

**Colorado State University**

**Procedures for Investigating and Responding to Complaints of Sexual Harassment under Title IX Laws and Regulations**

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## **SECTION 1 INTRODUCTION**

Colorado State University (“CSU” or “the University”) is committed to maintaining an educational and employment environment free from sexual harassment. To this end, CSU has adopted a policy entitled “Title IX Sexual Harassment” (the “Policy”) that prohibits these forms of misconduct and provides that individuals found responsible for violating the policy will be subject to sanctions. The grievance procedures described in this document will guide how CSU will investigate and respond to complaints of sexual harassment under the Policy. The Procedures are meant to be utilized with the Policy. The Policy defines terms that are utilized throughout these Procedures.

These procedures provide for a prompt and equitable resolution of matters reported that are subject to Title IX regulations and the Policy. CSU will treat all those involved in a sexual harassment grievance proceeding pursuant to the Policy fairly and equitably in accordance with the Title IX regulations. Differences between one party’s rights and options and another party’s rights and options will never be based on sex.

Under the Title IX law and regulations, the parties to a proceeding are referred to as the “Complainant” and the “Respondent”. Under CSU’s policies, these parties are usually referred to as the “Impacted Party” and the “Responding Party,” respectively. The legal terms and CSU’s terms are used interchangeably in these Procedures.

## **SECTION 2 SCOPE AND APPLICABILITY**

These Procedures apply to conduct that occurs on university property, and to conduct that occurs off university property, including electronic conduct, when the conduct occurs in the context of a university employment or education program or activity in the United States, including, but not limited to, university-sponsored academic, athletic, extracurricular, research, online or internship programs or activities.

These procedures address incidents that are covered under the Title IX law and regulations because they meet the definition of “sexual harassment” in that law (see the Policy, Section 2, Definitions). These procedures do not address sexual misconduct that is prohibited under CSU’s Policy but does not equate to sexual harassment as defined by Title IX. Such sexual misconduct is governed instead by the Student Conduct Code where the Responding Party is a student or the Office of Equal Opportunity’s (OEO’s) grievance procedures where the Responding Party is a non-student. Student employees accused of sexual misconduct may be subject to either or both student and employee procedures and sanctions, depending upon the facts and circumstances.

Notwithstanding the above, the University reserves the right to determine which procedures to apply to a formal complaint and to specify one procedure for multiple allegations in a complaint, even where some allegations may fall with the Title IX regulations and some may not.

### SECTION 3 REPORTING

**Any person experiencing an immediate safety concern, or who observes a crime in progress or having just occurred, should immediately call 911.**

#### How to Report

Anyone may report an incident of sexual harassment, sexual misconduct or gender-based discrimination to the Office of Title IX Programs and Gender Equity as follows:

In person during business hours: Office of Title IX Programs and Gender Equity 123 Student Services Building (corner of University Ave. and Libby Coy Way) Fort Collins, CO 80523	By telephone: 970-491-1715
By postal mail: Office of Title IX Programs and Gender Equity 0160 Campus Delivery Fort Collins, CO 80523-0160	By email: [needed] Titleix@ColoState.edu  Online: <a href="https://titleix.colostate.edu/title-ix/reporting-options/">click here</a> ( <a href="https://titleix.colostate.edu/title-ix/reporting-options/">https://titleix.colostate.edu/title-ix/reporting-options/</a> )

Responsible Employees, as defined in the Policy, who witness or receive information regarding an allegation of sexual harassment, sexual misconduct, or relationship violence must report all known details within 24 hours to the Title IX Coordinator, Deputy Title IX Coordinator, or designee in the Office of Title IX Programs and Gender Equity. All other members of the CSU community are strongly encouraged to [report](#) to the Title IX Coordinator, Deputy Title IX Coordinator, or Office of Title IX Programs and Gender Equity any information learned about an alleged incident of sexual harassment, sexual misconduct, gender-based discrimination or relationship violence known to the individual as soon as possible. The names and contact information for the Title IX Coordinator and Deputy Title IX Coordinators are on the [CSU Title IX web page](#).

Notwithstanding these obligations, anyone may report an incident at any time; there is no time limit on reporting to the University.

An Impacted Party may choose to report their complaint to law enforcement. A law enforcement investigation may take place simultaneously with these procedures. In cases where there is an immediate threat to safety, a violation of an existing measure, or a minor involved, CSU is required to report to the police. In cases where a report is made to law enforcement by CSU, the Impacted Party has the choice to participate in the criminal investigation, or not.

