



Institutional Equity and Compliance

UNIVERSITY OF COLORADO **BOULDER**

# **OIEC Resolution Procedures 2020-2021**

**Effective: August 14, 2020**

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.

The information contained within the OIEC Resolution Procedures is intended to provide general information to members of the university community and is not intended to, nor does it, create an express or implied 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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**Important Note:** *As part of preventative measures implemented by the University of Colorado Boulder during the COVID-19 pandemic, the OIEC may conduct operations remotely during portions of the 2020-2021 academic year. During remote operations, the OIEC can still be contacted via phone, email, or U.S. mail. Meetings will be conducted via phone or videoconference. Please refer to the OIEC website and those of other applicable university offices to get the latest information about remote staffing for the 2020-2021 academic year.*

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[OIEC website](#)

# Office of Institutional Equity and Compliance

## I. 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 affiliate – into one office. Utilizing a comprehensive and integrated structure with dedicated staff for accommodations, case resolutions, education, and supportive and safety measures, the OIEC’s mission is to create and foster a safe, inclusive, and accessible environment and to be a national leader in the prevention of and response to protected-class discrimination and harassment and sexual misconduct. The OIEC will continuously refine its policies, procedures and practices to maintain legal compliance while utilizing evidence-based and innovative models of assessment, prevention and response. The OIEC implements and enforces the University of Colorado Sexual Misconduct, Intimate Partner Violence and Stalking Policy; the University of Colorado Boulder Discrimination and Harassment Policy; and the University of Colorado Conflict of Interest in Cases of Amorous Relationships Policy (Applicable Policies).<sup>1</sup>

The OIEC is committed to preventing discrimination or harassment based on race, color, national origin, pregnancy, sex, age, disability, creed, religion, sexual orientation, gender identity, gender expression, veteran status, political affiliation, or political philosophy. The OIEC is also committed to preventing any form of related retaliation as prohibited by University policies and state and federal laws.

The OIEC utilizes fair and unbiased processes and treats all individuals who seek our assistance with respect and dignity.

## II. Purpose and Scope

### A. Legal Compliance

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

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

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<sup>1</sup> Applicable Policies: Conflict of Interest in Cases of Amorous Relationships (APS) 5015); Sexual Misconduct, Intimate Partner Violence, and Stalking (APS 5014); CU Boulder Discrimination and Harassment Policy.



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- Title VI
- Title VII
  
- Title IX of the Education Amendments of 1972
- Rehabilitation Act (1973) (Sections 503 and 504)
- Vietnam Era Veterans Readjustment Assistance Act (1974)
- Family Educational Rights and Privacy Act of 1974 (as amended by the Higher Education Amendments of 1998)
- 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
- Colorado Anti-Discrimination Act (1979)
- Colorado Revised Statutes § 24-34-402, et. seq.
- Colorado Revised Statutes § 23-5-146 and §23-5-147; and
- Article 8 Laws of the Regents

### **B. Policy Administration**

The Resolution Procedures are also intended to be the formal resolution procedures for the following Applicable Policies:



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

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

2. **[Discrimination and Harassment Policy](#)**<sup>3</sup>

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

3. **[Conflict of Interest in Cases of Amorous Relationships Policy](#)**<sup>4</sup>

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

### III. General Jurisdiction

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

1. The university has authority to conduct a preliminary inquiry to determine whether the alleged conduct occurred in the context of a University program, activity, or employment.
2. Actions taken under the Resolution Procedures are separate and apart from any law enforcement or other court process or proceeding, such as a civil lawsuit or criminal prosecution, that may relate to the same underlying factual incident(s). The OIEC's jurisdiction does not depend on whether criminal charges are filed. Formal Grievance

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

<sup>3</sup> University of Colorado Boulder Discrimination and Harassment Policy, online at <https://www.colorado.edu/policies/discrimination-harassment-policy>

<sup>4</sup> University of Colorado Conflict of Interest in Cases of Amorous Relationships Policy (APS 5015), online at <https://www.cu.edu/oie/aps/5015>



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Processes, Formal Adjudication Processes, or other case resolutions conducted by the OIEC are not postponed while criminal or civil proceedings are pending unless there are extenuating circumstances, as determined by the OIEC. Dismissal of criminal charges or acquittal in a criminal case does not prevent the OIEC from resolving an incident.

3. There is no time limitation for reporting a concern to the OIEC or for the OIEC to address matters described within this document. The OIEC's response to the report will be governed by the current Resolution Procedures and Applicable Policies.
4. After proper notice as provided for in this document, the failure of an individual to appear or respond to the OIEC does not prevent the OIEC from proceeding with or completing the applicable process.
5. For employees, any matters falling outside the scope of the Applicable Policies may be addressed by the appointing/disciplinary authority. For students, [Student Conduct and Conflict Resolution](#) (SCCR) has jurisdiction for all other student conduct matters not listed herein. In the event that there are multiple potential charges involving the Applicable Policies or the Student Code of Conduct, the OIEC shall have the discretion to determine the most appropriate way to proceed in accordance with university policies and applicable laws. Options include concurrent investigations, joint investigations, deferring to the findings of one office or using the investigation and findings of one office as the basis of further investigation by the other.
6. When an alleged violation involves more than one University of Colorado campus, the complaint shall be resolved by the campus with the disciplinary authority over the respondent. The campus responsible for the resolution process may request the involvement or cooperation of any other affected campus and should advise appropriate officials of the affected campus of the progress and results of the resolution process.
7. University employees and students sometimes work or study at the worksite or program of another organization affiliated with the university. When a violation is alleged by or against university employees or students in those circumstances, the complaint shall be addressed as provided in the affiliation agreement between the university and the other entity. In the absence of an affiliation agreement or a provision addressing this issue, the university may, at its discretion, choose to 1) conduct its own resolution process; 2) conduct a joint resolution process with the affiliated entity; 3) defer to the findings of a resolution process by the affiliated entity where the university has reviewed the resolution process and is satisfied that it was fairly conducted; 4) use the resolution process and findings of the affiliated entity as a basis for further investigation or adjudication; or 5) take other action as determined appropriate by the Associate Vice Chancellor of the OIEC or designee.
8. 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 supportive, safety, policy compliance and/or educational measures



as determined by the Associate Vice Chancellor of the OIEC or designee if the alleged conduct adversely affects equal access to employment or education for any current CU Boulder community members.

## IV. Reporting Options

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

### A. University/Office of Institutional Equity and Compliance

To notify the university of any of the prohibited conduct listed in Sections VII, VIII, and IX, to request support measures related to such conduct, or to initiate an OIEC resolution process, please contact the OIEC directly.

- Phone: (303) 492-2127
- Email: [cureport@colorado.edu](mailto:cureport@colorado.edu)

Contact us directly:

- Valerie Simons  
Associate Vice Chancellor and Title IX Coordinator  
[valerie.simons@colorado.edu](mailto:valerie.simons@colorado.edu)  
(303) 492-5359
- Llen Pomeroy  
Assistant Vice Chancellor and Deputy Title IX Coordinator  
[lleen.pomeroy@colorado.edu](mailto:lleen.pomeroy@colorado.edu)  
303-492-0277
- For a full list of reporting options, please refer to the [OIEC's Reporting & Resolutions website](#).

#### Amnesty provisions

To encourage reporting and participation, personal consumption of alcohol or other drugs by the complainant, the respondent, or witnesses will not be subject to disciplinary action.<sup>5</sup> Similarly, minor infractions related to failure to comply with public health and safety provisions in the Student Code of Conduct will not be subject to disciplinary action. The goal of these provisions is to remove potential barriers to reporting and/or participation. However, final jurisdiction and decision-making regarding any conduct not covered by the Applicable Policies will be made by the Director of

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<sup>5</sup> For the “amnesty provision” specific to the Sexual Misconduct, Intimate Partner Violence and Stalking Policy, please see Section V(D)(3) of that policy.



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Student Conduct and Conflict Resolution (for students) or the appointing/disciplinary authority (for employees).

Even if a complainant chooses not to report formally and/or chooses not to participate in a resolution process (through OIEC or law enforcement), the complainant can contact the OIEC for information and assistance accessing on- or off-campus supportive services as set forth in Section V and to access available supportive and safety measures as set forth in Section VII(C)(1) and Section VIII(C)(1).

### **B. Law Enforcement**

Complainants 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 complainants alleging misconduct that is also a criminal offense.

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. See Section VI(D).

- **University Police/On Campus**  
(303) 492-6666 (non-emergencies)  
[CU Boulder PD General Information website](#)  
[CU Boulder PD Anonymous Reporting website](#)

Reporting to the University of Colorado Boulder Police Department (CUPD) will constitute notice to the university/OIEC and may result in an OIEC resolution process subject to applicable state law.

- **City of Boulder Police/Off Campus**  
(303) 441-3333 (non-emergencies)  
[Boulder PD General Information website](#)

#### *Preservation of evidence*

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 complainant wants to report an incident(s), it is important to preserve any evidence of the sexual assault (or other misconduct) so that if a complainant 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, Grindr, etc.), correspondence via other messaging applications (Whatsapp, Kik, GroupMe, WeChat etc.), Buff OneCard access records, video surveillance<sup>6</sup>, and 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 to seven days of the sexual assault. It is best if an individual 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 program can be found on the [Boulder Community Health SANE webpage](#).

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 described above does not preclude an investigation from taking place.

### **C. Confidential Reporting Options**

If a complainant is not sure about initiating a university resolution process or making a police report, the complainant can receive free, confidential information and support by calling the Office of Victim Assistance (OVA) at the University of Colorado Boulder. All employees in OVA are advocates and licensed counselors.

- **Office of Victim Assistance**  
Center for Community (C4C), Suite N450  
(303) 492-8855  
[assist@colorado.edu](mailto:assist@colorado.edu)  
[OVA website](#)
- Other confidential resources are listed in Section XI.

### **V. Support and Assistance including Protective Orders**

When an individual notifies the OIEC (either directly or through a responsible employee,

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<sup>6</sup> Please note that the university's ability to collect video surveillance from university cameras and/or Buff OneCard records may be limited due to the timeframe in which the allegation is reported to the OIEC. Most university video footage is retained for 30 days. However, the OIEC may be unable to obtain video footage within that time frame due to hardware or software issues related to the recording and retention of such video. Promptly notifying the OIEC of preservation requests increases the likelihood of such preservation. If you do not want to report an allegation, but you believe there is relevant video footage that you would like the university to preserve, please contact the OIEC to discuss this option.



advocate, third party, or other) that they have experienced conduct prohibited by the Applicable Policies, the OIEC will provide referral information as needed (whether or not there is a Formal Complaint or participation in a Formal Grievance Process, Formal Adjudication Process or other resolution process) in accessing on- and off- campus services, including but not limited to counseling, academic assistance, housing, health services, mental health services, victim advocacy, legal assistance, visa and immigration services, assessments for no contact orders, and/or forensic sexual assault nurse examiner (SANE) exams.

For a written summary of options and resources available to any person reporting sexual misconduct, please refer to [this PDF document on the OIEC website](#).

### **A. Orders of Protection, Restraining Orders, or Similar Lawful Orders**

Complainants 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 in the [State of Colorado County Court Restraining Order Brochure](#).

The Office of Victim Assistance (OVA) can assist individuals free of charge with the process of obtaining a restraining order. CU Student Legal Services (SLS) may also be able to provide resources. 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 Associate Vice Chancellor of the OIEC or designee.

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

*\*Privacy and confidentiality have distinct meanings.\**

### **A. Privacy**

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

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

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



The Family Educational Rights and Privacy Act of 1974 (FERPA), as amended by the Higher Education Amendments of 1998, governs access to records, and information from within those records, pertaining to students that are maintained by the university including OIEC. Pursuant to FERPA, the university may disclose records and information pertaining to a student with the student's written consent.

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

Even in absence of written consent or a request otherwise from a student, FERPA authorizes the university to provide records and information pertaining to students to parent(s) who provide proof that their child student is a dependent as defined under the Internal Revenue Code. A copy of the last federal income tax return listing the student as a dependent may serve as proof of dependency and allow the university to provide parent(s) with access to such records maintained by OIEC, to the extent determined appropriate by the Associate Vice Chancellor of the OIEC or designee. In addition, FERPA authorizes the university to disclose to parent(s) if a student under 21 years of age is found responsible through Student Conduct and Conflict Resolution for a violation involving use or possession of alcohol or other drugs.

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

Under FERPA, students have a right to review and inspect records that directly pertain to them. Students who would like to review such records maintained by the OIEC must complete and submit the OIEC's records inspection form. The OIEC will comply with a properly submitted student request within a reasonable time period not to exceed 45 days, as provided by FERPA, unless otherwise authorized by law.

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

The university recognizes that third parties may have a legitimate interest in knowing whether a university employee or student has been found responsible for engaging in a violation of university policies. In the event that, after a Formal Grievance Process and any rights of appeal have been completed, an employee or student has been found responsible for engaging in a violation of the Sexual Misconduct, Intimate Partner Violence, and Stalking policy, the university may confirm upon inquiry from a potential employer, licensing or credentialing agency, or institution that the employee or student has been found responsible for violating the policy, subject to applicable state and federal laws (e.g. FERPA) regarding such disclosures.



Similarly, CU Boulder recognizes that third parties may have a legitimate interest in knowing whether a CU Boulder employee has been found responsible for engaging in protected-class discrimination or harassment, or a related violation. In the event that, after a Formal Adjudication Process including any rights of appeal has been completed, an employee has been found responsible for engaging in protected-class discrimination or harassment, or related violations, CU Boulder may confirm upon inquiry from a potential employer or licensing or credentialing agency that the employee has been found responsible for violation of the University of Colorado Boulder Discrimination and Harassment Policy. CU Boulder may also confirm that an investigation under the policy is pending against an employee or that an employee resigned employment while an investigation under the policy was pending.

### Colorado Open Records Act

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

## **B. Confidentiality**

“Confidential” means that information shared by an individual with designated campus or community professionals cannot be revealed to any other person without express permission of the individual, or as otherwise permitted or required by law. Those campus and community professionals who have the ability to maintain confidential relationships include health care providers, mental health professionals, the sexual assault victim advocate, attorneys, and ordained clergy, all of whom normally have privileged confidentiality that is recognized by Colorado state law. These individuals are prohibited from breaking confidentiality unless (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 XI so that complainants and respondents can provide information confidentially and still receive supportive or safety measures as necessary through the Associate Vice Chancellor of the OIEC 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.

The university will keep confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality will not impair the university’s ability to provide the supportive measures. Supportive measures should be individualized and appropriate based on the information gathered by the Title IX Coordinator or designee.



### **C. 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 resolution process be pursued, that no disciplinary action be taken, or that the allegation not be reported to law enforcement, the responsible employee remains required to report all relevant information to the Associate Vice Chancellor 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.

A responsible employee does not satisfy the reporting obligation by reporting to a supervisor or university personnel other than the Associate Vice Chancellor of the OIEC or designee.

