



*OFFICE OF*  
**EQUAL  
OPPORTUNITY  
& TITLE IX**

*PROCEDURES 2019-2020*



UNIVERSITY *of*  
DENVER

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(Effective November 21, 2019)

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## 1. Purpose

The Office of Equal Opportunity & Title IX established these Procedures to assist in carrying out its responsibilities in the administration and enforcement of the University of Denver's ("the University") policies related to non-discrimination, and in facilitating the University's compliance with applicable laws, including: Executive Order 11246; Title VI and Title VII of the Civil Rights Act of 1964; the Equal Pay Act (EPA) of 1963; the Age Discrimination in Employment Act; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Americans with Disabilities Act (ADA) of 1990 and as amended by ADA Amendments Act of 2008; the Rehabilitation Act of 1973; the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974; Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994; the Genetic Information Nondiscrimination Act (GINA) of 2008; Colorado Anti-Discrimination Act (CADA); Colorado Sexual Orientation Employment Discrimination Act (SOEDA); Colorado Prevention of Sexual Misconduct on Higher Education Campuses; Denver Municipal Ordinances; and other applicable federal, state, and local anti-discriminatory laws. University policies and these Procedures are intended to comply with the prohibitions of these laws.

Consistent with federal, state and local law, and University policies related to non-discrimination, the University, through the Office of Equal Opportunity & Title IX, takes prompt and equitable action in response to reports of:

- Discrimination (including pay discrimination), harassment, and/or gender-based violence, on the basis of race, color, national origin, ancestry, age, religion, creed, disability, sex, sexual orientation, gender identity, gender expression, marital status, pregnancy, military enlistment, veteran status, or genetic information;
- Sexual and gender-based harassment, including non-consensual sexual contact, non-consensual sexual penetration, sexual exploitation, relationship violence, and stalking;
- Failure to provide reasonable accommodations for disability, religion, and creed; and
- Retaliation against any individual or group of individuals involved in an investigation and/or resolution of a report under these Procedures.

The Office of Equal Opportunity & Title IX will recommend interim measures for the parties involved and the community, conduct neutral investigations, promote accountability for violations of policies and procedures, and recommend other remedies designed to eliminate Prohibited Conduct, prevent its recurrence, and address its effects.

Contact Information for the [Office of Equal Opportunity & Title IX](#):

**Title IX Coordinator**

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**Director of Equal Opportunity**

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University of Denver  
Mary Reed Building, 4<sup>th</sup> Floor  
2199 South University Blvd.  
Denver, CO 80208  
303-871-3941  
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Contact Information for the United States Department of Education, Office for Civil Rights is as follows:

**United States Department of Education  
Office for Civil Rights (OCR)**

Lyndon Baines Johnson Department of  
Education Building  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Telephone: 800-421-3481  
FAX: 202-453-6012  
TDD: 800-877-8339  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

**Denver Office  
Office for Civil Rights**

U.S. Department of Education  
Cesar E. Chavez Memorial Building  
1244 Speer Boulevard, Suite 310  
Denver, CO 80204-3582  
Telephone: 303-844-5695  
FAX: 303-844-4303  
TDD: 800-877-8339  
Email: [OCR.Denver@ed.gov](mailto:OCR.Denver@ed.gov)

## 2. Scope and Jurisdiction

All members of the University of Denver community are subject to these Procedures, including students, faculty, staff, administrators, board members, consultants, vendors, and others engaged in business with the University. Each member of the community is responsible for conducting oneself in accordance with these Procedures and other University policies and procedures. These Procedures apply to all conduct that occurs on campus. These Procedures may also apply to conduct that occurs off campus, including online or electronic conduct, if the University finds that the conduct:

- a. occurred in the context of an employment or education program or activity of the University;
- b. had continuing adverse effects on campus, including posing a reasonable risk of harm to the community; or
- c. had continuing adverse effects in an off-campus employment or education program or activity. Examples of covered off-campus conduct include University-sponsored study abroad, research or internship programs.

These Procedures apply to conduct that takes place from the date on which the student enrolls at the University and continues until the student withdraws or graduates, including periods during term breaks and between terms. For faculty and staff, these Procedures apply to the conduct that takes place from the date on which the individual accepts an offer of employment until their employment ceases. If a student voluntarily disenrolls or an employee voluntarily resigns prior to final resolution of any matter, the Office of Equal Opportunity & Title IX retains jurisdiction to address the matter. However, the former student or employee is limited in their rights pursuant to these Procedures.

Visitors to and guests of the University are both protected from and subject to the restrictions on Prohibited Conduct, as defined in these Procedures. However, visitors and guests do not have any contractual rights pursuant to these Procedures. Visitors and guests may initiate a report of Prohibited Conduct committed against them by members of the University community, but visitors and guests are limited in their rights pursuant to these Procedures. The University can permanently trespass visitors and guests who have been alleged to have engaged in Prohibited Conduct without any rights to the resolution processes described in these Procedures. Further, members of the University community who host guests may be held accountable for the misconduct of their guests pursuant to applicable University policies.

Board of Trustees and/or Chancellor-approved University policies will prevail when a conflict exists between these Procedures and applicable Board of Trustees and/or Chancellor-approved University policies.

### **3. Notice of Non-Discrimination and Statement of Compliance with Title IX**

#### **A. Notice of Non-Discrimination**

The University of Denver is committed to affirmative action and equal opportunity. The University is committed to enforcing non-discrimination policies and making the University a non-discriminatory work and education environment in which all individuals are treated with respect and dignity.

The University provides equal opportunity in employment, educational activities, and other programs to all employees, students, and applicants. The University shall not discriminate against any person in the University's education or employment programs and activities on the basis of race, color, national origin, ancestry, age, religion, creed, disability, sex, sexual orientation, gender identity, gender expression, marital status, pregnancy, military enlistment, veteran status, or genetic information.

#### **B. Statement of Compliance with Title IX**

Pursuant to Title IX of the Education Amendments of 1972, the University of Denver does not discriminate on the basis of sex or gender in its educational, extracurricular, athletic, or other programs or in the context of employment.

The University will promptly and equitably respond to reports of discrimination, harassment or gender-based violence in order to eliminate the harassment, prevent its recurrence, and address its effects on any individual or the community.

#### **C. Affirmative Action Program**

In support of equal employment opportunity, the University has developed written affirmative action plans for women, minorities, individuals with disabilities, and covered veterans. The University's plans are available at the Office of Equal Opportunity & Title IX, Mary Reed Building, 2199 S. University Blvd. Denver, CO 80208, or online at [www.du.edu/equalopportunity](http://www.du.edu/equalopportunity).

The Office is responsible for compliance with state and federal equal employment opportunity laws and affirmative action regulations. The Office is also responsible for implementing the University's affirmative action plans, including equal employment practices, monitoring, internal reporting, and receiving complaints of discrimination, harassment or retaliation.

University policy and equal employment opportunity/affirmative action regulations and laws protect all employees and applicants for employment from coercion, intimidation, interference, or discrimination for filing a complaint or assisting in an investigation.

#### **D. Pay Transparency Policy Statement**

Employees are not prohibited from discussing their salaries and/or compensation with other employees and non-employees. The University will not discharge, discipline, or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential

job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal Complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the University's legal duty to furnish information. (41 CFR 60-1.35(c)).

#### **E. Equal Pay and Pay Equity**

The Equal Pay Act of 1963, as amended, prohibits sex discrimination in payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility under similar working conditions, in the same establishment.

The University is also committed to the principle of pay equity, and expressly prohibits disparate pay on the basis of an employee's race, color, national origin, ancestry, age, religion, creed, disability, sex, sexual orientation, gender identity, gender expression, marital status, pregnancy, military enlistment, veteran status, or genetic information. The University prohibits pay discrimination based on sex, discriminatory pay practices based on sex, and sex discrimination affecting compensation.

### **4. Definitions**

#### **A. Business Day**

Business Day refers to any weekday Monday through Friday in which the University is in operation, including days when the University is in operation but classes are not in session.

#### **B. Coercion, Force, and Abuse of Power**

Coercion is unreasonable and/or persistent pressure to compel another individual to initiate or continue sexual activity against that individual's will. When someone makes clear that they do not want to engage in sexual contact, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be Coercion. A person's words or conduct are sufficient to constitute Coercion if those words or conduct wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. Coercion differs from seduction based on the type of pressure someone uses to engage in sexual activity with another. Examples include threatening to disclose another individual's private sexual information related to sexual orientation, gender identity, or gender expression, and threatening to harm oneself if the other party does not engage in the sexual activity.

Force is the use of physical violence and/or imposing on someone physically to engage in sexual activity. A party does not need to resist the sexual advance or request, but resistance will be viewed as a clear demonstration of lack of Consent. Force includes threats of physical violence against another person or intimidation (implied threats).

