



Office of Institutional Equity

UNIVERSITY OF COLORADO **COLORADO SPRINGS**

## **Office of Institutional Equity Procedures** **Effective August 14, 2020**

### **Contact Information**

**719-255-4324**

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

The University of Colorado Colorado Springs does not discriminate on the basis of race, color, national origin, sex, pregnancy, age, disability, creed, religion, sexual orientation, gender identity, gender expression, veteran status, political affiliation or political philosophy in admission and access to, and treatment and employment in, its educational programs and activities.

The information contained within the Office of Institutional Equity Procedures (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 Office of Institutional Equity or University of Colorado Colorado Springs and community members. The Office of Institutional Equity reserves the right to change or eliminate any of the language herein at its discretion and without notice.

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The Procedures are also intended to be the “campus investigation/adjudication process” pursuant to the University of Colorado Sexual Misconduct, Intimate Partner Violence, and Stalking Policy; the University of Colorado Conflict of Interest in Cases of Amorous Relationships Policy; and the University of Colorado Colorado Springs Discrimination and Harassment Policy. This document should be read in conjunction with those policies. The Procedures are also sometimes referred to as “grievance process or grievance procedures.”

## **I. THE OFFICE OF INSTITUTIONAL EQUITY MISSION**

The Office of Institutional Equity (OIE) was created to address all complaints of sexual misconduct and protected class discrimination and harassment, whether against a student, employee, or third-party. The OIE's mission is to create and foster a safe, inclusive, and accessible environment. Utilizing a comprehensive and integrated approach, the OIE facilitates accommodations, case resolutions, education, and supportive and safety measures. The OIE will continuously refine its policies, procedures, and practices to maintain legal compliance while utilizing evidence-based and innovative models of prevention and response.

The OIE implements and enforces the [University of Colorado Sexual Misconduct, Intimate Partner Violence and Stalking Policy](#); the [University of Colorado Colorado Springs Discrimination and Harassment Policy](#); and the [University of Colorado Policy on Conflict of Interest in Cases of Amorous Relationships](#) (Applicable Policies).

The University of Colorado Colorado Springs (UCCS or University) is committed to preventing discrimination or harassment based on race, color, national origin, pregnancy, sex, age, disability, creed, religion, sexual orientation, gender identity, gender expression, veteran status, political affiliation, or political philosophy. The OIE is responsible for addressing allegations of any form of related retaliation as prohibited by University policies, state laws, and federal laws

To achieve this mission, the OIE utilizes fair and unbiased processes and treats all individuals who seek our assistance with respect and dignity.

## **II. PURPOSE, SCOPE, AND FUNCTION**

### **A. LEGAL COMPLIANCE**

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

- Equal Pay Act of 1963
- Civil Rights Act of 1964
- Title IV
- Title VI
- Title VII
- Title IX of the Education Amendments (1972)
- Rehabilitation Act (1973) (Sections 503 and 504)
- Vietnam Era Veterans Readjustment Assistance Act (1974)
- Age Discrimination Act (1975)
- Age Discrimination in Employment Act (1976)
- Pregnancy Discrimination Act (1978)
- 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)
- The Violence Against Women Reauthorization Act of 2013
- Uniformed Services Employment and Reemployment Rights Act (1994)
- Colorado Anti-Discrimination Act (1979)

- Colorado Revised Statutes § 24-34-402, et. seq.
- Colorado Revised Statutes § 23-5-146 and §23-5-147; and
- Article 8 Laws of the Regents

## **B. POLICY ADMINISTRATION**

The OIE Procedures provide the formal resolution procedures for the following Applicable Policies:

### **1. SEXUAL MISCONDUCT, INTIMATE PARTNER VIOLENCE AND STALKING POLICY<sup>1</sup>**

The policy prohibits sexual misconduct prohibited by Title IX as well, as conduct that falls outside of Title IX's jurisdiction. Specifically, this policy prohibits sexual assault, dating violence, domestic violence, Title IX stalking, stalking, sexual exploitation, Title IX hostile environment, sexual harassment-hostile environment, Title IX quid pro quo sexual harassment, and quid pro quo sexual harassment. The policy also prohibits retaliation and other related violations.

### **2. PROTECTED CLASS DISCRIMINATION AND HARASSMENT POLICY<sup>2</sup>**

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

### **3. CONFLICT OF INTEREST IN CASES OF AMOROUS RELATIONSHIPS POLICY<sup>3</sup>**

The 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, whether of the same or opposite sex.

## **C. FUNCTION**

The OIE is responsible for, and may delegate responsibility and authority for, the following functions:

- 1) Ensuring that formal complaints and reports of misconduct under the Applicable Policies are handled appropriately and in a timely manner.
- 2) Overseeing adequate, reliable, and impartial resolution of reports and formal complaints of misconduct under the Applicable Policies.
- 3) 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 disciplinary authority to initiate disciplinary action for inappropriate or unprofessional conduct.
- 4) Ensuring facilitation of reasonable support measures, as applicable, for all parties.
- 5) Ensuring broad publication of the campus report and formal complaint process and procedures including posting the process and procedures on an appropriate campus website and maintaining a current procedure.

<sup>1</sup> University of Colorado Sexual Misconduct, Intimate Partner Violence and Stalking Policy (APS 5014), online at <https://www.cu.edu/oie/aps/5014>

<sup>2</sup> University of Colorado Colorado Springs Discrimination and Harassment Policy UCCS 300-017, online at [https://equity.uccs.edu/sites/g/files/kjihxj1441/files/2020-04/300-017\\_1.pdf](https://equity.uccs.edu/sites/g/files/kjihxj1441/files/2020-04/300-017_1.pdf)

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

- 6) 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.
- 7) Reviewing and confirming that the relevant policy statements of the campus Annual Security Report pursuant to the Clery Act are consistent with Applicable Policies and campus report or formal complaint process and procedures.
- 8) Monitoring campus compliance with the Applicable Policies and these Procedures.
- 9) Ensuring there is ongoing training and education regarding reporting and preventing sexual and other discriminatory misconduct, for all students, faculty, and staff.
- 10) Ensuring that Title IX Coordinators, investigators, and decision-makers are thoroughly trained.
- 11) 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.
- 12) 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).

### **III. GENERAL JURISDICTION**

The Applicable Policies apply to all students, faculty, staff, contractors, patients, volunteers, affiliated entities and other third parties. For specific jurisdictional provisions, see the Applicable Policies. The OIE Procedures govern how the OIE will administer and enforce the Applicable Policies.

- 1) The University has the authority to conduct at least a preliminary inquiry to determine whether the alleged conduct occurred in the context of a University program or activity, or has continuing effects on the health and safety of the campus community.
- 2) Actions taken under the Procedures are separate and apart from any law enforcement or other court process or proceeding, such as a civil lawsuit or criminal prosecution, that may relate to the same underlying factual incident. The OIE's jurisdiction does not depend on whether criminal charges are filed. The OIE will not postpone resolving an allegation pursuant to these 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 of misconduct related to the Applicable Policies.
- 3) There is no time limitation for reporting a concern to the OIE or for the OIE to address matters described within this document. The OIE's response will be governed by the current Procedures and Applicable Policies.
- 4) After proper notice as provided for in this document, the failure of an individual to appear and/or respond to the OIE does not prevent the OIE from proceeding with or completing the applicable process.
- 5) For employees, any matters falling outside the jurisdiction of the Applicable Policies shall be referred to the appointing/disciplinary authority. For students, the Office of the Dean of Students (DOS) 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 disciplinary 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.

- 6) When an alleged violation involves more than one University of Colorado campus, it shall be resolved by the campus with the disciplinary 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.
- 7) 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 formal complaint or report 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 a) conduct its own resolution process; b) conduct a joint resolution process with the affiliated entity; c) 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; d) use the resolution process and findings of the affiliated entity as a basis for further investigation or adjudication; or e) take other action as determined appropriate by the Director of Institutional Equity or designee.
- 8) Conduct alleged to have occurred before an individual became a student, faculty, staff, contractor, patient, volunteer, or affiliated entity with UCCS may be addressed in accordance with these Procedures, if the alleged conduct adversely affects equal access to employment or education for any current UCCS community members as determined by the Director of Institutional Equity or designee.

#### **IV. PRIVACY AND CONFIDENTIALITY**

##### **A. PRIVACY**

Privacy generally means that information related to a report of prohibited conduct will be shared with a limited number of individuals who “need to know” in order to assist in the active review, adjudication, 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.

##### *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. Access to personnel records is restricted in accordance with University policy and state law.

The 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 the 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 the OIE, to the extent

determined appropriate by the Director of Institutional Equity, or designee. In addition, FERPA authorizes the University to disclose to parent(s) if a student under 21 years of age is found responsible by the Office of the Dean of Students for a violation involving use or possession of alcohol or other drugs.

Except as otherwise specified in this document or a pending health or safety emergency as defined under FERPA, student records and information are confidential 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 complete and submit a records request through the Office of the Registrar. The OIE will comply with a properly submitted student request within a reasonable time period not to exceed 45 days, as provided by FERPA.

#### *Disclosure of Policy Violations and/or Pending Investigations*

The University recognizes that third parties may have a legitimate interest in knowing whether a University employee or student has been found responsible for engaging in a violation of University policies. In the event that, after a Formal Resolution Procedure and any rights of appeal have been completed, an employee or student has been found responsible for engaging in a violation of the Sexual Misconduct, Intimate Partner Violence, and Stalking policy, the University may confirm upon inquiry from a potential employer, licensing or credentialing agency, or institution that the employee or student has been found responsible for violating the policy subject to applicable state and federal laws (e.g. FERPA) regarding such disclosures. In the event that, after Formal Resolution Procedure including any rights of appeal has been completed, an employee has been found responsible for engaging in a violation of the UCCS Discrimination and Harassment Policy, the University may confirm upon inquiry from a potential employer or licensing or credentialing agency that the employee has been found responsible for violating the policy. UCCS may also confirm that an investigation under the policy is pending against an employee or that an employee resigned employment while an investigation under the policy was pending.