### **D. Determination Regarding Obligation to Provide a Safe and Non-Discriminatory Environment and Consideration of “Override Factors”**

If an individual has disclosed an incident of misconduct, but wishes to maintain privacy or requests that no investigation or grievance process be conducted or disciplinary action taken, the Associate Vice Chancellor of the OIEC or designee will discuss the availability of supportive measures, describe the process for filing a Formal Complaint, discuss resolution options, explain that the university prohibits retaliation, and explain the steps the university will take to prevent retaliation if the individual participates in a resolution process and that the university will take responsive action if it occurs.

If, having been informed of the university’s prohibition of retaliation and its obligations to prevent and respond to retaliation, the individual would still like to maintain privacy or requests that no investigation or grievance process be conducted or no disciplinary action be taken, the Associate Vice Chancellor of the OIEC or designee will weigh that request against the university’s obligation to provide a safe, non-discriminatory environment for all students, faculty, and staff.

In making that determination, the Associate Vice Chancellor of the OIEC or designee will consider a range of potentially overriding factors that would cause the campus to commence an investigation or grievance process, or take disciplinary action after an investigation of misconduct occurred, including the following:

- The risk that the respondent (the person accused of the misconduct) will commit additional acts of misconduct or other violence;
- The seriousness of the alleged misconduct, including whether the respondent threatened further misconduct or other violence against the complainant or others, whether the alleged misconduct was facilitated by the incapacitation of the complainant, or whether the respondent has been found responsible in legal or other disciplinary proceedings for acts of misconduct or other violence;



- Whether the alleged misconduct was perpetrated with a weapon;
- Whether the complainant is a minor;
- Whether the university possesses means other than the complainant's testimony to obtain relevant evidence of the alleged misconduct (e.g., security cameras or personnel, physical evidence); or
- Whether the alleged misconduct reveals a pattern of perpetration at a given location or by a particular group.

The decision to file a Formal Complaint and initiate a Formal Grievance Process pursuant to the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy or to initiate a Formal Adjudication Process pursuant to the Discrimination and Harassment Policy or Conflict of Interest in Cases of Amorous Relationships Policy by the Associate Vice Chancellor or designee will be conducted on a case-by-case basis after an individualized and thoughtful review.

Nothing in this section limits the Associate Vice Chancellor of the OIEC or designee from responding to the alleged conduct in a manner other than through a Formal Grievance Process or Formal Adjudication Process that the Associate Vice Chancellor or designee may determine is appropriate under the circumstances. Other options include, but are not limited to, providing supportive measures, conducting a Policy Compliance Meeting, referral to other offices, providing targeted or broad-based educational programming or training, or consulting with other university officials as appropriate, including, but not limited, to the CUPD, Student Support and Case Management, or the Behavioral Intervention Team. Additionally, nothing in the override analysis limits the ability of a disciplinary authority to initiate or impose disciplinary action as necessary.

If the university honors the individual's request for privacy, the university's ability to meaningfully investigate the incident may be limited and disciplinary action may not be possible.

The Associate Vice Chancellor of the OIEC or designee may also determine that a report to the police may 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 a reasonable effort to notify potential complainants prior to reporting to law enforcement.

## **VII. Sexual Misconduct, Intimate Partner Violence, and Stalking Policy Resolution Procedures**

The university will be responsive to any report or complaint of "Prohibited Conduct" as listed below and is committed to providing prompt, fair, impartial, and equitable resolutions of any



complaint reported to the OIEC, whether reported directly by a complainant or by a third party, such as a mandatory reporter. The primary concern is the safety of all university community members. The university will take steps to prevent recurrence of any prohibited conduct and remedy discriminatory effects on the complainant and others, as appropriate.

## A. Prohibited Conduct

The [University of Colorado Sexual Misconduct, Intimate Partner Violence, and Stalking Policy](#) prohibits “**Sexual Misconduct**,” meaning both conduct on the basis of sex specifically prohibited by Title IX as well as conduct that falls outside of Title IX’s jurisdiction. Specifically, the policy prohibits sexual assault, dating violence, domestic violence, Title IX stalking, stalking, sexual exploitation, Title IX hostile environment, hostile environment, Title IX quid pro quo sexual harassment, and quid pro quo sexual harassment. The policy also prohibits retaliation and other related violations. See Section III, Section VIII, and Section IX of the policy for definitions.

## B. Policy Jurisdiction

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

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

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

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

### 1. Title IX Sexual Misconduct

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



## 2. Sexual Misconduct

- a. "Sexual Misconduct" is conduct that does not otherwise meet the jurisdictional standard or definition of Title IX Sexual Misconduct, but where the conduct occurred in the context of an employment or education program or activity of the university or where both the complainant and respondent are affiliated with the university.
- b. For all allegations of Sexual Misconduct not falling under VII(B)(2)(a), the Title IX Coordinator or designee will consider the degree of the university's control over the respondent, the relationship between the complainant and respondent, and assess the surrounding circumstances of the alleged conduct for the presence of the following factors:
  - Targets or causes harm to an individual connected with the university;
  - Threatens further sexual or other violence against the complainant or others and there is reasonable fear that such further conduct could target or cause harm to someone connected with the university;
  - Is of a violent nature or was frequent or severe;
  - Prior or current similar, misconduct complaints about the respondent, or if the respondent has a known history or records from a prior school indicating a history of sexual or other violence;
  - Use of, or threat to use, a weapon, access to or attempts to access weapons, or a history of bringing weapons to the university;
  - Multiple alleged complainants or respondents;
  - Facilitation by the incapacitation of the complainant through alcohol, drugs, disability, unconsciousness, or other means;
  - The complainant is a minor;
  - Whether the alleged sexual misconduct reveals a pattern of perpetration at a given location or by a particular group; or
  - Any other signs of predatory behavior.

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





## C. Supportive and Safety Measures

*Supportive measures* are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent that are designed to restore or preserve equal access to the university's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the university's educational or work environment, or to deter Sexual Misconduct. Supportive measures should be individualized and appropriate based on the information available to the Senior Director of Support and Safety Measures or designee.

Some *safety measures* involve restricting a respondent's access to university programs and activities and may not become available until after the completion of Formal Grievance Process, unless emergency removal action is determined appropriate. See Section VII(C)(2) below.

Whether supportive or safety measures are appropriate is determined after an individualized assessment by the Senior Director of Support and Safety Measures or designee and every effort should be made to avoid depriving any student of educational access. Supportive or safety measures may be kept in place, lifted, or modified as additional information is obtained, or may be extended permanently, as appropriate.

Complainants and respondents may request supportive or safety measures from the Senior Director of Support and Safety Measures or designee. Supportive measures should be provided to complainants or respondents whether or not the complainant files a Formal Complaint or engages in another resolution process. Witnesses or other participants in a Formal Grievance Process may also request supportive or safety measures. The Senior Director of Support and Safety Measures or designee will maintain oversight of these requests and the provision of any such measures.

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

### 1. Types of supportive and safety measures

Supportive and safety measures that may be available include, but are not limited to:

- academic services (extensions of time or other course-related adjustments, arranging for a party to re-take a course, excuse related absences, or withdraw from a class without penalty);
- accessing medical services;
- accessing counseling services;



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- employment modifications;
- campus safety escort services and increased security and monitoring of certain areas of campus;
- transportation/parking modifications;
- mutual or individual no-contact orders enforced by the university;
- discussing options and providing referral information for obtaining criminal or civil protection or restraining orders;
- residential relocations on or off campus;
- student refund (more information is available online at the [OIEC's Student Respondent Refund Information page](#).)
- emergency removals from program or activity (interim exclusion orders for parts of or entire campus, classes, etc., interim student suspension.) See Section VII(C)(2);
- administrative leave for employees in consultation with Chief Human Resource Officer or designee and appointing/disciplinary authority. See Section VII(C)(2); and/or
- temporary suspension of supervisory or evaluative authority for employees in consultation with Chief Human Resource Officer or designee and appointing/disciplinary authority. See Section VII(C)(2).

### 2. Emergency Removals

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

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

- Interim student suspension



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- Interim exclusion order for parts of or entire campus, classes, etc.<sup>7</sup>
- Administrative Leave (Decisions to place a non-student employee on administrative leave during the pendency of a Formal Grievance Process are made in consultation with Chief Human Resource Officer or designee and appointing/disciplinary authority.)
- Temporary suspension of supervisory or evaluative authority for employees in consultation with Chief Human Resource Officer or designee and appointing/disciplinary authority.

### a. Individualized Safety and Risk Analysis

The Senior Director of Support and Safety Measures or designee has the authority to conduct an individualized safety and risk analysis. The factors considered in the safety and risk analysis include:

- Seriousness of the alleged conduct;
- Location of the alleged incident(s);
- The risk that the respondent will commit additional acts of sexual or other violence;
- Whether the respondent threatened further sexual or other violence against the complainant or others;
- Whether there have been other misconduct complaints about the same respondent or if the respondent has a known history of arrests or records from a prior school indicating a history of sexual or other violence;
- The existence of multiple complainants and/or respondents;
- Whether the conduct was facilitated by the incapacitation of the complainant (through alcohol, drugs, disability, unconsciousness, or other means);
- Whether the alleged conduct was perpetrated with force, violence, or weapons;
- Whether the complainant is a minor;
- Whether the alleged conduct reveals a pattern of perpetration (by the alleged

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<sup>7</sup> See related campus policy, [University of Colorado Boulder Exclusions of Persons from University Property Procedures](#).



perpetrator, by a particular group or organization, around a particular recurring event or activity, and/or a particular location); and/or

- Whether any other aggravating circumstances or signs of predatory behavior are present.

#### **b. Opportunity to Challenge an Emergency Removal Decision**

In the case of an emergency removal, the respondent will be provided written notice of the alleged prohibited conduct and the opportunity to meet, if they choose, with the Senior Director of Support and Safety Measures or designee. The Senior Director of Support and Safety Measures or designee will ensure that the respondent is afforded prompt opportunity, not to exceed 10 days of the notice of emergency removal, to challenge the decision by being heard during a meeting or phone call or by submission of a written statement. This does not preclude additional meetings, at the discretion of the Senior Director, after the 10 days have passed to review the emergency removal.

It is the responsibility of the respondent to request the meeting or phone call. After providing the respondent with notice of the allegations and an opportunity to be heard, the Senior Director of Support and Safety Measures or designee may decide to lift or continue the emergency removal, potentially until the completion of a Formal Grievance Process or other resolution procedure. The Senior Director of Support and Safety Measures or designee may also determine whether any exceptions may be appropriate. The emergency removal may be re-evaluated during the course of a Formal Grievance Process or other resolution procedure if new information is presented that mitigates the threat to health and physical safety of students or employees.

#### **D. Resolution Processes**

The OIEC has authority to conduct a preliminary inquiry upon receiving a report or complaint alleging prohibited conduct. A preliminary inquiry may include, but is not limited to, evaluating whether the complaint implicates a policy enforced by the OIEC, whether the complaint and parties are within the jurisdiction of the OIEC, and whether the complaint presents a safety threat such that the OIEC must report the concern to law enforcement. See Section VI(D) for additional information regarding “override factors.” The OIEC shall then determine the most appropriate means for addressing the report or complaint. Options include but are not limited to:

- Formal Grievance Process. See Section VII(D)(1)
- Policy Compliance Remedies. See Section VII(D)(2)
- Preliminary Inquiry: Determining that the facts of the complaint or report, even if true, would not constitute a violation of the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy and closing the matter following a preliminary inquiry.



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- No limitation on existing authority: Referring the matter to an employee's disciplinary authority or supervisor. The Resolution Procedures do not limit the authority of a disciplinary authority to initiate or impose disciplinary action as necessary.
- Other referral: Determining a complaint does not fall within the jurisdiction of the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy and referring the complaint to appropriate office(s) on campus best situated to address the reported concerns.

### Resolution Process Officials

The OIEC's resolutions processes, including the Formal Grievance Process, are conducted by trained officials who do not have a conflict of interest or bias for or against the complainant or respondent, or against complainants or respondents generally. An official shall recuse from any role in the Formal Grievance Process, or other resolution process, in those instances where the official believes that their impartiality might reasonably be questioned by an independent, neutral observer due to the official's personal bias or prejudice against the complainant or respondent, or against complainants or respondents generally, or where the official has a personal or professional relationship with one of the parties that would adversely affect the official's ability to serve as an impartial finder of fact or other role.

### **1. Formal Grievance Process**

The Formal Grievance Process is the procedure the OIEC uses to investigate allegations of sexual misconduct and to determine whether an individual more likely than not engaged in conduct that violates the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy. Individuals found responsible for violating the policy are subject to sanction, up to and including expulsion or termination of employment.

A Formal Grievance Process includes four major stages: (1) Filing and Evaluation of the Formal Complaint, (2) Investigation, Investigative Report, and Recommendations, (3) Hearing and Determination Regarding Responsibility (including sanction, if applicable), and (4) Appeal, as applicable and described below.

### Timeframes

The OIEC is committed to providing a prompt, fair and impartial resolution of all matters referred for Formal Grievance Process. The university will provide an equitable resolution of any Formal Complaints of Sexual Misconduct within an average of 90 calendar days, except that such time frame may be extended for good cause with prior written notice to the complainant and respondent of the delay and reason for the delay. The university will provide the complainant and respondent with regular written updates on the status of the Formal Grievance Process throughout the process until conclusion.

Good cause may exist for a variety of factors, including the complexity of the circumstances of each allegation, the integrity and completeness of the investigation,



compliance with a request by law enforcement, or due to concurrent law enforcement activity likely to produce materially relevant evidence, absences by the parties, the availability of witnesses, the necessity to provide translation services or accommodations of a disability, university breaks or vacations, the necessity to access relevant and probative documentation that is not immediately available, or other legitimate reasons.

In order to deliver a reasonably prompt process, the complainant and the respondent each have an obligation to meet deadlines as requested by OIEC during the Formal Grievance Process. Extensions of time shall only be granted for good cause shown, and the parties shall be provided written notice of extensions or any delay, as applicable, and the reasons for any such extensions or delays.

### Respondent Participation

If the respondent chooses not to participate in the Formal Grievance Process, the OIEC may complete the grievance process based on the totality of information obtained during the Investigation Stage, which may include witness interviews, police investigation reports, and other relevant documents or information, and/or Hearing and Appeal stages, as applicable.

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

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

An individual (referred to as the complainant) or Title IX Coordinator or designee must file a document alleging an allegation of misconduct under the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy against an individual (referred to as the respondent) for the university to initiate a Formal Grievance Process. The Formal Complaint must contain the complainant's or Title IX Coordinator's physical or digital signature. The Formal Complaint form is available on the [OIEC's website](#).

A complainant who reports allegations of Sexual Misconduct with or without filing a Formal Complaint may receive supportive measures. See Section VII(C).

#### Who May File a Formal Complaint

To initiate a grievance process under the policy, either the complainant or Title IX Coordinator or designee must file and sign a Formal Complaint.