Abuse of Power occurs when an individual in a position of authority, whether that authority is real or perceived, induces another individual to engage in activity that would otherwise be nonconsensual based on the need for a specific performance or duty (i.e. grading, performance evaluation).

### **C. Complainant**

An individual who files a report alleging that they have been subjected to Prohibited Conduct. Complainant also refers to the University when it exercises the right to initiate a Complaint and proceed with a formal investigation, as necessary. Where groups of individuals initiate Complaints pursuant to these Procedures, the Supervising Director or their designee, has the discretion to determine the proper course of action.

### **D. Complaint**

A Complaint made to the Office of Equal Opportunity & Title IX in accordance with these Procedures that alleges Prohibited Conduct pursuant to these Procedures.

### **E. Consent**

Consent must be clear, knowing, and voluntary. Consent is active, not passive. Consent can be given by words or actions as long as those words or actions create mutually understandable, clear permission regarding willingness to engage in sexual activity (and the conditions thereof). Individuals who choose to engage in sexual activity of any type with another individual must first obtain clear Consent.

Consent cannot be granted by an individual who:

- is not of legal age (Colorado Revised Statutes § 18-3-402);
- is Incapacitated, as defined by these Procedures;
- where there is Coercion, Force or Abuse of Power, as defined by these Procedures;

Important considerations in determining whether Consent is present:

Consent Required for Each Act. Each participant in a sexual encounter is expected to obtain Consent to each act of sexual activity. Consent to any one form of sexual activity does not automatically imply Consent to any other form of sexual activity.

Consent Must be Affirmative. Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. Relying on non-verbal communication can lead to misunderstandings. Silence, in and of itself, cannot be interpreted as Consent. Consent may not be inferred from silence, passivity, lack of resistance, or lack of an active response alone. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving Consent.

Revocation of Consent. If at any time during the sexual activity, any confusion or ambiguity arises as to the willingness of the other individual to proceed, both parties should stop and clarify, verbally, the other's willingness to continue before further engaging in such activity. Either party may revoke Consent at any time. Revocation of Consent must be outwardly demonstrated by words or actions that clearly indicate a desire to end sexual activity. Once a participant has expressed withdrawal of Consent, the other participant must cease sexual activity.

Prior or Current Sexual Relationship. Individuals with a prior or current sexual relationship do not automatically Consent either initially or to continued sexual activity. Even in the context of a relationship, the parties must obtain Consent to engage in all sexual activity.

## **F. Disciplinary Action**

Any action levied by the University against an employee found responsible for Prohibited Conduct.

## **G. Disciplinary Authority**

The University administrator or designee with the authority to impose Disciplinary Action to an employee.

## **H. Gender-based Violence**

Gender-based Violence is an umbrella term for the following Prohibited Conduct:

1. Stalking
2. Non-Consensual Sexual Contact
3. Non-Consensual Sexual Penetration
4. Dating or Domestic Violence
5. Sexual Exploitation

## **I. Incapacitation**

Incapacitation means that an individual is impaired to such a level that they lack the ability to make informed, rational judgments about whether or not to engage in sexual activity. An individual cannot obtain Consent by taking advantage of the Incapacitation of another, where the individual initiating sexual activity knew or reasonably should have known that the other was incapacitated. An individual's intoxication does not excuse their obligation to obtain Consent.

Important considerations when determining whether Incapacitation is present:

An individual who is incapacitated is unable, temporarily or permanently, to give Consent because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs or due to a temporary or permanent physical or mental health condition.

When alcohol or other drugs (including medication) are involved, Incapacitation is a state beyond drunkenness or intoxication. A person can be intoxicated without being incapacitated. The level of impairment must be a state beyond mere intoxication and significant enough to render the person unable to give Consent.

Individuals may show signs of Incapacitation in different ways. However, typical signs include slurred or incomprehensible speech, unsteady manner of walking, confusion, combativeness, emotional volatility, vomiting, or incontinence. An incapacitated individual may not be able to understand where they are, how they got there, what is happening, and whom they are with.

## **J. Investigator**

An objective, neutral fact-finder with relevant training and experience. An Investigator may or may not be an employee of the University.

## **K. Outcomes**

Required University statuses and educational opportunities, restrictions, and/or expectations for a student found responsible for Prohibited Conduct.



**L. Outcome Council**

A body composed of University staff or faculty convened by the Office of Student Rights & Responsibilities to review the factual findings and Prohibited Conduct determinations issued by the Office of Equal Opportunity & Title IX and impose Outcomes. Outcome Council has no role where the Respondent is an employee.

**M. Preponderance of the Evidence**

The standard of proof that the Office of Equal Opportunity & Title IX applies to its investigations. An allegation is proven by a Preponderance of the Evidence if, based on the information provided, the alleged Prohibited Conduct is more likely to have occurred than not to have occurred.

**N. Prohibited Conduct**

Words or conduct prohibited by the University set forth in Section 5 of these Procedures:

1. Discrimination
2. Discrimination in Violation of the Equal Pay Act
3. Harassment
4. Stalking
5. Non-Consensual Sexual Contact
6. Non-Consensual Sexual Penetration
7. Sexual Exploitation
8. Dating or Domestic Violence
9. Physical Misconduct based on a Protected Status
10. Failure to Inform Supervisor of a Consensual Sexual Relationship with a Student or a Supervisee
11. Retaliation
12. Obstruction

**O. Protected Status**

Protected Statuses are race, color, national origin, ancestry, age, religion, creed, disability, sex, sexual orientation, gender identity, gender expression, marital status, pregnancy, military enlistment, veteran status, or genetic information.

**P. Reporting Party**

Any individual who has reported allegations of Prohibited Conduct pursuant to these Procedures. The Reporting Party need not be the Complainant.

**Q. Respondent**

An individual or group against whom a Complaint of Prohibited Conduct is made pursuant to these Procedures. This may include students, faculty, staff, administrators, board members, consultants, vendors, and others engaged in business with the University.

**R. Responsible Employee**

All University faculty, staff, and other community members who have leadership or supervisory responsibilities or who have significant responsibility for student or campus activities. Responsible Employee includes, but is not limited to:

1. Members of the Board of Trustees
2. Chancellor
3. Provost
4. Vice Chancellors
5. Vice and Associate Provosts
6. Deans
7. Directors
8. Department Chairs
9. Campus Safety personnel
10. Athletics personnel (including paid and unpaid coaches)
11. Campus Life & Inclusive Excellence personnel (including Resident Advisors)
12. Faculty and Staff (including Graduate Teaching Assistants), and
13. Advisors to student groups (including those who are not otherwise employees of the University; e.g. fraternity or sorority advisors).

**S. Supervising Director**

The Director of Equal Opportunity or the Title IX Coordinator who is supervising an investigation.

**T. Third Party**

Any other participant in any process under these Procedures, including a witness to the incident(s), or an individual who makes a report on behalf of someone else.

**U. University Premises**

All land, buildings, facilities, or other property in the possession of or owned, used, operated or controlled by the University, including adjacent streets and sidewalks.

**V. Written Notice**

Notice by email is an official form of delivery. Delivery via email will be sent to a student's or an employee's @du.edu email address. Notice may also be delivered in person or to an individual's University or permanent address, as reported by the person to the University.

**5. Prohibited Conduct**

In accordance with the University's [Discrimination and Harassment Policy, Section 3.10.010](#), these Procedures identify the following categories of Prohibited Conduct:

**A. Discrimination**

Discrimination is an action or behavior that results in impermissible negative or different treatment of an individual based, in whole or in part, upon the person's race, color, national origin, ancestry, age, religion, creed, disability, sex, sexual orientation, gender identity, gender expression, marital status, pregnancy, military enlistment, veteran status, or genetic information.

Examples of Discrimination include, but are not limited to: hiring, discharge, promotion, compensation, terms, conditions, benefits or privileges of employment or education, creation of discriminatory work or academic conditions, or the use of discriminatory evaluative standards in employment or educational settings.

## **B. Discrimination in Violation of the Equal Pay Act**

Discrimination in Violation of the Equal Pay Act occurs when employees of one sex are paid wages at a rate less than the rate at which employees of the opposite sex are paid for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment of wages is made pursuant to: (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex. For the purposes of this provision, wages means all forms of payment made to or on behalf of employees as remuneration for employment.

## **C. Harassment**

Harassment is form of discrimination based, in whole or in part, upon the person's race, color, national origin, ancestry, age, religion, creed, disability, sex, sexual orientation, gender identity, gender expression, marital status, pregnancy, military enlistment, veteran status, or genetic information.

