

Title: Procedures for Investigation of Sexual Misconduct Complaints	Procedure Number: 3-A	Page 1 of 9
Board Policy or Policies: Policy 3.12 – Sexual Misconduct	Adopted by: Carrie Besnette Hauser, President Date of Last Revision: November 1, 2017	

Part 1 – General Implementation

Background

College Policy 3.12, Sexual Misconduct (the “Sexual Misconduct Policy”), prohibits all forms of discrimination based on sex or gender, including sexual misconduct by students, faculty, staff and other members of the College community, as well as contractors, consultants, and vendors doing business with or providing services to the College. This Procedure is adopted as of the date specified above to implement the Sexual Misconduct Policy and address legal requirements set forth in Title IX of the Education Amendments of 1972 and its accompanying regulations (“Title IX”).

Title IX Coordinators

The College will appoint and support a Title IX Coordinator who is responsible for implementing and monitoring Title IX compliance on behalf of the College, providing oversight of the Deputy Title IX Coordinators for Title IX matters and for all other duties specified by Title IX or the College from time to time. Any inquiries regarding compliance with Title IX or enforcement of the Sexual Misconduct Policy should be directed to the Title IX Coordinator. All of the College’s Responsible Employees, as designated by the College President, must inform the Title IX Coordinator of all reports and complaints raising Title IX issues, unless the complainant requests confidentiality and the employee, because of the employee’s role as a confidential resource by law or designation as described below, is able to honor that request. Any other requests for confidential treatment of a complaint or report shall be directed to and handled by the Title IX Coordinator.

The College shall designate one or more Deputy Title IX Coordinators for each campus who are responsible for coordinating training, education, communications, and administration of the complaint and grievance procedures for Sexual Misconduct complaints on that campus.

Notifications

The Title IX Coordinator shall broadly disseminate written notice of the Sexual Misconduct Policy in its publications, websites, handbooks and other locations to reach the widest audience reasonably possible, including students, employees and vendors. Such notice shall include contact information for the Title IX Coordinator and Deputy Title IX Coordinators. The Title IX Coordinator also shall inform students and staff of College policy on Sexual Misconduct through live or recorded training sessions.

Definitions and Examples of Prohibited Conduct

For purposes of implementing the Sexual Misconduct Policy, the following definitions will apply:

Sexual Misconduct

Sexual Misconduct, a form of unlawful discrimination, encompasses all forms of prohibited sexual or gender-based conduct which unreasonably interfere with an employee's or student's work, educational, or social performance at the College or any of its programs or activities (whether on- or off-campus) or creates an intimidating, hostile, or offensive work, educational, or social environment. Sexual Misconduct includes sexual harassment and sexual violence, each of which is further described below.

Sexual Harassment

Sexual harassment is defined as interaction between individuals of the same or opposite gender that is characterized by unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, living conditions, educational evaluation, and/or ability to participate in a College activity; or
- Submission to or rejection of such conduct by an individual is used as the basis for tangible employment or educational decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or participation in an activity, or creating an intimidating, hostile or offensive working or educational environment.

Hostile environment sexual harassment is unwelcome sexual conduct that is sufficiently severe or pervasive that it alters the conditions of education or employment and creates an environment that a reasonable person would find intimidating, hostile, or offensive. The determination of whether an environment is "hostile" is a fact-specific inquiry based upon subjective and objective factors of the circumstances. These circumstances could include the frequency of the conduct, its severity, and whether it is threatening or humiliating. A single instance of sexual assault can constitute a hostile environment.

Sexual harassment is not intended to include conduct or contact reasonably viewed as accepted forms of social or professional interaction.

Sexual Violence

Sexual violence includes all violent sexual conduct, whether or not the conduct leads to a criminal

charge or conviction, or any physical sexual conduct perpetrated without consent or when an individual is incapable of giving consent. This includes, but is not limited to, sexual contact of any kind without consent, rape, other physical assaults of a sexual nature, sexual battery or molestation, or attempts to commit any of these acts. Sexual violence can take the form of intentional physical conduct that is sexual in nature, such as touching (however slight) with any object a student's breast, groin, genitals, mouth or other bodily part in a sexual or hostile manner, or disrobing or exposing a student without consent.

Domestic violence, dating violence and stalking are forms of sexual violence expressly prohibited by the College.