- *Title IX Sexual Misconduct:* To file a Formal Complaint, a complainant must be participating in or attempting to participate in the university's education program or activity. "Attempting to participate" can include a complainant who (1) is applying for admission or employment; (2) has graduated from one program but intends to apply to another program and/or intends to remain involved with a university's alumni programs or activities; or (3) has left school because of Sexual Misconduct but expresses a desire to re-enroll. A complainant who is on a "leave of absence"



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may also be participating or attempting to participate in a university's programs or activities.

- *Sexual Misconduct*: To file a Formal Complaint, a complainant may or may not be a member of the university community who alleges to be a victim of conduct that would violate the policy.

Complainants are encouraged to meet with an investigator(s) prior to filing a Formal Complaint, but are not required to do so.<sup>8</sup>

### Evaluation of a Formal Complaint

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

The Title IX Coordinator or designee will notify the complainant if additional time is needed to consider the complaint, such as when gathering additional information is necessary to determine whether dismissal is appropriate.

The university may consolidate Formal Complaints in situations that arise out of the same facts or circumstances and involve more than one complainant, more than one respondent, or what amount to counter-complaints by one party against the other. The university may also consolidate under the Formal Grievance Process related violations as designated in the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy or other prohibited conduct under other policies, procedures or codes of conduct.

If the alleged conduct would not violate the policy, the Title IX Coordinator or designee will dismiss the Formal Complaint with regard to that conduct (mandatory dismissal).

The Title IX Coordinator or designee will notify both the complainant and the respondent of the complaint either by issuing a Notice of Allegations (see Section VII(D)(1)(b)) or a Notice of Complainant and Dismissal, which will include a summary of the allegations reported and an explanation as to the reason for the dismissal from the Formal Grievance Process.

### Appeal of Dismissal of Formal Complaint

If a Formal Complaint is dismissed, either party may appeal. To file an appeal of the dismissal, the complainant or respondent must submit the appeal within seven (7) days of the Notice of Complainant and Dismissal. The appeal must include an explanation as

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<sup>8</sup> In-person reporting and meetings may not be available at all times during the 2020-2021 academic year due to remote campus operations implemented as preventative measures during the COVID-19 pandemic. Meetings will be conducted via telephone or videoconference.



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to why the alleged misconduct, if true, would violate the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy and why the Formal Complaint should not be dismissed.

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

After a Formal Grievance Process is initiated, the Formal Complaint may be subject to either mandatory or discretionary dismissal. See Section VII(D)(1)(d).

### Formal Complaints by Title IX Coordinator and Overriding Factors

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

If, having been informed of the university's prohibition of retaliation and its obligations to prevent and respond to retaliation, the complainant would still like to maintain privacy or does not want to file a Formal Complaint initiating the Formal Grievance Process, the Title IX Coordinator or designee will weigh that request against the university's obligation to provide a safe, non-discriminatory environment for all students, faculty, and staff. In making that determination, the Title IX Coordinator or designee will consider a range of potentially overriding factors that would cause the Title IX Coordinator or designee to file a Formal Complaint and initiate a Formal Grievance Process, including the following:

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

The decision to file a Formal Complaint by the Title IX Coordinator or designee and





initiate the Formal Grievance Process will be made on a case-by-case basis after an individualized and thoughtful review.

### **b. Notice of Allegations**

If a Formal Grievance Process is commenced, the respondent and complainant shall receive a written Notice of Allegations. The written Notice of Allegations may be sent to the respondent and the complainant by email or via U.S. mail to the permanent addresses appearing in the university's information system or the 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 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 written Notice of Allegations.

The OIEC requests the respondent contact the investigator(s) within three (3) days of the issuance of the Notice of Allegations to schedule a meeting.<sup>9</sup>

If, in the course of an investigation, a complainant alleges additional violations or the Title IX Coordinator or designee decides to investigate additional allegations about the complainant or respondent that are not included in the initial Notice of Allegations, the OIEC will issue an Amended Notice of Allegations to both parties.

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

- The identity of the parties involved in the incident;
- The specific section(s) of the policy allegedly violated;
- The conduct allegedly constituting Sexual Misconduct;
- The date and location of the alleged incident, to the extent known and available;
- Information about the Formal Grievance Process;
- A statement that the respondent is presumed not responsible for the alleged conduct and that a Determination Regarding Responsibility is made at the conclusion of the Formal Grievance Process;
- Information about the policy provisions that prohibit knowingly making false statements or knowingly submitting false information during the Formal Grievance Process;
- Information that the parties have equal opportunity to inspect and review evidence;
- Information that the complainant and respondent may each have an advisor of their choice, including an attorney. The advisor may not engage in any conduct that would constitute harassment or retaliation against any person who has participated in an investigation and may be denied further participation for

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<sup>9</sup> All complainants and respondents will be provided with written notice of the date, time, location, and purpose of their investigative interviews, or other meetings, with sufficient time to prepare in order to participate.



harassing or retaliatory conduct.

### **c. Investigation, Investigative Report, and Recommendations**

#### **Evidence Gathering Phase**

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

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

The university, and not the parties, holds both the burden of proof and the burden of gathering evidence sufficient to reach a Determination Regarding Responsibility for Sexual Misconduct.

Both parties may present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Neither party is restricted from discussing the allegations under investigation or from gathering or presenting relevant evidence. The OIEC will also contact individuals who may have potentially relevant information related to allegations under investigation even if these individuals are not proposed by the parties.

The OIEC will not use any party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the university obtains that party's voluntary, written consent to do so for a Formal Grievance Process.

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

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



*Evidence Review and Preliminary Investigative Report*

The OIEC will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which the university does not intend to rely in reaching a Determination Regarding Responsibility, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. This includes inculpatory or exculpatory evidence whether obtained from a party or other source.

The OIEC must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, along with a Preliminary Investigative Report. The Preliminary Investigative Report will include a written summary of relevant and material evidence. While the university will not restrict the ability of the parties to discuss the allegations or gather evidence, the university will seek to ensure that the parties and their respective advisors, advocates or support persons, as applicable, maintain the privacy of disclosed information, particularly in electronic and/or hard copy format. Parties receiving such private information should only distribute it to those individuals with a legitimate need to know. The university will continue to enforce prohibitions against harassment and retaliation.

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

*Final Investigative Report*

The Final Investigative Report will include a written summary of relevant and material evidence, will incorporate the parties' responses to the Preliminary Investigative Report, and will include recommendations as to findings of fact and recommendations regarding responsibility based on the information available prior to the hearing. The investigator(s) recommendations are not final conclusions; the ultimate factual findings and final Determination Regarding Responsibility is made by the Hearing Officer(s) only after a live hearing including the opportunity for cross-examination.

The Final Investigative Report will be issued to each party and the party's advisor at least fourteen (14) days prior to a hearing in an electronic format or a hard copy, for their review and written response, which will be provided to the Hearing Officer(s).

**d. Dismissal After Initiating Formal Grievance Process**

*Mandatory and Discretionary Dismissals*

If, after initiating a Formal Grievance Process, the university learns that the conduct alleged in the Formal Complaint would not constitute Sexual Misconduct even if proved, then the university must dismiss the Formal Complaint with regard to that conduct (mandatory dismissal).



The university may, but is not required to, dismiss a Formal Complaint at any time prior to the hearing if the complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the Formal Complaint or any allegations therein, if the respondent is no longer enrolled or employed at the university, or if specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the Formal Complaint or the allegations therein (discretionary dismissal).

- *Title IX Sexual Misconduct*: If the university dismisses a Formal Complaint pursuant to the Title IX Sexual Misconduct procedures, the Title IX Coordinator or designee will consider whether the conduct alleged in the Formal Complaint violates other provisions of the policy and any other university or campus policies, procedures, or conduct codes.
- *Sexual Misconduct*: If the university dismisses a Formal Complaint pursuant to the Sexual Misconduct procedures, the Title IX Coordinator or designee will consider whether the conduct alleged in the Formal Complaint constitutes a violation of any other university or campus policies, procedures, or conduct codes.

### Notice of Dismissal and Opportunity to Appeal

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

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

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

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

The university will consider the appeal and issue a determination either upholding the appeal or overturning the dismissal within seven (7) days. If additional time is needed to consider the appeal, the appeal decision-maker will notify the parties of the extension for good cause. This could include gathering additional information from the complainant, the respondent, or additional individuals. The decision-maker for the



appeal of a dismissal may not be the same decision-maker that reached the determination regarding dismissal, the investigator(s), or the Title IX Coordinator. The decision-maker for the appeal must be trained.

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

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

A trained Hearing Officer will preside over a live hearing. Nothing precludes the university from utilizing a single decision-maker (Hearing Officer) or a panel of decision-makers (including the Hearing Officer) for the hearing and to determine responsibility.

Each party may bring one advisor of their choosing to conduct cross-examination to the live hearing, with prior notice to the university that the advisor will attend and that advisor's name. The university will inform both parties of the identity of the other party's advisor. If a party does not have an advisor for the live hearing, the university will provide that party an advisor without fee or cost to the party. A party may not personally ask questions during the hearing. If a party declines to have an advisor, the party still may not personally ask questions of the other party or witnesses during the hearing.

Upon notice that a party needs an advisor, the university will endeavor to assign an advisor at least fourteen (14) days prior to the scheduled pre-hearing conference so the advisor may prepare. The advisor provided by the university to conduct cross-examination on behalf of that party may be, but is not required to be, an attorney.

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

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

#### **Pre-Hearing Conference**

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

Prior to the pre-hearing conference, the parties will provide the Hearing Officer with a list of witnesses they may call and evidence they may use during the hearing.



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At the pre-hearing conference, the Hearing Officer and the advisors will discuss, at minimum, the following topics:

- Identification of each party's advisor who will be attending the live hearing;
- The procedures to be followed at the hearing;
- Identification of witnesses who will appear at the hearing;
- Identification of exhibits that will be presented for the cross-examination process.

### Hearing Decorum

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

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

- Advisors must be respectful of all participants and the hearing process. Abusive, intimidating, and harassing conduct will not be tolerated;
- Advisors may only make objections to questions on the grounds of relevance or to assert a privilege. Advisors must signal for the Hearing Officer's attention, calmly state their objection, and wait for a determination;
- Repetitive or redundant questioning may be deemed both lacking in relevancy and harassing;
- Should an advisor need to confer with their party, they may request that the Hearing Officer grant them a recess. A mid-hearing conferral may not exceed 10 minutes. Every effort should be made to conduct conferrals privately and to not be overly disruptive;
- Parties and advisors may not create audio or audiovisual recordings of the hearing;
- Advisors and parties must acknowledge the rules of decorum in advance of a hearing, including an acknowledgement that failure to abide by the rules may result in adjournment of the hearing and a postponement until the party whose advisor failed to abide by the rules may secure a new advisor.

### Cross-Examination Procedure



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

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

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

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

### Submission to Cross-Examination

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

- *Title IX Sexual Misconduct:* If a party or witness does not submit to cross-examination at the live hearing, the Hearing Officer must not rely on any statement of that party or witness in reaching a Determination Regarding Responsibility.
- *Sexual Misconduct:* The Hearing Officer is not required to exclude or disregard any prior statement based on a party or witness who does not submit to cross-examination at the live hearing, and may instead decide how much weight to give the prior statements, weighed in light of all the evidence in the case and the issues to be decided.

### Determination Regarding Responsibility

Consistent with the standard of proof in other conduct proceedings, the Hearing Officer and panelists, if applicable, must apply the preponderance of the evidence standard when making findings of fact and conclusions as to whether a violation of the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy has occurred. A preponderance of the evidence exists when the totality of the evidence demonstrates that an allegation of Sexual Misconduct is more probably true than not. If the evidence



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weighs so evenly that the Hearing Officer and panelists, if applicable, is unable to say that there is a preponderance on either side, the Hearing Officer and panelists, if applicable, must determine that there is insufficient evidence to conclude there has been a violation of the policy.

In applying the preponderance of the evidence standard, the Hearing Officer and panelists, if applicable, may consider both direct and circumstantial evidence. The Hearing Officer and panelists, if applicable, may determine the credibility of parties and witnesses and the weight to be given their statements, taking into consideration their means of knowledge, strength of memory and opportunities for observation, the reasonableness or unreasonableness of their statements, the consistency or lack of consistency of their statements, their motives, whether their statements are contradicted or supported by other evidence, any evidence of bias, prejudice or interest, and the person's manner and demeanor when providing statements.

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

The Hearing Officer must issue a written Determination Regarding Responsibility that will be sent to the OIEC. The written Determination Regarding Responsibility may be submitted to the Office of University Counsel to review for legal sufficiency prior to being issued to the parties.

The written determination must include:

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





to the complainant; and

- The university's procedures and permissible bases for the complainant and respondent to appeal.

In cases resulting in no policy violation, the OIEC will provide the written determination to the parties simultaneously after it is prepared by the Hearing Officer. Both parties have the opportunity to appeal the written Determination Regarding Responsibility. See Section VII(D)(1)(f).

In cases resulting in a policy violation, prior to the issuance of the written determination, the Hearing Officer will refer the matter to the appropriate sanctioning authorities (for either a student or employee respondent) for a disciplinary sanction to be determined. See Section VII(D)(1)(e)(i) and Section VII(D)(1)(e)(ii) below. After the sanction has been incorporated into the written Determination Regarding Responsibility, the OIEC will provide the written determination and sanction to the parties simultaneously. Both parties have the opportunity to appeal the written determination, including the sanction, if applicable. See Section VII(D)(1)(f).

If the respondent is a student employee and the alleged misconduct occurs outside the employment capacity, the OIEC may determine that the respondent's supervisory upline has a legitimate need to know information related to the Formal Grievance Process.

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

The OIEC will also provide any applicable notices to the complainant following the conclusion of any subsequent corrective or disciplinary action pursuant to the State Personnel Board Rules for respondents who are classified employees and the Professional Rights and Duties procedure and Privilege and Tenure process for respondents who are faculty.

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

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

In cases where the Formal Grievance Process results in a determination that a student respondent is responsible for a policy violation, the matter will be referred, with the written determination (prior to the inclusion of the sanction), to the Sanctioning Board prior to the issuance of a written determination.

#### **Student Sanctioning Board**



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The Sanctioning Board is composed of three members who are collectively authorized to impose sanctions for student respondents and to remedy the effects of the sexual misconduct. The Board shall decide by unanimous decision. The Board will notify the Hearing Officer of the determined sanctions so that the Hearing Officer can include them within the written determination.

The OIEC Senior Director of Support and Safety Measures or designee is a member and the Chair of the Sanctioning Board for student respondents and will appoint two additional university employees who are not affiliated with the OIEC to serve on the Sanctioning Board. University employees who serve on the Sanctioning Board will have received appropriate training regarding the applicable policies and factors pertinent to the sanctioning decision.

