edu)

A Complainant may self-report their experience to the OIE but is NOT required to do so.

To encourage Student reporting and remove potential barriers to Student reporting, minor infractions involving alcohol or drugs by Student Complainants, Student Respondents, or Student Witnesses, may not be subject to disciplinary action under the Student Code of Conduct, in accordance with the Good Samaritan Provision.<sup>6</sup>

### B. Responsible Employees: Required Reporting to OIE

“Responsible Employees” *are required* to report conduct prohibited under the Applicable Policies *directly to the OIE*. 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

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<sup>6</sup> [Student Conduct | Office of the Dean of Students](#)

the authority to take action to redress prohibited conduct; and/or (3) has been given the duty of reporting incidents of prohibited conduct by the AVC/Title IX Coordinator. Responsible Employees are required to promptly report to the OIE all known details about the alleged prohibited conduct, including (as known):

- name(s) of the Complainant(s);
- name(s) of the Respondent(s);
- name(s) of any alleged Witnesses; and
- any other relevant facts, including the date, time, and specific location of the alleged incident.
- If the Responsible Employee does not know all of the above details, the Responsible Employee must still make a report with the available information. If the Responsible Employee is unable to provide this information at the time of making an initial report, but later becomes aware of additional information, the Responsible Employee must supplement the prior report.

***The AVC/Title IX Coordinator has designated ALL UCCS Employees, including Student Employees, as “Responsible Employees.”***

Communications of alleged prohibited conduct to a Responsible Employee are *not confidential*, and Responsible Employees must report alleged prohibited conduct to the AVC/Title IX Coordinator or designee when it is disclosed to them. Exceptions to this designation are limited to Employees in their capacity of providing confidential services, as described in [Section V\(B\)](#) of these Resolution Procedures.

If an individual discloses alleged prohibited conduct to a Responsible Employee, the Responsible Employee must report the allegation(s) to the OIE. A Responsible Employee does not satisfy their reporting obligation by reporting to a supervisor or other University personnel other than the OIE or AVC/Title IX Coordinator or designee. A Responsible Employee may be identified as a Party or Witness in an OIE resolution. Responsible Employees are encouraged to inform the individual of the Responsible Employee’s obligations to report the allegation(s) to the OIE. The Responsible Employee is also encouraged to share the contact information of the AVC/Title IX Coordinator with the individual. Responsible Employees shall NOT inform an alleged Respondent of the report to OIE without prior consultation with the AVC/Title IX Coordinator or designee.

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 in cases of sexual assault, 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 or designee to allow a Preliminary Inquiry to occur.

Employees who are a designated Campus Security Authority (CSA) have additional obligations under the Clery Act to report certain criminal offenses under the law that occur on University property for statistical purposes. The OIE staff are designated as CSAs. More information about Clery reporting obligations is available at: <https://asr.uccs.edu/annual-security-and-fire-safety-report>.

Even if an individual who discloses an incident of alleged prohibited conduct wishes to maintain privacy and requests that no resolution process be pursued, that no disciplinary action be taken, or that the allegation(s) not be reported to law enforcement, the Responsible Employee remains required to report all relevant information to the AVC/Title IX Coordinator or designee, who will explain that the University prohibits retaliation and that the University will not only take steps to prevent retaliation, but will also take strong responsive action if it occurs.

Additionally, all Employees who are not confidential Employees must provide the following information to any person who discloses to them information about prohibited conduct: (1) the contact information of the OIE; and (2) information about how to make a complaint of prohibited conduct.

**Pregnancy or Related-conditions:** When a person discloses a pregnancy or related condition to an Employee, that Employee must provide that person with the Title IX Coordinator's contact information and inform the person that the Title IX Coordinator can coordinate specific actions to ensure that person's equal access to the university's education programs or activities.

Responsible Employees are not required to report information disclosed during an individual's participation as a subject in an Institutional Review Board (IRB)- approved human subjects research protocol. The IRB may, in appropriate cases, require researchers to provide reporting information to all subjects of IRB research.

Disclosures that occur during public events are encouraged to be reported to the OIE so that, when possible, the disclosing Party and others, as appropriate, can receive information about reporting, supportive measures, resources, and resolution options. In cases where a Complainant is not identified, the AVC/Title IX Coordinator or designee will consider the circumstances of the report and whether other action is necessary to preserve the safety of any individuals or the campus community.

### **C. Confidential Reporting**

Confidential Employees are *not required* to report prohibited conduct to the AVC/Title IX 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 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 Applicable Policies and that they are not Responsible Employees who have a mandatory reporting obligation to the AVC/Title IX Coordinator or designee; or
- (2) their status as a Responsible Employee who is providing professional services within a privileged relationship that exempts them from mandatory reporting obligations; and
- (2) how an individual may contact the AVC/Title IX Coordinator or designee and make a complaint under the Applicable Policies; and
- (3) that the AVC/Title IX Coordinator or designee may be able to offer and coordinate supportive measures, as well as initiate a resolution process.

As described above, Responsible Employees must report prohibited conduct disclosed to them when they are not providing professional services within a privileged relationship.

Any Employee, confidential or otherwise, may also have independent professional obligations to report allegation(s) of criminal conduct to law enforcement officials. Employees are welcome to consult with University Counsel to determine whether an independent reporting obligation exists.

Complainants may report confidentially via the following resources:

### **Students**

- The Wellness Center (719) 255-4444  
<https://www.uccs.edu/recwellness/wellness>

### **Employees**

- Colorado State Employee Assistance Program: (800) 821-8154 <https://cseap.colorado.gov>

### **ROTC**

Members of the Army Reserve Officers' Training Corps (ROTC) program may also be eligible to confidentially report sexual misconduct and access services through the Sexual Harassment/Assault Response and Prevention (SHARP) program:

- 24/7 Hotline (voice/text): (202) 498-4009  
[DPRR: SHARP \(army.mil\) safehelpline.org](https://dprp.sharp.army.mil/safehelpline.org)

### **Medical Forensic Exam (MFE), Forensic Nurse Examiner (FNE), and Sexual Assault Nurse**



### **Examiner (SANE)**

SANE and FNE professionals have specialized training to assist individuals who may have experienced sexual assault and dating and domestic violence. Adults 18 years and older who are not considered “at risk” under the law, can speak with an MFE, FNE, or SANE confidentially, and at no cost. Seeking medical support does not mean the assault is reported by medical staff to the police unless an individual requests that they report to police or if they are required to make a report by law. If an individual chooses for the police to be called or the medical staff must make a mandated report, individuals do not have to speak with the police or give their names. For additional information and resources, including reporting options, visit:

<https://youhavetherightco.org/>

*Anyone* who has experienced domestic violence or a sexual assault can obtain a medical forensic examination at:

#### **UC Health Memorial Hospital Central**

1400 E. Boulder Street  
Colorado Springs, CO 80909  
(719) 365-5000

<https://www.uchealth.org/locations/uchealth-memorial-hospital-central/>

### **D. Reporting to Law Enforcement**

Complainants have the right but are not required to report to law enforcement simultaneously with a report to the OIE. The OIE can assist Complainants in reporting to law enforcement for alleged prohibited conduct that may also be a criminal offense.

In some instances, the OIE is obligated to report the alleged prohibited conduct to the appropriate law enforcement agency. In those instances, the OIE will make reasonable effort to notify potential Complainants prior to reporting to law enforcement.

Contact information for University and local law enforcement is:

#### **UCCS Police Department (PD) On-campus**

(719) 255-3111 (non-emergencies)

<https://police.uccs.edu/> and [UCCS Safe App](#)

#### **Colorado Springs Police Department (CSPD) Off Campus**

911 (emergency only)

(719) 444-7000 (non-emergencies)

[Colorado Springs Police Department | City of Colorado Springs](#)

### **E. Protection Orders or Similar Lawful Orders**

Complainants who are interested in obtaining protection orders, or any other order issued by a court,

must pursue those options on their own behalf. More information about protection order rules and laws in Colorado is located on the [Colorado Judicial Branch website](#), which includes a link to [instructions for obtaining a civil protection order](#) and other forms.

UCCS complies with Colorado law in recognizing protection orders. Any person who obtains protection orders from Colorado or any other state should provide a copy to the UCCS PD and the AVC/Title IX Coordinator or designee.

## **F. Preservation of evidence**

It is important to preserve any evidence so that if a Complainant decides at any point in time to report the incident, that evidence may be used in an OIE resolution and/or criminal or other investigation. In addition to supporting a person's health and wellbeing, medical examinations can be critical in obtaining physical evidence. It is important to note that physical evidence degrades over time. In cases of sexual or other physical assault, it is ideal to receive a medical examination within three days of the incident. If this is not possible, a person who has experienced sexual or other assault is still encouraged to seek medical treatment and potential evidence collection. *A lack of evidence does not preclude an investigation from taking place.*

Examples of evidence to preserve include, but are not limited to:

- clothing worn or removed at the time of the incident;
- bedding (as applicable) from the time of the incident);
- correspondence discussing the incident (this could be with the Respondent, or with friends, family, or other individuals, and may include e-mail, social media messages/posts or screenshots, other written correspondence, and phone records);
- photographs, videos, video surveillance;<sup>7</sup>
- journal, diary, calendar entries;
- names of Witnesses and contact information.

## **V. Privacy, Confidentiality, and Overriding Factors**

*Privacy and confidentiality have distinct meanings.*

### **A. Privacy**

“Privacy” generally means that information related to a report of alleged prohibited conduct may be shared with a limited number of individuals who “need to know” in order to assist in the active review, adjudication, or resolution of the report, and related issues. All University Employees who are involved in a potential response 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 state law.

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<sup>7</sup> The University's ability to collect video surveillance from University or other cameras, and other records of access may be limited by terms of retention of the records' custodian, and the timeframe in which the allegation is reported to OIE. If you do not want to report an allegation, but you believe there is relevant video footage that you would like the University to preserve, please contact the OIE to discuss this option.



## **1. Family Educational Rights and Privacy Act of 1974**

The privacy of Student education records will be protected in accordance with the University's policy for compliance with the Family Educational Rights and Privacy Act (FERPA) and state law protections.

FERPA, as amended by the Higher Education Amendments of 1998, governs access to records, and information from within those records, pertaining to Students that are maintained by the University including OIE. Pursuant to FERPA, the University may disclose records and information pertaining to a Student with the Student's written consent.

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

Even in absence of written consent or a request otherwise from a Student, FERPA authorizes the University to provide records and information pertaining to Students to parent(s) who provide proof that their child Student is a dependent as defined under the Internal Revenue Code. A copy of the last federal income tax return listing the Student as a dependent may serve as proof of dependency and allow the University to provide parent(s) with access to such records maintained by OIE, to the extent determined appropriate by the AVC/Title IX Coordinator or designee.

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

Under FERPA, Students have a right to review and inspect records that directly pertain to them. Students who would like to review such records maintained by the OIE must submit the request to the AVC/Title IX Coordinator in writing. The OIE will comply with a properly submitted Student request within a reasonable time period not to exceed 45 days, as provided by FERPA, unless otherwise authorized by law. Additional requests to inspect a file may be limited to only allow the inspection of records once every 45 days.

## **2. Disclosure of Policy Violations or Pending Investigations**

The University recognizes that third Parties (either employers and/or institutions receiving transferring Students) may have a legitimate interest in knowing whether a University Employee or Student has been found responsible for engaging in prohibited conduct. In the event that, after a grievance process and any rights of appeal have been completed, an Employee or Student has been found responsible for engaging in prohibited conduct, the





University may confirm upon inquiry from a potential employer, or licensing or credentialing agency or institution, that the Employee or Student has been found responsible for violation of this Policy subject to applicable state and federal laws (e.g., Family Educational Rights and Privacy Act) regarding such disclosures. The University may also confirm upon inquiry that an investigation under this Policy is pending against an Employee or Student or that an Employee or Student resigned employment or withdrew while an investigation under this Policy was pending, again subject to applicable state and federal laws.

### **3. Colorado Open Records Act**

As a public entity, the University is subject to the Colorado Open Records Act (CORA), C.R.S. §24-72-2014, *et seq.* and is legally obligated to comply with any CORA requests that pertain to OIE records.