The Title IX Coordinator or designee may direct an investigation into complaints of conduct that is prohibited by the Policy, whether or not it also constitutes a crime under applicable law. An Impacted Party has the option to report to law enforcement but is not required to do so. Even if a matter is not reported to law enforcement, this does not negate the University's obligation to investigate the matter.

A concurrent law enforcement investigation could delay the timing of any University investigation under these Procedures. If this occurs, the Impacted Party and Responding Party will be notified of the delay.

#### **SECTION 4 PRIVACY OF INFORMATION**

CSU has an obligation to maintain an environment free of sexual harassment and misconduct. Students and employees who want to discuss a complaint in strict confidence may use the confidential support resources listed in the Policy and on the [CSU Title IX website](#).

Under the law, Responsible Employees (see definition in the Policy) have mandatory reporting and response obligations and cannot honor an Impacted Party's request not to make a report to the appropriate administrators. Responsible Employees must, however, maintain privacy of any information disclosed other than by making a required report. The Title IX Office and the Office of Equal Opportunity will share information only as necessary, and only with people who need to know to fulfill the purposes of the Policy, the Procedures, and applicable law. This may include investigators, witnesses, administrators, and the parties and their advisors. CSU will comply with the Family Educational Rights and Privacy Act ("FERPA") and other confidentiality laws as they apply to Title IX proceedings.

#### **SECTION 5 SUPPORTIVE AND INTERIM MEASURES**

After receiving a report of sexual harassment, the Title IX Coordinator or designee will evaluate available information to determine the need for any supportive or interim measures and provide appropriate resources to both parties both on and off campus. Supportive and interim measures will be reviewed for appropriateness and possible adjustment as additional information is received. The parties involved in allegations of prohibited conduct are entitled to receive information and assistance regarding supportive and interim measures whether or not the Impacted Party chooses to file a formal complaint with the University and/or report a crime to local law enforcement. Information about supportive and interim measures placed on the parties will be kept confidential by the University to the greatest extent practicable under the circumstances.

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

After receiving a report of sexual harassment, the Office of Title IX Programs and Gender Equity will promptly contact the Impacted Party to discuss the availability of supportive measures. Supportive measures are non-disciplinary, non-punitive, individualized services

designed to restore or preserve equal access to the University's education program or activity. Supportive measures are offered as appropriate, as reasonably available to the Impacted Party or the Responding Party before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures may include, but are not limited to: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Each party is also provided with a list of appropriate resources by the Title IX Office at the time of the party's initial contact with that office.

## **B. Interim Measures**

Interim measures may be instituted by Student Conduct Services in the Student Resolution Center after a report is received from the Office of Title IX Programs and Gender Equity. Depending on the nature of the complaint, CSU may take any and all interim measures it deems necessary to protect the CSU community or any of its individual members. Interim measures may be imposed effective immediately, without prior notice, when in the judgement of the Director of the Student Resolution Center, the seriousness of alleged behavior threatens the safety and well-being of members of the University community, threatens university property or has potential to disrupt or interfere with normal University operations.

Parties are encouraged to contact the Title IX Office to make a request for interim measures. The purpose of such measures is to address safety concerns and minimize, to the extent reasonable and practical, the impact on the involved parties.

Examples of interim measures include:

- No-contact order with proximity
- Interim trespass order
- Interim residential relocation
- Interim residential suspension
- Interim university suspension
- Interim transcript notation
- Interim registration hold
- Interim degree hold
- Request for academic adjustments
- Change to dining and/or transportation arrangements
- Adjustment to on-campus working arrangements
- Limitation or prohibition regarding participating in University activities absent written authorization from an appropriate University official

### **C. Emergency Removal**

Interim university suspension, interim residential suspension, and interim trespass orders may result in the removal of a Responding Party from a University education program or activity on an emergency basis. Such actions may be taken only after an individualized safety and risk analysis has resulted in a determination by the Director of the Student Resolution Center or designee, for students, or by the Title IX Coordinator or designee, for employees (including student employees), that there is an immediate threat to the physical health or safety of any individual arising from the allegations of sexual harassment. In the event of such action, the Responding Party will be provided with notice and an opportunity to appeal the decision immediately following the removal. The review will be conducted by the Student Consult Team Title IX Subgroup or the Employee Consult Team.

