

COLORADO COMMUNITY COLLEGE SYSTEM
SYSTEM PRESIDENT'S PROCEDURE
CIVIL RIGHTS GRIEVANCE AND INVESTIGATION PROCESS

SP 3-50b

EFFECTIVE: May 9, 2012
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REFERENCE: Board Policy (BP) 3-120 Affirmative Action/Anti-Discrimination; BP 4-120 Prohibition of Discrimination or Harassment; System President's Procedure (SP) 3-120a and SP 4-120a Sexual Misconduct Procedure; SP 3-50b and SP 4-31a Civil Rights Grievance and Investigation Process for Employees and Students

APPROVED:

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System President

Application

This procedure applies to all civil rights grievances within CCCS. Depending upon who the accused party (respondent) is, the System and Colleges will cite to either SP 3-50b or SP 4-31a; however, for equity purposes, CCCS has implemented one uniform procedure¹.

When the respondent to a civil rights grievance is an Administrator/Professional Technical employee(s), Faculty, Adjunct Instructor(s), Classified employee(s), hourly employee(s), which would include student hourly's and workstudy's (CCCS employees), authorized volunteer(s), guest(s) or visitor(s), the System and Colleges will cite to SP 3-50b.

¹ CCCS has adopted, parts of the National Center for Higher Education Risk Management (NCHERM) Group and the Association of Title IX Administrators (ATIXA) policy, "The NCHERM Group/ATIXA Model Policy and Procedure for Civil Rights Equity Grievance Resolution For All Faculty, Students and Employees". Use and Adaptation of this model with citations to the NCHERM Group/ATIXA is permitted through a license to the Colorado Community College System. All other rights reserved © 2014. The NCHERM Group, LLC/ATIXA.

When the respondent to a civil rights grievance is a student, the System and Colleges will cite to SP 4-31a.

Basis

Board Policy (BP) 3-120 and BP 4-120 provides that individuals affiliated with the System or Colleges shall not be subjected to unlawful discrimination and/or harassment on the basis of sex/gender, race, color, age, creed, national or ethnic origin, physical or mental disability, veteran or military status, pregnancy status, religion, genetic information, gender identity, sexual orientation, or any other protected category under applicable local, state, or federal law (also known as “civil rights laws”), including protections for those opposing discrimination or participating in any grievance process on campus or within the Equal Employment Opportunity Commission or other human rights agencies, in its employment practices or educational programs and activities.

Definitions

ADA , Title VI, and VII Coordinator (EO Coordinator), and Title IX Coordinator² are the employee(s) designated by the System and College Presidents to oversee all civil rights complaints. The Presidents may also designate a “Deputy” EO and Title IX Coordinator.

Appointing Authority is the individual with the authority, or delegated authority, to make personnel decisions regarding the respondent. The System or College President (President) is considered the designee unless he/she has delegated this responsibility in writing.

Discrimination and Harassment includes:

Discrimination is any distinction, preference, advantage for or detriment to an individual compared to others that is:

- based upon an individual’s actual or perceived civil rights classification(s);
- severe, persistent or pervasive; and
- that unreasonably interferes with or limits:
 - Employee’s employment conditions or deprives the individual of employment access or benefits.
 - Student’s ability to participate in, access, or benefit from the College’s educational program or activities.
 - Authorized volunteers’ ability to participate in the volunteer activity.
 - Guests and visitors’ ability to participate in, access, or benefit from the College’s programs.

Discriminatory Harassment is:

- detrimental action based on an individual’s actual or perceived civil rights classification(s), which is:
- severe, persistent or pervasive; and

² The System and the Colleges may designate one employee to be the Title IX Coordinator as well as the EO Coordinator or they may designate two separate employees. Also, the Colleges may designate Deputy Title IX and EO Coordinators.

- that unreasonably interferes with or limits:
 - Employee's employment conditions or deprives the individual of employment access or benefits.
 - Student's ability to participate in, access, or benefit from the College's educational program or activities.
 - Authorized volunteers' ability to participate in the volunteer activity.
 - Guests and visitors' ability to participate in, access, or benefit from the College's programs.

Retaliatory Harassment is any adverse employment or educational action taken against a person because of the person's perceived participation in a complaint or investigation of discrimination and/or harassment based on civil rights laws.

- It is a violation of this procedure to engage in retaliatory acts against any person who reports an incident of discrimination and/or harassment, or any person who testifies, assists or participates in a proceeding, investigation or hearing relating to such allegation of discrimination and/or harassment. Such act will be subject to discipline, up to and including expulsion for students, termination for CCCS employees, and dismissal for authorized volunteers, guests or visitors.

Sexual Misconduct,³ includes, but is not limited to:

- Sexual Harassment
- Non-Consensual Sexual Contact (or attempts to commit same)
- Non-Consensual Sexual Intercourse (or attempts to commit same)
- Sexual Exploitation

For more information on sexual misconduct please refer to SP 3-120a and SP 4-120a.