#### **B. Confidentiality**

“Confidential” means that information shared by an individual with designated campus or community professionals cannot be revealed to any other person without express 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, designated victim advocates, attorneys, and ordained clergy, all of whom normally have privileged confidentiality that is recognized by Colorado state law. These individuals are prohibited from breaking confidentiality unless (1) given permission to do so by the person who disclosed the information; (2) there is an imminent threat of harm to self or others; (3) the conduct involves suspected abuse of a minor under the age of 18; or (4) as otherwise required or permitted by law or court order.

The University supports the use of confidential resources as listed in [Section XIII.A](#) so that Complainants and Respondents can provide information confidentially and still receive supportive or safety measures as necessary through the AVC/Title IX Coordinator or designee. Communications with these confidential resources are confidential to the extent permitted by statutory law. Confidential resources are exempt from mandatory reporting pursuant to the policies.

#### **C. Overriding Factors (Obligation to Provide a Safe and Nondiscriminatory Environment)**

In response to alleged prohibited conduct, the OIE will make a reasonable effort to meet with the Complainant to discuss the availability of supportive measures, confidential and other resources, resolution options, and explain that the University prohibits retaliation.

If, having been informed of the University’s prohibition of retaliation and its obligations to prevent and respond to retaliation, the Complainant would like to maintain privacy, requests that no resolution process be conducted, or no disciplinary action be taken, the AVC/Title IX Coordinator or designee will weigh that request against the University’s obligation to provide a safe, nondiscriminatory environment for all Students, faculty, and staff.

In making that determination, the AVC/Title IX 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 prohibited conduct occurred, including the following:

- The risk that the respondent (the person accused of misconduct) will commit additional acts of misconduct or other violence;
- The seriousness of the alleged misconduct, including whether the respondent threatened further misconduct or other violence against the complainant or others, whether the alleged misconduct was facilitated by the incapacitation of the complainant, or whether the respondent has been found responsible in legal or other disciplinary proceedings for acts of misconduct or other violence;
- Whether the alleged misconduct was perpetrated with a weapon;
- Whether the complainant is a minor;
- Whether the university possesses means other than the complainant's testimony to obtain relevant evidence of the alleged misconduct (e.g., security cameras or personnel, physical evidence); or
- Whether the alleged misconduct reveals a pattern of perpetration at a given location or by a particular group.

Before initiating a resolution under this section, the AVC/Title IX Coordinator or designee, will make a reasonable attempt to first notify the Complainant and appropriately address reasonable concerns about their safety or the safety of others, and implement appropriate supportive measures.

Nothing in this section limits the AVC/Title IX Coordinator or designee from responding to the alleged prohibited conduct in a manner other than a Formal Grievance Procedure, when determined to be in the best interests of the safety of Complainant(s) and the campus, and which serves to remedy the effects of the alleged prohibited conduct and prevent recurrence. Options include, but are not limited to: 1) providing supportive and/or safety measures, 2) conducting an Adaptable Resolution Process, 3) referral to other offices, 4) providing targeted or broad-based educational programming or training, or 4) consulting with other University officials as appropriate, including, but not limited, to UCCS PD, the Office of the Dean of Students, the Campus Assessment Response and Evaluation (CARE) Team, or Human Resources to determine if other action is necessary to maintain campus safety and order, and/or to address any imminent or serious threat to a Complainant, other individuals, or campus. Additionally, nothing in the Individualized Safety and Risk Analysis limits the ability of a Sanctioning Authority to initiate or impose disciplinary action as necessary, and in accordance with relevant University policies and procedures.

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

## **VI. Supportive and Safety Measures**

*Supportive measures* are non-disciplinary, non-punitive individualized measures designed to (1) restore or preserve an individual's access to the University's education or employment program or activity, including measures to protect the safety of an individual or the University's educational or work environment; or (2) provide support during an OIE resolution process. Supportive measures are offered as appropriate and reasonably available, without fee or charge, and cannot unreasonably burden any involved Party. Supportive measures will be provided to the applicable Party(ies) and afforded regardless of participation in an OIE resolution process or reports of an alleged crime to law enforcement.

*Safety measures* may include supportive measures, as defined above, and may involve temporarily restricting a Respondent's access to University programs and activities (emergency removal).

Whether supportive or safety measures are appropriate is determined after an individualized assessment by the OIE and every effort should be made to avoid depriving anyone of access to their educational or employment activities. Supportive and safety measures may be kept in place, lifted, or modified as additional information is obtained, or may be extended permanently, as appropriate.

Complainants, Respondents, and other Parties involved in an OIE resolution may request supportive or safety measures from the AVC/Title IX Coordinator or designee. The AVC/Title IX Coordinator or designee will maintain oversight of these requests and the provision of any supportive or safety measures. Additionally, Parties may request modification or termination of a supportive or safety measure applicable to them if their circumstances change materially. The OIE may, as appropriate, continue, modify or terminate supportive measures at the conclusion of a resolution process.

The AVC/Title IX Coordinator or designee may consult with other campus authorities or individuals whose assistance may be required in order to effectively implement supportive measures, including but not limited to appropriate leadership within departments that support Students and/or Employees with matters regarding disability or other accommodations, academics, and employment. When implemented as part of a Formal Grievance Process, supportive and safety measures may be considered as evidence during the investigation and hearing.

The OIE must not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one Party of supportive measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve a Party's access to the education program or activity, or when an exception applies:

- When the recipient has obtained prior written consent from a person with the legal right to consent to the disclosure;



- When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- To carry out the Applicable Policies, including action taken to address prohibited conduct in the University's education program or activity;
- As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or other funding agreement; or
- To the extent such disclosures are not otherwise in conflict with the Applicable Policies, when required by State or local law or when permitted under FERPA, 20 U.S.C. 1232g, or its implementing regulations, 34 CFR part 99.

Whether Emergency Removal is appropriate is determined by the AVC/Title IX Coordinator or designee after an Individualized Safety and Risk Analysis ([refer to Section V\(B\)\(1\)](#)), and every effort should be made to avoid depriving any Student or Employee of access to their educational or employment activities. Supportive and safety measures may be kept in place, lifted, or modified as additional information is obtained; or, they may be extended indefinitely, as appropriate.

#### **A. Supportive Measures**

Types of supportive and safety measures that may be available include, but are not limited to:

- academic services (extensions of deadlines or other course-related adjustments, arranging for a Party to re-take a course, excusing related absences, or withdrawing from a class without penalty);
- support with extra-curricular modifications or related adjustments;
- support in accessing medical services;
- support in accessing counseling or other confidential services;
- support with employment modifications (such as changes to schedule or location);
- campus safety escort services and/or increased security and monitoring of certain areas of campus;
- transportation/parking modifications;
- mutual or individual no-contact orders enforced by the University;
- provision of information for obtaining a protection order through the court system;
- leaves of absence;



- adjustments, modifications, or refund related to campus housing or residency (as applicable);
- training and education programs related to sex-based harassment and other prohibited conduct under the Applicable Policies; and
- Emergency Removal, below.

### **B. Safety Measures (Emergency Removal)**

The University may remove a Respondent from an education program or activity on an emergency basis after the University:

- 1) undertakes an Individualized Safety and Risk Analysis (below)
- 2) determines that an imminent threat to the health or safety of any Students or other individuals arising from the allegation(s) of misconduct under an Applicable Policy justifies removal; and
- 3) provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

Emergency removals are done in accordance with other applicable policies and processes, including as administered by the Office of the Dean of Students (for Student Respondents) and/or Human Resources (for Employee Respondents). The OIE will conduct an individualized safety and risk analysis to determine what, if any, emergency removals are necessary.

#### **1. Individualized Safety and Risk Analysis:**

The factors considered in the individualized safety and risk analysis include:

- The seriousness of the alleged conduct;
- Location of the alleged incident(s);
- The risk that the respondent will commit additional acts of sexual or other violence;
- Whether the respondent threatened further sexual or other violence against the complainant or others;
- Whether there have been other misconduct complaints about the same respondent or if the respondent has a known history of arrests or records from a prior school indicating a history of sexual or other violence;
- The existence of multiple complainants or respondents;



- Whether the conduct was facilitated by the incapacitation of the complainant (through alcohol, drugs, disability, unconsciousness, or other means);
- Whether the alleged conduct was perpetrated with force, violence, or weapons;
- Whether the complainant is a minor;
- Whether the alleged conduct reveals a pattern of perpetration (by the alleged perpetrator, by a particular group or organization, around a particular recurring event or activity, and a particular location); or
- Whether any other aggravating circumstances or signs of predatory behavior are present.

Emergency Removals may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, or the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.* The OIE must initiate the Formal Grievance Process before or within a reasonable timeframe after an Emergency Removal has been determined an appropriate course of action.

Types of Emergency Removal include, but are not limited to:

- Interim Student suspension.
- Interim exclusion order for parts of or entire campus (residence halls, classes, etc.). All exclusion orders will be administered in conjunction with the UCCS Police.<sup>8</sup>
- Administrative Leave
  - Decisions to place a non-Student Employee on administrative leave during the pendency of an OIE Formal Grievance Procedure (refer to [Section XI](#) and/or [Section XII](#)) are made in consultation with Chief Human Resource Officer or designee and Sanctioning Authority.
- Temporary suspension of supervisory or evaluative authority for Employees in consultation with the Chief Human Resource Officer or designee and Sanctioning Authority.

## 2. Opportunity to Challenge Emergency Removal Decision

In the case of an Emergency Removal, the Respondent will be provided written notice of the alleged prohibited conduct and afforded the prompt opportunity to challenge the decision. The written notice will include the procedure for challenging the decision based on either the Student

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<sup>8</sup> See related campus policy, [UCCS 100-015 Campus Exclusions](#).

Code of Conduct process (for Students) or the HR process (for Employees); and, in the case of exclusion, in accordance with established university policy and the UCCS Police Department.

## **VII. Introduction: Case Resolution Procedures**

### **A. Types of Resolution Procedures**

OIE Resolution processes include:

- Preliminary Inquiry refer to [Section VIII](#).
- Informational Report (document only) refer to [Section IX](#).
- Policy Compliance Education refer to [Section X](#).
- Formal Grievance Process refer to [Section XI](#) and/or [Section XII](#).
- Adaptable Resolution Process (Informal Resolution) refer to [Section XIII](#).

OIE investigations are administrative in nature and are not criminal investigations. Participating in an OIE resolution as a Complainant, Respondent or Witness is voluntary, although Responsible Employees are expected to provide information in accordance with their obligations to report conduct prohibited by the Applicable Policies to the OIE.

### **B. Resolution Process Officials**

The OIE's Resolution Processes will be conducted by staff who are appropriately trained and have qualifications and experience that will facilitate prompt, fair, equitable and impartial resolutions. The AVC/Title IX Coordinator or designee shall ensure that OIE Resolution Process Officials, including investigators and appeal officers, receive annual training that does not rely on sex stereotypes and promotes impartial investigations and adjudications of formal complaints, on the Applicable Policies and these Resolution Procedures, including the University's obligations for compliance with applicable laws and regulatory guidance, how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; evidence standards and what is "relevant," recordkeeping, and other training as relevant to the official's specific responsibilities. The AVC/Title IX Coordinator or designee shall determine if one or more investigators shall be assigned to each case depending on the specific circumstances and as warranted.

### **C. Participant Rights**

Participants shall be afforded the following rights, with specific provisions of the applicable resolution process as noted:

1. The OIE shall treat Complainants and Respondents equitably;
2. Retaliation is prohibited, as defined in the Applicable Policies.

