University of Colorado
Boulder | Colorado Springs | Denver | Anschutz Medical Campus

ADMINISTRATIVE POLICY STATEMENT

Policy Title: Sexual Misconduct, Intimate Partner Violence, and Stalking

APS Number: 5014

APS Functional Area: ~~HUMAN RESOURCES~~COMPLIANCE

Brief Description:	Prohibits all forms of *Sexual Misconduct,*[1] including conduct prohibited by Title IX and other *sexual misconduct.* This policy also defines and prohibits related misconduct, including *retaliation,* 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:	September 2, 2021
Approved by:	President Todd Saliman
Responsible University Officer:	~~Title IX Coordinators~~Vice President of Compliance and Equity
Responsible Office:	~~Offices of Institutional~~ Equity Offices
Policy Contact:	~~Offices of Institutional~~ Equity Offices
Supersedes:	Sexual Misconduct, Intimate Partner Violence and Stalking, August 14, 2020
Last Reviewed/Updated:	~~September 2, 2021~~October 1, 2026 (Technical Changes Made)
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 stated 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 Statutes § 24-34-402, *et. seq.*;
- Colorado Revised Statutes § 23-5-146 and §23-5-147; and
- Article 8 of the Laws of the Regents.

I. PREAMBLE

The University of Colorado ("university") is committed to ensuring that students, faculty, and staff are not subjected to discrimination, including discrimination on the basis of sex, as well as other forms of *sexual misconduct* that are inconsistent with the university's values and mission.

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[1] As used in this Policy, *Sexual Misconduct* includes both *Title IX Sexual Harassment* and other forms of *sexual misconduct* that fall outside Title IX's jurisdiction.

This *Sexual Misconduct* Policy ("Policy") is designed to ensure equal access to the academic and professional experiences at the 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 of 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* or other prohibited conduct.

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 Article 5.B – Academic Freedom of the Laws of the Regents, 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.

This Administrative Policy Statement (APS) describes the university'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 and any person who is subject to its requirements. The university reserves the right to modify this APS when appropriate.

II. POLICY STATEMENT

Sexual Misconduct, as defined below, may include forms of sex discrimination. The university prohibits sex-based discrimination and harassment, including discrimination based on sex as defined by Title IX, discrimination based on sex that falls outside of Title IX, and other forms of *sexual misconduct* as defined by this Policy. Any person who has experienced other forms of protected class discrimination and harassment that does not constitute *Sexual Misconduct* should also report it to the campus Office of Institutional Equity. 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* 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 *supportive 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. PROHIBITED CONDUCT

The university prohibits *Sexual Misconduct,* meaning both conduct on the basis of sex specifically prohibited by Title IX and conduct that falls outside of Title IX's jurisdiction. Prohibited conduct under this Policy includes:

- *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.*

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IV. SEXUAL MISCONDUCT JURISDICTION

A. Jurisdiction

1. This 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 Policy applies to conduct that occurs within an *education program or activity* of the university, or if the *complainant* or *respondent* are affiliated with the university community. This includes off-campus conduct, including online or electronic conduct. Alleged conduct may be considered either Title IX Sexual Misconduct or Sexual Misconduct, depending on the following jurisdictional requirements:

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

   b. Sexual Misconduct:

      i. Applies to 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.

      ii. For all allegations of *Sexual Misconduct* not falling under (i), the Title IX Coordinator or designee will consider the degree of the university's control over the *respondent*, the relationship between the *complainant* and *respondent*, and assess the surrounding circumstances of the alleged conduct for the presence of the following factors:

      - Targets or causes harm to an individual connected with the university;
      - Threatens further sexual or other violence against the *complainant* or others and there is reasonable fear that such further conduct could target or cause harm to someone connected with the university;
      - Is of a violent nature or was frequent or severe;
      - Prior or current similar, misconduct complaints about the *respondent*, or if the *respondent* has a known history or records from a prior school indicating a history of sexual or other violence;
      - Use of, or threat to use, a weapon, access to or attempts to access weapons, or a history of bringing weapons to the university;
      - Multiple alleged *complainants* or *respondents*;
      - Facilitation by the *incapacitation* of the *complainant* through alcohol, drugs, disability, unconsciousness, or other means;
      - The *complainant* is a minor;
      - Whether the alleged *Sexual Misconduct* reveals a pattern of perpetration at a given location or by a particular group; or
      - Any other signs of predatory behavior.

