



ADMINISTRATIVE POLICY STATEMENT

Policy Title: Sexual Misconduct, Intimate Partner Abuse and Stalking

APS Number: 5014

APS Functional Area: **HUMAN RESOURCES**

Brief Description:	Prohibits all forms of <i>sexual misconduct</i> , which is defined as <i>sexual assault - non-consensual intercourse, sexual assault - non-consensual sexual contact, sexual exploitation, intimate partner abuse</i> (including domestic and dating violence), <i>stalking</i> , and <i>sexual harassment</i> . This policy also defines related misconduct, including <i>retaliation</i> , failure to report, providing false or misleading information, and failing to abide with the orders or sanctions of the Title IX Coordinator or other authorized officials.
Effective:	October 1, 2018
Approved by:	President Bruce D. Benson
Responsible University Officer:	Title IX Coordinators
Responsible Office:	Offices of Institutional Equity
Policy Contact:	Offices of Institutional Equity
Supersedes:	Sexual Misconduct, July 1, 2015
Last Reviewed/Updated:	October 1, 2018
Applies to:	All campuses. The system administration is considered a campus for the purposes of this policy and is required to adopt any campus requirements herein.

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

- 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”);
- Title VII of the Civil Rights Act of 1964 (“Title VII”);
- Colorado Revised Statute 24-34-402; and
- Article 10 of the Laws of the Regents

I. PREAMBLE

The University of Colorado is committed to ensuring that students, faculty, and staff are not subjected to discrimination, including discrimination on the basis of sex or gender. *Sexual assault, sexual harassment*, and other forms of gender-based violence constitute discrimination when they deny equal educational and employment opportunities.

The Sexual Misconduct, Intimate Partner Abuse and Stalking Policy (“Sexual Misconduct Policy”) is designed to ensure equal access to the academic and professional experiences at the University of Colorado (“university”). This policy defines prohibited conduct and reporting obligations, as well as campus support services for involved parties. This policy requires that each campus have an office with specialized expertise to address *sexual misconduct* in a manner that ensures all parties receive prompt, fair, and equitable treatment and that safeguards the dignity and rights for all involved. These offices implement this policy and administer the related campus procedures. Anyone who encounters an issue or seeks

guidance related to this policy should consult with the designated office for their campus. University employees who are mandatory reporters (“*responsible employees*”) must promptly report *sexual misconduct* as further outlined in the policy.

The faculty, students, and staff of the university enjoy freedom of speech as guaranteed by the United States Constitution, Colorado Constitution, and the Laws of the Regents. This policy is intended to protect members of the university community from discrimination and harassment, not to regulate protected speech. The University of Colorado also recognizes academic freedom, as defined in the Laws of the Regents (Article 5.D), and this policy will not be interpreted to prohibit conduct that is legitimately related to course content, teaching methods, research, or scholarship, or the expression of political and academic views of students and faculty in the classroom.

The university prohibits other forms of discrimination and harassment. This policy addresses *sexual misconduct* as forms of discrimination and harassment. Any person who has experienced discrimination and harassment that does not constitute *sexual misconduct* should report it to the campus Office of Institutional Equity.

This administrative policy statement describes the University of Colorado’s policies and procedures defining and providing for the investigation and remediation of potential *sexual misconduct*. It does not constitute a contract, whether express or implied, between the University of Colorado and any person who is subject to its requirements. The University of Colorado reserves the right to modify this administrative policy statement when appropriate.

II. INTRODUCTION

Sexual misconduct, as defined below, is a form of sex discrimination. The university is committed to providing an environment where all individuals can study and work free from sex discrimination.

It is critical to this commitment that anyone who may have been the target of or has experienced *sexual misconduct* in the context of university educational programs, activities or employment, feel free to report their concerns without fear of *retaliation*.

To foster a climate that encourages prevention and reporting of *sexual misconduct*, the university will engage in prevention efforts, educate the community, respond to all reports promptly, provide reasonable interim protection measures when necessary to maintain the safety of the university environment, and recognize the inherent dignity of all individuals involved. The university shall provide fair and equitable processes to investigate and address complaints of *sexual misconduct* that provide fundamental due process.