3. Resolutions shall be conducted by trained officials who do not have a conflict of interest or bias for or against the Complainant(s) or Respondent(s). An official shall recuse from participating in a resolution 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(s) or Respondent(s), 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;
4. Respondents are presumed *not responsible* for the alleged sex discrimination or other alleged prohibited conduct until a determination is made at the conclusion of a Formal Grievance Process; and, prior to the determination, the Parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision-maker;
5. A process with reasonably prompt timeframes established for evaluation of a report or complaint, investigation, determination, and appeal (as applicable), that allows for reasonable extension of timeframes on a case-by-case basis for good cause, as discussed further below;
6. Reasonable steps taken by the OIE to protect the privacy of Parties and Witnesses during the pendency of an investigation, provided the steps do not restrict the ability of Parties to: obtain and present evidence, including by speaking to Witnesses, consult with their family members, confidential resources, or Advisors; or otherwise prepare for or participate in the investigation; and, reasonable steps to prevent and address the Parties' and their Advisors' unauthorized disclosure of information and evidence obtained solely through the Formal Grievance Process, including as related to alleged sex-based harassment or other prohibited conduct. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex-based harassment or other prohibited conduct are authorized;
7. An objective evaluation of all evidence that is relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence, including that credibility determinations must not be based on a person's status as a Complainant, Respondent, or Witness;
8. The exclusion of the following types of evidence, and questions seeking that evidence, as impermissible (i.e., must not be accessed or considered, except by the recipient to determine whether an exception in paragraphs (i) through (iii) applies; must not be disclosed; and must not otherwise be used), regardless of whether they are relevant:
  - (i) Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
  - (ii) A Party's or Witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or Witness, unless the recipient obtains that





Party's or Witness's voluntary, written consent for use in the University's Resolution Procedures; and, in cases of alleged sexual misconduct,

- (iii) 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 sex-based harassment or preclude determination that sex-based harassment occurred;
9. Consistent principles for how the University determines which procedures apply to the resolution of different kinds of complaints.
10. The same opportunity to receive Supportive Measures from OIE before, during, and after a resolution process;
11. The same opportunity to utilize an Advisor of their choosing, who may or may not be an attorney, advocate, or other Support Person throughout the process and in any meeting or proceeding. 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 OIE, a Party's Advisor, advocate, or Support Person 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 or retaliation against any person who has participated in an investigation and may be denied further participation for harassing or retaliatory conduct;
12. Receive notice before they participate in any interview with the date, time, location, Participants, and purpose of all meetings or proceedings, with sufficient time to prepare for meaningful participation, including presentation of inculpatory and exculpatory evidence or information, and Witnesses;
13. Timely and equal access to relevant information, case updates, and applicable Notices;
14. In the case of a Formal Grievance Process, Parties also have the right to review any OIE investigative report and inspect the case file, which contains all information and evidence collected, including that which a decision-maker does not intend to rely on in reaching a determination, prior to any hearing (as applicable), and prior to the determination of any investigative findings, determination of responsibility, or conclusions, and unless prohibited or confidential under law gathered as part of the investigation;
15. In the case of a Formal Grievance Process, the opportunity to present Witnesses, including expert Witnesses;

16. In the case any sanctions are issued, Notice will include the basis upon which the sanction was determined, whether any Party has a right of appeal and appeal requirements, and Parties will be provided the opportunity to present information about aggravating or mitigating circumstances prior to the sanction's implementation.

#### **D. Investigators**

While investigations will generally be conducted by OIE staff who are appropriately qualified and trained, the OIE may also designate other individuals (either from within the University, including an administrator), or from outside the University, to conduct or assist with a resolution. Circumstances which may warrant such outside resolutions include, but are not limited to, conflicts of interest, allegation(s) of bias, or workload. The AVC/Title IX Coordinator or designee retains the discretion to determine whether the use of outside investigator(s) is warranted and reasonable given the circumstances and information available. Outside investigators shall have adequate training, qualifications, and experience that will, in the judgment of the OIE, facilitate a prompt, fair, and impartial resolution. Any outside investigator designated to address an allegation(s) must adhere to the requirements of these Resolution Procedures and will confer with the AVC/Title IX Coordinator or designee on a regular basis about the progress of the resolution.

#### **E. Timeframes for Complaint Resolution**

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

- Preliminary Inquiry: 30 days
- Adaptable Resolution Process: 90 days
- Formal Grievance Process:
  - Preliminary Inquiry: 30 days
  - Evidence gathering: 90 days
  - Hearing process, including virtual, live cross-examination, the Determination Regarding Responsibility, and any associated sanctions applicable): 90 days
  - Appeals 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, 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 OIE during a Formal Grievance Process. Extensions of time shall only be granted for good cause shown, and the Parties shall be provided written notice of extensions or any delay, as applicable, and the reasons for any such extensions or delays. Non-participation by any Party, and lack of evidence, does not preclude the OIE from proceeding to the next stage of the investigation process through to conclusion.

## **VIII. Preliminary Inquiry, Dismissal, Appeal of Dismissal, and Referral**

### **A. Preliminary Inquiry**

The OIE has the authority to conduct a preliminary inquiry upon receiving a report or complaint alleging prohibited conduct that would fall under the OIE's jurisdiction. A preliminary inquiry may include, but is not limited to, evaluating whether the complaint implicates an Applicable Policy, whether the complaint and Parties are within the jurisdiction of the OIE, whether the allegation(s), if true, describe conduct that would violate an Applicable Policy, or whether the complaint presents a safety threat requiring the OIE to report the concern to law enforcement. The OIE may collect information from one or more Parties or sources as part of the preliminary inquiry. Upon conclusion of the preliminary inquiry, the OIE may dismiss the complaint, refer the matter to another campus process (as appropriate), implement supportive or safety measures, or initiate an Adaptable or Formal resolution.

In cases when alleged prohibited conduct, even if true, would not violate an Applicable Policy, or the OIE is unable to gather sufficient information to make a determination that an Applicable Policy is implicated and/or whether the OIE may assert jurisdiction, the OIE may inform appropriate campus authorities of the complaint and recommendations for preventive or supportive measures, based on the information collected.

### **B. Dismissal**

Prior to dismissing a complaint, the AVC/Title IX Coordinator or designee must make reasonable efforts to clarify the allegation(s) with the Complainant, provide supportive measures to Complainant and Respondent as appropriate, and take other appropriate prompt and effective steps to ensure prohibited conduct does not continue or recur.

- Refer to [Section XI\(A\)\(3\)](#) for dismissal of complaints of alleged violations of CU APS 5014.
- Refer to [Section XII\(A\)\(2\)](#) for dismissal of complaints of alleged violations of CU APS 5065.
- Refer to [Section XIV\(C\)](#) regarding allegations of noncompliance with CU APS 5015.

### **C. Referral**

The OIE will support the Complainant and other Parties, as applicable, by providing information about available resources and referral to other campus offices for consideration of the matter and specific

support needs, as appropriate.

## **IX. Informational Report (Document Only)**

At a Complainant's request, and when there are no overriding factors present, or, if insufficient information is obtained through a preliminary inquiry to determine whether the report is within the OIE's jurisdiction, the OIE may close a case by documenting the incident as an informational report and providing the appropriate resource referrals and supportive measures as applicable. The AVC/Title IX Coordinator or designee will assess for barriers to reporting and consider implementing further supportive measures or initiation of another resolution process if additional information regarding the initial complaint is received.

## **X. Policy Compliance Education**

The OIE has discretion to conduct a Policy Compliance Education Meeting if it decides that such a meeting is the most appropriate way to respond to an allegation(s) of prohibited conduct. Additionally, the OIE retains discretion to proceed with a Formal Grievance Process for allegation(s) that, if proven true, would violate one or more of the Applicable Policies. The OIE will notify the Complainant if it determined appropriate to commence or resume a Formal Grievance Process at any time.

In the case that Policy Compliance Education is appropriate, the OIE may:

- Provide interim or long-term supportive measures to the Complainant, Respondent, or other Parties;
- Provide a referral to other campus-based resolution processes as appropriate for the specific facts of the case;
- Meet with the Respondent to:
  - o discuss the impact of the alleged behavior and provide the Respondent an opportunity to respond;
  - o review prohibited conduct under the Applicable Policy(ies); or
  - o identify and discuss appropriate future conduct with the Respondent, as well as how to avoid behavior that could be interpreted as retaliatory.
  - o If OIE meets with the Respondent, the OIE may inform the Complainant of the Respondent's responses if appropriate; notify the Respondent's Sanctioning Authority of the allegation(s) and responses if necessary, who will determine whether any other disciplinary action is appropriate; or,
- Provide targeted or broad-based educational programming or training as appropriate.

## **XI. Formal Grievance Procedure: Sexual Misconduct (CU APS 5014)<sup>9</sup>**

The OIE may resolve a report of alleged prohibited conduct through the Formal Grievance Procedure when the alleged conduct, if true, would be prohibited under the Applicable Policies. The University may dismiss a request for a Formal Grievance Process in accordance with [Section V\(C\)](#). The University may also elect to move forward with a Formal Grievance Process, overriding a Complainant’s request, pursuant to [Section V\(C\)](#).

The OIE may consolidate complaints in situations that arise out of the same facts or circumstances and involve more than one Complainant or more than one Respondent, or what amount to counter-complaints by one Party against the other. This Formal Grievance Procedure is how the OIE investigates allegation(s) of conduct prohibited by this Policy, and to determine whether an individual more likely than not engaged in conduct that violates the Policy. Individuals found responsible for violating CU APS 5014 are subject to sanction, up to and including expulsion or termination of employment.

### **A. Filing and Evaluation of a Formal Complaint**

#### **1. Formal Complaint**

In cases of alleged violations of conduct prohibited by CU APS 5014, either the Complainant or the Title IX Coordinator or designee must file a formal complaint for the university to initiate the Formal Grievance Procedure. The formal complaint must contain the Complainant’s or Title IX Coordinator’s physical or digital signature. The formal complaint form is available by contacting OIE. A Complainant who reports allegation(s) of Sexual Misconduct may receive supportive measures with or without filing a formal complaint. Refer to [Section VI](#).

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

To initiate a grievance process under CU APS 5014, either the Complainant or Title IX Coordinator or designee must file and sign a formal complaint.

##### *Title IX Sexual Misconduct:*

To file a formal complaint, a Complainant must be participating in or attempting to participate in the university’s education program or activity. “Attempting to participate” can include a Complainant who (1) is applying for admission or employment; (2) has graduated from one program but intends to apply to another program and/or intends to remain involved with a university’s alumni programs or activities; or (3) has left school because of Sexual Misconduct but expresses a desire to re-enroll. A Complainant who is on a “leave of absence” may also be participating or attempting to participate in a university’s programs or activities.

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<sup>9</sup> Parties may receive correspondence from the OIE and/or other staff within the CU system acting on behalf of the OIE in facilitation of the Formal Grievance Procedure, including but not limited to the Hearing and Sanctioning Processes, as applicable.

*Sexual Misconduct:*

To file a formal complaint, a Complainant may or may not be a member of the university community who alleges to be a victim of conduct that would violate this Policy.

*Formal Complaints by Title IX Coordinator and Overriding Factors*

If a complainant has disclosed an incident of Sexual Misconduct but wishes to maintain privacy and does not wish to initiate the Formal Grievance Process, the AVC/Title IX Coordinator or designee must discuss the availability of supportive measures with the complainant, describe the process for filing a Formal Complaint, and explain that the university prohibits retaliation. The AVC/Title IX Coordinator or designee will further explain the steps the university will take to prevent retaliation if the individual participates in a Formal Grievance Process and how the university will take responsive action should retaliation occur.

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 initiating the Formal Grievance Procedure, the AVC/Title IX 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 or designee will consider a range of potentially overriding factors that would cause the AVC/Title IX Coordinator or designee or designee to file a Formal Complaint and initiate a Formal Grievance Procedure. Refer to [Section V\(C\)](#). The decision to file a Formal Complaint by the AVC/Title IX Coordinator or designee and initiate the Formal Grievance Process will be made on a case-by-case basis after an individualized and thoughtful review.

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

Once a formal complaint has been filed, the Title IX Coordinator or designee will evaluate whether the conduct alleged in the formal complaint, if proved, would constitute a violation of the policy. If additional information is needed to evaluate jurisdiction, the Title IX Coordinator or designee will make reasonable efforts to obtain that information. The Title IX Coordinator or designee will notify the Complainant if additional time is needed to consider the complaint.

The university may consolidate Formal Complaints in situations that arise out of the same facts or circumstances and involve more than one Complainant, more than one Respondent, or what amount to counter-complaints by one Party against the other. The university may also consolidate under the Formal Grievance Process related violations as designated in CU APS 5014 or other prohibited conduct under other policies, procedures, or codes of conduct.



### **a. Mandatory and Discretionary Dismissals**

If the alleged conduct would not violate the policy, even if proven true, or the university lacks jurisdiction under CU APS 5014 to pursue the matter, the AVC/Title IX Coordinator or designee will dismiss the Formal Complaint with regard to that conduct (*mandatory dismissal*). The OIE may, but is not required to, dismiss a formal complaint at any time during the investigation if the Complainant notifies the AVC/Title IX Coordinator or designee in writing that the Complainant would like to withdraw the formal complaint or any allegation(s) therein, if the Respondent is no longer enrolled or employed at the university, or if specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint or the allegation(s) therein (*discretionary dismissal*).

