



Institutional Equity and Compliance
UNIVERSITY OF COLORADO **BOULDER**

Process and Procedures 2017-2018

Effective: July 1, 2017

As required by Title IX, Title VII, and other equal opportunity laws, the University of Colorado Boulder does not discriminate on the basis of race, color, national origin, sex, pregnancy, age, disability, creed, religion, sexual orientation, gender identity, gender expression, veteran status, political affiliation or political philosophy in admission and access to, and treatment and employment in, its educational programs and activities. Questions concerning the application of these laws may be referred to the Executive Director of the Office of Institutional Equity and Compliance or the Department of Education, Office for Civil Rights (<http://www2.ed.gov/about/offices/list/ocr/>).

The information contained within the OIEC Process and Procedures is intended to provide general information to members of the university community and is not intended to, nor does it, create a contract between the OIEC or CU Boulder and community members. The OIEC reserves the right to change or eliminate any of the language herein at its discretion and without notice.

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A. Overview and Mission Statement of the Office of Institutional Equity and Compliance

The Office of Institutional Equity and Compliance (OIEC) was created in August 2014 to integrate resolutions of all complaints of protected class harassment and/or discrimination or sexual misconduct -- whether against a student, employee, or third-party -- into one office. The OIEC implements and enforces the University of Colorado Sexual Misconduct Policy, the University of Colorado Boulder Discrimination and Harassment Policy, and the University of Colorado Policy on Conflict of Interest in Cases of Amorous Relationships. The Executive Director of the OIEC, who is also the campus Title IX Coordinator, reports directly to the Chancellor.

OIEC is committed to preventing and eliminating discrimination or harassment based on race, color, national origin, pregnancy, sex, age, disability, creed, religion, sexual orientation, gender identity, gender expression, veteran status, political affiliation, or political philosophy. The OIEC is also committed to eliminating and preventing any form of related retaliation as prohibited by University policies, state laws, and federal laws including but not limited to The Civil Rights Act of 1964 (Title VI and Title VII), Title IX of the Education Amendments of 1972 and the Americans with Disabilities Act.

To achieve this mission, OIEC conducts fair and unbiased investigations and treats all individuals who seek our assistance with respect and dignity. We also coordinate the provision of remedial and interim protective measures as necessary, and provide educational trainings and sessions for all members of the University community, including faculty, staff, and students.

B. Purpose and Scope

The OIEC Process and Procedures ("Process and Procedures") is intended to comply with the related requirements of the following federal laws, their implementing regulations, and related federal agency guidance, including:

- Equal Pay Act of 1963
- Civil Rights Act of 1964
 - Title IV
 - Title VI
 - Title VII

- Title IX of the Education Amendments (1972)
- Rehabilitation Act (1973) (Sections 503 and 504)
- Vietnam Era Veterans Readjustment Assistance Act (1974)
- Age Discrimination Act (1975)
- Age Discrimination in Employment Act (1976)
- Pregnancy Discrimination Act (1978)
- Americans with Disabilities Act of 1990 (Amendments Act of 2008)
- The Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act (1991)
- Violence Against Women Act (1994)
- Uniformed Services Employment and Reemployment Rights Act (1994)
- The Violence Against Women Reauthorization Act of 2013

The Process and Procedures is also intended to be the "campus complaint process and procedures" pursuant to the University of Colorado Sexual Misconduct Policy and the University of Colorado Boulder Discrimination and Harassment Policy and should be read in conjunction with those policies. The Process and Procedures is also sometimes referred to as "grievance procedures."

C. Jurisdiction

1. The Process and Procedures govern all students, faculty, staff, contractors, patients, volunteers, affiliated entities and other third parties regarding:
 - a. Conduct that occurs on or as it relates to University property or at official functions and University-sponsored programs conducted away from the campus. University property is defined as land, buildings and facilities in possession of or owned, used or controlled by the University or funded by University budgets;
or
 - b. Conduct that occurs off University property if it:
 - (1) has a potential continuing effect on campus, including, but not limited to, adversely affecting the health, safety or security of any member of the University

community or the mission of the University¹; or (2) involves any records or documents of the University.

2. Actions taken under the Process and Procedures are separate and apart from any law enforcement or other court process or proceeding, such as a civil lawsuit or criminal prosecution, that may relate to the same underlying factual incident. OIEC's jurisdiction does not depend on whether criminal charges are filed. Investigations or inquiries conducted by the OIEC are not postponed while criminal or civil proceedings are pending unless otherwise determined by the OIEC. Dismissal of criminal charges or acquittal in a criminal case does not prevent the OIEC from investigating and adjudicating an incident. There is no statute of limitations for OIEC matters. The date of the alleged incident determines which Process and Procedures (or applicable Student Code of Conduct prior to 2015-16) will apply.
3. The failure of an individual to appear and/or respond to the OIEC does not prevent the OIEC from proceeding with or completing the applicable process.
4. The University has an obligation and jurisdiction to conduct at least a preliminary inquiry to determine whether the alleged conduct occurred in the context of, or has continuing effects on, a University program, activity or employment.
5. The OIEC Executive Director or designee has the authority and discretion to review and take any appropriate action deemed necessary, including re-opening an investigation, if (1) evidence, including but not limited to, results from a sexual assault nurse examination (SANE), becomes available that was previously outside of the university's ability to access; (2) the Process and Procedures as set forth herein were not followed; or (3) additional circumstances warrant it.
6. For employees, any other matters outside the scope of the Process and Procedures shall be handled by the appointing/disciplinary authority. For students, the Office of Student Conduct and Conflict Resolution (OSCCR) has jurisdiction for all other student conduct matters not listed herein. In the event that there are potential, multiple charges involving OIEC

Process and Procedures and the Student Code of Conduct, the OIEC and OSCCR shall have the discretion to jointly determine the most appropriate way to proceed. Options include concurrent investigations, joint investigations, deferring to the findings of one office or using the investigation and findings of one office as the basis of further investigation by the other.

7. When an alleged violation involves more than one University of Colorado campus, the complaint shall be handled by the campus with the disciplinary authority over the respondent. The campus responsible for the investigation may request the involvement or cooperation of any other affected campus and should advise appropriate officials of the affected campus of the progress and results of the investigation.
8. University employees and students sometimes work or study at the worksite or program of another organization affiliated with the University. When a violation is alleged by or against University employees or students in those circumstances, the complaint shall be handled as provided in the affiliation agreement between the University and the other entity. In the absence of an affiliation agreement or a provision addressing this issue, the University may, at its discretion, choose to 1) conduct its own investigation; 2) conduct a joint investigation with the affiliated entity; 3) defer to the findings of an investigation by the affiliated entity where the University has reviewed the investigation process and is satisfied that it was fairly conducted; 4) use the investigation and findings of the affiliated entity as a basis for further investigation; or 5) take other action as determined appropriate by the OIEC Executive Director or designee.
9. Conduct alleged to have occurred before an individual became a student, faculty, staff, contractor, patient, volunteer, or affiliated entity with CU Boulder may be addressed through applicable remedial, protective, and/or educational measures as determined by the OIEC Executive Director or designee if the alleged conduct interferes with or impedes upon equal access to employment or education for any current CU Boulder community members.

¹ For example, see Section I of both the Discrimination and Harassment Policy (<http://www.colorado.edu/policies/discrimination-and-harassment-policy-and-procedures>) and the Sexual Misconduct Policy (<http://www.cu.edu/oape/aps/5014>).

D. Reporting Options

(303) 441-3333 (non-emergencies),
<https://bouldercolorado.gov/police>

Call 911 in an Emergency or if you have an immediate safety concern

1. **University/OIEC:** To notify the University and initiate the OIEC resolution process regarding any of the prohibited conduct as listed in Section G you may:

- a. Call OIEC: (303) 492-2127
- b. Email OIEC: cureport@colorado.edu
- c. Contact us directly at:
 - Valerie Simons, Executive Director and Title IX Coordinator
valerie.simons@colorado.edu
(303) 492-5359
 - Llen Pomeroy, Director of Investigations and Deputy Title IX Coordinator
l.len.pomeroy@colorado.edu
303-492-0277

For a full list of reporting options, please refer to our website at:

www.colorado.edu/institutionalequity/reporting-options.

To encourage reporting, minor infractions by the complainant, the respondent or witnesses (e.g., student use of alcohol or drugs) will be addressed informally whenever possible. The goal of this policy is to remove potential barriers to reporting. However, final jurisdiction and decision-making regarding any conduct not covered by these policies and procedures will be made by the Director of the Office of Student Conduct and Conflict Resolution (for students) or the appointing/disciplinary authority (for employees) in consultation with the OIEC.

Even if a victim chooses not to report formally and/or chooses not to participate in an investigation process (through OIEC or law enforcement), the victim can contact the OIEC for information and assistance accessing on or off campus support services as set forth in Section L and to access available remedial and/or protective measures as set forth in Section H(2).

2. Law Enforcement

- a. University Police/On Campus:
(303) 492-6666 (non-emergencies),
<http://police.colorado.edu/>
(general information) and
<https://police.colorado.edu/content/anonymous-reporting-form> (anonymous reporting)
- b. City of Boulder Police/Off Campus:

Victims are not required, but do have the right, to file a criminal complaint with law enforcement and the University/OIEC simultaneously. The OIEC can assist in reporting to law enforcement for victims alleging misconduct that is also a criminal offense.

Please note that it is important to preserve evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protective order. Regardless of whether or not a victim wants to report an incident(s), it is important to preserve any evidence of the sexual assault (or other misconduct) so that if a victim decides at any point in time to report the incident, that evidence is still available. Examples of evidence to preserve include, but are not limited to: the clothing the individual was wearing, bedding, text message correspondence discussing the assault (either with the accused or with friends or family), photographs, screenshots, emails, social media correspondence/posts (Facebook, Tinder, Snapchat, Instagram, Yik Yak, etc.), correspondence via other messaging applications (Whatsapp, Kik, GroupMe, etc.), video surveillance, and/or names of witnesses and contact information.