For non-student employees under emergency removal, during the pendency of a proceeding under the Policy, a non-student employee Responding Party may be placed on Administrative Leave.

Law enforcement may address any imminent safety concerns independent of the emergency removal review procedures.

## **SECTION 6 EXPECTATIONS AND RESPONSIBILITIES**

An Impacted Party may choose not to file a formal complaint or participate in the investigation; however, all other University students and employees are expected to cooperate with an investigation. Failure to participate may limit but not eliminate the investigation.

### **A. Parties' Expectations**

Throughout the grievance proceedings, the Impacted Party and the Responding Party can expect:

1. Information and an explanation regarding the Policy and the Procedures
2. The option to report the allegation(s) to local law enforcement
3. Supportive and interim measures that are reasonable and practicable under the circumstances
4. Information about, and assistance obtaining, available resources for medical treatment or counseling
5. Written notice of allegations leading to an investigation, including information about the conduct alleged and potential Policy violation
6. Reasonable time to respond to allegations as well as prompt and equitable resolution of formal complaints under these Procedures
7. An opportunity to offer information or evidence and identify witnesses relevant to the investigation

8. The opportunity to have an advisor of their choice, subject to the limitations outlined in Section 13, to attend meetings or proceedings where the party is present
9. Access to any information used by the decision makers in making a final decision
10. The opportunity to submit concerns or issues about the process including investigator bias or conflict of interest to the Title IX Coordinator or the Vice President for Equity, Equal Opportunity and Title IX
11. Written notice of investigatory outcomes
12. The opportunity to appeal a final finding of responsibility and any sanction imposed
13. Both freedom from and the responsibility to refrain from retaliation
14. The responsibility to provide truthful and complete information to the best of one's ability

## **B. Requirements of Administrators**

Any individual designated by CSU as a Title IX Coordinator, Deputy Title IX Coordinator, Title IX investigator, Title IX decision-maker, or facilitator of an informal resolution of a Title IX matter, shall:

1. Not have a conflict of interest in the matter.
2. Not have a bias for or against impacted parties or responding parties generally, nor as to the individual parties in the matter.
3. Be trained on sexual harassment.
4. Be trained on the scope of the educational program or activity in which the alleged conduct took place.
5. Be trained on how to conduct an investigation, hearing, appeal, or informal resolution procedure, as appropriate, and how to serve impartially.
6. Be trained on any technology to be used in the hearing process, if participating in the hearing.
7. Be trained on issues of relevance and evidence, if serving as a hearing officer.
8. Be trained on issues of relevance in creating investigative reports, if serving as an investigator.

## **C. Training Materials**

Any materials used to train the individuals referred to above must not rely on sex stereotypes and must promote impartial investigations and adjudications on formal complaints. All such materials will be posted online to be publicly available.

## **SECTION 7 PRELIMINARY INQUIRY**

### **A. Commencement of Inquiry**

After receiving a report of alleged conduct prohibited under the Policy, the Title IX Office will conduct a preliminary inquiry. This is an initial gathering of information that will enable the University to assess the need to take any immediate action to address the safety and health needs of the Impacted Party, Responding Party and the CSU community. In addition, this provides an opportunity to assess next steps for investigating reported conduct. At this stage, the Title IX Coordinator or designee will determine if the allegations, if true, would rise to the level of a violation of the Policy and warrant a full investigation. If the Title IX Coordinator or designee finds that the information available does not warrant proceeding to a formal investigation, the matter will be closed, but may be reopened if further information is received.

This preliminary inquiry may include, but is not limited to, information gathering from the parties, soliciting written statements, meeting with witnesses, and gathering other information necessary to make decisions as to the appropriate resolution. If the matter is closed, CSU reserves the right to reopen a preliminary investigation at any time.

If an Impacted Party requests that the process not move forward or refuses to participate, the University will weigh that request against the University's obligation to address any risk of harm to the Impacted Party or other individuals in the community and the nature of the incident or conduct at issue and may proceed as determined appropriate. The Title IX Coordinator has the discretion to file a formal complaint of a policy violation even if the Impacted Party chooses not to do so.

At any time, the Title IX Coordinator and other University officials may conduct a threat assessment to determine the risk of harm to the parties or to the University community. The Title IX Coordinator or designee will use the information gathered to determine how to move forward.