The AVC/Title IX Coordinator or designee will notify both the Complainant and the Respondent of the complaint either by issuing a Notice of Allegation(s) (Refer to [Section XI.B.](#)) or a Notice of Complaint and Dismissal (below).

### **b. Notice and Opportunity to Appeal Dismissal of Formal Complaint**

Upon either mandatory or discretionary dismissal, the university will promptly send written notice of the dismissal and reason(s) simultaneously to the Parties, along with information about the appeal process. If a Formal Complaint is dismissed, both Parties may appeal in writing. To file an appeal of the dismissal, a Party must submit the written appeal within seven (7) days of the notice of dismissal.

Either Party may appeal a dismissal of a Formal Complaint on the following bases:

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

Both Parties may submit a written statement in response to the appeal, either in support of, or challenging, the dismissal.

The university will consider the appeal and issue a determination either upholding the appeal or overturning the dismissal within seven (7) days. If additional time is needed to consider the appeal, the appeal decision-maker will notify the Parties of the extension for



good cause. This could include gathering additional information from the complainant, the respondent, or additional individuals. The decision-maker for the appeal of a dismissal may not be the same decision-maker that reached the determination regarding dismissal, the investigator(s), or the AVC/Title IX Coordinator. The decision-maker for the appeal must be trained.

The appeal decision-maker will issue a written decision describing the result of the appeal and the rationale for the result. The appeal decision must be provided simultaneously to both Parties.

### **B. Written Notice of Allegation(s)(s)**

If the Formal Grievance Procedure is commenced, the Respondent and Complainant shall receive a written Notice of Allegation(s). The written Notice of Allegation(s) may be sent to the Respondent and the Complainant: 1) by email; 2) via U.S. mail to the permanent addresses appearing in the university's information system; 3) the address appearing in a police report; or 4) may be hand-delivered. Notice will be considered furnished on the date of hand-delivery, on the date emailed, or on the date U.S. mailed.

For Student Respondents, a notation will be placed on their transcript stating either that the Student is under investigation or if an interim suspension or exclusion is in place for applicable cases. This notation will be removed at the conclusion of the Formal Grievance Process but may be replaced with a sanctioning notation as applicable if a policy violation is found.

For Employee Respondents, the OIE will send a copy of the Notice of Allegation(s)(s) to the Sanctioning Authority, the Department Director or Executive Director, the appropriate division Vice Chancellor, the Chancellor, and Human Resources. For Student Respondents, the OIE will send a copy of the Notice of Allegation(s) to the Office of the Dean of Students and the Chancellor. If the Respondent is a Student Employee and the alleged misconduct occurs outside the employment capacity, the OIE may determine that the Respondent's supervisory upline has a legitimate need to know information related to the case resolution and will send a copy of the Notice of Allegation(s) to the Student Employees supervisor and Student Employment.

The written Notice of Allegation(s) will include a request that the Respondent contact the OIE within three (3) business days of the issuance of the Notice of Allegation(s) to schedule an initial meeting.

If, in the course of an investigation, a Complainant alleges additional violations or the Title IX Coordinator or designee decides to investigate additional allegation(s) about the Complainant or Respondent that are not included in the initial Notice of Allegation(s), the OIE will issue an Amended Notice of Allegation(s) to both Parties.

The written Notice of Allegation(s) (and any Amended Notices of Allegation(s)) will include:

- The identity of the Parties involved in the incident;





- The specific section(s) of the policy allegedly violated;
- The conduct allegedly constituting a policy violation;
- The date and location of the alleged incident, to the extent known and available;
- Information about the Formal Grievance Procedure;
- 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 Formal Grievance Procedure;
- Information about the policy provisions that prohibit knowingly making false statements or knowingly submitting false information during the Formal Grievance Procedure;
- Information that the Parties have equal opportunity to inspect and review evidence;
- Information that the Complainant and Respondent may each 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.
- Require that the Respondent contact the OIE within three (3) business days to schedule an initial meeting.

### **C. Collection and Review of Information, Evidence, and Investigative Reports**

After the Notice of Allegation(s) has been issued to the Parties, the OIE's investigator(s) will seek to obtain all available information and evidence directly related to the allegation(s) at issue. Collection of evidence may include and is not limited to, conducting interviews with the Parties and Witnesses, obtaining university records such as building access records, class schedule, work schedules, video recordings, security footage, and collection of other documentation such as police reports, forensic examinations (with written consent), emails, text messages, etc.

*All interviews with an OIE investigator will occur virtually and/or by another method that produces a written record or transcript that identifies the individuals present, their role, and each person's statements, including the investigator(s).*

Both Parties may provide Witnesses, including fact and expert Witnesses, and other inculpatory and exculpatory evidence. The OIE will also contact individuals who may have potentially relevant

information related to allegation(s) under investigation even if these individuals are not proposed by the Parties. Both 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 university, and not the Parties, holds both the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility. The Complainant, Respondent, and Witnesses are expected to respond to requests to schedule an interview or to provide other evidentiary materials within a timely manner. If a Party or Witness fails to respond within a reasonable time, generally five (5) business days, the investigator may continue the investigation without the benefit of information the Party or Witness might have provided.

The OIE will provide, to a Complainant or Respondent whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time for the Party to prepare to participate.

Neither Party is restricted from gathering or presenting relevant evidence or restricted from discussing the allegation(s) with anyone. University policy prohibits retaliation and harassment against anyone who reports an allegation(s) of misconduct or who participates in the investigation process. Any action found to constitute retaliation or harassment under university policy is subject to disciplinary action.

The OIE will not use any Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the university obtains that Party's voluntary, written consent to do so for a grievance procedure. The OIE retains discretion to redact information not relevant to the investigation, as appropriate, to protect the privacy of the Party, such as but not limited to, a Party's social security number (SSN), identifying insurance or payment information, names or other identifying information of individuals not relevant to the investigation (such as names of insurers, family members, or others).

The Parties may be accompanied to any related meeting or proceeding by a Support Person and/or Advisor of their choice, who may be, but does not have to be, an attorney or their Advisor for the hearing. During the investigation stage of Formal Grievance Procedure, the Support Person, and/or Advisor is not allowed to testify and must primarily provide support and/or advice to the Party. A Support Person and/or Advisor who is verbally abusive, disruptive to the investigative process, or persists in trying to substantively interfere with the investigative process after warnings to cease and desist may be asked to leave and may be precluded from attending future meetings or conferences.

## **1. Evidence Review and Preliminary Investigative Report (PIR)**



The OIE will provide both Parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegation(s) raised in a Formal Complaint, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility, so that each Party can meaningfully respond to the evidence prior to conclusion of the investigation. This includes inculpatory or exculpatory evidence, whether obtained from a Party or other source.

The OIE must send to each Party and the Party's Advisor, if any, the evidence subject to inspection and review in an electronic format or hard copy, along with the PIR. The PIR will include a written summary of all relevant and material evidence. While the university will not restrict the ability of the Parties to discuss the allegation(s) or gather evidence, the OIE will seek to ensure that the Parties and their respective Advisors or Support Persons, as applicable, maintain the privacy of disclosed information. 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, retaliation, and other related misconduct.

The Parties will have *ten (10) business days* to review and submit a written response to the PIR. The investigator(s) will consider the Parties' responses, if any, prior to completing the Final Investigative Report.

Following the issuance of the PIR, Parties or Witnesses may be requested to provide additional information or participate in a meeting at the discretion of the OIE investigator(s).

## **2. Final Investigative Report (FIR)**

The FIR will include a written summary of relevant and material evidence, will incorporate the Parties' responses to the PIR, if any. The factual findings and final determination regarding responsibility are made by the Hearing Officer(s) only after a live hearing that includes the opportunity for cross-examination.

The FIR and case file will be issued to each Party and the Party's Advisor at least *ten(10) business days* prior to the hearing in an electronic format or hard copy for their review and written response which will be provided to the Hearing Officer(s). The Parties will have access to the FIR and case file through the conclusion of the hearing and any appeals.

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

A trained Hearing Officer will preside over a live hearing, conducted via videoconference, after which

the Hearing Officer will make a determination regarding responsibility. Nothing precludes the university from utilizing a single decision-maker (Hearing Officer) or a panel of decision-makers (including the Hearing Officer) for the hearing and to determine responsibility.

Each Party may bring one Advisor of their choosing to conduct cross-examination to the live hearing, with prior notice to the university that the Advisor will attend and that Advisor's name. The university will inform both Parties of the identity of the other Party's Advisor. If a Party does not have an Advisor for the live hearing, the university will provide that Party an Advisor for purposes of cross-examination without fee or cost to the Party. For university-appointed Advisors, their role will end at the conclusion of the hearing.

Though a Party may utilize an Advisor of their own choosing throughout the Formal Grievance Procedure, 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 *ten (10) business 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.

Live hearings will be conducted virtually, with Parties (and their respective Advisors) 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. Each Party is also permitted to bring one Support Person of their choice to the hearing, with prior notice to the university that a Support Person will attend and that Support Person's name. The Support Person may not be a Witness to the incident(s) at issue and may not speak during the hearing.

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

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

The Pre-Hearing Conference and Hearing may be scheduled to occur on the same day.

### Hearing Decorum

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

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

- Advisors must be respectful of all participants and the hearing process. Abusive, intimidating, and harassing conduct will not be tolerated;
- Advisors may only make objections to questions on the grounds of relevance or to assert a privilege. Advisors must signal for the Hearing Officer's attention, calmly state their objection, and wait for a determination;
- Repetitive or redundant questioning may be deemed both lacking in relevancy and harassing;
- Should an Advisor need to confer with their Party or vice versa, they may request that the Hearing Officer grant them a short recess. Every effort should be made to conduct conferrals privately and to not be overly disruptive;
- Parties and Advisors may not create audio or audiovisual recordings of the hearing;
- Advisors and Parties must acknowledge the rules of decorum in advance of a hearing, including an acknowledgement that failure to abide by the rules may result in the exclusion of an Advisor from the hearing. In that case, the hearing officer will adjourn and postpone the hearing pending the Party securing a new Advisor through their own selection or as assigned by the university.

### Cross-Examination Procedure

At the live hearing, the Hearing Officer must permit each Party's Advisor to ask each Party and any

Witnesses all relevant questions and follow-up questions, including those challenging credibility. Each Party's Advisor must ask questions directly, orally, and in real time. A Party's Advisor may only ask a Party or Witness relevant questions.

A relevant question is one that is related to the allegations of prohibited conduct under investigation. Questions are relevant when they may aid in showing whether the alleged prohibited conduct occurred.

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

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

#### Submission to Cross-Examination<sup>10</sup>

Any Party or Witness may choose to not participate in the live hearing and cross-examination. If a Complainant or Respondent declines to submit to cross-examination, the Party's Advisor may still ask questions on their behalf. The Hearing Officer cannot draw an inference about the Determination Regarding Responsibility based solely on a Party's or Witness's absence from the live hearing or refusal to answer cross-examination or other questions.

The Hearing Officer is not required to exclude or disregard any prior statement based on a Party or Witness who does not submit to cross-examination at the live hearing and may instead decide how much weight to give the prior statements, weighed in light of all the evidence in the case and the issues to be decided.

#### 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 of fact and conclusions as to whether a violation of the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy occurred. A preponderance of the evidence exists when the totality of the evidence demonstrates that an allegation of Sexual Misconduct is more probably true than not. If the evidence weighs so evenly that the Hearing Officer is unable to say that there is a preponderance on either side, the Hearing Officer must determine that there is insufficient evidence to conclude there has been a violation of the policy.

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<sup>10</sup> In cases involving a Student Complainant and Student Respondent, Parties *may* be provided the opportunity to voluntarily opt-out of live cross-examination, and instead allow for the Hearing Officer to rely on the case file and FIR to make a determination of responsibility. If any Party does not voluntarily waive their right to cross-examination, the Hearing will proceed and cross-examination will occur with participating Parties and Witnesses. The University must not require any waiver of participation as a condition of enrollment, continuing enrollment, or employment or continuing employment.