#### *Colorado Open Records Act (CORA)*

As required by the Colorado Open Records Act, the University shall not release any records related to the investigation of Sexual Misconduct or finding of Sexual Misconduct unless otherwise permitted by law.

## **B. CONFIDENTIALITY**

Confidentiality 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 victims' 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 Sections VI and XIII so that complainants can provide information confidentially and still receive support measures as necessary through the Director of Institutional Equity or designee. Communications with these confidential

resources are confidential to the extent permitted by statutory law. Confidential resources are not considered Responsible Employees for mandatory reporting purposes.

## V. PROHIBITED CONDUCT

The University will be responsive to any report or formal complaint of prohibited conduct, as defined by the Applicable Policy, and is committed to providing prompt, fair, impartial, and equitable resolutions, regardless of whether the report is made directly by a complainant or by a third party, such as a mandatory reporter. The primary concern is the safety of all University community members. The University will take steps to prevent recurrence of any prohibited conduct and remedy discriminatory effects on the complainant and others, as appropriate.

**A. SEXUAL MISCONDUCT, INTIMATE PARTNER VIOLENCE AND STALKING POLICY (CU APS 5014)<sup>4</sup>,** CU APS 5014 prohibits sexual misconduct prohibited by Title IX, as well as conduct that falls outside of Title IX’s jurisdiction. Specifically, this policy prohibits sexual assault, dating violence, domestic violence, Title IX stalking, sexual exploitation, Title IX hostile environment, sexual harassment-hostile environment, Title IX quid pro quo sexual harassment, and quid pro quo sexual harassment. The policy also prohibits retaliation and other related violations

### 1. POLICY JURISDICTION

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

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

The Title IX Coordinator or designee is authorized to determine whether the policy applies to alleged prohibited conduct and whether the University has jurisdiction to take any action pursuant to this Policy.

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

#### Title IX Sexual Misconduct

“Title IX Sexual Misconduct” is conduct that occurs in an education program or activity against a person in the United States. If the prohibited conduct falls under Title IX Sexual Misconduct jurisdiction and definitions, the Title IX Coordinator or designee must utilize the Title IX Sexual Misconduct procedures as prescribed by the Title IX regulations.

#### Sexual Misconduct

“Sexual Misconduct” is conduct that does not otherwise meet the jurisdictional standard or definition of Title IX Sexual Misconduct, but where the conduct occurred in the context of an employment or

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<sup>4</sup> Sexual Misconduct, Intimate Partner Abuse and Stalking Policy (CU APS 5014) found at: <https://www.cu.edu/ope/aps/5014>



education program or activity of the University where both the complainant and respondent are affiliated with the University.

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

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

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

## **B. DISCRIMINATION AND HARASSMENT POLICY (UCCS 300-017)<sup>5</sup>**

The Discrimination and Harassment Policy prohibits discrimination and harassment on the basis of protected-class status in admission and access to, and treatment and employment in, its educational programs and activities. For purposes of the policy, "protected classes" refers to race, color, national origin, sex, pregnancy, age, disability, creed, religion, sexual orientation, gender identity, gender expression, veteran status, political affiliation, and political philosophy. The policy also prohibits retaliation and other related violations.

### **1. POLICY JURISDICTION**

The Policy applies to all students, faculty, staff, contractors, patients, volunteers, affiliated entities, and other third parties. This includes off-campus conduct, including online or electronic conduct

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<sup>5</sup> UCCS Discrimination and Harassment Policy found at [https://equity.uccs.edu/sites/g/files/kjihxj1441/files/2020-04/300-017\\_1.pdf](https://equity.uccs.edu/sites/g/files/kjihxj1441/files/2020-04/300-017_1.pdf)

when the conduct occurs in the context of a University program or activity, or has continuing effects on the health and safety of the campus community.

The Director of Institutional Equity or designee is authorized to determine whether the policy applies to alleged prohibited conduct and whether the University has jurisdiction to take any action pursuant to this Policy.

**C. CONFLICT OF INTEREST IN CASES OF AMOROUS RELATIONSHIPS POLICY (CU APS 5015)<sup>6</sup>,**

CU APS 5015 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 of the same or opposite sex. On the UCCS campus, the Chancellor has designated the OIE as the office to report compliance and address all reports of CU APS 5015 violations.

If the individuals do not report the relationship, and the evaluative authority continues, the OIE may utilize Formal Resolution Procedures to resolve a potential violation of the Amorous Relationships Policy.

**1. REMOVING DIRECT EVALUATIVE OR SUPERVISORY RESPONSIBILITIES**

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

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

In either set of circumstances described above, if removal of evaluative authority is outside the supervisor's authority, the matter shall be referred to the individual with the authority to make the necessary modifications to remove the evaluative authority.

In all cases, the responsibility to disclose rests with the person in the evaluative position.

The individual to whom the disclosure is made is responsible for requiring that actions be taken to resolve the conflict by terminating the evaluative relationship, and the individual to whom disclosure is made bears responsibility for keeping this information confidential to the fullest extent possible.

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.

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<sup>6</sup> Conflict of Interest in Cases of Amorous Relationships (APS 5015) found at <https://www.cu.edu/ope/aps/5015>

## 2. 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 by CU APS 5015, 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 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.

## D. RELATED MISCONDUCT

Under the Applicable Policies, the OIE may also address the following allegations:

### 1. FAILURE TO REPORT:

The University will administer the Applicable Policies in a manner that promotes the reporting of misconduct and avoids disciplinary actions when Responsible Employees conscientiously discharge their reporting obligations. A failure to report an allegation of misconduct shall result in a violation of the Applicable Policies only if the Responsible Employee(s) received information that a member of the University community was subjected to or committed an act of misconduct and intentionally, knowingly, or recklessly disregarded the obligation to report, thus resulting in harm to a member of the University community.

### 2. RETALIATION:

The University of Colorado will not permit retaliation against a member of the University community who has indicated intent to file or has filed, supported, or provided information in connection with a report of misconduct. Retaliation means adverse educational or employment actions, including direct or indirect intimidation, threats, and harassment, taken against a member of the University community because of their protected activities. An adverse educational or employment action is any conduct that would dissuade a reasonable person from reporting an allegation of misconduct or participating in a resolution process.

### 3. PROVIDING FALSE OR MISLEADING INFORMATION:

Providing false or misleading information related to misconduct is contrary to the purposes of the Applicable Policies. Members of the University community must provide reports of misconduct in good faith. A person who knowingly or recklessly alleges a false report of misconduct or knowingly or recklessly provides false information during the course of an investigation violates the Applicable Policy. Making a report or providing information in good faith, even if the facts alleged in the report are not later substantiated, will not constitute providing false or misleading information.

### 4. INTERFERENCE WITH REPORTING:

No member of the University community may prohibit or interfere with a Responsible Employee or any other person reporting misconduct to the Director of Institutional Equity or a designee.

5. FAILURE TO COMPLY WITH ORDERS AND SANCTIONS:

Subject to any rights of appeal, members of the University community must comply with orders of the OIE or other appropriate University officials related to the Applicable Policy, including but not limited to University issued No-Contact Orders, exclusion orders, and summary suspension. Subject to any rights of appeal, members of the University community must abide by and complete sanctions related to the applicable misconduct.

**VI. REPORTING**

***Call 911 or Campus Police (719-255-3111) in an emergency  
or if you have an immediate safety concern.***

The OIE encourages individuals who experience prohibited conduct to report the matter to the OIE as soon as possible.

Employees who are aware of prohibited conduct are required to report to the OIE (see Section A below).

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/reporting\\_options](https://equity.uccs.edu/reporting/reporting_options)

Individuals can also contact the OIE directly

Phone: (719) 255-4324

Email: [equity@uccs.edu](mailto:equity@uccs.edu)

Contact a staff member directly at:

Amanda Allee, Ph.D.  
Director of Institutional Equity  
Title IX Coordinator  
[aallee@uccs.edu](mailto:aallee@uccs.edu)  
(719) 255-3834

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(719) 255-3725

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Student Services Assistant  
[sfinneg3@uccs.edu](mailto:sfinneg3@uccs.edu)  
(719) 255-4324

To encourage student reporting, minor infractions by the student complainant, student respondent, or student witnesses, will not be subject to disciplinary action under the Student Code of Conduct in order to remove potential barriers to student reporting.

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

Even if a complainant chooses not to report formally and/or chooses not to participate in the process (through OIE or law enforcement), the complainant can contact the OIE for information and assistance accessing on- or off- campus support and safety services.

### Confidential Support

Free, confidential information and services can be accessed through the following resources:

#### Students

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

#### Employees

Colorado State Employee Real Help Hotline: (833) 533-CHAT (2428).

### **A. RESPONSIBLE EMPLOYEES**

#### Incidents shared with a Responsible Employee

The University views reporting misconduct under the Applicable Policies as fundamental to its ability to provide a campus environment that allows equal access to educational and employment opportunities. Any Responsible Employee who witnesses or receives a written or oral report alleging that a member of the University community has been subjected to or has committed an act of misconduct related to the Applicable Policies must promptly report the allegations to the OIE.

Responsible Employee means any employee who: (1) has the authority to hire, promote, discipline, evaluate, grade, formally advise or direct faculty, staff, or students; (2) has the authority to take action to redress prohibited conduct; or (3) has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Director of Institutional Equity or designee.

A Responsible Employee does not satisfy the reporting obligation by reporting to their supervisor or University personnel other than the OIE or a designee approved by the Director of Institutional Equity. The Responsible Employee is required to promptly report to the Director of Institutional Equity or designee all known details about the alleged prohibited conduct, including:

- 1) Name(s) of the complainant(s);
- 2) Name(s) of the respondent(s);
- 3) Name(s) of any alleged witnesses; and
- 4) Any other relevant facts, including the date, time, and specific location of the alleged incident.

