

# **Resolution Procedures**

## **2025-2026**

**Effective: September 2025**

The University of Colorado 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, marital 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 these Resolution Procedures is intended to provide general information to members of the university community and is not intended to, nor does it, create a contract between members of the University of Colorado community and the University of Colorado. It does not confer any rights or create any obligations for the university. The university reserves the right to change or eliminate any of the language herein at its discretion and without notice.

# Table of Contents

I. Overview and Mission Statement of the Office of Ethics, Risk and Compliance .....	3
II. Purpose and Scope .....	3
III. Reporting Options .....	4
IV. Definitions.....	6
V. General Jurisdiction.....	8
VI. Support and Assistance Including Orders of Protection .....	9
VII. Privacy, Confidentiality, and the University’s Obligation to Provide a “Safe and Non-Discriminatory Environment” .....	10
VIII. Sexual Misconduct, Intimate Partner Violence, and Stalking Policy Resolution Procedures.....	13
IX. Protected Class Nondiscrimination Policy Resolution Procedures .....	40
X. Conflict of Interest in Cases of Amorous Relationships Resolution Procedures.....	62
XI. Outside Investigators and Hearing Officers .....	80

Office of Ethics, Risk, and Compliance  
University of Colorado System  
1800 Grant Street  
Denver, CO

Valerie Simons  
Vice President of Compliance and Equity  
System Title IX Coordinator  
[valerie.simons@cu.edu](mailto:valerie.simons@cu.edu)  
[OERC website](#)

# Office of Ethics, Risk, and Compliance

## I. Overview and Mission Statement of the Office of Ethics, Risk and Compliance

The OERC's mission is to create and foster a safe, inclusive, and accessible environment. The OERC is committed to preventing discrimination and harassment based on race, color, national origin, pregnancy, sex, age, disability, creed, religion, sexual orientation, gender identity, gender expression, veteran status, marital status, political affiliation, or political philosophy. We are committed to preventing any form of related retaliation as prohibited by University policies and state and federal laws. The OERC utilizes fair and unbiased processes and treats all individuals who seek our assistance with respect and dignity.

The OERC implements and enforces the University of Colorado Sexual Misconduct, Intimate Partner Violence, and Stalking Policy (APS 5014, effective September 2, 2021); the University of Colorado Protected Class Nondiscrimination Policy (APS 5065, effective August 1, 2024); and the University of Colorado Conflict of Interest in Cases of Amorous Relationships Policy (APS 5015, effective July 2, 2015) (Applicable Policies).

## II. Purpose and Scope

### A. Legal Compliance

These Resolution Procedures (Resolution Procedures) are intended to comply with the related requirements of federal and state laws, their implementing regulations, and related agency guidance and the 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. [Protected Class Nondiscrimination Policy](#)<sup>1</sup>

The policy prohibits discrimination and harassment 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, marital status, political affiliation, and political philosophy. The policy also prohibits retaliation and other related violations.

---

<sup>1</sup> University of Colorado Protected Class Nondiscrimination Policy (APS 5065), online at [APS 5065 - Protected Class Nondiscrimination | University of Colorado \(cu.edu\)](#).

2. [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.

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

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

### III. Reporting Options

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

#### A. Office for Ethics, Risk, and Compliance

To notify the university of any of the Prohibited Conduct described in Sections VIII, IX, and X, to request support measures related to such conduct, or to initiate an OERC resolution process, please contact the OERC directly.

- Phone: (303) 860-4258
- Email: [CUSystemReport@cu.edu](mailto:CUSystemReport@cu.edu)

Contact us directly:

- Valerie Simons  
Vice President and Title IX Coordinator  
[Valerie.simons@cu.edu](mailto:Valerie.simons@cu.edu)  
(303) 860-4258
- Katie Polidoro  
Compliance & Equity Officer  
[Kathryn.polidoro@cu.edu](mailto:Kathryn.polidoro@cu.edu)  
303-860-5633

---

<sup>2</sup> University of Colorado Sexual Misconduct, Intimate Partner Violence, and Stalking Policy (APS 5014), online at [APS 5014 - Sexual Misconduct, Intimate Partner Violence, and Stalking | University of Colorado \(cu.edu\)](#).

<sup>3</sup> University of Colorado Conflict of Interest in Cases of Amorous Relationships Policy (APS 5015), online at [APS 5015 - Conflict of Interest in Cases of Amorous Relationships | University of Colorado \(cu.edu\)](#).

- For a full list of reporting options and resources, please refer to the [OERC 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>4</sup> The goal of these provisions is to remove potential barriers to reporting and participation. However, final jurisdiction and decision-making regarding any conduct not covered by the Applicable Policies will be made by the appointing/disciplinary authority.

Even if a complainant chooses not to report formally or chooses not to participate in a resolution process (through OERC or law enforcement), the complainant can contact the OERC for information and assistance accessing supportive services and to access available supportive and safety measures as set forth in Section VIII(C) and Section IX(B).

## **B. Law Enforcement**

Complainants are not required, but do have the right, to file a criminal complaint with law enforcement simultaneously with an administrative report to the university/OERC. The OERC can assist in reporting to law enforcement for complainants alleging misconduct that is also a criminal offense.

In some instances, the OERC is obligated to report the alleged conduct to the appropriate law enforcement agency. In those instances, the OERC will make reasonable effort to notify potential complainants prior to reporting to law enforcement. See Section VII(E).

- **City of Denver Police Department**  
(720)-913-2000 (non-emergencies)  
[Denver Police Department General 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 an order of protection. 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 (for allegations of sexual assault), bedding (for allegations of sexual assault), text message correspondence discussing the incidents at issue (either with the accused or with friends or family), photographs, screenshots, videos, emails, social media correspondence/posts, correspondence via other forms of written communication, video

---

<sup>4</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.

surveillance, and names of witnesses and contact information.

Regardless of if an individual wants to report a sexual assault, a Medical Forensic Exam (MFE) can be done to preserve evidence. An MFE is conducted by a Forensic Nurse Examiner (FNE) and includes a Sexual Assault Nurse Exam (SANE). An MFE can be conducted at Denver Health Medical Center, Littleton Adventist Medical Center of Aurora, Porter Adventist Hospital, and St. Athony Hospital (Lakewood), ideally within five to seven days of the sexual assault. More information about an MFE, including hospital contact information can be found [here](#).

Please note that if some or all of this evidence is unavailable or does not exist, you are still encouraged to report potential Prohibited Conduct. A lack of physical or electronic evidence does not preclude an investigation from taking place.

## IV. Definitions

**Advisor:** An individual designated by the complainant or respondent to be present at interviews and/or conduct cross-examination at hearings. Advisors may be, but do not have to be, attorneys. If a party does not designate an advisor, the OERC will appoint an advisor for cross-examination at a hearing 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 or regent. A disciplinary authority is the individual or office that has the authority or delegated authority to impose discipline upon a particular employee or regent.

**Complainant:** An individual who is alleged to be the victim of Prohibited Conduct under any applicable policy.

**Day:** For purposes of calculating timeframes pursuant to these policies and procedures, a day is a calendar day. However, the OERC will not require parties to submit documents or responses or participate in any meetings on a weekend, holiday, or any other university system closure. In the event that a scheduled meeting or deadline falls on a weekend, holiday, or any other system closure, the OERC will extend a deadline to the next business day or promptly reschedule a meeting.

**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 removal from any university building, activity, or program, including leave from one's employment. This could include removal from all university activities and programs, and 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 OERC resolution process.

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

**Regent:** Any individual who has been elected to serve on the University Colorado Board of Regents.

**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 any University of Colorado campus, either full time or part time, pursuing undergraduate, graduate, or professional studies, as well as non-degree seeking students. This includes individuals who confirm their intent to enroll in programs, those attending new student welcome or orientation sessions, students between academic terms, and those that were enrolled at the date of an alleged incident. This also includes persons who are eligible to enroll but are not enrolled at the university, persons who are suspended from the university, and persons participating in a leave of absence. Persons who are not officially enrolled for a particular term but who have a continuing relationship, as determined by their campus's academic advising, with the university are considered students.

**University:** The University of Colorado System Administration.

**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 OERC.

## V. General Jurisdiction

The Applicable Policies apply to all students, faculty, staff, regents, contractors, patients, volunteers, affiliated entities and other third parties. For specific jurisdictional provisions, see the Applicable Policies. The Resolution Procedures govern how the OERC 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 OERC's jurisdiction does not depend on whether criminal charges are filed. Formal Grievance Processes or other case resolutions conducted by the OERC are not postponed while criminal or civil proceedings are pending unless there are extenuating circumstances, as determined by the OERC. Dismissal of criminal charges or acquittal in a criminal case does not prevent the OERC from resolving an incident.
3. There is no time limitation for reporting a concern to the OERC, however, the OERC's ability to address concerns is dependent in part upon the university's degree of control over a respondent at the time the matter is reported. The OERC's response to the report will be governed by the applicable policy in place at the time of the alleged misconduct, and if applicable, the current Resolution Procedures.
4. After proper notice as provided for in this document, the failure of an individual to appear or respond to the OERC does not prevent the OERC 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. In the event that there are multiple potential charges involving the Applicable Policies, the OERC 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 sometimes work at the worksite or program of another organization affiliated with the university. When a violation is alleged by or against university employees 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 grievance process; or 5) take other action as determined appropriate by the VP /Title IX Coordinator or designee. In all circumstances, university employees work at the worksite or program of another organization affiliated with the university can contact the OERC to be connected with university and community resources.
8. Conduct alleged to have occurred before an individual became an employee, regent, volunteer, or affiliated entity with the University may be addressed through applicable supportive and safety measures, educational measures, and resolution procedures as determined by the VP/Title IX Coordinator or designee. The VP/Title IX Coordinator or designee will consider whether the alleged conduct adversely affects the safety of or equal access to employment or university program or activity for any university community member.

