APS 5014 - Sexual Misconduct

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Policy Profile

Policy Title:	Sexual Misconduct
APS Number:	5014
Effective:	July 1, 2015
Approved by:	President Bruce D. Benson
Responsible University Officer:	Vice President for Academic Affairs and Vice President, Employee and Information Services
Responsible Office:	Academic Affairs and Employee Services
Policy Contact:	Academic Affairs and Employee Services
Supersedes:	Sexual Harassment Policy and Procedures, July 20, 2012
Last Reviewed/Updated:	July 1, 2015
Applies to:	All campuses. The system administration shall be considered a campus for the purposes of this policy and be required to adopt any campus requirements herein.

Policy Snapshot

Brief Description: Prohibits all forms of *sexual misconduct*, including *sexual assault-non-consensual intercourse, sexual assault-non-consensual sexual contact, sexual exploitation, intimate partner abuse* (including domestic and dating violence), *gender/sex-based stalking, sexual harassment* and any related *retaliation.*

Reason for Policy: This policy and the required campus complaint process and procedures are intended to comply with the related requirements of the following federal laws, their implementing regulations and related federal agency guidance:

- Title IX of the Education Amendments of 1972 (?Title IX?);

- The Violence Against Women Reauthorization Act (?VAWA?);
- The Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act (?Clery Act?); and
- Title VII of the Civil Rights Act of 1964 (?Title VII?).

I. Introduction

Sexual misconduct, as defined below, is a form of sex discrimination. The University of Colorado (?University?) is committed to providing an environment where all individuals can achieve their academic and professional aspirations free from sex discrimination.

Further, it is critical to this commitment that anyone who believes they may have been the target of or has experienced *sexual misconduct* in the context of University educational programs, activities or employment, to feel free to report their concerns for appropriate investigation and response, without fear of *retaliation*.

To foster a climate that encourages prevention and reporting of *sexual misconduct*, the University will provide prevention efforts, educate the community, respond to all reports promptly, provide interim protection measures to address safety and recognize the inherent dignity of all individuals involved.

II. Policy Statement

A. Sexual Misconduct Prohibited

The University prohibits any of the following, collectively referred to as ?*sexual misconduct*,? and further defined in Section III below:

1. *Sexual assault - non-consensual sexual intercourse;*
2. *Sexual assault - non-consensual sexual contact;*
3. *Sexual exploitation;*
4. *Intimate partner abuse* (including domestic or dating violence);
5. *Gender/sex-based stalking;*
6. *Sexual harassment; and*
7. *Retaliation* as related to any form of sexual misconduct in subsections A(1)-(6).

This prohibition applies to all students, faculty, staff, contractors, patients, volunteers, affiliated entities and other third parties, regardless of sex, gender, sexual orientation, gender expression or gender identity. Any violations may be subject to disciplinary action, up to and including, expulsion or termination of employment, as applicable. The University will consider what appropriate potential actions should be taken, including contract termination and/or property exclusion, regarding third party conduct that is alleged to have violated this policy; however those options may be limited depending on the circumstances of the arrangement.

This prohibition applies to conduct that occurs on campus. It also applies to off campus

conduct, including on-line or electronic conduct, if the conduct (1) occurred in the context of an employment or education program or activity of the University or (2) has continuing adverse effects on campus.

The University takes prompt and effective steps reasonably intended to stop any form of *sexual misconduct*, eliminate any hostile environment, prevent its recurrence and as appropriate, remedy its effects.

B. Options for Reporting and Assistance Following an Incident of Sexual Misconduct

When a student, faculty or staff member reports that they have experienced *sexual misconduct* , whether it occurred on or off campus, the campus shall provide them with written notification of the following:

1. Reporting rights and options, including to whom and how they should report an alleged offense, including law enforcement authorities (any on-campus and local police) and to be assisted by campus authorities in doing so, but also of their option to decline to notify such authorities;
2. The importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order;
3. Responsibilities for orders of protection, no-contact orders, restraining orders or similar lawful orders issued by a criminal, civil or tribal court or by the campus;
4. Counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, availability of forensic nurses to administer forensic sexual assault nurse exams (?SANE?) and other services available for victims within the campus and in the community; and
5. Options for, and available assistance in, changing transportation and working situations, in addition to any available academic and residential accommodations. This notification shall be made and accommodations afforded if they are reasonably available, regardless of whether the person who experienced *sexual misconduct* chooses to participate in any campus investigation or disciplinary proceeding or report the crime to law enforcement.