Regardless of if an individual wants to report the assault to the police, a medical exam can be done to preserve evidence. The Sex Assault Nurse Examiner (SANE) program at the Emergency Department at Boulder Community Health Foothills Hospital is available to conduct a SANE exam, ideally within five days of the sexual assault. It is best if a victim does not bathe, shower, eat, drink, douche or change clothes. However, evidence can be collected if you have done any or all of these things. More information about the SANE exam can be found here: <http://www.bch.org/emergency--trauma-services/sexual-assault-nurse-examiner-%28sane%29-program.aspx>.

Please note that if some or all of this evidence is unavailable or does not exist, you are still encouraged to report a sexual assault. The lack of evidence does not preclude an investigation from taking place.

Reporting to the University Police will constitute notice to the University/OIEC and may result in an OIEC resolution process subject to applicable state

law. In some instances, the OIEC is obligated to report the alleged conduct to the appropriate law enforcement agency. In those instances, the OIEC will make reasonable effort to notify potential complainants prior to reporting to law enforcement.²

3. Confidential Options

If a victim is not sure about initiating a University resolution process or making a police report, the victim can receive free, confidential information and support by calling the Office of Victim Assistance at the University of Colorado Boulder at (303) 492-8855, by e-mail at assist@colorado.edu, in person at the Center for Community (C4C), Suite S440, or at the OVA website (<http://cuvictimassistance.com/>). All employees in OVA are advocates and licensed counselors. Other confidential resources are listed in Section L.

E. Support Services and Assistance including Protective Orders

When an individual notifies the OIEC (either directly or through a responsible employee, advocate, third party, or other) that they have experienced conduct prohibited by these policies, the OIEC will provide assistance as needed (whether or not there is a formal report or participation in an investigation) in accessing on and off campus services, including but not limited to counseling, health services, mental health services, victim advocacy, legal assistance, visa and immigration services, and/or the availability of forensic sexual assault nurse exams (“SANE”). For a written summary of options and resources available to any victim of sexual misconduct please refer to the “Reporting Options and Assistance” link on our website:

<http://www.colorado.edu/institutionalequity/>.

Orders of Protection, No Contact Orders, Restraining Orders, or Similar Lawful Orders

Victims who are interested in obtaining an Order of Protection, or any other order issued by a court must pursue those options on their own behalf. Restraining orders are obtained through the Boulder County Consolidated Courts. More information on obtaining a restraining order in Colorado is located at <http://www.courts.state.co.us/userfiles/File/Media/Brochures/restraining.pdf>. The Office of Victim Assistance (OVA) can assist victims free of charge with the process of obtaining a restraining order. CU Student Legal Services (SLS) may also be able to provide resources.³ CU-Boulder complies with

Colorado law in recognizing orders of protection. Any person who obtains an order of protection from Colorado or any other state should provide a copy to the University of Colorado Boulder Police Department and the Executive Director of OIEC or designee.

F. Privacy, Confidentiality, and the University’s Obligation to Provide a “Safe and Non-Discriminatory Environment”

Privacy and confidentiality have distinct meanings.

Privacy: generally means that information related to a report of prohibited conduct will be shared with a limited circle of individuals who “need to know” in order to assist in the active review, investigation, resolution of the report, and related issues. All University employees who are involved in a potential response receive specific training and guidance about safeguarding private information in accordance with applicable laws.

The privacy of student education records will be protected in accordance with the University’s policy for compliance with the Family Educational Rights and Privacy Act (FERPA) and state law protections. Access to personnel records is restricted in accordance with University policy and state law.

Confidentiality: means that information shared by an individual with designated campus or community professionals cannot be revealed to any other person without express permission of the individual, or as otherwise permitted or required by law. Those campus and community professionals who have the ability to maintain confidential relationships include health care providers, mental health professionals, the sexual assault victim advocate, and ordained clergy, all of whom normally have privileged confidentiality that is recognized by Colorado state law. These individuals are prohibited from breaking confidentiality unless (i) given permission to do so by the person who disclosed the information; (ii) there is an imminent threat of harm to self or others; (iii) the conduct involves suspected abuse of a minor under the age of 18; or (iv) as otherwise required or permitted by law or court order.

The University supports the use of confidential resources as listed in Section L so that victims can provide information confidentially and still receive remedial and/or protective measures as necessary

² See Section F.

³ For information on Student Legal Services and applicable services, please see

[http://www.cubouldersls.com/eligibility/limitations-on-services.](http://www.cubouldersls.com/eligibility/limitations-on-services)

through the Executive Director or designee. Communications with these confidential resources are confidential to the extent permitted by statutory law. Confidential resources are not considered “responsible employees” for mandatory reporting purposes as defined in Section M.

Responsible Employees: If an individual discloses an incident to a responsible employee who by definition is a mandatory reporter but the individual wishes to maintain privacy and requests that no investigation be conducted, that no disciplinary action taken, or that the allegation not be reported to law enforcement, the responsible employee remains required to report all relevant information to the Executive Director of the OIEC or designee who will explain that the University prohibits retaliation and that the University will not only take steps to prevent retaliation but will also take strong responsive action if it occurs.

Determination Regarding Obligation to Provide a Safe and Non-Discriminatory Environment

If the individual would still like to maintain privacy and does not wish for the OIEC to investigate or address the matter, the Executive Director or designee will weigh and determine that request against the University’s obligation to provide a safe, non-discriminatory environment for all students, faculty, and staff. In making that determination, the Executive Director or designee will consider a range of factors, including the following:

- The seriousness of the alleged conduct;
- The increased risk that the alleged perpetrator will commit additional acts of sexual or other violence;
- Whether the alleged perpetrator threatened further sexual or other violence against the alleged victim or others;
- Whether there have been other misconduct complaints about the same alleged perpetrator or if the perpetrator has a known history of arrests or records from a prior school indicating a history of sexual or other violence;
- The existence of multiple alleged victims and/or perpetrators;
- Whether the conduct was facilitated by the incapacitation of the victim (through alcohol, drugs, disability, unconsciousness, or other means);
- Whether the alleged conduct was perpetrated with a weapon or other violent means;
- Whether the alleged victim is a minor;

- Whether the alleged conduct reveals a pattern of perpetration (by the alleged perpetrator, by a particular group or organization, around a particular recurring event of activity, and/or a particular location);
- Whether any other aggravating circumstances or signs of predatory behavior are present; or
- Whether the University possesses other means to obtain relevant evidence of the alleged conduct (e.g., security cameras or personnel, physical evidence).

The Executive Director or designee’s decision will be conducted on a case by case basis after an individualized review and the Executive Director or designee may consult with other University officials as appropriate including but not limited to the University of Colorado Police Department, Student Support and Case Management, and/or the Behavioral Intervention Team. The Executive Director or designee may also determine that a report to the police may also be warranted given the factors above despite an individual’s request for privacy. The OIEC will consider the range of factors listed above in making the determination to report to law enforcement. In those instances, the OIEC will make reasonable effort to notify potential complainants prior to reporting to law enforcement. If the University honors the individual’s request for privacy, the University’s ability to meaningfully investigate the incident and pursue disciplinary action, if appropriate, may be limited.

G. Prohibited Conduct

The conduct listed below is prohibited, as are attempts to commit and aiding, abetting, or inciting others to commit them. Prohibited conduct also includes conduct engaged in by electronic means including, but not limited to, computers, any type of phone, or any other means of electronic communication. These provisions should not be construed, and will not be enacted, to deny individuals any rights protected by the United States and/or Colorado Constitution.

1. Discriminating and/or harassing on the basis of one or more protected classes of race, color, national origin, sex, age, disability, creed, religion, sexual orientation, gender identity, gender expression, pregnancy, veteran status,

political affiliation and/or political philosophy.⁴

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

Harassment means verbal or physical conduct related to one's protected class that unreasonably interferes with an individual's work or academic performance or creates an intimidating or hostile work or educational environment.

2. Engaging in Sexual Misconduct⁵ which includes:
- a. **Sexual Assault-Non-Consensual Intercourse:** means any sexual intercourse, however slight, with any object, by any person upon another person that is without affirmative consent and/or by force. Intercourse includes vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.
 - b. **Sexual Assault-Non-Consensual Contact:** means any intentional sexual touching, however slight, with any object, by any person upon another person, that is without affirmative consent and/or by force. Sexual contact includes intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or any other intentional bodily contact in a sexual manner.
 - c. **Sexual Exploitation:** means conduct that takes sexual advantage of another person for the benefit of anyone other than that person without that person's affirmative consent. Examples of behavior that could rise to the level of sexual exploitation include: prostituting another person; recording images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's affirmative consent; distributing images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not

affirmatively consent to such disclosure and objects to such disclosure; and, viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's affirmative consent.

- d. **Sexual Harassment:** means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature.

A policy violation results if one of the following occurs:

Quid Pro Quo ("This for That")

This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University activity is conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a University program or activity.

Hostile Environment

Hostile environment is a form of sexual harassment. Whether a hostile environment exists is determined from both a subjective and an objective perspective. The subjective perspective evaluates whether or not the complainant experienced unwelcome sexual conduct. The objective perspective evaluates whether or not the unwelcome sexual conduct was, from the perspective of a reasonable person in the alleged complainant's position, sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University's education or employment programs and/or activities. Mere offensive nonsexual conduct is not enough to create a "hostile environment" as defined in this policy. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a single or isolated incident of sexual assault may be sufficient.

- e. **Intimate Partner Abuse (including domestic or dating violence):** means any act of violence or

⁴ Please see the University's Discrimination and Harassment Policy (www.colorado.edu/policies/discrimination-and-harassment-policy-and-procedures).

