

COLORADO COMMUNITY COLLEGE SYSTEM

SYSTEM PROCEDURE

Civil Rights and Sexual Misconduct Resolution Process

SP 19-60

APPROVED: August 12, 2020

EFFECTIVE: August 12, 2020

REFERENCE: Board Policy (BP) 19-60 Prohibition of Discrimination, Harassment or Retaliation

APPROVED:

 / Joe Garcia /
Joseph A. Garcia, Chancellor

Application

This procedure applies to the Community Colleges within the Colorado Community College System and the System Office (CCCS).

Allegations that an individual has engaged in any discriminatory, harassing, and/or retaliatory behavior, including Sexual Misconduct, after the effective date of this procedure will be resolved under this procedure.

Basis

Board Policy (BP) 19-60 provides that individuals affiliated with CCCS shall not discriminate or harass on the basis of sex, gender, race, color, age, creed, national or ethnic origin, ancestry, physical or mental disability, familial status, veteran or military status, pregnancy status, religion, genetic information, gender identity, sexual orientation, or any other protected class or category under applicable local, state or federal law (also known as “civil rights laws”), in connection with employment practices or educational programs and activities (including in admissions). BP 19-60 further provides that individuals affiliated with CCCS shall not retaliate against any person who opposes discrimination, harassment or retaliation, or participates in any complaint or investigation process.

Definitions

For definitions applicable to this procedure, refer to Appendix A.

Procedure

Filing a Complaint

Any person who believes they have been subjected to a civil rights violation should follow this procedure to report their concerns. CCCS will act on any complaint brought to the attention of the Title IX/EO Coordinator that is made under this procedure.

All complaints shall be made as promptly as possible after the occurrence, so that CCCS can more effectively address the reported concerns. A delay in reporting may result in the loss of relevant evidence and witness testimony, and may affect the ability of CCCS to substantiate the allegations. The complaint should describe the alleged incident, which may include when and where it occurred, the parties involved, and the desired remedy sought. Any supporting documentation and evidence may be referenced within the body of the complaint.

The System Office and each College must include a clearly visible link on its web page for filing civil rights complaints, and publish the name, title, address, telephone number, and email address of the Title IX/EO Coordinator. Complaints may also be submitted directly to the Title IX/EO Coordinator verbally or in writing. Complainants may be asked to reduce verbal complaints to writing and sign them (in person or electronically) before proceeding through the resolution process (e.g., Sexual Harassment/Title IX complaints must be in writing and signed by the Complainant or Title IX Coordinator before proceeding with formal investigation). The System Office and each College must also annually distribute through electronic or other means of communication the institution's nondiscrimination policy, which includes the sexual misconduct policy and procedure, and shall make available educational programs to all incoming students and newly employed faculty and staff.

Confidentiality

CCCS employees, depending on their roles, have varying reporting responsibilities and may not be able to maintain confidentiality of information reported to them. Any person who reports concerns of civil rights violations should not assume that confidentiality or anonymity can be protected in connection with making a report.

At individual Colleges, some confidential resources may be available, such as mental health counselors, either on or off campus, campus health service providers, off-campus rape crisis resources, legal professionals, and/or members of the clergy. Except in rare circumstances, such as the existence of an immediate threat of harm, these individuals can offer options and advice without any obligation to report internally or externally unless the Complainant has requested information be shared. Other outside confidential resources are available, and the Title IX/EO Coordinator can assist in connecting an individual to these resources.

Any person who reports concerns of civil rights violations should also be aware that CCCS must issue immediate emergency notifications and/or 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. CCCS will make every effort to ensure that a Complainant's name and other identifying information is not disclosed, while still providing adequate information for community members to make safety decisions in light of the danger.

Employee Reporting Obligations

CCCS employees (including student employees), unless deemed a confidential resource by law, have an ethical obligation to promptly report any incidents they are aware of concerning civil rights violations. Reports should be made within 24 hours, unless there is reasonable justification for a delay. Employees unsure of the scope of this requirement may direct their questions to the Title IX/EO Coordinator. 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 other individuals affiliated with CCCS are strongly encouraged to report civil rights violations.