If the Responsible Employee does not know all 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.

If an individual discloses an incident to a Responsible Employee who by definition is a mandatory reporter, but the individual wishes to maintain privacy and requests that no resolution process be pursued, that no disciplinary action be taken, or that the allegation not be reported to law enforcement, the Responsible Employee remains required to report all relevant information to the OIE.

Failure to report in accordance with this section may be considered a violation of the Applicable Policies.

#### Incidents involving a Responsible Employee

Responsible Employees are not required to report prohibited conduct to which they have been personally subjected to the Director of Institutional Equity or designee, but are nonetheless encouraged to report.

## **VII. SUPPORT MEASURES**

When OIE receives a report (either directly or through a Responsible Employee, advocate, third party, or other) that an individual has experienced conduct prohibited by the Applicable Policies, the OIE will provide referral information as needed (regardless of whether a formal complaint is filed or the individual participates in a Formal Resolution Procedure) in accessing on- and off-campus services, including but not limited to counseling, health services, mental health services, victim advocacy, visa and immigration services, and/or forensic Sexual Assault Nurse Examiner (SANE) exam, and information on the OIE's Procedures. A list of available Resources is included in these Procedures (See Section XIII), and posted at: <https://equity.uccs.edu/resources>.

If a student or employee requires an accommodation to participate in a resolution process (such as an accessible meeting location or a sign language interpreter) under the UCCS Disability Access and Accommodation Policy 300-021, that student or employee should contact the OIE to request such accommodation.

### **A. ORDERS OF PROTECTION, RESTRAINING ORDERS, OR SIMILAR LAWFUL ORDERS**

Individuals who are interested in obtaining an Order of Protection, or any other order issued by a court, must pursue those options on their own behalf. Restraining orders are obtained through the El Paso County Courthouse. More information on obtaining a restraining order in Colorado is located at [https://www.courts.state.co.us/Self\\_Help/protectionorders/](https://www.courts.state.co.us/Self_Help/protectionorders/).

UCCS complies with Colorado law in recognizing orders of protection. Any person who obtains an order of protection from Colorado or any other state should provide a copy to the UCCS Police Department and the OIE.

### **B. NO CONTACT ORDERS**

The University may issue a "No Contact" order to a participant in an OIE resolution process. These "No Contact" orders are separate from a court-issued protection order. OIE is responsible for determining if a No Contact order has been violated and will make referrals to the disciplinary authority for disciplinary action. The OIE may also inform UCCS Police. The University may issue exclusion orders pursuant to Regent Law Article 14.B.6. UCCS Police may issue advisements to limit contact with a specific individual(s).

### **C. SUPPORT MEASURES**

Support measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent. Support Measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational or work environment, or deter misconduct.

Support measures may be kept in place, lifted, or modified as additional information is obtained, or may be extended permanently, as appropriate

Witnesses or other participants in a Formal Resolution Procedure may also request support measures. The OIE will maintain oversight of these requests and the provision of any such measures.

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

#### Types of Support Measures

Support measures that may be available include, but are not limited to:

- academic services (extensions of time or other course-related adjustments, arranging for a party to re-take a course, excuse related absences, or withdraw from a class without penalty)
- accessing medical services
- accessing counseling services
- employment modifications
- campus safety escort services and increased security and monitoring of certain areas of campus
- transportation/parking modifications
- mutual or individual no-contact orders enforced by the University
- discussing options and providing referral information for obtaining criminal or civil protection or restraining orders
- residential relocations on or off campus
- student refund

### **VIII. EVALUATION OF A REPORT**

Upon receiving a report or formal complaint alleging prohibited conduct, the University has jurisdiction to conduct at least a preliminary inquiry. A preliminary inquiry may include, but is not limited to, evaluating whether the report or formal complaint implicates a policy enforced by the OIE, whether the report or formal complaint and parties are within the jurisdiction of the OIE, and whether the report or formal complaint presents a safety threat such that the OIE must report the concern to law enforcement, take action on the report despite complainant request for privacy (see Section IV), or implement safety measures.

The OIE shall then determine the most appropriate means for addressing the report or formal complaint. Options for responding to a report of prohibited conduct include, but are not limited to:

- 1) **Informational Report**: At complainant request or based on insufficient information obtained through a preliminary inquiry, the OIE may close a case by documenting the incident as an informational report and providing the appropriate resource referrals and support measures as applicable.
- 2) **Dismissal**: OIE may dismiss a case upon evaluation of a report. See Section X for dismissal procedures related to allegations of Sexual Misconduct, Intimate Partner Violence, and Stalking. See Section XI for dismissal procedures related to allegations of Protected Class Discrimination and Harassment, Conflict of Interest in Amorous Relationships, and Related Misconduct.
  - a. When determining a report or formal complaint does not fall within the jurisdiction of the Applicable Policies, the complainant will be referred to the appropriate office(s) on campus best situated to address the reported concerns.
  - b. OIE Procedures do not place any limitation on existing authority. The OIE may refer a matter of unprofessional or inappropriate conduct that, if true, would not rise to a violation of an Applicable Policy to the appropriate disciplinary authority for consideration. OIE Procedures do not limit the authority of a disciplinary authority to initiate or impose disciplinary action.

- 3) **Policy Compliance Remedy**: See Section IX.
- 4) **Formal Resolution**: See Section X for Formal Grievance Procedures related to allegations of Sexual Misconduct, Intimate Partner Violence, and Stalking. See Section XI for Formal Adjudication Procedures related to allegations of Protected Class Discrimination and Harassment, Conflict of Interest in Amorous Relationships, and Related Misconduct.

**A. OBLIGATION TO PROVIDE A SAFE AND NON-DISCRIMINATORY ENVIRONMENT AND CONSIDERATION OF OVERRIDE FACTORS**

If an individual has disclosed an incident of misconduct to the OIE, but wishes to maintain privacy or requests that no Formal Resolution Procedure occur or disciplinary action taken, the OIE will explain that the University prohibits retaliation, explain the steps the University will take to prevent retaliation if the individual participates in a resolution process, and that the University will take responsive action if it occurs.

If, having been informed of the University's prohibition of retaliation and its obligations to prevent and respond to retaliation, the individual would still like to maintain privacy or requests that no investigation be conducted or disciplinary action taken, the Director of Institutional Equity 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 Director of Institutional Equity or designee will consider a range of potential overriding factors that would cause the campus to address the alleged conduct, including the following:

- 1) The risk that the alleged perpetrator will commit additional acts of misconduct or other violence;
- 2) The seriousness of the alleged misconduct, including risk of repeat incident, 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;
- 3) Whether the alleged misconduct was perpetrated with a weapon;
- 4) Whether the complainant is a minor;
- 5) Whether the University possesses means other than the complainant's testimony to obtain relevant evidence of the alleged misconduct (e.g., security cameras, personnel records, or physical evidence); or
- 6) Whether the alleged misconduct reveals a pattern of perpetration at a given location or by a particular group.

The decision to file a Formal Complaint and initiate a Formal Resolution Process or other action despite the complainant's request that no resolution process or action proceed, will be conducted on a case-by-case basis after an individualized review. If the University honors the complainant's request for privacy, the University's ability to meaningfully investigate the incident and pursue disciplinary action, if appropriate, may be limited.

The OIE may honor a complainant's request for privacy and still address the misconduct through other options, such as providing support measures, conducting a Policy Education Meeting, referring the matter to



other offices, providing targeted or broad-based educational programming or training, or consulting with other University officials as appropriate, including, but not limited, to the UCCS Police, Human Resources, or CARE Team. Additionally, nothing in this section limits the ability of a disciplinary authority to initiate or impose disciplinary action, as necessary.

## **B. SAFETY MEASURES**

Some safety measures<sup>7</sup> involve restricting a respondent's access to University programs and activities and may not become available until after the completion of a Formal Resolution Procedure unless emergency removal action is determined appropriate.

The OIE will determine whether safety measures are appropriate after an individualized assessment. Every effort should be made to avoid depriving any student of educational access. Safety measures may be kept in place, lifted, or modified as additional information is obtained, or may be extended permanently, as appropriate.

### **1. EMERGENCY REMOVALS**

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

#### *Types of emergency removal include, but are not limited to:*

- Interim student suspension
- Interim exclusion order for parts of or entire campus, classes, etc.
- Employee Administrative Leave
- Temporary suspension of duties, including responsibilities associated with student-employment

Student emergency removals will be administered in conjunction with the Office of the Dean of Students in accordance with the Student Code of Conduct.

Employee emergency removals will be administered in conjunction with Human Resources (HR) in accordance with applicable processes.

All exclusion orders will be administered in conjunction with the UCCS Police.

#### *Individualized Safety and Risk Analysis*

The following factors will be considered in the individualized safety and risk analysis:

- Seriousness of the alleged conduct;
- Location of the alleged incident(s);
- The risk that the alleged perpetrator will commit additional acts of sexual or other violence;
- Whether the alleged perpetrator threatened further sexual or other violence against the alleged victim or others;

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<sup>7</sup> For allegations of Title IX violations, safety measures will be implemented in accordance with Title IX requirements.

- Whether there have been other misconduct complaints about the same alleged perpetrator or if the perpetrator has a known history of arrests or records from a prior school indicating a history of sexual or other violence;
- The existence of multiple alleged victims and/or perpetrators;
- Whether the conduct was facilitated by the incapacitation of the alleged victim (through alcohol, drugs, disability, unconsciousness, or other means);
- Whether the alleged conduct was perpetrated with force, violence, or weapons;
- Whether the alleged victim 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/or a particular location); and/or
- Whether any other aggravating circumstances or signs of predatory behavior are present.