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

3. The Title IX Coordinator or designee is 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.

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4. To initiate a grievance process under this Policy, either the *complainant* or Title IX Coordinator or designee must file and sign a *formal complaint*.

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

   b. Sexual Misconduct: To file a *formal complaint*, a *complainant* may or may not be a member of the university community who alleges to be a victim of conduct that would violate this Policy.

5. If, at any point during the investigation, the alleged conduct does not constitute a Policy violation, the Title IX Coordinator or designee can dismiss the *formal complaint* in whole or part. Dismissal does not preclude action under other university or campus policies, procedures, or conduct codes.

   a. Title IX Sexual Misconduct: The Title IX Coordinator or designee must dismiss a *formal complaint*, subject to appeal under section VII.D, if the alleged conduct would not constitute Title IX Sexual Misconduct or the university lacks jurisdiction under the requirements of Title IX.

   b. Sexual Misconduct: The Title IX Coordinator or designee must dismiss a *formal complaint*, subject to appeal under section VII.D, if the alleged conduct would not constitute *Sexual Misconduct* or the university lacks jurisdiction to pursue the matter.

V. PREVENTION AND REPORTING

A. 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*, *stalking,* and *sexual exploitation* in the applicable criminal jurisdiction;

3. The definition of *consent*, in reference to sexual activity under this 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 *complainants* and the procedures that the campus will follow after a *Sexual Misconduct* allegation.

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

When a student, faculty, or staff member reports a possible incident of *Sexual Misconduct*, whether it occurred on- or off-campus, the campus shall provide the *complainant* 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. How to file a *formal complaint*;
   c. To be assisted by campus authorities in making a report; and
   d. 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, obtaining *supportive measures*, including changing transportation and working situations, in addition to any available academic and residential accommodations. This notification shall be made and *supportive measures* afforded if they are reasonably available, regardless of whether the person who reported experiencing *Sexual Misconduct* chooses to participate in any campus grievance process or report the alleged 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)*~~

C. **Confidential Resources and Privacy**

1. Confidential Resources/Independent Reporting Obligations: The university supports the use of confidential resources for all parties, for any reason, including support for medical assistance, counseling, crisis intervention, advocacy, and assistance with legal, housing, and financial matters. Information shared with confidential resources is not disclosed to any party outside of the resource(s) with limited exceptions as defined by law or policy of the resource.

2. Employees who are confidential resources are not required to report *Sexual Misconduct* under this Policy. 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.

   Confidential Resources:

   CU Boulder
   CU Colorado Springs
   CU Denver
   CU Anschutz Medical Campus
   CU System Administration ~~*(Administered by CU Boulder)*~~

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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)~~

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.

3. Privacy and Information Disclosure: The university will not disclose the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a *formal complaint* of *Sexual Misconduct*, any *complainant*, any individual who has been reported to be the perpetrator of sex discrimination, any *respondent*, and any witness, except as may be permitted by law, or to carry out an investigation, hearing, or judicial proceeding related to this Policy. This may require sharing information, including identification information, between internal university offices.

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

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

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

   The decision to file a *formal complaint* by the Title IX Coordinator or designee and initiate the grievance process will be on a case-by-case basis after an individualized and thoughtful review.

5. Findings of *Sexual Misconduct*: The university recognizes that third parties (either employers and/or institutions receiving transferring students) may have a legitimate interest in knowing whether a university employee or student has been found responsible for engaging in *Sexual Misconduct*. In the event that, after a grievance process and any rights of appeal have been completed, an employee or student has been found responsible for engaging in *Sexual Misconduct*, the university may confirm upon inquiry from a potential employer, licensing or credentialing agency, or institution that the employee or student has been found responsible for violating this Policy subject to applicable state and federal laws (*e.g.,* Family Educational Rights and Privacy Act (FERPA)) regarding such disclosures. As required by the Colorado Open Records Act, the university shall not release any

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records related to the investigation of *Sexual Misconduct* or finding of *Sexual Misconduct* unless otherwise permitted by law.