### Factors Considered in Sanctioning

The Sanctioning Board members conduct an individualized review, including review of the Hearing Officer's written Determination Regarding Responsibility, similarly situated cases, assessment of the factors below, and may review the entire file and consult as necessary with OIEC staff, 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:

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



### Possible sanctions

Sanctions may include one or more of the following:

- **Warning/Written Reprimand:** A warning/written reprimand is a written statement from the Board or designee that the behavior was inappropriate and that more serious action will be taken should subsequent infractions occur.
- **Educational Sanctions:** The student may be required to attend a class, evaluation, or program (e.g., alcohol or anger management classes or training on sexual misconduct or protected-class discrimination and harassment). This is not an exhaustive list but should serve as a reference for the types of educational sanctions that may be imposed.
- **Meeting with the Senior Director of Support and Safety Measures or designee:** The student may be required to meet with a university official to review the terms of the sanction and ensure compliance prior to eligibility to apply for readmission, as applicable.
- **Residence Hall Reassignment:** A student who resides in a residence hall is assigned to a different residence hall on campus.
- **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 on either a permanent or temporary basis. Specific exclusion from the residence halls may also be imposed.
- **Probation:** A student is placed on probation. Probation lasts for a specific period of time, and is implemented by semesters. Any violation of university policies or the conditions of probation committed during the probationary period will result in further disciplinary action.
- **Restriction or Denial of University Services:** The student is restricted from using or is denied specified university services, including participation in university activities.
- **Delayed Conferral of Degree:** The issuance of a student's diploma is delayed for a specified period of time.
- **Withholding of Official Transcript:** The transcript is withheld for a specified timeframe for those students who have already graduated.
- **Suspension:** The student is required to leave the university for a specific period of time. A suspension notation appears on the student's transcript until the period of suspension has expired and all other sanctions are complete. The student is



required to apply for readmission to the university after their 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.

- **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 on university property for limited periods and specific activities with the permission of the Senior Director of Support and Safety Measures or designee. Should the student enter university property without permission, the police may charge the student with trespass.
- **Expulsion:** The student is required to permanently leave the university. A notation of expulsion remains permanently on the student's transcript. Expulsion from the university includes an automatic exclusion from University of Colorado property. An expulsion decision results in the student being expelled from all campuses in the University of Colorado system.
- **Disciplinary Stop and Disciplinary Hold:** 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. 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.
- **Additional Sanctions:** The Board has the discretion to impose any additional sanctions that may be warranted and appropriate given the circumstances of the case.

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

In cases where the Formal Grievance Process results in a determination that an employee respondent is responsible for a policy violation or acted inappropriately or unprofessionally, the matter will be referred, with the written determination (prior to the inclusion of the sanction), to the disciplinary authority. If the respondent is a student employee and the alleged misconduct occurs outside the employment capacity, the OIEC may determine that the respondent's supervisory upline has a legitimate need to know information related to the case resolution such that they may consider employment sanctions.

Any sanctioning process pursuant to these Resolution Procedures does not replace any



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additional meetings that may be required under other applicable personnel processes (e.g., State Personnel Board Rules for classified employees; Professional Rights and Duties procedure and Privilege and Tenure process for faculty).

### OIEC's formal recommendation to disciplinary authority

The Associate Vice Chancellor of the OIEC or designee will provide a formal recommendation to the disciplinary authority as to applicable sanctions consistent with the factors set forth in Section VII(D)(1)(e)(i).

### Sanction required

In order to remediate the effects of sexual misconduct, the disciplinary authority will impose sanctions. Sanctions for classified staff in the written determination may include either a corrective action or a notice of disciplinary action, issued pursuant to the State Personnel Rules.

The disciplinary authority will determine the type of sanctions in consultation with the Chief Human Resource Officer or designee, the Associate Vice Chancellor of the OIEC or designee, and any other administrative staff with a need to know.

The appointing/disciplinary authority may have access to the investigation and hearing records and may consult with the adjudicative staff in order to determine action.

The Associate Vice Chancellor or designee will notify the Hearing Officer of the determined sanctions so that the Hearing Officer can include the sanction within the written determination.

Potential sanctions include:

- Letter of Expectation/Reprimand: A warning/written letter of expectation or reprimand is a statement from the disciplinary authority that the behavior was inappropriate and that more serious disciplinary action will be taken should subsequent infractions occur.
- Mandatory Training: The employee may be required to attend a training, class, or program as relevant to the misconduct.
- Demotion: The employee is demoted from their current position.
- Job Duty Modifications: The disciplinary authority may modify the employment responsibilities of the employee.
- Reduction in Salary/Ineligibility for Merit Increases: The employee's salary is reduced either permanently or temporarily, or the employee is not eligible for merit increases either permanently or temporarily.



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- **Ineligibility for Rehire:** The employee is no longer eligible for employment at the university.
- **Exclusion:** The employee is denied access to all or a portion of university property. When an employee is excluded from university property, that employee may be permitted on university property for limited periods and specific activities with the permission of the university official or designee who imposed the exclusion. Should the employee enter university property without permission, police may charge the employee with trespass.
- **Termination of Employment Contract or Termination of Employment:** Pursuant to applicable laws and policies specific to the employee's status, the disciplinary authority recommends or terminates employment.
- **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.

### **f. Appeals**

Either the complainant or respondent may file a written appeal of the Determination Regarding Responsibility. All appeals must be made in accordance with the procedures outlined in this section.

Basis for appeal of a Determination Regarding Responsibility:

- To determine whether there were procedural irregularities that affected the outcome of the matter;
- If new evidence that was not reasonably available at the time the Determination Regarding Responsibility or dismissal was made that could affect the outcome of the matter;
- The Title IX Coordinator, investigators, or Hearing Officer, and panelists, if applicable, had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

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

The decision-maker(s) for the appeal (Appeal Board) may not be the same Hearing Officer that reached the Determination Regarding Responsibility or dismissal, the investigator(s), or the Title IX Coordinator. All Appeal Board members must be trained.

The Appeal Board will issue a written decision describing the result of the appeal and the rationale for the result. The appeal decision must be provided simultaneously to



both parties.

**i. How to File an Appeal and Timeframe**

Appeals must be submitted in writing to the Associate Vice Chancellor of the OIEC or designee within seven (7) days after the Determination Regarding Responsibility is issued. The appeal should indicate the specific basis for the appeal (see above), supporting arguments and documentation, and any other relevant information the appealing party wishes to include. The appealing party should be aware that all appeals are documentary reviews, and no interviews are conducted. Generally, appeals are determined solely on the merits of the documents submitted. Appeal documents therefore should be as complete and succinct as possible. All sanctions imposed in the case will not go into effect until either the deadline for filing an appeal passes and no appeal is filed or, if a timely appeal is filed, the appeal is decided, whichever comes first.

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

**ii. Appeal Process and Appeal Board**

The Associate Vice Chancellor designee will notify the other party to the original complaint (complainant or respondent) in writing, and the party will be provided seven (7) days to respond in writing to the appeal. The response should be sent to the Associate Vice Chancellor or designee. Neither party is required to respond to an appeal. Not responding to an appeal does not imply agreement with the appeal.

After the submission of all documentation or the seven-day deadline for response has passed, the Associate Vice Chancellor or designee will appoint university employees (who may include staff from the Anschutz, Denver, and Colorado Springs campuses) who are not otherwise affiliated with the OIEC at CU Boulder to serve on the Appeal Board.

**iii. Appeal Decisions**

Upon review of the appeal, the Appeal Board may:

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

The Board members shall not make new findings of fact. The Board shall review



all documentation submitted, make the final decision upon appeal, and concurrently provide the parties with a written Notice of Appeal Decision within 21 days of its receipt of all final documentation.

### **2. Policy Compliance Remedies**

The OIEC may determine that the most prompt and effective way to address a concern is through a Policy Compliance Meeting. For example, the OIEC may resolve a report or complaint through a Policy Compliance Meeting if the alleged conduct, even if true, would not be considered prohibited conduct under the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy.

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

- Provide interim or long-term supportive measures to the complainant and the respondent;
- Provide a referral to other campus-based resolution processes as appropriate for the specific facts of the case;
- Provide targeted or broad-based educational programming or training; and/or
- Conduct a Policy Compliance Meeting with the respondent to (1) discuss the behavior as alleged and provide an opportunity to respond; (2) review prohibited conduct under the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy; (3) identify and discuss appropriate future conduct and behavior as well as how to avoid behavior that could be interpreted as retaliatory; (4) inform the complainant of the respondent’s responses if appropriate; and (5) notify SCCR or the respondent’s appointing or disciplinary authority of the allegations and responses if necessary, who will determine whether any other disciplinary action is appropriate.

The OIEC retains discretion to conduct a Policy Compliance Meeting. Additionally, the OIEC retains discretion to proceed with a Formal Grievance Process for allegations that, if proven true, would violate the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy.

For allegations that would warrant a Formal Grievance Process, but the OIEC proceeded with a Policy Compliance Meeting because the complainant requested





privacy or that no investigation or disciplinary action be taken and that request could be honored consistent with the factors and obligations of the OIEC as set forth in Sections VI(D) and VII(D)(1)(a), the OIEC will notify the complainant of the ability to end the Policy Compliance Meeting process at any time and to commence or resume a Formal Grievance Process.

## VIII. Discrimination and Harassment Policy Resolution Procedures

The university will be responsive to any report or complaint of “Prohibited Conduct” as listed below and is committed to providing prompt, fair, impartial, and equitable resolutions of any complaint reported to the OIEC, whether reported directly by a complainant or by a third party, such as a mandatory reporter. The primary concern is the safety of all university community members. The university will take steps to prevent recurrence of any prohibited conduct and remedy discriminatory effects on the complainant and others, as appropriate. The following procedures will apply to resolution of all reports or complaints of prohibited conduct related to the University of Colorado Boulder Discrimination and Harassment Policy.

### A. Prohibited Conduct

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

### B. Policy Jurisdiction

The policy applies to all students, faculty, staff, contractors, patients, volunteers, affiliated entities, and other third parties. For specific jurisdiction provisions, please see the Discrimination and Harassment Policy.

### C. Supportive and Safety Measures

*Supportive measures* are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent that are designed to restore or preserve equal access to the university’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the university’s educational or work environment, or deter discrimination and harassment. Supportive measures should be individualized and appropriate based on the information available to the Senior Director of Support and Safety Measures or designee.

Some *safety measures* involve restricting a respondent’s access to university programs



and activities and may not become available until after the completion of Formal Adjudication Process, unless emergency removal action is determined appropriate. See Section VIII(C)(2).

Whether supportive or safety measures are appropriate is determined after an individualized assessment by the Senior Director of Support and Safety Measures or designee and every effort should be made to avoid depriving any student of educational access. Supportive or safety measures may be kept in place, lifted, or modified as additional information is obtained, or may be extended permanently, as appropriate.

Complainants and respondents may request supportive or safety measures from the Senior Director of Support and Safety Measures or designee. Supportive measures should be provided to complainants or respondents whether or not the complainant engages in another resolution process. Witnesses or other participants in a Formal Adjudication Process may also request supportive or safety measures. The Senior Director of Support and Safety Measures or designee will maintain oversight of these requests and the provision of any such measures.

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

### **1. Types of supportive and safety measures**

Supportive and safety measures that may be available include, but are not limited to:

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



- residential relocations on or off campus;
- student refund (more information is available online at the [OIEC's Student Respondent Refund Information page](#).)
- emergency removals from program or activity (interim exclusion orders for parts of or entire campus, classes, etc, interim student suspension. See Section VIII(C)(2);
- administrative leave for employees in consultation with Chief Human Resource Officer or designee and appointing/disciplinary authority. See Section VIII(C)(2); and
- temporary suspension of supervisory or evaluative authority for employees in consultation with Chief Human Resource Officer or designee and appointing/disciplinary authority. See Section VIII(C)(2)

## 2. Emergency Removals

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

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

- Interim student suspension
- Interim exclusion order for parts of or entire campus, classes, etc.<sup>10</sup>
- Administrative Leave (Decisions to place a non-student employee on administrative leave during the pendency of a Formal Adjudication Process are made in consultation with Chief Human Resource Officer or designee and appointing/disciplinary authority.)
- Temporary suspension of supervisory or evaluative authority for employees in consultation with Chief Human Resource Officer or designee and appointing/disciplinary authority.

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<sup>10</sup> See related campus policy, [University of Colorado Boulder Exclusions of Persons from University Property Procedures](#).



**a. Individualized Safety and Risk Analysis**

The Senior Director of Support and Safety Measures or designee has the authority to conduct an individualized safety and risk analysis. The factors considered in the safety and risk analysis include:

- Seriousness of the alleged conduct;
- Location of the alleged incident(s);
- The risk that the respondent will commit additional acts of sexual or other violence;
- Whether the respondent threatened further sexual or other violence against the complainant or others;
- Whether there have been other misconduct complaints about the same respondent or if the respondent has a known history of arrests or records from a prior school indicating a history of sexual or other violence;
- The existence of multiple complainants and/or respondents;
- Whether the conduct was facilitated by the incapacitation of the complainant (through alcohol, drugs, disability, unconsciousness, or other means);
- Whether the alleged conduct was perpetrated with force, violence, or weapons;
- Whether the complainant is a minor;
- Whether the alleged conduct reveals a pattern of perpetration (by the respondent, by a particular group or organization, around a particular recurring event or activity, and/or a particular location); and
- Whether any other aggravating circumstances or signs of predatory behavior are present.

**b. Opportunity to Challenge an Emergency Removal Decision**

In the case of an emergency removal, the respondent will be provided written notice of the alleged prohibited conduct and the opportunity to meet, if they choose, with the Senior Director of Support and Safety Measures or designee. The Senior Director of Support and Safety Measures or designee will ensure that the



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respondent is afforded prompt opportunity, not to exceed 10 days of the notice of emergency removal, to challenge the decision by being heard during a meeting or phone call or by submission of a written statement. This does not preclude additional meetings, at the discretion of the Senior Director, after the 10 days have passed to review the emergency removal.

It is the responsibility of the respondent to request the meeting or phone call. After providing the respondent with notice of the allegations and an opportunity to be heard, the Senior Director of Support and Safety Measures or designee may decide to lift or continue the emergency removal, potentially until the completion of a Formal Adjudication Process or other resolution procedure. The Senior Director of Support and Safety Measures or designee may also determine whether any exceptions may be appropriate. The emergency removal may be re-evaluated during the course of a Formal Adjudication Process or other resolution procedure if new information is presented that mitigates the threat to health and physical safety of students or employees.