Reporting Options and Assistance:

- CU-Boulder
- UCCS
- CU Denver | Anschutz Medical Campus
- CU System Administration

C. Responsible Employees Must Report Sexual Misconduct

Any faculty or staff member who is considered a *responsible employee*, as defined in Section III, who witnesses or receives information regarding any possible *sexual misconduct* prohibited herein is required to promptly report to the Title IX Coordinator or designee all known details about the alleged *sexual misconduct*, including:

1. Name of the alleged victim;
2. Name of alleged perpetrator;
3. Name of any alleged witnesses; and
4. Any other relevant facts, including the date, time and specific location of the alleged incident.

All individuals, even if not considered a *responsible employee*, are highly encouraged to promptly report such information to a *responsible employee* or directly to the Title IX Coordinator or designee.

Reports, complaints and other information must be provided in good faith. It is a violation of this policy when a person knowingly or recklessly alleges a false complaint of *sexual misconduct* or provides false information during the course of an investigation, and violators may be subject to disciplinary action, up to and including expulsion or termination of employment, as applicable. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

D. Confidential Resources and Privacy

The University supports the use of Confidential Resources so that victims of *sexual misconduct* can report such misconduct confidentially and receive support and accommodations as necessary through the Title IX Coordinator or designee. Communications with these confidential resources are confidential to the extent permitted by statutory law and not considered ?*responsible employees*? pursuant to Section IIIC.

Confidential Resources:

- CU-Boulder
- UCCS
- CU Denver
- CU Anschutz Medical Campus
- CU System Administration

If an individual discloses an incident to a *responsible employee* but wishes to maintain privacy or requests that no investigation be conducted or disciplinary action taken, the *responsible employee* remains required to report all relevant information to the Title IX Coordinator who will explain that the University prohibits *retaliation* and that the University will not only take steps to prevent *retaliation* but also to take strong responsive action if it occurs. If the individual would still like to maintain privacy or requests that no investigation be conducted or disciplinary action taken, the Title IX Coordinator will weigh that request against the University?s obligation to provide a safe, non-discriminatory environment for all students, faculty and staff. In making that determination, the Title IX Coordinator will consider a range

of factors, including the following:

- The increased risk that the alleged perpetrator will commit additional acts of sexual or other violence;
- The seriousness of the alleged conduct;
- Whether the alleged conduct was perpetrated with a weapon;
- Whether the alleged victim is a minor;
- Whether the University possesses other means to obtain relevant evidence of the alleged conduct (e.g., security cameras or personnel, physical evidence); and

Whether the alleged conduct reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The Title IX Coordinator?s decision will be conducted on a case by case basis after an individualized review. If the University honors the individual?s request for privacy or requests that no investigation be conducted or disciplinary action taken, the University?s ability to meaningfully investigate the incident and pursue disciplinary action, if appropriate, may be limited, but nonetheless may proceed.

E. Designation and Responsibilities of the Title IX Coordinator

The Title IX Coordinator is responsible for overseeing complaints of *sexual misconduct* pursuant to this policy and identifying and addressing any patterns or systemic problems that arise during review of those complaints.

Each campus shall designate and provide notice of the name, title, office address, telephone number and email address for the campus Title IX Coordinator and any designated Deputy Coordinators.