*Opportunity to Challenge an Emergency Removal Decision*

In the case of an emergency removal, the respondent will be provided written notice of the alleged prohibited conduct and afforded prompt opportunity to challenge the decision. The written notice will include the procedure for challenging the decision based on either the Student Code of Conduct process (for students) or the HR process (for employees).

**IX. POLICY COMPLIANCE REMEDY**

The OIE may determine that the most prompt and effective way to ensure compliance with an Applicable Policy to address a concern is through a Policy Education Meeting. For example, the OIE may resolve a report or formal complaint<sup>8</sup> through a Policy Education Meeting if the alleged conduct, even if true, would not be considered prohibited conduct under one of the Applicable Policies.

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

- Provide interim or long-term support measures to the complainant and/or the respondent;
- Provide a referral to other campus resolution processes as appropriate based on the specific facts of the case<sup>9</sup>;
- Provide targeted or broad-based educational programming or training; and/or
- Conduct a Policy Education Meeting with the respondent to (1) discuss the behavior as alleged and provide an opportunity to respond; (2) review prohibited conduct under the Applicable Policies; (3) identify and discuss appropriate future conduct and behavior as well as how to avoid behavior that could be interpreted as retaliatory; (4) inform the complainant of the respondent’s responses if appropriate; and (5) notify the Office of the Dean of Students or the respondent’s appointing or

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<sup>8</sup> Formal complaints will only be addressed through the Policy Compliance Remedy when 1) the complainant requests not to engage in formal resolution, 2) the complainant withdraws the complaint in writing, or 3) OIE dismissed the formal complaint in accordance with the Procedures.

<sup>9</sup> Referrals may be to the Ombud’s, Faculty Relations Manager, or any other informal resolution process housed within a campus department.

disciplinary authority of the allegations and responses if necessary, who will determine whether any other disciplinary action is appropriate.

The OIE retains discretion to proceed with a Formal Resolution for allegations of misconduct that, if proven true, would violate the Applicable Policy. Additionally, the OIE will notify complainants of their ability to end the Policy Compliance Remedy process at any time and to commence or resume Formal Resolution, if the alleged misconduct, if proven true, would warrant Formal Resolution.

## **X. FORMAL GRIEVANCE PROCEDURES: SEXUAL MISCONDUCT, INTIMATE PARTNER VIOLENCE, AND STALKING (CU APS 5014)**

The Formal Grievance Procedure is how the OIE investigates allegations of Sexual Misconduct, Intimate Partner Violence, and Stalking, and to determine whether an individual more likely than not engaged in conduct that violates the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy (CU APS 5014). Individuals found responsible for violating CU APS 5014 are subject to sanction, up to and including expulsion or termination of employment.

The Formal Grievance Procedures for Sexual Misconduct, Intimate Partner Violence, and Stalking includes four major stages: 1) Filing and Evaluation of the Formal Complaint, 2) Investigation and Investigative Report, 3) Hearing and Determination Regarding Responsibility (including sanction, if applicable), and 4) Appeal, as applicable and described below.

### **A. FILING AND EVALUATION OF A FORMAL COMPLAINT**

#### *Formal Complaint Required to Initiate Formal Grievance Process*

An individual (referred to as the complainant) or Title IX Coordinator or designee must file a document alleging an allegation of misconduct under the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy against an individual (referred to as the respondent) 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 allegations of Sexual Misconduct with or without filing a formal complaint may receive support measures. See Section VII, Support Measures.

#### *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.

*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 grievance process, the 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 as outlined in Section VIII. A.

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.

#### *Mandatory and Discretionary Dismissal*

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 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 Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein, if the respondent is no longer enrolled or employed at the University, or if specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or the allegations therein (discretionary dismissal).

*Title IX Sexual Misconduct:* If the University dismisses a Formal Complaint pursuant to the Title IX Sexual Misconduct jurisdiction, the Title IX Coordinator or designee will consider whether the conduct alleged in the Formal Complaint may violate other provisions of CU APS 5014 and any other University or campus policies, procedures, or conduct codes, and make appropriate referrals.

*Sexual Misconduct:* If the University dismisses a Formal Complaint pursuant to the Sexual Misconduct jurisdiction, the Title IX Coordinator or designee will consider whether the conduct alleged in the Formal Complaint may constitute a violation of any other University campus policies, procedures, or conduct codes, and make appropriate referrals.

The Title IX Coordinator or designee will notify both the complainant and the respondent of the complaint either by issuing a Notice of Allegations (See Section X.B.) or a Notice of Complaint and Dismissal (see below).

#### *Appeal of 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 allegations 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 within seven (7) calendar days of the Notice of Complaint and Dismissal. The appeal must include an explanation as to why the alleged misconduct, if true, would violate the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy and why the Formal Complaint should not be dismissed.

An administrator within the OIE<sup>10</sup>, separate from the Title IX Coordinator or decision-maker for the initial dismissal, will consider the appeal and issue a determination either upholding or overturning the dismissal within seven (7) calendar days.

## **B. WRITTEN NOTICE OF ALLEGATIONS**

If the Formal Grievance Procedure is commenced, the respondent and complainant shall receive a written Notice of Allegations. The written Notice of Allegations 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 employee respondents, the OIE will send a copy of the Notice of Allegation to the appointing/disciplinary 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 Allegations 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 Allegations to the student employees supervisor and Student Employment.

The written Notice of Allegations will include a request that the respondent contact the OIE within three (3) business days of the issuance of the Notice of Allegations 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 allegations about the complainant or respondent that are not included in the initial Notice of Allegations, the OIE will issue an Amended Notice of Allegations to both parties.

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

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<sup>10</sup> OIE may request review by other institutional equity administrators from within the CU System.

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. INVESTIGATION AND INVESTIGATIVE REPORT**

### **1. EVIDENCE GATHERING**

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

Collection of evidence may include conducting interviews with the parties and witnesses, obtaining University records such as Lion One Card and door access records and video recordings, and collection of other documentation such as police reports, emails, text messages, etc.

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 allegations 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 with anyone. University policy prohibits retaliation and harassment against anyone who reports an allegation 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 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. 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.

## 2. EVIDENCE REVIEW AND PRELIMINARY INVESTIGATIVE REPORT

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 allegations 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 a hard copy, along with a Preliminary Investigative Report. The Preliminary Investigative Report will include a written summary of relevant and material evidence. While the University will not restrict the ability of the parties to discuss the allegations 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, particularly in electronic and/or hard copy format. Parties receiving such private information should only distribute it to those individuals with a legitimate need to know. The University will continue to enforce prohibitions against harassment and retaliation.

The parties will have fourteen (14) calendar days to submit a written response to the Preliminary Investigative Report. The investigator(s) will consider the parties' responses, if any, prior to completing the Final Investigative Report.

## 3. FINAL INVESTIGATIVE REPORT

The Final Investigative Report will include a written summary of relevant and material evidence, will incorporate the parties' responses to the Preliminary Investigative Report, and may include recommendations as to findings of fact and recommendations regarding responsibility based on the information available prior to the hearing. The investigator(s) recommendations are not final conclusions; the ultimate 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 Final Investigative Report will be issued to each party and the party's advisor at least fourteen (14) days prior to a hearing in an electronic format or a hard copy, for their review and written response that will be provided to the Hearing Officer(s).

## 4. DISMISSAL AFTER INITIATING THE FORMAL GRIEVANCE PROCEDURE

If, after initiating Formal Grievance Procedure and before the Hearing, the University, based on the available evidence, engages in a mandatory or discretionary dismissal in accordance with Section X.A. above, the University will provide a Notice of Dismissal and Opportunity to Appeal to complainant and respondent.

### *Notice of Dismissal and Opportunity to Appeal after Notice of Allegations*

If the University dismisses a case pursuant to Section A. above and after it has issued a Notice of Allegations, the University will promptly send written notice of the dismissal (Notice of 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. To file an appeal of the dismissal, a party must submit the appeal in accordance with the instructions contained in the Notice of Dismissal within seven (7) calendar days.

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
- The 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 designate a trained decision maker for the appeal. 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 Title IX Coordinator.

The decision maker will consider the appeal and issue a determination either upholding or overturning the dismissal within seven (7) calendar days. If additional time is needed to consider the appeal, the 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 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.

#### **D. HEARING AND DETERMINATION REGARDING RESPONSIBILITY**

A trained Hearing Officer will preside over a live hearing for the purpose of determining findings of fact and policy violations. 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 must have an advisor to conduct cross-examination during the live hearing. Each party may bring one advisor of their choosing to the hearing to conduct cross-examination. Parties' must inform the OIE of their advisor for cross-examination prior to the pre-hearing conference (see below). If a party does not have an advisor for the live hearing, the University will provide that party an advisor without fee or cost to the party. Upon notice that a party needs an advisor, the University will endeavor to assign an advisor at least fourteen (14) 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.

A party may not personally ask questions of the other party or any witnesses during the hearing. If a party does not bring an advisor of their choosing and declines to utilize the University provided advisor, the party still may not personally ask questions of the other party or witnesses during the hearing.

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

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



## 1. PRE-HEARING CONFERENCE

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

Prior to the pre-hearing conference, the parties must 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.

## 2. 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. All attendees, including parties, advisor/support person, and witnesses must be respectful of all participants and the hearing process. Abusive, intimidating, and harassing conduct will not be tolerated. The following rules apply:

- Advisors may only make objections to questions on the grounds of relevance or to assert a privilege. Advisors must signal for the Hearing Officer's attention, calmly state their objection, and wait for a determination;
- Repetitive or redundant questioning may be deemed both lacking in relevancy and harassing;
- Should an advisor need to confer with their party, they may request that the Hearing Officer grant them a recess. A mid-hearing conferral may not exceed 10 minutes. Every effort should be made to conduct conferrals privately and to not be overly disruptive;
- No one other than the Hearing Officer or designee may create audio or audiovisual recordings of the hearing;
- Advisors and parties must acknowledge the rules of decorum in advance of a hearing, including an acknowledgement that failure to abide by the rules may result in adjournment of the hearing and a postponement until the party whose advisor failed to abide by the rules may secure a new advisor.