Other Civil Rights Offenses, when the act is based upon the status of a civil rights protected class, include, but are not limited to, the following:

- Threatening or causing physical harm, extreme verbal abuse or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a protected class.
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a civil rights protected class.
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the System or College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity on

³ CCCS has elected to use the term "Sexual Misconduct" to comply with its federal obligations pursuant to Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Violence Against Women Reauthorization Act (VAWA) of 2013. The term "sexual misconduct" is intended to include incidences that may rise to the level of Sexual Assault, as defined by C.R.S. 18-3-402, or Sexual Assault on a Child, as defined by C.R.S. 18-3-405, and/or applicable local jurisdictional crimes. The decision to investigate and sanction an incident under this procedure does not constitute a determination that the incident is a criminal offense. The decision to criminally charge an incident as a "sexual assault", and/or applicable local jurisdictional crimes, is a determination for law enforcement.

the basis of actual or perceived membership in a protected class; hazing is also illegal under Colorado law⁴ and prohibited by this procedure.

- Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class.
- Violence between those in an intimate relationship, which includes romantic relationships, dating⁵, domestic⁶ and or relationship violence.
- Stalking⁷, defined as a course of conduct directed at a specific person on the basis of actual or perceived membership in a protected class that is unwelcome and would cause a reasonable person to feel fear.

⁴ Colorado law, C.R.S. 18-9-124, "hazing", which is applicable to criminal prosecutions, but defers from the definition used in this procedure, is defined as any activity by which a person recklessly endangers the health or safety of or causes a risk of bodily injury to an individual for purposes of initiation or admission into or affiliation with any student organization; except that "hazing" does not include customary athletic events or other similar contests or competitions, or authorized training activities conducted by members of the armed forces of the state of Colorado or the United States.

⁵ Colorado law does not define "dating violence"; therefore the System and the Colleges will use the definition set forth in the Violence Against Women Reauthorization Act (VAWA) of 2013, in the System and College procedures. Dating Violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

⁶ Colorado law, C.R.S. 18-6-800.3, defines "domestic violence" as an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship. Domestic Violence also includes any other crime against a person, or against property, including an animal or any municipal ordinance violation against a person, or against property, including an animal, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship. This definition is applicable to criminal prosecutions, and it will also be used in applicable System President's Procedures.

⁷ Colorado Law, C.R.S. 18-3-602, "stalking", which is applicable to criminal prosecutions, but defers from the definition used in this procedure, is defined as a person commits stalking if directly, or indirectly through another person, the person knowingly:

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

- Any other System or College rule, when a violation is motivated by the actual or perceived victim's protected class.

Complainant(s) is a person who is subject to alleged inappropriate civil rights behavior. For purposes of this procedure, a complainant can be a CCCS Employee(s), student(s), authorized volunteer(s), guest(s), or visitors(s).

Disciplinary Authority is the individual with authority, or delegated authority, to impose discipline upon a respondent.

Investigator(s) is the person(s) charged to investigate the civil rights grievance by the Title IX and/or the EO Coordinator. The Appointing or Disciplinary Authority may also be the investigator(s) over the particular complaint as well as the person in charge of enforcing the discipline.

Jurisdiction applies to behaviors that take place on the campus, at System or College sponsored events, and may also apply off-campus and to actions online when the Title IX/EO Coordinator determines that the off-campus conduct affects a substantial System or College interest. A substantial System or College interest is defined to include:

- Any action that constitutes criminal offense as defined by federal or Colorado law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the municipality where the System or College is located;
- Any situation where it appears that the accused individual may present a danger or threat to the health or safety of self or others;
- Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- Any situation that is detrimental to the educational interests of the System or College.

Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc occurring completely outside of the System or College's control (e.g., not on System or College networks), websites or between System or College email accounts) will only be subject to this procedure when those online behaviors can be shown to cause a substantial on-campus disruption. Otherwise, such communications are considered speech protected by the 1st Amendment to the Constitution.

Off-Campus discriminatory or harassing speech by employees may be regulated by the System and Colleges only when such speech is made in an employee's official or work-related capacity.

Offensive conduct that does not rise to the level of discrimination or harassment may not result in the imposition of discipline under the System President's Procedures, but will be addressed through civil confrontation, remedial actions, education and/or effective conflict resolution mechanisms.

Respondent(s) is a person whose alleged conduct is the subject of a complaint. For purposes of this procedure, a respondent can be a CCCS Employee(s), authorized volunteer(s), guest(s), visitor(s), or student(s).

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for alleging a civil rights violation, supporting a party bringing a civil rights grievance or for assisting in providing information relevant to a claim of a civil rights violation is a serious violation of Board Policy, and System President's Procedures. All allegations of retaliation will be treated as another possible instance of violation(s) under this grievance procedure. Acts of alleged retaliation should be reported immediately to the Title IX/EO Coordinator and will be promptly investigated. The System and Colleges are prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Procedure

The System President delegates to each College President the responsibility to ensure this procedure is implemented at their College. The System President will be responsible to ensure this procedure is implemented at the System office.

Accommodation of Disabilities

The System and Colleges are committed to full compliance with the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination and harassment against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if he or she has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the System and Colleges whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

The EO Coordinator has been designated as the ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including investigation of any grievance alleging noncompliance. The EO Coordinator is not necessarily the disability services coordinator for the System or College.

Student with Disabilities

The Colleges are committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities at the System and Colleges.

All accommodations are made on a case-by-case basis. A student requesting an accommodation should first contact the System or College's designated Director or Coordinator of Disability Services for students. The Director or Coordinator reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate to the student's particular needs and academic programs.