### **D. Resolution Processes**

The OIEC has authority to conduct at least a preliminary inquiry upon receiving a report or complaint alleging prohibited conduct. A preliminary inquiry may include, but is not limited to, evaluating whether the complaint implicates a policy enforced by the OIEC, whether the complaint and parties are within the jurisdiction of the OIEC, and whether the complaint presents a safety threat such that the OIEC must report the concern to law enforcement. See Section VI(D) for additional information regarding “override factors.” The OIEC shall then determine the most appropriate means for addressing the report or complaint. Options include but are not limited to:

- Formal Adjudication Process. See Section VIII(D)(1)
- Policy Compliance Remedies. See Section VIII(D)(2)
- Preliminary Inquiry: Determining that the facts of the complaint or report, even if true, would not constitute a violation of the Discrimination and Harassment Policy and closing the matter following a preliminary inquiry.
- No limitation on existing authority: Referring the matter to an employee’s disciplinary authority or supervisor. The Resolution Procedures do not limit the authority of a disciplinary authority to initiate or impose disciplinary action as necessary
- Other referral: Determining a complaint does not fall within the jurisdiction of the Discrimination and Harassment Policy and referring the complaint to appropriate office(s) on campus best situated to address the reported concerns.

#### OIEC Investigators

The OIEC’s Resolution Processes will be conducted by staff who are appropriately trained and have qualifications and experience that will facilitate prompt, fair, equitable and impartial resolutions. The Assistant Vice Chancellor of the OIEC or designee shall ensure that OIEC investigators and Investigation Review Board members receive annual training



on how to conduct investigations and adjudications that protect safety of all parties, ensure due process, promote accountability and other issues related to protected-class discrimination and harassment and related retaliation. The Assistant Vice Chancellor of the OIEC or designee shall determine if one or more investigators shall be assigned to each case depending on the specific circumstances and as warranted.

### **1. Formal Adjudication Process**

The OIEC may resolve a report of alleged misconduct through the Formal Adjudication Process when the alleged misconduct, if true, would be prohibited under the Discrimination and Harassment Policy. The OIEC may decline to pursue a Formal Adjudication Process if: 1) a complainant has requested that a Formal Adjudication Process not be pursued, and 2) the OIEC has determined that the complainant's request can be honored consistent with the university's obligation to provide a safe and non-discriminatory environment. See Section VIII(D)(1)(a) below.

#### Timeframes

The university will use its best efforts to complete its investigation and impose sanctions when applicable within an average of ninety (90) days, 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, the integrity and completeness of the investigation, compliance with a request by law enforcement, or due to concurrent law enforcement activity likely to produce materially relevant evidence, absences by the parties, the availability of witnesses, the necessity to provide translation services or accommodations of a disability, university breaks or vacations, the necessity to access relevant and probative documentation that is not immediately available, or other legitimate reasons.

In order to deliver a reasonably prompt process, the complainant and the respondent each have an obligation to meet deadlines as requested by OIEC during the investigation and as specified below. Extensions of time shall only be granted for good cause shown, and the parties shall be provided written notice of extensions or any delay, as applicable, and the reasons for any such extensions or delays.

#### **a. Formal Adjudication Override Factors**

If a complainant has disclosed an incident of discrimination or harassment but wishes to maintain privacy and does not wish to initiate the Formal Adjudication Process, the Associate Vice Chancellor of the OIEC or designee must discuss availability of supportive measures with the complainant and explain that the university prohibits retaliation. The Associate Vice Chancellor of the OIEC or designee will further explain the steps the university will take to prevent retaliation if the individual participates in a Formal Adjudication Process and that the OIEC will take responsive action if retaliation occurs.



If, having been informed of the university's prohibition on retaliation and its obligations to prevent and respond to retaliation, the complainant would still like to maintain privacy or does not want to initiate a Formal Adjudication Process, the Associate Vice Chancellor of the OIEC or designee will weigh that request against the university's obligation to provide a safe, non-discriminatory environment for all students, faculty, and staff. In making that determination, the Associate Vice Chancellor of the OIEC or designee will consider a range of potentially overriding factors that would cause the Associate Vice Chancellor of the OIEC or designee to initiate a Formal Adjudication Process, include the following:

- Targets or causes harm to an individual connected with CU Boulder;
- Threatens violence against the alleged complainant or others and there is reasonable fear that such further conduct could target or cause harm to someone connected with CU Boulder;
- Is of a violent nature or was frequent or severe;
- Prior or current similar complaints about the respondent or the respondent has a known history or records from a prior school indicating a history of violence;
- Use of, or threat to use, a weapon, access to or attempts to access weapons, or a history of bringing weapons to CU Boulder;
- Multiple complainants and/or respondents
- The complainant is a minor;
- Whether the alleged protected-class discrimination or harassment, or related violations, reveals a pattern of perpetration at a given location or by a particular group; and
- Any other signs of predatory behavior

### **b. Rights and Responsibilities of the Parties**

During a Formal Adjudication Process, the complainant and the respondent shall each have equitable opportunity to:

- An adjudication conducted by trained officials who do not have a conflict of interest or bias for or against the complainant or respondent. An official shall recuse themselves from participating in an adjudication in those instances where the official believes that their impartiality might reasonably be questioned by an independent, neutral observer due to the official's personal bias or prejudice



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- against the complainant or respondent or where the official has a personal or professional relationship with one of the parties that would adversely affect the official's ability to serve as an impartial finder of fact;
- Supportive and safety measures to be provided before an adjudication or while an adjudication is pending. See Section VIII(C).
  - Receive notice before they participate in an interview with sufficient time to prepare for meaningful participation;
  - A process with reasonably prompt timeframes, with extensions for good cause. See Section VIII(D)(1).
  - Present relevant information to the investigator(s), including evidence and identifying witnesses, See Section VIII(D)(1)(c)(ii);
  - Have an advisor of their choosing, including an attorney, advocate, or other support person who is not a potential witness in the investigation or could otherwise compromise the investigation, provide support and advice throughout the Formal Adjudication Process, including but not limited to being present for any meetings with OIEC personnel. The advisor, advocate or other support person may not engage in any conduct that would constitute harassment or retaliation against any person who has participated in an investigation and may be denied further participation for harassing or retaliatory conduct;
  - Timely and equal access to any relevant information, including witness identities and relevant information provided by complainant, respondent, witnesses, and other documentation gathered during the investigation, unless the university is legally prohibited from disclosing the information to a party, See Section VIII(D)(1)(c)(iii);
  - Review and respond to a Written Evidence Summary of the relevant and material evidence gathered during the Investigation prior to any investigative findings or conclusions, as described in Section VIII(D)(1)(c)(iii);
  - Submit questions to the investigator(s) to be asked of the other party or witnesses following the dissemination of the Written Evidence Summary and prior to any investigative findings or conclusions; investigator(s) will address all relevant questions and provide an explanation as to any decision to exclude questions as not relevant, See Section VIII(D)(1)(c)(iii);
  - Inspect the case file, which contains all information or evidence, unless prohibited or confidential under law, gathered as part of the investigation, including information the OIEC does not intend to rely on in reaching a determination, prior to any investigative findings or conclusions, Section





VIII(D)(1)(c)(iii);

- An internal review by the Investigation Review Board before the final investigative findings are issued, Section VIII(D)(1)(c)(v);
- Receive written, concurrent notice of the investigation outcome and a copy of the written Determination Regarding Responsibility at the conclusion of the Investigation, Section VIII(D)(1)(c)(vi);
- Provide information about aggravating or mitigating factors prior to any sanction being imposed, if applicable, Section VIII(D)(1)(d)(ii) and VII(D)(1)(e)(i);
- Receive notice of any sanction, if applicable, in writing, including a statement of the basis upon which any sanction was imposed, Section VIII(D)(1)(d)(v); and
- Appeal the investigative findings or sanction imposed as described in Section VIII(D)(1)(f), as applicable.

### **c. Major Stages of the Investigation**

The OIEC is committed to providing a prompt, fair and impartial resolution of all matters referred for formal adjudication. A formal adjudication can include three stages: Investigation, Sanction, and Appeal, as applicable and described below.

#### **i. Notice of Allegations**

If a Formal Adjudication Process is commenced, the OIEC shall send the respondent and the complainant a written Notice of Allegations. The written Notice of Allegations may be sent to the respondent and the complainants by email, or sent via U.S. mail to the permanent addresses appearing in the university's information system or the 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 employee respondents,<sup>11</sup> 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 written Notice of Allegations.

If, in the course of an investigation, a complainant alleges additional violations or the Associate Vice Chancellor or designee decides to investigate additional allegations about the complainant or respondent that are not included in the initial Notice of Allegations, the OIEC will issue an Amended Notice of Allegations to both parties.

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

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<sup>11</sup> If the respondent is a student employee and the alleged misconduct occurs outside the employment capacity, the OIEC may determine that the respondent's supervisory upline has a legitimate need to know information related to the case resolution.



- Provide a copy of the OIEC Resolution Procedures;
- Identify the complainant and respondent;
- Identify the Investigator(s) who will conduct the investigation;
- Identify the conduct allegedly constituting the potential violation, including the date and location of the alleged incident to the extent known and available;
- Identify the specific section of the Discrimination and Harassment Policy alleged to have been violated;
- Include a statement that no determinations have been or will be made until the conclusion of the investigation;
- Options for supportive and safety measures; and
- Require that the respondent contact the OIEC within three (3) days to schedule a meeting. If the respondent chooses not to participate in the adjudication process, the OIEC may complete the adjudication based on the totality of information obtained during the Investigation Stage, which may include police investigation reports and other relevant documents or information, and Sanctioning and Appeal stages, if applicable.

## **ii. Evidence Gathering Phase of Investigation**

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

The university, and not the parties, holds both the burden of proof and the burden of gathering evidence sufficient to reach a Determination Regarding Responsibility.

Both parties may present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Neither party is restricted from discussing the allegations under investigation or from gathering or presenting relevant evidence. The OIEC will also contact individuals who may have potentially relevant information related to allegations under investigation even if these individuals are not proposed by the parties.



The investigators interview the complainant and the respondent separately and provide each party the opportunity to be heard and to respond to all relevant information.

**iii. Disclosure of Written Evidence Summary**

Following the Evidence Gathering Phase, the investigator(s) shall send a Written Evidence Summary of the relevant and material facts to the complainant and respondent who each have seven (7) days to review and respond. At this time, the parties will also have access to witness identities and opportunity to inspect the full investigative file.

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

**iv. Factual Findings and Determination Regarding Responsibility**

At the conclusion of the Evidence Gathering Phase, including any relevant information or questions submitted in response to the Written Evidence Summary and subsequent follow-up investigation, as appropriate, the investigator(s) shall prepare a written Determination Regarding Responsibility that will include a description of procedural steps taken, including any notifications to the parties, interviews, and methods for gathering evidence, a statement of factual findings and a determination as to whether or not there was a violation of policy based on the application of the factual findings to the Discrimination and Harassment Policy.

**Standard of Review/Burden of Proof**

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

In applying the preponderance of the evidence standard, the investigator(s) may consider both direct and circumstantial evidence. The investigator(s) may determine the credibility of parties and witnesses and the weight to be given their statements, taking into consideration their means of knowledge, strength of memory and opportunities for observation, the reasonableness or unreasonableness of their statements, the consistently or lack of consistency of their statements, their motives, whether their



statements are contradicted or supported by other evidence, any evidence of bias, prejudice or interest, and the person's manner and demeanor when providing statements.

It is the responsibility of the OIEC, not the parties, to make a determination based on the totality of the available information to determine whether or not the preponderance of the evidence has been met. Neither party bears a burden of proof.

For investigations involving student respondents, the Determination Regarding Responsibility will include a determination of whether the respondent is found responsible for violating the Discrimination and Harassment Policy or not.

For investigations involving employee respondents, the written determination regarding responsibility will include a determination of whether the respondent is found responsible for violating the Discrimination and Harassment Policy or not. If an employee respondent is found not to be responsible for violating the Discrimination and Harassment Policy, the written Determination Regarding Responsibility may, if applicable, include a determination that the employee respondent engaged in conduct that was inappropriate or unprofessional. In such cases, the OIEC will refer such matters to the appointing/disciplinary authority, who will make the final determination on appropriate action or response.

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

#### **v. Investigation Review Board**

The written Determination Regarding Responsibility shall be presented for review to the Investigation Review Board. The Investigation Review Board shall consist of employees who are not affiliated with the OIEC and have received appropriate training regarding implementation and application of the OIEC Resolution Procedures. The Investigation Review Board reviews the written determination to review for investigator(s) bias and impartiality, thoroughness of the investigation, and sufficiency to support the finding. The Investigation Review Board may review any information contained in the investigative file, may consult with the investigator(s), or may recommend that further investigation or a new investigation be done by the same or other investigator(s). The Investigation Review Board may not conduct its own investigation.

#### **vi. Notice of Finding<sup>12</sup>**

The OIEC shall advise the complainant and respondent simultaneously in writing of the result or outcome of the investigation. A copy of the written Determination Regarding Responsibility shall be provided to the complainants and the respondent. In addition, for

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<sup>12</sup> Findings under the OIEC Resolution Procedures are not findings pursuant to applicable state and federal legal standards, i.e. a policy violation may not rise to a violation of equal opportunity law.



investigations involving employee respondents, the respondent's supervisor and appointing/disciplinary authority also receive the written determination of responsibility.<sup>13</sup>

The Notice of Finding will also notify the parties as to the next step in the process, as applicable.

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

In cases where the investigation results in a policy violation, the matter will be referred through the Assistant Vice Chancellor of the OIEC and Investigator(s) providing the Notice of Finding to the Sanctioning Board. In the event that no violation the Discrimination and Harassment Policy was found, there is no preclusion of discipline for other student misconduct under either the Student Code of Conduct or Student Honor Code & Procedures.

#### **i. Student Sanctioning Board**

The Sanctioning Board is composed of three members who are collectively authorized to impose sanctions for student respondents and to remedy the effects of discrimination and/or harassment. The Board shall simultaneously notify the complainant and the respondent of any sanctions and shall decide by unanimous decision.

The OIEC Senior Director of Support and Safety Measures or designee is a member and the Chair of the Sanctioning Board for student respondents and will appoint two additional university employees who are not affiliated with the OIEC to serve on the Sanctioning Board. University employees who serve on the Sanctioning Board will have received appropriate training regarding the applicable policies and factors pertinent to the sanctioning decision.

#### **ii. Parties' opportunity to be heard**

Within seven (7) days of the date of the Notice of Finding, the respondent and complainant will each have the opportunity to present to the Board any aggravating or mitigating circumstances related to the conduct that may impact sanctioning. Parties may meet with members of the Board or submit such information to the Board in writing. For meetings, the Board will meet separately with each party, as applicable. It is the responsibility of the parties to set the appointment and meet within the time prescribed. Information submitted to the Board must be limited to describing mitigating or aggravating circumstances that may affect sanctioning. Any statement outside of these guidelines will not be considered.

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<sup>13</sup> If the respondent is a student employee and the alleged misconduct occurs outside the employment capacity, the OIEC may determine that the respondent's supervisory upline has a legitimate need to know information related to the case resolution.