## **VI. Support and Assistance Including Orders of Protection**

When an individual notifies the OERC (either directly or through a responsible employee, advocate, third party, or other) that they have experienced conduct prohibited by the Applicable Policies, the OERC will provide referral information as needed (whether or not there is a Formal Complaint or participation in a Formal Grievance Process or other resolution process) in accessing university and community services, including but not limited to counseling, workplace assistance, health services, mental health services, victim advocacy, legal assistance, visa and immigration services, assessments for no-contact orders, and medical forensic exams.

### **A. Orders of Protection 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. Orders of protection can be obtained through the Denver District and County Courts, or in any county in which a person lives, works or attends school. More information about protection order rules and laws in Colorado is located on the [Colorado Judicial Branch website](#), which includes a link to [instructions for obtaining a civil protection order](#) and other forms.

The University 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 VP/Title IX Coordinator or designee.

## **VII. 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, investigation, 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.

Pursuant to FERPA, 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 OERC 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.

Students who would like to review such records maintained by the OERC must complete and submit the OERC's records inspection form. The OERC 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. Additional requests to inspect a file may be limited to only allow the inspection of records once every 45 days.

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

The university recognizes that third parties may have a legitimate interest in knowing whether a university employee, regent, or affiliate 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, a respondent has been found responsible for violating one or more of the Applicable Policies, the university may confirm upon inquiry from a potential employer, licensing or credentialing agency, or institution that the individual has been found responsible for violating the policy, subject to applicable state and federal laws regarding such disclosures.

The University may also confirm that an investigation of an employee under an Applicable Policy is pending or that an employee resigned employment while an investigation under the policy was pending.

#### Colorado Open Records Act

CU Boulder is a public institution, and as such is subject to the Colorado Open Records Act (CORA), C.R.S. § 24-72-201, et seq. The university must comply with CORA, which may require, depending on the specific request and whether a CORA exception applies, withholding or producing OERC records. Access to personnel records is restricted in accordance with university policy and state law.

### **B. Confidentiality**

“Confidential” means that information shared by an individual with designated university 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 university and community professionals who have the ability to maintain confidential relationships include health care providers, mental health professionals, sexual assault victim advocates, attorneys, and ordained clergy, all of whom normally have privileged confidentiality that is recognized by Colorado state law. These individuals are prohibited from breaking confidentiality unless (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 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 VP/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 pursuant to the Applicable Policies, 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 VP/Title IX Coordinator 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 VP/Title IX Coordinator or designee.

## **D. All Employees**

All employees who are not Responsible Employees must provide the following information to any person who discloses to them information about Prohibited Conduct: (1) the contact information of Vice President of Compliance and Equity/Title IX Coordinator; and (2) information about how to make a complaint of Prohibited Conduct.

When a person discloses a pregnancy or related condition to an employee, that employee must provide that person with the VP/Title IX Coordinator's contact information and inform the person that the OERC can coordinate specific actions to ensure that person's equal access to the university's programs or activities.

## **E. 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 VP/Title IX Coordinator 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 VP/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 VP/Title IX Coordinator or designee will consider a range of potentially overriding factors that would cause the university 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 Applicable Policies by the VP/Title IX Coordinator or designee will be conducted on a case-by-case basis after an individualized and thoughtful review.

Nothing in this section limits the VP/Title IX Coordinator or designee from responding to the alleged conduct in a manner other than through a Formal Grievance Process that the VP/Title IX Coordinator 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 Human Resources. 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 VP/Title IX Coordinator 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 OERC will consider the range of factors listed above in making the determination to report to law enforcement. In those instances, the OERC will make a reasonable effort to notify potential complainants prior to reporting to law enforcement.

## **VIII. 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 OERC, whether reported directly by a complainant or by a third party, such as a responsible employee. 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](#)<sup>5</sup> 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, 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, knowingly filing false complaints, 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 faculty, staff, regents, contractors, 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 termination of employment. The university will consider what potential actions should be taken, including contract termination and 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 a program or activity of the university, or if the complainant or respondent are affiliated with the university community. This includes conduct that happens away from university owned buildings, including online or electronic conduct.

The VP/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 VP/Title IX Coordinator or designee must utilize the Title IX Sexual Misconduct procedures as prescribed by the Title IX regulations.

---

<sup>5</sup> APS 5014, effective September 2, 2021.

## **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 VP/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 institution or employer 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 VP/Title IX Coordinator or designee determines that at least one of the above factors is present, then the VP/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 OERC.

*Safety measures* may include supportive measures, as defined above, and may involve temporarily restricting a respondent's access to university programs and activities (emergency removals).

Whether supportive or safety measures are appropriate is determined after an individualized assessment by the OERC and every effort should be made to avoid depriving any individual of access to the workplace or university activities. 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 OERC. 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 OERC 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:

- accessing medical services;
- accessing counseling services;
- employment modifications;



- temporary changes in work assignments, work space, or other activities.
- leaves of absence
- training and education programs;
- increased security and monitoring of certain areas of university property;
- transportation/parking modifications;
- mutual or individual no-contact orders enforced by the university;
- discussing options and providing referral information for obtaining criminal or civil orders of protection;
- emergency removals See Section VIII(C)(2).

## **2. Emergency Removals**

The university may remove a respondent from a university 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 employee 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 exclusion order for parts of, or entire, university property or campus.
- Administrative Leave in consultation with the Vice President for Human Resources or designee and appointing/disciplinary authority.
- Temporary suspension of supervisory or evaluative authority for employees in consultation with Vice President for Human Resources or designee and appointing/disciplinary authority.

### **a. Individualized Safety and Risk Analysis**

The OERC will conduct an individualized safety and risk analysis to determine what, if any, emergency removals are necessary. 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 institution or employer indicating a history of sexual or other violence;
- The existence of multiple complainants 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 perpetrator, by a particular group or organization, around a particular recurring event or activity, and a particular location); 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 VP/Title IX Coordinator or designee. The OERC 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 OERC 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 OERC may decide to lift or continue the emergency removal, potentially until the completion of a Formal Grievance Process or other resolution procedure. The OERC 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 the complainant or others.<sup>6</sup>

## **D. Resolution Processes**

The OERC 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 OERC, whether the complaint and parties are within the jurisdiction of the OERC, and whether the complaint presents a safety threat such that the OERC must report the concern to law enforcement. See Section VII(E) for additional information regarding “override factors.” The OERC 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 VIII\(D\)\(1\)](#);
- Policy Compliance Remedies. [See Section VIII\(D\)\(2\)](#);
- Adaptable Resolutions (Informal Resolutions). [See Section VIII\(D\)\(3\)](#);
- Referrals and Other Remedies. [See Section VIII\(D\)\(4\)](#).

### **Resolution Process Officials**

The OERC’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 themselves 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.

---

<sup>6</sup> OERC investigators have access to information provided to the VP/Title IX Coordinator or designee, and relevant information may be considered as part of the totality of information gathered during the course of an investigation pursuant to a Formal Grievance Process.

## 1. Formal Grievance Process

The Formal Grievance Process is the procedure the OERC 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 termination of employment.

A Formal Grievance Process includes five major stages: (1) Filing and Evaluation of the Formal Complaint, (2) Investigation, (3) Dissemination of the investigative file and investigative report, (4) Hearing and Determination Regarding Responsibility (including sanction, if applicable), and (5) Appeal, as applicable and described below.

### Timeframes

The OERC 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 a reasonably prompt timeframe, 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 is determined on a case-by-case basis and is intended to be used sparingly. Good cause may exist for a variety of factors, including the case complexity, the integrity and completeness of the investigation, the availability of the parties, witnesses, or evidence, the necessity to provide translation services or accommodations of a disability, university breaks or vacations, or other legitimate reasons.

The OERC will not postpone or delay the Formal Grievance Process while criminal or civil proceedings are pending, including for the availability of law enforcement or court records, unless there are extenuating circumstances, as determined by the OERC.

In order to deliver a reasonably prompt process, the parties each have an obligation to meet deadlines, including participating in interviews or providing relevant documentation or other evidence in a timely manner during the Investigation stage of the Formal Grievance Process, as requested by the OERC. If a party does not participate in the Investigation stage, whether by participating in an interview, providing a written statement, or submitting other evidence for consideration, in a reasonable timeframe, the OERC may move to the next stage of the Formal Grievance Process without the party's participation.

### Party Participation

If a party chooses not to participate in the Formal Grievance Process, the OERC 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 the Hearing and Appeal stages, as applicable.

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

### Formal Complaint Required to Initiate Formal Grievance Process

An individual (referred to as the complainant) or VP/Title IX Coordinator or designee must file a document alleging 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 VP/Title IX Coordinator's physical or digital signature. The Formal Complaint form is available [here](#).

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

### Who May File a Formal Complaint

To initiate a grievance process under the policy, either the complainant or VP/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 or intends to remain involved with a university's alumni programs or activities; or (3) has left school because of Sexual Misconduct but expresses a desire to re-enroll. A complainant who is on a "leave of absence" may also be participating or attempting to participate in the 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 they are 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.

### Evaluation of a Formal Complaint

Once a Formal Complaint has been filed, the OERC 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 or the allegations, the OERC will make reasonable efforts to obtain that information. The OERC 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 OERC will dismiss the Formal Complaint with regard to that conduct (mandatory dismissal). All parties have the opportunity to appeal a mandatory dismissal. More information about Mandatory Dismissals can be found below in Section VIII(D)(1)(b).