Employees and Authorized Volunteers with Disabilities

Pursuant to the ADA, the System and Colleges will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.

An employee or authorized volunteer requesting an accommodation should first contact the System or College's designated Director or Coordinator of Disability Services for employees and authorized volunteers. The designee will work with the individual's supervisor to identify which essential functions of the position are affected by the disability and what reasonable accommodations could enable the person to perform those duties.

Guests or Visitors with Disabilities

All accommodations requests shall be made to the System or College's designated Director or Coordinator of Disability Services for guests and visitors. The College will provide reasonable accommodations.

Complaint Procedures Concerning Civil Rights Violations

The System and the Colleges do not permit inappropriate civil rights behavior, including discrimination, harassment, and retaliation, in our work environment, and/or educational programs and activities. The System and Colleges can respond to a complaint only if it is aware of the allegations made. Further, the System and Colleges can more effectively investigate the sooner the allegation is brought to its attention. Any person who believes they have been subjected to a civil rights violation should follow this procedure to report these concerns.

Confidentiality and Reporting Incident(s) of Civil Rights Violations

CCCS employees and officials affiliated with the System and Colleges, depending on their roles within CCCS, have varying reporting responsibilities and abilities to maintain confidentiality. In order to make informed choices, one should be aware of

confidentiality and mandatory reporting requirements when consulting System and College resources.

On campus, some resources may maintain confidentiality, offering options and advice without any obligation to inform an outside agency or individual unless you have requested information to be shared. Other resources exist for you to report crimes and policy violations and these resources will take action when you report victimization to them. Most resources on campus fall in the middle of the two extremes; neither the College, nor the law, requires them to divulge private information that is shared with them, except in rare circumstances. The following describes the reporting options at the System and Colleges.

Further, any person has the right to file a police report. Should a complainant want to do so, and needs further assistance, please contact the Title IX and/or EO Coordinator, or the College designee in charge with overseeing the Clery Reporting obligations. Each College must publish and notify the College community of who this individual is.

Employee's Obligation To Report

CCCS employees, unless deemed a confidential resource by law, have an ethical obligation to report any incidences they are aware of concerning civil rights violations. If the employee is unsure, s/he may direct their questions to the Title IX and/or EO Coordinator at the System or at the Colleges. Failure to report will be considered a violation of BP 3-70, Colorado Community College System Code of Ethics, and may result in discipline, up to and including termination.

All CCCS employees receiving reports of potential civil rights violations are expected to promptly contact the Title IX and/or EO Coordinator, within 24 hours of becoming aware of a report or incident. In all cases, the System and the Colleges' Title IX and/or EO Coordinator will give consideration to the victim in how the grievance is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution when an alleged victim chooses not to initiate or participate in a formal grievance.

To Report a Complaint Confidentially⁸

If one desires that details of the incident be kept confidential, they should speak with mental health counselors, either on or off campus, campus health service providers, or off-campus rape crisis resources who can maintain confidentiality.

The System and Colleges will provide on and/or off-campus mental health counselors free of charge. In addition, another confidential resource you may speak to off-campus, are members of the clergy and chaplains. If you speak to a confidential resource that is endorsed by the College, these individuals are asked to submit anonymous statistical information to the College for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

⁸ The System and the Colleges are expected to establish on and/or off-campus mental health resources. These resources must be publicized for the System and College community.

If you are unsure of someone's duties and ability to maintain privacy, ask them before talking to them. They will be able to explain and help a reporting party to make decisions about who is in the best position to help.

Clery Act-Federal Statistical Reporting Obligations

Certain campus officials have a duty to report criminal misconduct for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student affairs/student conduct officers, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

Clery Act-Federal Timely Warning Reporting Obligations

Victims of criminal misconduct should also be aware that College administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The College will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

For more information on Clery Act reporting requirements please contact the College's designee in charge with overseeing the Clery Reporting obligations. Each College must publish and notify the College community of who this individual is.

Reporting a Complaint

In order to take appropriate corrective action, a complaint must be brought to the attention of the System or the College; therefore, anyone who believes s/he has experienced or witnessed inappropriate civil rights behavior should promptly report such behavior to the Title IX and/or EO Coordinator.

The System and Colleges will act on any informal or formal grievance made under this procedure and brought to the attention of the Title IX and/or EO Coordinator.

Filing a Complaint

All complaints shall be made as promptly as possible after the occurrence. A delay in reporting may be reasonable under some circumstances; however, an unreasonable delay in reporting is an appropriate consideration in evaluating the merits of a complaint or report.

The System and the Colleges must include a web link to the Civil Rights Incident Report Form, as attached to this procedure (See Appendix) which will serve to initiate a grievance.

If you do not want to make a report through the online form, please report all concerns or complaints relating to civil rights violations to the Title IX/EO Coordinator(s) at the System or the Colleges. The System and the Colleges are required to publish the name, title, address, phone number, and email of the Title IX and EO Coordinator(s).