Preliminary Steps and Timeline

Upon receipt of a complaint, the Title IX/EO Coordinator will review the complaint to determine whether the complaint alleges sufficient information to support that a civil rights violation has occurred (reasonable cause). If the Title IX/EO Coordinator is unable to make this determination in reviewing the complaint alone, the Title IX/EO Coordinator may, at their discretion, reach out to the Complainant or others, as relevant, for clarification and/or additional information.

If no reasonable cause is found to initiate a formal investigation, the Title IX/EO Coordinator shall inform the Complainant of this decision and discuss other options for addressing the reported concerns.

If there is reasonable cause and the Complainant wishes to proceed, the Title IX/EO Coordinator will initiate an informal resolution or a formal investigation. If the Complainant does not wish to proceed, the Title IX/EO Coordinator will give consideration to the Complainant's preference, but reserves the right, when necessary to protect the CCCS community, to initiate an informal resolution or formal investigation of the complaint. The Title IX/EO Coordinator also reserves the right to initiate an investigation and resolve a complaint without a participating or identifiable Complainant.

The Title IX/EO Coordinator may consider a number of factors when determining whether to initiate an informal resolution or formal investigation without the Complainant's participation and/or without an identifiable Complainant.

These factors may include, but are not limited to, the following:

- Seriousness of the alleged conduct;
- Risk that the Respondent will similarly harm others;
- Previous complaints or allegations involving similar conduct;
- Whether multiple Complainants were involved;
- Whether the conduct was facilitated by incapacitation;
- Whether a weapon or violence was used;

- Whether the Complainant is a minor and/or at-risk;
- Whether the conduct was predatory in nature; and/or
- Any other information deemed relevant by the Title IX/EO Coordinator.

The informal resolution and formal investigation processes are designed to address the reported concerns, end the inappropriate behavior, and prevent its reoccurrence. This may include providing a fair and reliable determination about whether policies or procedures have been violated.

The Title IX/EO Coordinator will also evaluate the complaint to determine if it alleges Sexual Harassment under Title IX and occurred within one of its programs or activities in the United States. In such cases, the specific procedures applicable to Sexual Harassment (e.g., live hearing) will apply. If not, the complaint must be closed for Title IX Sexual Harassment purposes, but it may be addressed under other civil rights procedures outlined herein. Dismissal of a Title IX Sexual Harassment case is subject to the appeal procedures outlined herein. If a complaint involves allegations of Title IX Sexual Harassment within a CCCS program or activity in the United States along with other conduct that is not covered by Title IX, the Title IX/EO Coordinator in their discretion will either process the entire complaint under Title IX Sexual Harassment procedures or will divide the allegations and process them separately under applicable provisions of this procedure.

CCCS shall make every effort to complete the resolution or investigation process within approximately 90 days from the date the complaint is filed. If CCCS cannot resolve the complaint within this timeline, the Title IX/EO Coordinator may extend the timeline when necessary, to properly resolve the complaint. Written notice will be provided to the parties regarding the extension.

Interim Actions

The Title IX/EO Coordinator, in consultation with appropriate administrative personnel, may implement interim actions, including Supportive Measures, intended to protect the safety and security of the campus community, address the effects of the reported behavior, and prevent further violations, while the complaint is under review or investigation. These remedies may include, but are not limited to, placing an employee on administrative leave, interim actions outlined in the SP 4-30 Student Disciplinary Procedure, campus bans/emergency removals, referral to counseling and health services or to the Colorado State Employee Assistance Program (CSEAP), education to the community, altering housing situations, altering work arrangements, providing campus escorts, implementing contact limitations between the parties (e.g., no contact orders), offering adjustments to academic deadlines or course schedules, and/or suspending privileges such as attendance at College activities or participation in College-sponsored organizations. Any campus ban/emergency removal will be implemented only after a determination that the person poses an immediate threat to the physical health or safety of another.

In all cases in which an interim action is imposed, the individual will be given the opportunity to meet with the Title IX/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/EO Coordinator shall have sole discretion to implement or stay an interim action, and to determine its conditions and duration. Violation of an interim action may be grounds for disciplinary action, up to and including expulsion, termination, a "Cease Communications" directive, or issuance of a "No Trespass" order, also known as a *persona non grata*.

Following the completion of the investigation or resolution process, interim actions may be continued or made permanent as deemed necessary.