- *Domestic violence* includes crimes of violence committed by a current or former spouse or partner of the impacted student, by a person with whom the impacted student shares a child in common or by a person who is cohabitating with or has cohabitated with the impacted student as a spouse or partner. Other persons capable of committing domestic violence are defined by Colorado statute, and any conduct by such persons that meets the statutory definition of domestic violence is prohibited.
- *Dating violence* is sexual violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the impacted student. The existence of such relationship shall be determined based on a consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.
- *Stalking* is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

Consent

Sexual activity without consent is by its nature Sexual Misconduct and often is considered to be rape or attempted rape. Consent to sexual activity must be informed, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Sexual misconduct includes sexual activity with someone known, or who should be known, to be unable to give active consent due to age, alcohol or other drug use, unconsciousness or semi-consciousness, intellectual or other disability or other inability to give informed, knowing and voluntary consent to sexual activity.

Retaliation

The College prohibits retaliation against individuals who engage in the protected activity of filing a complaint or report of Sexual Misconduct or who participate in a Sexual Misconduct investigation or complaint. Retaliatory action is regarded as a basis for a separate complaint under the College's Sexual Misconduct Policy and accompanying procedures and can lead to the same sanctions as may be imposed for findings of Sexual Misconduct. Retaliation complaints can be pursued against individuals who did not engage in Sexual Misconduct but instead retaliated against complainants, witnesses or others involved in a Sexual Misconduct investigation or complaint.

Part 2 – Reporting, Investigation and Grievance Procedures

The College expressly prohibits any Sexual Misconduct carried out by employees, students, or third parties. The College will take steps to prevent recurrence of any Sexual Misconduct and correct its discriminatory effects on the complainant and others. To that end, the College will follow reporting, investigation and grievance procedures in substantially the form set forth below in response to a Sexual Misconduct complaint or for suspected Sexual Misconduct. These procedures will replace any student conduct code or employee grievance procedures unless the College determines, in its discretion, that another procedure should be used to resolve a particular matter. The College may, in its discretion, modify its investigation and grievance procedures in the interests of promoting full and fair resolution of Sexual Misconduct complaints in accordance with applicable law.

Reporting Sexual Misconduct

An individual with questions or a possible Sexual Misconduct complaint against a student, faculty, staff member or other individual should contact the Title IX Coordinator or the Deputy Title IX Coordinator designated for the individual's campus, as set forth in the Addendum to these Procedures. Any individual who is a victim of sexual assault or other act of Sexual Misconduct will be informed of available law enforcement authorities and the option to file or decline to file a criminal complaint. The Title IX Coordinator will assist complainants in making contact with appropriate law enforcement authorities where requested.

When a complainant requests confidentiality or asks that a complaint not be pursued, the College will inform the complainant that honoring a request for confidentiality may limit its ability to respond fully to the incident, including pursuing disciplinary action against the respondent. If the complainant still requests confidentiality or asks that a complaint not be pursued, the College will take all reasonable steps to investigate and respond to the complaint consistent with the request, provided that the College is able to both honor the complainant's request and provide a safe and nondiscriminatory environment for all individuals, including the complainant. The Title IX Coordinator or Deputy Title IX Coordinator for the individual's campus will be responsible for evaluating confidentiality requests.

Employee Responsibility to Report Sexual Misconduct

In order to enable the College to respond effectively and to prevent instances of Sexual Misconduct, all College employees shall receive training appropriate to their position duties and shall be informed of their respective responsibilities to report incidents that may involve Sexual Misconduct. Any employee who is designated as a "Responsible Employee" pursuant to Title IX will be informed of such designation. Employees designated as confidential resources below may be exempt from reporting requirements. Employees who fail to act on reports or complaints of sexual harassment; who discourage employees, students, or third-party vendors from reporting sexual harassment; who have engaged in or encouraged retaliation; or who otherwise fail to follow the requirements imposed pursuant to the Sexual Misconduct Policy or this Procedure may be subject to corrective action or discipline, up to and including termination.

Any College employee whose duties include counseling of students (whether or not the counseling is

provided pursuant to a professional license) may, at the College's discretion, be designated as confidential resources for reporting of Sexual Misconduct. Such counselors will receive training on Title IX compliance when in receipt of a confidential report.

Any employee or student who is found to have made an intentionally false or malicious report or complaint of sexual harassment or retaliation may be subject to corrective or disciplinary action, up to and including termination or expulsion.