External Complaints

Students with complaints of this nature also have the right to file a formal complaint with the United States Department Education:

Office for Civil Rights (OCR)

U.S. Department of Education

Cesar E. Chavez Memorial Building

1244 Speer Boulevard, Suite 310

Denver, CO 80204-3582

Telephone: (303) 844-5695

Facsimile: (303) 844-4303

Email: OCR.Denver@ed.gov

Web: <http://www.ed.gov/ocr>

For employees with complaints of this nature also have the right to file a formal complaint with the Colorado Department of Regulatory Agencies

Colorado Civil Rights Division

1560 Broadway #1050

Denver, CO 80202

Telephone: (303) 894-2997

Facsimile: (303) 894-7830

Web: <http://www.dora.state.co.us/civil-rights/index.htm>

Or

United States Equal Employment Opportunity Commission

303 E. 17th Avenue

Suite 410

Denver, CO 80203

Telephone: (800) 669-4000

Facsimile: (303) 866-1085

Web: <http://www.eeoc.gov/field/denver/index.cfm>

All other grievances where the complainant is a student(s) and the basis of the complaint is not based on federal or state civil rights laws will be addressed pursuant to SP 4-31, Student Grievance Procedure.

<https://www.cccs.edu/wp-content/uploads/2012/08/SP4-31Rev07112013.pdf>

All other grievances by an employee(s) and the basis of the complaint is not based on federal or state civil rights laws will be addressed pursuant to SP 3-50a, Employee Grievances.

<https://www.cccs.edu/wp-content/uploads/2013/09/SP-3-50a.pdf>

The Complaint

The complaint should clearly and concisely describe the alleged incident(s), when and where it occurred, and the desired remedy sought. The grievance should be signed by the initiator or, in the case of an email submission, sent as an email attachment, in letter format and should contain the name and all contact information for the grievant. Any supporting documentation and evidence should be referenced within the body of the formal grievance. Additionally, the initiator of a grievance should submit any supporting materials in writing as quickly as is practicable.

The complainant's supporting documentation should clearly demonstrate all informal efforts, if any, to resolve the issue(s) with the person involved and the person's supervisor. This includes names, dates and times of attempted or actual contact along with a description of the discussion and the manner of communication made in the course of each effort. If contacting the person involved and/or the supervisor is impracticable, the complainant should state the reasons why.

Preliminary Steps

This complaint process involves an immediate initial investigation to determine if there is sufficient evidence to believe a violation has occurred. If so, the System or the College will initiate a prompt, thorough and impartial investigation. This investigation is designed to provide a fair and reliable determination about whether policies or procedures have been violated. If so, the System or the College will implement a prompt and effective remedy designed to end the inappropriate behavior, prevent its recurrence and address its effects.

Interim Remedies

If, in the judgment of the Title IX and/or EO Coordinator, the safety or well-being of any member(s) of the College community may be jeopardized by the presence on-campus of the accused individual or the ongoing activity of a student organization whose behavior is in question, the Title IX and/or EO Coordinator may provide interim remedies intended to address the short-term effects of the inappropriate behavior, including retaliatory behavior, i.e., to redress harm to the alleged victim and the community and to prevent further violations.

These remedies may include, but are not limited to, referral to counseling and health services or to the Colorado State Employee Assistance Program (CSEAP), education to the community, altering the housing situation of the accused student or resident employee (or the alleged victim, if desired), altering work arrangements for employees, providing campus escorts, implementing contact limitations between the parties, offering adjustments to academic deadlines, or course schedules.

The College may interim suspend a student, place an employee on administrative leave, or dismiss from the College any authorized volunteer(s), guest(s), or visitor(s) pending the completion of the investigation and issuance of findings. In all cases in which an interim action is imposed, the individual will be given the opportunity to meet with the Title IX and/or EO Coordinator prior to such action being imposed, or as soon thereafter as reasonably possible, to show cause why the interim action should not be implemented. The Title IX and/or EO Coordinator have sole discretion to implement or stay an interim action under this procedure, and to determine its conditions and duration. Violation of an interim action under this procedure may be grounds for further disciplinary action, up to and including expulsion, termination, activate a “cease communications” directive, or issue a “No Trespass” order, *also known as a persona non grata*.

For students-during an interim action, the respondent may be denied access to the College campus/facilities/events and, if applicable, College housing. As determined by the appropriate administrative officer, Title IX and/or EO Coordinator or designee, this restriction includes classes and/or all other College activities or privileges for which the student might otherwise be eligible. At the discretion of the appropriate administrative officer, Title IX and/or EO Coordinator, alternative coursework options, including the option of an on-line course, may be pursued to ensure as minimal an impact as possible on the accused student.

Timeline of Process (Informal and Formal)

The System and the Colleges shall make every effort to complete the informal process no later than 30 days from the date of notice of complaint.

If the complainant chooses to file a formal complaint, or the informal process was unsuccessful, the System and the Colleges shall make every effort to complete the investigation and implement remedies, if any, no later than 60 days from the date the complaint is filed.

If the System or the College cannot resolve the formal complaint within these time frames, the Title IX and/or EO Coordinator may extend the deadline when necessary, and for good cause, to properly investigate the complaint. The System or the College will provide written notice to the parties of and the reason for the extension.

