



TITLE IX PROCEDURES

Colorado State University Pueblo (CSU Pueblo) will follow the following procedures in all Title IX matters to ensure due process for the parties as required by the Title IX regulations.

A. FAIR AND EQUITABLE PROCESS

1. No individual designated as a Title IX Coordinator, Investigator, Decision-maker, Appeal Decision-maker, or person designated to facilitate an informal resolution process may have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Title IX Coordinator, Investigator, and Decision-maker must be separate individuals or entities.
2. CSU Pueblo will not make credibility determinations based on a person's status as a Complainant, Respondent, or witness.
3. A Respondent is presumed not responsible for alleged conduct until a determination regarding responsibility is made at the conclusion of the Formal Resolution Process.
4. Throughout the processes described herein, CSU Pueblo will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence.
5. The processes described herein are subject to the reasonably prompt timeframes stated. These timeframes may be extended for good cause upon written notice to the Parties setting forth the reason for such extension. Good cause may include considerations such as the absence of a Party, a Party's advisor, or a witness; concurrent law enforcement activity; complexity of the case; scheduling conflicts with the Office of Administrative Courts or other professionals involved with the informal resolution process; or the need for language assistance or accommodation of disabilities.

B. INFORMAL RESOLUTION PROCESS

1. At times, the Parties may wish to engage in an Informal Resolution Process (IRP) to lessen the time and effort required by the Formal Resolution Process. The University will offer the IRP as a solution-based process (e.g. mediation). The University may seek outside mediators to conduct the student IRP and will utilize the Employee Relations Specialist for employee IRP. The IRP does not involve a full investigation and adjudication of the matter.
2. Availability of Informal Resolution Process
Parties are not required to participate in the Informal Resolution Process. The Title IX Coordinator may offer IRP to the Parties in certain circumstances. The IRP is only available after a formal complaint is filed and only if all Parties voluntarily consent, in writing, to the Informal Resolution Process. However, any time prior to agreeing to a resolution, any Party has the right to withdraw from the Informal Resolution Process and resume the formal resolution process. The IRP, if available, may be implemented any time prior to reaching a determination regarding responsibility. It will not be offered in the following situations:
 - I. The Complainant is a student and the Respondent is an Employee.
 - II. The alleged incident is sexual assault, domestic violence, dating violence, or stalking.
 - III. The alleged incident includes quid pro quo.

3. Notice of Availability of Informal Resolution Process

If the IRP is available, the Title IX Coordinator will issue written notice to the parties disclosing:

- a. The allegations;
- b. The requirements of the IRP, including the circumstances under which it precludes the Parties from resuming a Formal Complaint arising from the same allegations;
- c. Any consequences resulting from participating in the IRP, including the records that will be maintained or could be shared; and
- d. That either Party may withdraw from the IRP and resume the formal grievance process prior to agreeing to a resolution.

4. Timeframe

CSU Pueblo will make a good faith effort to complete the informal resolution process within an average of sixty to ninety days. After the Parties have agreed to a resolution that is accepted by the Title IX Coordinator, neither Party may appeal the resolution.

C. FORMAL RESOLUTION PROCESS

1. Formal Complaint

- a. A Formal Complaint may be filed by a Complainant or by the Title IX Coordinator. A Formal Complaint may be brought to the attention of the Title IX Coordinator, Nicole Ferguson, in person at OSC 201 or by phone at 719-549-2210 or email at nicole.ferguson@csupueblo.edu.
- b. CSU Pueblo will investigate the allegations in a Formal Complaint unless that matter is resolved through the IRP or is otherwise dismissed as stated below.

2. Dismissal

- a. The Title IX Coordinator will dismiss a Formal Complaint, and no investigation will be conducted under this procedure if:
 - i. The conduct alleged in the Formal Complaint would not constitute Sexual Harassment even if proved; or
 - ii. The conduct alleged in the Formal Complaint did not occur within the Jurisdiction/Applicability of the policy.
- b. The Title IX Coordinator may dismiss a Formal Complaint, or any allegations therein, at any time during the investigation or hearing if:
 - i. The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegation therein;
 - ii. The Respondent is no longer enrolled in or employed by CSU Pueblo; or
 - iii. Specific circumstances prevent CSU Pueblo from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

- c. The dismissal of a Formal Complaint under Section B.2.a. of this Procedure does not preclude CSU Pueblo from conducting an investigation or taking action under other applicable policies with regard to conduct that is not subject to this Policy. Allegations of student conduct that fall under the definition of Sexual harassment but fall outside of the jurisdiction/applicability of this procedure will follow this process.
- d. Upon dismissal of the Formal Complaint or any allegations therein, the Title IX Coordinator will promptly send written notice of the dismissal and the reasons therefor simultaneously to the Parties. The Title IX Coordinator will refer the matter to Student Conduct and Case Management or appropriate University Administration for further review under the applicable University policy or process.