⁵ Please see the University of Colorado Sexual Misconduct Policy (<https://www.cu.edu/ope/aps/5014>).

threatened act of violence⁶ against a person with whom the individual is or has been involved in a sexual or dating relationship. This includes threats, assault, property damage, and violence or threat of violence to one's self or to the family members of the sexual or romantic partner when used as a method of coercion, control, punishment, intimidation or revenge. This definition includes intimate partner violence, dating violence, and domestic violence.

- f. **Gender/Sex Based Stalking:** means directly or indirectly through another person, and based on actual or desired sexual or amorous relationships, repeatedly following, approaching, contacting, placing under surveillance, or making any form of communication with another person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship in a manner that would cause a reasonable person to (a) fear for the person's safety or the safety of others or; (b) suffer substantial emotional distress, including causing a person to respond by altering their activities.
- 3. **Retaliation:** means any adverse action threatened or taken against a person because an individual has filed, supported, or provided information in connection with a complaint of prohibited conduct, including but not limited to, direct and indirect intimidation, threats, and harassment. An "adverse action" is one that would dissuade a reasonable person from reporting an allegation of misconduct or participating in an investigation of misconduct.
- 4. **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for the person's safety or the safety of others; or (ii) suffer substantial emotional distress. Course of conduct means two 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.

- 5. Violating the Conflict of Interest in Amorous Relationships Policy.⁷
- 6. Failing to comply with the direction or order of the OIEC or university staff who are performing their duties pursuant to the Process and Procedures. Examples of "orders" include, but are not limited to, no-contact orders, exclusion orders, orders for interim suspension, and directives to meet with OIEC investigators.⁸
- 7. Failing to abide by or complete a sanction as related to these policies in a satisfactory manner.
- 8. Failing to report: Any responsible employee who witnesses, or receives a written or oral report of a complaint alleging, discrimination, harassment, sexual misconduct or related retaliation as covered by the Process and Procedures but fails to promptly report it to the OIEC.
- 9. Providing false or misleading information: All participants are expected to provide truthful information in any proceeding. Knowingly or recklessly alleging a false complaint of discrimination, harassment, sexual misconduct or related retaliation or providing false information during the course of an investigation can subject a student or employee to disciplinary action, up to and including expulsion or termination of employment, as applicable. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

KEY DEFINITIONS APPLICABLE TO SEXUAL MISCONDUCT:

Affirmative consent: means the unambiguous and voluntary agreement to engage in a specific sexual activity. Consent is clear, knowing, and voluntary words or actions which create mutually understandable clear permission regarding willingness to engage in, and the conditions of, sexual activity. Consent must be active; silence by itself cannot be interpreted as consent. Consent is not effectively given if it results from the use of *force*, including *threats*, *intimidation* or

⁶ Acts of violence may be physical, sexual, emotional, economic, or psychological in nature. In determining whether the alleged conduct would constitute violence, the OIEC will consider the severity or pervasiveness of the alleged conduct, including the seriousness of the behavior or whether there is a pattern of conduct taken against the romantic or sexual partner used as a method of coercion, control, punishment, intimidation, or revenge.

⁷ See University of Colorado Policy on Conflict of Interest in Cases of Amorous Relationships (<https://www.cu.edu/oie/efficiency-and-effectiveness/presidents-task-force-efficiency/aps-5015-conflict-interest-cases>)

⁸ At the discretion of the OIEC, a violation of Section G.6. may be charged and sanctioned if applicable upon failure to comply or dismissed without a formal investigation upon compliance with the direction or order.

coercion, or if it is from someone who is incapacitated:

- **Force** is the use of physical violence or imposing on someone physically to gain sexual access.
- **Threats** exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual contact they would not otherwise have given. For example, threats to kill someone, themselves, or to harm someone one cares for constitute threats.
- **Intimidation** occurs when someone uses physical presence to menace another, although no physical contact occurs, or where knowledge of prior violent behavior by an assailant, coupled with menacing behavior, places someone in fear as an implied threat.
- **Coercion** is unreasonable pressure for sexual activity. Coercion differs from seduction by the repetition of the coercive activity beyond what is reasonable, the degree of pressure applied, and other factors such as isolation. When someone makes it clear that they do not want sex, do not want to go past a certain point, or want it to stop, continued pressure beyond that point can be coercive. It also includes “grooming” meaning an attempt to control victims through a systematic process which takes advantage of an individual’s vulnerabilities using a combination of strategies to gain the individual’s trust, lower inhibitions, and gain cooperation and “consent.”

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

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

communicated clearly.

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

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

H. OIEC Resolution Procedures

The University does not tolerate and will be responsive to any report or complaint of “Prohibited Conduct” as listed in Section G and is committed to providing prompt, fair, impartial, and equitable investigation and resolution of any complaint that the University knows, or in the exercise of reasonable care, should have known about. The primary concern is the safety of all University community members. The University, through the OIEC, will take steps to prevent recurrence of any prohibited conduct and remedy discriminatory effects on the complainant and others if appropriate. The following procedures will apply to resolution of all reports or complaints of prohibited conduct:

1. Overview of Resolution Process: The University has an obligation and jurisdiction to conduct at least a preliminary inquiry to determine whether the conduct occurred in the context of, or had continuing effects on, a University program, activity or employment. The OIEC shall determine the most appropriate means for addressing the report or complaint. Options include but are not limited to:

- a. Formal Investigation (see Section H(6))
- b. Informal Resolution (see Section H(7))
- c. Determining that the facts of the complaint or report, even if true, would not constitute a violation of these policies and closing the matter following a preliminary inquiry.
- d. Referring the matter to an employee's disciplinary authority or supervisor. The Process and Procedures do not limit the authority of a disciplinary authority to initiate or impose disciplinary action as necessary.

2. **Remedial and Protective Measures:** The University will implement reasonably available measures to protect a complainant and facilitate the complainant's continued access to University employment or education programs and activities at any stage of the process.

Such measures may be both **remedial** (designed to address a complainant's safety and well-being and continued access to educational opportunities) or **protective** (action involving a respondent).

Remedial measures are available regardless of the manner of resolution under this policy or level of participation by a complainant. Protective measures, which involve restricting the rights of a respondent, may require participation in a formal investigation. Where there is a sufficient factual basis to impose remedial and/or protective measures, they will not disproportionately impact the complainant.

Remedial and protective measures include but are not limited to:

- a. academic services (arranging for a complainant to re-take a course, excuse related absences, or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record)
- b. accessing medical services
- c. accessing counseling services
- d. employment modifications
- e. transportation changes
- f. no-contact orders enforced by the University
- g. discussing options for obtaining criminal or civil protection or restraining orders
- h. residential re-locations on or off campus
- i. changes to or exclusion from classes
- j. changes to or exclusion from campus activities

- k. campus exclusion orders
- l. interim student suspension (See Section (H)(3))
- m. administrative leave for employees in consultation with Chief Human Resource Officer or designee and appointing/disciplinary authority
- n. temporary suspension of supervisory or evaluative authority for employees in consultation with Chief Human Resource Officer or designee and appointing/disciplinary authority

The University will maintain the privacy of any remedial and protective measures provided under this policy to the extent practicable and will promptly address any violation of the protective measures. These measures may be kept in place until the end of an investigation, may be lifted or modified as additional information is presented, or may be extended permanently as appropriate.

Participants in OIEC resolution processes may request remedial and/or protective measures from the Executive Director or designee. The Executive Director or designee will maintain oversight of these requests and the provision of any such measures. The Executive Director or designee has the discretion to ensure the appropriateness of any remedial and/ or protective measures based on all available information, including whether they are reasonably available, and will meet with a complainant or respondent to address any concerns about the provision of remedial or protective measures. The University will enforce any violations of protective measures.

3. **Interim Student Suspension:** The Executive Director or designee has the authority to interim suspend any student whose presence may impose a continuing danger to persons or property or an ongoing threat of disrupting academic progress. In the case of an interim suspension, the student will be provided oral or written notice of the alleged prohibited conduct and the opportunity to meet as soon as possible (**but not to exceed ten (10) days**) with the Executive Director or designee so that the Executive Director or designee may determine if the interim suspension will continue based on the known, relevant information at the time. It is the responsibility of the respondent to schedule the meeting in the applicable timeframe if requested. After notice and opportunity to be heard, the Executive Director or designee may decide to lift or continue the interim suspension, potentially until there are final investigation findings and a sanction imposed. The Executive Director or designee may also determine whether any exceptions may be appropriate based on factors which include, but are not limited to, nature/severity of the behavior, prior misconduct,

extent of academic progress to date, and availability of faculty and/or online classes.

4. **OIEC Investigators:** Investigations will be conducted by staff who are appropriately trained and have qualifications and experience that will facilitate a prompt, fair, equitable and impartial investigation. The Executive Director or designee shall ensure that OIEC investigators and Standing Review Committee members receive annual training on issues related to sexual assault, intimate partner abuse, stalking, sexual harassment, protected class discrimination and harassment and retaliation. The OIEC Executive Director or designee shall determine if one or more investigators shall be assigned to each case depending on the specific circumstances and as warranted.

5. **Outside Investigators:** The OIEC Executive Director or designee may also designate other individuals (either from within the University, including an administrator, or from outside the University) to conduct or assist with an investigation or to manage an alternative dispute resolution process. Circumstances which may warrant such investigations include, but are not limited to, conflict of interest, allegations of bias, or workload. The Executive Director or designee retains the discretion to determine whether the use of outside investigator(s) is warranted and reasonable given the circumstances and information available and known at the time. Outside investigator(s) shall have adequate training, qualifications and experience that will, in the judgment of the OIEC Executive Director or designee, facilitate a prompt, fair, and impartial investigation. Any outside investigator(s) designated to address an allegation must adhere to the requirements of the Process and Procedures and confer with the OIEC Executive Director or designee on a regular basis about the progress of the investigation.