Informal and Formal Grievance Procedure for Complaints

Informal Grievance Process

Before pursuing the formal complaint process, every reasonable effort should be made to constructively resolve issues at the informal level. Whenever possible and safe, the problem or complaint should first be discussed with the individual involved in the complaint. If the complainant does not feel as though he/she has gotten satisfactory resolution with the individual involved, the complainant should contact the individual’s direct supervisor to attempt to resolve the complaint. If these efforts are unsuccessful, the formal complaint process may be initiated. The System and the Colleges do not

require the complainant to contact the person involved or that person's supervisor if doing so is impracticable, or if the complainant believes that the conduct cannot be effectively addressed through informal means.

If the incident involves an alleged sexual assault, the System and the Colleges will not enter into the informal process.

Formal Grievance Process

If the informal grievance process is unsuccessful, or if the System, the College, or the complainant choose not to pursue the informal process, upon receipt of the grievance, the Title IX/EO Coordinator(s) will open a formal case, file and assign an investigator(s) who will direct the investigation, confer with the Title IX Coordinator/EO Coordinator(s) on interim remedies, accommodations for the alleged victim, and take any other necessary remedial short-term actions necessary.

The System and the Colleges have the right to assign more than one investigator per incident.

The investigator(s) will then take the following steps:

- In coordination with the Title IX/EO Coordinator(s), initiate any necessary interim remedial actions;
- Determine the identity and contact information of the complainant(s) (whether that be the initiator, the alleged victim, or a System or College proxy or representative);
- Identify the policies and procedures allegedly violated;
- Conduct an immediate initial investigation to determine if there is sufficient evidence to charge the respondent(s), and what policy and procedure violations should be alleged as part of the complaint;
 - If there is insufficient evidence to support the complaint, the grievance should be closed with no further action;
- Meet with the complainant to finalize the complaint;
- Prepare the notice of charges on the basis of the initial investigation;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the accused individual, who may be given notice prior to or at the time of the interview;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline;
- Make a finding, based on a preponderance of the evidence (whether a policy/procedural violation is more likely than not);
- Present the findings to the respondent, who may accept the findings, accept the findings in part and reject them in part, or may reject all findings; and
- Share the findings and update the complainant on the status of the investigation and the outcome.

Participation in the Grievance Process

The investigator(s) will contact or request a meeting with the complainant(s), the alleged victim (if different people), and the respondent(s). The investigator(s) may also contact or request a meeting with relevant System or College staff, students, or others as part of the investigation. The complainant(s) and respondent(s) may offer any documentation, witnesses, or other materials in support of their position as it relates to the complaint.

The complainant(s) and the respondent(s) have the opportunity to be advised by a personal advisor of their choice, at their expense, at any stage of the process and to be accompanied by that advisor at any meeting or hearing; however, the complainant(s) or respondent(s) cannot be represented by an attorney or law student (legal counsel) unless civil or criminal actions concerning the particular incident in question are pending. Under those limited exceptions, the legal counsel's role shall be advisory only.

An advisor may only consult and advise his or her advisee, but not speak for the advisee at any meeting or hearing. These procedures are entirely administrative in nature and are not considered legal proceedings.

The complainant(s) and respondent(s) must notify the System or College of the identity of an advisor at least two (2) business days before the date of any meeting or hearing calendared.

Audio and/or Video Recording

The System and the Colleges, at its discretion, may audio or video record any meeting throughout the process. The hearing shall be recorded. Should a recording exist, the complainant and respondent may request a copy at the end of the process; however, if one requests a copy, the opposing party will automatically receive a copy as well for equity purposes. No other audio or video recording will be allowed.

The complainant and respondent are not allowed to make a copy of the recording without permission of the Title IX and/or EO Coordinator. Persons given access to the recording will be required to sign an agreement confirming that they will protect the privacy of the information contained in the recording. Failure to protect the information, may lead to further disciplinary action and/or civil action.

Findings

Investigator(s) shall issue the findings in the form of an investigation report. Both parties shall be informed of the findings through a meeting.

Where the respondent accepts the finding that s/he is in violation of the civil rights procedure, including violation of retaliation, the report will be given to the Appointing or Disciplinary Authority to proceed with disciplinary action, after consultation with the Title IX/EO Coordinator(s), in accordance with the applicable policies and procedures that govern.

In the event that the complainant or respondent rejects the findings in part or entirely, he or she must submit their rejection in writing to the investigator(s). The rejection

must clearly outline what findings they disagree with. If the rejection is vague, the investigator(s) will return the rejection to the individual and ask for clarification.

The investigator(s) will inform the Title IX/EO Coordinator of the rejection by sharing the parties' written objection. The Title IX/EO Coordinator will then convene a hearing to determine whether the accused individual is in violation of the contested aspects of the complaint. Both parties shall be notified of the hearing in writing.

The Hearing Process

The System and the Colleges have the right to elect an individual or a three person panel to oversee the hearing process. Any person fulfilling this role must have had prior investigation training.

Prior to the hearing, the hearing panel or person, in consultation with the parties and investigator(s), may decide in advance of the hearing that certain witnesses do not need to be physically present if their testimony can be adequately summarized by the investigator(s) during the hearing.

At the hearing, the complainant and respondent have the opportunity to be present and to participate in the hearing including questioning all present witnesses, though formal cross-examination is not used between the parties. If alternative questioning mechanisms are desired (screens, Skype, questions directed through the hearing panel or person, etc.) the parties should request them from the hearing panel or person two business days prior to the scheduled hearing.