In applying the preponderance of the evidence standard, the Hearing Officer may consider both direct and circumstantial evidence. The Hearing Officer may determine the credibility of Parties and Witnesses and the weight to be given to 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 Hearing Officer, not the Parties or the investigators, to make a determination based on the totality of the available information whether or not the preponderance of the evidence has been met. Neither Party bears a burden of proof. The ultimate determination of factual findings and responsibility rests with the Hearing Officer after full consideration of all available evidence.

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 Regarding Responsibility must include:

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

In 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. Additionally, the OIE will make an individualized assessment as to whether any supportive or safety measures should be continued or newly implemented.

In the event a policy violation is found, sanctioning is required.

In cases where a Student Respondent has been found *responsible* for a policy violation, prior to the issuance of the written Determination Regarding Responsibility, the Hearing Officer will refer the matter to the Sanctioning Authority for a disciplinary sanction to be determined. After the sanction has been incorporated into the written Determination Regarding Responsibility, the OIE will provide the written Determination Regarding Responsibility, including the sanction, to the Parties simultaneously. Parties have the opportunity to appeal the written determination, including the sanction, if applicable. [Refer to Section G.](#)

In the case an Employee Respondent is found *responsible* for a violation of policy, Parties will simultaneously be provided a copy of the written Notice of Findings and Determination of Responsibility. Additionally, the Respondent's supervisory upline, including the Sanctioning Authority, receives the written Notice of Findings and Determination of Responsibility. Parties may appeal the findings of an investigation prior to sanctioning. [Refer to Section G.](#)

If the Respondent is a Student who is also employed by the University and the alleged misconduct occurs outside the employment capacity, the OIE may determine that the Respondent's supervisory upline has a legitimate need to know information related to the Formal Grievance Procedure.

The Determination Regarding Responsibility becomes final either on the date that the University provides the Parties with the outcome 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 OIE will also provide any applicable notices to the Complainant following the conclusion of any subsequent corrective or disciplinary action pursuant to the State Personnel Board Rules for Respondents who are classified Employees and the Professional Rights and Responsibilities procedure and Privilege and Tenure process for Respondents who are faculty.

## **F. Sanctioning Process**

### **1. General Sanctioning Information**

#### **a. Optional Impact Statement**

Within seven (7) business days of the issuance of the Determination Regarding Responsibility, or written Notice of Findings and Determination Regarding Responsibility, as applicable, both Parties may submit an optional written statement to the Sanctioning Authority detailing any aggravating or mitigating circumstances that may impact sanctioning. The statement should only contain information about the factors considered in sanctioning, as described below.

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

The Sanctioning Authority will conduct an individualized review in making a sanctioning determination. This review will include consideration of the final written Notice of Findings





and Determination of Responsibility, any written statement submitted by either Party at the sanctioning stage, the entire investigative file, as well as consultation with OIE or other University staff, as needed. 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 Student Code of Conduct or other applicable codes of conduct and any active disciplinary sanctions in place at time of the conduct;
- Impact of incident on Complainant;
- Acceptance of responsibility by Respondent; and,
- On-going safety risk to Complainant or community.

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

In order to remediate the effects of misconduct, the Dean of Students will impose sanctions for Student Respondents. The Dean of Students will determine the type of sanctions in consultation with the AVC/Title IX Coordinator or designee, and any other administrative staff with a need to know. Even if the Student Respondent is found to not have violated an Applicable Policy, nothing precludes the AVC/Title IX Coordinator or designee from referring the matter to the Dean of Students or designee for consideration of discipline for other Student misconduct under the Student Code of Conduct. The range of sanctions for Student Respondents found responsible for violating one or more Applicable Policies are stated in the Student Code of Conduct, posted online at: [Student Conduct | Office of the Dean of Students](#) and includes those designed to provide education or remedial measures up to and including expulsion or termination of employment.



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

The AVC/Title IX Coordinator or designee will notify the Sanctioning Authority if an Employee Respondent was found to have violated an Applicable Policy or acted inappropriately or unprofessionally. In order to remediate the effects of misconduct, the Sanctioning Authority will impose sanctions. The Sanctioning Authority will determine the type of sanctions in consultation with the Chief Human Resources Officer or designee, the AVC/Title IX Coordinator or designee, and any other administrative staff with a need to know. Any applicable sanctioning meeting for an Applicable Policy violation pursuant to these Resolution Procedures does not replace any additional meetings that may be required under other applicable personnel processes (e.g., State Personnel Board Rules for classified Employees; Privilege and Tenure process for faculty). The Sanctioning Authority may have access to the investigative records. Additionally, the OIE can provide redacted information to the Sanctioning Authority related to similarly situated investigations and sanctioning outcomes to ensure consistency and equity in sanctioning.

The Sanctioning Authority will provide the AVC/Title IX Coordinator or designee the sanctioning decision to be included with the written determination provided by the OIE.

The range of sanctions for Employee Respondents found responsible for violating one or more Applicable Policies is:

Letter of Expectation/Reprimand: A warning/written letter of expectation or reprimand is a statement from the Sanctioning 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 Sanctioning 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.

Suspension/Unpaid Leave. The Employee is suspended from employment without pay for



a definite period of time.

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, action may be taken by the police for trespass.

Termination of Employment Contract or Termination of Employment: Pursuant to applicable laws and policies specific to the Employee's status, the Sanctioning Authority recommends or terminates employment.

Initiation of Employment Status-Specific Process: Classified staff and tenured/tenure-track faculty have rights to specific disciplinary processes. The Sanctioning Authority may choose to initiate that process as a sanction for an Applicable Policy violation.

Additional Sanctions: The Sanctioning Authority has the discretion to impose any additional sanctions that may be warranted and appropriate given the circumstances of the case.

## **G. Appeals of Formal Grievance Procedure**

In cases resulting in no policy violation, either Party may file a written appeal of the Determination Regarding Responsibility. In cases a Student Respondent is found responsible for violating a policy, either Party may file a written appeal of the Determination Regarding Responsibility, which includes sanctions. In cases an Employee Respondent is found responsible for violating a policy, either Party may file a written appeal prior to sanctioning and after receipt of the Notice of Findings and Determination of Responsibility; appeals of sanctions may be governed by other procedures (e.g., State Personnel Board Rules for classified Employees; Privilege and Tenure process for faculty). All appeals must be made in accordance with the Procedures outlined in this section.

Basis for appeal of a Determination Regarding Responsibility, or Notice of Findings and Determination of Responsibility:

- 1) To determine whether there were procedural irregularities that affected the outcome of the matter;
- 2) If new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter;
- 3) The AVC/Title IX Coordinator, investigators, or Hearing Officer had a conflict



of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

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

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

Appeals must be submitted in writing to the AVC/Title IX Coordinator or designee within *seven (7) business days* after the determination regarding responsibility is issued. The appeal should indicate the specific basis for the appeal (see above), supporting arguments and documentation, and any other relevant information the appealing Party wishes to include.

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

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

### **2. Notification and Opportunity to Respond**

If an appeal is received, the AVC/Title IX Coordinator or designee will notify the non-appealing Party (Complainant or Respondent) in writing of the appeal, and the non-appealing Party will be provided *seven (7) business days* to respond in writing to the appeal. The non-appealing Party is not 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 AVC/Title IX Coordinator or designee will appoint trained university Employees (who may include staff from the Anschutz, Denver, and Boulder campuses, and/or CU System Employees) who are not otherwise affiliated with the OIE at UCCS to serve on the Appeal Board.

Upon review of the appeal, the Appeal Board may:

- 1) Uphold the initial decision in its entirety;
- 2) Direct that there be reconsideration by the Hearing Officer (or a new Hearing Officer) based on the existing evidence; or

- 3) Direct that there be re-investigation (by the same or different investigators) followed by a second live cross-examination hearing process conducted in accordance with the process outlined above.

The Appeal Board shall not make new findings of fact. The Appeal Board shall review all documentation submitted, make the final decision upon appeal, and simultaneously provide the Parties with a written Notice of Appeal Decision within *30 days* of its receipt of all final documentation.

## **XII. Formal Grievance Procedure: Protected Class Nondiscrimination Policy (CU APS 5065)**

The OIE may resolve a report of alleged prohibited conduct through the Formal Grievance Process when the alleged conduct, if true, would be prohibited under the Applicable Policies. The University may dismiss a request for a Formal Grievance Process in accordance with [Section XII\(2\)\(a\)](#). The University may also elect to move forward with a Formal Grievance Process, overriding a Complainant's request, pursuant to [Section V\(C\)](#).

### **A. Filing and Evaluation of a Formal Complaint**

#### **1. Formal Complaint**

Anyone (referred to as the Complainant), including the AVC/Title IX Coordinator or designee, may file a complaint alleging misconduct under CU APS 5065 against an individual (referred to as the Respondent) to initiate the Formal Grievance Procedure. [Refer to Section IV. for reporting options](#). A Complainant who reports allegation(s) of conduct prohibited by CU APS 0565 may receive supportive or measures with or without filing a formal complaint. Refer to [Section VI](#).

If a Complainant has disclosed an incident of conduct prohibited under the Protected Class Nondiscrimination Policy, but wishes to maintain privacy and does not wish to initiate the formal grievance procedure, the AVC/Title IX 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, and consider the range of overriding factors, as outlined in [Section V\(C\)](#).

#### **2. Evaluation of Formal Complaint**

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



Coordinator or designee will notify the Complainant if additional time is needed to consider the complaint.

The university may consolidate Formal Complaints in situations that arise out of the same facts or circumstances and involve more than one Complainant, more than one Respondent, or what amount to counter-complaints by one Party against the other. The university may also consolidate under the Formal Grievance Process related violations as designated in the Applicable Policies or other prohibited conduct under other policies, procedures, or codes of conduct.

#### **a. Dismissal**

If the alleged conduct would not violate the policy, even if proven true, or the university lacks jurisdiction under CU APS 5065 to pursue the matter, the Title IX Coordinator or designee will dismiss the Formal Complaint with regard to that conduct.

The OIE may, but is not required to, dismiss a formal complaint at any time during the investigation if the Complainant notifies the AVC/Title IX Coordinator or designee in writing that the Complainant would like to withdraw the formal complaint or any allegation(s) therein, if the Respondent is no longer enrolled or employed at the university, or if specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint or the allegation(s) therein.

AVC/Title IX Coordinator or designee will notify both the Complainant and the Respondent of the complaint either by issuing a Notice of Allegation(s) (refer to [Section XII.B.](#)) or a Notice of Complaint and Dismissal (see below).

#### **b. Notice and Opportunity to Appeal Dismissal of Formal Complaint**

If a Formal Complaint is dismissed, Parties will receive a Notice of Complaint and Dismissal, which will include a summary of the allegation(s) reported and an explanation as to the reason for the dismissal. Either Party may appeal. To file an appeal of the dismissal, the Complainant or Respondent must submit the appeal to the AVC/Title IX Coordinator or designee within *seven (7) business days* of the Notice of Complaint and Dismissal. The appeal must include an explanation as to why the alleged misconduct, if true, would violate CU APS 5065 and why the Formal Complaint should not be dismissed.

The AVC/ Title IX Coordinator or designee, will consider the appeal and issue a determination either upholding or overturning the dismissal within *seven (7) business days*.<sup>11</sup>

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<sup>11</sup> OIE may request review by other appropriately trained administrators from within the CU System.

## **B. Written Notice of Allegation(s)(s)**

If the Formal Grievance Procedure is commenced, the Respondent and Complainant shall receive a written Notice of Allegation(s). The written Notice of Allegation(s) may be sent to the Respondent and the Complainant: 1) by email; 2) via U.S. mail to the permanent addresses appearing in the university's information system; 3) the address appearing in a police report; or 4) may be hand-delivered. Notice will be considered furnished on the date of hand-delivery, on the date emailed, or on the date U.S. mailed.

For Student Respondents, a notation will be placed on their transcript stating either that the Student is under investigation or if an interim suspension or exclusion is in place for applicable cases. This notation will be removed at the conclusion of the Formal Grievance Process but may be replaced with a sanctioning notation as applicable if a policy violation is found.