3. Consolidation

The Title IX Coordinator may consolidate Formal Complaints as to allegations of Sexual Harassment where the allegations of Sexual Harassment arise out of the same facts or circumstances.

4. Timeframe

CSU Pueblo will make a good faith effort to complete the Formal Resolution process, including the hearing but excluding appeals, within an average of sixty to ninety days. The timeframe is stayed during the informal process. The filing of the Formal Complaint with the Title IX Coordinator starts the timeframe for the process.

5. Written Notice

Upon receipt of a Formal Complaint, the Title IX Coordinator will issue written notice of allegations to the Respondent and Complainant, if known. The written notice will be provided to each Party with sufficient time to prepare a response before any initial interview. The notice of allegations will include the following:

- a. Notice of this procedure and the processes contained herein, including the Informal Resolution Process described in Section 2 above;
- b. The identities of the Parties involved, if known;
- c. The conduct allegedly constituting sexual harassment;
- d. The date and location of the incident, if known;
- e. A statement that the Respondent is presumed not responsible for the alleged conduct;
- f. A statement that a determination regarding responsibility is made at the conclusion of the formal resolution process;
- g. A statement that Parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
- h. A statement that Parties may inspect and review evidence; and
- i. A statement that knowingly making false statements or knowingly submitting false information during this process is prohibited and may be grounds for separate discipline.

If, during the course of an investigation, CSU Pueblo decides to investigate additional allegations about the Complainant or Respondent relating to the same facts or circumstances but are not

included in the earlier written notice, CSU Pueblo will provide notice of the additional allegations to the Parties whose identities are known.

6. Advisor

- a. Each Party has the right to have an advisor of their choice but are not required to have one. During the Hearing phase of the proceedings, only the Advisor can ask cross examination questions of the other Party or witnesses.
- b. The advisor may be, but need not be, an attorney. The advisor may not be a witness or a potential witness in the case.
- c. The advisor may be present at any proceedings that are part of the Formal Resolution process. Only one person may serve in the role as advisor and appear at the hearing or at any other proceeding. The Party may not have anyone other than their advisor appear at any proceeding. If a Party wishes to have an advisor present at a proceeding, CSU Pueblo will work within reason to schedule the proceeding so the advisor may attend, without unreasonably delaying the progress of the formal resolution process.
- d. If a Party wishes to ask cross examination questions of a Party or witness at the hearing and does not have an advisor, CSU Pueblo will select and provide an advisor to the Party, free of charge, for the limited purpose of conducting cross examination.
- e. Except as described in Section 3.8.4 below, a Party's advisor may not speak on behalf of the Party, nor participate in the process. All communications from the Title IX Coordinator and Investigator, both oral and written, will be done with the Complainant and not with the advisor.
- f. The Party may choose to have a different advisor appear at the hearing than appeared during the investigative proceedings. If the Party chooses to have a different advisor at the hearing, they must inform the Title IX Coordinator, in writing, prior to the final investigative report being delivered to the Party. The new advisor will receive a copy of the investigative report

D. INVESTIGATION

1. CSU Pueblo will investigate the allegations in a Formal Complaint.
2. CSU Pueblo, and not the Complainant or the Respondent, has the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility.
3. CSU Pueblo cannot access, consider, disclose, or otherwise use a Party's records that are made or maintained by a health care professional acting in his or her professional capacity, and which are made or maintained in connection with the provision of treatment to the Party, unless CSU Pueblo obtains that Party's voluntary written consent to do so for the resolution process.
4. During the investigation, each Party has an opportunity to present witnesses and evidence to the Investigator.
5. The Investigator will provide written notice of the date, time, location, participants, and purpose of any investigative interview or other meeting to any Party or witness whose participation is invited or expected.
6. Prior to the conclusion of the investigation, the Investigator will send to each Party and to each Party's advisor, if any, all evidence obtained as part of the investigation (evidence report) regardless of whether CSU Pueblo intends to rely on such evidence in reaching a determination regarding responsibility, that is directly related to the allegations raised in the Formal Complaint.