**iii. Factors considered in sanctioning**

The Board members conduct an individualized review and shall review the final written Determination Regarding Responsibility and may review the entire file and consult as necessary with OIEC staff, 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:

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

**iv. Possible sanctions**

Sanctions may include one or more of the following:

- **Warning/Written Reprimand:** A warning/written reprimand is a written statement from the Board or designee that the behavior was inappropriate and that more serious action will be taken should subsequent infractions occur.
- **Educational Sanctions:** The student may be required to attend a class, evaluation, and/or program (e.g., alcohol or anger management classes or training on sexual misconduct or protected-class discrimination and harassment). This is not an exhaustive list but should serve as a reference for the types of educational sanctions that may be imposed.



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- Meeting with the Senior Director of Support and Safety Measures or designee: The student may be required to meet with a university official to review the terms of the sanction and ensure compliance prior to eligibility to apply for readmission, as applicable.
- Residence Hall Reassignment: A student who resides in a residence hall is assigned to a different residence hall on campus.
- 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 on either a permanent or temporary basis. Specific exclusion from the residence halls may also be imposed.
- Probation: A student is placed on probation. Probation lasts for a specific period of time, and is implemented by semesters. Any violation of university policies or the conditions of probation committed during the probationary period will result in further disciplinary action.
- Restriction or Denial of University Services: The student is restricted from using or is denied specified university services, including participation in university activities.
- Delayed Conferral of Degree: The issuance of a student's diploma is delayed for a specified period of time.
- Withholding of Official Transcript: The transcript is withheld for a specified timeframe for those students who have already graduated.
- Suspension: The student is required to leave the university for a specific period of time. A suspension notation appears on the student's transcript until the period of suspension has expired and all other sanctions are complete. The student is required to apply for readmission to the university after their 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.
- 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 on university property for limited periods and specific activities with the permission of the Senior Director of Support and Safety Measures or designee. Should the student enter university property without permission, the police may charge the student with trespass.



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- **Expulsion:** The student is required to permanently leave the university. A notation of expulsion remains permanently on the student's transcript. Expulsion from the university includes an automatic exclusion from University of Colorado property. An expulsion decision results in the student being expelled from all campuses in the University of Colorado.
- **Disciplinary Stop and Disciplinary Hold:** 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. 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.
- **Additional Sanctions:** The Board has the discretion to impose any additional sanctions that may be warranted and appropriate given the circumstances of the case.

### **v. Notice to parties**

The Sanctioning Board will provide a written statement to the parties (Notice of Sanction Pending Appeal) informing them of the sanction and the basis upon which any sanction was imposed.

### **e. Sanctioning Process for Employee Respondents<sup>14</sup>**

The Associate Vice Chancellor of the OIEC or designee will notify the disciplinary authority if an employee respondent was found to have violated a policy or acted inappropriately or unprofessionally.

### **i. Parties' opportunity to be heard by the OIEC**

Following the conclusion of any appeal of the Investigation or the expiration of the appeal deadline (7 days from the Notice of Finding, see Section VIII(D)(1)(f)(ii)), the respondent and complainant will each have an opportunity to separately meet with the Associate Vice Chancellor of the OIEC or designee to discuss any mitigating or aggravating circumstances related to the conduct that may impact sanctioning.

It is the responsibility of the parties to set the appointment and meet within the time prescribed. Alternatively, the complainant or respondent may submit a written statement to the Associate Vice Chancellor of the OIEC or designee in lieu of a meeting. Written

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<sup>14</sup> If the respondent is a student employee and the alleged misconduct occurs outside the employment capacity, the OIEC may determine that the respondent's supervisory upline has a legitimate need to know information related to the case resolution.





statements must be submitted or a meeting held within seven (7) days of the notice sent by the Associate Vice Chancellor or designee (following the appeals process or the expiration of the deadline for appeals).

Information must be limited to describing mitigating or aggravating circumstances that may affect sanctioning. Any statement outside of these guidelines will not be considered.

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

### **ii. OIEC's formal recommendation to disciplinary authority**

The Associate Vice Chancellor of the OIEC or designee will provide a formal recommendation to the disciplinary authority as to applicable sanctions consistent with the factors set forth in Section VIII(D)(1)(d)(iii).

### **iii. Sanction required and Potential Sanctions**

In order to remediate the effects of protected-class discrimination and/or harassment, the disciplinary authority will impose sanctions.

The disciplinary authority will determine the type of sanctions in consultation with the Chief Human Resource Officer or designee, the Associate Vice Chancellor of the OIEC or designee, and any other administrative staff with a need to know.

The appointing/disciplinary authority may have access to the investigative records and may consult with the investigator(s) in order to determine action.

Potential sanctions include:

- Letter of Expectation/Reprimand: A warning/written letter of expectation or reprimand is a statement from the disciplinary authority that the behavior was inappropriate and that more serious disciplinary action will be taken should subsequent infractions occur.
- Mandatory Training: The employee may be required to attend a training, class, or program as relevant to the misconduct.
- Demotion: The employee is demoted from their current position.
- Job Duty Modifications: The disciplinary authority may modify the employment responsibilities of the employee.
- Reduction in Salary/Ineligibility for Merit Increases: The employee's salary is



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- reduced either permanently or temporarily, or the employee is not eligible for merit increases either permanently or temporarily.
- **Ineligibility for Rehire:** The employee is no longer eligible for employment at the university.
  - **Exclusion:** The employee is denied access to all or a portion of university property. When an employee is excluded from university property, that employee may be permitted on University property for limited periods and specific activities with the permission of the university official or designee who imposed the exclusion. Should the employee enter university property without permission, action may be taken by the police for trespass.
  - **Termination of Employment Contract or Termination of Employment:** Pursuant to applicable laws and policies specific to the employee's status, the disciplinary authority recommends or terminates employment.
  - **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.

### **iv. Notice to parties**

The Associate Vice Chancellor of the OIEC or designee 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. Regardless of the OIEC findings, there is no preclusion of discipline by the appointing authority for other misconduct or for inappropriate or unprofessional conduct.

### **f. Appeals**

#### **i. Appeals for Student Respondents**

Upon the conclusion of the Investigation (if no violation is found) or the Sanctioning (if a violation is found), whichever is applicable, either the complainant or respondent may file a written appeal. All appeals must be made in accordance with the procedures outlined in this section.



### How to File an Appeal and Timeframe

Appeals must be submitted in writing to the Associate Vice Chancellor of the OIEC or designee within seven (7) days after the Notice of Sanction (or Notice of Finding if no violation is found) is issued. The appeal should indicate the specific basis for the appeal (see below), supporting arguments and documentation, and any other relevant information the appealing party wishes to include. The appealing party should be aware that all appeals are documentary reviews, and no interviews are conducted. Generally, appeals are determined solely on the merits of the documents submitted. Appeal documents therefore should be as complete and succinct as possible. Unless any applicable Notice of Sanction specifies otherwise based on safety considerations, all sanctions imposed in the case will not go into effect until either the deadline for filing an appeal passes and no appeal is filed or, if a timely appeal is filed, the appeal is decided, whichever comes first.

### Basis for Appeal

Appeals must state one or more of the following criteria as the reason for the appeal.

- Procedural errors by which any party was prevented from receiving a fair adjudication; or
- A sanction was disproportionate to the violation of the Discrimination and Harassment Policy.

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

### Appeal Process and Appeal Advisory Board

The Associate Vice Chancellor of the OIEC or designee will notify the other party to the original complaint (complainant or respondent) in writing, and the party will be provided seven (7) days to respond in writing to the appeal. The response should be sent to the Associate Vice Chancellor of the OIEC or designee. Neither party is required to respond to an appeal. Not responding to an appeal does not imply agreement with the appeal.

After the submission of all documentation or the seven-day deadline for response has passed, the Associate Vice Chancellor of the OIEC or designee will appoint two additional university employees (who may include staff from the Anschutz, Denver, and Colorado Springs campuses) who are not otherwise affiliated with the OIEC at CU Boulder to serve on the three-person Appeal Advisory Board. The Appeal Advisory Board appointees will have received appropriate training on the Discrimination and Harassment Policy and appeal procedures. The Associate Vice Chancellor of the OIEC or designee is the Chair of the Appeal Advisory Board.

### Appeal Decisions

Upon review of the appeal, the Appeal Advisory Board may recommend that the Associate Vice Chancellor of the OIEC:



- Uphold the initial decision in its entirety;
- Send the case back for reconsideration and potentially re-investigation (by the same or different officials); or
- Reduce or increase a disproportionate sanction.

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

## ii. Appeals for Employee Respondents

Upon the conclusion of the Investigation, either the complainant or respondent may file a written appeal of the Investigation outcome. All appeals must be made in accordance with the procedures outlined in this section. Any rights of appeal of a sanction shall be conducted in accordance with the procedure for appeal, if available to the employee, such as the State Personnel Rules or rules governing proceedings before the Faculty Senate Committee on Privilege and Tenure.

Nothing in this section shall be read to create a right of appeal of sanctions for employees that is not otherwise provided for by law or university policy.

### How to File an Appeal and Timeframe

Appeals must be submitted in writing, to the Associate Vice Chancellor of the OIEC or designee within seven (7) days after the Notice of Finding. The appeal should indicate the specific ground for the appeal (see below), supporting arguments and documentation, and any other relevant information the appealing party wishes to include. The appealing party should be aware that all appeals are documentary reviews in which no interviews are conducted. Generally, appeals are determined solely on the merits of the documents submitted. Appeal documents therefore should be as complete and succinct as possible.

### Basis for Appeal

The only basis for appeal is:

- Procedural errors by which any party was prevented from receiving a fair investigation.

In the appeal, the party may not present any new evidence unless the party can demonstrate that it could not, with reasonable diligence, have discovered and produced evidence during the course of the investigation.

### Appeal Process and Appeal Advisory Board

The Associate Vice Chancellor of the OIEC or designee will notify the other party to the original complaint (complainant or respondent) in writing and provide seven (7) days to



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respond in writing to the appeal. The response should be sent to the Associate Vice Chancellor of the OIEC or designee.

Neither party is required to respond to an appeal. Not responding to an appeal does not imply agreement with the appeal.

After the submission of all documentation, or the seven-day deadline for response has passed, the Associate Vice Chancellor of the OIEC or designee will appoint two additional university employees (who can include staff from the Anschutz, Denver and Colorado Springs campuses) who are not otherwise affiliated with the OIEC at CU Boulder to serve on the three-person Appeal Advisory Board. The Appeal Advisory Board appointees will have received appropriate training on the applicable policies and appeal procedures. The Associate Vice Chancellor of the OIEC or designee is the Chair of the Appeal Advisory Board.

### Appeal Decisions

Upon review of the appeal, the Appeal Advisory Board may recommend that the Associate Vice Chancellor of the OIEC:

- Uphold the initial decision in its entirety and refer to the disciplinary authority for sanctioning if applicable; or
- Send the case back for reconsideration and potentially re-investigation.

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

## **2. Policy Compliance Remedies**

The OIEC may determine that the most prompt and effective way to address a concern is through a Policy Compliance Meeting. For example, the OIEC may resolve a report or complaint through a Policy Compliance Meeting if the alleged conduct, even if true, would not be considered prohibited conduct under the Discrimination and Harassment Policy.

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

- Provide interim or long-term supportive measures to the complainant or the



respondent;

- Provide a referral to other campus-based resolution processes as appropriate for the specific facts of the case;
- Provide targeted or broad-based educational programming or training; and
- Conduct a Policy Compliance Meeting with the respondent to (1) discuss the behavior as alleged and provide an opportunity to respond; (2) review prohibited conduct under the Discrimination and Harassment Policy; (3) identify and discuss appropriate future conduct and behavior as well as how to avoid behavior that could be interpreted as retaliatory; (4) inform the complainant of the respondent's responses if appropriate; and (5) notify SCCR or the respondent's appointing/disciplinary authority of the allegations and responses if necessary, who will determine whether any other disciplinary action is appropriate.

The OIEC retains discretion to conduct a Policy Compliance Meeting. Additionally, the OIEC retains discretion to proceed with a Formal Adjudication Process for allegations that, if proven true, would violate the Discrimination and Harassment Policy.

For allegations that would warrant a Formal Adjudication Process, but the OIEC proceeded with a Policy Compliance Meeting because the complainant requested privacy or that no investigation or disciplinary action be taken and that request could be honored consistent with the factors and obligations of the OIEC as set forth in Section VI(D) and VIII(D)(1)(a), the OIEC will notify the complainant of the ability to end the Policy Compliance Meeting process at any time and to commence or resume a Formal Adjudication Process.

## **IX. Conflict of Interest in Cases of Amorous Relationships Resolution Procedures**

The [University of Colorado Conflict of Interest in Cases of Amorous Relationships Policy](#) requires that direct evaluative authority not be exercised in cases where amorous relationships exist or existed within the last seven years between two individuals, whether of the same or opposite sex. Problems often arise with amorous relationships in situations where one party is the supervisor and the other the supervisee. In such situations the integrity of academic or employment decisions may either be compromised or appear to be compromised. Further, amorous relationships between parties of unequal power greatly increase the possibility that the individual with the evaluative responsibility, typically a supervisor or a faculty member, will abuse her/his power and sexually exploit the student or employee. A relationship which began as consensual, may in retrospect be seen as something else by one or both of the parties. Moreover, others may be adversely affected by such behavior because it places the faculty member or supervisor in a position to favor or advance one student's or employee's interest at



the expense of others and implicitly makes obtaining preferences contingent upon romantic or sexual favors. The policy, consequently, is intended to: (1) establish a reporting structure to protect participants in these relationships from violations of university conflict of interest guidelines; and (2) provide direction concerning how to terminate evaluative responsibilities between the two parties in the reported relationship. If the individuals do not report the relationship, and the evaluative authority continues, OIEC may conduct an adjudication into a potential violation of the Amorous Relationships Policy.

Read the full [Conflict of Interest in Cases of Amorous Relationships Policy](#).

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

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

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

2) If the amorous relationship exists in a form of supervisor/supervisee direct evaluative relationship other than those enumerated above, it must be disclosed to the supervisor's unit head, typically the appointing authority, with all parties present. The parties involved may choose to have this disclosure in written form placed in their own personnel files. In either of these sets of circumstances, the responsibility to disclose rests with the person in the evaluative position. The individual to whom the disclosure is made is responsible for requiring that actions be taken to resolve the conflict by terminating the evaluative relationship.

3) If such actions are outside that individual's authority, the matter shall be referred to the individual with the authority to take such actions.

In any of the circumstances described above, the individual to whom disclosure is made bears responsibility for keeping this information confidential to the fullest extent possible.

When information concerning an amorous relationship has been placed in personnel files, it will be removed and destroyed seven years after the time of initial disclosure if the interested party should so request, specifying, in addition, that the prior relationship has now ended.

On the campuses a report of the action taken to resolve this conflict of interest shall be made to the Chancellor or the Chancellor's designee. On the CU Boulder campus, the OIEC is the



designated office to report compliance with the policy.