### Formal Complaints by Title IX Coordinator

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 VP/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 VP/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 how the university will take responsive action should retaliation occur.

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 VP/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 VP/Title IX Coordinator or designee will consider a range of potentially overriding factors that would cause the VP/Title IX Coordinator or designee or designee to file a Formal Complaint and initiate a Formal Grievance Process. [See Section VII\(E\)](#) for additional information regarding overriding factors.

## **b. 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 VP/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 VP/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 VP/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.

The dismissal of a complaint does not preclude a complainant or the VP/Title IX Coordinator or designee from re-initiating a Formal Grievance Process at a later time.

### *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 in writing. To file an appeal of the dismissal, a party must submit the written 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 VP/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 VP/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.

### **c. Investigation**

#### *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, may be 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 delivery, by any of the above methods. For employee respondents, the employee's supervisory upline, including the employee's disciplinary authority, as well as Human Resources, will also receive a copy of the written Notice of Allegations. For Regent respondents, the Chair and Vice Chair of the board, the President, and the Vice President for University Counsel will receive a copy of the written Notice of Allegations.

The OERC requests the respondent contact the investigator(s) within three (3)



days of the issuance of the Notice of Allegations to schedule a meeting.<sup>7</sup>

If, during the course of an investigation, a complainant alleges additional violations or the VP/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 OERC 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(s), 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 harassing or retaliatory conduct.

---

<sup>7</sup> All complainants and respondents will be provided with written notice of the date, time, location, and purpose of their respective investigative interviews, or other meetings, with sufficient time to prepare in order to participate.

### Evidence Gathering

After the written Notice of Allegations has been issued to the parties, the OERC investigator(s) will seek to obtain all relevant and available evidence. *Relevant evidence* means evidence that is related to the allegations of Prohibited Conduct under investigation. Questions and evidence are relevant when they may aid in showing whether the alleged Prohibited Conduct occurred.

Collection of evidence may include conducting interviews with the parties and witnesses, obtaining university records such as 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 OERC may 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 OERC 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 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 advisor is not allowed to speak on behalf of a party 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 OERC will provide to a complainant or respondent whose participation is requested, 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.

The OERC cannot compel participation of any party or witness; parties and witnesses are free to decline to participate in meetings with the OERC and free to decline to provide information requested by the OERC. However, any witness or party who wishes to participate in a meeting with the OERC or provide information for consideration as part of the evidence gathering phase must do so within a reasonable timeframe and prior to the Evidence Review, as explained below. Parties have the opportunity to submit a written statement in response to the Evidence Review or Investigative Report but will not have the option of participating in an interview after the evidence gathering phase concludes, unless requested by the OERC.

**d. Dissemination of the Investigative File and Investigative Report**

*Evidence Review*

The OERC will provide all 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 the Hearing. This includes inculpatory or exculpatory evidence whether obtained from a party or other source.

The OERC 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. 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 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 an optional written response to the Evidence Review. Requests for additional time to respond will be considered on a case-by-case basis. Extensions of time shall only be granted for good cause shown, and the parties shall be provided written notice of extensions, as applicable.

Following the issuance of the Evidence Review, parties or witnesses may be requested to provide additional information or participate in a meeting at the discretion of the OERC investigator(s).

*Investigative Report*

The Investigative Report will summarize the relevant evidence, as determined by the OERC investigator(s), without reaching any findings of fact or conclusions. The 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 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. The written response and investigative file will be provided to the Hearing Officer(s). All evidence that the parties would like to be considered must be provided to the investigator and included in the Investigative Report and written response. The Hearing Officer(s) will not accept new evidence not contained in this final investigative file.

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

A trained Hearing Officer will preside over a live hearing, conducted via videoconference, after which the Hearing Officer will make a determination regarding responsibility. 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.

##### *Hearing Advisors*

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 for purposes of cross-examination without fee or cost to the party. For university-appointed advisors, their role will end at the conclusion of the hearing.

Though a party may utilize an advisor of their own choosing throughout the Formal Grievance Process, the role of the university-appointed advisor is limited to conducting cross-examination of parties and witnesses during the live hearing. A party may not personally conduct cross-examination during the hearing. Even if a party declines to work with an advisor, the party will have a university advisor appointed, and the university-provided advisor will be present to conduct cross-examination of the other party and witnesses.

Upon notice that a party needs an advisor for the hearing, 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.

### Hearing Participation and Optional Waivers

Individuals may choose how they participate in the hearing, if at all. Parties and witnesses are not required to participate in the hearings. In some cases when both parties decline to ask and answer questions during cross examination, the opportunity to waive a live hearing may be provided if both parties agree to it. In that case, the Hearing Officer will issue a determination based on the evidence contained in the investigation file.

### Virtual Hearing

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. Each party is also permitted to bring one support person of their choice to the hearing, with prior notice to the university that a support person will attend and that support person's name. The support person may not be a witness to the incident(s) at issue and may not speak during the hearing.

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 Process

To effectuate an orderly, fair, and respectful hearing, the OERC will communicate with and provide information to each party. The parties will be asked to provide the Hearing Officer with a list of witnesses they may call and evidence they may use during the hearing. The OERC will provide each party with:

- The name(s) of the Hearing Officer;
- The names of each party's advisor and/or support person who will be attending the live hearing;
- The names of any witnesses who will be appear at the hearing;
- Identification of exhibits that will be presented for the cross-examination process; and
- The procedures to be followed during the hearing.

The Hearing Officer will convene a pre-hearing conference prior to the start of the hearing. Attendance is required, at minimum, by each party's advisor.

At the pre-hearing conference, the Hearing Officer and the advisors will review,

at a minimum, the information outlined above and discuss jurisdictional and evidentiary guidelines.

No new evidence will be permitted outside the investigative record, meaning no new witnesses who have not been previously identified and no new documents (including photos, video, or other media) that have not been previously disclosed to the investigators.

OERC investigators are not considered fact witnesses for purposes of the hearing and may only be called following a showing of good cause. Good cause includes:

- Procedural irregularities related to the investigation.
- Bias or conflict of interest for or against a party, or for or against complainants or respondents in general.

#### 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 or vice versa, they may request that the Hearing Officer grant them a short recess. 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 the exclusion of an advisor from the hearing. In that case, the hearing officer will adjourn and postpone the hearing pending the party securing a new advisor through their own selection or as assigned by the university.

#### Cross-Examination Procedure

At the live hearing, the Hearing Officer must permit each party's advisor to ask each 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 is one that is related to the allegations of Prohibited Conduct under investigation. Questions are relevant when they may aid in showing whether the alleged Prohibited Conduct occurred.

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 hearing and cross-examination. 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.

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

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

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 whether or not the preponderance of the evidence has been met. Neither party bears a burden of proof. The ultimate determination of factual findings and responsibility rests with the Hearing Officer after full consideration of all available evidence.

#### Opportunity for Optional Impact Statements

Following the issuance of the determination regarding responsibility, both parties will be separately invited by the OERC to submit an optional impact statement, if applicable, for the potential sanctioning decision maker(s) to consider regarding the incident(s) under investigation. This opportunity will be made available to both parties regardless of whether either party participated in the live cross-examination process. The sanctioning authority will review any submitted information and include it in the case file but will not share this information with the Hearing Officer as it does not have any bearing on the factual findings. Optional impact statements will only be shared with the sanctioning decision maker(s) if the Hearing Officer determines that a policy violation has occurred so that the sanctioning decision maker(s) may consider it in making the sanctioning determination.



The optional impact statement should contain information about the factors considered in sanctioning. The optional impact statement may include aggravating or mitigating factors for the sanctioning board to consider.

*Written Determination*

The Hearing Officer must issue a written Determination Regarding Responsibility that will be sent to the OERC and subsequently to the parties. 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 OERC 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 VIII(D)(1)(g).

In cases resulting in a policy violation, the Hearing Officer will refer the matter to the appropriate sanctioning authorities for a disciplinary sanction to be determined. See Section VIII(D)(1)(f). After the sanction has been incorporated

into the written Determination Regarding Responsibility, the OERC 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 VIII(D)(1)(g).

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 OERC 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 Responsibilities 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. Additionally, the OERC will make an individualized assessment as to whether a no-contact order or other supportive measures should be continued or newly implemented.

#### Hearing Manual

Additional information regarding the Hearing phase of the Formal Grievance Process is available in the OERC Hearing Manual.

### **f. Sanctioning Process**

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.

Any sanctioning process 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). University disciplinary authorities also have the ability to take disciplinary action for inappropriate or unprofessional behavior that may not rise to the level of a violation of the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy or may be outside the purview of the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy.

#### Sanction required

In order to remediate the effects of 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 sanction(s) in consultation with the Chief Human Resources Officer or designee and the VP/Title IX Coordinator or designee, and any other administrative staff with a need to know pursuant to any other process applicable to the employee.

The disciplinary authority may have access to the investigative records in order to determine action. Additionally, the OERC can provide redacted information to the disciplinary authority related to similarly situated investigations and sanctioning outcomes to ensure consistency and equity in sanctioning.

Potential sanctions include but are not limited to:

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

with trespass.

- Termination of Employment Contract or Termination of Employment: Pursuant to applicable laws and policies specific to the employee's status, the disciplinary authority recommends or terminates employment.
- Additional Sanctions: The disciplinary authority has the discretion to impose any additional or other sanctions that may be warranted and appropriate given the circumstances of the case and the status of the respondent.

#### Sanctioning for Regent Respondents

In matters where the determination is that a respondent Board of Regents member 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 Chair and Vice Chair for further action by the Board of Regents. The sanction will be determined in accordance with [Regent Policy 2](#).