- a. Upon receipt of the evidence report, each Party may submit a written response, which the Investigator will consider prior to conclusion of the investigation and completion of the investigative report.
 - b. The written response, if any, must be submitted to the Investigator by the deadline designated by the Investigator, which will be at least ten days after the Investigator sends the evidence report to the Party, unless the deadline is extended for good cause.
7. The Investigator will then create an investigative report that fairly summarizes relevant evidence. The Investigator must conduct an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
8. At least ten days prior to the scheduled hearing, the Title IX Coordinator will send to each Party and to each Party's advisor, if any, the investigative report.
- a. Each Party may submit a written response, which the Title IX Coordinator will submit to the Decision-maker for consideration at the hearing.
 - b. The written response, if any, must be submitted to the Title IX Coordinator by the deadline designated by the Title IX Coordinator, unless the deadline is extended for good cause.

E. HEARING

1. General Conduct of the Hearing

- a. CSU Pueblo has contracted with the Colorado Office of Administrative Courts to preside over the hearings and an appointed Administrative Law Judge within that Office will serve as the Decision-maker at the hearing.
- b. The Decision-maker will conduct a live hearing. Prior to the hearing, the Decision-maker will review the investigative report and the written responses provided by the Parties, if any.
- c. The hearing may occur in person. If either Party, or the University submits a request no later than 10 days prior to the scheduled hearing, the hearing will occur virtually in a manner allowing the participants to simultaneously see and hear the party or witness answering questions. During the COVID-19 pandemic, hearings will be virtual. The Decision-maker will appear virtually unless otherwise agreed.
- d. Hearings will be recorded. The recording will be available to the Parties for inspection and review.

2. Standard of Evidence

- a. The determination of responsibility will be made by the Decision-maker using the preponderance of the evidence standard as defined in the Title IX Policy. Preponderance of the evidence is evidence that proves that it is more likely than not that an allegation is true.

3. Relevant Evidence Considered

- a. In making a determination of responsibility or sanctions, the Decision-maker may only consider relevant evidence.
- b. Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determinations to be made more probable or less probable than it would be without the evidence.

- c. The Decision-maker will not consider evidence about the Complainant's sexual predisposition or prior sexual behavior, except that the Decision-maker may consider:
 - i. Evidence about the Complainant's prior sexual behavior, when offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
 - ii. Evidence concerning specific incidents of the Complainant's prior sexual behavior with respect to the Respondent, when offered to prove consent.
- d. The Decision-maker will not consider evidence of any statement of a Party or witness, if the Party or witness does not submit to cross-examination at the hearing, in reaching a determination regarding responsibility. The Decision-maker will not draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.
- e. The Decision-maker will not consider Information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- f. The Decision-maker must conduct an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
- g. Credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.
- h. The Decision-maker may consider the evidence in the Investigative Report in reaching their decision and making credibility determinations.

4. Witness Examination

- a. Each Party, not their advisor, may make an opening statement and a closing argument. Neither the opening statement nor the closing argument are to be considered evidence.
- b. The Decision-maker will allow each Party's advisor to examine witnesses, including direct examination and cross examination.
- c. Cross examination may not be conducted by either Party, but a Party may conduct direct examination of their witnesses. Cross examination may only be conducted by an advisor acting on a Party's behalf.
- d. Only relevant cross-examination questions may be asked of a Party or witness. Before a Party or witness answers a question, the Decision-maker will determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- e. The Decision-maker may make a determination of relevancy of questions asked during direct examination and exclude those questions
- f. The Decision-maker may ask questions of the witnesses and the Party throughout the proceedings.

5. Written Determination

- a. After considering the investigative report, including any Party's written response to the investigative report, and all relevant evidence presented at the hearing, the Decision-maker will issue a written determination to the Title IX Coordinator.
- b. The Title IX Coordinator will promptly provide the written determination to the Sanctioning Authority.
- c. The Sanctioning Authority shall provide a written sanction, or recommend sanctions as stated below, within 5 working days to the Title IX Coordinator. Said document shall be

attached to the Decision-makers written determination and the Title IX Coordinator will provide the Written Determination and sanctions simultaneously to the Parties.

- d. The written determination will include:
 - i. Identification of the allegations potentially constituting Sexual Harassment;
 - ii. A description of the procedural steps from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews, site visits, methods used to gather other evidence, and hearings held;
 - iii. Findings of fact supporting the determination;
 - iv. Conclusions regarding the application of the Title IX Policy, or any other policy alleged to have been violated within the Complaint to the facts;
 - v. A statement of, and rationale for, the result as to each allegation, including:
 1. A determination regarding responsibility;
 2. Any disciplinary sanctions imposed on the Respondent;
 3. Whether remedies will be provided to the Complainant;
 - vi. Procedures and permissible bases for the Parties to appeal.
 - vii. The written determination becomes final 7 days after it is sent to the Parties, unless an appeal is filed.