Rights of Involved Parties

Throughout the civil rights and sexual misconduct resolution process, Complainants and Respondents shall be entitled to the following:

- To be treated with respect by CCCS employees.
- To take advantage of Supportive Measures and other resources, such as counseling, psychological services, and health services.
- To experience a safe living, educational, and work environment.
- To have an advisor of their choice present at any meeting.
- To have access to a Title IX/EO Coordinator, investigator(s), hearing officers/decision-maker(s) for Title IX cases, and/or other individuals assisting with the resolution process who do not have a conflict of interest or bias for or against either party.
- 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 be informed of the outcome/resolution of the complaint, and the sanctions and rationale for the outcome where permissible.
- To have assistance in contacting law enforcement, if desired.
- To request housing, employment, and/or educational modifications, as deemed appropriate and reasonable.
- To request no further contact with the opposite party, as deemed appropriate, allowable and reasonable.

Informal Resolution

The Title IX/EO Coordinator, in consultation with the parties, may determine that an informal resolution is appropriate to resolve the reported concerns. The primary focus during an informal resolution remains the welfare of the parties and the safety of the CCCS community, but it does not involve a written investigation report or an opportunity to appeal. An informal resolution may include but is not limited to:

- The provision of interim or long-term remedial measures;
- Referral to other resolution processes;
- Training or educational programming for the parties;
- The Title IX/EO Coordinator or a designee serving as a facilitator to discuss the reported concerns with the Complainant and Respondent (either separately or together) and to identify possible resolutions and/or appropriate future conduct; and/or

- Referral to a Disciplinary Authority to further address the reported behavior, as deemed appropriate.

Notice of the allegations and specific Informal Resolution process will be provided to both parties.

At any time during the informal resolution process, the Title IX/EO Coordinator may elect to initiate a formal investigation as deemed appropriate to resolve the matter. The parties can elect to cease the informal resolution process at any time before it concludes and proceed with a formal investigation. The informal resolution process is not available in Sexual Harassment cases involving a student Complainant and an employee Respondent.

Formal Investigation

If a formal investigation is initiated, the Title IX/EO Coordinator shall provide written notice (Notice of Investigation) to the Complainant and Respondent notifying them of the investigation and will assign one or more impartial investigators to conduct an investigation into the complaint. The investigation will include an objective evaluation of all relevant evidence, both inculpatory (incriminating or tending to show responsibility for a violation) and exculpatory (exonerating or tending to negate responsibility for a violation). The investigator(s) may request an interview with the Complainant, the Respondent, and any witnesses, including expert witnesses for Sexual Harassment cases, deemed relevant by the investigator(s). The parties will be provided with sufficient details of the allegations (such as identity of parties, nature of the conduct, and date/location of the incident, if known). All parties and other witness or participants in the investigation process will be provided written notice of the date, time, location, participants and purpose of any interview or meeting with sufficient time to prepare to participate.

Throughout the investigation, all questions will go through the assigned investigators. The Complainant and Respondent may offer any documentation, witnesses, or other materials in support of their position as it relates to the complaint. There will be a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the resolution process. Any credibility determinations made by investigators will not be based upon a person's status as a Complainant, Respondent, or witness.

The Complainant and the Respondent have the opportunity to be advised and accompanied by an advisor of their choice, at their expense, at any stage of the process. In the event of a live hearing, if either party does not have an advisor, the College will provide one to that party at no cost. An advisor may consult and advise their advisee, but may not speak on behalf of their advisee. These procedures are entirely administrative in nature and are not considered legal proceedings. The investigator(s) may end a meeting or remove or dismiss an advisor who becomes disruptive or who does not abide by the restrictions on their participation as explained above.

Should the Complainant or Respondent decide to withdraw from courses or resign employment while a complaint is pending, the process may proceed in that party's absence and sanctions may still be imposed affecting the party's ability to return to CCCS. Additionally, the Title IX/EO Coordinator may dismiss the formal complaint if the Complainant requests such dismissal in writing, if the Respondent is no longer enrolled/employed at CCCS, or other specific circumstances prevent the investigators from gathering evidence sufficient to reach a determination. Notice regarding the dismissal will be provided in writing simultaneously to the parties.