6. Formal Investigations⁹

a. Major Stages and Timelines

i. Notice of Investigation (NOI)

If a formal investigation is commenced, the OIEC shall send the respondent and the complainant a Notice of Investigation which will:

- Provide a copy of the OIEC Process and Procedures;
- Identify the complainant and respondent;
- Identify the investigators;

- Identify the factual description premising a charge of prohibited conduct;
- Identify the prohibited conduct provisions under Section G;
- Identify any interim protective measures, which typically include but are not limited to, a no-contact order; and
- Require that the respondent contact the OIEC **within three (3) days** to set up a meeting.

The Notice of Investigation may be sent to the respondent and the complainant by email or permanent addresses appearing in the University's information system, to an address appearing in a police report, or may be hand-delivered. Notice will be considered furnished on the date of hand-delivery or on the date emailed. For student respondents, the Chancellor will also receive a copy of the Notice of Investigation. For employee respondents, the employee's supervisory upline including the Chancellor and the employee's appointing/disciplinary authority as well as Human Resources will also receive a copy of the Notice of Investigation. If the respondent does not schedule or attend an interview by the date specified in the Notice of Investigation, or if the respondent schedules an interview but does not attend or attends but does not participate, the OIEC may complete the investigation based on the totality of information obtained, which may include police investigation reports and other relevant documents or information.

ii. Investigative Process

The OIEC follows an investigative model whereby investigator(s) interview the complainant and the respondent separately and provide each party the opportunity to be heard and to respond. There are no formal hearings. The complainant and the respondent shall each have the right to:

- Timely notice of an interview or meeting where a party's presence is requested;
- Present relevant information to the investigator, including evidence and identifying witnesses;
- Have an advisor of their choice present during any interview, which can include, but is not limited to, an attorney or advocate. Advisors are not authorized to participate instead of the

⁹ Section H(6) does not apply to matters formally investigated pursuant to the University of Colorado Conflict of Interest in Cases of Amorous Relationships Policy. Section 2 ("Policies and Procedures") of that Policy applies in those cases and the University is the complainant.

complainant or respondent. If a complainant or respondent chooses to have an advisor present for interviews, it is the complainant or respondent's obligation to select an advisor whose schedule allows attendance within the timeframes designated;

- Review and respond to a Written Evidence Summary of the relevant and material facts gathered during the investigation prior to a final report and to access witness identities at that time;
- Receive a copy of the final Investigative Report at the conclusion of the investigation and following the review by the Standing Review Committee; and
- Receive notice of any sanction, if applicable, in writing.

iii. Disclosure of Written Evidence Summary

Following the fact gathering, the investigator(s) shall send a Written Evidence Summary of the relevant and material facts to complainant and respondent who each have **seven (7) days** to review and respond. The parties will also have access at this time to witness identities.

iv. Investigative Report

At the conclusion of an investigation and following the submission of any information by either the complainant or respondent, the investigator(s) shall prepare a written Investigative Report that will include a statement of factual findings and a determination as to whether or not there was a violation. The OIEC may also submit the Investigative Report to the Office of University Counsel to review for legal sufficiency.

v. Report to Standing Review Committee

The Investigative Report shall be presented for review to the Standing Review Committee. The Standing Review Committee shall consist of employees who have received appropriate training regarding implementation and application of the Process and Procedures. The Standing Review Committee reviews the Investigative Report to review for investigator(s) bias and impartiality, thoroughness of the investigation, and sufficiency to support the finding. The Standing Review Committee may review any information contained in the investigative file, may consult with the investigator(s), or may

recommend that further investigation or a new investigation be done by the same or another investigator. The Standing Review Committee may not conduct its own investigation or hearing.

vi. Notice of Finding¹⁰

The OIEC shall advise the complainant and respondent simultaneously in writing of the result or outcome of any investigation conducted under the Process and Procedures. A copy of the final Investigative Report as approved by the Standing Review Committee shall be provided to the complainant, the respondent, the Chancellor and the respondent's supervisor and appointing/disciplinary authority as applicable for employee respondents.

vii. Completion of Investigation/Sanction

The University will use its best efforts to complete its investigation and impose sanctions **within sixty (60) days** of the issuance of a Notice of Investigation, although this time frame may be extended for good cause. Good cause may exist for a variety of factors, including the complexity of the circumstances of each allegation (for example, employment discrimination cases and some protected class harassment investigations will typically take longer), the integrity and completeness of the investigation, to comply with a request by law enforcement, to accommodate the availability of witnesses, to provide translation services, to account for University breaks or vacations, to access relevant and probative documentation that is not immediately available, or to address other legitimate reasons. In the event the sixty-day timeframe is extended, both the complainant and respondent will be notified in writing.

b. **Deadlines/Extensions of Time:** The complainant and the respondent each have an obligation to meet deadlines as requested by OIEC during the investigation and as specified above. Extensions of time shall only be granted for good cause shown and the parties shall be provided written notice of extensions as applicable.

c. **Standard of Review/Burden of Proof:** The standard of proof required for a finding of responsibility is a preponderance of evidence, *i.e.*, the information gathered demonstrates that it

¹⁰ Investigative findings under the OIEC Process and Procedures are not findings pursuant to applicable state and federal legal standards, *i.e.* a policy violation may not arise to a violation of equal opportunity law.

is "more likely than not" that the conduct occurred.

d. Other Evidentiary Standards:

i. Sexual history in sexual misconduct cases

The OIEC will not seek or consider irrelevant information regarding the complainant's or respondent's sexual history. Relevant information may include the shared sexual history between the complainant and the respondent, particularly if there are questions about physical injury or trauma. However, a prior consensual dating or sexual relationship between the complainant and respondent by itself does not support an inference of affirmative consent or preclude a finding of sexual misconduct.

ii. Respondent's prior acts/pattern evidence

The OIEC will review if available any prior complaints of misconduct committed by the respondent if they are relevant and probative to the alleged conduct at issue, or if they demonstrate a pattern of behavior. Such prior complaints, if relevant and probative, may be used in the imposition of interim protective measures, the investigative finding, and/or sanctioning.

e. Sanctioning Overview for All Cases (Students or Employees):

In cases where the investigation results in a determination that the OIEC policies have been violated, within **seven (7) days** of the date of the Notice of Finding, the respondent and complainant will each have an opportunity to separately meet with the Executive Director or designee to discuss any mitigating or aggravating circumstances related to the incident that may impact sanctioning. It is the responsibility of the parties to set the appointment and meet within the time prescribed. This meeting does not replace any additional meetings that may be required under other applicable personnel process (e.g., State Personnel Board Rules for classified employees; Professional Rights and Duties procedure and Privilege and Tenure process for faculty).

Alternatively, the complainant or respondent may submit a written statement in lieu of a meeting within **seven (7) days** of the Notice of Finding. A written statement may be up to three pages in length and must be limited to describing mitigating or aggravating circumstances that may affect sanctioning. Any statement outside of these guidelines will not be considered. Repeated violations are likely to result in progressively severe sanctions. In the event that

no violation of OIEC policies is found, there is no preclusion of discipline for other student misconduct under the Student Code of Conduct (for students) or for inappropriate or unprofessional conduct, or other misconduct (for employees). Pursuant to the Discrimination and Harassment Policy a sanction is required when an employee is found to have engaged in inappropriate or unprofessional conduct. The Executive Director or designee may consult as necessary with OIEC staff, the Office of Student Conduct and Conflict Resolution, or any other University staff as needed in making a sanctioning determination. Factors pertinent to a sanctioning decision may include as applicable:

- i. Severity of conduct and whether it escalated during the incident;*
- ii. Whether the complainant was incapacitated at the time;*
- iii. Whether there was force/violence, weapons, or threats of force/violence;*
- iv. Any prior history of related criminal or policy violations;*
- v. Impact on complainant;*
- vi. Acceptance of responsibility by respondent; and/or*
- vii. On-going safety risk to complainant and/or community.*

f. Notice and Sanction for Student Respondents:

The Executive Director or designee is authorized to impose sanctions for student respondents and shall simultaneously notify the complainant and the respondent of any sanctions and any other steps taken by the campus to remedy the discrimination or harassment. One or more sanctions may be imposed:

- i. Warning/Written Reprimand:* A warning/written reprimand is a written statement from the Executive Director or designee that the behavior was inappropriate and that more serious conduct action will be taken should subsequent infractions occur.
- ii. Educational Sanctions:* The student may be required to attend a class, program (e.g., alcohol or anger management classes). This is not an exhaustive list but should serve as a reference for the types of educational sanctions that may be imposed.
- iii. Residence Hall Reassignment:* A student who resides in a residence hall is assigned

to a different residence hall on campus.

- iv. *Residence Hall Termination:* A student's residence hall agreement is terminated through the OIEC process and the student is prohibited from residing in any University residence hall on either a permanent or temporary basis. Specific exclusion from the residence halls may also be imposed. Termination may occur in cases where a student appears to be involved in violation of University policies and the behavior or pattern of behavior has a significant negative impact on a person's living community.
- v. *Probation:* A student is placed on probation. Probation lasts for a specific period of time, and is implemented by semesters. Any violation of the OIEC policies or the conditions of probation committed during the probationary period will result in further disciplinary action.
- vi. *Restriction or Denial of University Services:* The student is restricted from using or is denied specified University services, including participation in University activities.
- vii. *Delayed Conferral of Degree:* The issuance of a student's diploma is delayed for a specified period of time.
- viii. *Withholding of Official Transcript:* The transcript is withheld for a specified timeframe for those students who have already graduated.
- ix. *Suspension:* The student is required to leave the University for a specific period of time. A suspension notation appears on the student's transcript. After the period of suspension has expired, the transcript notation will be removed. The student is required to apply for readmission to the University after his/her suspension period. Suspension from the University includes an exclusion from University property during the period of suspension. A suspension decision results in the student being suspended from all campuses of the University of Colorado system. Upon completion of the suspension, if the student wishes to return to the University, they must complete the re-admission process through the Office of Admissions.
- x. *Exclusion:* The student is denied access to all or a portion of University property. When a student is excluded from University property, that student may be permitted

onto University property for limited periods and specific activities with the permission of the Executive Director or designee. Should the student enter University property without permission, action may be taken by the police for trespass.