Informal Resolution Process

Sexual Misconduct complaints, other than those described in the following sentence, may be resolved using an informal resolution process overseen by one or more College representatives if (i) the College determines, in its discretion, that such a process would be appropriate; and (ii) all parties agree to participate in the informal resolution process and agree to a resolution. Allegations of sexual violence, sexual assault, domestic violence, dating violence or stalking may not be resolved through an informal resolution process. The parties to any informal resolution process will not be required to interact directly with one another unless they and the College all agree to communicate directly with each other in attempting to resolve the matter. The College may provide mediation, using trained mediators, between the involved parties and coordinate other informal and voluntary resolution measures. Any party may request that the informal resolution process be terminated at any time, at which time the formal resolution process (described below) commences. In addition, any party can initiate the formal resolution process if the party is dissatisfied with a proposed informal resolution.

Investigations and Formal Resolution Process

The College will initiate a formal resolution process in any matter where the informal resolution process is not available or when the College deems it appropriate. Following a report of Sexual Misconduct, including a formal complaint or when the College receives notice that Sexual Misconduct may have occurred, the Title IX Coordinator will assign an investigator to conduct an investigation to determine whether or not the conduct occurred and, if the conduct occurred, what actions should be taken by the College. The College will take immediate or interim measures for severe cases and acts of sexual violence, as described below under Interim Measures. An individual suspected or accused of Sexual Misconduct will be provided with a written explanation indicating that an investigation has commenced, a description of the alleged actions or conduct leading to the investigation, and the policy violation under investigation.

The College will commence the investigation as soon as is practicable under the circumstances regardless of whether there is a pending criminal investigation or formal criminal charge. The College will establish a timeframe for how long it will take to issue a written outcome of the complaint, using all reasonable efforts to complete its investigation within 60 days of the filing of a complaint or within 60 days of the date on which the College becomes aware of suspected Sexual Misconduct, subject to any factors which delay the investigation beyond the College's control. The College will schedule dates for completion of the initial investigation, completion of the investigation report, final decision-making and/or determination of sanctions.

The nature and extent of the investigation will vary depending upon the circumstances, including whether the parties are amenable to pursuing an informal resolution if appropriate. The Investigator will conduct

fact-finding, review of written and other evidence and witness interviews. The Investigator will interview both the complainant and the respondent and allow both parties to provide information regarding the complaint. To help ensure a prompt and thorough investigation, the complainant and the respondent will be required to provide as much information as possible relating to the conduct, including the individuals involved, all relevant details and circumstances pertaining to the conduct, names of witnesses and any other information that the complainant or the respondent believes to be relevant to the investigation. As appropriate, the Investigator will interview witnesses with relevant information.

Complainants and respondents will be provided with the following procedural protections in connection with the resolution of suspected or alleged violations of this Policy:

- The opportunity to speak or present evidence on their own behalf (cross-examination by either the complainant or the respondent will not be permitted).
- The opportunity to identify witnesses who can provide information about the alleged conduct at issue.
- The opportunity to review any information that will be offered by the other party in support of the other party's position (to the greatest extent possible and consistent with FERPA or other applicable law).
- The right to bring a victim advocate or advisor of the respondent or complainant's choice to all phases of the investigation and campus conduct proceeding, provided that such advisor does not directly participate in the investigation, interviews or other proceedings.
- The right to be informed of the outcome of the investigation.
- The opportunity to appeal the outcome of the investigation.

At the conclusion of the investigation, the Investigator will prepare a written report summarizing the investigation and findings. The Title IX Coordinator will review the investigation report prior to its finalization and determine whether a violation of policy has occurred. The standard used to determine whether the respondent has violated the College's Sexual Misconduct Policy is whether it is more likely than not that the respondent has engaged in behavior that constitutes Sexual Misconduct. This is often referred to as a "preponderance of the evidence" standard. For purposes of both the investigation and decision-making process, the College will strive to be complete, thorough, and impartial, basing all decisions on evidence and information determined to be reliable.

Sanctions and Corrective Actions

If, at the conclusion of the investigation, the Title IX Coordinator determines that it is more likely than not that a violation of the College's Sexual Misconduct Policy has occurred, he or she will, in consultation with student affairs and/or human resources representatives, determine what, if any, sanctions or corrective actions are appropriate. The range of potential sanctions that may be imposed against a student includes, but is not limited to, the following: written or verbal apology, discrimination or harassment education, verbal or written warning, probation, suspension and dismissal from the College. Employees who are found to have violated the College's Sexual Misconduct Policy may be subject to corrective actions including disciplinary action up to and including termination. Guests and other third parties who are found to have violated the College's Sexual Misconduct Policy are subject to action deemed

appropriate by the College, which may include removal or exclusion from the College, termination of any applicable contractual or other arrangements with the College and any other remedies available through law or equity. In instances where the College is unable to take disciplinary or other corrective action in response to a violation of this policy because a complainant requests confidentiality or for some other reason, the College will nonetheless pursue other steps to limit the effects of the misconduct at issue and prevent its recurrence.