## 3. CROSS-EXAMINATION PROCEDURE

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

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

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

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

Submission to Cross-Examination

Any individual (complainant, respondent, or witnesses) may choose to not participate in the live cross-examination hearing. If a complainant or respondent declines to submit to cross-examination, the party's advisor may still ask questions on their behalf. The Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

*Title IX Sexual Misconduct:* If a party or witness does not submit to cross-examination at the live hearing, the Hearing Officer must not rely on any statement of that party or witness in reaching a determination regarding responsibility.

*Sexual Misconduct:* 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.

4. DETERMINATION REGARDING RESPONSIBILITY

Evidentiary Standard

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

In applying the preponderance of the evidence standard, the Hearing Officer and panelists, if applicable, may consider both direct and circumstantial evidence. The Hearing Officer and panelists, if applicable, may determine the credibility of parties and witnesses and the weight to be given 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.

### Determinations

It is the responsibility of the Hearing Officer and the panelists, if applicable, not the parties or the investigators, to make a determination based on the totality of the available information to determine whether or not the preponderance of the evidence has been met. Neither party bears a burden of proof. While the Hearing Officer and panelists, if applicable, may consider any recommendations provided by the investigator(s) in the Final Investigative Report, the ultimate determination of factual findings and responsibility rests with the Hearing Officer and panelists, if applicable, after full consideration of all available evidence.

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

The written determination must include:

- Identification of the allegations potentially constituting a policy violation;
- 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 cases resulting in no policy violation, the OIE will provide the written determination to the parties simultaneously after it is prepared by the Hearing Officer. Both parties have the opportunity to appeal the written determination regarding responsibility. See Section X.G.

In cases resulting in a policy violation or a determination of inappropriate conduct, prior to the issuance of the written determination, the Hearing Officer will refer the matter to the appropriate sanctioning authorities (for either a student or employee respondent) for a disciplinary sanction determination. See Section X.E. and Section X.F. below. The sanctioning authority must provide to OIE a written decision regarding the sanction, to include either the specific sanction(s) imposed or the decision not to impose a sanction. After the sanction has been incorporated into the written determination regarding responsibility, the OIE will provide the written determination and sanction to the parties simultaneously. Both parties have the opportunity to appeal the written determination. See Section X.G.

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 grievance process, and will forward the information to the respondent's supervisor and/or Student Employment.

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

The 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 Duties procedure and Privilege and Tenure process for respondents who are faculty.

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

#### **E. SANCTIONING PROCESS FOR STUDENT RESPONDENTS**

In cases where the Formal Grievance Procedure results in a determination that a student respondent is responsible for a policy violation, the matter will be referred, with the written determination (prior to the inclusion of the sanction), to the Office of the Dean of Students prior to the issuance of a final written determination. The conduct officer will notify the Hearing Officer and Title IX Coordinator or designee of the determined sanctions, so that it will be included with the written determination provided by the OIE.

##### Factors Considered in Sanctioning

In accordance with the Student Code of Conduct, the conduct officer shall conduct an individualized review, including review of the Hearing Officer's written determination regarding responsibility, similarly situated cases, assessment of the factors below, and may review the entire file and consult as necessary with OIE staff, the Dean of Students, or any other University staff as needed in making a sanctioning determination.

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

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

##### Possible Sanctions

Sanctions may include one or more of the following:

Educational Sanctions: The student may be required to perform a specific number of hours of community service, complete a reflection or research paper, attend a class, workshop, program, or lecture, or be involved with the community in a way that brings about a new understanding of the community and how behavior may have impacted others. This is not an exhaustive list, but should serve as a reference for the types of educational sanctions that may be levied.

Letter of Notice: Policy reminder.

Written Warning: A written statement that the behavior was inappropriate and more serious conduct action will be taken should subsequent infractions occur.

Formal Reprimand: More serious than a Written Warning, a student receives a formal reprimand, any future violations of the Student Code of Conduct will likely result in more severe disciplinary actions.

Disciplinary Probation: Probation for a designated period of time in which specific sanctions or restriction may be imposed as part of this probation. Further prohibited conduct is likely to result in suspension. The student on disciplinary probation is not in good standing with the University. Loss of good standing may prohibit or impact a student from:

- Representing the University through official events
- Studying Abroad
- Serving in a leadership position or on a University committee

Residence Hall Reassignment: The student is assigned to a different residence hall on campus. If there is a room type change, the student's bill will be adjusted accordingly.

Residence Hall Termination: The student's residence hall agreement is terminated through the conduct process and the student is prohibited from residing in any University residence hall on either a permanent or temporary basis. Specific exclusion from the residence halls may also be imposed. Termination may occur in cases where a student appears to be involved in violations of the Code and the behavior or pattern of behavior has a significant negative impact on their living community. Students whose housing contract is terminated through the conduct process are financially responsible for all charges associated with housing for the remainder of the academic year. Parents or guardians of housing residents under age 21 will be notified of residence hall termination as a result of suspension or expulsion.

Restriction or Denial of University Services: The student is restricted from using or is denied specific University services, including participation in University activities.

Suspension: The student is required to leave the University for a specific period of time. An indication of suspension appears on the student's transcript. After the period of suspension has expired, the transcript notation will be removed upon request of the student. The student is required to apply for readmission to the University after the suspension period through the Office of Admissions. Suspension from the University includes an automatic exclusion from campus property during the period of suspension. A suspension decision results in the student being suspended from all campuses of the University of Colorado System.

Suspension in Abeyance: The student is suspended from the University, but due to mitigating circumstances, the suspension is deferred, allowing the student to continue with daily University activities and providing a student with one final opportunity to prove they can operate responsibly within the community. If the student, through the conduct process, is found to have violated the Code of Conduct during the period of the suspension in abeyance, the student will be immediately suspended from the University for the duration of the abeyance, as well as given additional sanctions, including an extension of the suspension, or expulsion.

Expulsion: The student is required to permanently leave the University. A notation of expulsion keeps the incident on file in the Office of the Dean of Students indefinitely. Expulsion from the University includes

an automatic exclusion from the campus property. An expulsion decision results in the student being expelled from all campuses in the University of Colorado System. An indication of expulsion appears on the student's transcript.

Exclusion: The student is denied access to all or a portion of campus. Student exclusions will be issued in coordination with the UCCS Police Department. When a student is excluded from University property, that student may be permitted onto University property for limited periods and specific activities with the permission of the UCCS Chief of Police and the Dean of Students or designee. Should the student enter University property without permission, the student is subject to action taken by law enforcement for criminal trespass.

Delayed Conferral of Degree: The issuance of a student's diploma is delayed for a specific period of time.

Recommendation for Revocation of Degree: The conduct officer(s) may recommend to the Regents of the University of Colorado revocation of an earned degree.

Additional Sanctions: Additional sanctions may include, but are not limited to, requiring the student to compensate a victim for theft or damage, counseling assessment or referral, or community service.

*Student Disciplinary Hold and Disciplinary Stop*

A disciplinary hold may also be placed by the Office of the Dean of Students if a student fails to complete assigned sanctions. The disciplinary hold is honored by the UCCS campus, including Continuing Education, and prohibits the student from registering for classes until the sanction has been completed.

A disciplinary stop shall be placed on a student's record if they are suspended as the outcome of the OIE proceeding. A disciplinary stop is honored by all University of Colorado campuses and prohibits a student from being admitted to any of the campuses, and from registering for classes until the suspension period is over and the student has reapplied and has been re-admitted.

*Student Refund Policy After Disciplinary Action*

For current information regarding housing and/or tuition refunds, please go to:

<https://www.uccs.edu/dos/student-conduct>

## **F. SANCTIONING PROCESS FOR EMPLOYEE RESPONDENTS**

In cases that result in a determination that an employee respondent is responsible for a policy violation or acted inappropriately or unprofessionally, the matter will be referred, with the written determination (prior to the inclusion of the sanction), to the disciplinary authority and Human Resources.

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

*Sanction required*

In order to remediate the effects of Sexual Misconduct, the disciplinary authority should impose sanctions when there is a finding of responsibility for a policy violation. Sanctions for classified staff in the written determination may include either a corrective action or a notice of disciplinary action, issued pursuant to the State Personnel Rules.

The disciplinary authority will determine the type of sanctions in consultation with the Chief Human Resource Officer or designee, the Director of Institutional Equity or designee, OIE, and any other administrative staff with a need to know.

The appointing/disciplinary authority may have access to the investigative records.

The disciplinary authority may consider the following factors as pertinent to a sanctioning decision, as applicable:

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

The disciplinary authority will provide the Director of Institutional Equity or designee the sanctioning decision to be included with the written determination provided by the OIE.

#### Potential sanctions

Sanctions may include, but are not limited to:

Letter of Expectation/Reprimand: A warning/written letter of expectation or reprimand is a statement from the disciplinary authority that the behavior was inappropriate and that more serious disciplinary action will be taken should subsequent infractions occur.

Mandatory Training: The employee may be required to attend a training, class, or program as relevant to the misconduct.

Demotion: The employee is demoted from their current position.

Job Duty Modifications: The disciplinary authority may modify the employment responsibilities of the employee.

Reduction in Salary/Ineligibility for Merit Increases: The employee's salary is reduced either permanently or temporarily, or the employee is not eligible for merit increases either permanently or temporarily.

Ineligibility for Rehire: The employee is no longer eligible for employment at the University.

Exclusion: The employee is denied access to all or a portion of University property. When an employee is excluded from University property, that employee may be permitted on University property for limited periods and specific activities with the permission of the University official or designee who imposed the exclusion. Should the employee enter University property without permission, police may charge the employee with trespass.