Once the procedures are explained and the participants are introduced, the investigator will present the report of the investigation first, and be subject to questioning by the parties. The investigator(s) will be present during the entire hearing process, but will only be present during deliberations at the request of the hearing panel or person. The findings of the investigation are not binding on the hearing panel or person, though any undisputed conclusions of the investigation report will not be revisited, except as necessary to determine sanctions/responsive actions. Once the investigator(s) is/are questioned, the hearing panel or person will permit questioning of and by the parties, and of any present witnesses. Questions may be directed through the panel at the discretion of the hearing panel or person.

Formal rules of evidence will not apply. Any evidence that the panel believes is relevant and credible may be considered, including history and pattern evidence. The hearing panel or person will address any evidentiary concerns prior to and/or during the hearing, may exclude irrelevant or immaterial evidence and may ask the panel to disregard evidence lacking in credibility. The hearing panel or person will determine all questions of procedure and evidence. Anyone appearing at the hearing to provide information will respond to questions on his/her own behalf.

Unless the hearing panel or person determines it is appropriate, no one will present information or raise questions concerning: 1.) Incidents not directly related to the

possible violation, unless they show a pattern, or 2.) The sexual history of or the character of the victim/party bringing a grievance.

There will be no observers in the hearing. The hearing panel or person may allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the hearing panel or person or the parties involved. The hearing does not allow for character witnesses, but will accept up to two letters supporting the character of the individuals involved.

In hearings involving more than one accused individual or in which there is more than one complainant, the standard procedure will be to hear the grievances jointly; however, the Title IX and/or EO Coordinator may permit the hearing pertinent to each responding party to be conducted separately. In joint hearings, separate determinations of responsibility will be made for each responsible party.

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings, and will be subject to discipline for failure to do so. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors.

Hearings are recorded and are subject to the terms discussed above under the subheading, "Audio and/or Video Recording".

The hearing will determine whether it is more likely than not that the respondent violated the policies forming the basis of the charge. The goal of the hearing is to provide an equitable resolution via an equitable process, respecting the civil and legal rights of all participants.

The hearing panel or person shall issue a decision. Both the complainant and the respondent shall be notified in writing of the decision.

- If the respondent is found not in violation, the investigation shall be closed.
- If the respondent is found in violation, the decision will be given to the Appointing or Disciplinary Authority to proceed with disciplinary proceedings in accordance with the applicable policies and procedures that govern. Specifically,:
 - For faculty, disciplinary action will be in compliance with BP 3-20, Due Process for Faculty.
<https://www.cccs.edu/wp-content/uploads/2012/08/BP3-20.pdf>
 - For classified employees, disciplinary action will be taken pursuant to the applicable State Personnel Rules and Regulations.
<https://www.colorado.gov/spb>
 - For students, disciplinary action will be taken pursuant to BP and SP 4-30, Student Discipline.
https://www.cccs.edu/wp-content/uploads/2012/08/SP4-30_2014.pdf

Sanctions

Sanctions or responsive actions will be determined by the Appointing or Disciplinary Authority. Factors considered when determining a sanction/responsive action may include, but are not limited to, the following:

- The nature, severity of, and circumstances surrounding the violation;
- An individual's disciplinary history;
- Previous grievances or allegations involving similar conduct;
- Any other information deemed relevant by the Appointing or Disciplinary Authority;
- The need for sanctions/responsive actions to bring an end to the behavior and/or retaliation;
- The need for sanctions/responsive actions to prevent the future recurrence of the behavior and/or retaliation; and
- The need to remedy the effects of the inappropriate behavior and/or retaliation on the victim and the System and College community.

The following are the usual sanctions that may be imposed:

- For students-warning, probation, fines, restitution, denial of privileges, assignment to perform services for the benefit of the System or College community, re-assignment to another class section including the option for an on-line section, suspension, expulsion, a "Cease Communications" directive, or a "No trespass" directive.
- For CCCS employees-warning, written warning, corrective actions, probation, restitution, denial of privileges, suspension, demotion, termination of employment, a "Cease Communications" directive, or a "No trespass" directive.
- For authorized volunteers, guest(s), or visitors-warning, writing warning, denial of privileges, dismissal from the System or College, a "Cease Communications" directive, or a "No Trespass" directive.

Appeals

Appealing sanctions will be handled in accordance with:

- For faculty, disciplinary action will be in compliance with BP 3-20, Due Process for Faculty.
<https://www.cccs.edu/wp-content/uploads/2012/08/BP3-20.pdf>
- For classified employees, disciplinary action will be taken pursuant to the applicable State Personnel Rules and Regulations.
<https://www.colorado.gov/spb>
- For students, disciplinary action will be taken pursuant to BP 4-30 and SP 4-30, Student Discipline.
https://www.cccs.edu/wp-content/uploads/2012/08/SP4-30_2014.pdf

Statement of the Rights of a Party Bringing a Grievance

- To be treated with respect by CCCS employees.
- To take advantage of System and College support resources, such as counseling, psychological services, health services.
- To experience a safe living, educational and work environment.