No unauthorized recording will be allowed, and all parties must request permission to record in advance. CCCS, at its discretion, may grant authorization for recording of an interview, and in that case, CCCS will also record to ensure there is an accurate record.

Throughout the formal investigation process, the Title IX/EO Coordinator will provide regular written updates on the status of the investigation to the Complainant and the Respondent through the conclusion of the investigation.

Preliminary Investigation Report

Following the fact gathering stage of the formal investigation, the investigator(s) shall issue a Preliminary Investigation Report to the Complainant and Respondent (and their advisors, if applicable) for review. The Preliminary Investigation Report will include relevant facts as gathered by the investigators. At this stage, parties may review upon request all evidence collected as part of the investigation, whether or not it will be relied upon in reaching a determination. The Complainant and the Respondent will have ten (10) calendar days to review and respond to the Preliminary Investigation Report with any changes, clarifications, or questions.

Final Investigation Report

At the conclusion of the fact gathering stage and formal investigation, including any relevant information submitted in response to the Preliminary Investigation Report, the investigator(s) shall issue a Final Investigation Report to the Title IX/EO Coordinator detailing the factual findings and summarizing the relevant evidence. This report will not contain any determinations as to whether the conduct is in violation of applicable policies.

Upon receipt of the Final Investigation Report, the Title IX/EO Coordinator shall proceed as follows:

- For cases involving Sexual Harassment within the United States, the Title IX/EO Coordinator shall initiate a live hearing as described below. If a live hearing cannot be held due to refusal of parties to participate, CCCS reserves the right to address the conduct through the procedures applicable to non-Sexual Harassment/Title IX cases.
- For other civil rights cases (non-Sexual Harassment or Sexual Harassment outside the United States), the Title IX/EO Coordinator will obtain a written Determination Report from the investigators as to whether or not, based on a preponderance of the evidence, the alleged behavior took place and whether

that behavior constitutes a civil rights violation. The determination shall include a summary of all evidence and information used to reach these conclusions.

Live Hearing for Sexual Harassment Cases

Live hearings are subject to the following procedures:

Scheduling - A live hearing must be scheduled no earlier than ten (10) days after issuance of the Final Investigation Report. Written notice of the date, time, location, participants and purpose for the hearing will be provided to the parties. The parties must notify the Title IX/EO Coordinator if any other witnesses will be presented so they can be notified of the hearing. Written notice of the date, time, location, participants and purpose for the hearing will be provided to all individuals who are invited or expected to participate allowing them reasonably sufficient time to prepare.

Hearing Officer(s) - A Hearing Officer is responsible for overseeing the hearing; making determinations as to relevance of evidence/questioning, determining whether evidence will be permitted, and making a final determination regarding the allegations. A Hearing Officer must be a different individual than any investigator or Title IX/EO Coordinator assigned to the case. A Hearing Officer has discretion regarding the details and order that parties will be permitted to present evidence, provided that both parties are given equal opportunities to present relevant evidence, both inculpatory (incriminating or tending to show responsibility for a violation) and exculpatory (exonerating or tending to negate responsibility for a violation), and cross-examine witnesses. The Hearing Officer may issue a document to the parties in advance outlining the hearing process that will be followed on the day of the hearing.

Advisors - At the hearing, the Complainant and Respondent must be accompanied by an advisor. If the party does not provide their own, CCCS will provide an advisor at no charge. The advisor is responsible for questioning the witnesses; the Complainant and Respondent are not permitted to ask questions directly.

Questioning and Cross-Examining Witnesses - Each party's advisor may question the other party and any witnesses with relevant questions and follow-up questions, including those challenging credibility. Questioning will be done directly, orally and live. At the request of a party or at the discretion of CCCS, the parties may be located in separate rooms using technology for live viewing of other participants. After each question is stated, the Hearing Officer will decide whether it is relevant and permissible before the party/witness provides an answer. If it is excluded, the reason for exclusion will be provided. Evidence of the Complainant's prior sexual predisposition or behavior is not relevant except to prove that someone other than the Respondent committed the alleged conduct or to prove consent.

Recording/Transcript - CCCS shall record the hearing and make it available to all parties. Alternatively, CCCS, in its discretion, may elect to transcribe the proceedings as the method of recordkeeping.