- xi. *Expulsion:* The student is required to permanently leave the University. A notation of expulsion remains permanently on the student's transcript. An expulsion keeps the incident on file in the OIEC permanently. Expulsion from the University includes an automatic exclusion from University property. An expulsion decision results in the student being expelled from all campuses of the University of Colorado system.
- xii. *Recommendation for Revocation of Degree:* The Executive Director or designee recommends to the Regents of the University of Colorado revocation of an earned degree.
- xiii. *Additional Sanctions:* The Executive Director or designee have the discretion to impose any additional sanctions that may be warranted and appropriate given the circumstances of the case.

g. Notice and Sanction for Employee

Respondents: The Executive Director or designee will notify the disciplinary authority if a respondent was found to have violated a policy or acted inappropriately or unprofessionally. The disciplinary authority will impose sanctions as warranted in consultation with the Chief Human Resource Officer or designee, the Executive Director of OIEC or designee and any other administrative staff with a need to know. The Executive Director or designee will provide a formal recommendation as to applicable sanctions consistent with the factors set forth in Section H(6)(e). The appointing/disciplinary authority may have access to the investigative records and may consult with the investigator(s) in order to take appropriate action. The Executive Director will ensure to the extent possible that both parties simultaneously receive notice of any sanctions imposed and any other steps taken by the campus to remedy the discrimination or harassment to the extent permitted by law. The Executive Director or designee must ensure that that any disciplinary action proposed by the appointing/disciplinary authority against an employee respondent is appropriate and timely pursuant to the Process and Procedures. Any disputes in cases between the Executive Director or designee and the appointing/disciplinary authority regarding

discipline shall be resolved by submitting the case information to the Chancellor for review and final decision. The Chancellor shall also have access to the investigative records and may consult with the investigator in order to take appropriate action. One or more sanctions may be imposed:

- i. Letter of Expectation/Reprimand:* A warning/written letter of expectation or reprimand is a statement from the disciplinary authority that the behavior was inappropriate and that more serious disciplinary action will be taken should subsequent infractions occur.
- ii. Mandatory Training:* The employee may be required to attend a training, class, or program as relevant to the misconduct.
- iii. Demotion:* The employee is demoted from their current position.
- iv. Job Duty Modifications:* The disciplinary authority may modify the employment responsibilities of the employee.
- v. Reduction in Salary/Ineligibility for Merit Increases:* The employee's salary is reduced either permanently or temporarily or the employee is not eligible for merit increases either permanently or temporarily.
- vi. Ineligibility for Rehire:* The employee is no longer eligible for employment at the University.
- vii. Exclusion:* In consultation with the disciplinary authority, the Executive Director of the OIEC or designee denies access for the employee to all or a portion of University property. When an employee is excluded from University property, that employee may be permitted onto University property for limited periods and specific activities with the permission of the Executive Director or designee. Should the employee enter University property without permission, action may be taken by the police for trespass.
- viii. Termination of Employment Contract and/or Termination of Employment:* Pursuant to applicable laws and policies specific to the employee's status, the disciplinary authority recommends or terminates employment.
- ix. Additional Sanctions:* The disciplinary authority has the discretion to impose any additional sanctions that may be warranted and appropriate given the circumstances of the case.

h. Conclusion of Formal Investigation: The OIEC

investigation report and sanction if applicable are final and there are no separate appeal procedures. Pursuant to Section C(5), the Executive Director or designee has the discretion to re-open an investigation in limited circumstances.

7. Informal Resolutions

The OIEC may determine that the most prompt and effective way to address a concern is through the informal resolution process. The primary focus during an informal resolution remains the welfare of the complainant and the safety of the campus community, but it does not involve a written report or a determination as to whether a policy has been violated. This type of approach provides the University with a "remedies-based" resolution option that allows the University to tailor responses to the unique facts and circumstances of an incident, particularly in cases where there is not a broader threat to individual or campus safety. In these cases, the OIEC may do one or more of the following:

- Provide interim or long-term remedial measures to complainant that do not require notification to the respondent;
- Provide targeted or broad-based educational programming or training; and/or
- Meet with the respondent to (1) discuss the behavior as alleged and provide an opportunity to respond; (2) review prohibited conduct policies as applicable; (3) identify and discuss appropriate conduct and behaviors moving forward and how to avoid behavior that could be interpreted as retaliatory; (4) follow-up with the complainant regarding the respondent's responses if appropriate; and (5) notify the OSCCR or the respondent's supervisor of the allegations and responses if necessary, who will determine whether any other disciplinary action is appropriate.

Although mediation may be appropriate as an additional resolution option for many allegations of prohibited conduct, it is not appropriate for allegations of sexual assault or other serious cases. In cases that would warrant a formal investigation (such as cases of sexual violence) but the OIEC proceeded with an informal resolution or did not proceed (as requested by the complainant and consistent with the factors and obligations of the OIEC as set forth in Section F), the OIEC will notify the complainant of their right to end the informal resolution process at any time and commence a formal investigation.

8. Record Retention and Confidentiality of Records

In all cases, the OIEC shall retain the investigator's report and final sanction decision for a minimum of three years or for as long as any administrative or legal action arising out of the complaint is pending. All records, reports and investigations shall be considered confidential and shall not be disclosed publicly except to the extent required by law.

9. Request to Inspect Student Educational Records

Students have the right to inspect and review their educational records. To do so, students must submit a request to inspect records form. The OIEC will comply with a request for access within a reasonable time, not to exceed 45 days.

10. Student Disciplinary Hold and Disciplinary Stop

While OIEC proceedings are pending, the University may place a disciplinary hold on the student's records. The disciplinary hold is honored by the University of Colorado Boulder campus, including Continuing Education, and prohibits the student from registering for classes until the OIEC process has been completed. The transcript hold prohibits the academic transcript from being released until all actions have been completed. A disciplinary hold may also be placed if a student fails to complete assigned sanctions, which has the same impact on a student's records and registration as described above. The disciplinary hold will not be removed until all sanctions are completed.

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

11. Student Refund Policy After Disciplinary Action

If a student is suspended or expelled from the University, or has their Housing and Dining Services contract terminated, assessment or refund of tuition and fees and/or Housing and Dining Services room and board costs are made in the same way as when a student voluntarily withdraws. See the Office of the Registrar (registrar.colorado.edu, (303) 492-6970, or Regent Administrative Center room 105). The date used for determining the amount due will be the first day of the suspension or expulsion, as decided upon

by the OIEC.

12. Release of Student Information in OIEC

Provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended by the Higher Education Amendments of 1998, govern access to a student's academic transcript or conduct file.

The student and/or those university officials who demonstrate a legitimate educational need for disciplinary information may have access to the student's conduct file. Parent(s) who provide proof that a student is a dependent as defined in Section 152 of the Internal Revenue Code of 1954 may have access to the student's conduct file. A copy of the last federal income tax return listing the student as a dependent will serve as proof of dependency and allow the parent(s) access to the student's conduct file without written consent of the student. In this case, parents may also have access to a conduct file even if the student has requested otherwise.

In addition, parent(s) may be notified if a student under 21 years of age is found responsible through the Office of Student Conduct and Conflict Resolution for a violation involving use or possession of alcohol or other drugs. All other inquiries, including, but not limited to, inquiries from employers, government agencies, news media, family, friends, or police agencies, require a written release from the student before access to university conduct files is granted. An exception to the foregoing is that information may be released pursuant to a lawfully issued subpoena and as otherwise provided by FERPA.

13. Re-Release of Information

Individuals who receive confidential information due to an exception to privacy laws, due to their participation in the OIEC process, or due to the signed consent of the student whose records are in question are prohibited from further disclosing/releasing the confidential information, unless expressly permitted by law as in cases involving a crime of violence or nonforcible sexual offense. Violation of this prohibition could result in additional charges or other appropriate action.

I. Title IX Coordinator

At the University, the Executive Director of the OIEC is also the Title IX Coordinator. The responsibilities of the Title IX Coordinator pursuant to the University of Colorado Sexual Misconduct Policy include:

- a. Ensuring that complaints and any subsequent disciplinary actions are being handled appropriately and in a timely manner;

- b. Overseeing adequate, reliable, and impartial investigations of complaints of misconduct;
- c. Evaluating any complainant request for privacy pursuant to Section E;
- d. Referring matters for further action or discipline for inappropriate or unprofessional conduct under other applicable policies or procedures even if a sexual misconduct policy violation is not found. No provision of this policy shall be construed as a limitation on the authority of the disciplinary authority under applicable policies and procedures to initiate disciplinary action;
- e. Facilitating reasonable interim protective remedies and accommodations as applicable to a complainant or a respondent;
- f. Ensuring broad publication of the campus complaint process and procedures;
- g. Providing an annual report to the Chancellor documenting: (1) the number of reports or complaints of violations of this policy; (2) the categories (*i.e.*, student, employee, or other) of the parties involved; (3) the number of policy violations found; and (4) examples of sanctions imposed for policy violations;
- h. Reviewing and confirming that the relevant policy statements of the campus Annual Security Report pursuant to the Clery Act are consistent with this policy and campus complaint process and procedures;
- i. Overseeing and monitoring campus compliance with this policy;
- j. Ensuring there is ongoing training and education regarding reporting and preventing sexual misconduct for all students, faculty and staff;
- k. Maintaining records and related documentation of compliance with this policy, including, but not limited to retaining copies of any training documentation, tracking student and employee training participation, documenting each step of the campus complaint process and procedure from interim measures, accommodations for persons experiencing sexual misconduct, investigation, disciplinary proceeding, sanctions, and any retaliation; and
- l. Ensuring broad dissemination of the statement that the University shall not discriminate on the basis of sex in employment or in its education programs and activities.