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

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

## **C. Allegations of Non-Compliance**

### **1. Resolution Processes**

The OIEC has authority to conduct at least a preliminary inquiry upon receiving a report or complaint alleging prohibited conduct. A preliminary inquiry may include, but is not limited to, evaluating whether the complaint implicates a policy enforced by the OIEC, whether the complaint and parties are within the jurisdiction of the OIEC. The OIEC shall then determine the most appropriate means for addressing the report or complaint. Options include but are not limited to:

- Formal Adjudication Process. See Section IX(C)(2)
- Policy Compliance Remedies. See Section IX(C)(3)
- Preliminary Inquiry: Determining that the facts of the complaint or report, even if true, would not constitute a violation of the Amorous Relationship Policy and closing the matter following a preliminary inquiry.
- No limitation on existing authority: Referring the matter to an employee's disciplinary authority or supervisor. The Resolution Procedures do not limit the authority of a disciplinary authority to initiate or impose disciplinary action as necessary
- Other referral: Determining a complaint does not fall within the jurisdiction of the Amorous Relationship Policy and referring the complaint to appropriate office(s) on campus best situated to address the reported concerns.

### *OIEC Investigators*

The OIEC's Resolution Processes will be conducted by staff who are appropriately trained and have qualifications and experience that will facilitate prompt, fair, equitable and impartial resolutions. The Assistant Vice Chancellor of the OIEC or designee shall ensure that OIEC investigators and Investigation Review Board members receive annual training on how to conduct investigations and adjudications that protect safety of all parties, ensure





due process, promote accountability and other issues related to protected-class discrimination and harassment and related retaliation. The Assistant Vice Chancellor of the OIEC or designee shall determine if one or more investigators shall be assigned to each case depending on the specific circumstances and as warranted.

## **2. Formal Adjudication Process**

The OIEC may resolve a report of alleged misconduct through the Formal Adjudication Process when the alleged misconduct, if true, would be prohibited under the Amorous Relationship Policy. The OIEC may decline to pursue a Formal Adjudication Process if 1) a complainant has requested that a Formal Adjudication Process not be pursued, and 2) the OIEC has determined that the complainant's request can be honored consistent with the university's obligation to provide a safe and non-discriminatory environment and that the matter can be brought into compliance with the steps noted above. See Section IX(C)(1) above.

### Timeframes

The university will use its best efforts to complete its investigation and impose sanctions when applicable within an average of ninety (90) days, 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, the integrity and completeness of the investigation, compliance with a request by law enforcement, or due to concurrent law enforcement activity likely to produce materially relevant evidence, absences by the parties, the availability of witnesses, the necessity to provide translation services or accommodations of a disability, university breaks or vacations, the necessity to access relevant and probative documentation that is not immediately available, or other legitimate reasons.

In order to deliver a reasonably prompt process, the complainant and the respondent each have an obligation to meet deadlines as requested by OIEC during the investigation and as specified below. Extensions of time shall only be granted for good cause shown, and the parties shall be provided written notice of extensions or any delay, as applicable, and the reasons for any such extensions or delays.

### **a. Rights and Responsibilities of the Parties**

During a Formal Adjudication Process, the complainant and the respondent shall each have equitable opportunity to:

- An adjudication conducted by trained officials who do not have a conflict of interest or bias for or against the complainant or respondent. An official shall recuse themselves from participating in an adjudication in those instances where the official believes that their impartiality might reasonably be questioned by an independent, neutral observer due to the official's personal bias or prejudice



## Institutional Equity and Compliance

UNIVERSITY OF COLORADO BOULDER

against the complainant or respondent or where the official has a personal or professional relationship with one of the parties that would adversely affect the official's ability to serve as an impartial finder of fact;

- Supportive and safety measures to be provided before an adjudication or while an adjudication is pending. Supportive and safety measures, when determined to be appropriate and reasonably available by the Senior Director of Support and Safety Measures or designee, are intended to maintain the educational or employment environment if possible and may include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations. Supportive and safety measures should be individualized and appropriate based on the information gathered by the Senior Director of Support and Safety Measures or designee;
- Receive notice before they participate in an interview with sufficient time to prepare for meaningful participation;
- A process with reasonably prompt timeframes, with extensions for good cause. See Section IX(C)(2).
- Present relevant information to the investigator(s), including evidence and identifying witnesses, See Section IX(C)(2)(b)(ii);
- Have an advisor of their choosing, including an attorney, advocate, or other support person who is not a potential witness in the investigation or could otherwise compromise the investigation, provide support and advice throughout the Formal Adjudication Process, including but not limited to being present for any meetings with OIEC personnel. The advisor, advocate or support person may not engage in any conduct that would constitute harassment or retaliation against any person who has participated in an investigation and may be denied further participation for harassing or retaliatory conduct;
- Timely and equal access to any relevant information, including witness identities and relevant information provided by complainant, respondent, witnesses, and other documentation gathered during the investigation, unless the university is legally prohibited from disclosing the information to a party, See Section IX(C)(2)(b)(iii);
- Review and respond to a Written Evidence Summary of the relevant and material facts gathered during the Investigation prior to any investigative findings or conclusions, as described in Section IX(C)(2)(b)(iii);



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- Submit questions to the investigator(s) to be asked of the other party or witnesses following the dissemination of the Written Evidence Summary and prior to any investigative findings or conclusions; Investigator(s) will address all relevant questions and provide an explanation as to any decision to exclude questions as not relevant, See Section IX(C)(2)(b)(iii);
- Inspect the case file, which contains all information or evidence, unless prohibited or confidential under law, gathered as part of the investigation, including information the OIEC does not intend to rely on in reaching a determination, prior to any investigative findings or conclusions, Section IX(C)(2)(b)(iii);
- An internal review by the Investigation Review Board before the final investigative findings are issued, Section IX(C)(2)(b)(v);
- Receive written, concurrent notice of the investigation outcome and a copy of the final Investigation Report at the conclusion of the Investigation, Section IX(C)(2)(b)(vi);
- Provide information about aggravating or mitigating factors prior to any sanction being imposed, if applicable, Section IX(C)(2)(c)(i);
- Receive notice of any sanction, if applicable, in writing, including a statement of the basis upon which any sanction was imposed, Section IX(C)(2)(c)(iv); and
- Appeal the investigative findings or sanction imposed as described in Section IX(C)(2)(d), as applicable.

### **b. Major Stages of the Investigation**

The OIEC is committed to providing a prompt, fair and impartial resolution of all matters referred for formal adjudication. A formal adjudication can include three stages: Investigation, Sanction, and Appeal, as applicable and described below.

#### **i. Written Notice of Allegations**

If a Formal Adjudication Process is commenced, the OIEC shall send the respondent and the complainant a written Notice of Allegations. The written Notice of Allegations may be sent to the respondent and the complainant by email, or sent via U.S. mail to the permanent addresses appearing in the university's information system or the 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 employee respondents,<sup>15</sup> the employee's supervisory upline, including the Chancellor and the

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<sup>15</sup> If the respondent is a student employee and the alleged misconduct occurs outside the employment capacity, the OIEC may determine that the respondent's supervisory upline has a



employee's appointing/disciplinary authority, as well as Human Resources, will also receive a copy of the written Notice of Allegations.

If, in the course of an investigation, a complainant alleges additional violations or the Associate Vice Chancellor or designee decides to investigate additional allegations about the complainant or respondent that are not included in the initial Notice of Allegations, the OIEC will issue an Amended Notice of Allegations to both parties.

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

- Provide a copy of the OIEC Resolution Procedures;
- Identify the complainant and respondent;
- Identify the investigator(s) who will conduct the investigation;
- Identify the conduct allegedly constituting the potential violation, including the date and location of the alleged incident to the extent known and available;
- Identify the specific section of the Conflict of Interest in Cases of Amorous Relationships Policy alleged to have been violated;
- Include a statement that no determinations have been or will be made until the conclusion of the investigation;
- Options for any supportive and safety measures; and
- Require that the respondent contact the OIEC within three (3) days to schedule a meeting. If the respondent chooses not to participate in the adjudication process, the OIEC may complete the adjudication based on the totality of information obtained during the Investigation Stage, which may include police investigation reports and other relevant documents or information, and Sanctioning and Appeal stages, if applicable.

### **ii. Evidence Gathering Phase of Investigation**

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

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legitimate need to know information related to the case resolution.



The university, and not the parties, holds both the burden of proof and the burden of gathering evidence sufficient to reach a Determination Regarding Responsibility.

Both parties may present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Neither party is restricted from discussing the allegation under investigation or from gathering or presenting relevant evidence. The OIEC will also contact individuals who may have potentially relevant information related to allegations under investigation even if these individuals are not proposed by the parties.

The investigators interview the complainant and the respondent separately and provide each party the opportunity to be heard and to respond to all relevant information.

### **iii. Disclosure of Written Evidence Summary**

Following the Evidence Gathering Phase, the investigator(s) shall send a Written Evidence Summary of the relevant and material facts to the complainant and respondent who each have seven (7) days to review and respond. At this time, the parties will also have access to witness identities and opportunity to inspect the full investigative file.

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

### **iv. Factual Findings and Determination Regarding Responsibility**

At the conclusion of the Evidence Gathering Phase, including any relevant information or questions submitted in response to the Written Evidence Summary and subsequent follow-up investigation, as appropriate, the Investigator(s) shall prepare written factual findings and Determination Regarding Responsibility that will include a description of procedural steps taken, including any notifications to the parties, interviews, and methods for gathering evidence, a statement of factual findings and a determination as to whether or not there was a violation of policy based on the application of the factual findings to the policy.

#### **Standard of Review/Burden of Proof**

Regardless of the whether the respondent is a student or employee, consistent with the standard of proof in other conduct proceedings, the OIEC applies the “preponderance of the evidence” standard when making findings of fact and conclusions as to whether violations of policy occurred. A preponderance of the evidence exists when the totality of the evidence demonstrates that an allegation of misconduct is more probably true



than not. If the evidence weighs so evenly that the investigator(s) is unable to say there is a preponderance on either side, the investigator(s) must determine that there is insufficient evidence to conclude that a violation of the Conflict of Interest in Cases of Amorous Relationships Policy occurred.

In applying the preponderance of the evidence standard, the investigator(s) may consider both direct and circumstantial evidence. The investigator(s) may determine the credibility of parties and witnesses and the weight to be given their statements, taking into consideration their means of knowledge, strength of memory and opportunities for observation, the reasonableness or unreasonableness of their statements, the consistency or lack of consistency of their statements, their motives, whether their statements are contradicted or supported by other evidence, any evidence of bias, prejudice or interest, and the person's manner and demeanor when providing statements.

It is the responsibility of the OIEC, not the parties, to make a determination based on the totality of the available information to determine whether or not the preponderance of the evidence has been met. Neither party bears a burden of proof.

The written determination regarding responsibility will include a determination of whether the respondent is found responsible for violating the policy or not. If an employee respondent is found not to be responsible for violating the policy, the written Determination Regarding Responsibility may, if applicable, include a determination that the employee respondent engaged in conduct that was inappropriate or unprofessional. In such cases, the OIEC will refer such matters to the disciplinary authority, who will make the final determination on appropriate action or response.

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

### **v. Investigation Review Board**

The written Determination Regarding Responsibility shall be presented for review to the Investigation Review Board. The Investigation Review Board shall consist of employees who are not affiliated with the OIEC and have received appropriate training regarding implementation and application of the OIEC Resolution Procedures. The Investigation Review Board reviews the written determination to review for investigator(s) bias and impartiality, thoroughness of the investigation, and sufficiency to support the finding. The Investigation Review Board may review any information contained in the investigative file, may consult with the investigator(s), or may recommend that further investigation or a new investigation be done by the same or other investigator(s). The Investigation Review Board may not conduct its own investigation.



**vi. Notice of Finding<sup>16</sup>**

The OIEC shall advise the complainant and respondent simultaneously in writing of the result or outcome the investigation. A copy of the written Determination Regarding Responsibility shall be provided to the complainant and the respondent. In addition, for the respondent's supervisor and appointing/disciplinary authority also receive the written determination of responsibility.

The Notice of Finding will also notify the parties as to the next step in the process, as applicable.

**c. Sanctioning Process for Respondents (Including Student Employees)**

The Associate Vice Chancellor of the OIEC or designee will notify the disciplinary authority if an employee respondent was found to have violated a policy or acted inappropriately or unprofessionally.

**i. Parties' opportunity to be heard by the OIEC**

Following the conclusion of any appeal of the Investigation or the expiration of the appeal deadline (7 days from the Notice of Finding, see Section IX(C)(2)(d)), the respondent and complainant will each have an opportunity to separately meet with the Associate Vice Chancellor of the OIEC or designee to discuss any mitigating or aggravating circumstances related to the conduct that may impact sanctioning.

It is the responsibility of the parties to set the appointment and meet within the time prescribed. Alternatively, the complainant or respondent may submit a written statement to the Associate Vice Chancellor of the OIEC or designee in lieu of a meeting. Written statements must be submitted or a meeting held within seven (7) days of the notice sent by the Associate Vice Chancellor of the OIEC or designee (following the appeals process or the expiration of the deadline for appeals).

Information must be limited to describing mitigating or aggravating circumstances that may affect sanctioning. Any statement outside of these guidelines will not be considered.

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

**ii. OIEC's formal recommendation to disciplinary authority**

The Associate Vice Chancellor of the OIEC or designee will provide a formal

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<sup>16</sup> Findings under the OIEC Resolution Procedures are not findings pursuant to applicable state and federal legal standards, i.e. a policy violation may not rise to a violation of equal opportunity law.



recommendation to the disciplinary authority as to applicable sanctions.

### iii. Sanction required and Potential Sanctions

In order to remediate the effects of Amorous Relationship non-compliance, the disciplinary authority will impose sanctions.

The disciplinary authority will determine the type of sanctions in consultation with the Chief Human Resource Officer or designee, the Associate Vice Chancellor of the OIEC or designee, and any other administrative staff with a need to know.

The appointing/disciplinary authority may have access to the investigative records and may consult with the investigator(s) in order to determine action.

#### Potential sanctions include:

- Letter of Expectation/Reprimand: A warning/written letter of expectation or reprimand is a statement from the disciplinary authority that the behavior was inappropriate and that more serious disciplinary action will be taken should subsequent infractions occur.
- Mandatory Training: The employee may be required to attend a training, class, or program as relevant to the misconduct.
- Demotion: The employee is demoted from their current position.
- Job Duty Modifications: The disciplinary authority may modify the employment responsibilities of the employee.
- Reduction in Salary/Ineligibility for Merit Increases: The employee's salary is reduced either permanently or temporarily, or the employee is not eligible for merit increases either permanently or temporarily.
- Ineligibility for Rehire: The employee is no longer eligible for employment at the university.
- Exclusion: The employee is denied access to all or a portion of university property. When an employee is excluded from university property, that employee may be permitted on university property for limited periods and specific activities with the permission of the university official or designee who imposed the exclusion. Should the employee enter university property without permission, action may be taken by the police for trespass.
- Termination of Employment Contract or Termination of Employment: Pursuant to applicable laws and policies specific to the employee's status, the disciplinary authority recommends or terminates employment.