Title IX Coordinators:

- CU-Boulder
- UCCS
- CU Denver | Anschutz Medical Campus
- CU System Administration

For all matters within the scope of this policy, at a minimum, each campus Title IX Coordinator or designee shall be specifically responsible and have delegated authority from the Chancellor for the following:

1. Ensuring that complaints and any subsequent disciplinary actions are being handled appropriately and in a timely manner;
2. Overseeing adequate, reliable and impartial investigations of complaints of *sexual misconduct*;
3. Evaluating any *complainant* request for privacy pursuant to Section II(D);
4. Referring matters for further action or discipline for inappropriate or unprofessional conduct under other applicable policies or procedures even if a *sexual misconduct* policy

violation is not found. No provision of this policy shall be construed as a limitation on the authority of the disciplinary authority under applicable policies and procedures to initiate disciplinary action;

5. Facilitating reasonable interim protective remedies and accommodations as applicable;
6. Ensuring broad publication of the campus complaint process and procedures, required pursuant to Section II(F) below, including posting the procedure on an appropriate campus website and maintaining a current procedure for each campus;
7. Providing an annual report to the Chancellor documenting: (1) the number of reports or complaints of violations of this policy; (2) the categories (i.e., student, employee or other) of the parties involved; (3) the number of policy violations found; and (4) examples of sanctions imposed for policy violations;
8. Reviewing and confirming that the relevant policy statements of the campus Annual Security Report pursuant to the Clery Act are consistent with this policy and campus complaint process and procedures;
9. Overseeing and monitoring campus compliance with this policy;
10. Ensuring there is ongoing training and education regarding reporting and preventing *sexual misconduct*, for all students, faculty and staff;
11. Maintaining records and related documentation of compliance with this policy, including, but not limited to retaining copies of any training documentation, tracking student and employee training participation, documenting each step of the campus complaint process and procedures from interim measures, accommodations for persons experiencing sexual misconduct, investigation, disciplinary proceeding, sanctions and any retaliation; and
12. Ensuring broad dissemination of the statement that the University shall not discriminate on the basis of sex in employment or in its education programs and activities.

F. Investigation/Adjudication Process and Procedures

Each campus shall establish a written complaint process and procedures providing for prompt and equitable resolution of any sexual misconduct complaints within 60 days, except for good cause with written notice to the *complainant* and *respondent* of the delay and reason for the delay. Any applicable disciplinary procedure must provide a prompt, fair, transparent and impartial process from the investigation to the final results, including a procedure that:

1. Includes timely notice of meetings;
2. Provides timely and equal access to the *complainant*, *respondent* and appropriate university officials to any relevant information, including witness identities and relevant information provided by witnesses;
3. Is conducted by officials who do not have a conflict of interest or bias for or against the *complainant* or *respondent;*
4. Allows the *complainant* and *respondent* to each have an advisor, including an attorney, who is not a potential witness in the investigation or could otherwise compromise the investigation; and
5. Applies the preponderance of the evidence standard in findings regarding the complaint.

Campus Procedures:

- CU-Boulder
- UCCS
- CU Denver | Anschutz Medical Campus
- CU System Administration

G. Complaints Involving Two or More Campuses

When an alleged violation of this policy involves more than one University campus, the campus with primary disciplinary authority over the *respondent* shall investigate the complaint pursuant to its applicable complaint process and procedures. The campus responsible for the investigation may request the involvement or cooperation of any other affected campus and should advise appropriate officials of the affected campus of the progress and results of the investigation.

H. Campus Primary and Ongoing Prevention and Awareness Programs

Each campus shall create, provide and publish a comprehensive, intentional and integrated programming, initiatives, strategies and campaigns intended to end *sexual misconduc*t that are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to campus community needs and informed by research or assessed for value, effectiveness or outcome. These programs must also consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community and societal levels.

The programs must include both primary prevention and awareness programs offered to incoming students and new employees and ongoing prevention and awareness campaigns directed at current students, faculty and staff.

Each campus should develop its prevention programs taking into account the particular needs of its students, faculty and staff and shall include:

1. A statement that the University prohibits *sexual misconduct* and provides notice of this policy, the campus complaint process and procedures and where complaints may be filed;
2. The definitions of dating violence, domestic violence, sexual assault and stalking in the applicable criminal jurisdiction;
3. The definition of consent, in reference to sexual activity, in the applicable criminal jurisdiction;
4. Safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of *sexual misconduct* against a person other than the individual;
5. Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and
6. Information about the procedures that alleged victims should follow, and that the campus will follow, after an incident of *sexual misconduct* has occurred.

III. Definitions

Italicized terms used in this Administrative Policy Statement are defined in the Policy Glossary of Terms or are defined below.