J. ADA Compliance

The Americans with Disabilities Act (ADA) is a federal civil rights law designed to remove barriers that

prevent qualified individuals with disabilities from enjoying the same educational and employment opportunities available to non-disabled persons. Individuals with disabilities are entitled to access, support, and when appropriate, reasonable accommodations. ADA Compliance supports the ongoing development of an accessible university that embraces and celebrates diversity. ADA Compliance provides disability-related information, services, and resources for faculty, staff and visitors. ADA Compliance is responsible for providing reasonable accommodations for faculty and staff, educating the campus community, and promoting equal access and opportunity for those with disabilities. Additionally, ADA Compliance, in collaboration with Facilities Management and Housing Facilities Services, addresses the structural accessibility needs of the campus community.

Reasonable Accommodations for Employees

A reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. The ADA applies to all employees at the university, including permanent faculty and staff, research faculty, temporary employees, and student employees. An employee who would like to request an accommodation due to disability may make a request to the employee's supervisor, or directly to ADA Compliance. When possible, employees should submit accommodation requests in writing. If an employee makes a request to the employee's supervisor, the supervisor should refer the employee to the ADA Coordinator, or contact ADA Compliance directly to communicate the request.

To determine whether an employee is eligible for an accommodation under the ADA, ADA Compliance may ask for documentation of a medical condition to determine whether it qualifies as a disability. The inquiry will be limited to information necessary to determine disability and appropriate reasonable accommodation(s). Having a medical condition alone is not enough to make an employee eligible for an accommodation; under the ADA, a disability is a physical or mental impairment that substantially limits one or more major life activities, such as breathing, eating, sleeping, walking, talking, or manual tasks.

ADA Compliance will review an employee's request for accommodation and accompanying medical documentation to determine whether a reasonable accommodation can be made. ADA Compliance will notify an employee within two (2) business days after a request for accommodation has been received and indicate whether any additional information is

required. An employee may take time necessary to gather required information; however, an accommodation may not be established until all information is received. Once all necessary information has been received, ADA Compliance will make a determination on an accommodation request within five (5) business days.

In determining whether an accommodation is reasonable, ADA Compliance will consider the effectiveness of the proposed accommodation, as well as whether it would pose an undue financial or administrative hardship to the university. In the course of reaching these determinations, ADA Compliance may need to communicate with an employee's supervisor or others in the department to establish the impact and efficacy of an accommodation. After a determination has been made, ADA Compliance will document the decision in a letter to the employee and will copy the employee's supervisor where appropriate. If a request for accommodation is denied, the letter will include an explanation as to why it was denied.

Should an employee be denied an employment accommodation, or receive an accommodation that differs from the accommodation the employee initially requested, she or he may submit an appeal of the accommodation decision to the director of ADA Compliance. Appeals should be in writing and should include: 1) the reasons why the accommodation provided is not effective in meeting an employee's disability-related limitations; 2) identification of an alternative accommodation that would be more effective, or if no accommodation was granted, the accommodation originally requested; 3) the reasons why the requested accommodation more effectively satisfies the employee's disability-related needs. All relevant information should be included in the appeal when it is submitted. The scope of appeal review is limited to determining whether an accommodation decision is reasonable under the circumstances. Appeals may be submitted by email to adacoordinator@colorado.edu, or by U.S. mail or in person to Office of Institutional Equity and Compliance, Administrative and Research Center 2nd floor, University of Colorado Boulder, 557 UCB, Boulder, CO 80309.

A written appeal response will be provided in writing within 15 business days of the time the completed appeal is submitted. ADA Compliance may refer complaints the Office of Institutional Equity and Compliance for investigation, when appropriate. If a student they has experienced discrimination or harassment because of a disability, they should contact the Office of Institutional Equity and Compliance directly at (303) 492-2127 or cureport@colorado.edu. For additional information,

please contact ADA Compliance at (303) 492-9725 or adacoordinator@colorado.edu.

Reasonable Accommodations for Applicants

An applicant to a position at the university who has a disability is entitled to reasonable accommodation(s) to enable the applicant to fully participate in the application process. Applicants may contact the Human Resources recruiter for the position to which they are applying to request an accommodation, or they may contact ADA Compliance directly. Requests for accommodation during the application process will be handled as expeditiously as possible.

Confidentiality

The law requires that ADA Compliance keep medical information confidential. However, the law allows ADA Compliance to share information regarding an employee's need for accommodation with individuals who are considered to have a legitimate need to know this information. These persons can include an employee's supervisor(s), human resources personnel, first aid and safety personnel, personnel investigating compliance with the ADA, and other persons considered to have a legitimate need to know. The law does not prohibit an employee from voluntarily discussing their medical condition or information with others.

Sign Language Interpreting and Real-time Captioning

Employees and visitors to campus who require sign language interpreting, real-time captioning, or other communication assistance should contact ADA Compliance at interpretingrequest@colorado.edu or captioningrequest@colorado.edu, or (303) 492-9725. Supervisors, family members, and others may make a request for services on another's behalf.

Barriers to Accessibility

ADA Compliance addresses issues related to access for people with disabilities on the CU-Boulder campus. Students, faculty, staff, or visitors to campus who encounter barriers to accessing a university service, program, or activity due to a disability should contact ADA Compliance. When possible, concerns regarding access should be submitted in writing to help ensure clarity. ADA Compliance will work to resolve the issue and provide disability-related training and information where appropriate.

Appeals of Academic Accommodations

In the event a student has concerns about any academic accommodation or adjustment the student has or has not received, the student should follow the Disability Services grievance process, outlined on the

Disability Services website at www.colorado.edu/disabilityservices/students/grievances. After following that process, if a student believes they have been denied a reasonable accommodation, the student may contact ADA Compliance to appeal an accommodation decision.

In order to appeal an accommodation decision from Disability Services, a student should submit in writing information stating: 1) the reason(s) why any accommodations that have been granted are not effective; 2) an alternative accommodation that would be more effective, or if no accommodation was granted, the accommodation originally requested; and 3) how the alternative accommodation is connected to a limitation from a disability. All relevant information should be included in order for an appeal to be considered. The scope of appeal review is limited to determining whether an accommodation decision is reasonable under the circumstances. Appeals may be submitted to adacoordinator@colorado.edu, Appeals may be submitted by email to adacoordinator@colorado.edu, or by U.S. mail or in person to Office of Institutional Equity and Compliance, Administrative and Research Center 2nd floor, University of Colorado Boulder, 557 UCB, Boulder, CO 80309.

A written appeal response will be provided in writing within 15 business days of the time the completed appeal is submitted. ADA Compliance may refer complaints the Office of Institutional Equity and Compliance for investigation, when appropriate. If a student believes she or he has experienced discrimination or harassment because of a disability, they should contact the Office of Institutional Equity and Compliance directly at (303) 492-2127 or cureport@colorado.edu. For additional information, please contact ADA Compliance at (303) 492-9725 or adacoordinator@colorado.edu.

Appeals of Housing Accommodation Decisions

Residents of campus housing who were denied accommodation requests in part or in full by the housing medical accommodations committee, or have received accommodation(s) and do not believe they are effective, may appeal the decision of the committee. In order to appeal an accommodation decision from the housing medical accommodations committee, the student should submit in writing information stating: 1) the reason(s) why any accommodations that have been granted are not effective; 2) an alternative accommodation that would have been more effective, or if no accommodation was granted, the accommodation originally requested; and 3) how the alternative accommodation is connected to a limitation from a

disability. All relevant information should be included in order for an appeal to be considered. The scope of appeal review is limited to determining whether an accommodation decision is reasonable under the circumstances, given the housing available at the time.

Appeals may be submitted to adacoordinator@colorado.edu, or by U.S. mail or in person to Office of Institutional Equity and Compliance, Administrative and Research Center 2nd floor, University of Colorado Boulder, 557 UCB, Boulder, CO 80309.

ADA Compliance may refer complaints the Office of Institutional Equity and Compliance for investigation, when appropriate. A formal response will be provided in writing from ADA Compliance within 15 business days. If a student believes she or he has experienced discrimination or harassment because of a disability, they should contact the Office of Institutional Equity and Compliance at (303) 492- 2127 or cureport@colorado.edu. An appeal response shall be provided within 15 business days. For additional information, please contact the ADA Compliance at (303) 492-9725 or adacoordinator@colorado.edu.

For more information on the ADA and Reasonable Accommodations:

- Please contact our Director of ADA Compliance, Michael Roseberry
adacoordinator@colorado.edu
Phone number: (303) 492-9725
Fax Number: (303) 492-5005
- Visit the ADA website:
<http://www.colorado.edu/institutionalequity/ada>

K. Education and Prevention

The University is committed to providing comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to reduce and ultimately end all forms of discrimination and harassment. Such programming shall be culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to campus community needs, and informed by research or assessed for value, effectiveness or outcome. Programs shall also consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community and societal levels. Mandatory programs currently include Community Equity and Effective Bystander Intervention (Students) and the Discrimination and Harassment Training (Employees).

One of the primary components of education and prevention at the University is learning effective “bystander intervention” skills. Most everyone in our community will witness situations where help is needed, and what a bystander does may make all the difference. Key bystander intervention skills include recognizing different types of situations where help might be needed, noticing precursors to harmful situations, building capacity for overcoming barriers to intervening, and having a range of strategies for intervening effectively.