Determination Report - Following the hearing, the Hearing Officer will issue a Determination Report to the Title IX/EO Coordinator as to whether or not, based on a preponderance of the evidence, the alleged behavior took place and whether that behavior constitutes a civil rights violation. In reaching this determination, the Hearing Officer must consider all relevant evidence, except for any privileged information (unless waived) or medical records (unless specific, written consent is obtained). If a party or witness does not submit to cross-examination during the live hearing, the Hearing Officer cannot rely on any of their statements in their determination, and may not draw any inferences based solely on a party or witness failing to submit to cross-examination. The Determination Report shall include a summary of the allegations; a summary of the procedural steps in the case; findings of fact supporting the determination, conclusions regarding violation of applicable policies with supporting rationale; any disciplinary steps or remedial measures imposed; and the parties' appeal rights.

Notice of Findings

Once a Determination Report is received (either from the investigator(s) or the Hearing Officer following a live hearing), the Title IX/EO Coordinator shall provide written notice (Notice of Findings) simultaneously to the Complainant and Respondent (and their advisors, if applicable) notifying them of the findings. A copy of the Final Investigation Report and Determination Report, if applicable, shall be attached to the Notice of Findings. The Complainant and Respondent shall be advised of their right to appeal, subject to the grounds below, by filing a written appeal with the Title IX/EO Coordinator within ten (10) calendar days of service of the decision.

Appeals for Formal Investigations

In the event of an appeal, the Title IX/EO Coordinator shall perform an initial review to determine if the appeal meets the limited grounds listed below and is timely (filed within ten [10] calendar days, as noted above). If the appeal is found to meet these criteria, the Title IX/EO Coordinator shall forward the appeal to a designated appellate officer, who shall give written notice to the opposing party and provide a suitable time frame for the opposing party to submit a written response to the appeal. The appeal and any responses shall be reviewed by the appellate officer. The party requesting an appeal must show error, as the original finding is presumed to have been decided reasonably and appropriately. The only grounds for appeal are as follows:

1. A procedural error occurred that significantly impacted the outcome of the decision (e.g., substantiated bias, conflict of interest, or material deviation from established procedures). The written appeal shall specify the procedural error and how it impacted the outcome of the decision.
2. The findings are not supported by substantial evidence in the investigation report or the report does not articulate a rational connection between the facts found and the decision made. The written appeal shall specify the finding(s) not supported by substantial evidence or for which the report does not articulate a rational connection between the facts found and the decision made; or
3. To consider new evidence, unavailable during the original investigation, that could substantially impact the original finding(s). Any new evidence and its impact must be included in the written appeal.

If the appellate officer determines a procedural error occurred that significantly impacted the outcome of the decision, the appellate officer shall return the complaint to the Title IX/EO Coordinator with instructions to convene a new investigation or the appellate officer shall otherwise cure the procedural error.

If the appellate officer determines the findings were not supported by substantial evidence in the investigation report, the report does not articulate a rational connection between the facts found and the decision made, or new evidence substantially impacts the original finding(s), the appellate officer shall conduct or request appropriate additional steps (such as requesting additional investigation by the investigators) and/or modify the findings accordingly.

Written notice of the outcome of the appeal shall be provided simultaneously to the parties.

Sanctions

Once the appeal process has been exhausted, if the Respondent is found not in violation of policies or procedures outlined herein, the complaint shall be closed with no further disciplinary action. If additional concerns, outside the scope of this procedure, are identified during the course of the investigation, the findings may be shared with appropriate administrative personnel to further address, as deemed appropriate.

If the Respondent is found in violation of policies or procedures outlined herein, the findings shall be provided to the Disciplinary Authority to proceed in accordance with applicable policies:

- 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/2013/09/SP4-30.pdf>
- Instructors and Administrative, Professional-Technical (APT) employees are at-will under BP 3-10, and may not be subject to additional procedures when issuing sanctions: <https://www.cccs.edu/policies-and-procedures/board-policies/bp-3-10-administration-of-personnel/>.

Disciplinary Authorities may consider a number of factors when determining a sanction. These factors may include, but are not limited to, the following:

- The nature, severity of, and circumstances surrounding the violation;
- An individual's disciplinary history;
- Previous complaints or allegations involving similar conduct; and/or
- Any other information deemed relevant by the Disciplinary Authority.