For Employee Respondents, the OIE will send a copy of the Notice of Allegation(s)(s) to the Sanctioning Authority, the Department Director or Executive Director, the appropriate division Vice Chancellor, the Chancellor, and Human Resources. For Student Respondents, the OIE will send a copy of the Notice of Allegation(s) to the Office of the Dean of Students and the Chancellor. If the Respondent is a Student Employee and the alleged misconduct occurs outside the employment capacity, the OIE may determine that the Respondent's supervisory upline has a legitimate need to know information related to the case resolution and will send a copy of the Notice of Allegation(s) to the Student Employees supervisor and Student Employment.

The written Notice of Allegation(s) will include a request that the Respondent contact the OIE within three (3) business days of the issuance of the Notice of Allegation(s) to schedule an initial meeting.

If, in the course of an investigation, a Complainant alleges additional violations or the AVC/Title IX Coordinator or designee decides to investigate additional allegation(s) about the Complainant or Respondent that are not included in the initial Notice of Allegation(s), the OIE will issue an Amended Notice of Allegation(s) to both Parties.

The written Notice of Allegation(s) (and any Amended Notices of Allegation(s)) will include:

- The identity of the Parties involved in the incident;
- The specific section(s) of the policy allegedly violated;
- The conduct allegedly constituting a policy violation;
- The date and location of the alleged incident, to the extent known and available;



- Information about the Formal Grievance Procedure;
- 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 Formal Grievance Procedure;
- Information about the policy provisions that prohibit knowingly making false statements or knowingly submitting false information during the Formal Grievance Procedure;
- Information that the Parties have equal opportunity to inspect and review evidence;
- Information that the Complainant and Respondent may each 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.
- Require that the Respondent contact the OIE within *three (3) business days* to schedule an initial meeting.

### **C. Collection and Review of Information, Evidence, and Investigative Reports**

After the Notice of Allegation(s) has been issued to the Parties, the OIE's investigator(s) will seek to obtain all available information and evidence directly related to the allegation(s) at issue. Collection of evidence may include and is not limited to, conducting interviews with the Parties and Witnesses, obtaining university records such as building access records, class schedule, work schedules, video recordings, security footage, and collection of other documentation such as police reports, emails, text messages, etc.

*All interviews with an OIE investigator will occur virtually and/or by another method that produces a written record or transcript that identifies the individuals present, their role, and each person's statements, including the investigator(s).*

The OIE follows an investigation model whereby investigators interview the Complainant(s) and the Respondent(s) separately and provide each Party the opportunity to be heard and to respond. Investigators also provide the opportunity for the Parties to suggest Witnesses. The Parties will also have an opportunity to submit questions for the investigator(s) to ask of the other Party and Witnesses. 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 of the information is outweighed by the danger of unfair prejudice or confusion of the issues, or in consideration of undue delay or needless presentation of cumulative evidence.



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. The Complainant, Respondent, and Witnesses are expected to respond to requests to schedule an interview or to provide other evidentiary materials within a timely manner. If a Party or Witness fails to respond within a reasonable time, generally five (5) business days, the investigator may continue the investigation without the benefit of information the Party or Witness might have provided.

The OIE will provide, to a Complainant or Respondent whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings, with sufficient time for the Party to prepare to participate.

Neither Party is restricted from gathering or presenting relevant evidence or restricted from discussing the allegation(s) with anyone. University policy prohibits retaliation and harassment against anyone who reports an allegation(s) of misconduct or who participates in the investigation process. Any action found to constitute retaliation or harassment under university policy is subject to disciplinary action.

The OIE will not use any Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the university obtains that Party's voluntary, written consent to do so for a grievance procedure. The OIE retains discretion to redact information not relevant to the investigation, as appropriate, to protect the privacy of the Party, such as but not limited to, a Party's social security number (SSN), identifying insurance or payment information, names or other identifying information of individuals not relevant to the investigation (such as names of insurers, family members, or others).

The Parties may be accompanied to any related meeting or proceeding by a Support Person and/or Advisor of their choice, who may be, but does not have to be, an attorney. During the investigation stage of Formal Grievance Procedure, the Support Person, and/or Advisor is not allowed to speak on the Party's behalf and must primarily provide support and/or advice to the Party. A Support Person and/or Advisor who is verbally abusive, disruptive to the investigative process, or persists in trying to substantively interfere with the investigative process after warnings to cease and desist may be asked to leave and may be precluded from attending future meetings or conferences.

### **1. Evidence Review and Preliminary Investigative Report (PIR)**

The OIE will provide both Parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegation(s) raised in a Formal Complaint, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility, so that each Party can meaningfully respond to the evidence prior to

conclusion of the investigation. This includes inculpatory or exculpatory evidence, whether obtained from a Party or other source.

The OIE will send to each Party and the Party's Advisor, if any, the evidence subject to inspection and review in an electronic format or hard copy, along with the PIR. The PIR will include a written summary of all relevant and material evidence. While the university will not restrict the ability of the Parties to discuss the allegation(s) or gather evidence, the OIE will seek to ensure that the Parties and their respective Advisors or Support Persons, as applicable, maintain the privacy of disclosed information. 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, retaliation, and other related misconduct.

The Parties will be provided a reasonable timeframe, not less than five (5) business days to access the PIR and submit a written response to the PIR.<sup>12</sup> The investigator(s) will consider the Parties' responses, if any, prior to completing the Final Investigative Report.

Following the issuance of the evidence for review and PIR, Parties or Witnesses may be requested to provide additional information or participate in a meeting at the discretion of the OIE investigator(s).

## 2. Final Investigative Report (FIR)

At the conclusion of the evidence gathering phase, including any relevant information or questions submitted in response to the PIR and investigative file subsequent follow-up investigation, as appropriate, the investigator(s) shall prepare a written FIR including an analysis of the facts and a determination as to whether or not there was a violation of Nondiscrimination Policy based on the application of the factual findings to the Nondiscrimination Policy.<sup>13</sup>

Regardless of whether the Respondent is a Student or Employee, consistent with the standard of proof in other conduct proceedings, the OIE applies the "preponderance of the evidence" standard when making findings of fact and conclusions as to whether violations of Nondiscrimination Policy occurred. A preponderance of the evidence exists when the totality of the evidence demonstrates that an allegation(s) of misconduct is more probably true than not. If the evidence weighs so evenly that the investigator(s) is unable to say there is a preponderance on either side, the investigator(s) must determine that there is insufficient evidence to conclude that a violation of the Nondiscrimination Policy occurred.

In applying the preponderance of the evidence standard, the investigator(s) may consider both direct and circumstantial evidence. The investigator(s) may determine the credibility of Parties and

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<sup>12</sup> Reasonableness will be determined on a case-by-case basis and may include consideration of the complexity of the case, volume of information to be reviewed, and whether any accommodations apply for any Party.

<sup>13</sup> In cases consolidated under CU APS 5014, a Hearing Officer will serve as the decision-maker. Refer to [Section XI](#).

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 OIE, not the Parties, to make a determination based on the totality of the available information whether or not the preponderance of the evidence has been met. Neither Party bears a burden of proof.

For investigations involving Student Respondents, the FIR will include a determination of whether the Respondent is found responsible for violating the Nondiscrimination Policy or not.

For investigations involving Employee Respondents, the written FIR will include a determination of whether the Respondent is found responsible for violating the Nondiscrimination Policy or not. If an Employee Respondent is found not to be responsible for violating the Nondiscrimination Policy, the written FIR may, if applicable, include a determination that the Employee Respondent engaged in conduct that was inappropriate or unprofessional. In such cases, the OE will refer such matters to the Sanctioning Authority, who will make the final determination on appropriate action or response.

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

#### **D. Dismissal After Initiation of Formal Grievance Procedure**

After a Notice of Allegation(s) is issued, the university may, but is not required to, dismiss a Complaint or Formal Grievance Procedure at any time if:

- The Complainant voluntarily withdraws any or all of the allegation(s) in the complaint in writing, and the OIE determines that without the Complainant's withdrawn allegation(s), the conduct that remains alleged in the complaint, if any, would not constitute prohibited conduct even if proven;
- The Respondent is not participating in the university's education program or activity or employed at the university; or
- Specific circumstances prevent the OIE from gathering evidence sufficient to reach a determination as to the allegation(s) therein.

If the university dismisses a Formal Grievance Procedure, the OIE 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.

The dismissal of a Formal Grievance Procedure does not preclude a Complainant or the AVC/Title IX Coordinator or designee from re-initiating a Formal Grievance Procedure at a later time.

Either Party may appeal a dismissal of a Formal Complaint on the following bases:

- Procedural irregularities that affected the dismissal;
- New evidence that was not reasonably available at the time of dismissal, which could affect the outcome of the matter; or,
- The AVC/Title IX Coordinator or designee, investigator(s), 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 dismissal.

If an appeal is received, the AVC/Title IX Coordinator or designee will notify the other Party to the original complaint (complainant or respondent) in writing, and the Party will be provided seven (7) days to respond in writing to the appeal. The response should be sent to the AVC/Title IX Coordinator or designee. Neither Party is required to respond to an appeal. Not responding to an appeal does not imply agreement with the appeal.

After the submission of all documentation or the seven-day deadline for response has passed, the AVC/Title IX 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/Formal Grievance Process.

Upon review of the appeal, the decision-maker may:

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

The decision-maker will issue a written decision describing the result of the appeal within 30 days and the rationale for the result. The appeal decision must be provided simultaneously to both Parties.

### **E. Determination Regarding Responsibility**

Consistent with the standard of proof in other conduct proceedings, the investigator must apply the preponderance of the evidence standard when making findings of fact and conclusions as to whether a violation of the Protected Class Nondiscrimination Policy occurred. A preponderance of the evidence exists when the totality of the evidence demonstrates that an allegation of prohibited conduct is more probably true than not. If the evidence weighs so evenly that the investigator is unable to say that there is a preponderance on either side, the investigator must determine that there is insufficient evidence to conclude there has been a violation of the policy.

In applying the preponderance of the evidence standard, the investigator may consider both direct and circumstantial evidence. The investigator may determine the credibility of Parties and Witnesses and the weight to be given to 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, not the Parties, to make a determination based on the totality of the available information whether or not the preponderance of the evidence has been met. Neither Party bears a burden of proof. The ultimate determination of factual findings and responsibility rests with the investigator after full consideration of all available evidence.

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 Regarding Responsibility must include:

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

In 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. Additionally, the OIE will make an individualized assessment as to whether any supportive or safety measures should be continued or newly implemented.

In the event a policy violation is found, sanctioning is required.

In cases where a Student Respondent has been found *responsible* for a policy violation, prior to the issuance of the written Determination Regarding Responsibility, the OIE will refer the matter to the Sanctioning Authority for a disciplinary sanction to be determined. After the sanction has been incorporated into the written Determination Regarding Responsibility, the OIE will provide the written Determination Regarding Responsibility, including the sanction, to the Parties simultaneously. Parties have the opportunity to appeal the written determination, including the sanction, if applicable. Refer to [Section G](#).

In the case an Employee Respondent is found *responsible* for a violation of policy, Parties will simultaneously be provided a copy of the written Notice of Findings and Determination of Responsibility. Additionally, the Respondent's supervisory upline, including the Sanctioning Authority, receives the written Notice of Findings and Determination of Responsibility. Parties may appeal the findings of an investigation prior to sanctioning. Refer to [Section G](#).

If the Respondent is a Student who is also employed by the University and the alleged misconduct occurs outside the employment capacity, the OIE may determine that the Respondent's supervisory upline has a legitimate need to know information related to the Formal Grievance Procedure.

The Determination Regarding Responsibility becomes final either on the date that the University provides the Parties with the outcome 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 OIE will also provide any applicable notices to the Complainant following the conclusion of any subsequent corrective or disciplinary action pursuant to the State Personnel Board Rules for Respondents who are classified Employees and the Professional Rights and Responsibilities procedure and Privilege and Tenure process for Respondents who are faculty.

## **F. Sanctioning Process**

### **1. General Sanctioning Information**

#### **a. Optional Impact Statement**

Within seven (7) business days of the issuance of the Determination Regarding Responsibility, or written Notice of Findings and Determination Regarding Responsibility, as applicable, both Parties may submit an optional written statement to the Sanctioning Authority detailing any aggravating or mitigating circumstances that may impact sanctioning. The statement should only contain information about the factors considered in sanctioning, as described below.