#### **g. Appeals**

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

Basis for appeal of a Determination Regarding Responsibility:

- 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 VP/Title IX Coordinator, Investigator(s), 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 may not be the same Hearing Officer that reached the Determination Regarding Responsibility or dismissal, the

investigator(s), or the VP/Title IX Coordinator. All appeal decision makers must be trained. The Appeal Decision maker may be an employee of CU System Administration, CU Boulder, CU Denver | Anschutz, or the University of Colorado, Colorado Springs.

The appeal decision-maker(s) 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.

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

Appeals must be submitted in writing to the VP/Title IX Coordinator 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.

#### **i. Notification and Opportunity to Respond**

If an appeal is received, the VP/Title IX Coordinator 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 VP/Title IX Coordinator 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 VP/Title IX Coordinator will appoint appeal decision-maker(s) who is not otherwise affiliated with the OERC.

#### **ii. Appeal Decisions**

Upon review of the appeal, the appeal decision-maker(s) may:

- Uphold the initial decision in its entirety;
- Direct that there be reconsideration by the Hearing Officer or disciplinary authority (or a new Hearing Officer or disciplinary authority) 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 (by the same or different Hearing Officer) conducted in accordance with the process outlined above.

The appeal decision-maker(s) shall not make new findings of fact. The appeal decision-maker(s) 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 OERC may determine that the most prompt and effective way to address a concern is through a Policy Compliance process. This type of approach provides the university with options that allow 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. The primary focus during a Policy Compliance process 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.

During a Policy Compliance process, the OERC may:

- Provide interim or long-term supportive measures to the complainant and/or the respondent;
- Provide a referral to other university-based resolution processes as appropriate for the specific facts of the case;
- Meet with the respondent to discuss the behavior as alleged and provide the respondent an opportunity to respond;
- Review Prohibited Conduct under the Sexual Misconduct, Intimate Partner Violence, and Stalking Policy with both parties separately;
- Discuss appropriate future conduct with the respondent, as well as how to avoid behavior that could be interpreted as retaliatory;
- Inform the complainant of the respondent's responses if appropriate;

- Notify the respondent's appointing/disciplinary authority of the allegations and responses if necessary, who will determine whether any other disciplinary action is appropriate; or
- Provide targeted or broad-based educational programming or training as appropriate.

The OERC retains discretion to assess the allegations of misconduct to determine if a Policy Compliance process is appropriate. The OERC has discretion to involve other individuals or offices who have a legitimate need to know the allegations and be part of the resolution, the respondent's disciplinary authority.

For allegations that would warrant a Formal Grievance Process, but the OERC 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 OERC as set forth in Sections VII(E) and VIII(D)(1)(a), the OERC will notify the complainant of their ability to end the Policy Compliance process at any time and to commence or resume a Formal Grievance Process.

### **3. Adaptable Resolutions (Informal Resolutions)**

The OERC may facilitate an Adaptable Resolution process when appropriate and when both parties voluntarily consent to participate. The VP/Title IX Coordinator or designee will determine the appropriateness of an Adaptable Resolution on a case-by-case basis; however, Adaptable Resolutions are prohibited to resolve allegations that an employee sexually harassed a student. Adaptable Resolutions may also not be an option in cases where there is concern about an inherent power dynamic between the parties that would impact the ability to effectuate a fair and equitable resolution.

The purpose of an Adaptable Resolution process is to allow the parties more agency in reaching a mutual written agreement about how to repair harm (to the extent possible) and move forward from the incident(s) at issue. The parties have latitude to form an agreement that is meaningful to them given the circumstances and impact of the incident(s) at issue.

The specific process that parties follow to reach a resolution agreement will be determined by the OERC facilitator in consultation with the parties. This may include a form of shuttle diplomacy, where the parties separately meet with a facilitator to formulate an agreement, or participate in a Restorative Justice conference, where the parties engage in a dialogue with a trained facilitator in order to come to an

agreement that will repair harm.

The resolution agreement must be approved by the VP/Title IX Coordinator or designee and is enforceable by the OERC once signed by the parties. The OERC will not permit the following terms to be included in a resolution agreement:

- Admissions of criminal or civil legal liability;
- Monetary payments among the parties;
- Non-Disclosure Agreements/Clauses prohibiting the parties or participants from discussing the allegations, the Adaptable Resolution process, or the resolution agreement; or

At any point during an Adaptable Resolution process prior to reaching a resolution agreement, either party may withdraw from the process and request a Formal Grievance Process or other resolution. Once a resolution agreement is approved by the VP/Title IX Coordinator and signed by all parties, a Formal cannot be initiated for the allegations underlying the Adaptable Resolution, and the case/Formal Grievance Process will be dismissed. However, the OERC may address a party's failure to comply with the signed resolution agreement via a Formal Grievance Process as outlined in the Discrimination and Harassment Procedures. See Section IX(C)(1)

#### **4. Referrals to a Disciplinary Authority**

In situations where university employees are alleged to have engaged in misconduct under an Applicable Policy, the OERC may determine that the employee's disciplinary authority or supervisor is best situated to efficiently and meaningfully respond to the allegations at issue. Nothing in the OERC's Resolution Procedures limits the authority of an employee's disciplinary authority from initiating or imposing disciplinary action as necessary.

### **IX. Protected Class Nondiscrimination 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 OERC, 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 Protected Class Nondiscrimination Policy.



## **A. Prohibited Conduct**

The [Protected Class Nondiscrimination 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, marital status, political affiliation, and political philosophy. This includes prohibiting discrimination or harassment based on intersectional identities, as well as antisemitism, Islamophobia, or caste. The policy also prohibits retaliation and other related violations. For definitions, see Section IV of the policy.

## **B. 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 discrimination and harassment. Supportive measures should be individualized and appropriate based on the information available to the OERC.

*Safety measures* may include supportive measures, as defined above, and may involve temporarily restricting a respondent’s access to university programs and activities (emergency removals). See Section IX(B)(2) below.

Whether supportive or safety measures are appropriate is determined after an individualized assessment by the OERC. 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 OERC. Supportive measures should be provided to complainants or respondents whether or not the complainant engages in a resolution process. Witnesses or other participants in a Formal Grievance Process may also request supportive or safety measures. The OERC 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:

- accessing medical services;
- accessing counseling services;
- employment modifications;
- temporary changes in work assignments, workspace, or other activities.
- leaves of absence;
- training and education programs;
- 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 orders of protection;
- emergency removals. See Section IX(B)(2).

## **2. Emergency Removals**

The university may remove a respondent from a 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 other employee or university community member 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 exclusion order for parts of or entire workplace, university owned building, campus, etc.
- 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 the Vice President for Human Resources or designee and appointing/disciplinary authority.)

- Temporary suspension of supervisory or evaluative authority for employees in consultation with the Vice President for Human Resources or designee and appointing/disciplinary authority.

#### **a. Individualized Safety and Risk Analysis**

The OERC will conduct an individualized safety and risk analysis to determine what, if any, emergency removals are necessary. 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 violence;
- Whether the respondent threatened further 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 institution indicating a history of violence;
- The existence of multiple complainants or respondents;
- 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 perpetrator, by a particular group or organization, around a particular recurring event or activity, and a particular location); 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 OERC. The OERC 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 OERC 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 OERC may decide to lift or continue the emergency removal, potentially until the completion of a Formal Grievance Process or other resolution procedure. The OERC 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 the complainant or others.

## **C. Resolution Processes**

The OERC resolution processes include:

- Formal Grievance Process. [See Section IX\(C\)\(1\)](#);
- Policy Compliance Remedies. [See Section IX\(C\)\(2\)](#);
- Adaptable Resolutions (Informal Resolutions). [See Section IX\(C\)\(3\)](#);
- Referrals and Other Remedies. [See Section IX\(C\)\(4\)](#).

### **Preliminary Inquiry**

The OERC has the authority to conduct a preliminary inquiry upon receiving a report or complaint alleging Prohibited Conduct that would fall under the OERC's jurisdiction. A preliminary inquiry may include, but is not limited to, evaluating whether the complaint implicates a policy administered by the OERC, whether the complaint and parties are within the jurisdiction of the OERC, whether the allegations, if assumed to be true, describe conduct that would violate an Applicable Policy, and whether the complaint presents a safety threat such that the OERC must report the concern to law enforcement. A preliminary inquiry may also include additional steps, for example meeting with individuals or reviewing documents, to evaluate whether the facts of the complaint appear to be based in fact and would be a violation of an Applicable Policy such that it could proceed to the Formal Grievance Process. [See Section VII\(E\)](#) for additional information regarding overriding factors.

### Resolution Process Officials

The OERC'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 VP/Title IX Coordinator or designee shall ensure that OERC Resolution Process Officials receive annual training on how to conduct resolutions. The VP/Title IX Coordinator 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 Grievance Process**

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

If a complainant does not want to initiate the Formal Grievance Process, the OERC 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 VP/Title IX Coordinator or designee will consider a range of potentially overriding factors that would cause the VP/Title IX Coordinator or designee to initiate a Formal Grievance Process. [See Section VII\(E\)](#) for a list of overriding factors the VP/Title IX Coordinator may consider.

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

### Timeframes

The university will use its best efforts to complete its investigation and impose sanctions when applicable within a reasonable amount of time, although this time frame may be extended for good cause.

Good cause is determined on a case-by-case basis and is intended to be used sparingly. Good cause may exist for a variety of factors, including the case complexity, the integrity and completeness of the investigation, the availability of the parties, witnesses, or evidence, the necessity to provide translation services or accommodations of a disability, university closure or vacations, or other legitimate reasons.