### **B. Determination of Applicability of Title IX Procedures**

Another purpose of the preliminary inquiry is to enable the Title IX Coordinator or designee to determine whether the allegations in the report, if true, would constitute sexual harassment subject to the Title IX law and regulations. If so, the matter will proceed according to these Procedures. If not, other University procedures and processes may apply, including the Student Conduct Code where the Responding Party is a student, and the Office of Equal Opportunity's grievance procedures where the Responding Party is an employee.

## **SECTION 8 FILING A FORMAL COMPLAINT**

An Impacted Party may file a formal complaint alleging any action that would be prohibited by the Policy. Once a formal complaint has been filed, the procedures for investigation, hearings

and appeals set forth in these Procedures will apply until the complaint is resolved either by dismissal of the complaint, or a final determination is issued regarding responsibility of the Responding Party, and any appeals are decided (or the time for an appeal has passed without a filing). The formal complaint must be filed in writing with the Office of Title IX Programs and Gender Equity, 123 Student Services Building, Fort Collins, CO 80523-0160, 970-491-1715. Complaints may be filed [online](#), via [email](#), by postal mail, or in person. The complaint must be signed by the Impacted Party (Complainant). Digital signatures are acceptable. The information contained in the formal complaint should be as specific as possible, including the following (if known):

- Name, address, telephone number, and email address of each Impacted Party (complainant) filing the formal complaint
- Date, time and location where the alleged sexual harassment or sexual misconduct occurred (for each instance, if occurring on more than one occasion)
- Name(s) of the alleged perpetrator(s) of the sexual harassment or sexual misconduct
- Name(s) of all witnesses to the occurrence(s)
- Request that the allegation of sexual harassment be investigated
- Description of the behavior of the alleged perpetrator(s) on each such occasion
- Any other information that the Impacted Party wishes to provide regarding the occurrence(s) and impacts
- Note: legally privileged information such as medical records, attorney-client privileged information, or discussions with a victim advocate, rape crisis counselor, or professional counselor need not be provided

Promptly after a formal complaint is received by the Office of Title IX Programs and Gender Equity, a representative of that office will contact the Impacted Party to discuss next steps in the grievance procedure.

Where two separate complaints contain allegations arising out of the same facts or circumstances, the Title IX Coordinator may consolidate the complaints into one proceeding. Where a formal complaint involves more than one Impacted Party and/or more than one Responding Party, references in these procedures to a singular party include the plural, as applicable.

## **SECTION 9   DISMISSAL OF THE FORMAL COMPLAINT**

Under the circumstances described below, the University must, or in some cases may in its discretion, dismiss a complaint. Dismissal of the formal complaint does not preclude the University from conducting a review and taking action under the Student Conduct Code or any rules or policies governing the conduct of a student or an employee.

### **A. Required Dismissal**

The formal complaint **must** be dismissed if it is determined at any time that:

- The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proven by a preponderance of the evidence; or
- The conduct alleged in the formal complaint did not occur in the University's education program or activity or did not occur in the United States. As used herein, "education program or activity" includes all incidents occurring on university property and property owned or controlled by a student organization recognized by the University.

### **B. Discretionary Dismissal**

The formal complaint or any allegations therein **may** be dismissed by the Title IX Coordinator if, at any time during the investigation or hearing, any of the following occurs:

- The Impacted Party notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint or any allegations therein;
- The Responding Party is no longer enrolled or employed by the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

### **C. Notice of Dismissal**

Upon a dismissal required or permitted above, the Title IX Coordinator or designee will promptly send written notice of the dismissal and reasons simultaneously to the parties. The notice shall advise the parties regarding their rights to appeal.

## **SECTION 10 NOTICE TO THE PARTIES**

After a formal complaint is filed, the Office of Title IX Programs and Gender Equity will provide written notice to the parties of the following:

1. The University's grievance procedures for Title IX matters, including informal resolution procedures
2. The allegations of conduct potentially constituting sexual harassment as defined in the Title IX regulations and CSU's policy, including the portions of the Policy that are alleged to have been violated

3. The identities of the parties involved in the alleged incident(s), if known
4. The date(s) and location(s) of the alleged incident(s), if known
5. That the Responding Party is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance procedures
6. That the parties may each have an advisor of their choice, who may be, but is not required to be, an attorney
7. That knowingly making a false statement or submitting false information in the grievance process is a violation of the CSU Policy on Title IX Sexual Harassment and the Student Conduct Code

This written notice does not constitute a finding or a determination of responsibility.

