



## **DISCRIMINATION, PROTECTED CLASS HARASSMENT, AND RETALIATION PROCEDURES**

Colorado State University Pueblo (CSU Pueblo) will follow the procedures contained herein in all Discrimination, Protected Class Harassment, and Retaliation (discrimination) matters to ensure due process for the parties.

### **A. Purpose and Scope**

These procedures describe, in general terms, the process involved in considering and investigating reports brought forward to the Office of Human Resources and Institutional Equity (HRIE) concerning issues of discrimination and protected class harassment as prohibited by the Discrimination, Protected Class Harassment, and Retaliation Policy (Policy). Issues involving or invoking sexual harassment will also be examined under the Policy of Title IX, Sexual Harassment and Gender Discrimination (<http://csu-pueblo-policies.colostate.edu/policy.aspx?id=173>).

### **B. Reporting**

Members of the University community who believe they have been subjected to discrimination, harassment, or retaliation in violation of the Policy, are encouraged to contact the Office of HRIE. Responsible employees are also required to report incidences of suspected discrimination, protected harassment, or retaliation. Persons may report to the following:

Nicole Ferguson  
Director of Compliance/Title IX Coordinator  
Office #201C in OSC  
[nicole.ferguson@csupueblo.edu](mailto:nicole.ferguson@csupueblo.edu)

### **C. Resolution Procedures**

#### **1. Timeframe for Resolution**

Reports pursuant to these procedures will be addressed and resolved promptly after the report is made. The timeframe will vary based on the complexity of the complaint and other factors such as witness availability. It is the University's goal to complete investigations in a timely manner. Absent extenuating circumstances, every effort will be made to complete investigations within 90 days following the delivery of the notice of investigation, not including procedures based on the Faculty Handbook provisions or appeals. The timeframe may be extended based on a variety of factors, including the complexity of the allegations, the need to preserve the integrity and completeness of the investigation, to comply with a request by law enforcement, availability of witnesses, University breaks or vacations, to access relevant documentation not immediately available, or other legitimate reasons.

#### **2. Initial Review of Complaint**

HRIE will determine the most appropriate means for addressing the allegation. Options include but are not limited to: (a) investigating the allegation; (b) informal resolution; or (c) determining that the facts of the allegation, even if true, would not constitute a violation of

the Policy. The Director of Compliance/Title IX Coordinator may designate another individual to conduct or assist with the investigation.

The failure of an individual to appear and/or respond to HRIE does not prevent HRIE from proceeding or completing the applicable process. The University may conduct an inquiry to determine whether the alleged conduct occurred in the context of, or has continuing effects on, a University program, activity, or employment.

### **3. Interim Steps**

When appropriate, prior to or up to the investigation, the University may take reasonable interim steps to protect the safety and well-being of members of the University community, to maintain the integrity of the investigative and/or resolution process, and/or deter retaliation. This may include removal of the Respondent from campus.

Participants in the resolution process may request remedial or protective measures from the Director of Compliance/Title IX Coordinator at any point during the process.

### **4. Informal Resolution**

HRIE may determine the most prompt and effective way to address a concern is through an informal resolution process. The primary focus during an informal resolution remains the welfare of the Complainant, Respondent and the safety of the campus community, but it does not involve a written report. This type of approach provides the University with a “remedies-based” resolution option and allows the University to tailor responses to the unique facts and circumstances of an incident, particularly in cases where there is not a broader threat to individual or campus safety. In these cases, the Office of HRIE may do one or more of the following:

- Provide interim or long-term remedial measures to Complainant that do not require notification to the Respondent;
- Provide targeted or broad-based educational programming or training; and/or
- Meet with the Respondent to (a) discuss the behavior as alleged and provide an opportunity to respond; (b) review prohibited conduct policies; (c) identify and discuss appropriate conduct and behaviors moving forward and how to avoid behavior that could be interpreted as retaliatory;
- Follow-up with the Complainant regarding the Respondent’s responses, if appropriate;
- Any agreement reached in the informal resolution process must be approved by the Respondent’s supervisory authority; and
- Notify the supervisory authority of the allegations and responses, if necessary. Any disciplinary action will follow the appropriate Respondent status as a faculty member, staff, or student.

### **5. Initiation of Formal Complaint**

If HRIE determines an investigation is warranted, the Respondent will be advised, in a written Notice of Investigation as set forth below, of the allegations. The Respondent will also be advised to meet with the investigator to present relevant information in response to the allegations. The Respondent's supervisor shall be notified an investigation is taking place. HRIE will discuss with the Respondent's supervisor whether the Respondent should be relieved of any supervisory or evaluative authority during the investigation. Although

HRIE endeavors to limit the number of individuals who may learn about the complaint, confidentiality cannot be guaranteed.

**a. A Notice of Investigation (NOI)**

An NOI will initiate a formal investigation and will be sent via official university means, such as email, and shall identify:

- Where to access a copy of these Procedures;
- The Complainant and Respondent;
- The standard of review/burden of proof used in the case which shall be preponderance of the evidence;
- The investigator(s) assigned to the case;
- A factual description of the allegation;
- The applicable policy provision;
- Any interim protective measures, which typically include but are not limited to, a no-contact order;
- A requirement that the Respondent contact with the investigator to set up a meeting within three (3) business; and
- A statement that no decision has been made as to the allegations being sustained or not sustained until the investigation has been completed.