The OERC will not postpone or delay the Formal Grievance Process while criminal or civil proceedings are pending, including for the availability of law enforcement or

court records, unless there are extenuating circumstances, as determined by the OERC.

In order to deliver a reasonably prompt process, the parties each have an obligation to meet deadlines, including participating in interviews or providing relevant documentation or other evidence in a timely manner during the evidence gathering phase of the investigation, as requested by OERC during the Formal Grievance Process. If a party does not participate in the evidence gathering phase of the investigation, whether by participating in an interview, providing a written statement, or submitting other evidence for consideration, in a reasonable timeframe, the OERC may move to the next stage of the Formal Grievance Process without the party's participation.

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

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

- Make a complaint to the OERC verbally or in writing;
- Be treated equitably;
- Have the university take reasonable steps to protect their privacy, provided the steps do not restrict the parties' ability to obtain and present evidence, including speaking to witnesses, consulting with their family members, confidential resources, or advisors, or otherwise preparing for or participating in the grievance procedures;
- A grievance process conducted by trained officials (any person designated as a Title IX Coordinator, investigator, or decisionmaker) who do not have a conflict of interest or bias for or against the individual complainant or respondent or against complainants or respondents generally. The decisionmaker may be the same person as the VP/Title IX Coordinator or investigator. An official shall recuse themselves from participating in a grievance 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 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 measures to be provided before the Formal Grievance Process begins or while a Formal Grievance Process is pending;

- 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;
- Present relevant information to the investigator(s), including inculpatory or exculpatory evidence, and identifying witnesses;
- Have an advisor of their choosing, including an attorney, advocate, or other support person throughout the Formal Grievance Process, including but not limited to being present for any meetings with OERC personnel. In order to protect the integrity of the investigation, an advisor may not be a potential witness in the investigation, or individual who could otherwise compromise the investigation. During a meeting with the OERC, a party's advisor may not speak on behalf of the party. The advisor, advocate, or other support person may not engage in any conduct that would constitute harassment, threats, or retaliation against any person who has participated in an investigation, including OERC personnel, and may be denied further participation for harassing or retaliatory conduct;
- Timely and equal access to review and respond to the Written Evidence Summary, which will include any relevant information gathered during the investigation, including information provided by complainant, respondent, witnesses, documentation, and relevant evidence, unless the university is legally prohibited from disclosing the information to a party. See Section IX(C)(1)(b)(v);
- Inspection of the case file, which contains all information or evidence, unless prohibited or confidential under law, gathered as part of the investigation, including information the OERC does not intend to rely on in reaching a determination, prior to any investigative findings or conclusions.
- An objective evaluation of all evidence that is relevant and not otherwise impermissible, and the exclusion of evidence that is impermissible. See Section IX(C)(1)(b)(vii);
- A presumption that the respondent is not responsible for the alleged misconduct;

- Receive written, concurrent notice of the investigation outcome and a copy of the written Determination Regarding Responsibility at the conclusion of the Investigation. See Section IX(C)(1)(b)(vii);
- Provide information about aggravating or mitigating factors prior to any sanction being imposed, if applicable. See Section IX(C)(1)(b)(viii)-(ix);
- Receive notice of any sanction, if applicable, in writing, including a statement of the basis upon which any sanction was imposed. See Section IX(C)(1)(b)(x); and
- Appeal the investigative findings. See Section IX(C)(1)(b)(viii)-(ix).

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

### **i. Initial Evaluation of Complaint**

Once a complainant has initiated a Formal Grievance Process by making a complaint, the OERC designee will evaluate whether the conduct alleged, if proved, would constitute a violation of the Protected Class Nondiscrimination Policy. If additional information is needed to evaluate the allegations, the OERC will make reasonable efforts to obtain that information.

The OERC 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 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 Applicable Policies or other Prohibited Conduct under other policies, procedures, or codes of conduct.

Upon review of the complaint and verification that a complainant wishes to proceed with a Formal Grievance Process, the OERC may determine that there is insufficient jurisdiction or cause to proceed with resolving the complaint through a Formal Grievance Process and may close the matter. Reasons for such closure may include, but is not limited to:

1. An inability to identify the Respondent after taking reasonable



steps to do so;

2. The Respondent is not currently affiliated with the university; or
3. The OERC determines that the conduct alleged in the complaint, even if proven, would not constitute Prohibited Conduct.

*Formal Grievance Processes Initiated by the OERC and Overriding Factors*

If a complainant has disclosed an incident of Prohibited Conduct but wishes to maintain privacy and does not wish to initiate the Formal Grievance Process, the OERC must discuss the availability of supportive measures with the complainant, describe the process for initiating a Formal Grievance Process and explain that the university prohibits retaliation. The OERC or designee will further explain the steps the university will take to prevent retaliation if the individual participates in a Formal Grievance Process and how the university will take responsive action should retaliation occur.

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 initiate the Formal Grievance Process, the OERC 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 OERC will consider a range of potentially overriding factors that would cause the VP/Title IX Coordinator or designee to initiate a Formal Grievance Process. [See Section VII\(E\)](#) for a list of overriding factors the OERC may consider.

The decision to initiate a Formal Grievance Process by the VP/Title IX Coordinator will be made on a case-by-case basis after an individualized review. The OERC will notify and provide a copy of the Notice of Allegations to a complainant in these circumstances.

**ii. Notice of Allegations**

If a Formal Grievance Process is commenced, the OERC 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, may be 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 delivery, by any of the above methods. For employee respondents, the employee's supervisory upline

and the employee's disciplinary authority, as well as Human Resources, will also receive a copy of the written Notice of Allegations. For regent respondents, the Chair and Vice Chair of the board, the President, and the Vice President for University Counsel will receive a copy of the written Notice of Allegations.

If, in the course of an investigation, a complainant alleges additional violations or the OERC decides to investigate additional allegations about the complainant or respondent that are not included in the initial Notice of Allegations, the OERC 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(s);
- The specific section(s) of the policy allegedly violated;
- The conduct alleged to constitute Prohibited Conduct;
- The date(s) and location(s) of the alleged incident(s), to the extent known and available;
- Information about the Formal Grievance Process and other OERC resolution processes;
- 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;
- A statement that retaliation is prohibited;
- 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 access the relevant and not otherwise impermissible evidence; and
- Information that the complainant and respondent may each have an advisor of their choice, including an attorney. The

advisor may not engage in any conduct that would constitute harassment or retaliation against any person who has participated in an investigation and may be denied further participation for harassing or retaliatory conduct.

- Information about the availability of supportive measures;
- Information about any supportive measures that impact their participation in any university program or activity pending the outcome of the Formal Grievance Process;

A request that the respondent contact the OERC to schedule a meeting to discuss the Formal Grievance Process and/or to respond to the allegations.

### **iii. Dismissal After Issuance of Notice of Allegations**

After a Notice of Allegations is issued, the university may, but is not required to, dismiss a Complaint or Formal Grievance Process at any time if:

- The complainant voluntarily withdraws any or all of the allegations in the complaint in writing, the VP/Title IX Coordinator declines to initiate a Formal Grievance Process under Section IX(C)(1)(b)(i), and the OERC determines that without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute Prohibited Conduct even if proven;
- The respondent is not participating in the university's program or activity or employed at the university; or
- Specific circumstances prevent the OERC from gathering evidence sufficient to reach a determination as to the allegations therein.

If the university dismisses a Formal Grievance Process, the OERC will consider whether the conduct alleged may constitute a violation of any other university or campus policies, procedures, or conduct codes and refer the matter to other appropriate offices.

The dismissal of a Formal Grievance Process does not preclude a complainant or the OERC from re-initiating a Formal Grievance Process at

a later time.

*Notice of Dismissal and Opportunity to Appeal*

If the OERC dismisses a Formal Grievance Process after a Notice of Allegations is issued, both parties will be notified in writing of the dismissal, the basis for the dismissal, and information about the appeal process.

Each party may appeal a dismissal in writing. To file an appeal of the dismissal, a party must submit a written appeal to the OERC within seven (7) days of the notice of dismissal.

An appeal of a dismissal must articulate the basis of the appeal, including why the Formal Grievance Process should continue. Parties may appeal on the following bases only:

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

If an appeal is received, the OERC 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 VP/Title IX Coordinator 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 OERC will appoint a decision maker who has been trained and who did not take part in an investigation of the allegations or dismissal of the complaint.

Upon review of the appeal, the decision maker may:

- Uphold the initial decision in its entirety; or

- Overturn the dismissal and direct that the Formal Grievance Process continue.

The decision maker will issue a written decision describing the result of the appeal within 30 days and the rationale for the result. The appeal decision must be provided simultaneously to both parties.

#### **iv. Investigation**

After the written Notice of Allegations has been issued to the parties, the OERC will seek to obtain all relevant and available evidence. *Relevant evidence* means evidence that is related to the allegations of Prohibited Conduct under investigation. Questions and evidence are relevant when they may aid in showing whether the alleged Prohibited Conduct occurred.

Collection of evidence may include conducting interviews with the parties and witnesses, obtaining university records such as 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 fact 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 OERC 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 OERC will provide the individuals whose participation is requested, 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.

The investigators will interview the parties separately and provide each party the opportunity to be heard and to respond to all relevant information. Any witness or party who wishes to participate in a meeting with the OERC or provide information for consideration as part of the evidence gathering phase must do so within a reasonable timeframe and prior to the issuance of the Written Evidence Summary. Following the issuance of the Written Evidence Summary, parties or witnesses may be

requested to provide additional information or participate in a meeting at the discretion of the OERC.

The OERC will take reasonable steps to protect the privacy of the parties and witnesses during the pendency of the grievance procedures, provided that the steps do not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the Formal Grievance Process.