D. **Reporting *Sexual Misconduct***

1. Purpose of Reporting: All members of the university community may report *Sexual Misconduct*. Reporting not only allows the university to undertake investigations when appropriate, but also allows the university to inform those who have been involved of *supportive measures* 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 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. *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 IX.L.

   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(s) of the *complainant(s)*;
      ii. Name(s) of *respondent(s)*;
      iii. Name(s) of any alleged witnesses; and
      iv. Any other relevant facts, including the date, time, and specific location(s) of the alleged incident.

      If the *responsible employee* does not know all the above details, the *responsible employee* must still make a report with the available information. 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 *complainant* 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 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 Institutional Review Board Research.

   e. *Responsible employees* who receive information related to *Sexual Misconduct* in the course of serving in their capacity as ombuds, as designated by the university, are not required to report to the Title IX Coordinator. These *responsible employees* must report *Sexual Misconduct* disclosed to them when they are not serving in their capacity as ombuds.

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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. 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, but they are nonetheless encouraged to report.

3. 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*.

4. *Formal Complaint*: A *complainant* or Title IX Coordinator or designee must file a document alleging *Sexual Misconduct* against a *respondent* for the university to initiate a formal investigation under this Policy. The *formal complaint* must contain the *complainant*'s or Title IX Coordinator's physical or digital signature. A *complainant* who reports allegations of *Sexual Misconduct* with or without filing a *formal complaint* may receive *supportive measures*.

VI. RESPONSIBILITIES OF THE TITLE IX COORDINATOR

A. The Title IX Coordinator is responsible for overseeing reports of *Sexual Misconduct* and identifying and addressing any patterns or systemic problems that arise during review of those reports.

B. 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)*~~

C. For all matters within the scope of this Policy, at a minimum, each campus Title IX Coordinator shall be specifically responsible and have delegated authority from the appropriate 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 reports of *Sexual Misconduct* are handled appropriately and in a timely manner;

2. Overseeing adequate, reliable, and impartial investigations of reports of *Sexual Misconduct*;

3. Evaluating whether a *formal complaint* should proceed over a *complainant*'s decision to not move forward pursuant to section V.C.4;

4. Evaluating whether a *formal complaint* must be dismissed on jurisdictional bases;

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5. 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;

6. Facilitating *supportive measures* for all parties;

7. Ensuring broad publication of the campus complaint process and procedures, including posting the process and procedures on an appropriate campus website;

8. Providing an annual report to the president and the appropriate campus chancellor documenting:
   a. the number of reports or *formal 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;

9. 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;

10. Monitoring campus compliance with this Policy;

11. Ensuring there is ongoing training and education regarding reporting and preventing *Sexual Misconduct* for all students, faculty and staff;

12. Ensuring that Title IX Coordinators, investigators, and decision-makers are thoroughly trained;

13. 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 *supportive measures*, investigation, hearing, sanctioning, and appeal; and

14. 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.

VII. GRIEVANCE PROCESS AND PROCEDURES

A. General Requirements

Each campus shall establish a written grievance process and procedures providing for equitable resolution of any *formal complaints* of *Sexual Misconduct* within an average of 90 calendar days, except that such time frame may be extended for good cause with prior written notice to the *complainant* and *respondent* of the delay and reason for the delay. Each campus will also provide the *complainant* and *respondent* with regular written updates on the status of the investigation throughout the process until conclusion. Any grievance 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*, or against *complainants* or *respondents* generally. An official shall recuse from any role in the 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 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.

2. Provides *supportive measures* before or after the filing of a *formal complaint* or where a report of *Sexual Misconduct* has been made but no *formal complaint* has been filed. *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* and 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

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protect the safety of all parties or the university's educational or work environment, or deter *Sexual Misconduct*. *Supportive measures* may include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus safety escort services, mutual or individual 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 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*. *Supportive measures* should be individualized and appropriate based on the information gathered by the Title IX Coordinator or designee.

3. May remove a *respondent* from an *education program or activity* on an emergency basis after the university undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of *Sexual Misconduct* justifies removal, and provides the *respondent* with notice and an opportunity to challenge the decision immediately following the removal. The university may also place a non-student employee on administrative leave during the pendency of a grievance process.