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

The Sanctioning Authority will conduct an individualized review in making a sanctioning determination. This review will include consideration of the final written Notice of Findings



and Determination of Responsibility, any written statement submitted by either Party at the sanctioning stage, the entire investigative file, as well as consultation with OIE or other University staff, as needed. 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 Student Code of Conduct or other applicable codes of conduct and any active disciplinary sanctions in place at time of the conduct;
- Impact of incident on Complainant;
- Acceptance of responsibility by Respondent; and,
- On-going safety risk to Complainant or community.

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

In order to remediate the effects of misconduct, the Dean of Students will impose sanctions for Student Respondents. The Dean of Students will determine the type of sanctions in consultation with the AVC/Title IX Coordinator or designee, and any other administrative staff with a need to know. Even if the Student Respondent is found to not have violated an Applicable Policy, nothing precludes the AVC/Title IX Coordinator or designee from referring the matter to the Dean of Students or designee for consideration of discipline for other Student misconduct under the Student Code of Conduct. The range of sanctions for Student Respondents found responsible for violating one or more Applicable Policies are stated in the Student Code of Conduct, posted online at: [Student Conduct | Office of the Dean of Students](#), and includes those designed to provide education or remedial measures up to and including expulsion or termination of employment.

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

The AVC/Title IX Coordinator or designee will notify the Sanctioning Authority if an Employee Respondent was found to have violated an Applicable Policy or acted inappropriately or unprofessionally. In order to remediate the effects of misconduct, the



Sanctioning Authority will impose sanctions. The Sanctioning Authority will determine the type of sanctions in consultation with the Chief Human Resources Officer or designee, the AVC/Title IX Coordinator or designee, and any other administrative staff with a need to know. Any applicable sanctioning meeting for an Applicable Policy violation pursuant to these Resolution Procedures does not replace any additional meetings that may be required under other applicable personnel processes (e.g., State Personnel Board Rules for classified Employees; Privilege and Tenure process for faculty). The Sanctioning Authority may have access to the investigative records. Additionally, the OIE can provide redacted information to the Sanctioning Authority related to similarly situated investigations and sanctioning outcomes to ensure consistency and equity in sanctioning.

The Sanctioning Authority will provide the AVC/Title IX Coordinator or designee the sanctioning decision to be included with the written determination provided by the OIE.

The range of sanctions for Employee Respondents found responsible for violating one or more Applicable Polices is:

Letter of Expectation/Reprimand: A warning/written letter of expectation or reprimand is a statement from the Sanctioning 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 Sanctioning 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.

Suspension/Unpaid Leave. The Employee is suspended from employment without pay for a definite period of time.

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, action may be taken by the police for trespass.

Termination of Employment Contract or Termination of Employment: Pursuant to applicable laws and policies specific to the Employee's status, the Sanctioning Authority recommends or terminates employment.

Initiation of Employment Status-Specific Process: Classified staff and tenured/tenure-track faculty have rights to specific disciplinary processes. The Sanctioning Authority may choose to initiate that process as a sanction for an Applicable Policy violation.

Additional Sanctions: The Sanctioning Authority has the discretion to impose any additional sanctions that may be warranted and appropriate given the circumstances of the case.

### **G. Appeals of Formal Grievance Procedure**

In cases resulting in no policy violation, either Party may file a written appeal of the Determination Regarding Responsibility. In cases a Student Respondent is found responsible for violating a policy, either Party may file a written appeal of the Determination Regarding Responsibility, which includes sanctions. In cases an Employee Respondent is found responsible for violating a policy, either Party may file a written appeal prior to sanctioning and after receipt of the Notice of Findings and Determination of Responsibility; appeals of sanctions may be governed by other procedures (e.g., State Personnel Board Rules for classified Employees; Privilege and Tenure process for faculty). All appeals must be made in accordance with the Procedures outlined in this section.

Basis for appeal of a Determination Regarding Responsibility, or Notice of Findings and Determination of Responsibility:

- 1) To determine whether there were procedural irregularities that affected the outcome of the matter;
- 2) If new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter;
- 3) The AVC/Title IX Coordinator or investigator had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

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

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

Appeals must be submitted in writing to the AVC/Title IX Coordinator or designee within *seven (7) business days* after the determination regarding responsibility is issued. The appeal should indicate the specific basis for the appeal (see above), supporting arguments and documentation, and any other relevant information the appealing Party wishes to include.

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

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

## **2. Notification and Opportunity to Respond**

If an appeal is received, the AVC/Title IX Coordinator or designee will notify the non-appealing Party (Complainant or Respondent) in writing of the appeal, and the non-appealing Party will be provided *seven (7) business days* to respond in writing to the appeal. The non-appealing Party is not 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 AVC/Title IX Coordinator or designee will appoint trained university Employees (who may include staff from the Anschutz, Denver, and Boulder campuses, and/or CU System Employees) who are not otherwise affiliated with the OIE at UCCS to serve on the Appeal Board.

Upon review of the appeal, the Appeal Board may:

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

The Appeal Board shall not make new findings of fact. The Appeal Board shall review all

documentation submitted, make the final decision upon appeal, and simultaneously provide the Parties with a written Notice of Appeal Decision within *30 days* of its receipt of all final documentation.

### **XIII. Adaptable Resolution Process (also known as Informal Resolution)<sup>14</sup>**

The OIE may determine that the most prompt and effective way to ensure compliance with an Applicable Policy is through an Adaptable Resolution Process. This approach 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 an individual or campus safety. The primary focus of an Adaptable Resolution Process remains the welfare of the Parties and the safety of the campus community, and this process does not involve a written report or a determination as to whether the policy has been violated. If at any time the OIE determines that an Adaptable Resolution Process is no longer appropriate or an effective way to ensure compliance, the OIE retains the authority to proceed with a Formal Grievance Process.

#### **A. Adaptable Resolution**

The AVC/Title IX Coordinator or designee will determine the appropriateness of an Adaptable Resolution Process instead of a Formal Grievance Process on a case-by-case basis, including consideration of the roles of each involved Party. The Adaptable Resolution Process is designed to resolve complaints while meeting the needs and interests of the Parties.

**Exceptions:** *Adaptable Resolution is prohibited in cases of alleged sexual misconduct involving an Employee Respondent and Student Complainant. Adaptable Resolutions may also not be an option in cases where there is concern about an inherent power dynamic between the Parties that would impact the ability to effectuate a fair and equitable resolution.*

The University must not require or pressure the Parties to participate in an Adaptable Resolution Process. The University must obtain the Parties' voluntary consent to the Adaptable Resolution Process and must not require waiver of the right to an investigation and determination of a complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right.

*The Process is voluntary and will not occur unless the Complainant and Respondent agree in writing to participate.*

The purpose of an Adaptable Resolution Process is to allow the Parties more agency in reaching a mutual written agreement about how to repair alleged harm (to the extent possible) and move forward

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<sup>14</sup> The term "Informal Resolution Process" is sometimes used in related federal and state regulations (including Title IX) and University policies. This term should not be construed to mean that alleged sex-based harassment or other prohibited conduct is not taken seriously by the University. It may be used interchangeably with "Adaptable Resolution Process," which is a type of Informal Resolution.



from the incident(s) at issue. The Parties have latitude to form an agreement that is meaningful to them given the circumstances and impact of the incident(s) at issue.

It is possible for the Adaptable Resolution Process to be initiated after a Formal Grievance Procedure has been initiated; however, the Adaptable Resolution Process may not be facilitated by the investigator of the complaint within the Formal Grievance Process, and new information provided by the Parties during the Adaptable Resolution Process *will not be used* by the investigator if the complaint is referred back to the Formal Grievance Procedure. The AVC/Title IX Coordinator or designee will oversee the Adaptable Resolution Process, conduct an initial and ongoing assessment as to whether the Adaptable Resolution Process should continue, and make the final determination on all Adaptable Resolutions facilitated by the OIE regarding whether the terms agreed to by the Parties are appropriate in light of all circumstances of the complaint.

In some circumstances, depending on the nature and/or severity of the allegation(s), an Adaptable Resolution Process may not be appropriate, and the AVC/Title IX Coordinator or designee may not approve an Adaptable Resolution Process. It is possible that an Adaptable Resolution Process may not be available in some cases involving allegations of conduct prohibited by Title IX, including but not limited to cases involving both a Student and Employee Party.

### **1. Notice of Agreement to Engage in Adaptable Resolution Process**

Prior to engaging in an Adaptable Resolution Process, the OIE will obtain the Complainant's and Respondent's voluntary, written consent. For Employee Respondents, the AVC/Title IX Coordinator will determine if their Sanctioning Authority must also provide their voluntary, written consent.

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

- The allegation(s);
- The requirements of the Adaptable Resolution Process, including the circumstances under which it precludes the Parties from resuming a Formal Grievance Process arising from the same allegation(s) provided that at any time prior to reaching a written agreement under the Adaptable Resolution Process, any Party has the right to withdraw from the Adaptable Resolution Process and resume the Formal Grievance Process;
- The potential terms that may be requested or offered in an Adaptable Resolution Agreement, including notice that the agreement is binding only on the Parties (“Notice of Agreement”);
- Any consequences resulting from participating in the Adaptable 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 (“Adaptable Resolution Agreement”) and signed by both Parties and the AVC/Title IX Coordinator or designee; and,
- That once the Adaptable Resolution Process is finalized, neither Party is permitted to file another complaint arising from the same allegation(s).

## 2. Timeframe

The Process may take place at any time before a determination of responsibility is made in a Formal Grievance Process, but typically within **90 days** after both Parties provide voluntary, written consent to participate in the Adaptable Resolution Process, unless the Parties and the AVC/Title IX Coordinator or designee agree to an extension for good cause.

## 3. Adaptable Resolution Process Options

The specific process that Parties follow to reach an Adaptable Resolution Agreement will be determined by the OIE facilitator in consultation with the Parties. This may include, for example, a form of shuttle diplomacy, wherein the Parties separately meet with a facilitator to formulate an agreement, or participation in a Restorative Justice conference wherein the Parties engage in a facilitated dialogue in order to come to an agreement that will repair harm. The Adaptable Resolution Process may include, but is not limited to:

- Mediation (where available);
- Restorative Justice Conference (where available);
- Separating the Parties;
- Supportive and safety measures;
- Referring the Parties to counseling;
- Disciplinary sanctions;
- Targeted preventive educational and training programs; and,
- Follow-up by the OIE to ensure that the Adaptable Resolution Agreement has been implemented effectively.

## 4. Potential Terms

Terms that may be included in an Adaptable Resolution Agreement include but are not

limited to:

- Restrictions on contact; and
- Restrictions on the Respondent's participation in one or more of the University's programs or activities or attendance at specific events, including restrictions the University could have imposed as remedies or disciplinary sanctions had the University determined at the conclusion of the Formal Grievance Process that prohibited conduct, including sex discrimination, occurred.

The OIE *will not permit* the following terms to be included in an Adaptable Resolution Agreement:

- Admissions of criminal or civil legal liability;
- Monetary payments among the Parties;
- Non-Disclosure Agreements or clauses prohibiting the Parties or Participants from discussing the allegation(s), the Adaptable Resolution Process, or the Adaptable Resolution Agreement; or
- Revocation of an earned degree.

## **5. Effects of Adaptable Resolution Process**

Any remedies and disciplinary sanctions agreed to in an Adaptable Resolution Agreement have the same effect as remedies provided and sanctions imposed following a Formal Grievance Process (including any hearing, as applicable).

## **6. Adaptable Resolution Agreement (Final Agreement)**

The terms of any Adaptable Resolution Agreement must be in writing and signed by the Parties, any appropriate sanctioning authorities, and the AVC/Title IX Coordinator or designee. Use of electronic signatures is permitted. A signed agreement to an Adaptable Resolution is enforceable, final, and is not subject to appeal by either Party.

The Adaptable Resolution Agreement must be approved by the AVC/Title IX Coordinator or designee and is enforceable by the OIE once signed by the Parties. The OIE may address a Party's failure to comply with the signed Adaptable Resolution Agreement via a Formal Grievance Process as outlined in these Resolution Procedures. To the extent necessary, the AVC/Title IX Coordinator or designee must still take other appropriate prompt and effective steps to ensure that alleged prohibited conduct does not continue or recur within the University's education program or activity.

## **B. Referrals to a Sanctioning Authority**

In situations where university Employees are alleged to have engaged in misconduct under an Applicable Policy, the OIE may determine that the Employee's Sanctioning Authority, supervisor, or department Chair is best situated to efficiently and meaningfully respond to the allegation(s) at issue. Nothing in the OIE's Resolution Procedures limits the authority of an Employee's Sanctioning Authority from initiating or imposing disciplinary action as necessary.