Harassment is unwelcome, unwanted conduct that becomes Prohibited Conduct when:

1. submission to such conduct is either explicitly or implicitly a term or condition of an individual's employment or participation in a University program or activity (*quid pro quo*); or
2. the conduct is sufficiently severe, pervasive, or persistent to interfere with a person's work, academic performance, or participation in a University program or activity, such that a reasonable person would consider the environment hostile or offensive (*hostile environment*).

Sexual Harassment is form of Harassment, which includes unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.

## **D. Stalking**

Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

1. Course of conduct means two (2) or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property.
2. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
3. Reasonable person means a reasonable person under similar circumstances and with similar identities to the person who alleges stalking.

Stalking includes "cyber-stalking," a form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact, to engage in activities delineated in this definition.

Examples of Stalking include, but are not limited to:

- Following a person;
- Appearing at their residence, work, or academic spaces;
- Making harassing phone calls;

- Mailing written messages or sending or posting electronic messages;
- Leaving messages or objects at their residence, work, vehicle, or academic spaces; and
- Vandalizing personal property.

#### **E. Non-Consensual Sexual Contact**

Non-Consensual Sexual Contact is any intentional sexual touching, however slight with any object, by any individual upon another individual without that individual's Consent. Sexual Contact includes:

1. Having, or attempting to have, sexual contact with a body part (e.g., penis, tongue, finger, hand) or object;
2. Intentional contact with the breasts, buttocks, groin, or genitals, or touching another individual with any of these body parts, or making another touch you or themselves with or on any of these body parts;
3. Any intentional bodily contact in a sexual manner, though not involving contact with/of/by the breasts, buttocks, groin, genitals, mouth or other orifice; and
4. Any other act which a reasonable person would associate with sexual contact.

#### **F. Non-Consensual Sexual Penetration**

Non-Consensual Sexual Penetration is any penetration, no matter how slight, without the Consent of either party:

1. of the vagina or anus with any body part or object, or
2. any contact between the mouth of one person and the genitalia of another person.

#### **G. Sexual Exploitation**

Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit or to benefit or advantage anyone other than the individual being exploited. Sexual exploitation may include, but is not limited to:

1. Prostituting another person;
2. Video or audio-taping sexual activity, or posting said media, without the knowledge and agreement of the other party;
3. Going beyond the boundaries of Consent (including letting someone observe a sexual act without the knowledge or agreement of the other party);
4. Engaging in voyeurism (observing another party's nudity or sexual activity without their knowledge or agreement);
5. Endangering health and safety without the knowledge and agreement (such as knowingly exposing another individual to a sexually-transmitted infection) of the other party;
6. Exposing one's breasts, buttocks, groin, or genitals in a non-consensual circumstance or inducing another to expose their breasts, buttocks, groin, or genitals;
7. Inducing Incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity; and
8. Inducing another individual to engage in sexual activity through Abuse of Power.

## **H. Dating or Domestic Violence**

Dating or Domestic Violence means violence committed by:

1. a current or former spouse;
2. an individual who is or has been in a social relationship of a romantic or intimate nature with a second person;
3. an individual with whom the Complainant shares a child in common;
4. an individual who is cohabitating with or who has cohabitated with the Complainant as a spouse or romantic or intimate partner; or
5. any individual against a Complainant who is protected from that person's acts under the domestic or family violence laws of Colorado.

Violence is defined as any act or pattern of acts of physically, sexually, emotionally, or financially abusive behavior that one individual uses against a current or former partner to gain or maintain power and control over another.

Dating or Domestic Violence encompasses a broad range of behaviors. Such behaviors may take the form of threats, property damage, violence or threat of violence to one's self, one's romantic or intimate partner or to the family members, friends, or pets of the romantic or intimate partner.

Dating or Domestic Violence affects individuals of all genders, gender identities, gender expressions, and sexual orientations and does not discriminate by racial, social, or economic background, or ability. The persons involved do not need to be sexually intimate, but rather may represent themselves as a couple or dating whether different sexes or the same sex.

When both parties in a relationship report Dating or Domestic Violence, the Investigator will make an assessment to determine the predominant aggressor in the reported circumstances.

## **I. Physical Misconduct Based on a Protected Status**

Physical Misconduct Based on a Protected Status is any of the following acts, when there is reasonable cause to believe the act was motivated, in whole or in part, by the protected status of another person:

1. Any act causing or likely to cause, bodily harm to any person, regardless of intent; or
2. Any act resulting in physical contact with another person, without their consent.

Actions taken in self-defense or the defense of another may mitigate findings under these Procedures.

## **J. Failure to Inform Supervisor of a Consensual Sexual Relationship with a Student or a Supervisee**

The University strongly discourages sexual relationships between a teacher and student or between a supervisor and supervisee because such relationships tend to create compromising conflicts of interest, or the appearance of such conflicts. As used in this section, the term "teacher" includes a faculty member, teaching assistant, graduate student, administrator, coach, advisor, counselor, residence staff, program director or other University employee having supervisory, teaching, mentoring, advising, coaching or other evaluative responsibilities for students. Relationships between persons occupying such asymmetrical positions of power, even when both Consent, raise suspicions that the person in authority has violated standards of professional conduct and potentially subject

the person in authority to charges of sexual harassment. The relationship may give rise to the perception on the part of others that there is favoritism or bias in academic or employment decisions affecting the student or staff member. Moreover, given the uneven balance of power within such relationships, Consent by the student or staff member in such cases is suspect and may be viewed by others or, at a later date, by the student or staff member as having been given as the result of Coercion or intimidation. The atmosphere created by such appearances of bias, favoritism, intimidation, Coercion, or exploitation undermines the spirit of trust and mutual respect that is essential to a healthy work and academic environment. In any allegation of sexual harassment brought by a person in a subordinate position, "Consent to the relationship" will not be deemed a sufficient defense or justification for conduct that otherwise would be deemed sexual harassment under the policy of the University.

In the event of such a relationship, the person in a position of authority has the responsibility to notify their own supervisor so that a resolution consistent with this policy may be reached. Failure to comply with this requirement is a violation of these Procedures.

#### **K. Retaliation**

Retaliation is any action, or threatened action, including but not limited to intimidation, threats, Coercion, discrimination, that negatively effects the working, academic, or educational opportunities such that a reasonable person would likely be deterred from reporting Prohibited Conduct or participating in this process, because that person(s):

1. Reported Prohibited Conduct under these Procedures;
2. Participated in any process (including an investigation, report, remedial, disciplinary, or appeal processes) under these Procedures; and/or,
3. Served as a Supervising Director, Investigator, Outcome Council Member, Appeals Officer, or otherwise exercised authority under these Procedures.

Retaliation can occur in-person or online. Retaliation may be by words or actions. Retaliation can also occur by requesting a third party to take action. The University will treat such conduct as a separate incident of Prohibited Conduct of these Procedures.

#### **L. Obstruction**

Obstruction occurs when any person, including a third party employed by, who is a guest of, or otherwise represents or acts on behalf of, a party intentionally deters, interferes, or hinders:

1. the University's ability to conduct an investigation (including the deletion or request to delete relevant evidence after notice of the University's investigation);
2. another person from reporting allegations of Prohibited Conduct; or
3. another person from participating in any process (including an investigation, report, remedial, disciplinary, or appeal processes) under these Procedures.

## **6. Privacy**

The Office of Equal Opportunity & Title IX is not a confidential resource. For any report of Prohibited Conduct, the University will respect and safeguard the privacy interests of all individuals involved in a manner consistent with the need for a careful assessment of the allegation and any necessary steps to

eliminate the conduct, prevent its recurrence, and address its effects.

Information related to a report under these Procedures will only be shared with those University employees who have a “need to know” in order to assist in the active response, review, investigation, or resolution of the report. Information regarding a report will not be shared with the Complainant’s or Respondent’s parents, guardians, or Third Party unless permissible under the [Family Education Rights and Privacy Act](#) (FERPA).

#### **A. Release of Information**

If a report of Prohibited Conduct discloses a serious and immediate threat to the University community, the University’s Department of Campus Safety will issue a timely notification to protect the health or safety of the community as required by the [Clery Act](#). The notification will not include the Complainant’s name.

Pursuant to the Clery Act and the 2013 Amendments to the Violence Against Women Act, the Office of Equal Opportunity & Title IX will provide anonymous statistical information regarding reported criminal incidents to the University’s Department of Campus Safety for inclusion in the Daily Crime Log and in the University’s Annual Security Report. The University may also share aggregate data about reports, Outcomes, and/or Disciplinary Action without including personally identifiable information.

The University conducts all proceedings under these Procedures in accordance with the requirements of Title IX, the Clery Act, the Violence Against Women Act, FERPA, state and local law, and University policy. The University will not release information, including the identity of the parties, from such proceedings except as required or permitted by law or University policy.