- To have an advisor during this process, as discussed in the procedure.
- To refuse to have an allegation resolved through conflict resolution procedures.
- To receive amnesty for minor student misconduct (such as alcohol or drug violations) that is ancillary to the incident.
- To be free from retaliation.
- To have grievances heard in substantial accordance with these procedures.
- To full participation of the injured party in any proceeding whether the injured party is serving as the party bringing a grievance or the System or College is serving as party bringing a grievance.
- To be informed in writing of the outcome/resolution of the grievance, sanctions where permissible and the rationale for the outcome where permissible.
- Refer to law enforcement and have assistance in contacting law enforcement.
- Housing and living accommodations.
- No contact with the Responding Party, if desired.

Statement of the Rights of the Responding Party

- To be treated with respect by CCCS employees.
- To take advantage of System and College support resources, such as counseling, psychological services, health services.
- To have an advisor during this process.
- To refuse to have an allegation resolved through conflict resolution procedures.
- To have grievances heard in substantial accordance with these procedures.
- To be informed of the outcome/resolution of the grievance and the rationale for the outcome, in writing.

Special Grievance Process Provisions

- **Alternative Testimony Options**
For sexual misconduct complaints, and other complaints of a sensitive nature, whether the alleged victim is serving as the complainant or as a witness, alternative testimony options will be given, such as placing a privacy screen in the hearing room, or allowing the alleged victim to testify outside the physical presence of the accused individual, such as by Skype. While these options are intended to help make the alleged victim more comfortable, they are not intended to work to the disadvantage of the respondent.
- **Attempted violations**
In most circumstances, the System and the College will treat attempts to commit acts that would be considered civil rights violations or retaliation as if those attempts had been completed.
- **Bystander Engagement**
The System and the Colleges encourage individuals to offer help and assistance to others in need. Sometimes, people are hesitant to offer assistance to others, for fear that they may get themselves in trouble (for example, a student who has been

drinking underage might hesitate to help take a sexual misconduct victim to the Campus Police or Security). The System and the College pursues a policy of limited immunity for individuals who offer help to others in need. This is not immunity from criminal prosecution. While policy and procedure violations cannot be overlooked, the System and the Colleges will provide educational options, rather than punishment, to those who offer their assistance to others in need.

- **Complainant can be System or College**
As necessary, the System and the Colleges reserve the right to initiate a complaint, to serve as complainant, and to initiate conduct proceedings without a formal complaint by the victim of misconduct.
- **Disruption of Process**
At any point during the investigation or hearing, the investigator(s), Title IX/EO Coordinator, or hearing representative, may remove anyone who is causing a disruption or being uncooperative, and, further, suspend and/or end a meeting or hearing if the behavior becomes a significant interruption to the order of the process. If the System or College representative decides to end the meeting or hearing, the process will continue with making a determination with the facts known at that time.
- **Equity**
Both the complainant and respondent are given the same opportunities throughout the process.
- **False Reports**
The System and the Colleges will not tolerate intentional false reporting of incidents. False reporting could lead to disciplinary action, up to and including the sanctions listed above under the subheading, "The following are the usual sanctions that may be imposed".

False reporting may also be a violation of state criminal statutes and civil defamation laws.

- **Immunity for Victims and Witnesses**
The System and the Colleges encourage the reporting of violations and crimes by victims and witnesses. Sometimes, victims or witnesses are hesitant to report to CCCS employees or participate in grievance processes because they fear that they themselves may be accused of policy and procedure violations, such as underage drinking at the time of the incident. It is in the best interests of this community that as many victims as possible choose to report to the System and the Colleges, and that witnesses come forward to share what they know. To encourage reporting, the System and the Colleges pursue a policy of offering victims of crimes and witnesses limited immunity from policy violations related to the incident. This is not immunity from criminal prosecution.

- Notification of Outcomes

Complainant(s) and Respondent(s) have an absolute right to be informed of the outcome, essential findings, and the sanctions imposed, if any, unless the System or the College have a legitimate concern for the health, safety, or welfare of the System or College community.

The outcome of a campus investigation is part of the educational record of the accused student, and is protected from release under a federal law, FERPA. However, the System and the Colleges observe the legal exceptions as follows:

- Specifically, Complainant(s) in non-consensual sexual contact/intercourse, sexual exploitation, sexual harassment, stalking, and relationship violence incidents have an absolute right to be informed of the outcome, essential findings, and sanctions of the hearing, in writing, without condition or limitation.
 - The System and the Colleges may release publicly the name, nature of the violation, and the sanction imposed for any individual who is found to have committed a “crime of violence,” including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property and kidnapping/abduction. The System and the College will release this information to the complainant in any of these offenses regardless of the outcome.
- Parental Notification when Students are involved in an incident
The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The College may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is not-dependent, the College will contact the appropriate next of kin to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about individual conduct complaints pursuant to the Family Educational Rights and Privacy Act.
 - Past Sexual History/Character
The past sexual history or sexual character of a party will not be admissible by the other party in the investigation or hearing unless such information is determined to be highly relevant by the investigator. All such information sought to be admitted will be presumed irrelevant, and any request to overcome this presumption by the parties must be included in the complaint/response or a subsequent written request, and must be reviewed in advance of the hearing by the Title IX and/or EO Coordinator. While previous conduct violations by the accused are not generally admissible as information about the present alleged violation, the Appointing or Disciplinary Authority may supply previous complaint information to the investigators, the conduct board, or may consider it him/herself if s/he is hearing the complaint, only if:
 - 1) The respondent was previously found to be responsible;
 - 2) The previous incident was substantially similar to the present allegation;and

3) Information indicates a pattern of behavior and substantial conformity with that pattern by the respondent.