**b. Investigative Process**

HRIE follows an investigative model whereby the investigator interviews the Complainant, Respondent, involved parties, and witnesses separately and provides each party the opportunity to be heard and to respond. There are no formal hearings except as provided in the faculty handbook after the investigation has concluded.

During the course of the investigation, the investigator will review relevant documents, interview relevant witnesses, and view other relevant, available evidence. Anonymity cannot be guaranteed.

The investigator will have the discretion to determine how many witnesses will be interviewed, as well as the order of such interviews. Witnesses must have observed the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual's character. The investigator will determine the relevance of any proffered information by any party to the investigation.

The investigator may also contact the Complainant, Respondent, involved parties, and/or witnesses as needed, for example, when evidence is disputed or when further information is required. The Complainant, Respondent, involved parties, and witnesses may continue to provide additional evidence to be considered, even after the investigation is initiated. The Investigator can place a deadline on submission of information.

Additionally, both the Complainant and Respondent shall each have the opportunity to:

- Receive timely notice of an interview or meeting where their presence is requested;
- Present relevant information to the investigator, including relevant evidence and identifying witnesses;

- Have an advisor of their choice present during any interview, which may be an attorney, but need not be. The advisor is not authorized to participate instead of the Complainant or Respondent. If a Complainant or Respondent chooses to have an advisor present for interviews, it is their obligation to select an advisor whose schedule allows attendance within the timeframes designated;
- Review and respond to a summary of the relevant and material facts gathered during the investigation after receiving notice from the Office of HRIE but prior to a final determination being made. The parties are not required to respond to the Evidence Report, however, should they wish to, the response together with any corresponding evidence or additional documentation must be received within five (5) business days from the date the investigator provided the summary. Any such responses will be included as part of the investigation by the investigator;
- Receive a copy of the final Investigative Report at the conclusion of the investigation; and
- Receive notice of any sanction, as appropriate, through official University means.

#### **D. Findings/Determinations/Sanctions.**

At the conclusion of an investigation, the final Investigative Report shall be prepared to include a statement of factual findings and a determination of whether the Policy has been violated. The Title IX Coordinator/Director of Compliance shall make the determination of whether the policy was violated. A “preponderance of the evidence” standard will be used to determine whether the alleged conduct violates University policies against discrimination and harassment. A preponderance of the evidence standard means it is more likely than not the alleged misconduct occurred.

Once a decision as to the outcome of the complaint is made, the Complainant and Respondent will both receive a summary of the facts and findings, reason for the decision, and the legal standard applied. If it is determined there is an insufficient basis to conclude discrimination or harassment, threats, or actual retaliation has occurred (“insufficient basis”), that will conclude the University’s investigation.

As directed by HRIE, the supervisory authority should initiate formal action if the Respondent was found to have violated this Policy. The supervisory authority, and other administrators with a need to know, may have access to the investigative records and may consult with the Director of Compliance/Title IX Coordinator in order to take appropriate action.

#### **E. Appeals**

Upon the conclusion of the investigation and issuance of the findings, either the Complainant or Respondent may file a written appeal. If either party are Faculty and a grievance has been filed, the appeal process will follow the Faculty Handbook procedure. If no grievance has been filed, the below process will be followed.

The Complainant (or impacted party in the case of a University-initiated investigation) and the Respondent each have the right to appeal the decision of the Director of Compliance/Title IX Coordinator and imposition of any sanction to the Executive Director of HRIE. The appeal must be in writing with all supporting materials attached and filed in person, via courier, or via postal or electronic mail within seven days of the issuance of notification of the decision. Decisions not appealed within such time are deemed final.

A copy of any appeal will be furnished to the Complainant (or impacted party in the case of a University-Initiated Investigation) or the Respondent(s), as the case may be. Each party may provide a response to the appeal. The response to the appeal must be in writing with all supporting materials attached and received in person, via courier, or via postal or electronic mail within seven days of the issuance of notification of the appeal.

The appeal shall consist of a concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal. Appeals are not intended to open a new investigation of the complaint. In most cases, appeals are confined to a review of the written documentation and pertinent documentation regarding the grounds for appeal. The appeal will be conducted in an impartial manner.

The Executive Director of HRIE will issue a decision on the appeal to all parties involved. Normally this decision will be made within 20 days from the date the appeal was received. The Executive Director of HRIE may (1) uphold or reverse the finding, (2) decrease or increase the sanction(s), and/or (3) take other action as deemed appropriate by the Executive Director of HRIE. The written decision of the Executive Director of HRIE on the appeal shall constitute the University's final action.

#### **F. Records/Retention**

In all cases, the Office of HRIE shall retain the investigator's report in accordance with the University's records retention policy or for as long as any administrative or legal action arising out of the report is pending. All records of discrimination, harassment and related retaliation reports and investigations shall be considered confidential and shall not be disclosed publicly except to the extent required by law.