#### **B. Records**

The Office of Equal Opportunity & Title IX documents each report or investigation of Prohibited Conduct, requests for assistance, and resolutions under these Procedures. Consistent with University’s [Records Management Policy](#), the Office of Equal Opportunity & Title IX will maintain separate, secure records in order to track patterns and systemic behaviors. Records related to the investigation of any allegations of Prohibited Conduct will not be stored in personnel files of employees reporting alleged discrimination, and instead shall be retained in a separate, secure location by the Office of Equal Opportunity & Title IX. The University will keep such records confidential to the extent permitted by law.

#### **C. Confidentiality**

Confidentiality means that a client or patient (including students, staff, and faculty) sharing information with a designated campus or community professional can expect that the professional will only disclose such information with the individual’s express written permission, unless there is a continuing threat of serious harm to the patient/client or to others, or there is a legal obligation to reveal such information (e.g. where there is suspected abuse or neglect of a minor). An individual can seek confidential assistance and support by speaking with specially designated [confidential resources](#).

## 7. Resources

The University encourages all individuals to seek the support of on- and off-campus resources, regardless of when or where an incident occurred. Trained professionals can provide guidance in making decisions, information about available resources, procedural options, and assistance to either party in the event that a report and/or resolution is pursued under these Procedures. The University is committed to treating all members of the community with dignity, care and respect. Any individual affected by allegations of Prohibited Conduct whether as a Complainant, a Respondent or a Third Party, will have equal access to support consistent with their needs and available University [resources](#).

Any participant may request reasonable assistance or support (i.e., for disability, language barriers, or location/proximity concerns) to allow their full participation in any process under these Procedures. A party must submit such requests to the Office of Equal Opportunity & Title IX in a timely manner, at least 72 hours before any meeting time. For interpreting or Communication Access Realtime Translation (CART) services, requests should be made as soon as possible.

## 8. Reporting

The University encourages all individuals to seek assistance from a medical provider, as needed, and/or law enforcement immediately after an incident of Prohibited Conduct, whether or not the individual plans to pursue criminal action. This facilitates preservation of evidence and a timely response by law enforcement and/or the University.

The University has a strong interest in supporting community members who experience discrimination, harassment or gender-based violence. The University encourages all individuals or third-party witnesses to report any incident to the University and, if the incident involves potential criminal conduct, to also report to law enforcement.

Making a report under these Procedures means telling someone in authority what happened, in person, by telephone, in writing or by email. Deciding whether to make a report and choosing how to proceed are personal decisions. At the time a report is made, a Complainant does not have to decide whether or not to request any particular course of action, nor does a Complainant need to know how to label what happened. The University provides support to assist each individual in making these important decisions and, to the extent legally possible, will respect an individual's autonomy in deciding how to proceed. In this process, the University will balance the individual's interest with the University's obligation to provide a safe and non-discriminatory environment for all members of the University community.

Individuals have several reporting options within and outside the University (as described in Sections A and B below). Individuals may pursue these options simultaneously, or any one of them separately. The University has resources to support a Complainant regardless of the course of action chosen.

The University will review and address all reports in a fair and impartial manner and treat all individuals involved with dignity and respect. In every report under these Procedures, the University will make an immediate assessment of any risk of harm to the University or to the broader University community and will take steps necessary to address those risks. These steps may include interim measures to provide for the safety of the individual and the University community.



## **A. Reporting to Law Enforcement**

The University encourages Complainants to contact local law enforcement to report incidents of Prohibited Conduct that may also be crimes under state criminal statutes. The University will assist a Complainant, at the Complainant's request, in contacting local law enforcement and will cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process.

The University's definitions, burden of proof, and procedures differ from federal and state criminal law. The University is not bound by law enforcement's determination whether or not to prosecute a Respondent nor the outcome of any criminal prosecution. The University will independently determine under these Procedures whether Prohibited Conduct has occurred. The University may undertake any process under these Procedures prior to, simultaneously with or following civil or criminal proceedings.

## **B. Reporting to the University**

The University will refer all reports of possible violations to the Office of Equal Opportunity & Title IX to facilitate consistent application of these Procedures to all individuals and to allow the University to respond promptly and equitably to eliminate discrimination, harassment, or gender-based violence, prevent its recurrence, and eliminate its effects.

The University encourages Complainants to report incidents of Prohibited Conduct directly to the Office of Equal Opportunity & Title IX by:

- Contacting the Title IX Coordinator

Jeremy Enlow, Title IX Coordinator  
University of Denver, Mary Reed Building, 4<sup>th</sup> Floor  
2199 South University Blvd.  
Denver, CO 80208  
Phone: 303-871-3142  
[Jeremy.Enlow@du.edu](mailto:Jeremy.Enlow@du.edu)  
<https://www.du.edu/equalopportunity/titleix/index.html>

Title IX [Online Report Form](#)

- Contacting the Office of Equal Opportunity & Title IX

Office of Equal Opportunity & Title IX  
University of Denver, Mary Reed Building, 4<sup>th</sup> Floor  
2199 South University Blvd.  
Denver, CO 80208  
Phone: 303-871-7016  
[equalopportunity@du.edu](mailto:equalopportunity@du.edu)  
<https://www.du.edu/equalopportunity/>

Equal Opportunity [Online Report Form](#)

Individuals may also report Prohibited Conduct to:

- Department of Campus Safety

Department of Campus Safety  
University of Denver  
2130 S. High St., MSC 6200  
Denver, CO 80208  
General Reports: 303-871-2334  
Anonymous Reports: 303-871-3130  
Emergencies: 911 and 303-871-3000  
<https://www.du.edu/campussafety/contact-us/index.html>

- Office of Student Rights & Responsibilities

Office of Student Rights & Responsibilities  
Driscoll Student Center North  
2055 E. Evans Ave.  
Denver, CO 80208  
303-871-3111  
[studentconduct@du.edu](mailto:studentconduct@du.edu)  
<https://www.du.edu/studentlife/studentconduct/rightsresponsibilities.html>

- Student Outreach and Support Referral (SOS Referral, formerly CARE Report)

Student Outreach & Support  
University of Denver  
Driscoll Student Center South, Suite 30  
2050 E. Evans Ave.  
Phone: 303-871-2400  
[SOS@du.edu](mailto:SOS@du.edu)

SOS Referral [Online Report Form](#)

- Housing and Residential Education Staff including Resident Advisors (RAs, GRAs)

Housing and Residential Education  
University of Denver  
Nagel Hall, First Floor  
2055 E. Evans Ave. Suite 200  
Denver, CO 80208  
Phone: 303-871-2246  
[housing@du.edu](mailto:housing@du.edu)  
<https://www.du.edu/housing/>

- Another Responsible Employee, which includes, but is not limited to:
  - Members of the Board of Trustees
  - Chancellor
  - Provost
  - Vice Chancellors
  - Vice and Associate Provosts
  - Deans
  - Directors
  - Department Chairs
  - Campus Safety personnel
  - Athletics personnel (including paid and unpaid coaches)
  - Campus Life & Inclusive Excellence personnel (including Resident Advisors)
  - Faculty and Staff (including Graduate Teaching Assistants), and
  - Advisors to student groups (including those who are not otherwise employees of the University; e.g. fraternity or sorority advisors).

### **C. Duties of Responsible Employees**

The University requires Responsible Employees to immediately report to the Office of Equal Opportunity & Title IX the following information:

1. all known details of the incident (including the date, time, location);
2. the names of the parties involved;
3. a brief description of the incident; and
4. whether the incident has been previously reported to the Office of Equal Opportunity & Title IX.

These reporting obligations promote timely support for all parties and an effective and consistent University response.

### **D. Anonymous Reporting**

Responsible Employees cannot submit anonymous reports.

Any other individual can make a report without disclosing one's own name, identifying the Respondent, or requesting any action. Depending on the level of information available about the incident or the individuals involved, the University may not be able to fully respond or take further action in response to an anonymous report.

Anonymous reports are referred to Department of Campus Safety, the Director of Equal Opportunity and/or the Title IX Coordinator for review for appropriate action. The University will review all anonymous reports, and where there is sufficient information, include applicable information in Clery Act reporting.

### **E. Timeliness and Location of Incident**

Although there is no time limit on reporting Prohibited Conduct, the University encourages Complainants and Third Parties to promptly report allegations of Prohibited Conduct, preferably within 180 days of the last incident of Prohibited Conduct.

If the Respondent is no longer a student or employee, the University may not be able to take Disciplinary Action and/or impose Outcomes against the Respondent. Nevertheless, the University will still seek to provide support for a Complainant and take steps to end the Prohibited Conduct, prevent its recurrence, and address its effects.