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

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

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

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

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

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

B. **Complainant:** Within the context of this policy, means a person who is subject to alleged *sexual misconduct* or *retaliatio*n.

C. **Gender/sex-based stalking:** Means directly or indirectly through another person, and based on actual or desired sexual or amorous relationships, repeatedly following, approaching, contacting, placing under surveillance or making any form of communication with another person, a member of that person?s immediate family, or someone with whom that person has or has had a continuing relationship in a manner that would cause a reasonable person to (a) fear for his or her safety or the safety of others or; (b) suffer substantial emotional distress, including causing a person to respond by altering their activities.

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

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

F. **Respondent**: Within the context of this policy, means a person who is accused of alleged *sexual misconduct* or *retaliation*.

G. **Retaliation**: Means any adverse action threatened or taken against a person because an individual has filed, supported or provided information in connection with a complaint of *sexual misconduct*, including but not limited to direct and indirect *intimidation, threats* and harassment. An ?adverse action? is any conduct or action that would dissuade a reasonable person from reporting an allegation of *sexual misconduct* or participating in

an investigation of *sexual misconduct*.

H. **Responsible employee**: Means any employee who: (1) has the authority to hire, promote, discipline, evaluate, grade, formally advise or direct faculty, staff or students; (2) has the authority to take action to redress sexual misconduct; and/or (3) has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX Coordinator. This definition does not include any medical, mental health, counseling or ombuds office personnel, in addition to any other offices covered by a statutory privilege or designated in campus procedures as not subject to mandatory reporting to the university.

I. **Sexual assault ? nonconsensual sexual intercourse**: Means any sexual intercourse, however slight, with any object, by any person upon another person that is without *affirmative consent* and/or by *force*. Intercourse includes vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue or finger; and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact. Also refer to the definitions of ?*affirmative consent?* and ?*incapacitation?*.

J. **Sexual assault ? nonconsensual sexual contact**: Means any intentional sexual touching, however slight, with any object, by any person upon another person, that is without *affirmative consent* and/or by *force*. Sexual contact includes intentional contact with the breasts, buttocks, groin or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or any other intentional bodily contact in a sexual manner. Also refer to the definitions of ?*affirmative consent?* and ?*incapacitation?*.

K. **Sexual exploitation**: Means conduct that takes sexual advantage of another person for the benefit of anyone other than that person without that person?s consent. Examples of behavior that could rise to the level of sexual exploitation include: prostituting another person; recording images (e.g., video, photograph) or audio of another person?s sexual activity, intimate body parts or nakedness without that person?s consent; distributing images (e.g., video, photograph) or audio of another person?s sexual activity, intimate body parts or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and, viewing another person?s sexual activity, intimate body parts or nakedness in a place where that person would have a reasonable expectation of privacy, without that person?s consent.

L. **Sexual harassment**: Means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors and other verbal, non-verbal or physical conduct of a sexual nature.

Sexual harassment results if one of the following occurs:

Quid Pro Quo (?This for That?)
This type of *sexual harassment* occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University activity is conditioned upon, either explicitly or implicitly,

submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual?s employment, education, living environment or participation in a University program or activity.?

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

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

IV. Related Policies

A. Campus Sexual Misconduct Policies and Procedures

CU-Boulder
UCCS
CU Denver | Anschutz Medical Campus
CU System Administration

B. APS 5015 - Conflict of Interest in Amorous Relationships

V. History

- Supersedes: Sexual Harassment Policy and Procedures, July 20, 2012
- Correction: 11/29/2012 correction to strike Section IV.G. which was not shown in final version for July 20, 2012.
- Supersedes: Sexual Harassment Policy and Procedures, July 1, 2009?
- Supercedes: Sexual Harassment Policy and Procedures, July 1, 2003?
- Supercedes: University Policy on Sexual Harassment, November 14, 1996?
- Supercedes: University Policy on Sexual Harassment, July 1, 1999
- Initial Policy: University Policy on Sexual Harassment, June 5, 1989

VI. Key Words

date, rape, domestic, interpersonal, violence, sexting
Attachments:
Video:
Images:
Groups audience:
Office of Policy and Efficiency (OPE)

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