- **Standard of proof**
The System and the Colleges will use the preponderance of evidence standard in the civil rights investigation proceedings, meaning, the System and the Colleges will determine whether it is more likely than not a violation occurred.
- **Training, Education, and Prevention Program Requirements**
CCCS employees and authorized volunteers are required to be trained on civil rights laws. Specifically, at a minimum, employees and authorized volunteers are to be trained on Title IX, VAWA, and Clery Act requirements annually and unlawful harassment and discrimination prevention bi-annually. The System and Colleges may require additional training at its discretion.

The System and Colleges engage in comprehensive educational programming to prevent civil rights violations. To meet its requirements under the Violence Against Women Reauthorization Act (VAWA) of 2013, the Colleges are expected to provide primary and on-going prevention programs to prevent domestic violence, dating violence, sexual assault and stalking.

- **Withdrawal or Resignation While Charges Pending**
Should the complainant or respondent decide to withdraw or resign while charges are pending, the process will proceed in his/her absence to a reasonable resolution and that person will not be permitted to return to the System or the Colleges unless all sanctions have been satisfied.

Retaliatory Acts

If any person who reports an incident of a civil rights violation, or any person who testifies, assists or participates in a proceeding, investigation or hearing relating to the allegation, feels they are being subjected to retaliatory acts may report such incidences to the Title IX/EO Coordinator.

It is a violation of this procedure to engage in retaliatory acts against any person who reports an incident of a civil rights violation(s), or any person who testifies, assists or participates in a proceeding, investigation or hearing relating to the allegation. Such act will be subject to discipline as specified above.

Revising this Procedure

This procedure defines and prohibits inappropriate civil rights behavior on the basis of federal, state and local laws. If statutory provisions, regulatory guidance, or court interpretations change or conflict with this System President's Procedure, CCCS retains the right to revise accordingly and for the changes to take effect immediately.

CCCS reserves the right to change any provision or requirement of this procedure at any time and the change shall become effective immediately.

APPENDIX
COMPLAINT
INCIDENT REPORT FORM
CIVIL RIGHTS

Directions: If you believe that you have been subjected to civil rights violations, you may submit your complaint using this form, or verbally by contacting the Title IX/EO Coordinator. Depending on the information you provide, the System and the Colleges may be obligated to investigate even without your permission. The System and the Colleges can only base its findings and take actions based on the information provided by you. If more space is necessary, please continue your comments on the back of this form, or on a separate sheet of paper.

Date of Complaint: _____

Name (Complainant): _____ S#, if applicable _____

System or College: _____

Please Check: Employee____ Student____ Authorized Volunteer ____ Guest/Visitor____

If you are not the victim, please include their name(s) _____

Is victim, *please check:*

Employee____ Student____ Authorized Volunteer ____ Guest/Visitor____

Name(s) of who you believe committed the alleged act(s): _____

Is person an employee, student, authorized volunteer, or guest/visitor?

Check One: Employee____ Student____ Authorized Volunteer____ Guest/Visitor ____

Please describe the alleged incident(s), and when and where it occurred. Also, please attach any supporting documentation and evidence.

Complaint Incident Report Form Continued-Civil Rights

Identify all individuals with knowledge of the conduct about which you are complaining.

We highly encourage attempting to resolve complaints informally. Would you be interested in attempting this process? *Check one:* Yes ____ No ____
**If the complaint is an allegation of sexual assault, the System nor the College will allow an informal proceeding to occur.*

Please describe your requested remedy for this complaint.

Disclosure

To investigate your complaint, it will be necessary to interview you, the alleged respondent(s), and any witnesses with knowledge of the allegations or defenses. The statements and the information that you are providing may be attributed to you and could be included in any investigative reports that are prepared. Further, it may be necessary to include you as a witness in any hearing that may occur due to these alleged incidents.

Authorization to disclose identity of person reporting incident: Yes No
**Please note limiting the System and College's ability to disclose will affect the ability to respond to the complaint.*

Please provide your contact information

Phone Number _____ Alternate Phone Number _____

Email _____

Acknowledgement

I, _____, am willing to cooperate fully in the investigation of my complaint and provide whatever evidence the System or the College deems relevant. I affirm that the information I am providing is true and correct to the best of my knowledge. I understand that my statements and the information that I am providing may be attributed to me and could be included in any investigation reports that are prepared. I also understand that this investigation is confidential and for me to disclose any information that I have obtained during the course of this investigation could interfere with the investigation. Further, I understand that discussing this investigation with Non-College Officials could expose me to civil liability under current defamation law. I also understand that if I do not fully cooperate, decisions will be made based on the best information available to the System or the College.

Signature

Date

Witness

Date

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)
AUTHORIZATION

I, _____, understand that my complaint constitutes an “educational record” as defined by the Family Educational Rights and Privacy Act of 1974 (FERPA). As such I authorize the College to disclose my name and/or the specific allegation(s) made by me to the respondent of said allegation(s) and to others identified as material witnesses during the course of this investigation. Other than the aforementioned, I understand that I retain all other rights afforded to me under FERPA.

Signature

Date

Witness

Date