The University also encourages the reporting of off-campus conduct that occurred in the context of an employment or education program or activity of the University, or that has continuing adverse effects on campus or on an off-campus employment or education program or activity, because such conduct is also covered under these Procedures.

#### **F. Amnesty for Personal Use of Drugs or Alcohol**

The University has a concern and responsibility for preserving the well-being of all members of the University community. Because the health and safety of students are of primary importance to the University, students are expected to not only look out for their own health and safety, but also the safety of their peers. Students are expected to take immediate action when a person's health or safety is threatened. When a student undertakes an intentional action to report an act of, or seek assistance from a University official or emergency services for themselves or others as a result of Prohibited Conduct, the students involved will not be found responsible for an alcohol- or drug-related violation of the [Honor Code](#), nor will an alcohol- or drug-related violation appear on their Student Conduct record. This amnesty does extend to any student who provides a statement to the Office of Equal Opportunity & Title IX in the course of any process pursuant to these Procedures. However, this amnesty does not extend to the distribution, sale, or otherwise providing another individual with alcohol or illegal drugs for the purposes of inducing Incapacitation.

The students involved may be referred for an educational outcome or evaluation related to their health status or substance use. This referral will not constitute a violation of the [Honor Code](#).

For information related to Medical Amnesty, please see the [Honor Code](#).

#### **G. Protection of Minors and Mandatory Reporting of Suspected Child Abuse**

The University promptly reports all suspected child abuse and neglect, including sexual assault, to law enforcement and/or to the Denver Department of Human Services toll-free child abuse and neglect hotline at 720-944-3000. All University employees must report suspected child abuse and neglect to the Title IX Coordinator or Department of Campus Safety.

For the purposes of this reporting obligation, a child is any individual under the age of 18, and the suspected abuse may involve physical, sexual or other forms of abuse or neglect, regardless of the identity of the suspected perpetrator. The duty to report is triggered by reasonable suspicion or belief and does not require actual evidence of abuse. An employee, student, or volunteer is not responsible for investigating suspected child abuse.

A report should be made as follows:

1. If a child is in immediate danger, call the police (911)
2. If there is no immediate danger, call:
  - University of Denver Department of Campus Safety: 303-871-3000
  - University of Denver Title IX Coordinator: 303-871-7016

These individuals will assist in making the mandated child protective services report to Denver Police Department: 720- 913-2000, and Denver Child Protective Services: 720-944-3000.

## **9. Initial Assessment and Intake**

### **A. Assessment**

When the Office of Equal Opportunity & Title IX receives a report of Prohibited Conduct, the Supervising Director or designee will conduct an initial assessment of the reported information. The Supervising Director or designee will respond to any immediate health or safety concerns raised in the report to determine if the [Clery Act](#) requires the Department of Campus Safety to include non-identifying information in the University's Daily Crime Log and/or to make a timely notification to the University community.

The goal of this assessment is to provide an integrated and coordinated response to reports of Prohibited Conduct under these Procedures. The assessment will consider the nature of the report, the safety of the individual and the University community, the Complainant's expressed preference for resolution, and the necessity for any interim measures or modifications to maintain the safety of the Complainant or the University community.

If the nature or circumstances of the report are not within the scope of Prohibited Conduct, the Supervising Director will, as appropriate, refer the matter to an appropriate administrator, provide the Complainant with resources, and/or close the matter.

### **B. Intake**

After assessment, the Supervising Director will request an intake meeting with the Complainant. Where appropriate, the University will consider and seek action consistent with the interest of the Complainant and the Complainant's expressed preference for manner of resolution while balancing the University's obligation to provide a safe and non-discriminatory environment for all members of the University community.

As part of intake, the Supervising Director will:

1. Review the University's Policy and Procedures against discrimination and harassment, discuss the expectations and responsibilities of a Complainant, and answer any questions that the Complainant may have;
2. Notify the Complainant of the right to make a report (or decline to make a report) with law enforcement if the conduct may also constitute a crime(s) under state criminal statutes and, if requested, assist the Complainant with notifying law enforcement;
3. Notify the Complainant of the availability of medical treatment to address any physical and mental health concerns and to preserve evidence;
4. Provide the Complainant with information about:
  - On- and off-campus resources;
  - The available range of interim measures when appropriate;
5. Provide an explanation of the procedural options, including alternative resolution, investigation, and the possibility of Disciplinary Actions and/or Outcomes;
6. Discuss the Complainant's expressed preference for the manner of resolution and any

- barriers to proceeding in that manner;
7. Explain the University's prohibition on Retaliation; and
  8. Explain the role of a support person or advisor.

Although the University will consider a Complainant's request for anonymity, the University may not be able to fully investigate and respond to a report if the Complainant requests that their name not be disclosed to the Respondent or declines to participate in an investigation. The University will consider Complainant's request for anonymity as one of many factors in determining the appropriate means for resolution of the reported conduct. The University may be unable to honor such a request in certain circumstances in order to adequately fulfill the University's obligations to promote a safe and inclusive environment.

## 10. Interim Measures

All students and employees have the right to continue their education or employment free from the threat of Prohibited Conduct. Upon the receipt of a report or allegation of Prohibited Conduct, the Supervising Director will consult with other relevant University administrators to determine whether any interim measures are appropriate to protect the safety, wellbeing, and continued access to educational and employment opportunities. A Complainant or Respondent may also request interim measures.

The Supervising Director may make recommendations regarding the necessity of interim measures to modify the job responsibilities of an employee, academic program, requirements of a student, or student housing assignments. In matters involving students, the Vice Chancellor for Campus Life and Inclusive Excellence or their designees, in consultation with the appropriate faculty and/or administrators, is empowered to impose any interim measures. In matters involving employees, the Vice Chancellor of Human Resources & Inclusive Community or designee will make the determination regarding interim measures in consultation with the appropriate administrators. The leadership of the relevant unit will implement the interim measures.

The University will consider interim measures for support on a case-by-case basis at the time of reporting and throughout the resolution process. Interim measures should not unduly interfere with a Complainant or Respondent's academic progress or employment duties beyond that deemed necessary to protect the University, any member of the University community, or the University's mission. The University will balance these interests by carefully considering the facts of each case.

Examples of interim measures may include:

- academic adjustments (i.e. modified absence policy, per assignment extensions, assignment or course modifications, rescheduling or extra-time on exams)
- access to counseling services and supportive resources
- change in work schedule or job assignment
- change in class schedule or transferring between sections of a course
- withdrawing from class without academic penalty
- voluntary leave of absence for students
- change in student on-campus housing
- restrictive measures (no contact or location restriction)
- interim suspension or administrative leave

- connection to the Department of Campus Safety to request an escort or other appropriate measures to facilitate safe movement between classes and activities on campus
- any other remedy which can be tailored to the involved individuals to achieve the goals of these Procedures

For academic and non-academic accommodations based on a disability, medical condition, or mental health condition, please see the Office of [Disability Services Program Handbook](#).

#### **A. Types of Resolutions**

The appropriate means of resolution will depend on the circumstances of each report. The Supervising Director (or their designee), in consultation with other University administrators as appropriate, is responsible for determining the appropriate means of resolution. The University may resolve reports in one of the following manners:

1. Inquiry
2. Alternative resolution
3. Formal investigation

In making that determination, the Supervising Director may consider factors such as:

- The nature, scope, and severity of the alleged Prohibited Conduct, including whether the reported Prohibited Conduct involved harassment, discrimination, or physical violence (with additional consideration for the use of a weapon);
- Whether the incident involved a minor;
- The respective roles of the Complainant and Respondent;
- The risk posed to any individual or to the University community by not proceeding, including the risk of additional violence;
- The degree of harm or the ramifications of the alleged Prohibited Conduct on the Complainant or University community;
- Whether there have been other reports regarding alleged Prohibited Conduct by the Respondent;
- Whether the report reveals a pattern of alleged Prohibited Conduct at a given location or by a particular group;
- The Complainant's preferred means of resolution;
- The Complainant's willingness to participate in an investigation or other means of resolution;
- If the Complainant is unwilling to participate, whether the University possesses other means to obtain relevant evidence;
- The University's ability to identify a Respondent;
- The facts that are reasonably in dispute;
- The affiliation that the Complainant, Respondent, and other involved person(s) have with the University;
- The University's obligation to provide a safe and non-discriminatory environment; and
- The University's obligation to satisfy any other legal or regulatory requirements.

The Supervising Director has the discretion to consolidate multiple reports against a Respondent into one Investigation if doing so is likely to result in reliable and more efficient resolution without causing prejudice to a party or parties or confusion for the fact finders.

The University will communicate the chosen course of action to the parties.