## **SECTION 11 INFORMAL RESOLUTION PROCEDURES**

The informal resolution process is voluntary. It is designed to resolve complaints without a hearing while meeting the needs and interests of the parties. It is available only after a formal complaint has been filed and at any time during the investigation. All parties and the Title IX Coordinator or designee must agree in writing to participate for an informal resolution procedure to be used, and all parties must agree in writing to the proposed resolution. If the parties are unable to agree, or if any Party chooses not to engage in or to withdraw from the informal resolution procedure before it concludes, then the informal resolution procedure will terminate, and formal grievance procedures will be followed.

Informal resolution is not available under any of the following circumstances:

- There has not been a formal complaint made by the Impacted Party or signed by the Title IX Coordinator
- The allegations in the formal complaint include that a CSU employee sexually harassed a CSU student

The Title IX Coordinator or designee will assess the request for informal resolution against the severity of the alleged violation and the potential risks to campus community members. If the Title IX Coordinator or designee determines that informal resolution is appropriate, the Title IX Coordinator or designee will notify the parties. The written notification will include disclosure of:

- The allegations in the formal complaint
- The requirements of the informal resolution process, including the circumstances under which the parties would be precluded from resuming a formal complaint arising from the same allegations

- The caution that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process
- The consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The Title IX Coordinator or designee will facilitate a dialogue with the parties to seek a resolution. The complaint will be deemed resolved when the parties expressly agree to an outcome that is acceptable to them which is approved by the Title IX Coordinator in consultation with other appropriate university administrators. Either party may withdraw from the informal resolution process at any time. The informal resolution process will be conducted in accordance with procedures specified by the Title IX Coordinator, as determined in the Title IX Coordinator's sole discretion.

Pursuing an informal resolution does not preclude later use of a formal investigation if new information becomes available or if the informal resolution does not achieve its intended purpose. The Title IX Coordinator or designee may initiate an investigation at any time that the Title IX Coordinator deems it appropriate, solely at the discretion of the Title IX Coordinator.

## **SECTION 12 FORMAL INVESTIGATION**

### **A. Designation of Investigator**

1. The Title IX Coordinator or designee will designate at least one investigator to conduct a prompt, fair, and impartial investigation of the reported conduct and prepare a report of investigative findings (the "Investigative Report"). At the University's discretion, the investigator may be an internal or an external investigator and more than one investigator may be assigned. All investigators – internal or external – will be selected based on specific training and experience investigating allegations of discrimination, sexual or relationship violence, sexual harassment, and stalking. The investigation process will be thorough, unbiased and impartial. The Title IX Coordinator or designee will provide the parties with the name of the Investigator(s) in the Notice of Investigation.
2. As soon as possible, but no later than three (3) business days after delivery of the identity of the Investigator(s), the parties should inform the Title IX Coordinator (in writing) of any conflicts of interest of the selected Investigator(s). The Title IX Coordinator will consider the nature of the alleged conflict and determine if different individuals should be assigned as Investigator(s). The Title IX Coordinator's decision regarding any alleged conflicts is subject to the Title IX

Coordinator's sole discretion and is final. The Title IX Coordinator may consult with other University personnel to discuss conflicts of interest.

## **B. Nature of the Investigation**

The investigation will normally consist of separate interviews with the Impacted Party, the Responding Party, and any witnesses whom the Investigator(s) believes may provide necessary and relevant information. The investigation may include the review of documentation or other items relevant to the reported conduct. The Investigator(s) will provide the parties with written notice of meetings at which their presence is required. In all cases, the Investigator(s) have the independent authority to evaluate the relevance of witnesses and other information offered by the parties and to assess the credibility of witnesses interviewed. If an investigation by law enforcement is being conducted concurrently with the CSU investigation, the investigators may share relevant information with law enforcement personnel.

## **C. The Parties' Identification of Potential Witnesses and Documentation**

During the investigation, both parties will have an equal opportunity to be heard, submit information, and identify witnesses who may have relevant information.

The parties should identify any witnesses the party wants the Investigator(s) to interview and provide any other information as early in the process as possible, but such information must be received before the investigation is completed. The parties may also provide the Investigator(s) with questions they would like the Investigator(s) to ask the other party or witnesses. All information and questions described in this Section must be presented to the Investigator(s) in writing and include a brief description as to how the persons, documents, and/or items are relevant to the investigation. This information must be provided to the Investigator(s) during the investigation. Proposed witnesses must have observed the incident at issue or have information relevant to the incident and cannot be offered solely to provide information about a party's character. The Investigator(s) have authority to determine what witnesses, information and/or questions are likely to provide information relevant to the investigation and are appropriate to ask.