III. POLICY STATEMENT

A. Sexual Misconduct

Sexual misconduct means the following, as each term is further defined in Section IV:

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. *Stalking; and*
6. *Sexual harassment.*

B. Primary and Ongoing Prevention and Awareness Programs

Each campus shall create, provide, and publish comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to prevent *sexual misconduct* 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. 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 shall develop its prevention programs taking into account the particular needs of its students, faculty, and/or staff. The prevention programs 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 *affirmative consent*, in reference to sexual activity under the Sexual Misconduct Policy and in the applicable criminal jurisdiction;
4. Safe and positive options for bystander intervention that an individual may carry out to prevent harm or intervene when there is a risk of *sexual misconduct* against another person;
5. Information on how to reduce the risk of *sexual misconduct* by recognizing warning signs of abusive behavior and how to avoid potential attacks; and
6. Information about the procedures available to alleged victims and the procedures that the campus will follow after an allegation of *sexual misconduct* has been reported.

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

When a student, faculty, or staff member reports an incident of *sexual misconduct*, whether it occurred on- or off-campus, the campus shall provide the reporting party who experienced *sexual misconduct* with written notification of the following:

1. Reporting rights and options, including:
 - a. to whom and how to report an alleged offense, including campus authorities and local law enforcement authorities;
 - b. to be assisted by campus authorities in making a report; and
 - c. to decline to notify such authorities.
2. The importance of preserving evidence that may assist in proving that an alleged criminal offense occurred or may be helpful in obtaining a protection order;
3. The method by which the individual can seek orders of protection, no-contact orders, restraining orders or similar lawful orders issued by a court or other competent authority;
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 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 reported experiencing *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](#)
[CU Colorado Springs](#)
[CU Denver](#)
[CU Anschutz Medical Campus](#)
[CU System Administration](#) (Administered by CU Boulder)

D. Confidential Resources and Privacy

1. Confidential Resources/Independent Reporting Obligations - The university supports the use of confidential resources for all parties. Employees who are confidential resources are not considered “*responsible employees*” who are required to report *sexual misconduct* under this policy. Communications of *sexual misconduct* to a “*responsible employee*” are not confidential, and these employees must report *sexual misconduct* to the Title IX Coordinator or designee when it is disclosed to them.

A person who is a confidential resource under this policy may have an independent obligation to report some forms of criminal conduct to law enforcement officials. Any person who is a confidential resource may consult with campus legal counsel to determine whether an independent reporting obligation exists.

Clery Act Reporting:

Those persons who are “Campus Security Authorities” for purposes of crime reporting under the Clery Act may find a summary of their obligations at:

[CU Boulder](#)
[CU Colorado Springs](#)
[CU Denver](#)
[CU Anschutz Medical Campus](#)
[CU System Administration](#) (Administered by CU Boulder)

Confidential Resources:

[CU Boulder](#)
[CU Colorado Springs](#)
[CU Denver](#)
[CU Anschutz Medical Campus](#)
[CU System Administration](#) (Administered by CU Boulder)

2. Complaining Party Requests Not to Proceed and Overriding Factors - If an individual has disclosed an incident of *sexual misconduct*, but wishes to maintain privacy or requests that no investigation be conducted or no disciplinary action be taken, the Title IX Coordinator or designee will 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 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 be conducted or no disciplinary action be taken, the Title IX Coordinator, or designee will weigh that request against the university’s obligation to provide a safe, non-discriminatory environment for all students, faculty, and staff. In making that determination, the Title IX Coordinator or designee will consider a range of potentially overriding factors that would cause the campus to commence an investigation or take disciplinary action after an investigation if *sexual misconduct* occurred, including the following:

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

The decision to proceed with an investigation or other action despite the individual's request that no investigation or action proceed will be conducted on a case-by-case basis after an individualized review.

3. Findings of Sexual Misconduct – The university recognizes that third parties may have a legitimate interest in knowing whether a university employee has been found responsible for engaging in *sexual misconduct*. In the event that, after an investigation and any rights of appeal have been completed, an employee has been found responsible for engaging in *sexual misconduct*, the university may confirm upon inquiry from a potential employer or licensing or credentialing agency that the employee has been found responsible for violating a policy related to *sexual misconduct*. The university may also confirm that an investigation of potential *sexual misconduct* is pending against an employee or that an employee resigned employment while an investigation of potential *sexual misconduct* was pending. As required by the Colorado Open Records Act, the university shall not release any records related to the investigation of *sexual misconduct* or finding of *sexual misconduct* unless otherwise permitted by law.