The vast majority of our community wants to help, but people need to build skills for overcoming barriers to helping and intervening effectively. The core strategies we teach and practice include:

- Options for in the moment and after the fact
- Using distraction to interrupt a situation
- Using stealth strategies to avoid drawing attention to the situation or yourself
- Directly intervening
- Asking a friend to help
- Getting someone in authority to help

The OIEC works collaboratively with a variety of university departments to provide a wide array of educational opportunities for students, faculty and staff beyond mandatory education and training. Our aim is to provide education about these issues across all divisions of the institution and for all students throughout their college career in order to create a safe and inclusive campus climate.

For more information on education and preventing programming for students, faculty or staff:

- Contact our Director of Education and Prevention/Deputy Title IX Coordinator, Teresa Wroe: teresa.wroe@colorado.edu (303) 735-7518
- Visit our website: <http://www.colorado.edu/institutionalequity/training-and-education>

L. Resources

Confidential Resources

On Campus:

Office of Victim Assistance (OVA)

Center for Community, Room S440

Phone: (303) 492-8855 (24-hour phone service)

Website: <http://cuvictimassistance.com/>

Provides services that may be used by victims or others who experience traumatic, disturbing or disruptive life events. All contacts are confidential.

Counseling and Psychiatric Services (CAPS)

Center for Community, Room S440

Phone: (303) 492-6766

Website: <http://www.colorado.edu/counseling/>

Offers counseling programs and activities for all members of the university. All contacts are confidential.

Faculty and Staff Assistance Program (FSAP)

Administrative Research Center (ARC) East Campus
3100 Marine Street, 3rd Floor, Room A353

Phone: (303)-492-3020

Website: <http://hr.colorado.edu/fsap/>

Offers counseling programs and activities for faculty and staff of the university. All contacts are confidential.

Ombuds Office*

Center for Community, Room N440

Phone: (303) 492-5077

Website: <http://www.colorado.edu/ombuds/>

Assists students, faculty, and staff in informally and impartially resolving complaints or disputes with other individuals, offices, or departments within the university. Does not maintain records and is independent of any department or office. All contacts are confidential.

Faculty Ombuds*

Administrative Research Center (ARC) East Campus
3100 Marine Street, Room 25

Phone: (303) 492-1574

Website: <http://www.colorado.edu/ombuds/faculty>

Student Legal Services (SLS)

University Memorial Center, Room 311

Phone: (303) 492-6813

Website: www.colorado.edu/studentaffairs/legal

Provides legal counseling to students on matters such as traffic violations, criminal charges, and employment problems. Does not provide advice on internal university issues.

Off Campus

Moving to End Sexual Assault (MESA)

Phone: (303) 443-7300 (24-hour hotline)

Website:

<http://www.movingtoendsexualassault.org/>

Safe House Progressive Alliance for Non-Violence (SPAN)

Phone: (303) 444-2424 (24-hour hotline and shelter)

Website: <http://www.safehousealliance.org/>

Safe House Protection Order Assistance

Phone: (303) 449-8623

Website: <http://www.safehousealliance.org/get-support/legal-advocacy/#clinic>

Safe Shelter of St. Vrain Valley

Phone: (303) 772-4422 (24-hour hotline and shelter)

Website: <http://www.safeshelterofstvrain.org/>

Counseling Services

On Campus

Counseling and Psychiatric Services (CAPS)

Center for Community, Room S440

Phone: (303) 492-6766

Website: <http://www.colorado.edu/counseling/>

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3100 Marine Street, 3rd Floor, Room A353

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Office of Victim Assistance (OVA)

Center for Community, Room S440

Phone: (303) 492-8855 (24-hour phone service)

Website: <http://cuvictimassistance.com/>

Provides services that may be used by victims or others who experience traumatic, disturbing or disruptive life events. All contacts are confidential.

Off Campus

Boulder Men's Center

Phone: (303) 444-8064

Counseling for men who have been abusive.

Mental Health Partners, Boulder and Broomfield County

Phone: (303) 443-8500 (for intake)

(303) 447-1665 (24/7 Emergency psychiatric services hotline)

Website: <http://www.mhpcolorado.org/>

Disability

ADA

Phone: (303) 492-9725

Website:

<http://www.colorado.edu/institutionalequity/ada>

Disability Services

Center for Community, Room N200

Phone: (303) 492-8671

Website: <https://disabilityservices.colorado.edu/>

Employee Services

On Campus

ADA Coordinator

Phone: (303) 492-9725

Website:

<http://www.colorado.edu/institutionalequity/ada>

Faculty Relations

Phone: (303) 492-0447

Website: <https://facultyaffairs.colorado.edu/faculty-relations>

Employee Relations

Administrative Research Center (ARC) East Campus
3100 Marine Street, 3rd Floor

Phone: (303) 492-0956

Website: <https://hr.colorado.edu/lr>

Faculty Ombuds*

Administrative Research Center (ARC) East Campus
3100 Marine Street, Room 25

Phone: (303) 492-1574

Website: <http://www.colorado.edu/ombuds/faculty>

Faculty and Staff Assistance Program (FSAP)

Administrative Research Center (ARC) East Campus
3100 Marine Street, 3rd Floor, Room A353

Phone: (303)-492-3020

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Office of Victim Assistance (OVA)

Center for Community, Room S440

Phone: (303) 492-8855 (24-hour phone service)

Website: <http://cuvictimassistance.com/>

Provides services that may be used by victims or others who experience traumatic, disturbing or disruptive life events. All contacts are confidential.

Off Campus

Colorado State Employee Assistance Program (C-SEAP)

Phone: (303) 866-4314

Website: <https://www.colorado.gov/c-seap>

Law Enforcement/Prosecution

On Campus

University of Colorado Police Department

1050 Regent Drive

Phone: (303) 492-6666 (non-emergencies, for emergencies dial 911)

Website: www.colorado.edu/police

Maintains a full-service police department. Officers, who are state certified, respond to reports of criminal acts and emergencies both on and off campus.

Off Campus

Boulder Police Department

1805 33rd St.

Boulder, CO 80301

Phone: (303) 441-3333 (non-emergencies, for emergencies dial 911)

Website: <https://bouldercolorado.gov/police>

Boulder Sheriff

5600 Flatiron Parkway

Boulder, CO 80301

Phone: (303) 441-3600 (non-emergencies, for emergencies dial 911)

Website:

<http://www.bouldercounty.org/dept/sheriff/>

District Attorney

Justice Center

1777 Sixth Street

Boulder, CO 80302

Phone: (303) 441-3700

Website:

<http://www.bouldercounty.org/dept/districtattorney>

Legal Services

Student Legal Services (SLS)

University Memorial Center, Room 311

Phone: (303) 492-6813

Website: www.colorado.edu/studentaffairs/legal

Provides legal counseling to students on matters such as traffic violations, criminal charges, and employment problems. Does not provide advice on internal university issues.

Medical and Health Services

On Campus

Wardenburg Health Services

1900 Wardenburg Drive

Boulder, CO 80309

Phone: (303) 492-5101

Website: <http://www.colorado.edu/health/>

Health Promotion

University Memorial Center, Room 411

Phone: (303) 492-2937

Website:

<http://www.colorado.edu/health/promotion>

Off Campus

Boulder Community Health Hospital

4747 Arapahoe Avenue

Boulder, CO 80303

Phone: (303) 415-7000

Website: <http://www.bch.org/locations--directions/foothills-hospital.aspx>

Boulder Community Health, Sexual Assault Nurse Examination or "SANE"
4747 Arapahoe Avenue
Boulder, CO 80303
Phone: (303) 415-8818
Website: [https://www.bch.org/emergency--trauma-services/sexual-assault-nurse-examiner-\(sane\)-program.aspx](https://www.bch.org/emergency--trauma-services/sexual-assault-nurse-examiner-(sane)-program.aspx)

Sexual Assault Nurse Examination Programs

Boulder Community Health, Sexual Assault Nurse Examination or "SANE"
4747 Arapahoe Avenue
Boulder, CO 80303
Phone: (303) 415-8818
Website: [https://www.bch.org/emergency--trauma-services/sexual-assault-nurse-examiner-\(sane\)-program.aspx](https://www.bch.org/emergency--trauma-services/sexual-assault-nurse-examiner-(sane)-program.aspx)

State and Federal Civil Rights Compliance Offices (Report Complaints of Harassment or Discrimination)

Colorado Civil Rights Division
Phone: (303) 894-2997
Website:
<http://cdn.colorado.gov/cs/Satellite/DORA-DCR/CBON/DORA/1251629362218>

U. S. Department of Education, Office for Civil Rights
Phone: (303) 844-2024
Website: <http://www2.ed.gov/about/offices/list/ocr/>

U.S. Department of Justice
Phone: (202) 514-2000
Website: <http://www.justice.gov/>

United States Equal Employment Opportunity Commission
Phone: (303) 866-1300
Website: www.eeoc.gov

Student Services on Campus

Counseling and Psychological Services (CAPS)
Center for Community, Room S440
Phone: (303) 492-6766
Website: <http://www.colorado.edu/counseling/>
Offers counseling programs and activities for all members of the university. All contacts are confidential.

Cultural Unity & Engagement Center
Center for Community, Room N320
Phone: (303) 492-5667
Website: www.colorado.edu/studentaffairs/cma
Provides counseling, outreach, and diversity education training.

Gender and Sexuality Center
Center for Community, Room N450
Phone: (303) 492-1377
Website: <http://www.colorado.edu/gsc/>
Provides advocacy, education, and support to the lesbian, gay, bisexual, queer, questioning, intersex and ally communities on campus.

Housing and Dining
Phone: (303) 492-6871
Website: <https://housing.colorado.edu/>

International Student and Scholar Services (ISSS)
Center for Community, Room S355
Phone: (303) 492-8057
Website: www.colorado.edu/oie/iss

Office of Student Conduct and Conflict Resolution
Center for Community, Room 430
Phone: (303) 492-5550
Website:
<http://www.colorado.edu/studentaffairs/studentconduct/>

Office of Victim Assistance (OVA)
Center for Community, Room S440
Phone: (303) 492-8855 (24-hour phone service)
Website: <http://cuvictimassistance.com/>
Provides services that may be used by victims or others who experience traumatic, disturbing or disruptive life events. All contacts are confidential.