#### **B. Time Frames for Resolution**

The University will address and resolve all reports in a fair, impartial, and timely manner. The time frame for resolution will depend on the availability of witnesses, University breaks or vacations, complexities of a case, including the number of witnesses and volume of information provided by the parties, as well as other considerations. The University will strive to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness. However, the University's failure to meet any of the time frames outlined in these Procedures, or failure to provide notice of the extension of these time frames, shall not be grounds for dismissing any matter and shall not be the basis of an appeal of any matter; nor shall any such failure limit the University's ability to complete an investigation, issue findings, impose Outcomes, enact Disciplinary Actions, or limit the University's ability take any other required administrative action under these Procedures.

### **11. Inquiry**

Allegations of Gender-based Violence will not be resolved through the inquiry process.

In all other cases, the Supervising Director has the discretion and authority to determine that a report can be resolved through an inquiry process at the earliest stage after receiving a report. The Supervising Director or designee, may initiate an inquiry to gather information and attempt to resolve the report. The inquiry may suggest remedial action that the Supervising Director will refer to the appropriate administrator. The Supervising Director has the discretion to initiate a formal investigation where the inquiry cannot resolve the concern or when the information gathered indicates that a formal investigation is necessary.

These Procedures should not be construed to limit the fact-finding process when the Supervising Director initiates an inquiry. The Supervising Director or designee may interview parties or witnesses and gather evidence to determine the appropriate resolution necessary to prevent and correct any discriminatory or harassing conduct. When the Supervising Director determines that a concern will be handled through the inquiry process, the Complainant and Respondent will be provided with a written resolution of the inquiry that includes a summary of the rationale for such resolution and any recommendations made.

Unlike a formal investigation, the Complainant and Respondent do not have the right to review all information gathered through the course of an inquiry. The Supervising Director has the discretion to redact, remove, or summarize, including, but not limited to, personally identifiable information, personnel records, witness statements, and other evidence that the Supervising Director determines would negatively impact the operation and mission of the University if disclosed to either party.

### **12. Alternative Resolution**

Alternative resolutions are a remedy-based approach designed to address a report by a Complainant without going through a formal investigation. The University may offer an alternative resolution to the Complainant and Respondent either before or after a formal investigation has commenced where:

1. Complainant and Respondent both consent to reaching an alternative resolution; and



2. The Supervising Director determines that alternative resolution is appropriate.

Where an initial assessment concludes that alternative resolution may be appropriate, the University will take action through the imposition of individual and community remedies designed to preserve the parties' access to educational, extracurricular and employment activities at the University and to eliminate a hostile environment. Examples of protective remedies are provided in the Section 10 of these Procedures.

For student Respondents, the measures deemed appropriate for alternative resolution will not result in formal Outcomes through the Outcome Council. Rather, such resolutions may take the form of education, coaching, mentoring, or other action steps deemed appropriate by the Supervising Director in consultation with appropriate campus offices.

For employee Respondents, alternative resolutions may result in mandatory requirements in the form of education, coaching, mentoring, or other action steps deemed appropriate by the employee's supervisor, in consultation with Human Resources & Inclusive Community.

Other potential remedies may include targeted or broad-based educational programming or training, supported direct confrontation of the Respondent and/or indirect action by the Office of Equal Opportunity & Title IX. Depending on the form of alternative resolution used, a Complainant may be able to maintain anonymity.

Mediation is one form of an alternative resolution. The University may offer mediation for appropriate cases, but will not compel a Complainant to engage in mediation, to directly confront the Respondent, or to participate in any particular form of alternative resolution. Participation in alternative resolution is voluntary, and until the resolution is finalized, a party can request to withdraw from the alternative resolution. The Supervising Director has the discretion to end the alternative resolution process at any time before the resolution is finalized.

The decision to pursue alternative resolution will be made when the University has sufficient information about the nature and scope of the alleged Prohibited Conduct, which may occur at any time, regardless of whether a formal investigation has commenced. Where an active investigation is suspended in order to explore alternative resolution, the Respondent's successful completion of the agreed upon action items will annul the formal investigation, closing the matter. However, the failure of a Respondent to adhere to the agreed terms of an alternative resolution may result in the Office of Equal Opportunity & Title IX commencing or resuming a formal investigation. Any party's willingness to explore alternative resolution will not be afforded any probative value in any formal investigation of the alleged Prohibited Conduct.

The Office of Equal Opportunity & Title IX will maintain records of all reports and conduct referred for alternative resolution.

## **13. Formal Investigation**

### **A. Initiation of an Investigation**

After an initial assessment, the Supervising Director will determine whether or not an investigation pursuant to these Procedures is appropriate. However, nothing in these Procedures shall prohibit referring alleged Prohibited Conduct to other units (including Student Rights and Responsibilities,

Human Resources Partners, and Internal Audit) for resolution pursuant to their own policies and/or procedures.

## **B. Designation of an Investigator**

The University will designate an Investigator. The investigation is designed to provide a thorough, fair, and reliable gathering of the facts. To this end, any Investigator chosen to conduct the investigation must be impartial and free of any actual conflict of interest.

Where a Complainant or Respondent has concerns that the assigned Investigator cannot conduct a fair and unbiased investigation (e.g., has a personal connection with one of the parties or witnesses) may report those concerns to the Supervising Director who will assess the circumstances and determine whether a different Investigator should be assigned to the matter. The party's concern must clearly describe the purported bias or actual conflict of interest and provide any evidence to support this conclusion.

Allegations of discrimination or bias against any Investigator or Supervising Director relating to the manner in which the investigation was conducted can also be raised during the appeal process. Any allegation of discrimination submitted after the deadline for submitting an appeal will not have an impact on the outcome of the appeal.

## **C. Initial Interview of Complainant**

The Investigator will conduct an initial interview with the Complainant during which time the Investigator will prepare a summary of the Complainant's interview. The Complainant will be given the opportunity to review the interview summary of their own initial interview and provide comments or corrections. All substantive comments or corrections submitted will be included in the Investigator's report.

## **D. Notice of Investigation to Respondent**

After the University decides to move forward with an investigation, the Respondent will be notified by the Office of Equal Opportunity & Title IX that an investigation has been initiated. The Respondent will be notified in writing and invited to an informational meeting to review the process and the resources available to them throughout the process.

The notice letter will include:

- Notice that an investigation has been initiated against the Respondent;
- A concise summary of the of the alleged Prohibited Conduct (including when and where it occurred, if known);
- Identification of the potential Prohibited Conduct violations;
- Where legally required, disclosure of the Complainant's name; and
- An invitation to attend an informational meeting.

The Respondent will be informed in writing if, during the investigation, additional information is disclosed that may also constitute Prohibited Conduct under these Procedures.

#### **E. Respondent Informational Meeting**

Each Respondent wishing to participate in an informational meeting will have five (5) Business Days after receiving notice to complete the informational meeting with the Supervising Director or designee, before the investigation moves forward. At the informational meeting, the Supervising Director or designee, will review these Procedures for the investigation, discuss the rights and responsibilities of a Respondent, and answer any questions that the Respondent may have.

#### **F. Initial Interview of Respondent**

After completing the informational meeting, or upon the expiration of the deadline to have an informational meeting, the Respondent will be invited to complete an initial interview with an Investigator. The initial interview must be completed within ten (10) Business Days of the notice of investigation, or the investigation will move forward without the Respondent's initial interview.

For Respondents who choose to participate in an initial interview, the Investigator will conduct an interview with the Respondent during which time the Investigator will prepare a summary of the Respondent's interview. The Respondent will be given the opportunity to review the interview summary of their own initial interview and provide comments or corrections. All substantive comments or corrections submitted will be included in the Investigator's report.

#### **G. Follow Up Interviews**

The Investigator may have follow-up questions for the Complainant, Respondent, or witnesses after their respective initial interviews. Each participant will have a reasonable time to complete any follow-up interview requested by an Investigator. If a follow-up interview is not completed within a reasonable time frame of the request, the investigation will move forward.

#### **H. Evidence**

The investigation will be conducted in a manner that is respectful of individual privacy concerns. The Investigator, not the Complainant or the Respondent, is responsible for gathering relevant evidence to the extent reasonably possible. However, each party will be given the opportunity to identify witnesses, provide other relevant information, such as documents, communications, photographs, and other evidence, and suggest questions to be posed to the other party or witness. Although the Investigator need not do so, the Investigator may draw a negative inference from a refusal to provide relevant information that the Investigator knows exists.

The Investigator will review all information identified or provided by the parties as well as any other evidence the Investigator obtains. The Investigator will determine the relevance and probative value of the information developed or received during the investigation. The Investigator may exclude evidence that is not relevant, including but not limited to statements of personal opinion rather than direct observations or reasonable inferences from the facts and statements as to general reputation for any character trait, including honesty.