Termination of Employment Contract or Termination of Employment: Pursuant to applicable laws and policies specific to the employee's status, the disciplinary authority recommends or terminates employment.

Corrective action issued pursuant to the State Personnel Rules.

Notice of disciplinary action issued pursuant to the State Personnel Rules.

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

## **G. APPEALS**

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

Basis for appeal of a determination regarding responsibility:

- 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 Title IX Coordinator, investigators, or Hearing Officer and panelists, if applicable, had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter

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

### **1. HOW TO FILE AN APPEAL AND TIMEFRAME**

Appeals must be submitted in writing to the OIE within seven (7) calendar 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. APPEAL PROCESS AND APPEAL BOARD**

Upon receiving an appeal, the OIE will appoint a trained Appeal Officer. The Appeal Officer will notify the non-appealing party (complainant or respondent) in writing of the appeal, and the non-appealing party will be provided seven (7) calendar days to respond in writing to the appeal. The response should be sent to the designated Appeal Officer. 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 Appeal Officer will appoint trained University employees (who may include staff from the Anschutz, Denver, and Boulder campuses) who are not otherwise affiliated with the OIE at UCCS to serve on the Appeal Board. The Appeal Officer and the decision-maker(s) for the appeal (Appeal Board) may not be the same Hearing Officer that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.



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 21 calendar days of its receipt of all final documentation.

## **XI. FORMAL ADJUDICATION PROCEDURES: PROTECTED CLASS DISCRIMINATION AND HARASSMENT, CONFLICT OF INTEREST IN AMOROUS RELATIONSHIPS, AND RELATED MISCONDUCT**

The OIE may resolve a report of alleged misconduct through the Formal Adjudication process when the alleged misconduct, if true, would be prohibited under the Applicable Policies.

The Formal Adjudication Procedures include five major stages: 1) Filing a report and evaluation of the complaint, 2) Evidence Gathering and Review, 3) Determination Regarding Responsibility, 4) Opportunity for Appeal, as applicable, and 5) Sanctions, as applicable.

### **A. FILING A REPORT AND EVALUATION OF COMPLAINT**

Any individual may file a report or complaint of protected class discrimination or harassment, conflict of interest in amorous relationship, or other related misconduct. The OIE will assess the report to determine 1) if the allegation, if proved, would constitute a violation of the Applicable Policy, 2) OIE jurisdiction based on Applicable Policies, and 3) Complainant's interest in engaging in the Formal Adjudication Procedure.

The OIE may decline to pursue a formal adjudication if a complainant has requested that a formal adjudication not be pursued, and the OIE has determined that the complainant's request can be honored consistent with the University's obligation to provide a safe and non-discriminatory environment (see Section VII.A.), or if the OIE determines the complaint, even if proved, would not constitute a policy violation or the OIE does not have jurisdiction over the respondent.

#### Formal Adjudication Override Factors

If a complainant has disclosed an incident of misconduct but wishes to maintain privacy and does not wish to initiate the Formal Adjudication Process, the Director of Institutional Equity or designee will weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all students, faculty, and staff as outlined in Section VIII.A.

#### Dismissal

If a complainant has requested Formal Adjudication, but OIE has determined that the allegations do not meet the threshold for Formal Adjudication and dismisses the report or complaint, the OIE will provide notice of the dismissal in writing to the Complainant. The Complainant may request reconsideration of OIE's determination by submitting a request in writing within seven (7) calendar days of the notice. The request must include an explanation of the alleged misconduct and why the alleged misconduct, if true, would violate the Applicable Policy.

The OIE will reconsider the allegation and issue a determination either upholding or overturning the dismissal within seven (7) calendar days.

## **B. WRITTEN NOTICE OF ALLEGATIONS**

If the Formal Adjudication Procedure is commenced, the respondent and complainant shall receive a written Notice of Allegations. The written Notice of Allegations 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 emailed, the date U.S. mailed, or at the time of hand-delivery.

If, in the course of an investigation, a complainant alleges additional violations of Applicable Policies or the Director of Institutional Equity or designee decides to investigate additional allegations about the complainant or respondent that are not included in the initial Notice of Allegations, the OIE will issue an Amended Notice of Allegations to both parties.

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

- The identity of the parties involved in the incident;
- The specific section(s) of the policy allegedly violated;
- Identify the conduct allegedly constituting the potential violation, including the date and location of the alleged incident to the extent known and available;
- Provide information about the Formal Adjudication Procedure;
- Information about the policy provisions that prohibit knowingly making false statements or knowingly submitting false information during the Formal Adjudication 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.
- Identify the Investigator(s) who will conduct the investigation;
- Include a statement that no determinations have been made or will be made until the conclusion of the investigation;
- Require that the respondent contact the OIE within *three (3) business days* to schedule an initial meeting.

For employee respondents, the appropriate division Vice Chancellor, the Department Director or Executive Director, the hiring authority, and Human Resources will receive a copy of the Notice of Allegations.

For student respondents, the Office of Dean of Students will be notified of the investigation. Other staff, such as the Director of Residence Life, Athletic Director, Student Government Advisor, or student employment supervisor may be notified of an investigation, if a finding of a policy violation would affect their eligibility to participate in the program.

If the respondent chooses not to participate in the adjudication process, the OIE may complete the adjudication based on the totality of information obtained during the Evidence Gathering Stage, which

may include police investigation reports and other relevant documents or information.

### **C. EVIDENCE GATHERING**

After the Notice of Allegation has been issued to the parties, the OIE's investigator(s) will seek to obtain all available evidence directly related to the allegations at issue. Collection of evidence may include conducting interviews with the parties and witnesses, obtaining University records such as card and door access records and video recordings, and collection of other documentation such as police reports, emails, text messages, etc.

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. Investigator(s) may request additional information and documentation from complainant(s) or respondent(s) to assist in evidence collection, such as phone records, emails, screenshots of text or social media messages, etc..

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 complainant(s) and respondent(s) to suggest witnesses. Both the complainant(s) and respondent(s) will also have an opportunity to submit questions for the Investigator(s) to ask of the other party and of 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.

### **D. EVIDENCE REVIEW**

Following the Evidence Gathering, the Investigator(s) shall allow the complainant(s) and respondent(s) to review the relevant and material facts. The investigator(s) shall send a summary of the relevant and material facts to the complainant(s) and respondent(s) who each have fourteen (14) calendar days to review and respond. At this time, the parties will also have access to witness identities and opportunity to inspect the full investigative file.

Upon reviewing the evidence, both the complainant(s) and respondent(s) will also have an opportunity to submit any additional questions for the investigator(s) to ask of the other party and of witnesses, as referenced above in Section C. The investigator(s) may determine a question is irrelevant and decline to ask it when the question is not reasonably calculated to lead to the discovery of probative evidence, when the probative value of the information is outweighed by the danger of unfair prejudice or confusion of the issues, or in consideration of undue delay or needless presentation of cumulative evidence.

### **E. FACTUAL FINDINGS AND DETERMINATION REGARDING RESPONSIBILITY**

Following the Evidence Gathering phase, including any relevant information or questions submitted in response to the Evidence Review and subsequent follow up evidence gathering, the Investigator(s) shall prepare a written determinations that will include a description of procedural steps taken, including any notifications to the parties, interviews, and methods for gathering evidence, a statement of factual findings, and a determination regarding whether or not there was a violation of policy based on the application of the factual findings to the Applicable Policy. If the respondent(s) is found not to be responsible for violating the Applicable Policy, the report may, if applicable, include a determination that the respondent(s) engaged in conduct that was inappropriate or unprofessional.

#### **1. STANDARD OF REVIEW/BURDEN OF PROOF**

In all cases, regardless of the allegation(s) or whether the respondent is a student or employee, the OIE applies the "preponderance of the evidence" standard when making findings of fact and

conclusions as to whether violations of policy occurred. A preponderance of the evidence exists when the totality of the information demonstrates that an allegation of misconduct is probably more true than not. If the evidence weighs so evenly that the Investigator(s) is unable to say there is preponderance on either side, the Investigator(s) must determine that there is insufficient information to conclude that a violation of the Applicable Policy occurred.

In applying the preponderance of the evidence standard, the Investigator(s) may consider both direct and circumstantial evidence. The Investigator(s) may determine the credibility of parties and witnesses and the weight to be given to their statements, taking into consideration their means of knowledge, strength of their 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/or 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 to determine whether or not the preponderance of the evidence has been met.

## 2. REPORT REVIEW

At the discretion of the Director of Institutional Equity, the written determination regarding responsibility may be presented for review to trained investigator(s) within UCCS or the University of Colorado system, not previously affiliated with the case to provide an independent review. The reviewer may assess the written determination to review for investigator(s) bias and impartiality, thoroughness of the investigation, and sufficiency to support the finding. The reviewer may review any information contained in the investigative file, may consult with the investigator(s), or may recommend that further investigation or a new investigation be done by the same or other investigator(s). The reviewer(s) may not conduct their own investigation. Nothing requires the assigned investigator(s) to a particular case to accept feedback given pursuant to this section.

The OIE may also submit written determinations to University Counsel to review for legal sufficiency.

## F. NOTICE OF OUTCOME

The OIE shall advise the complainant(s) and respondent(s) simultaneously in writing of the result or outcome of any investigation conducted under the Procedures. The Notice of Outcome shall include a review of the alleged misconduct and finding(s) regarding violation(s) of Applicable Policies. The Notice of Outcome will include a supplemental summary of the factual findings and determination of policy violations. The Notice of Outcome will also notify the parties as to the next step in the process, as applicable.

For investigations involving employee respondents, the appropriate division Vice Chancellor, the Department Director or Executive Director, the hiring authority, the Chancellor, and Human Resources will receive a copy of the of the written determinations for further consideration. This may include sanctioning in accordance with applicable policies, including the State Personnel Rules or the Privilege and Tenure Committee, as applicable, when there is a finding of a policy violation or inappropriate behavior.