## **D. Investigation Procedures**

1. Neither party will be permitted to directly question the other party during the investigation proceedings; questions for the other party may be submitted to the Investigator(s) as described above.
2. Moreover, the Investigator(s) generally will not gather or consider information related to either party's sexual history outside of the conduct in question except as

relevant to the alleged policy violation, as determined in the sole discretion of the Investigator(s).

3. The University cannot access, consider, disclose or otherwise use a party's treatment records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in their professional capacity without the party's voluntary, written consent.
4. Each party whose participation is invited or expected in any interview or meeting during the investigation will receive written notice of the date, time, location, participants and purpose with sufficient time to prepare for the interview or meeting and may be accompanied by their advisor. The advisor's role will be limited to advising the party. The advisor is not allowed to speak on behalf of the party, other than for purposes of conducting cross-examination.
5. The parties will have the opportunity to inspect and review any evidence obtained in the investigation that is directly related to the allegations in the formal complaint, even if the University does not intend to use that evidence in reaching its determination regarding responsibility. The Office of Title IX Programs and Gender Equity will provide each party (and the party's advisor, if any) such evidence to review, and the party will have at least 10 business days to submit a written response to be considered by the investigator prior to completion of the investigative report. All such evidence will be made available to the parties at the live hearing.

#### **E. Failure to Participate**

If the Impacted Party is unable or unwilling to participate in the investigation, the Title IX Coordinator or designee will determine whether the investigation shall proceed without the participation of the Impacted Party. If a Responding Party chooses not to participate in the investigation after receiving notice of the investigation, the investigation shall still proceed and a disciplinary decision may be reached based on the information gathered in the course of the investigation, even without the Responding Party's participation.

#### **F. Deadlines/Extensions of Time**

It is the expectation that all parties will adhere to the deadlines requested by the Title IX Coordinator or designee. Extensions of time will be granted in circumstances where there is good cause. This shall be done in writing and each party will be notified of the extension granted.

#### **G. Investigation Report**

At the conclusion of the investigation, an investigation report will be drafted for the Impacted Party and Responding Party to review. The report will fairly summarize the relevant evidence,

including inculpatory and exculpatory evidence. Each party will have 10 business days to review the investigative file and may respond, in writing, to the investigation report. If additional information is provided to the Investigator(s) at this time that was not previously known by the party and warrants further investigation, the Investigator(s) will notify the parties and then provide an amended investigation report.

## **H. Referral to Student Conduct Services**

The final investigation report will be referred to Student Conduct Services for review. The review will result in one of the following:

1. **No Evidence of Policy Violation:** a determination is made that, based on all information obtained through the investigation, the evidence, if proven, would not constitute sexual harassment as defined in the Title IX regulations. Both parties involved are notified of this conclusion and the formal complaint will be dismissed.
2. **Informal Resolution:** depending on the information obtained through the investigation and the wishes of the parties involved, the option of a voluntary informal resolution may be provided to the parties as described in Section 11 above. Conflict Resolution Services will facilitate both parties signing a contractual agreement stating the conditions of the informal resolution. Once agreed upon, the agreement will be shared with the Office of Title IX Programs and Gender Equity, which will facilitate compliance with the agreement by the parties. A party may report non-compliance to that office or to Student Conduct Services. In the event of a reported violation of the agreement, the matter will be referred to Student Conduct Services for further review and action. Further action may include reopening the investigation.
3. **Evidence of Policy and/or Conduct Code Violation:** if Student Conduct Services determines that the evidence in the investigation report would, if proven, constitute sexual harassment as defined in the Policy, the matter will be scheduled for a hearing as set forth in Section 14 below.

## **SECTION 13 ADVISORS AND SUPPORT PERSONS**

### **A. Advisors**

1. Each party may have a single advisor of such party's choice present during any stage of proceedings when the party is expected or invited to participate, including any meeting, investigation, interview, or hearing, held pursuant to the Policy. The advisor may be, but is not required to be, an attorney. The advisor's participation is confined to conducting cross-examination of parties and witnesses on the party's

behalf and advising the party. The parties will be asked to provide the name of their advisor at least five business days prior to the hearing.