4. Includes advance written notice of allegations to all parties with sufficient time to prepare a response before any initial interview. Notice will include:

    a. The identity of the parties involved in the incident;
    b. The specific section(s) of the Policy allegedly violated;
    c. The conduct allegedly constituting *Sexual Misconduct;*
    d. The date and location of the alleged incident, to the extent known and available;
    e. Information about the university's grievance process;
    f. 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 grievance process;
    g. Information about the provisions that prohibit knowingly making false statements or knowingly submitting false information during the grievance process;
    h. Information that the parties have equal opportunity to inspect and review evidence; and
    i. 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.

5. 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 this grievance process related violations as designated in this Policy or other prohibited conduct under other policies, procedures, or conduct codes.

6. Provides if, after a *formal complaint* is initiated, the university learns that the conduct alleged in the *formal complaint* would not constitute *Sexual Misconduct* even if proved, 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 during the investigation if the *complainant* notifies the Title IX Coordinator in writing that the *complainant* would like to withdraw the *formal complaint* or any allegations therein, if the *respondent* is no longer enrolled or employed at the university, or if specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the *formal complaint* or the allegations therein (discretionary dismissal).

    a. Title IX Sexual Misconduct: If the university dismisses a *formal complaint* pursuant to the Title IX Sexual Misconduct procedures, the Title IX Coordinator or designee will consider whether the conduct alleged in the *formal complaint* violates other provisions of this Policy and any other university or campus policies, procedures, or conduct codes.
    b. Sexual Misconduct: If the university dismisses a *formal complaint* pursuant to the Sexual Misconduct procedures, the Title IX Coordinator or designee will consider whether the conduct alleged in the *formal complaint* constitutes a violation of any other university or campus policies, procedures, or conduct codes.
    c. 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.

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7. Both parties may appeal a dismissal of a *formal complaint* on the following bases:

   a. To determine whether there were procedural irregularities that affected the dismissal;
   b. If new evidence that was not reasonably available at the time of dismissal could affect the outcome of the matter; or
   c. The Title IX Coordinator, investigators, or decision-makers had a conflict of interest or bias for or against *complainants* or *respondents* generally or the individual *complainant* or r*espondent* that affected the dismissal.

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

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

10. 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.

B. **Investigation Requirements**

Each campus shall establish an investigative process where 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*. When investigating a *formal complaint* and throughout the grievance process, the university must:

1. Provide the parties an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

2. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

3. 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 grievance process;

4. Provide the parties with the same opportunity to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but does not have to be, an attorney. During the investigation stage, the advisor is not allowed to testify, and must primarily observe and provide support. An 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;

5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

6. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a *formal complaint*, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation;

7. Prior to completion of the *investigative report,* the university 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, and the parties must have at least ten business days to submit a written response, which the investigator will consider prior to completion of the *investigative report*. The university must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and

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8. Create an *investigative report* that fairly summarizes relevant evidence without reaching any findings of fact or conclusions, and, at least ten business days prior to a hearing or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the *investigative report* in an electronic format or a hard copy, for their review and written response.

C. **Hearing Requirements**

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

   Each party may bring one advisor of their choosing to the live hearing to conduct cross-examination, 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 present at the live hearing, the university will provide that party an advisor, without fee or cost. Upon notice that a party needs an advisor, the university will endeavor to assign an advisor at least ten calendar 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. A party may not personally ask questions of the other party or witnesses during the hearing.

2. Live hearings will be conducted virtually, with parties located in separate locations. Technology will enable the Hearing Officer and parties to simultaneously see and hear the party or the witness answering questions. Hearings are closed to the public.

3. 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.

4. The parties will be provided the name(s) of the Hearing Officer and any panel members prior to the pre-hearing conference.

5. Pre-hearing Conference: The Hearing Officer will convene a pre-hearing conference with the parties and their respective advisors to plan for the hearing. Prior to the pre-hearing conference, the parties will provide the Hearing Officer with a list of witnesses they may call and evidence they may use during the hearing. At the pre-hearing conference, the Hearing Officer and the advisors will discuss, at minimum, the following topics:

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

   Should a party or advisor fail to participate in the pre-hearing conference, the party or advisor will receive the witness and exhibit lists at the time of the hearing.