For investigations involving student respondents, the written determinations will be provided to the Office of Dean of Students for further consideration. This may include sanctioning in accordance with the student conduct process, as outlined in the Student Code of Conduct, when there is a finding of a policy

violation or inappropriate behavior. Other staff, such as the Director of Residence Life, Athletic Director, Student Government Advisor, or student employment supervisor may be notified of the outcome of investigation, if a finding of a policy violation would affect a student's eligibility to participate in the program.

Complainant(s) or respondent(s) may review a full copy of the final written determination by submitting a written request to the Director of Institutional Equity.

## **G. APPEAL OF FINDING**

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

Basis for appeal of a determination regarding responsibility:

- 1) Whether new evidence has been presented which was unavailable during the initial investigation, and which, if considered, may materially affect the outcome of the investigation; or
- 2) Whether a due process error occurred, such as failure to provide notice or provide opportunity to respond to allegations, that unfairly and materially affected the outcome of the investigation; or
- 3) Whether the investigator(s) had a conflict of interest or exhibited unfair bias that materially affected the outcome of the investigation.

In the appeal, both 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 OIE within seven (7) calendar days after the Notice of Outcome is issued. The appeal should indicate the specific basis for the appeal (see above), supporting arguments and documentation, and any other relevant information the appealing party wishes to include.

The appealing party should be aware that all appeals are documentary reviews, and no interviews are conducted. Therefore, appeal documents should be as complete and succinct as possible. 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.

Upon receipt of an appeal, the OIE will designate a trained Appeals Officer, who shall be a trained University administrator, and the Appeals Officer shall make the determination as to whether these conditions have been met. If the Appeals Officer decides that appeal criteria are not met, the outcome of the investigation is final.

### **2. APPEAL PROCESS AND APPEAL ADVISORY BOARD**

The Appeal Officer will notify the non-appealing party (complainant or respondent) in writing of the appeal, and the non-appealing party will be provided seven (7) calendar days to respond in writing to the appeal. The response should be sent to the designated Appeal Officer. 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 Appeal Officer will appoint trained University employees (who may include staff from the Anschutz, Denver, and Boulder campuses) who are not otherwise affiliated with the OIE at UCCS to serve on

the Appeal Board. The Appeal Officer and the decision-maker(s) for the appeal (Appeal Board). The Appeals Officer is the Chair of the Appeal Advisory Board.

#### Appeal Decisions

Upon review of the appeal, the Appeal Advisory Board may recommend that the Appeal Officer:

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

The Appeal Board members shall not make new findings of fact. The Board shall review all documentation submitted, make the final decision upon appeal, and concurrently provide the parties with a written Notice of Appeal Decision within 21 calendar days of its receipt of all final documentation.

## **H. SANCTIONING**

### **1. STUDENTS**

Sanctions for students will be determined by the Office of the Dean of Students in accordance with the Student Code of Conduct. Any sanctions imposed by the Office of Dean of Students will not be determined or enforced until either the opportunity to appeal the determinations has passed, or the appeal has been heard and resolved. Support and Safety Measures shall remain in place during this period.

In cases where the investigation results in a policy violation, the respondent and complainant will each have an opportunity to meet separately with the Office of the Dean of Students to present any mitigating or aggravating circumstances related to the incident that may impact sanctioning. If a party would like to participate in this process, it is their duty to contact the disciplinary authority within *seven (7) calendar days* of the Notice of Outcome date to schedule a meeting. It is the responsibility of the parties to schedule the meeting within the timeframe prescribed. The Notice of Outcome will contain appropriate contact information for the Office of the Dean of Students. In lieu of an in-person meeting parties may submit a written statement. A written statement may be up to three pages in length and must be limited to describing mitigating or aggravating circumstances that may affect sanctioning. Any statement outside of these guidelines will not be considered.

The Office of the Dean of Students will notify the Director of Institutional Equity of the sanction imposed within 14 calendar days.

#### Student Disciplinary Hold and Disciplinary Stop

A disciplinary hold may also be placed by the Office of the Dean of Students if a student fails to complete assigned sanctions, which has the same impact on a student's records and registration. The disciplinary hold will not be removed until all sanctions are completed.

A disciplinary stop shall be placed on a student's record if they are suspended as the outcome of the OIE proceeding. A disciplinary stop is honored by all University of Colorado campuses and prohibits a student from being admitted to any of the campuses, and from registering for classes until the suspension period is over and the student has reapplied and has been re-admitted.

#### Student Refund Policy After Disciplinary Action

For current information regarding housing and/or tuition refunds, please go to:

<https://www.uccs.edu/dos/student-conduct>

## 2. EMPLOYEES

Sanctions for employees will be determined by their disciplinary authority in accordance with the Human Resources processes and procedures. Any sanctions imposed by the disciplinary authority will not be determined or enforced until either the opportunity to appeal the determinations has passed, or the appeal has been heard and resolved. Support and Safety Measures shall remain in place during this period.

In cases where the investigation results in a policy violation, the respondent and complainant will each have an opportunity to meet separately with the respondent's disciplinary authority to present any mitigating or aggravating circumstances related to the incident that may impact sanctioning. If a party would like to participate in this process, it is their duty to contact the disciplinary authority within *seven (7) calendar days* of the Notice of Outcome date to schedule a meeting. It is the responsibility of the parties to schedule the meeting within the timeframe prescribed. The Notice of Outcome will contain appropriate contact information for the disciplinary authority. In lieu of an in-person meeting parties may submit a written statement. A written statement may be up to three pages in length and must be limited to describing mitigating or aggravating circumstances that may affect sanctioning. Any statement outside of these guidelines will not be considered.

The disciplinary authority will notify the Director of Institutional Equity of the sanction imposed within 14 calendar days.

## **XII. PARTICIPANT RIGHTS**

Regardless of the resolution option utilized, the complainant(s) and the respondent(s) shall each have the right to:

- 1) Resolutions conducted by trained officials (see below) 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.
- 2) A process with reasonably prompt timeframes, with extensions for good cause, as discussed further below.
- 3) Receive Support Measures from OIE before, during, and after a resolution process.
- 4) Utilize an advisor of their choosing, including an attorney, advocate, or other support person throughout the process.
- 5) Timely and equal access to any relevant information.
- 6) Inspect the case file, which contains all information or evidence, unless prohibited or confidential under law, gathered as part of the investigation.

### Investigators

Investigations will be conducted by staff who are appropriately trained and have qualifications and experience that will facilitate a prompt, fair, equitable and impartial investigation. The OIE investigators shall receive annual training on issues related to sexual assault, intimate partner violence, stalking, sexual harassment, protected class discrimination and harassment, and retaliation.

### Outside Investigators:

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 an investigation or to manage an alternative dispute resolution process. Circumstances which may warrant such outside resolutions include, but are not limited to, conflict of interest, allegations of bias, or workload. The Director of Institutional Equity or designee retains the discretion to determine whether the use of outside investigator(s) is warranted and reasonable given the circumstances and information available and known at the time. Outside investigators shall have adequate training, qualifications and experience that will, in the judgment of the OIE, facilitate a prompt, fair, and impartial investigation or alternative resolution. Any outside investigator designated to address an allegation must adhere to the requirements of the Procedures and confer with the Director of Institutional Equity or designee on a regular basis about the progress of the investigation.

### Timeframes

The OIE is committed to providing a prompt, fair and impartial resolution of all reports and formal complaints. The University will provide an equitable resolution of any report or formal complaint within an average of 90 calendar days, except that such time frame may be extended for good cause with prior written notice to the complainant and respondent of the delay and reason for the delay. The University will provide the complainant and respondent with regular written updates on the status of the Formal Resolution Procedure throughout the process until conclusion.

Good cause may exist for a variety of factors, including the complexity of the circumstances of each allegation, the integrity and completeness of the investigation, compliance with a request by law enforcement, or due to 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 the Formal Resolution Procedure. 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.

## **XIII. RESOURCES**

There are many resources, most of which are free of charge, available to UCCS students, faculty, and staff to help with stressful or challenging situations. These offices can provide additional educational resources and support for addressing concerns, exploring options for reporting, and gaining skills for helping others.

### **A. CONFIDENTIAL RESOURCES**

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

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.

<https://www.uccs.edu/recwellness/health-services>

<https://www.uccs.edu/recwellness/mental-health-services>



**Memorial Hospital**, 1400 E. Boulder Street, (719) 365-5000

For any individual seeking a medical forensic/evidence exam (Sexual Assault Nurse Examination - SANE) after a sexual assault, UC Health Memorial Hospital provides this service. SANE exams are offered through the central location emergency room 24 hours a day 7 days a week.

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

**Real Help Hotline**, (888) 533-2428

The Real Help Hotline is open to assist UCCS employees if they ever feel overwhelmed by the stress in their life, no matter what causes the stress. The Real Help Hotline's confidential representatives are trained counselors who can offer free and immediate crisis counseling or find local resources to give further assistance.

<https://www.becolorado.org/program/the-real-help-hotline/>

**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.

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

## **B. ON CAMPUS RESOURCES**

**Dean of Students Office**, Main Hall Room 201, (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.

<https://dos.uccs.edu/>

**Disability Services**, Main Hall Room 105, (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/>

**Diversity, Equity & Inclusion**, Main Hall Room 312, (719) 255-4001

The Office of Equity, Diversity and Inclusion (EDI) strives to be inclusive of our entire community, regardless of social or cultural identity, background, perspective or origin. EDI, promotes the principles of equity and diversity—which are defined within a domestic context and a specific historical, social, and cultural framework—and an intellectual environment that is inclusive of all stakeholders in order to overcome the historical legacies of exclusion. <https://diversity.uccs.edu/>

**Human Resources**, University Office Park, (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. <https://www.uccs.edu/hr>

**LGBT Resource Center @ MOSAIC**, University Center 110, (719) 255-7527

The LGBT Resource Center @ MOSAIC exists as part of UCCS's on-going commitment to fostering a positive and inclusive atmosphere for everyone on campus. The LGBTRC is designed to provide resources and information to LGBT students, advocate for LGBT interests throughout campus, conduct outreach and education, and to ensure LGBT voices are represented among the campus at large.