The parties may be accompanied to any related meeting or proceeding by a support person and advisor of their choice. During the investigation stage of the Formal Grievance Process, the support person and advisor is not allowed to testify or speak on a party's behalf 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.

**v. Disclosure of Written Evidence Summary**

Following the evidence gathering phase, the investigator(s) shall send a *Written Evidence Summary* (WES) of the relevant and material information in the case to the complainant and respondent. The parties will have seven (7) days to review and respond to the WES. Extensions of time for party responses shall only be granted for good cause, as provided in Section IX(C)(1).

**vi. Process to Determine Credibility**

The investigator(s) shall have the ability to assess the credibility of parties and witnesses. Each party will also have an opportunity to submit questions in writing for the investigator(s) to ask of the other party and of witnesses for the purpose of eliciting relevant evidence, including evidence that will assist the investigator(s) to adequately assess a party's or witness's credibility. The investigator(s) may determine a question is irrelevant (i.e. not related to the allegations of Prohibited Conduct) and decline to ask it. The investigator(s) must also decline to ask a question if the response would elicit impermissible evidence as described in Section IX(C)(1)(b)(iv).

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

Following 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 Protected Class Nondiscrimination Policy.

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

The OERC 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 policy occurred.

The OERC will objectively evaluate all evidence that is relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence. 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. Credibility determinations will not be based on a party’s status as a complainant, respondent, or witness.

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

If an employee respondent is found not to be responsible for violating the Protected Class Nondiscrimination 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.

*Determination Regarding Responsibility*<sup>8</sup>

The OIEC shall issue the written Determination Regarding Responsibility to the complainant and the respondent, along with applicable next steps in the process.<sup>9</sup>

### **viii. Appeals**

Either party may appeal the Determination Regarding Responsibility within seven (7) days of its issuance. This occurs prior to the sanctioning phase for employee respondents.

Appeals must be submitted in writing to the OERC. The appeal should indicate the specific basis for the appeal (see below), supporting arguments, and any applicable documentation.

All appeals are documentary reviews, and no interviews are conducted. 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. Generally, appeals are determined solely on the merits of the claims, arguments, and documents submitted. Appeal documents therefore should be as complete and succinct as possible.

*Basis for Appeal*

Appeals are limited to the following three grounds:

- To determine whether there were procedural irregularities that

---

<sup>8</sup> Findings under the OERC Resolution Procedures are not findings pursuant to applicable state and federal legal standards, i.e. a policy violation does not equate to a violation of equal opportunity law.

<sup>9</sup> If the respondent is a student employee and the alleged misconduct occurs outside the employment capacity, the OERC may determine that the respondent's supervisory upline has a legitimate need to know information related to the case resolution.



affected the outcome of the matter;

- There is 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; or
- The VP/Title IX Coordinator, investigators, and/or decision-maker 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.

### Appeal Process

If an appeal is received, the OERC 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 OERC. 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 OERC will appoint a university employee (who may include staff from the Boulder, Anschutz, Denver, and Colorado Springs campuses) who are not otherwise affiliated with the OERC to serve as the appeal officer. The Appeal Officer will have received appropriate training on the Protected Class Nondiscrimination Policy and appeal procedures.

Upon review of the appeal, the Appeal Officer will:

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

The Appeal Officer shall not make new findings of fact. The Officer 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 receipt of the appeal. Extensions of time for the appeal decision shall be granted for good cause, as provided in Section IX(C)(1), and both parties will be notified in writing of any extensions.

## **ix. Sanctioning**

### **Sanctioning for Employee Respondents**

For employee Respondents, sanctioning occurs after the conclusion of the appeal stage of the process. The disciplinary authority is notified if an employee respondent was found to have violated a policy or acted inappropriately or unprofessionally and is provided the Determination Regarding Responsibility. Neither this notification, nor the OERC Formal Grievance Process, replaces any additional process or meetings that may be required under other applicable personnel processes (*e.g.*, State Personnel Board Rules for classified employees; Privilege and Tenure process for faculty).

In cases in which a policy violation is found, both parties may submit an optional written statement to the OERC detailing any aggravating or mitigating circumstances that may impact sanctioning. These optional statements will only be shared with the sanctioning authority. The statement should only contain information about the factors considered in sanctioning. The parties will have seven (7) days from the conclusion of the appeal stage of the process to submit a statement.

### **Sanction Required and Potential Sanctions**

In order to remediate the effects of misconduct, the disciplinary authority will impose sanctions. The disciplinary authority will determine the type of sanction(s) in consultation with the Chief Human Resources Officer or designee and the VP/Title IX Coordinator or designee, and any other administrative staff with a need to know pursuant to any other process applicable to the employee.

The disciplinary authority may have access to the investigative records in order to determine action. Additionally, the OERC can provide redacted information to the disciplinary authority related to similarly situated investigations and sanctioning outcomes to ensure consistency and equity in sanctioning.

Potential sanctions may include:

- Letter of Expectation/Reprimand: The employee is given a written letter/statement from the disciplinary authority that the behavior was inappropriate and that more serious disciplinary action may be taken should subsequent infractions occur.
- Mandatory Training: The employee is 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 modifies 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 or other sanctions that may be warranted and appropriate given the circumstances of the case or status of respondent.

#### *Sanctioning for Regent Respondents*

In matters where the determination is that a respondent Board of Regents member 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. The sanction will be determined in accordance with [Regent Policy 2](#).

## **x. Notice of Sanction**

The OERC 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 OERC findings, there is no preclusion of discipline by the disciplinary authority for other misconduct or for inappropriate or unprofessional conduct.

## **2. Policy Compliance Remedies**

The OERC may determine that the most prompt and effective way to address a concern is through a Policy Compliance process. This type of approach provides the university with options that allow 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. The primary focus during a Policy Compliance process 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.

During a Policy Compliance process, the OERC may:

- Provide interim or long-term supportive measures to the complainant and/or the respondent;
- Provide a referral to other university offices as appropriate for the specific facts of the case;
- Meet with the respondent to discuss the behavior as alleged and provide the respondent an opportunity to respond;
- Review Prohibited Conduct under the Protected Class Nondiscrimination Policy with both parties separately;
- Discuss appropriate future conduct with the respondent, as well as how to avoid behavior that could be interpreted as retaliatory;
- Inform the complainant of the respondent's responses if appropriate;
- Provide targeted or broad-based educational programming or training as appropriate.

The OERC retains discretion to assess the allegations of misconduct to determine if a Policy Compliance process is appropriate. The OERC has discretion to involve other individuals or offices who have a legitimate need to know the allegations and be part

of the resolution, for example the respondent's disciplinary authority or supervisory upline. Additionally, the OIEC retains discretion to proceed with a formal investigation for allegations that, if proven true, would violate the Protected Class Nondiscrimination Policy.

### **3. Adaptable Resolutions (Informal Resolutions)**

The OERC may facilitate an Adaptable Resolution process when appropriate and when both parties voluntarily consent to participate. The OERC will determine the appropriateness of an Adaptable Resolution on a case-by-case basis. Adaptable Resolutions may not be an option in cases where there is concern about an inherent power dynamic between the parties that would impact the ability to effectuate a fair and equitable resolution.

The purpose of an Adaptable Resolution process is to allow the parties more agency in reaching a mutual written agreement about how to repair harm (to the extent possible) and move forward from the incident(s) at issue. The parties have latitude to form an agreement that is meaningful to them given the circumstances and impact of the incident(s) at issue.

The specific process that parties follow to reach a resolution agreement will be determined by the OERC facilitator in consultation with the parties. This may include a form of shuttle diplomacy, where the parties separately meet with a facilitator to formulate an agreement, or participate in a Restorative Justice conference, where the parties engage in a dialogue with a trained facilitator in order to come to an agreement that will repair harm.

The resolution agreement must be approved by the VP/Title IX Coordinator or designee and is enforceable by the OERC once signed by the parties. The OERC will not permit the following terms to be included in a resolution agreement:

- Admissions of criminal or civil legal liability;
- Monetary payments among the parties;
- Non-Disclosure Agreements/Clauses prohibiting the parties or participants from discussing the allegations, the Adaptable Resolution process, or the resolution agreement; or

At any point during an Adaptable Resolution process prior to reaching a resolution agreement, either party may withdraw from the process and request a Formal Grievance Process or other resolution. Once a resolution agreement is approved by the VP/Title IX Coordinator and signed by all parties, a Formal Grievance Process cannot be initiated for the allegations underlying the Adaptable Resolution, and the

case/Formal Grievance Process will be dismissed. However, the OERC may address a party's failure to comply with the signed resolution agreement via a Formal Grievance Process as outlined above.

#### **4. Referrals to a Disciplinary Authority**

In situations where university employees are alleged to have engaged in misconduct under an Applicable Policy, the OERC may determine that the employee's disciplinary authority or supervisor is best situated to efficiently and meaningfully respond to the allegations at issue. Nothing in these Resolution Procedures limits the authority of an employee's disciplinary authority from initiating or imposing disciplinary action as necessary.

### **X. 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. 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 an employee, will abuse their 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 supervisor or employee with the evaluative responsibility in a position to favor or advance one employee's or one student'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, the OERC may conduct a grievance process 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 an employee/student direct evaluative relationship employee's unit head 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 supervisor/supervisee direct evaluative relationship, it must be disclosed to the supervisor's unit head 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.

A report of the action taken to resolve this conflict of interest shall be made to the President or the President's designee. The OERC 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 second or higher level supervisor who has a relationship with a staff member in their unit), the higher level employee may not act in an evaluative capacity in relation to the other individual. Specifically, when the individual at the higher level of evaluative authority and the other individual in the relationship are parties to a personnel action as defined 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 President or the President's designee, the OERC. If the President or the OERC should find that the actions do not adequately resolve the conflict, the President or the OERC may require other action.