E. Reporting Sexual Misconduct

1. Purpose of Reporting - The University of Colorado provides mechanisms for members of the university community to report *sexual misconduct*. Reporting allows the university to undertake investigations when appropriate, but also allows the university to inform those who have been involved of support services and to facilitate access to those services. Reporting also allows the university to identify institutional risks, increase the effectiveness of its training programs, and identify the need for additional services that will protect the university community from harm. The University of Colorado views reporting of *sexual misconduct* as fundamental to its ability to provide a campus environment that allows equal access to educational and employment opportunities.
2. Reporting by Students and Other Members of the University Community Who are Not Responsible Employees - The university encourages all members of the university community, even those who are not defined as *responsible employees*, to report *sexual misconduct* to the Title IX Coordinator or designee. To encourage *complainants* and witnesses to make reports of conduct prohibited under this policy and to allow for a review of these reports, the university will not pursue disciplinary action against an individual who makes a good faith report to the university or who participates in the investigation of an alleged incident of *sexual misconduct*, whether as a *complainant*, *respondent*, or witness, for a violation of the campus Student Code of Conduct's prohibitions upon the personal consumption of alcohol or other drugs. A *respondent's* intoxication resulting from intentional use of alcohol/drugs, however, will not function as a defense to engaging in *sexual misconduct*.
3. Responsible Employees Must Report Sexual Misconduct - Many members of the university community, generally including faculty and members of the administration with supervisory responsibilities, are *responsible employees*, who must promptly report *sexual misconduct* to the Title IX Coordinator or designee. A full definition of *responsible employees* is provided in Section IV.
 - a. Any *responsible employee* who witnesses or receives a written or oral report alleging that a member of the university community has been subjected to or has committed an act of *sexual misconduct* must promptly report the allegations to the Title IX Coordinator or designee. Members of the university community include students, faculty, staff, contractors, patients, visitors to campus, volunteers, and employees of affiliated entities. Because the university may have the ability to address or prevent future *sexual misconduct*, the obligation to report exists independently of whether the individual who was subjected to or committed an act of *sexual misconduct* is currently enrolled or employed at the university.
 - b. The *responsible employee* is required to promptly report to the Title IX Coordinator or designee all known details about the alleged *sexual misconduct*, including:
 - i. Name of the alleged victim;
 - ii. Name of alleged perpetrator;
 - iii. Name of any alleged witnesses; and
 - iv. Any other relevant facts, including the date, time, and specific location of the alleged incident.

If the *responsible employee* is unable to provide this information at the time of making an initial report, but later becomes aware of additional information, the *responsible employee* must supplement the prior report.

Responsible employees employed by university law enforcement are required to report pursuant to this section unless the information is otherwise excluded by state or federal law (for example, identifying information for the victim and/or information related to juveniles).

- c. In many instances, it may not be immediately apparent whether a person is a member of the university community, whether the *sexual misconduct* occurred on university property, or whether the alleged *sexual misconduct* occurred in the course of an educational program or activity of the university. Rather than conduct their own inquiries to determine whether these conditions exist, *responsible employees* should report potential *sexual misconduct* to the Title IX Coordinator or designee to allow a preliminary inquiry to occur.
- d. *Responsible employees* are not required to report information disclosed during an individual's participation as a subject in an Institutional Review Board-approved human subjects research protocol. Institutional Review Boards may, in appropriate cases, require researchers to provide reporting information to all subjects of IRB Research.
- e. *Responsible employees* who receive information related to *sexual misconduct* in the course of serving in the capacity as ombuds, as designated by the university, are not required to report to the Title IX Coordinator or designee. These *responsible employees* must report *sexual misconduct* disclosed to them when they are not serving in the capacity as ombuds.
- f. *Responsible employees* who receive information related to *sexual misconduct* in the course of providing professional services within a privileged relationship, such as health care providers or counselors, are not required to report to the Title IX Coordinator or designee. These *responsible employees* must report *sexual misconduct* disclosed to them when they are not providing professional services within a privileged relationship. These *responsible employees* may also have independent professional obligations to report some forms of criminal conduct to law enforcement officials. Any *responsible employee* may consult with campus legal counsel to determine whether an independent reporting obligation exists.
- g. A *responsible employee* does not satisfy the reporting obligation by reporting *sexual misconduct* to a supervisor or university personnel other than the Title IX Coordinator or designee.
- h. *Responsible employees* are not required to report *sexual misconduct* to which they have been personally subjected to the Title IX Coordinator or designee, but are nonetheless encouraged to report.