- **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.

#### **iv. Notice to parties**

The Associate Vice Chancellor of the OIEC or designee 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 and/or harassment to the extent permitted by law. Regardless of the OIEC findings, there is no preclusion of discipline by the appointing authority for other misconduct or for inappropriate or unprofessional conduct.

#### **d. Appeals**

Upon the conclusion of the Investigation, either the complainant or respondent may file a written appeal of the Investigation outcome. All appeals must be made in accordance with the procedures outlined in this section. Any rights of appeal of a sanction shall be conducted in accordance with the procedure for appeal, if available to the employee, such as the State Personnel Rules or rules governing proceedings before the Faculty Senate Committee on Privilege and Tenure.

Nothing in this section shall be read to create a right of appeal of sanctions for employees that is not otherwise provided for by law or university policy.

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

Appeals must be submitted in writing, to the Associate Vice Chancellor of the OIEC or designee within seven (7) days after the Notice of Finding. The appeal should indicate the specific ground for the appeal (see below), supporting arguments and documentation, and any other relevant information the appealing party wishes to include. The appealing party should be aware that all appeals are documentary reviews in which no interviews are conducted. Generally, appeals are determined solely on the merits of the documents submitted. Appeal documents therefore should be as complete and succinct as possible.

##### *Basis for Appeal*

The only basis for appeal is:

- Procedural errors by which any party was prevented from receiving a fair investigation.

In the appeal, the party may not present any new evidence unless the party can demonstrate that it could not, with reasonable diligence, have discovered and produced evidence during the course of the investigation.



### Appeal Process and Appeal Advisory Board

The Associate Vice Chancellor of the OIEC or designee will notify the other party to the original complaint (complainant or respondent) in writing and provide seven (7) days to respond in writing to the appeal. The response should be sent to the Associate Vice Chancellor of the OIEC or designee.

Neither party is required to respond to an appeal. Not responding to an appeal does not imply agreement with the appeal.

After the submission of all documentation, or the seven-day deadline for response has passed, the Associate Vice Chancellor of the OIEC or designee will appoint two additional university employees (who can include staff from the Anschutz, Denver and Colorado Springs campuses) who are not otherwise affiliated with the OIEC at CU Boulder to serve on the three-person Appeal Advisory Board. The Appeal Advisory Board appointees will have received appropriate training on the applicable policies and appeal procedures. The Associate Vice Chancellor of the OIEC or designee is the Chair of the Appeal Advisory Board.

### Appeal Decisions

Upon review of the appeal, the Appeal Advisory Board may recommend that the Associate Vice Chancellor of the OIEC:

- Uphold the initial decision in its entirety and refer to the disciplinary authority for sanctioning if applicable; or
- Send the case back for reconsideration and potentially re-investigation.

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

### **3. Policy Compliance Remedies**

The OIEC may determine that the most prompt and effective way to address a concern is through a Policy Compliance Meeting. For example, the OIEC may resolve a report or complaint through a Policy Compliance Meeting if the alleged conduct, even if true, would not be considered prohibited conduct under the Amorous Relationship Policy.

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



- Provide interim or long-term supportive measures to the complainant or the respondent;
- Provide a referral to other campus-based resolution processes as appropriate for the specific facts of the case;
- Provide targeted or broad-based educational programming or training; and
- Conduct a Policy Compliance Meeting with the respondent to (1) discuss the behavior as alleged and provide an opportunity to respond; (2) review prohibited conduct under the Amorous Relationship Policy; (3) identify and discuss appropriate future conduct and behavior as well as how to avoid behavior that could be interpreted as retaliatory; (4) inform the complainant of the respondent's responses if appropriate; and (5) notify the respondent's supervisor of the allegations and responses if necessary, who will determine whether any other disciplinary action is appropriate.

The OIEC retains discretion to conduct a Policy Compliance Meeting. Additionally, the OIEC retains discretion to proceed with a Formal Adjudication Process for allegations that, if proven true, would violate the Conflict of Interest in Cases of Amorous Relationships Policy.

## **X. Outside Investigators and Hearing Officers**

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

## **XI. Resources**



## A. Confidential Resources

### *On Campus:*

#### [Office of Victim Assistance \(OVA\)](#)

Center for Community (C4C), Room N450

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

Provides advocacy and counseling services that may be used by students, staff, faculty victims, complainants, or others who experience traumatic, disturbing or disruptive life events. All contacts are confidential.

#### [Counseling and Psychiatric Services \(CAPS\)](#)

Center for Community (C4C), Room N352 Wardenburg Health Center, 3rd Floor

Phone: (303) 492-CAPS (2277) (24-hour phone service)

Offers counseling, groups and workshops for CU Boulder students. All contacts are confidential.

#### [Faculty and Staff Assistance Program \(FSAP\)](#)

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

Phone: (303) 492-3020

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

#### [Ombuds Office](#)<sup>17</sup>

Center for Community (C4C), Room N440

Ombuds Phone: (303) 492-5077

Faculty Ombuds Phone: (303) 492-1574

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 (UMC), Room 311

Phone: (303) 492-6813

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:*

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<sup>17</sup> 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.



[Moving to End Sexual Assault \(MESA\)](#)

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

[Safe House Progressive Alliance for Non-Violence \(SPAN\)](#)

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

[Safe House Protection Order Assistance](#)

Phone: (303) 449-8623

[Safe Shelter of St. Vrain Valley](#)

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

## **B. Counseling Services**

### *On Campus*

[Counseling and Psychiatric Services \(CAPS\)](#)

Center for Community (C4C), Room N352

Wardenburg Health Center, 3rd Floor

Phone: (303) 492-CAPS (2277) (24-hour phone service)

Offers counseling, groups and workshops for CU Boulder students. All contacts are confidential.

[Faculty and Staff Assistance Program \(FSAP\)](#)

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

Phone: (303) 492-3020

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

[Office of Victim Assistance \(OVA\)](#)

Center for Community (C4C), Room N450

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

Provides advocacy and counseling services that may be used by students, staff, faculty victims, complainants, 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)



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

### **C. Disability**

*On Campus*

#### [ADA Compliance](#)

Administrative Research Center (ARCE), 2nd Floor East Campus, 3100 Marine Street

Phone number: (303) 492-9725

Fax Number: (303) 492-5005 [adacoordinator@colorado.edu](mailto:adacoordinator@colorado.edu)

#### [Disability Services](#)

Center for Community (C4C), Room N200

Phone: (303) 492-8671

### **D. Employee Services**

*On Campus*

#### [ADA Coordinator](#)

Director of ADA Compliance and ADA Coordinator: Caitlin O'Donnell

[adacoordinator@colorado.edu](mailto:adacoordinator@colorado.edu)

Phone: (303) 492-9725

Fax: (303) 492-5005

[Faculty Relations](#) Phone: (303) 492-0447

#### [Employee Relations](#)

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

Phone: (303) 492-0956

#### [Faculty and Staff Assistance Program \(FSAP\)](#)

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

Phone: (303)-492-3020

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

#### [Office of Victim Assistance \(OVA\)](#)

Center for Community (C4C), Room N450

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

Provides advocacy and counseling services that may be used by students, staff, faculty victims, complainants, or others who experience traumatic, disturbing or disruptive life events. All contacts are confidential.

*Off Campus*



[Colorado State Employee Assistance Program \(C-EAP\)](#)

Phone: (303) 866-4314

Law Enforcement/Prosecution

On Campus

**E. Law Enforcement**

*On Campus*

[University of Colorado Police Department \(CUPD\)](#)

1050 Regent Drive

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

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 Street

Boulder, CO 80301

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

[Boulder County Sheriff's Office](#)

5600 Flatiron Parkway

Boulder, CO 80301

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

[Boulder County District Attorney](#)

Boulder County Justice Center 1777 Sixth Street

Boulder, CO 80302

Phone: (303) 441-3700

Bias & Hate Hotline: (303) 441-1595

**F. Legal Services**

[Student Legal Services \(SLS\)](#)

University Memorial Center (UMC), Room 311

Phone: (303) 492-6813

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

**G. Medical and Health Services**

*On Campus*

[Medical Services](#) (Wardenburg Health Center)



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1900 Wardenburg Drive  
Boulder, CO 80309  
Phone: (303) 492-5101

### [Health Promotion](#)

Wardenburg Health Center, Room 130 1900 Wardenburg Drive  
Phone: (303) 492-2937

### *Off Campus*

### [Boulder Community Health Foothills Hospital](#)

4747 Arapahoe Avenue  
Boulder, CO 80303  
Phone: (303) 415-7000

### [Boulder Community Health, Sexual Assault Nurse Examiner \(SANE\) program](#)

4747 Arapahoe Avenue  
Boulder, CO 80303  
Phone: (303) 415-8818

## **H. Sexual Assault Nurse Examiner (SANE) Programs**

### [Boulder Community Health, Sexual Assault Nurse Examiner \(SANE\) program](#)

4747 Arapahoe Avenue  
Boulder, CO 80303  
Phone: (303) 415-8818

## **I. State and Federal Civil Rights Compliance Offices**

(Report Complaints of Harassment or Discrimination)

### [Colorado Civil Rights Division](#)

Phone: (303) 894-2997

### [U. S. Department of Education, Office for Civil Rights](#)

Phone: (303) 844-2024

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

Phone: (202) 514-2000

### [United States Equal Employment Opportunity Commission](#)

Phone: (303) 866-1300

## **J. Student Services on Campus**

### [Student Support and Case Management \(SSCM\)](#)





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Center for Community (C4C), Room N460

Phone: (303) 492-7348

SCCM staff serves as the primary resource for managing student issues, providing intervention and crisis prevention. The case managers coordinate with other CU Boulder departments and facilitate communication to and from the Student of Concern Team (SOCT). If concerned about a student contact SSCM or fill out a form online.

### [Counseling and Psychiatric Services \(CAPS\)](#)

Center for Community (C4C), Room N352 Wardenburg Health Center, 3rd Floor

Phone: (303) 492-CAPS (2277) (24-hour phone service)

Offers counseling, groups and workshops for CU Boulder students. All contacts are confidential.

### [Center for Inclusion & Social Change](#)

Center for Community (C4C), Room N320

Phone: (303) 492-0272

The Center for Inclusion and Social Change was formed in 2018 by the Cultural Unity and Engagement Center, the Women's Resource Center, and the Gender and Sexuality Center and supports students in exploring multiple intersecting aspects of their identity.

### [Housing & Dining](#)

Phone: (303) 492-6871

### [International Student and Scholar Services \(ISSS\)](#)

Center for Community (C4C), Room S355

Phone: (303) 492-8057

### [Student Conduct and Conflict Resolution \(SCCR\)](#)

Center for Community (C4C), Room S485

Phone: (303) 492-5550

### [Office of Victim Assistance \(OVA\)](#)

Center for Community (C4C), Room N450

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

Provides advocacy and counseling services that may be used by students, staff, faculty victims, complainants, or others who experience traumatic, disturbing or disruptive life events. All contacts are confidential.

### [Ombuds Office](#)<sup>18</sup>

Center for Community (C4C), Room N440

Phone: (303) 492-5077

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<sup>18</sup> 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.



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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 (UMC), Room 311

Phone: (303) 492-6813

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

## **K. Veterans**

*On Campus*

### [Veteran and Military Affairs](#)

Center for Academic Success and Engagement (CASE), W322

Phone: (303) 492-7322

*Off Campus*

### [Boulder Vet Center \(U.S. Department of Veterans Affairs\)](#)

4999 Pearl East Circle, Suite 106

Boulder, CO 80301

Phone: (303) 440-7306

## **L. Victim Advocacy**

*On Campus:*

### [Office of Victim Assistance \(OVA\)](#)

Center for Community (C4C), Room N450

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

Provides advocacy and counseling services that may be used by students, staff, faculty victims, complainants, 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)

### [Safe House Progressive Alliance for Non-Violence \(SPAN\)](#)

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

### [Safe House Protection Order Assistance](#)



Phone: (303) 449-8623

[Safe Shelter of St. Vrain Valley](#)

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

Visa and Immigration

[International Student and Scholar Services \(ISSS\)](#)

Center for Community (C4C), Room S355

Phone: (303) 492-8057

## XII. Definitions

**Advisor:** An individual designated by the complainant or respondent to be present at interviews and/or conduct cross-examination. Advisors may be, but do not have to be, attorneys. If a party does not designate an advisor, the OIEC will appoint an advisor for cross-examination in cases of alleged Sexual Misconduct.

**Aggravating Factor:** Relevant circumstances accompanying the commission of misconduct or occurring prior to the misconduct as specified in Prohibited Conduct that add to its seriousness. Examples may include the use of violence or force, violation of a trust or duty, premeditation of an 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:** An individual who is alleged to be the victim of prohibited conduct under any applicable policy.

**Day:** For purposes of these policies and procedures, a day is a calendar day, excluding business days that CU Boulder is officially closed. (Please refer to the [CU Boulder campus holiday schedule online](#).)

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

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

**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.”

**Respondent:** An individual who has been reported to be the perpetrator of alleged prohibited conduct under any applicable policy.

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

**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.

### **XIII. Appendix 1: Selected Colorado Criminal Definitions**

In Colorado, the criminal definitions of sexual assault, domestic violence (which also includes dating violence) and stalking are distinctly different from some of the definitions outlined in university policy. Below are the relevant sections of the Colorado Criminal Code that demonstrate these differences.

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

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



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

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

- The actor causes submission of the victim by means of sufficient consequences reasonably calculated to cause submission against the victim's will; or
- The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or
- The actor knows that the victim submits erroneously, believing the actor to be the victim's spouse; or
- At the time of the commission of the act, the victim is less than fifteen years of age and the actor is at least four years older than the victim and is not the spouse of the victim; or
- At the time of the commission of the act, the victim is at least fifteen years of age but less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim; or
- The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, unless incident to a lawful search; or
- The actor, while purporting to offer a medical service, engages in treatment or examination of a victim for other than a bona fide medical purpose or in a manner substantially inconsistent with reasonable medical practices; or
- The victim is physically helpless and the actor knows the victim is physically helpless and the victim has not consented.

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

(1) Any actor who knowingly subjects a victim to any sexual contact commits unlawful sexual contact if:

- The actor knows that the victim does not consent; or
- The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or
- The victim is physically helpless and the actor knows that the victim is physically helpless and the victim has not consented; or
- The actor has substantially impaired the victim's power to appraise or control the



victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission; or

- The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority, unless incident to a lawful search, to coerce the victim to submit; or
- The actor engages in treatment or examination of a victim for other than bona fide medical purposes or in a manner substantially inconsistent with reasonable medical practices.

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

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

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

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

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

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

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

- Makes a credible threat to another person and, in connection with the threat, repeatedly follows, approaches, contacts, or places under surveillance that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship; or
- Makes a credible threat to another person and, in connection with the threat, repeatedly makes any form of communication with that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing



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relationship, regardless of whether a conversation ensues; or

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