2. If a party makes a request not less than five business days prior to the hearing, the University will provide an advisor selected by the University for that party for purposes of conducting cross-examination of other parties and witnesses. The advisor provided by the University:
  - Will not be a witness to the incident or circumstances giving rise to the complaint
  - Will not advise opposing parties in the same matter
  - Will not be someone who holds a position of supervision or authority over the person they are advising
3. If for any reason the University is unable to provide an advisor as stated above, the hearing will be postponed for a reasonable time until it is able to do so, or the party names an advisor of their own selection.

## **B. Support Persons**

1. In addition to the advisor described above, the parties will have the same opportunity as one another to have a support person present with them during any stage of the proceeding.
2. A party may select a confidential victim advocate as their support person. In that case, communications with the confidential victim advocate would be covered by the confidentiality provisions of C.R.S. § 13-90-107(k)(I)(II).
3. A party's support person may not speak on behalf of the party and is not entitled to review evidence in the matter. The party may choose, on their own, to share evidence and the investigation report with their support person with the understanding that the content of these items shall not be shared with others.

## **SECTION 14 HEARINGS**

### **A. General Provisions**

The following provisions apply to hearings in sexual harassment proceedings for both student and non-student parties.

1. The possible disciplinary sanctions and remedies that CSU may implement are described in Section 12 of the Policy. Student employees are subject to both employment and student disciplinary sanctions.
2. There is a presumption that a Responding Party is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of

the adjudication process (not including appeal). This presumption does not limit the University's responsibility to implement supportive measures, interim measures and, where appropriate, emergency removals as set forth in Section 5 above.

3. The burden of proof in establishing a determination regarding responsibility of the Responding Party with respect to each allegation in the formal complaint rests with the University.
4. The standard of evidence to be used in all sexual harassment proceedings is the preponderance of the evidence standard. This means that a finding of responsibility will be made when the hearing officer determines that, based on the evidence, the Responding Party more likely than not engaged in behavior constituting sexual harassment.
5. Proceedings will be accomplished within reasonably prompt time frames, including the time for filing and resolving appeals and informal resolution processes. Temporary delays and extensions of time may be granted by the university official overseeing that portion of the process upon a showing of good cause and with notice to the parties. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
6. The adjudicating official shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.

## **B. Hearing Procedures**

1. If the formal complaint is not dismissed and the matter is not resolved informally, the University will schedule a live hearing to take place within a reasonably prompt time after the completion of the investigation phase. All parties are expected to participate in the hearing. An Impacted Party who declines to participate in the hearing may have their formal complaint dismissed. A Responding Party who fails to participate in the hearing may have a determination of responsibility made in the Responding Party's absence.
2. A party's advisor may be present at the hearing for the purposes of advising the party and conducting cross-examination of other parties and witnesses. Cross-examination will be conducted orally, in real time. A party may never cross-examine the other party or a witness directly. Cross examination will take place within the rules of decorum established by the Hearing Officer, which may include, but are not limited to, respectful exchanges during all proceedings, prohibitions on

badgering a witness or asking repetitive, misleading, confusing or harassing questions.

3. All or part of any live hearing may be conducted remotely in a manner that allows all participants to see and hear each other simultaneously. When the parties are physically present, they may be in separate rooms connected via audio/visual means.
4. Hearings will be presided over and managed by a Hearing Officer selected by the University. The Hearing Officer may or may not be a University employee. The Hearing Officer is the decision-maker with respect to a determination of responsibility.
5. Questions and evidence about the Impacted Party's sexual predisposition or prior sexual behavior are not relevant and will not be allowed, unless such questions and evidence are offered to prove that someone other than the Responding Party committed the conduct alleged in the formal complaint, or if the questions and evidence concern specific incidents of the Impacted Party's prior sexual behavior with respect to the same Responding Party and are offered to prove consent. However, prior sexual relations between the parties is not, in and of itself, conclusive evidence of consent in all instances. A person has the right to withdraw consent to sexual contact at any time, for any reason.
6. If a party or witness does not submit to cross-examination by the advisors for the parties at the hearing, statements of that individual may not be relied upon by the decision-maker in reaching a determination regarding responsibility, and no inference shall be drawn 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. However, this does not preclude consideration of statements of a party that, in and of themselves, may constitute sexual harassment, for example, video or written communications of a sexual harassing nature.