The following sanctions may be imposed:

- For students: warning, probation, fines, restitution, denial of privileges, assignment to perform services for the benefit of the CCCS 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, corrective action, probation, restitution, denial of privileges, suspension, demotion, reduction of pay, termination of employment, a “Cease Communications” directive, or a “No Trespass” directive.
- For authorized volunteers, guests, or visitors: warning, probation, denial of privileges, removal from CCCS property, a “Cease Communications” directive, or a “No Trespass” directive.

In addition to sanctions, other action may be taken as deemed appropriate to bring an end to the violation, to prevent future reoccurrence, and to remedy the effects of the violation.

Student Privacy

The outcome of a CCCS investigation is an educational record of a student Respondent, and is subject to privacy protections under the federal Family Educational Rights and Privacy Act (FERPA). However, CCCS observes the legal requirements to disclose the records as follows:

- Complainants in non-consensual sexual contact/intercourse, sexual exploitation, sexual harassment, stalking, and/or relationship violence incidents have an absolute right to be informed in writing of the outcome, essential findings, and sanctions without condition or limitation.
- CCCS 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. CCCS will release this information to the Complainant in any of these offenses regardless of the outcome.
- CCCS reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, and/or change in student status or conduct situation, particularly alcohol and other drug violations. CCCS 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 non-dependent, CCCS 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. CCCS also reserves the right to designate which CCCS officials have a need to know about individual conduct complaints pursuant to FERPA.

Outside Reporting

In addition to reporting to CCCS, any person has the right to file a police report. Complainants requiring assistance with this should contact the Title IX/EO Coordinator.

Student Complainants also have the right to make inquiries and/or file a complaint with:

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>

Employee Complainants also have the right to make inquiries and/or file a complaint with:

Colorado Department of Regulatory Agencies (DORA)
Colorado Civil Rights Division (CCRD)
1560 Broadway
Suite 825
Denver, CO 80202
Telephone: (303) 894-2997
Facsimile: (303) 894-7570
Email: dora_CCRD@state.co.us
Web: <https://www.colorado.gov/pacific/dora/civil-rights>

Or

United States Equal Employment Opportunity Commission (EEOC)
303 E. 17th Avenue
Suite 410
Denver, CO 80203
Telephone: (800) 669-4000
Facsimile: (303) 866-1085
Web: <https://www.eeoc.gov/field-office/denver/location>

Recordkeeping

Records of Civil Rights complaints (including Sexual Misconduct) must be maintained for a period of seven (7) years. Such records may include: Informal Resolution outcomes, Preliminary Investigation Reports, Final Investigation Reports, Determination Reports, recordings/transcripts of Live Hearings in Sexual Harassment cases, Notices of Findings, appeals and appeal outcomes, and discipline or remedies imposed.

Revising this Procedure

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

APPENDIX A - DEFINITIONS

ADA, Title VI, and Title VII Coordinator (EO Coordinator) and Title IX Coordinator(s) are the employee(s) designated at each College and the System Office to oversee all civil rights, including sexual misconduct, complaints. A “Deputy” EO and Title IX Coordinator may also be designated to act on behalf of the Coordinator. All references in policies and procedures to the Coordinator include the Deputy Coordinator.

Coercion, in the context of Sexual Misconduct, is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When a person makes it objectively clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Complainant is a person who is subject to alleged inappropriate or unlawful civil rights behavior. For purposes of this procedure, a Complainant can be a CCCS employee, student, authorized volunteer, guest, or visitor.

Consent for sexual activity must be clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions demonstrate permission, based on an objective standard, regarding willingness to engage in (and the conditions of) sexual activity. Further, consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity. Previous sexual activity or prior consent do not imply consent to future sexual acts. The consideration of prior, irrelevant sexual conduct, except relating to a prior relationship or history between the parties if relevant to some material issue in the process, is prohibited.

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

Discrimination is any distinction, preference, advantage, or detriment given to a person based on one or more actual or perceived protected classes.

Force is the use of physical violence and/or imposing on someone physically to engage in sexual activity. Force also includes threats, intimidation (implied threats) and coercion that overcomes resistance.