6. 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:

   a. Advisors must be respectful of the parties and the hearing process. Abusive, intimidating, and harassing conduct will not be tolerated;
   b. 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 and calmly state their objection and wait for a determination;
   c. Repetitive or redundant questioning may be deemed both lacking in relevancy and harassing;
   d. Should an advisor need to confer with their party, they may request that the Hearing Officer grant them a recess. A mid-hearing conferral may not exceed ten minutes. Every effort should be made to conduct conferrals privately and to not be overly disruptive;
   e. Parties and advisors may not create audio or audiovisual recordings of the hearing; and

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f. Advisors and parties must acknowledge the rules of decorum in advance of a hearing, including an acknowledgement that failure to abide by the rules may result in adjournment of the hearing and a postponement until the party whose advisor failed to abide by the rules may secure a new advisor.

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

8. A party's advisor may only ask a party or witness relevant questions. A relevant question seeks information that has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the information sought in the question. Before a *complainant*, *respondent*, or witness answers a cross-examination or other question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

9. 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*.

10. 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 may consider any relevant prior statement of a party or witness, whether or not they submit to cross-examination at the live hearing. The Hearing Officer may 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.

11. Consistent with the standard of proof in other conduct proceedings, the Hearing Officer must apply the preponderance of the evidence standard when making findings of fact and conclusions as to whether *Sexual Misconduct* or another 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 Hearing Officer is unable to say that there is a preponderance on either side, the Hearing Officer must determine that there is insufficient evidence to conclude there has been a violation of this Policy.

12. The Hearing Officer or panel must issue a written determination regarding responsibility. The written determination must include:

    a. Identification of the allegations potentially constituting *Sexual Misconduct;*
    b. 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;
    c. Findings of fact supporting the determination;
    d. Conclusions regarding the application of this Policy to the facts;
    e. 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* consistent with section VII.C.13, 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
    f. The university's procedures and permissible bases for the *complainant* and *respondent* to appeal.

13. In cases resulting in a Policy violation, the Hearing Officer or panel, prior to the issuance of the written determination, must refer the matter to the appropriate sanctioning authorities (for either a student or employee *respondent*) for a disciplinary sanction to be determined. The Hearing Officer or panel will include the disciplinary sanction in the written determination. 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 conduct codes.

14. The range of possible disciplinary sanctions for student *respondents* includes receiving a written warning or reprimand through expulsion. The range of possible disciplinary sanctions for employee *respondents* includes receiving a letter of expectation or reprimand through termination of employment or employment contract.

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15. The university must provide the written determination to the parties simultaneously. 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,
    - the date on which an appeal would no longer be considered timely, if an appeal is not filed.

16. The Title IX Coordinator is responsible for effective implementation of any remedies.

D. **Appeal**

1. Either party may appeal from a dismissal (mandatory or discretionary) or determination regarding responsibility, on the following bases:

    a. To determine whether there were procedural irregularities that affected the outcome of the matter;
    b. 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; or
    c. The Title IX Coordinator, investigators, or Hearing Officer 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.

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

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

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

E. **Reports 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 *formal complaint* pursuant to its applicable grievance 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.

VIII. RELATED VIOLATIONS AND CONSOLIDATION

A. Other misconduct, while not falling within the definition of *Sexual Misconduct*, hinders the university's ability to uphold its legal obligations and ensure equal access to educational and employment opportunities. As such, the university prohibits the following conduct:

1. 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.

2. Retaliation: The university will not permit *retaliation* against a member of the university community because the individual has made a report or *formal complaint*, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. Intimidation, threats, coercion, or discrimination, including charges against an individual for conduct code violations that do not involve sex discrimination or *Sexual Misconduct*, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or *formal complaint* of *Sexual Misconduct,* constitutes *retaliation*.

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3. Providing Materially False Statements: Providing materially false statements 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 makes false statements or knowingly or recklessly submits false information during the grievance process 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.

4. 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.