F. Related Violations

1. Other conduct, while not falling within the definition of *sexual misconduct*, hinders the University of Colorado's ability to uphold its legal obligations and ensure equal access to educational and employment opportunities. As such, the University of Colorado prohibits the following conduct:
 - a. Failure to Report - The university will administer this policy in a manner that promotes the reporting of *sexual misconduct* and avoids disciplinary actions when *responsible employees* conscientiously discharge their reporting obligations. A failure to report an allegation of *sexual misconduct* shall result in a violation of this policy only if the *responsible employees* received information that a member of the university community was subjected to or committed an act of *sexual misconduct* and intentionally, knowingly, or recklessly disregarded the obligation to report, thus resulting in harm to a member of the university community.
 - b. Retaliation - The University of Colorado will not permit *retaliation* against a member of the university community who has indicated an intent to file or has filed, supported, or provided information in connection with a complaint of *sexual misconduct*. *Retaliation* means adverse educational or employment actions, including direct or indirect *intimidation*, *threats*, and harassment, taken against a member of the university community because of their protected activities. An adverse educational or employment action

is any conduct that would dissuade a reasonable person from reporting an allegation of *sexual misconduct* or participating in an investigation of *sexual misconduct*.

- c. Providing False or Misleading Information - Providing false or misleading information related to *sexual misconduct* is contrary to the purposes of this policy. Members of the university community must provide reports of *sexual misconduct* in good faith. A person who knowingly or recklessly alleges a false complaint of *sexual misconduct* or knowingly or recklessly provides false information during the course of an investigation violates this policy. Making a report or providing information in good faith, even if the facts alleged in the report are not later substantiated, will not constitute providing false or misleading information.
- d. Interference with Reporting - No member of the university community may prohibit or interfere with a *responsible employee* or any other person's reporting *sexual misconduct* to the Title IX Coordinator or designee.
- e. Failure to Comply with Orders and Sanctions - Subject to any rights of appeal, members of the university community must comply with orders of the Title IX Coordinator or other appropriate university officials related to this policy, including, but not limited to, no-contact orders, exclusion orders, and orders for interim suspension. Subject to any rights of appeal, members of the university community must abide by and complete sanctions related to *sexual misconduct*.

G. 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](#)
[CU Colorado Springs](#)
[CU Denver](#)
[CU Anschutz Medical Campus](#)
[CU System Administration](#) (Administered by CU Boulder)

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 implementing this policy: Subject to the Title IX Coordinator's ultimate responsibility and authority, the Title IX Coordinator may further delegate responsibility and authority for the following functions:

1. Ensuring that complaints 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 III.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* violation is not found. No provision of this policy shall be construed as a limitation upon the authority of the disciplinary authority to initiate disciplinary action for inappropriate or unprofessional conduct;
5. Facilitating reasonable interim protective remedies and accommodations for all parties;
6. Ensuring broad publication of the campus complaint process and procedures, including posting the process and procedures on an appropriate campus website;
7. Providing an annual report to the President and the appropriate campus chancellor documenting: (a) the number of reports or complaints of alleged violations of this policy; (b) the categories (i.e., student, employee, or other) of the parties involved; (c) the number of policy violations found; (d) the number of appeals taken and the outcomes of those appeals; and (e) 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. 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, including interim measures, accommodations for persons experiencing *sexual misconduct*, investigation, and sanctioning; 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.

H. Title IX Coordinator's Jurisdiction to Conduct Preliminary Inquiry and Further Action

1. The Sexual Misconduct Policy applies to all students, faculty, staff, contractors, patients, volunteers, affiliated entities, and other third parties, regardless of sex, gender, sexual orientation, gender expression or gender identity. Subject to any rights of appeal, any person found responsible for engaging in *sexual misconduct* may be subject to disciplinary action, up to and including expulsion or termination of employment. The university will consider what potential actions should be taken, including contract termination and/or property exclusion, regarding third-party conduct alleged to have violated this policy, but those options may be limited depending on the circumstances of the arrangement.
2. This prohibition against *sexual misconduct* and related offenses applies to conduct that occurs on campus. This prohibition also applies to off-campus conduct, including on-line or electronic conduct, in the following circumstances:
 - a. If the conduct occurred in the context of an employment or education program or activity of the university; or
 - b. If both the alleged victim and alleged perpetrator are students or employees of the university; or
 - c. In all other cases not falling under (a) or (b), the Title IX Coordinator, or designee, will consider the degree of the university's control over the alleged perpetrator, the relationship between the alleged victim and alleged perpetrator, and assess the surrounding circumstances of the alleged conduct for the presence of the following factors:
 - i. Targets or causes harm to an individual connected with the university;
 - ii. Threatens further sexual or other violence against the alleged victim or others and there is reasonable fear that such further conduct could target or cause harm to someone connected with the university;
 - iii. Is of a violent nature or was frequent or severe;
 - iv. Prior or current similar, misconduct complaints about the alleged perpetrator or the alleged perpetrator has a known history or records from a prior school indicating a history of sexual or other violence;
 - v. Use of, or threat to use, a weapon, access to or attempts to access weapons, or a history of bringing weapons to the university;
 - vi. Multiple alleged victims and/or perpetrators;
 - vii. Facilitation by the *incapacitation* of the alleged victim through alcohol, drugs, disability, unconsciousness, or other means;
 - viii. The alleged victim is a minor;
 - ix. Whether the alleged *sexual misconduct* reveals a pattern of perpetration at a given location or by a particular group; and/or
 - x. Any other signs of predatory behavior.