Harassment is a form of Discrimination that includes Quid Pro Quo and Hostile Environment.

Hostile Environment occurs when a person is subjected to verbal or physical conduct based on a protected class that is sufficiently severe, persistent or pervasive, and objectively offensive to alter the conditions of a person’s employment or unreasonably interfere with a person’s ability to participate in or benefit from CCCS educational programs or activities, from both a subjective and objective viewpoint.

Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent. Incapacitation could result from mental or physical disability, sleep, unconsciousness, involuntary physical restraint, being underage, or from the ingestion of drugs or alcohol.

Sexual activity with someone whom one should know to be—or based on the circumstances should reasonably have known to be—mentally or physically incapacitated, is a form of Sexual Misconduct.

Use of alcohol or other drugs will never function as a defense to a violation of this procedure.

Investigator is a person charged to investigate the civil rights complaint by the Title IX/EO Coordinator.

Jurisdiction applies to behaviors that take place on a CCCS campus, at CCCS sponsored events, and may also apply to off-campus and online behavior when the Title IX/EO Coordinator determines that the off-campus or online behavior affects a substantial CCCS interest.

Quid Pro Quo is a type of Sexual Harassment that exists when an employee conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct, such as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.

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

Retaliation is any adverse employment or educational action taken against a person because of the person's participation, or perceived participation, in a complaint or investigation of discrimination and/or harassment. Retaliation includes acts to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege provided by applicable civil rights laws, policies and procedures.

Sexual Misconduct is a type of prohibited discrimination based on sex and includes, but is not limited to:

- *Sexual Harassment*, which may be in the form of Hostile Environment, Quid Pro Quo, Sexual Assault, Dating Violence, Domestic Violence or Stalking, as those terms are defined herein.
- *Non-Consensual Sexual Contact/Sexual Assault* (or attempts to commit same), which is any intentional sexual touching, however slight, with any body part or object, by any individual upon any individual, that is performed without consent. Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

Sexual assault also includes any nonconsensual sexual act proscribed by federal or state law, including when the victim lacks capacity to consent.

- *Non-Consensual Sexual Intercourse/Rape* (or attempts to commit same), which is any sexual penetration, no matter how slight, with any body part or object, or oral penetration by a sex organ of another person, without consent.
- *Dating Violence*, which is 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. There is no Colorado state law on dating violence; therefore, CCCS abides by the definition used in the Violence Against Women Reauthorization Act (VAWA) of 2013.
 - Dating Violence is violence and abuse committed by a person to exert power and control over a current or former dating partner.
 - Dating violence often involves a pattern of escalating violence and abuse over a period of time. Dating violence covers a variety of actions, and can include physical abuse, physiological and emotional abuse, and sexual abuse. It can also include "digital abuse", the use of technology, such as smartphones, the internet, or social media, to intimidate, harass, threaten, or isolate a victim.
- *Domestic Violence*, which includes any 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 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. C.R.S. 18-6-800.3. Domestic violence further includes felony or misdemeanor crimes of violence 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 Colorado, 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 Colorado.
 - Domestic violence is a pattern of abusive behavior in a relationship that is used by one partner to maintain power and control over another current or former intimate partner.
 - Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behavior that intimidates, manipulates, humiliates, isolates, frightens, terrorizes, coerces, threatens, hurts, injures, or wounds someone.
- *Stalking*, which is directly or indirectly through another person, is knowingly:
 - Making a credible threat to another person and, in connection with the threat, repeatedly following, approaching, contacting, or placing 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

- Making a credible threat to another person and, in connection with the threat, repeatedly making 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 following, approaching, contacting, placing under surveillance, or making any form of communication with another person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship in a manner that would cause a reasonable person to 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. C.R.S. 18-3-602.
- Stalking is a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking can include frightening communications, direct or indirect threats, and harassing a victim through the internet.
- Stalking also includes engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.
- *Sexual Exploitation*, which occurs when a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples include invasion of sexual privacy, prostituting another person, non-consensual recording of sexual activity, going beyond the boundaries of consent, engaging in voyeurism, knowingly transmitting a sexually transmitted infection or disease to another, exposing one's genitals or inducing another to expose their genitals, possession or viewing of pornography on CCCS property or at CCCS activities, or sexually based bullying.