### **C. Final Determination**

1. The Hearing Officer shall render a final determination regarding responsibility of the Responding Party for the allegations in the formal complaint. This written determination shall include:
  - Identification of the allegations potentially constituting sexual harassment.
  - 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 recipient’s code of conduct to the facts.
  - A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility.
  - Any disciplinary sanctions to be imposed on the Responding Party, as determined by Student Conduct Services, and whether remedies designed to restore or preserve equal access to the University’s education program or activity will be provided to the Impacted Party.
  - The procedures and permissible bases for the parties to appeal.
2. The Hearing Officer’s final determination shall be provided concurrently to the parties.

## **SECTION 15 APPEALS OF FINAL DETERMINATIONS**

### **A. Grounds for Appeal**

Appeals of decisions made during the sexual harassment grievance proceeding are not appealable until a final determination is made. Informal resolutions, once agreed to by the parties, are not appealable. When the determination regarding responsibility is final, the parties are afforded a right to appeal a determination of responsibility of the Responding Party or dismissal of the Impacted Party’s complaint, only on one or more of the following grounds:

1. Any procedural irregularity that affected the final outcome of the matter;
2. Newly discovered evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or Responding parties generally or the individual complainant or Responding Party that affected the outcome of the matter.

### **B. Appeal Procedures**

1. Appeals in Title IX sexual harassment complaints will be received and reviewed under the provisions for appeals in the Student Conduct Code. The parties will be notified in writing of their right to appeal upon issuance of the final determination. The notification will instruct the parties how to file an appeal.

2. Appeals must be submitted online via the Student Resolution Center website by a party within 10 business days of the date the Hearing Officer's decision is sent.
3. The officials reviewing the appeal cannot include the Hearing Officer who rendered the determination, the investigators, or the Title IX Coordinator.
4. The appellate official, or each individual serving on an appeals panel, shall meet the same standards and requirements as set forth above for the Title IX Coordinator, Deputy Title IX Coordinator, Title IX investigator, Title IX decision-maker, or facilitator of an informal resolution with respect to neutrality, lack of bias or conflict of interest, and training.
5. The party filing the appeal shall submit, together with their notice of appeal, a written statement as to the grounds for appeal and the evidence in support of the appeal. If the appeal is based on new evidence not reasonably available at the hearing, then the other party may, within 10 business days after receiving the appellant's statement, file a written response.
6. The appeals procedure is further detailed in the Student Conduct Code.

## **SECTION 16 RETALIATION; MATERIALLY FALSE STATEMENTS; RELATED VIOLATIONS**

1. Retaliation is defined in the Policy, Section 2. The University strictly prohibits retaliation with respect to all matters covered under the Policy and these Procedures. A formal complaint by a party is not required for the University to charge an individual with retaliation.
2. A determination regarding responsibility, alone, is not a sufficient basis on which to conclude that any party made a materially false statement. A formal complaint by a party is not required for the University to charge an individual with making a materially false statement. Charging an individual with a violation of University policies or procedures for making a materially false statement in bad faith in the course of proceedings under the Policy and Procedures does not constitute retaliation.
3. The University will not impose discipline on a party or witness for other policy violations related to the incident such as possession or consumption of alcohol or drugs. However, participation in an investigation, hearing or appeal does not shield any person from disciplinary action for sexual harassment or sexual misconduct, whether or not such behavior is related to the allegations in the formal complaint.
4. Disciplinary sanctions for students under this Section are determined pursuant to the Student Conduct Code. Disciplinary sanctions for employees may be imposed pursuant to applicable personnel policies and procedures. Any disciplinary action for a tenured faculty member must follow the procedures

outlined in Section E.15, Disciplinary Action for Tenured Faculty, of the Faculty and Administrative Professional Manual.

## **SECTION 17 RECORDKEEPING**

The University will retain for a period of seven years after the final determination and any appeals, all records related to the sexual harassment complaint, investigation, hearing and appeal, training materials as described in Section 6.C above, and implementation of any sanctions, supportive measures or interim measures. This includes records related to an informal resolution of a formal complaint.

The Title IX Coordinator or designee will, for each formal complaint of sexual harassment, document at the conclusion of the proceedings:

- The basis for the conclusion that the University's response to the complaint was not deliberately indifferent.
- The measures taken to restore or preserve equal access of the parties to the University's educational programs and activities in connection with the alleged sexual harassment.
- If the University does not provide the Impacted Party with supportive measures, the reasons why such response was not clearly unreasonable in light of the known circumstances at the time.