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

### **1. Resolution Processes**

The OERC resolution processes include:

- Formal Grievance Process. [See Section X\(C\)\(2\)](#); and
- Policy Compliance Remedies. [See Section X\(C\)\(3\)](#).

#### *Preliminary Inquiry*

The OERC has the authority to conduct a preliminary inquiry upon receiving a report or complaint alleging Prohibited Conduct that would fall under the OERC's jurisdiction. A preliminary inquiry may include, but is not limited to, evaluating whether the complaint implicates a policy administered by the OERC, whether the complaint and parties are within the jurisdiction of the OERC, whether the allegations, if assumed to be true, describe conduct that would violate an Applicable Policy, and whether the complaint presents a safety threat such that the OERC must report the concern to law enforcement. A preliminary inquiry may also include an OERC investigator taking additional steps, for example meeting with individuals or reviewing documents, to evaluate whether the facts of the complaint appear to be based in fact and would be a violation of an Applicable Policy such that it could proceed to the Formal Grievance Process. [See Section VII\(E\)](#) for additional information regarding overriding factors.

#### *Resolution Process Officials*

The OERC'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 OERC shall ensure that Resolution Process Officials receive annual training on how to conduct resolutions. The OERC determine if one or more investigators shall be assigned to each case depending on the specific circumstances and as warranted.

### **2. Formal Grievance Process**

The OERC may resolve a report of alleged misconduct through the Formal Grievance Process when the alleged misconduct, if true, would be prohibited under the Applicable Policies. The OERC may decline to pursue a Formal Grievance Process if: 1) a complainant has requested that a Formal Grievance Process not be pursued, and 2) the OERC has determined that the complainant's request can be honored consistent with the university's obligation to provide a safe and non-discriminatory environment.

If a complainant does not want to initiate the Formal Grievance Process, the OERC 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 OERC will consider a range of potentially overriding factors that would cause the OERC to initiate a Formal Grievance Process. [See Section VII\(E\)](#) for a list of overriding factors the OERC may consider.

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

### Timeframes

The university will use its best efforts to complete its investigation and impose sanctions when applicable within a reasonable amount of time, although this time frame may be extended for good cause.

Good cause is determined on a case-by-case basis and is intended to be used sparingly. Good cause may exist for a variety of factors, including the case complexity, the integrity and completeness of the investigation, the availability of the parties, witnesses, or evidence, the necessity to provide translation services or accommodations of a disability, university breaks or vacations, or other legitimate reasons.

In order to deliver a reasonably prompt process, the parties each have an obligation to meet deadlines, including participating in interviews or providing relevant documentation or other evidence in a timely manner during the evidence gathering phase of the investigation, as requested by the OERC during the Formal Grievance Process. If a party does not participate in the evidence gathering phase of the investigation, whether by participating in an interview, providing a written statement, or submitting other evidence for consideration, in a reasonable timeframe, the OERC may move to the next stage of the Formal Grievance Process without the party's participation.

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

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

- Make a complaint to the OERC verbally or in writing;
- Be treated equitably;
- Have the university take reasonable steps to protect their privacy, provided the steps do not restrict the parties' ability to obtain and present evidence, including speaking to witnesses, consulting with their family members, confidential resources, or advisors, or otherwise preparing for or participating in the grievance procedures;

- A grievance process conducted by trained officials (any person designated as a Title IX Coordinator, investigator, or decisionmaker) who do not have a conflict of interest or bias for or against the individual complainant or respondent or against complainants or respondents generally. The decisionmaker may be the same person as the Title IX Coordinator or investigator. An official shall recuse themselves from participating in a grievance 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 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 measures to be provided before the Formal Grievance Process begins or while a Formal Grievance Process is pending;
- 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;
- Present relevant information to the investigator(s), including inculpatory or exculpatory evidence, and identifying witnesses;
- Have an advisor of their choosing, including an attorney, advocate, or other support person throughout the Formal Grievance Process, including but not limited to being present for any meetings with OERC personnel. In order to protect the integrity of the investigation, an advisor may not be a potential witness in the investigation, or individual who could otherwise compromise the investigation. During a meeting with the OERC, a party's advisor may not speak on behalf of the party. The advisor, advocate, or other support person may not engage in any conduct that would constitute harassment, threats, or retaliation against any person who has participated in an investigation, including OERC Resolution Officials, and may be denied further participation for harassing or retaliatory conduct;
- Timely and equal access to review and respond to the Written Evidence Summary, which will include any relevant information gathered during the investigation, including information provided by

complainant, respondent, witnesses, documentation, and relevant evidence, unless the university is legally prohibited from disclosing the information to a party. See Section X(C)(2)(b)(v);

- 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 OERC does not intend to rely on in reaching a determination, prior to any investigative findings or conclusions.
- An objective evaluation of all evidence that is relevant and not otherwise impermissible, and the exclusion of evidence that is impermissible. See Section X(C)(2)(b)(vii);
- A presumption that the respondent is not responsible for the alleged misconduct;
- Receive written, concurrent notice of the investigation outcome and a copy of the written Determination Regarding Responsibility at the conclusion of the Investigation. See Section X(C)(2)(b)(vii);
- Provide information about aggravating or mitigating factors prior to any sanction being imposed, if applicable. See Section X(C)(2)(b)(viii)-(ix);
- Receive notice of any sanction, if applicable, in writing, including a statement of the basis upon which any sanction was imposed. See Section X(C)(2)(b)(x); and
- Appeal the investigative findings. See Section X(C)(2)(b)(viii)-(ix).

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

### **i. Initial Evaluation of Complaint**

Once a complainant has initiated a Formal Grievance Process by making a complaint, the OERC will evaluate whether the conduct alleged, if proved, would constitute a violation of the Conflict of Interest in Cases of Amorous Relationships Policy. If additional information is needed to evaluate the allegations, the OERC will make reasonable efforts to obtain that information.

The OERC 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 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 Applicable Policies or other Prohibited Conduct under other policies, procedures, or codes of conduct.

Upon review of the complaint and verification that a complainant wishes to proceed with a Formal Grievance Process, the OERC may determine that there is insufficient jurisdiction or cause to proceed with resolving the complaint through a Formal Grievance Process and may close the matter. Reasons for such closure may include, but is not limited to:

1. An inability to identify the Respondent after taking reasonable steps to do so;
2. The Respondent is not currently affiliated with the university; or
3. The OERC determines that the conduct alleged in the complaint, even if proven, would not constitute Prohibited Conduct.

*Formal Grievance Processes Initiated by VP/Title IX Coordinator and Overriding Factors*

If a complainant has disclosed an incident of Prohibited Conduct but wishes to maintain privacy and does not wish to initiate the Formal Grievance Process, the OERC must discuss the availability of supportive measures with the complainant, describe the process for initiating a Formal Grievance Process and explain that the university prohibits retaliation. The OERC will further explain the steps the university will take to prevent retaliation if the individual participates in a Formal Grievance Process and how the university will take responsive action should retaliation occur.

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 initiate the Formal Grievance Process, the OERC 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 OERC will consider a range of potentially overriding

factors that would cause the OERC to initiate a Formal Grievance Process. See Section VII(E) for a list of overriding factors the OERC may consider.

The decision to initiate a Formal Grievance Process by the OERC will be made on a case-by-case basis after an individualized review. The OERC will notify and provide a copy of the Notice of Allegations to a complainant in these circumstances.

## **ii. Notice of Allegations**

If a Formal Grievance Process is commenced, the OERC 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, may be 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 delivery, by any of the above methods. For employee respondents, the employee's supervisory upline, the employee's appointing/disciplinary authority, as well as Human Resources, will also receive a copy of the written Notice of Allegations. For regent respondents, the Chair and Vice Chair of the board, the President, and the Vice President for University Counsel will receive a copy of the written Notice of Allegations.

If, in the course of an investigation, a complainant alleges additional violations or the OERC decides to investigate additional allegations about the complainant or respondent that are not included in the initial Notice of Allegations, the OERC 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(s);
- The specific section(s) of the policy allegedly violated;
- The conduct alleged to constitute Prohibited Conduct;
- The date(s) and location(s) of the alleged incident(s), to the extent known and available;

- Information about the Formal Grievance Process and other OERC resolution processes;
- 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;
- A statement that retaliation is prohibited;
- 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 access the relevant and not otherwise impermissible evidence; and
- Information that the complainant and respondent may each have an advisor of their choice, including an attorney. The advisor may not engage in any conduct that would constitute harassment or retaliation against any person who has participated in an investigation and may be denied further participation for harassing or retaliatory conduct.
- Information about the availability of supportive measures;
- Information about any supportive measures that impact their participation in any university program or activity pending the outcome of the Formal Grievance Process;
- A request that the respondent contact the OERC to schedule a meeting to discuss the Formal Grievance Process and/or to respond to the allegations.

### **iii. Dismissal After Issuance of Notice of Allegations**

After a Notice of Allegations is issued, the university may, but is not required to, dismiss a Complaint or Formal Grievance Process at any time if:

- The complainant voluntarily withdraws any or all of the allegations in the complaint in writing, the OERC declines to initiate a Formal Grievance Process under Section X(C)(2)(a)(i),

and the OERC determines that without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute Prohibited Conduct even if proven;

- The respondent is not participating in the university's education program or activity or employed at the university; or
- Specific circumstances prevent the OERC from gathering evidence sufficient to reach a determination as to the allegations therein.