F. SANCTIONS

If the Decision-maker finds the Respondent has violated the Title IX policy or any other policy of the University, sanctions will be the responsibility of the appropriate sanctioning authority dependent on the Respondent's status at the University. The student sanctioning authority, the Respondent-employee's supervisor, or the appropriate faculty hearing panel will attend the hearing for purposes of hearing the evidence to facilitate the sanctioning process. They will not participate in the hearing or ask questions. Sanctions must be issued within 5 working days of the Decision-maker's decision.

1. For students, the Director of Student Conduct and Community Standards or designee will be the sanctioning authority when the Respondent is a student. Sanctioning guidelines will be as stated in the Student Code of Conduct.
2. For employees, the sanctioning authority for Administrative Professional employees and Faculty is the President of the University. The Sanctioning authority for State Classified employees are the Appointing Authorities as defined in University policy pursuant to the State Personnel Rules.
3. The supervisor or appropriate faculty panel will make recommendations for sanctions. If the supervisor has a conflict, then the next-level supervisor or an equivalent level supervisor will attend the hearing and make sanction recommendations. The Title IX Coordinator will determine a substitute if a conflict exists.
4. When the Respondent is Faculty, this process must follow the process outlined in the Faculty Handbook for either a grievance or a disciplinary action.
5. When the Respondent is a State Classified employee, processes pursuant to the State Personnel Rules are applicable.
6. If a Respondent is found responsible for Sexual Harassment under this Policy, possible sanctions include those listed in the Faculty Handbook for grievance and faculty disciplinary actions, up to and including termination. For State Classified employees, possible sanctions are those listed in the State Personnel Rules, up to and including termination. For Administrative

Professional employees, possible sanctions include, but are not limited to, all possible sanctions listed for Faculty or State Classified employees, up to and including termination.

G. APPEAL

1. Appealable Issues

- a. Either Party may appeal the dismissal of a Formal Complaint or any allegations therein or a determination regarding responsibility. No other issue may be appealed.

2. Basis for Appeal

- a. A Party may only appeal on one or more of the following bases:
 - i. A procedural error occurred that significantly impacted the outcome of the hearing.
 - ii. The sanction(s) imposed was substantially disproportionate to the severity of the violation(s) committed. Only Students can appeal on this basis.
 - iii. New and significant information is now available and is sufficient enough to alter the decision, which was not reasonably available at the time of the hearing. (Failure to present evidence during the proceedings or to participate the investigation, even when resulting from concern over pending criminal or civil proceedings, does not make information “unavailable” at the time of the meeting.)
 - iv. The Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, that affected the outcome of the matter.

3. Filing an Appeal

- a. If a Party wishes to file an appeal, the Party must notify the Title IX Coordinator in writing no later than 5 working days after the notice of dismissal or written determination is sent to the Party.
- b. The written appeal must state with specificity both the issues being appealed; and the bases for the appeal. The Party shall use the Appeal Form provided by the Title IX Coordinator.

4. Timeframe for Completion of Appeal

- a. CSU Pueblo will make a good faith effort to complete the appeal within 20 days.
- b. The timeframe for completion of appeal may be extended for good cause. If the timeframe for completion of appeal is extended, the Title IX Coordinator will notify both Parties in writing of the delay or extension and the reasons for the delay or extension.

5. Appeal Procedure

- a. After receiving a timely written appeal, the Title IX Coordinator will notify the Parties in writing that the appeal was filed and the process for submitting a written statement in support of, or challenging, the issues being appealed. The appeal, including any written statements submitted by the Parties, will be considered by the Appeal Decision-maker. The Appeal Decision-maker may also consider the investigative report, including any Party's

- written response to the investigative report, all relevant evidence presented at the hearing, and the recording of the hearing.
- b. The Appeal Decision-maker will issue a written determination of appeal, which will describe the result of the appeal and the rationale for the result and next steps if any.
 - c. The Title IX Coordinator will provide the written determination of appeal simultaneously to the Parties.
 - d. The result of the appeal is final.

H. RETALIATION

- 1. Retaliation is strictly prohibited.
- 2. A report of alleged retaliation may be made to the Title IX Coordinator in person, by mail, by telephone, or by electronic mail.
- 3. Any official with authority who receives a report of alleged retaliation must promptly report the alleged retaliation to the Title IX Coordinator.
- 4. Allegations of retaliation may be investigated and adjudicated under applicable CSU Pueblo policies.