5. 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 emergency removal orders. Subject to any rights of appeal, members of the university community must abide by and complete sanctions related to *Sexual Misconduct*.

6. The university may consolidate *formal complaints* of *Sexual Misconduct* with charges of related violations in situations that arise out of the same facts or circumstances and proceed under the grievance process applicable to *formal complaints* described in section VII. Alternatively, in the absence of a *formal complaint* for *Sexual Misconduct*, the university may proceed with adjudication for related violations under other applicable campus procedures or conduct codes.

IX. DEFINITIONS

Italicized terms used in this APS are defined in the APS Glossary of Terms or are defined in this Policy.

A. **Consent**: Means **affirmative *consent***, which is 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 they would not otherwise have given. For example, threats to kill or harm someone, kill or harm themselves, or 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. The following standards also apply to *consent*:

- 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*.

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- A *respondent*'s intoxication resulting from intentional use of alcohol or 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 an individual who is alleged to be the victim of conduct that could constitute *Sexual Misconduct*, *retaliation*, or other conduct in violation of this Policy.

C. **Dating violence**: means violence committed by a person, on the basis of sex –

1. who is or has been in a social relationship of a romantic or intimate nature with the victim; and

2. where the existence of such a relationship shall be determined based on a consideration of the following factors:
   a. The length of the relationship;
   b. The type of relationship; and
   c. The frequency of interaction between the persons involved in the relationship.

Dating violence includes an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship.

D. **Domestic violence**: The term "domestic violence" includes felony or misdemeanor crimes of violence, on the basis of sex, committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of ~~the jurisdiction~~Colorado receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of ~~the jurisdiction~~Colorado.

Domestic violence includes an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship.

E. **Education program or activity**: Includes locations, events, or circumstances over which the university exercises substantial control over both the *respondent* and the context in which the *Sexual Misconduct* occurs. This includes any building owned or controlled by a student organization that is officially recognized by the university.

F. **Formal Complaint**: means a document filed by a *complainant* or signed by the Title IX Coordinator or designee alleging *Sexual Misconduct* against a *respondent* and requesting that the university investigate the allegation of *Sexual Misconduct*. A *formal complaint* may be filed with the Title IX Coordinator or designee in person, by mail, or by electronic mail. If the *complainant* files the *formal complaint*, the document must contain the *complainant*'s physical or digital signature, or otherwise indicate that the *complainant* is the person filing the *formal complaint*.

G. **Hostile Environment**: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, or objectively offensive that it effectively denies a person equal access to the university's *education program or activity*. 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. This definition governs allegations of *hostile environment* related to *sexual misconduct* that fall outside Title IX's jurisdiction, including allegations of student and employee *sexual misconduct* as described in section IV.A.2.b.[2]

H. **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.

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[2] The following examples of non-Title IX sexual misconduct are offered for illustrative purposes only and are not an exhaustive list: alleged conduct that occurs in off-campus housing that does not have a nexus to an employment or educational program; and alleged conduct that occurs in study-abroad programs.

Incapacitation is a state where a person cannot make a rational, reasonable decision because they lack the capacity to give *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.

I. **Investigative Report**: A written report of relevant and material evidence distributed to both parties after gathering facts from both parties, witnesses, and any other available sources of evidence. The *investigative report* does not contain responsibility determinations or analysis and is intended to objectively present relevant evidence.

J. **Quid Pro Quo Sexual Harassment**: A member of the university community conditioning the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct.

K. **Respondent**: Within the context of this Policy, means an individual who has been reported to be the perpetrator of conduct that could constitute *Sexual Misconduct*, *retaliation*, or other conduct in violation of this Policy.

L. **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*; 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.

M. **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*.

N. **Sexual assault**: Means any attempted or actual sexual act directed against another person, without *consent* of the victim, including instances where the victim is incapable of giving *consent*. This includes:

1. Rape: the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object without the *consent* of the victim. This offense includes the rape of all persons and is properly applied regardless of the age of the victim if the victim did not *consent* or if the victim was incapable of giving *consent*.