If the Title IX Coordinator, or designee, determines that at least one of the above factors is present, then the Title IX Coordinator, or designee, may determine that the university may exercise jurisdiction for off-campus conduct that does not fall under (a) or (b) above.

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

I. 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 an average of 90 days, except for good cause with notice to the *complainant* and *respondent* of the delay and reason for the delay. An investigatory process may also incorporate the adjudicatory and/or disciplinary process (such as opportunity to be heard or provide a statement and respond to the allegation(s), the making of factual findings, and the determination of any policy violation), so long as it provides a prompt, fair, and impartial process from the investigation to the final results. Any investigatory process that may result in disciplinary action must specifically include a procedure that:

1. Is conducted by trained officials who do not have a conflict of interest or bias for or against the *complainant* or *respondent*. An official shall recuse from conducting an investigation 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;
2. Allows for interim measures to be provided before an investigation or while an investigation is pending. Interim measures, when determined to be appropriate and reasonably available by the Title IX Coordinator or designee, are intended to maintain the educational or employment environment if possible and may include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations. Interim measures should be individualized and appropriate based on the information gathered by the Title IX Coordinator;
3. Includes advance notice of allegations to all parties, with the identity of the *complainant*, the specific section of the policy allegedly violated, the conduct allegedly constituting the potential violation, and the date and location of the alleged incident, to the extent known and available;
4. Allows the *complainant* and *respondent* to receive notice before they participate in an interview with sufficient time to prepare for meaningful participation;
5. Allows the *complainant* and *respondent* to each have an advisor of their choosing, including an attorney, advocate, or other person who is not a potential witness in the investigation or could otherwise compromise the investigation. 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;
6. Provides the *complainant* and *respondent* with timely and equal access to any relevant information, including witness identities and relevant information provided by *complainant*, *respondent*, witnesses, and other documentation gathered during the investigation, unless the university is legally prohibited from disclosing the information to a party;
7. Provides opportunity to respond to a written evidence summary in writing in advance of any findings or conclusions;
8. Offers the *complainant* and *respondent* an opportunity to submit questions for the investigator to ask of the other party and of witnesses. The investigator may decline to ask a question that is not reasonably calculated to lead to the discovery of probative evidence or when the probative value of the information is outweighed by the danger of unfair prejudice or confusion of the issues or by considerations of undue delay or needless presentation of cumulative evidence. Questions about any party's prior sexual history are normally not probative and will be asked only when directly relevant to the incident where the alleged *sexual misconduct* occurred;
9. Consistent with the standard of proof in other student misconduct proceedings, applies the preponderance of the evidence standard when making findings of fact and conclusions as to whether *sexual misconduct* or other

violation of this policy has occurred. A preponderance of the evidence exists when the totality of the evidence demonstrates that an allegation of *sexual misconduct* is more probably true than not. If the evidence weighs so evenly that the investigator is unable to say that there is a preponderance on either side, the investigator must determine that there is insufficient evidence to conclude there has been a violation of this policy. In applying the preponderance of the evidence standard, an investigator may consider both direct and circumstantial evidence. The investigator may determine the credibility of 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;

10. Incorporates an internal review before the final investigative findings are issued;
11. Issues written, concurrent notice of the outcome to the *complainant* and *respondent*;
12. Allows the parties to provide information about any aggravating or mitigating circumstances before any sanction is imposed;
13. Requires a written statement of the basis upon which any sanction was imposed; and
14. For cases involving student *respondent*, provides for post-decision appeal to determine whether there were procedural errors by which any party was prevented from receiving a fair investigation or whether a sanction was disproportionate to the violation of this policy. In the appeal, a party may not present any new evidence unless the party can demonstrate that it could not, with reasonable diligence, have discovered and produced the evidence during the course of the investigation.