<https://uccs.edu/lgbtresourcecenter/>

**MOSAIC**, University Center 110A, (719) 255-3040

The mission of the Multicultural Office for Student Access, Inclusiveness, and Community (MOSAIC) is to support and create opportunities that assist all UCCS students in developing a sense of community and place on campus, with an emphasis on supporting and advocating for students from underrepresented communities. MOSAIC strives to create a safe place that encourages and nurtures connections and engagement across social identities, cultures, international status, experiences, gender identities, and sexual orientations. Serves the entire campus community, including students, faculty and staff.

<https://uccs.edu/mosaic/>

**Ombuds Program**, Cragmor Hall 003, (719) 255-3119

The Ombudsperson offers students and employees informal assistance in resolving disputes or confusion in a neutral environment where they can openly discuss individual or broader issues without having those concerns shared without their consent. <https://www.uccs.edu/ombuds>

**Respect on Campus**

Respect on Campus (ROC) is the UCCS interpersonal violence awareness program, and offers programs and events throughout the year that promote an awareness and understanding of sexual assault, dating and domestic violence, stalking, and other forms of sexual misconduct. The ROC website also gives resources and information on how to get help. <https://roc.uccs.edu/>

**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. <https://police.uccs.edu/>

**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. <https://military.uccs.edu/>

**C. OFF CAMPUS RESOURCES**

**Colorado Civil Rights Division**, 1560 Broadway Suite 110 Denver CO 80202, (303) 894-7855

The Colorado Civil Rights Division (CCRD) is charged with enforcing the State's anti-discrimination laws in the areas of employment, housing, and public accommodations. CCRD works to eliminate and prevent discrimination in these areas through investigation, education, mediation, and enforcement.

<https://www.colorado.gov/pacific/dora/civil-rights>

**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. <https://coloradosprings.gov/police-department>

**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. <https://www.epcsheriffsoffice.com/>

**U.S. Department of Education, Office for Civil Rights**, (800) 421-3481, [ocr@ed.gov](mailto:ocr@ed.gov)

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

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

#### **XIV. PROCEDURE DEFINITIONS**

The following terms are as defined for the purposes of the OIE Procedures.

**Advisor:** An individual designated by the complainant or respondent to be present at interviews and/or to conduct cross-examination.<sup>11</sup>

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

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

**Business day:** a day that the University is open and functioning as normal. Excludes holidays, weekends, and full-day administrative closures.

**Complainant:** Within the context of this policy, means a person who is subject to alleged prohibited conduct addressed by these Procedures and the Applicable Policies.

**Day/Calendar Day:** For purposes of these policies and procedures, a day is a calendar day.

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

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

**Interim Suspension:** Immediate and temporary suspension from any University activity or program.

**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.

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<sup>11</sup> See CU APS 5014 for additional provisions.

**Party:** Complainant or respondent and collectively referred to as “parties,” also referred to as Involved Party/ies.

**Protected Classes:** for purposes of the Procedures, protected classes refers to race, color, national origin, sex, pregnancy, age, disability, creed, religion, sexual orientation, gender identify, gender expression, veteran status, political affiliation, or political philosophy.

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

**Protected Class Harassment (excluding sexual harassment covered under CU APS 5014):** means verbal or physical conduct related to one’s protected class that unreasonably interferes with an individual’s work or academic performance or creates an intimidating or hostile work or educational environment

**Protected Class Hostile Environment (excluding sexual harassment covered under CU APS 5014):** Hostile environment is a form of protected class harassment. Whether a hostile environment exists is determined from both a subjective and an objective perspective. The subjective perspective evaluates whether or not the complainant experienced unwelcome conduct on the basis of his or her protected class status. The objective perspective evaluates whether or not the unwelcome conduct was, from the perspective of a reasonable person in the alleged complainant’s position, sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University’s education or employment programs and/or activities. Simple teasing, offhand comments, isolated incidents (unless extremely severe) or mere offensive conduct, unrelated to protected class, are not enough to create a “hostile environment” as defined in this policy.

**Preponderance of the evidence:** The evidentiary standard of proof used in all OIE procedures, meaning it is “more likely than not” that the alleged behavior occurred.

**Respondent:** Means a person who is accused of engaging in prohibited conduct as defined in these Procedures and Applicable Policies.

**Responsible employee:** Means any employee who: (1) has the authority to hire, promote, discipline, evaluate, grade, formally advise or direct faculty, staff, or students; (2) has the authority to take action to redress prohibited misconduct; and/or (3) has been given the duty of reporting incidents of sexual violence or any other misconduct to the Director of Institutional Equity | Title IX Coordinator or designee. The Director of Institutional Equity | Title IX Coordinator may designate in campus procedures that certain individuals who might otherwise not be considered responsible employees are subject to mandatory reporting requirements.

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

**Sanction:** Refers to either a sanction imposed by the Office of the Dean of Students or designee for students or discipline as imposed by the appointing/disciplinary authority for employees.

**Summary Suspension:** Temporary removal of student from campus through the Office of the Dean of Students, pending the outcome of a case.

**Supervisor:** Any one individual or a member of an evaluative committee or group who has the authority to hire, promote, discipline, evaluate, grade, formally advise or direct faculty, staff or students.

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

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

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

## XV. APPENDIX 1: APPLICABLE POLICY DEFINITIONS

### A. CU APS 5014

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

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

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

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

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

- Withdrawal of *consent* can be manifested through conduct and need not be a verbal withdrawal of *consent*.
- In order to give effective *consent*, the person giving *consent* must be of legal age under Colorado law for the purposes of determining whether there was a *sexual assault*.
- A *respondent*'s intoxication resulting from intentional use of alcohol or drugs will not function as a defense to engaging in sexual activity without an individual's *consent*.

**Dating violence:** means violence committed by a person, on the basis of sex

1. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - a. The length of the relationship;
  - b. The type of relationship; and
  - c. The frequency of interaction between the persons involved in the relationship.

**Domestic violence:** The term “domestic violence” includes felony or misdemeanor crimes of violence, on the basis of sex, committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

**Education program or activity:** Includes locations, events, or circumstances over which the university exercises substantial control over both the *respondent* and the context in which the *Sexual Misconduct* occurs. This includes any building owned or controlled by a student organization that is officially recognized by the university.

**Formal Complaint:** means a document filed by a *complainant* or signed by the Title IX Coordinator or designee alleging *Sexual Misconduct* against a *respondent* and requesting that the university investigate the allegation of *Sexual Misconduct*. A *formal complaint* may be filed with the Title IX Coordinator or designee in person, by mail, or by electronic mail. If the *complainant* files the *formal complaint*, the document must contain the *complainant*'s physical or digital signature, or otherwise indicate that the *complainant* is the person filing the *formal complaint*.

**Hostile Environment:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, or objectively offensive that it effectively denies a person equal access to the university's *education program or activity*. Mere offensive nonsexual conduct is not enough to create a *hostile environment*. Although repeated incidents increase the likelihood that harassment has created a *hostile environment*, a single or isolated incident of *sexual assault* may be sufficient. This definition governs allegations of *hostile environment* related to *sexual misconduct* that fall outside Title IX's jurisdiction, including allegations of student and employee *sexual misconduct* as described in section IV.A.2.b.<sup>12</sup>

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

***Incapacitation:*** *Incapacitation* may result from alcohol or other drug use, unconsciousness, or other factors. The use of alcohol or drugs in and of itself does not render a person incapacitated. *Incapacitation* is a state beyond drunkenness or intoxication. The impact of alcohol and drugs varies from person to person. *Incapacitation* is a state where a person cannot make a rational, reasonable decision because they lack the capacity to give *consent* (to understand the who, what, when, where, why, or how of sexual interaction). Incapacity can also result from illness, sleep, mental disability, and other circumstances. Engaging in sexual activity with a person whom you know to be mentally or physically incapacitated, or reasonably should know to be incapacitated, violates this Policy.

***Investigative Report:*** A written report of relevant and material evidence distributed to both parties after gathering facts from both parties, witnesses, and any other available sources of evidence. The *investigative report* does not contain responsibility determinations or analysis and is intended to objectively present relevant evidence.

***Quid Pro Quo Sexual Harassment:*** A member of the university community conditioning the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct.

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

- Rape: the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the *consent* of the victim. This offense includes the rape of all persons and is properly applied regardless of the age of the victim if the victim did not *consent* or if the victim was incapable of giving *consent*.
- Fondling: touching of the private body parts of another person for the purpose of sexual gratification, without the *consent* of the victim, including instances where the victim is incapable of giving *consent* because of the victim's age or because of the victim's temporary or permanent mental incapacity.
- Statutory Rape: sexual intercourse with a person who is under the statutory age of *consent* if the victim consented and the offender did not force or threaten the victim.
- Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

***Sexual Exploitation:*** Means conduct that takes sexual advantage of another person without that person's *consent*. Examples of behavior that could rise to the level of *sexual exploitation* include, but are not limited to: (1) prostituting another person; (2) taking possession of the intimate personal property of another person without that person's *consent*; (3) recording images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's *consent*; (4) distributing images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not *consent* to such disclosure; and (5) viewing or listening to another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's *consent*. If *sexual exploitation* is severe, pervasive, and objectively offensive, it may meet the definition of *Title IX Hostile Environment*; otherwise, it may constitute *Sexual Misconduct*.

**Stalking:** Means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

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

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

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

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

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

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

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

## **B. CU APS 5015**

**Amorous Relationships** exist when two individuals mutually and consensually understand a relationship to be romantic and/or sexual in nature.