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 before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to educational and employment programs and/or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational/employment environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. CCCS will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of CCCS to provide the supportive

measures. The Title IX/EO Coordinator is responsible for coordinating the effective implementation of supportive measures.

Other Civil Rights Offenses include, but are not limited to, the following, when the act is based upon one or more actual or perceived protected classes:

- Threatening or causing physical harm, verbal abuse, or other conduct which threatens or endangers the health or safety of any person.
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another.
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the CCCS community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity; hazing is also illegal under Colorado law.
- Bullying, defined as repeated and/or severe aggressive or negative actions or behaviors intentionally or reasonably likely to intimidate, hurt, control or diminish another person, physically, mentally, or emotionally. Bullying may include direct or indirect communications in verbal or nonverbal form and specifically includes bullying by electronic means (i.e. cyberbullying). Note: Any non-civil rights related bullying will be addressed under System Procedure 19-10, Bullying/Violence/Firearms on Campus.
- Violation of any other System or College rule.

APPENDIX B - COMPLIANCE REQUIREMENTS

Notice and Publication Requirements

Colleges must publish the following information on their website and in any student or employee handbooks/catalogs:

- Prohibition of Discrimination, Harassment or Retaliation Policy and Civil Rights and Sexual Misconduct Resolution Procedure (or the College-specific nondiscrimination policy and complaint procedure)
- Title IX/EO Coordinator contact information including name, job title, office address, email and phone number

Colleges must also publish the following information on their website:

- A local, state, or national 24-hour hotline that provides information on sexual misconduct
- Information about obtaining a Sexual Assault Nurse Examiner (SANE) forensic exam after a sexual assault, including local programs where the Colleges have MOUs for obtaining SANE exams, how to schedule an exam and arrange transportation, and who the individual can contact for more information. This publication must include a statement that says individuals can obtain a SANE exam without being required to participate in a law enforcement investigation or criminal justice response.
- All training materials used to train employees who have a role in Title IX/Sexual Harassment complaint resolutions.

In addition, at least annually, Colleges must disseminate notice of their Policy and Procedure and Title IX/EO Coordinator contact information targeting current students and employees (e.g., by sending an email containing the information), and prospective students and employees (e.g., by including it with the admission or employment application).

For CTE publications, the notice of nondiscrimination must include: “[COLLEGE] will take appropriate steps to ensure that the lack of English language skills will not be a barrier to admission and participation in vocational education programs.”

For Colleges operating in a service area that contains a community of national origin minority persons with limited English language skills, public notification materials must be disseminated to that community in its language. (34 CFR § 100 Appx B (V-E))

Training Requirements

Colleges must ensure that employees receive regular training related to their role in a civil rights/sexual misconduct case.

All employees working on a Title IX/Sexual Harassment case (including Title IX/EO Coordinators, investigators, hearing officers, and informal resolution facilitators) must receive training on the following topics:

- The Prohibition of Discrimination, Harassment or Retaliation Policy and Civil Rights and Sexual Misconduct Resolution Procedure (or the College-specific nondiscrimination policy and complaint procedure);
- Definition of Sexual Harassment;
- The scope of the College's program or activity where the conduct occurred;
- How to conduct an investigation, hearing, appeal, or informal resolution, as applicable; and
- How to serve impartially, including avoiding prejudice of facts, conflicts of interest and bias.

Additionally, Colleges must offer training to promote awareness of and prevention of sexual misconduct and training on the Prohibition of Discrimination, Harassment or Retaliation Policy and Civil Rights and Sexual Misconduct Resolution Procedure (or the College-specific nondiscrimination policy and complaint procedure). This training must be offered annually to all incoming students and new employees and to all students and employees anytime there is a substantial update to the policy or procedure.

Reporting Requirements

On or before October 1st every year, CCCS must provide to the Colorado Department of Higher Education:

- A copy of the Prohibition of Discrimination, Harassment or Retaliation Policy and Civil Rights and Sexual Misconduct Resolution Procedure;
- A Statement as to how the System/Colleges are providing information to students on how to receive support regarding sexual misconduct and how it is promoting the information;
- A description of the sexual misconduct training provided by CCCS; and
- A statement as to any changes in the manner in which CCCS provides or promotes the information.