For cases involving employee *respondents*, provides for post-decision appeal to determine whether there were procedural errors by which any party was prevented from receiving a fair investigation. In the appeal, a party may not present any new evidence unless the party can demonstrate that it could not, with reasonable diligence, have discovered and produced the evidence during the course of the investigation. Any rights of appeal of a sanction imposed as a result of a finding of *sexual misconduct*, shall be conducted in accordance with the procedure for appeal, if any, available to the employee, such as the State Personnel Rules or rules governing proceedings before the Faculty Senate Committee on Privilege and Tenure. Nothing in this section shall be read to create a right of appeal of sanctions for employees that is not otherwise provided for by law or university policy.

Campus Procedures:

[CU Boulder](#)
[CU Colorado Springs](#)
[CU Denver](#)
[CU Anschutz Medical Campus](#)
[CU System Administration](#) (Administered by CU Boulder)

J. 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.

IV. DEFINITIONS

Italicized terms used in this administrative policy statement are defined in the [APS Glossary of Terms](#) or are defined in this APS.

- 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 that create mutually understandable clear permission of 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, or intimidation, 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 she or he would not otherwise have given. For example, threats to kill or harm someone, kill or harm themselves, or to kill or harm someone for whom a person cares 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.

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 manifested through conduct and need not be a verbal withdrawal of 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.
- 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.

- B. **Complainant:** Within the context of this policy, means a person who is subject to alleged sexual misconduct or other conduct in violation of this policy.
- C. **Stalking:** Means directly or indirectly through another person, repeatedly following, approaching, contacting, placing under surveillance or making any form of communication with another person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship in a manner that would cause a reasonable person to: (a) fear for the individual's 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 physically 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 when used as a method of coercion, control, punishment, intimidation, or revenge. This includes, but is not limited to, assault, threats, and intentional property damage. This also includes acts of violence or threatened acts of violence against oneself and/or against the family members, friends, or pets of the sexual or dating partner. This definition includes intimate partner violence, dating violence, and domestic violence.

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

- F. **Respondent:** Within the context of this policy, means a person who is accused of alleged sexual misconduct, retaliation, or other conduct in violation of this policy.
- 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. A Title IX Coordinator may designate in campus procedures that certain individuals who might otherwise not be considered responsible employees are subject to mandatory reporting requirements.
- 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. 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 including 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 without that person’s affirmative consent. Examples of behavior that could rise to the level of sexual exploitation include, but are not limited to: prostituting another person; taking possession of the intimate personal property of another person without that person’s affirmative consent; recording images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness without that person’s affirmative consent; distributing images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not affirmatively consent to such disclosure; and viewing or listening to another person’s sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person’s affirmative consent.
- 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.

Although repeated incidents increase the likelihood that harassment has created a hostile environment, a single or isolated incident of sexual assault may be sufficient.

V. RELATED POLICIES AND OTHER RESOURCES

A. Campus Sexual Misconduct Policies and Procedures

- [CU Boulder](#)
- [CU Colorado Springs](#)
- [CU Denver](#)
- [CU Anschutz Medical Campus](#)
- [CU System Administration](#)

B. [APS 5015 Conflict of Interest in Amorous Relationships](#)

C. [Title IX Coordinators](#)

VI. HISTORY

- Adopted: June 5, 1989 - University Policy on Sexual Harassment.
- Revised: July 1, 1999; November 14, 1996; July 1, 2003 (renamed Sexual Harassment Policy and Procedures); July 1, 2009; July 20, 2012; November 29, 2012 (correction to strike Section IV.G. which was not shown in final version for July 20, 2012); July 1, 2015 (renamed Sexual Misconduct); October 1, 2018 (renamed Sexual Misconduct, Intimate Partner Abuse and Stalking).
- Last Reviewed: October 1, 2018.

VII. KEY WORDS

Title IX, sexual misconduct, sexual harassment, sexual exploitation, sexual assault, affirmative consent, responsible employee, retaliation, intimate partner abuse, dating violence, domestic violence, hostile environment, quid pro quo, incapacitation, reporting, confidential resources.