Ombuds Office*

Center for Community, Room N440

Phone: (303) 492-5077

Website: <http://www.colorado.edu/ombuds/>

Assists students, faculty, and staff in informally and impartially resolving complaints or disputes with other individuals, offices, or departments within the university. Does not maintain records and is independent of any department or office. All contacts are confidential.

Student Legal Services (SLS)

University Memorial Center, Room 311

Phone: (303) 492-6813

Website: www.colorado.edu/studentaffairs/legal

Provides legal counseling to students on matters such as traffic violations, criminal charges, and employment problems. Does not provide advice on internal university issues.

Women's Resource Center

University Memorial Center, Room 416

Phone: (303) 492-5713

Website:

www.colorado.edu/WomensResourceCenter

Provides information on services, organizations, and events through a variety of resources in a women-focused environment.

Veterans

Boulder Vet Center

4999 Pearl East Circle, Suite 106

Boulder, CO 80301

Phone: (303) 440-7306

Website:

<http://www.va.gov/directory/guide/facility.asp?ID=505>

CU Veteran Services

Center for Community, Room C482

Phone: (303) 492-7322

Website: <http://www.colorado.edu/veterans/>

Victim Advocacy

On Campus:

Office of Victim Assistance (OVA)

Center for Community, Room S440

Phone: (303) 492-8855 (24-hour phone service)

Website: <http://cuvictimassistance.com/>

Provides services that may be used by victims or others who experience traumatic, disturbing or disruptive life events. All contacts are confidential.

Off Campus

Moving to End Sexual Assault (MESA)

Phone: (303) 443-7300 (24-hour hotline)

Website:

<http://www.movingtoendsexualassault.org/>

Safe House Progressive Alliance for Non-Violence (SPAN)

Phone: (303) 444-2424 (24-hour hotline and shelter)

Website: <http://www.safehousealliance.org/>

Safe House Protection Order Assistance

Phone: (303) 449-8623

Website: <http://www.safehousealliance.org/get-support/legal-advocacy/#clinic>

Safe Shelter of St. Vrain Valley

Phone: (303) 772-4422 (24-hour hotline and shelter)

Website: <http://www.safeshelterofstvrain.org/>

Visa and Immigration

International Student and Scholar Services (ISSS)

Center for Community, Room S355

Phone: (303) 492-8057

Website: www.colorado.edu/oie/iss

**The Ombuds offices are confidential and not "responsible employees" for mandatory reporting purposes pursuant to University of Colorado-Boulder applicable policies but do not currently have a statutory privilege in Colorado.*

M. Definitions

Advisor: An individual designated by the complainant or respondent to be present at interviews. Advisors can include attorneys.

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

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

- **Force** is the use of physical violence or imposing on someone physically to gain sexual access.
- **Threats** exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual contact they would not otherwise have given. For example, threats to kill someone, themselves, or to harm someone one cares for constitute threats.
- **Intimidation** occurs when someone uses physical presence to menace another, although no physical contact occurs, or where knowledge of prior violent behavior by an assailant, coupled with menacing behavior, places someone in fear as an implied threat.
- **Coercion** is unreasonable pressure for sexual activity. Coercion differs from seduction by the repetition of the coercive activity beyond what is reasonable, the degree of pressure applied, and other factors such as isolation. When someone makes it clear that they do not want sex, do not want to go past a certain point, or want it to stop, continued pressure beyond that point can be coercive. It also includes “grooming” meaning an attempt to control victims through a systematic process which takes advantage of an individual’s vulnerabilities using a combination of strategies to gain the individual’s trust, lower inhibitions, and gain cooperation and “consent.”

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

- A person who does not want to consent to sex is not required to resist.
- Consent to some forms of sexual activity does not automatically imply consent to other forms of sexual activity.

- Silence, previous sexual relationships, or the existence of a current relationship do not imply consent.
- Consent cannot be implied by attire or inferred from the giving or acceptance of gifts, money or other items.
- Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly.
- Withdrawal of consent can be done in numerous ways and need not be a verbal withdrawal of consent.
- A respondent’s intoxication resulting from intentional use of alcohol/drugs will not function as a defense to engaging in sexual activity without an individual’s consent.
- In order to give effective consent, the person giving consent must be of legal age under Colorado law for the purposes of determining whether there was a sexual assault.

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

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

Complainant: A person who is subjected to alleged prohibited conduct under these policies.

Consent: See “Affirmative Consent”

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

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

Hostile Environment: An environment that a reasonable person would find intimidating, hostile or offensive. The determination of whether an environment is “hostile” must be based on all of the circumstances. These circumstances could include

the frequency of the conduct, its severity, and whether it is threatening or humiliating. Simple teasing, offhand comments and isolated incidents (unless extremely serious) will not amount to hostile environment harassment.

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

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

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

Participants: Complainant, Respondent and any witnesses or other third parties participating in an OIEC resolution process.

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

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

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

Respondent: means a person who is accused of alleged prohibited conduct.

Responsible Employee: means any employee who: (1) has the authority to hire, promote, discipline, evaluate, grade, formally advise or direct faculty, staff, or students; (2) has the authority to take action to redress sexual misconduct as defined herein; and/or (3) has been given the duty of reporting

incidents of sexual violence or any other misconduct by students to the Title IX Coordinator. This definition does not include any medical, mental health, counseling, or ombuds office personnel, in addition to any other offices covered by a statutory privilege or designated in campus procedures as not subject to mandatory reporting to the University.

Sanction: Refers to either a sanction imposed by the Executive Director of OIEC or designee for students or discipline as imposed by the appointing/disciplinary authority for employees.

Sexual Misconduct: means the following unwelcome conduct based upon an individual's sex or gender - sexual assault-non-consensual sexual intercourse, sexual assault - non-consensual sexual contact, sexual exploitation, sexual harassment, intimate partner abuse, gender/sex-based stalking, and any related retaliation.

Standing Review Committee: A committee made up of trained employees who review each investigative report before it is final during a formal investigation.

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

University: The University of Colorado Boulder.

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

University Property: University owned or controlled property.

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

Appendix 1: Selected Colorado Criminal Definitions

In Colorado, the criminal definitions of sexual assault, domestic violence (which also includes dating violence) and stalking are distinctly different from some of the definitions outlined in university policy.

Below are the relevant sections of the Colorado Criminal Code that demonstrate these differences.

Definition of Consent – Colorado Revised Statute § 18-3-401

(1.5) “**Consent**” for sexual activity means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. A current or previous relationship shall not be sufficient to constitute consent. Submission under the influence of fear shall not constitute consent.

Definition of Sexual Assault – Colorado Revised Statute § 18-3-402

- (1) Any actor who knowingly inflicts sexual intrusion or sexual penetration on a victim commits **sexual assault** if:
- (a) The actor causes submission of the victim by means of sufficient consequences reasonably calculated to cause submission against the victim’s will; or
 - (b) The actor knows that the victim is incapable of appraising the nature of the victim’s conduct; or
 - (c) The actor knows that the victim submits erroneously, believing the actor to be the victim’s spouse; or
 - (d) At the time of the commission of the act, the victim is less than fifteen years of age and the actor is at least four years older than the victim and is not the spouse of the victim; or
 - (e) At the time of the commission of the act, the victim is at least fifteen years of age but less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim; or
 - (f) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, unless incident to a lawful search; or
 - (g) The actor, while purporting to offer a medical service, engages in treatment or examination of a victim for other than a bona fide medical purpose or in a manner substantially inconsistent with reasonable medical practices; or
 - (h) The victim is physically helpless and the actor knows the victim is physically helpless and the victim has not consented.

Definition of Unlawful Sexual Contact – Colorado Revised Statute § 18-3-404

- (1) Any actor who knowingly subjects a victim to any sexual contact commits unlawful sexual contact if:
- (a) The actor knows that the victim does not consent; or
 - (b) The actor knows that the victim is incapable of appraising the nature of the victim’s conduct; or
 - (c) The victim is physically helpless and the actor knows that the victim is physically helpless and the victim has not consented; or
 - (d) The actor has substantially impaired the victim’s power to appraise or control the victim’s conduct by employing, without the victim’s consent, any drug, intoxicant, or other means for the purpose of causing submission; or
 - (e) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority, unless incident to a lawful search, to coerce the victim to submit; or
 - (f) The actor engages in treatment or examination of a victim for other than bona fide medical purposes or in a manner substantially inconsistent with reasonable medical practices.
- (1.5) Any person who knowingly, with or without sexual contact, induces or coerces a child by any of the means set forth in section 18-3-402 to expose intimate parts or to engage in any sexual contact, intrusion, or penetration with another person, for the purpose of the actor’s own sexual gratification, commits unlawful sexual contact. For the purposes of this subsection (1.5), the term “child” means any person under the age of eighteen years.

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

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

Domestic violence also includes any other crime against a person, or against property, including an

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

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

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

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

- (a) Makes a credible threat to another person and, in connection with the threat, repeatedly follows, approaches, contacts, or places under surveillance that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship; or
- (b) Makes a credible threat to another person and, in connection with the threat, repeatedly makes any form of communication with that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship, regardless of whether a conversation ensues; or
- (c) Repeatedly follows, approaches, contacts, places under surveillance, or makes any form of communication with another person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship in a manner that would cause a reasonable person to suffer serious emotional distress and does cause that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship to suffer serious emotional distress. For purposes of this paragraph (c), a victim need not show that he or she received professional treatment or counseling to show that he or she suffered serious emotional distress.