## **XIV. Compliance with Conflict of Interest in Cases of Amorous Relationships Policy**

There is a conflict of interest when a direct evaluative relationship exists between two Employees or between an Employee and a Student, either during the time that the amorous relationship is occurring or within seven years after it has occurred. The [University of Colorado Conflict of Interest in Cases of Amorous Relationships Policy](#) is intended to:

- 1) provide direction concerning how to terminate evaluative responsibilities between the two Parties in the reported relationship; and
- 2) establish a reporting structure to protect Participants in these relationships from violations of University conflict of interest guidelines. If the individuals do not report the relationship, and the evaluative authority continues, the OIE may conduct an adjudication into a potential violation of the Amorous Relationships Policy.

Examples of conflicts of interests in cases of amorous relationships include but are not limited to:

- a faculty member/Student direct evaluative relationship (for example, a Student currently enrolled in the faculty member's course);
- a faculty member/faculty member direct evaluative relationship (for example, a department chair and a faculty member of the same department); and
- supervisor/supervisee direct evaluative relationship

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

If a conflict of interest in an amorous relationships exists, the OIE will evaluate whether to investigate pursuant to the Formal Grievance Process will be used to resolve the conflict of interest or if compliance can be achieved through the following:

- 1) The relationship must be disclosed to the appropriate unit head(s), such as the department chair, dean, or head of the primary unit. The responsibility to disclose a conflict of interest to a unit head rests with the person in the evaluative position. The individual to whom disclosure is made bears responsibility for keeping the disclosure confidential to the fullest extent possible.
- 2) The unit head must meet with each Party to discuss how best to remove the evaluative



authority, and may do so with all Parties present or through separate meetings.

- 3) The individual in the evaluative position shall recuse themselves from all future evaluative actions involving the other person. The unit head, or other individual with such authority, is responsible for ensuring the conflict of interest has been removed by terminating the evaluative relationship.
- 4) The unit head will report the relationship to the OIE for documentation, including details regarding the steps taken to remove the evaluative authority between the involved Parties.

The Parties may choose to have this disclosure in written form placed in their own personnel files. When information concerning an amorous relationship has been placed in personnel files, it will be removed and destroyed seven years after the time of initial disclosure if the interested Party should so request, specifying, in addition, that the prior relationship has now ended.

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

When an amorous relationship, either current or within the last seven years, exists between an individual and an Employee who, although not their direct supervisor, is in the direct line of report (*e.g.*, a dean who is involved with a faculty member in their college, or a second or higher level supervisor who has a relationship with a staff member in their unit), the higher level Employee may not act in an evaluative capacity in relation to the other individual. Specifically, when the individual at the higher level of evaluative authority and the other individual in the relationship are Parties to a personnel action as defined in this policy, the evaluative authority must recuse themselves from participating in that action. In this circumstance, either the individual at the higher level or their supervisor must report the action taken to resolve the conflict to the Chancellor or the OIE. If the Chancellor or the OIE should find that the actions do not adequately resolve the conflict, the Chancellor or the OIE may require other action.

## **C. Procedure for Addressing Allegations of Noncompliance**

In cases of alleged noncompliance, the OIE will evaluate the complaint and resolve the matter based on the resolution appropriate to the circumstances. This may include conducting a preliminary inquiry, dismissal of the complaint, referral, or a formal grievance procedure in accordance with the alleged misconduct under CU APS 5014 and/or CU APS 5065.

# **XV. Resources<sup>15</sup>**

## **A. Confidential Resources**

### **Students:**

[Gallogly Recreation & Wellness Center](#), (719) 255-4444

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<sup>15</sup> Contact the OIE if you need assistance finding or connecting to specialized resources that may meet your needs.





Operating under a model of holistic health and wellness, the UCCS Wellness Center provides confidential mental health, health, nutritional and educational services in a collaborative and accessible environment to meet the needs of our diverse Student population.

### **Employees**

[Colorado State Employee Assistance Program \(CSEAP\)](#), (303) 866-4314

The CSEAP is available to all Employees of the State of Colorado. CSEAP offers professional assessment, referral, and short-term counseling services to address both personal and work-related concerns. CSEAP is also a resource for supervisors and managers seeking individual managerial consultation, work group organizational development, assistance with conflict resolution, or help in addressing workplace critical incidents (traumatic events).

### **Anyone**

[TESSA](#), 24-Hour Crisis Line (719) 633-3819, Main Office (719) 633-1462

TESSA is the only provider of confidential services specifically for victims of Domestic Violence and Sexual Assault (DVSA) in El Paso and Teller Counties. TESSA fundamentally does three things: 1) Provide immediate safety at their confidential Safehouse for women, children, and other victims escaping abuse, 2) Empower survivors through programs and support such as advocacy and counseling, 3) Create a safer future through education and outreach to schools, businesses, and other organizations.

## **B. Campus Resources**

### Athletics:

Member of Rocky Mountain Athletic Conference, and National Collegiate Athletic Association (NCAA) (Division II)

Executive Director: Nathan Gibson

Associate Athletic Director and Senior Woman Administrator: Sarah Meier

[Dean of Students Office](#), (719) 255-3091

The Office of the Dean of Students helps advocate for Students and provides problem solving assistance. The office is also responsible for maintaining and administering the UCCS Student Code of Conduct.

[Disability Services](#), (719) 255-3354

Provides services and/or accommodations primarily to Students with disabilities who must submit documentation for review. Provides consultation, information, and referrals to faculty and staff regarding disability related issues. <https://disability.uccs.edu/>

[Human Resources and ADA Coordinator](#), (719) 255-3372

Provides guidance and information to faculty, classified staff and professional exempt



Employees and supervisors regarding Employee relations matters including performance management, progressive discipline, grievance and dispute resolution procedures, and leave issues. Services are not confidential; however, the office attempts to honor requests to keep information confidential to the extent permitted by law and policy.

[MOSAIC](#) (719) 255-7527

The MOSAIC Office is a Student advocated support service designed to cultivate the holistic development of Students at UCCS.

[Procedures for Assisting Students and Employees who are Pregnant, Nursing, or with Pregnancy-related Conditions](#) and [Lactation Space](#) Resources

UCCS provides dedicated lactation space for Students, Employees, and visitors for people who wish to breastfeed and/or express breastmilk on the UCCS campus. OIE's website will maintain a link to current map(s) for where to find lactation spaces.

[UCCS Police](#), Gateway Hall, (719) 255-3111

The UCCS Police Department is a full-service police agency that operates 24 hours a day, 7 days a week, 365 days a year. Officers have full police authority on campus as well as in pre-defined boundaries off campus within the City of Colorado Springs.

[Veteran & Military Affairs](#), Gateway Hall, (719) 255-3253 This office supports the recruitment and retention of veterans to UCCS. It provides a key point of contact for counseling and program information for the veteran/military community on campus, while also developing and maintaining productive relations with off-campus organizations and programs serving veterans. Serves Students, staff, and faculty who are currently serving in the military (e.g. active, reserve, guard, etc.) or those who have served in the past.

### C. Off-Campus Resources

[Colorado Springs Police Department](#), 705 S. Nevada Avenue, (719) 444-7000 or 911

This department will respond to reports of off-campus criminal conduct, harassment, and assault within the City of Colorado Springs.

[El Paso County Sheriff Department](#), 27 E. Vermijo Avenue, (719) 520-7100 or 911

This department will respond to reports of off-campus criminal conduct, including sexual harassment and assault, within El Paso County.

[Local and National Hotlines](#)

Colorado-based and other hotlines and resources for support and assistance with various needs.

[NCAA](#)

National Collegiate Athletics Association



[Pikes Peak United Way](#) (phone: 2-1-1)

Pikes Peak United Way 2-1-1 provides referrals for food, housing, utilities, home repair, emergency shelter, clothing, transportation, military assistance, legal services, mental health, senior issues, substance abuse, medical care, faith-based resources, LGBTQ+, disability services, pregnancy resources, and more.

#### D. Legal Services

[Rocky Mountain Victim Law Center](#)

Rocky Mountain Victim Law Center is a Colorado nonprofit law firm providing free legal services to victims of crime in Colorado through our Victim Rights Legal Services, Legal Information Network of Colorado, and Title IX programs.

[Colorado Legal Services - Colorado Springs Office - Legal Aid Services](#)  
[legallaidoffices.com](http://legallaidoffices.com)

The mission of Colorado Legal Services is to provide meaningful access to high quality, civil legal services in the pursuit of justice for as many low-income persons and members of vulnerable populations throughout Colorado as possible.

#### E. State and Federal Civil Rights Compliance Offices

[Colorado Civil Rights Division](#)

Phone: (303) 894-2997

[Civil Rights Laws | U.S. Department of Education](#)

Phone: (303) 844-2024

[U.S. Department of Justice](#)

Phone: (202) 514-2000

[United States Equal Employment Opportunity Commission](#)

Phone: (303) 866-1300

## XVI. Definitions for purposes of these Resolution Procedures<sup>16</sup>

**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 OIE 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

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<sup>16</sup> See Applicable Policies for specific definitions that apply under each policy.

incident, and the existence of a previous conduct violation.

**Complainant:** An individual who is alleged to be subjected to prohibited conduct under any Applicable Policy.

**Day:** For purposes of these policies and procedures, a day is a calendar day, excluding business days that UCCS is officially closed. The OIE 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 OIE will extend a deadline to the next business day or promptly reschedule a meeting. Please refer to the UCCS Holiday calendar here: [Document Library | Human Resources \(uccs.edu\)](#).

**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:** Removal from the University’s education program or activity on an emergency basis, after an individualized safety and risk analysis and determination that an imminent and serious threat to the health or safety of a Complainant or any Students Employees, or other persons arising from the allegation(s) of sex discrimination or other prohibited conduct justifies removal. Emergency removal may include 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 OIE resolution process.

**Party:** Complainant or Respondent and collectively referred to as “Parties.”

**Respondent:** An individual who is accused of prohibited conduct under any Applicable Policy.

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

**Sanctioning Authority:** A Sanctioning Authority (may also be referred to as an “Appointing Authority” regarding Employees) is the individual or office that has the authority or delegated authority to impose discipline upon a particular Employee or Student.

**Student:** Per the UCCS policy glossary, “Students shall include, but not be limited to, individuals

enrolled in UCCS classes, whether credit or non-credit, on the home UCCS campus, those employing distance learning technologies, those offered through continuing education, and those offered through study abroad programs.”

**Support Person:** An individual, who may be a friend, family member, or other trusted person, chosen by a Party or Witness to accompany the Party or Witness in meetings with the OIE, and/or a hearing, to provide emotional comfort or support. Support persons are not Advisors, as defined in these Resolution Procedures.

**University:** The University of Colorado Colorado Springs.

**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 OIE.

## **XVII. Appendix 1: 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**

Any actor who knowingly inflicts sexual intrusion or sexual penetration on a victim commits sexual assault if:

- The actor causes submission of the victim by means of sufficient consequences reasonably calculated to cause submission against the victim’s will; or
- The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or
- The actor knows that the victim submits erroneously, believing the actor to be the victim’s spouse; or
- 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
- 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
- The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or Sanctioning Authority over the victim and uses this position of authority to coerce the victim to submit, unless incident to a lawful search; or
- 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
- 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:

- The actor knows that the victim does not consent; or
- The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or
- The victim is physically helpless and the actor knows that the victim is physically helpless and the victim has not consented; or
- 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
- The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or Sanctioning Authority over the victim and uses this position of authority, unless incident to a lawful search, to coerce the victim to submit; or
- The actor engages in treatment or examination of a victim for other than bona fide medical purposes or in a manner substantially inconsistent with reasonable medical practices.

(1.5) Any person who knowingly, with or without sexual contact, induces or coerces a child by any of the means set forth in section 18-3-402 to expose intimate parts or to engage in any sexual contact, intrusion, or penetration with another person, for the purpose of the actor's own sexual gratification, commits unlawful sexual contact. For the purposes of this subsection (1.5), the term “child” means any person under the age of eighteen years.

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

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



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

(Note that “dating violence” in Colorado is included with the broader definition of domestic violence)

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

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

- 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
- 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
- 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.