Witnesses must have observed the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual's character. The Investigator will review and determine the necessity of interviewing potential witnesses.

In general, a person's medical and counseling records are confidential unless the person voluntarily chooses to share those records with the Investigator. Additionally, personnel records are generally

private; however, the Investigator may review relevant personnel records. If relevant, the Investigator will summarize the information in the preliminary report for both parties to review, and the Investigator will make available the relevant portions of such records, with appropriate redactions for the non-sharing party's review.

The Investigator may consult experts who have no connection to the reported incident when expertise on a specific issue or submitted evidence is needed to gain a fuller understanding of the issue or of the relevance or value of the evidence. In instances where the Investigator consults an expert, the Supervising Director will determine whether the expert has any conflicts of interest or bias. Prior to consultation, the Investigator will share the expert's identity with both parties so that they can identify any potential conflict or bias for consideration by the Supervising Director.

The Investigator will not accept or consider external investigations or reports from privately hired consultants (including, but not limited to, those conducted by private Investigators, polygraph examiners, or any person retained to offer opinions on how available evidence should be interpreted). This provision does not apply to external investigators hired by the University to conduct an investigation pursuant to these Procedures. However, the Investigator may consider voluntarily submitted personal medical records that describe a licensed medical professional's direct observations of physical injury, disease, infection, or illness (or lack thereof).

In general, a Complainant's prior or post sexual history is not relevant, and the Investigator will not consider such information during an investigation. Where there is a current or ongoing relationship between the Complainant and the Respondent, and the Respondent alleges that the Complainant gave Consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of these Procedures, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute Consent. Any prior sexual history of the Complainant with other individuals is typically not relevant and will not be permitted except under limited exceptions at the discretion of the Supervising Director.

In gathering the facts, the Investigator may consider prior allegations of, or findings of responsibility for, similar conduct by the Respondent to the extent that such information is relevant. The Investigator will determine relevance based on an assessment of whether:

- The previous allegation or incident was substantially similar to the present allegation;
- The information indicates a pattern of behavior and substantial conformity with that pattern by the Respondent; or
- The Respondent was subject to a previous credible allegation, participated in an alternative resolution to a Complaint, and/or was previously found responsible for Prohibited Conduct.

Any party seeking to introduce information about prior sexual history or pattern evidence (as identified above) should bring this information to the attention of the Investigator at the earliest opportunity. The University, through the Investigator, may choose to consider this information with appropriate notice to the parties. Where a sufficient informational foundation exists, the Investigator, in consultation with the Supervising Director, will assess the relevance, form, and reliability of the information.

## **I. Preliminary Report**

After each person has had the opportunity to comment on their own statement and to identify witnesses and other potential information, and the Investigator has completed witness interviews and the gathering of evidence, the Investigator will prepare a preliminary report. The preliminary report will include, as applicable, the Complainant's interview summary, the Respondent's interview summary, each witness' interview summary, and either a copy or written summary of any other information the Investigator in their discretion deems relevant.

The Investigator will concurrently provide the Complainant and Respondent with access to review the preliminary report in an electronic format that restricts the parties from downloading or copying the report. The Complainant and Respondent have five (5) Business Days from the time they are given access to the preliminary report to submit any comments, feedback, additional documents, evidence, requests for additional investigation, names of additional witnesses, or any other information they deem relevant to the Investigator. Each party may meet with the Investigator to provide this additional information in lieu of or in addition to written comments.

If the Investigator receives information from a party in response to the preliminary report that warrants further investigation or review, the Investigator, in consultation with the Supervising Director, has the discretion to extend the investigation. If the Investigator extends the investigation, the Investigator will notify the parties in writing, issue an amended preliminary report, and provide the Complainant and Respondent access to such report for review and comment for at least three (3) Business Days.

## **J. Final Investigative Report**

After receiving any comments submitted by the Complainant and/or Respondent, or after the comment period has lapsed without receiving comments, the Investigator will address any relevant issues, pursue any additional investigative steps as needed, and issue a final investigative report.

The Investigator's final investigative report will contain all information from the preliminary report, any response to the preliminary report submitted by the Complainant and/or Respondent, and any additional information gathered. If the Respondent admits responsibility, the Investigator's final investigative report will contain a short summary of the allegations and the Respondent's admission of responsibility. The Supervising Director will review and approve the Investigator's final investigative report before it is issued.

The Investigator will make a determination based on a Preponderance of the Evidence as to whether the alleged Prohibited Conduct did or did not occur. The Investigator will provide the full rationale for the findings, including an analysis of the available information, in the final investigative report. The determination will be based solely on the evidence contained within the final investigative report. The two possible conclusions to an investigation are:

1. It is more likely than not that Prohibited Conduct occurred.
2. It is less likely than so that Prohibited Conduct occurred.

The Investigator will concurrently provide the Complainant and Respondent with access to review the final investigative report in an electronic format that restricts the parties from downloading or copying the report. At the same time, the Investigator will issue a determination letter to both parties

indicating whether or not Prohibited Conduct occurred. A copy of this letter will also be sent to necessary administrators and supervisors.

Where there is a determination of responsibility for Prohibited Conduct, the determination letter will contain information on where the matter is being referred for Disciplinary Action or Outcomes.

Where there is not a determination of responsibility for Prohibited Conduct, the Office of Equal Opportunity & Title IX may refer the final investigative report to University administrators for appropriate action pursuant to other applicable University policies, if necessary.

#### **K. Time Frames**

To help facilitate completion of the investigation in a timely manner, the University has established time frames for certain components of the investigation. The time frames do not change the fact that Complainants and Respondents have the right to determine whether, and to what extent, they will participate in the investigation. The investigation will move forward to the next stage whether or not the noticed individual completes the identified component by the applicable time frame.

Based on extenuating circumstances, the Complainant and/or Respondent may seek an extension by written request to the Supervising Director submitted prior to the original time frame. The Supervising Director will have sole discretion to grant or deny the extension. The Supervising Director may require proof to verify the circumstance(s) on which the request is based. The Supervising Director will notify the parties of any extension granted. Where a time frame applies to both parties, the extension will be given to both parties.

The University's failure to meet any of the time frames outlined within these Procedures, or to provide written notice of the extension of these time frames, shall not be grounds for dismissing any allegations of Prohibited Conduct, nor shall such failure limit the University's ability to complete an investigation, issue findings, impose Outcomes, enact Disciplinary Actions, or limit the University's ability to take any other required administrative action under these Procedures.

At the request of law enforcement, the University may agree to temporarily defer part or all of its fact-gathering until law enforcement has completed its initial evidence-gathering phase. The University will nevertheless communicate with the parties about resources and support, procedural options, anticipated timing, and the implementation of any necessary interim measures to protect the safety, wellbeing, and continued access to educational opportunities.

### **14. Advisors and Support Persons**

Throughout the entire process, the Complainant and Respondent have the right to be assisted by one advisor of their choosing and be supported by one support person of their choosing.

Advisors or support persons may not:

- be witnesses;
- present information on behalf of any person;
- submit documents on behalf of any person;
- discuss any matter directly with University administrators or Investigator in the absence of the supported person;

- represent any person or position; or
- otherwise actively participate in any proceeding.

Advisors and support persons may accompany and be present at any meeting or interview and may consult directly with the party whom they are advising or supporting in a way that does not disrupt or delay the meeting or interview.

The University will not allow advisors or support persons the opportunity to review any document or to attend any meeting in the absence of the person they are advising or supporting.

The University may exclude advisors or support persons who act in a manner contrary to these limitations or otherwise disrupt any proceeding from that proceeding and/or future proceedings.

Although a licensed attorney is permitted to serve as an advisor and/or support person at any stage in the resolution process, their participation in the resolution process is subject to the limitations described above.

## 15. Disciplinary Action

### A. For Employees and Other Non-Students as Respondents

Where an employee or other non-student has been found responsible for engaging in Prohibited Conduct, in consultation with Human Resources & Inclusive Community, the Respondent's supervisor or other responsible administrator will determine the appropriate Disciplinary Action. Disciplinary Action for employees may vary, up to and including termination of employment, based on the circumstances of the Prohibited Conduct. The Respondent's supervisor, or Human Resources & Inclusive Community, shall also notify the Supervising Director of the Disciplinary Action imposed. Disciplinary Action involving faculty is further subject to the [Policies and Procedures Relating to Faculty Appointment, Promotion and Tenure](#).

### B. For Students as Respondents

Where a student has been found responsible for engaging in Prohibited Conduct, the Office will refer the matter to Office of Student Rights and Responsibilities to convene an Outcome Council as provided in the [Honor Code](#).

## 16. Appeal

### A. General Provisions

1. **Employees** may appeal a finding issued under these Procedures by following the process outlined in this section.