2. ~~Fondling~~Sexual Contact: The intentional touching of the clothed or unclothed ~~private~~ body parts of another person for the purpose of sexual degradation, sexual gratification, or sexual humiliation without the *consent* of the victim~~, including instances where the victim is incapable of giving *consent* because of the victim's age or because of the victim's temporary or permanent mental incapacity~~. The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

3. Statutory Rape: Nonforcible sexual intercourse with a person who is under the statutory age of *consent*~~ if the victim consented and the offender did not force or threaten the victim~~.

4. Incest: Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

O. **Sexual exploitation**: Means conduct that takes sexual advantage of another person without that person's *consent*. Examples of behavior that could rise to the level of *sexual exploitation* include, but are not limited to: (1) prostituting another person; (2) taking possession of the intimate personal property of another person without that person's *consent*; (3) recording images (e.g., video, photograph) or audio of another person's sexual activity,

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intimate body parts, or nakedness without that person's *consent*; (4) 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 (5) 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 *consent*. If *sexual exploitation* is severe, pervasive, and objectively offensive, it may meet the definition of *Title IX Hostile Environment*; otherwise, it may constitute *Sexual Misconduct*.

P. **Stalking**: Means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. fear for their safety or the safety of others; or

2. suffer substantial emotional distress.

A course of conduct that constitutes stalking occurs where a person directly, or indirectly through another person knowingly:

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

- Makes a credible threat to another person and, in connection with the threat, repeatedly makes any form of communication with that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship, regardless of whether a conversation ensues; or

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

Q. **Title IX Sexual Harassment**: means unwelcome conduct on the basis of sex that satisfies one or more of the following:

1. "Sexual assault, dating violence, domestic violence and stalking as defined herein" ~~as defined in 20 U.S.C. § 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. § 12291(a)(10), "domestic violence" as defined in 34 U.S.C. § 12291(a)(8), or "stalking" as defined in 34 U.S.C. § 12291(a)(30);~~

2. Hostile Environment: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's *education program or activity*; or

3. Quid Pro Quo Sexual Harassment: An employee of the university conditioning the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct.

R. **Title IX Hostile Environment**: Unwelcome conduct, on the basis of sex, determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's *education program or activity*. 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.

S. **Title IX Quid Pro Quo Sexual Harassment**: An employee of the university conditioning the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct.

T. **Title IX Stalking**: Means engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to:

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1. fear for their safety or the safety of others; or

2. suffer substantial emotional distress.

A course of conduct that constitutes stalking occurs where a person directly, or indirectly through another person knowingly:

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

- Makes a credible threat to another person and, in connection with the threat, repeatedly makes any form of communication with that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship, regardless of whether a conversation ensues; or

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

X. RECORDKEEPING

The university must maintain the following records for a minimum of seven years:

A. Each *Sexual Misconduct* investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript;

B. Any disciplinary sanctions imposed on the *respondent*, and any remedies provided to the *complainant* designed to restore or preserve equal access to the university's education program or activity;

C. Any appeal and the result therefrom;

D. All materials used to train Title IX Coordinators, investigators, and decision-makers. The university must make these training materials publicly available on its website; and

E. Records of any actions, including any *supportive measures*, taken in response to a report or *formal complaint* of *Sexual Misconduct*. In each instance, the university must document the basis for its conclusion that its response was not deliberately indifferent and document that it has taken measures designed to restore or preserve equal access to the university's *education program or activity*. If a university does not provide a *complainant* with *supportive measures*, then the university must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the university in the future from providing additional explanations or detailing additional measures taken.

XI. 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 - Con~~flict of Interest in Amorous~~sensual Amorous Relationships

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C. Title IX and Title VI Coordinators

D. Campus Discrimination and Harassment Policies and Procedures

CU Boulder
CU Colorado Springs
CU Denver
CU Anschutz Medical Campus
CU System Administration ~~*(Administered by CU Boulder)*~~

XII. HISTORY

- Adopted: June 5, 1989 - University Policy on Sexual Harassment.
- Revised: November 14, 1996; July 1, 1999; 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); August 14, 2020 (renamed to Sexual Misconduct, Intimate Partner Violence, and Stalking); September 2, 2021; October 1, 2026 (Technical changes made).
- Last Reviewed: October 1, 2026~~September 2, 2021.~~

XIII. KEY WORDS

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

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