If the university dismisses a Formal Grievance Process, the OERC will consider whether the conduct alleged may constitute a violation of any other university or campus policies, procedures, or conduct codes and refer the matter to other appropriate offices.

The dismissal of a Formal Grievance Process does not preclude a complainant or the OERC from re-initiating a Formal Grievance Process at a later time.

*Notice of Dismissal and Opportunity to Appeal*

If the OERC dismisses a Formal Grievance Process after a Notice of Allegations is issued, both parties will be notified in writing of the dismissal, the basis for the dismissal, and information about the appeal process.

Each party may appeal a dismissal in writing. To file an appeal of the dismissal, a party must submit a written appeal to the OERC within seven (7) days of the notice of dismissal.

An appeal of a dismissal must articulate the basis of the appeal, including why the Formal Grievance Process should continue. Parties may appeal on the following bases only:

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

generally or the individual complainant(s) or respondent(s) that affected the dismissal.

If an appeal is received, the OERC 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 OERC. 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 OERC will appoint a decision maker who has been trained and who did not take part in an investigation of the allegations or dismissal of the complaint/Formal Grievance Process.

Upon review of the appeal, the decision maker may:

- Uphold the initial decision in its entirety; or
- Overturn the dismissal and direct that the Formal Grievance Process continue.

The decision maker will issue a written decision describing the result of the appeal within 30 days and the rationale for the result. The appeal decision must be provided simultaneously to both parties.

#### **iv. Investigation**

After the written Notice of Allegations has been issued to the parties, the OERC will seek to obtain all relevant and available evidence. *Relevant evidence* means evidence that is related to the allegations of Prohibited Conduct under investigation. Questions and evidence are relevant when they may aid in showing whether the alleged Prohibited Conduct occurred.

Collection of evidence may include conducting interviews with the parties and witnesses, obtaining university records such as 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 fact 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 OERC 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 OERC will provide the individuals whose participation is requested, 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.

The investigators will interview the parties separately and provide each party the opportunity to be heard and to respond to all relevant information. Any witness or party who wishes to participate in a meeting with the OERC or provide information for consideration as part of the evidence gathering phase must do so within a reasonable timeframe and prior to the issuance of the Written Evidence Summary. Following the issuance of the Written Evidence Summary, parties or witnesses may be requested to provide additional information or participate in a meeting at the discretion of the OERC.

The OERC will take reasonable steps to protect the privacy of the parties and witnesses during the pendency of the grievance procedures, provided that the steps do not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the Formal Grievance Process.

The parties may be accompanied to any related meeting or proceeding by a support person and advisor of their choice. During the investigation stage of the Formal Grievance Process, the support person and advisor is not allowed to testify or speak on a party's behalf 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.

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

Following the evidence gathering phase, the investigator(s) shall send a

*Written Evidence Summary* (WES) of the relevant and material information in the case to the complainant and respondent. The parties will have seven (7) days to review and respond to the WES. Extensions of time for party responses shall only be granted for good cause, as provided in Section X(C)(2).

**vi. Process to Determine Credibility**

The investigator(s) shall have the ability to assess the credibility of parties and witnesses. Each party will also have an opportunity to submit questions in writing for the investigator(s) to ask of the other party and of witnesses for the purpose of eliciting relevant evidence, including evidence that will assist the investigator(s) to adequately assess a party's or witness's credibility. The investigator(s) may determine a question is irrelevant (i.e. not related to the allegations of Prohibited Conduct) and decline to ask it. The investigator(s) must also decline to ask a question if the response would elicit impermissible evidence as described in Section X(C)(2)(iv).

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

Following 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 Conflict of Interest in Cases of Amorous Relationships 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 OERC 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 policy occurred.

The OERC will objectively evaluate all evidence that is relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence. 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. Credibility determinations will not be based on a party's status as a complainant, respondent, or witness.

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

If an employee respondent is found not to be responsible for violating the Conflict of Interest in Cases of Amorous Relationships 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 OERC 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.

#### *Determination Regarding Responsibility*<sup>10</sup>

The OERC shall issue the written Determination Regarding Responsibility to the complainant and the respondent, along with applicable next steps in the process.

### **viii. Appeals**

---

<sup>10</sup> Findings under the OERC Resolution Procedures are not findings pursuant to applicable state and federal legal standards, i.e. a policy violation does not equate to a violation of equal opportunity law.

Either party may appeal the Determination Regarding Responsibility within seven (7) days of its issuance. This occurs prior to the sanctioning phase for employee respondents.

Appeals must be submitted in writing to the OERC. The appeal should indicate the specific basis for the appeal (see below), supporting arguments, and any applicable documentation.

All appeals are documentary reviews, and no interviews are conducted. 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. Generally, appeals are determined solely on the merits of the claims, arguments, and documents submitted. Appeal documents therefore should be as complete and succinct as possible.

#### *Basis for Appeal*

Appeals are limited to the following three grounds:

- To determine whether there were procedural irregularities that affected the outcome of the matter;

#### *Appeal Process*

If an appeal is received, the OERC 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 OERC. 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 OERC will appoint an Appeal Officer (who may be staff from the Boulder, Anschutz, Denver, and Colorado Springs campuses). The Appeal Officer will have received appropriate training on the Conflict of Interest in Cases of Amorous Relationships Policy and appeal procedures.

Upon review of the appeal, the Appeal Officer will:

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

The Appeal Officer 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 receipt of the appeal. Extensions of time for the appeal decision shall be granted for good cause, as provided in Section IX(C)(1), and both parties will be notified in writing of any extensions.

## **ix. Sanctioning**

### *Sanctioning for Employee Respondents*

For employee Respondents, sanctioning occurs after the conclusion of the appeal stage of the process. The disciplinary authority is notified if an employee respondent was found to have violated a policy or acted inappropriately or unprofessionally and is provided the Determination Regarding Responsibility. Neither this notification, nor the OERC Formal Grievance Process, replaces any additional process or meetings that may be required under other applicable personnel processes (*e.g.*, State Personnel Board Rules for classified employees; Professional Rights and Responsibilities procedure and Privilege and Tenure process for faculty).

In cases in which a policy violation is found, both parties may submit an optional written statement to the OERC detailing any aggravating or mitigating circumstances that may impact sanctioning. These optional statements will only be shared with the sanctioning authority. The statement should only contain information about the factors considered in sanctioning. This step is not intended to supersede any other rights or processes employees may have under other university policies or applicable law. The parties will have seven (7) days from the conclusion of the appeal stage of the process to submit a statement.

### *Sanction Required and Potential Sanctions*

In order to remediate the effects of misconduct, the disciplinary authority will impose sanctions. The disciplinary authority will determine the type of sanction(s) in consultation with the Vice President for Human Resources or designee and the VP/Title IX Coordinator or designee, and any other administrative staff with a need to know pursuant to any other process applicable to the employee.

The disciplinary authority may have access to the investigative records in order to determine action. Additionally, the OERC can provide redacted information to the disciplinary authority related to similarly

situated investigations and sanctioning outcomes to ensure consistency and equity in sanctioning.

Potential sanctions may include:

- Letter of Expectation/Reprimand: The employee is given a written letter/statement from the disciplinary authority that the behavior was inappropriate and that more serious disciplinary action may be taken should subsequent infractions occur.
- Mandatory Training: The employee is 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 modifies 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 or other sanctions that may be warranted and

appropriate given the circumstances of the case and the status of the respondent.

#### *Sanctioning for Regent Respondents*

In matters where the determination is that a respondent Board of Regents member 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. The sanction will be determined in accordance with [Regent Policy 2](#).

#### **x. Notice of Sanction**

The OERC 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 OERC findings, there is no preclusion of discipline by the disciplinary authority for other misconduct or for inappropriate or unprofessional conduct.

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

The OERC may determine that the most prompt and effective way to address a concern is through a Policy Compliance process. This type of approach provides the university with options that allow 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 workplace safety. The primary focus during a Policy Compliance process remains the welfare of the parties and the safety of the university community, but this process does not involve a written report or a determination as to whether the policy has been violated.

During a Policy Compliance process, the OERC may:

- Provide interim or long-term supportive measures to the complainant and/or the respondent;
- Provide a referral to other university offices as appropriate for the specific facts of the case;
- Work with the involved individuals and department to remove the evaluative authority in order to be in compliance with the Conflict of Interests in Cases of Amorous Relationships Policy;
- Meet with the respondent to discuss the behavior as alleged and provide

the respondent an opportunity to respond;

- Review Prohibited Conduct under the Conflict of Interest in Cases of Amorous Relationships Policy with both parties separately;
- Discuss appropriate future conduct with the respondent, as well as how to avoid behavior that could be interpreted as retaliatory;
- Inform the complainant of the respondent's responses if appropriate;
- Notify the respondent's appointing/disciplinary authority or supervisory upline of the allegations and responses if necessary, who will determine whether any other disciplinary action is appropriate; or
- Provide targeted or broad-based educational programming or training as appropriate.

The OERC retains discretion to assess the allegations of misconduct to determine if a Policy Compliance process is appropriate. The OERC has discretion to involve other individuals or offices who have a legitimate need to know the allegations and be part of the resolution. Additionally, the OERC retains discretion to proceed with a formal investigation for allegations that, if proven true, would violate the Conflict of Interest in Cases of Amorous Relationships Policy.

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

The OERC may also designate other individuals (either from within the university, including an administrator, or from outside the university) to conduct or assist with a Formal Grievance Process or to manage a resolution process. Circumstances which may warrant such outside resolutions include, but are not limited to, conflict of interest, allegations of bias, or workload. The OERC 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 OERC, 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 these Resolution Procedures and confer with the OERC on a regular basis about the progress of the grievance or resolution process.