Additionally, employees may grieve Disciplinary Action issued as a result of the finding under these Procedures as follows:

- Faculty or staff members who receive Disciplinary Action pursuant to these Procedures may grieve as follows:

- Faculty members may pursue their applicable rights pursuant to the [Policies and Procedures Relating to Faculty Appointment, Promotion, & Tenure](#);
  - Staff may pursue a grievance pursuant to the Employee Grievance procedures outlined in the [Employee Handbook](#); and
  - Employees who are subject to a collective bargaining agreement must pursue their grievance rights pursuant to that agreement.
2. **Students** may appeal a finding issued under these Procedures, as well as the determination imposed by Outcome Council, by following the process outlined in this section.

## **B. Grounds for Appeal under these Procedures**

Appeals under these Procedures will be considered on the following grounds:

1. The existence of procedural error(s) so substantial that it would likely alter the investigative findings and ultimate outcomes, including concerns of bias or discrimination on the part of an Investigator(s) or Supervising Director;
2. Presentation of new and significant evidence which was not reasonably available at the time of the initial investigation and would likely alter the investigative findings and ultimate outcomes; and/or
3. Where the Respondent is a student, the Outcomes imposed are substantially disproportionate to the violation.

Mere disagreement with the decision is not grounds for appeal under these Procedures. The appellate process shall not re-hear a matter in part or in its entirety. Therefore, appellate officers under these Procedures may review the final investigative report and written information submitted by the parties on appeal, but may not engage in independent fact finding such as interviewing the parties or other witnesses.

Further, concerns of bias or discrimination on the part of an Investigator(s) and/or Supervising Director must be presented on appeal to be considered in the determination of the appeal. Complaints regarding bias or discrimination filed after the appeals process is concluded will have no impact on the findings of the investigation or the results of the appeal.

## **C. Appeal Determinations**

There are four possible determinations that may result from an appeal under these Procedures:

1. Uphold the original investigative findings.
2. If the appellate officer determines that new evidence should be considered, the final investigative report will be returned to the Office of Equal Opportunity & Title IX to be reviewed in light of the new information.
3. If the appellate officer determines that a material procedural error occurred, the appellate



officer may return the report to the Office of Equal Opportunity & Title IX with instructions to reconvene the investigative process to cure procedural error. In rare cases where the procedural error cannot be cured by the Office of Equal Opportunity & Title IX (as in cases of bias), the appellate officer may order a new review of the matter.

4. If the Respondent is a student, and the appellate officer determines that the Outcome(s) imposed are disproportionate to the violation, the appellate officer may return the matter to the Outcome Council with or without recommendations.

Appellate officers will issue their determinations in writing within ten (10) Business Days of the requested appeal. In extenuating circumstances, the appellate officer may notify the parties in writing that they need additional time to issue a determination. Appeal determinations will be communicated to the parties in writing and copied to the Supervising Director. Appeal determinations are final and not subject to further review.

#### **D. Process for Filing an Appeal:**

##### **1. Appeals Process When the Respondent is an Employee:**

When the Respondent is an employee, the appellate officer for investigative findings is the Vice Chancellor of Human Resources & Inclusive Community or designee.

Either party may file an appeal by submitting the request in writing to the Vice Chancellor for Human Resources & Inclusive Community or designee within five (5) Business Days of receiving the Letter of Determination. The appealing party may request an extension of these deadlines based on extenuating circumstances. The party must submit such a request in writing to the Vice Chancellor for Human Resources & Inclusive Community, or designee, prior to the original deadline for appeal.

If an appeal is received, the Supervising Director will notify both parties involved in the matter to be appealed. In any request for an appeal, the burden of proof lies with the party requesting the appeal. The appeal is not a new review of the underlying matter. The appellate officer will issue a determination within fifteen (15) Business Days of receiving the appeal. If the appellate officer requires additional time to make the determination, the parties will be notified.

##### **2. Appeals Process when the Respondent is a Student**

Appellate officers for students may be the Provost, the Provost's designee, the Vice Chancellor of Campus Life and Inclusive Excellence, or the Vice Chancellor's designee.

Students may appeal the investigative findings and/or assigned Outcomes by submitting a written appeal by the means identified in the written notice within five (5) Business Days of the date that the Outcomes are issued by the Outcome Council or, in cases that do not result in the imposition of Outcomes, the date of the letter of determination. The appeal must state the specific grounds for appeal. Where the appeal is on the grounds of new, previously unavailable evidence, the appealing party must submit the evidence with the written appeal.

The appellate officer will review the final investigative report and all evidentiary attachments to the report and may also request and review the following:

1. any information considered in determining an Outcome
2. any written submissions by the parties
3. any impact or mitigation statements

The appellate officer may request additional information as necessary, but the appellate officer shall not engage in independent fact-finding, such as interviewing the parties or other witnesses.

While the parties may review the final investigative report as part of the appeal process, the appeal deadline is calculated from the date that the Outcomes are issued, or the date of the letter of determination in cases that do not result in the imposition of Outcomes, and not from the date that the Respondent or Complainant chooses to review the final investigative report. Accordingly, participants are encouraged to make arrangements to review the final investigative report with the Office of Equal Opportunity & Title IX at their earliest convenience. The appeal deadline will not be extended due to a participant's failure to review the final investigative report in a timely manner.

## **17. Additional Considerations**

### **A. Responsibilities of Parties**

Throughout their involvement in any process under these Procedures, the consideration of discipline, and/or appeal proceedings, the Complainant and Respondent, as well as Third Parties, have the following responsibilities to:

1. Provide the University with truthful information and operate in good faith with University officials.
2. To not engage in Retaliation or Obstruction against any person who is perceived to have participated in any process pursuant to these Procedures.
3. Notify one's advisor or support person of the time, date, and location of any meeting associated with any process pursuant to these Procedures. The Investigator is not required to reschedule meetings to accommodate an advisor or support person.
4. Provide notification to the Investigator that an advisor or support person will be present for meetings no later than 48 hours before the scheduled meeting.
5. Provide the University with accurate address and other contact information so that notification is not unduly delayed.
6. Promptly open and read any communication from the Office of Equal Opportunity & Title IX, the Office of Student Rights & Responsibilities, or any other University administrator involved in any process pursuant to these Procedures.

### **B. External Agreements**

The University will not recognize or enforce agreements between the parties outside of these Procedures. However, the University will recognize any lawful order of a local, state, or federal law enforcement or similar agency, or any lawfully-issued protective or other order of a court or similar authority with appropriate jurisdiction.

### **C. External Resources**

An individual who believes that they has been subjected to unlawful Discrimination, Harassment, Gender-based Violence, or Retaliation has the right to file a complaint with an appropriate local, state,

or federal agency, such as the U.S. Department of Education Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), or the Colorado Civil Rights Division (CCRD), within the agency's applicable time limits.

In addition, any person who is dissatisfied with the University's internal procedures utilized for handling complaints, or with the result of the investigation or the Outcomes and/or Disciplinary Action imposed, may seek redress through these means to the extent allowed by law. The Complainant should be aware that filing a Complaint with the Office of Equal Opportunity & Title IX or any other University office does not extend or postpone the deadline for filing with external agencies.

Any individual who believes that they have been discriminated against under the laws set forth in Section 1, and to meet the strict procedural timelines and to the ability of the EEOC to investigate the complaint and protect the individual's right to file a private lawsuit, should promptly contact:

Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507

Or contact an EEOC field office by calling toll free 1-800-669-4000. For individuals with hearing impairments, EEOC's toll free TTY number is 1-800-669-6820.

## 18. Education and Prevention Programs

The University is committed to offering educational programs to promote awareness of Discrimination, Harassment, Gender-based Violence, and Retaliation. Educational programs include an overview of the University's policies and procedures; relevant definitions, including Prohibited Conduct; discussion of the impact of alcohol and illegal drug use; Consent; safe and positive options for bystander intervention; review of resources and reporting options available for students, faculty and staff; and information about risk reduction. Incoming first year students, new graduate students, and new employees will receive primary prevention and awareness programming as part of their orientation. Returning students and employees will also have ongoing opportunities for training and education. The [University's Office of Equal Opportunity & Title IX](#), the [Center for Advocacy, Prevention and Empowerment \(CAPE\)](#), and the [Office of Health Promotion](#) maintain an education and prevention calendar and tailor programming to address campus needs and climate.

## 19. Revisions

Pursuant to University's [Discrimination and Harassment Policy, Section 3.10.010](#), the University may update these Procedures at any time as necessary to comply with applicable local, state, and federal law or directives from relevant government agencies. The University will make such updates subject to approval from the Provost and the Vice Chancellor for Business and Financial Affairs and effective upon publication to the University community.