Interim Measures

The College must provide appropriate interim measures to address the safety and well-being of both parties prior to the final outcome of the investigation. The College may temporarily suspend any member of the College community suspected or accused of violating the College's Sexual Misconduct Policy or take any other interim measures the College deems appropriate. The College will provide a written explanation of assistance and accommodation options to each complainant. Such interim measures may include, but are not limited to, removing or relocating a student from campus housing, modifying course schedules, and imposing a "no contact" requirement. Any such interim measures will be taken in a manner that minimizes the burden on the complainant to the extent possible. The College will take reasonable steps to prevent the recurrence of any Sexual Misconduct, including retaliation, and to correct discriminatory effects on the complainant and others. Immediate and appropriate steps will be taken to protect complainants who experience sexual violence and to protect any person from retaliation associated with suspected or actual Sexual Misconduct.

Right to Appeal

The College will provide to all parties the outcome of the complaint and the investigation. After written notification of the resolution has been provided, the complainant and the respondent will have the opportunity to appeal the outcome, including whether there is a policy violation and any sanction(s) imposed. Any appeal must be submitted in writing to the President within seven (7) calendar days after notification of the investigation outcome and must set forth the grounds upon which the appeal is based.

Either the complainant or the respondent may appeal upon one or more of the following grounds:

- The established procedures were not followed in a significant way and, as a result, the factual findings, the sanction, or both, were not correct.
- The severity of the sanction imposed was not appropriate based on the nature of the violation or the circumstances.
- The discovery of new evidence, unavailable during the original hearing or investigation, which could substantially impact the original finding or sanction. A summary of the new information must be included with the student's request for appeal.

The President's decision on whether or not to overturn or modify the outcome shall be solely based on the grounds for appeal listed above. Neither party shall be entitled to a hearing in connection with any appeal, but the President may request written submissions from the parties or consider any other information as

deemed appropriate. If the President is unable to resolve the appeal for any reason, the College will designate another representative to decide the appeal. Both parties will be informed in writing of the outcome of any appeal within fourteen (14) days of the date by which all requested information is received unless the President determines that additional time is required.

ADDENDUM

CONTACT INFORMATION FOR TITLE IX INQUIRIES OR COMPLAINTS

Reports, complaints or inquiries regarding possible Sexual Misconduct or application of Title IX may be referred to the College's Title IX Coordinator, any Deputy Title IX Coordinator or to the U.S. Department of Education's Office for Civil Rights.

Contact information for the College Title IX Coordinator and Deputy Title IX Coordinators is as follows:

Student Inquiries

The following person has been designated to serve as the overall coordinator of student inquiries under Title IX, the Disabilities Act, the Rehabilitation Act, and other College policies prohibiting discrimination:

Lisa Doak

Title IX Coordinator

ldoak@coloradomtn.edu

970-947-8351

802 Grand Avenue

Glenwood Springs, Colorado 81601

Students also may contact the following persons who have been designated as Deputy Title IX Coordinators:

Aspen and Carbondale Campuses

Margaret Clement, Assistant Dean of Instruction, mtclement@coloradomtn.edu, 970-236-0430 extension 2430

Breckenridge and Dillon Campuses

Nicole Fazande, Associate Dean of Academic and Student Affairs, nfazande@coloradomtn.edu, 970-968-5805

Glenwood Springs and Spring Valley Campuses

Lisa Runck, Associate Dean of Student Affairs, lrunck@coloradomtn.edu, 970-947-8221

Leadville and Salida Campuses

Carolyn Lawrence, Associate Dean of Student Affairs, cmlawrence@coloradomtn.edu, 970-870-4463

Rifle Campus

Chip Thomas, Assistant Dean of Student Affairs, rpthomas@coloradomtn.edu, 970-625-6955

Steamboat Springs Campus

Carolyn Lawrence, Associate Dean for Student Affairs, cmlawrence@coloradomtn.edu, 970-870-4463

Vail Valley Campus at Edwards

Marc Brennan, Vice President and Campus Dean, mabrennan@coloradomtn.edu, 970-569-2913

Employee Inquiries

The following person has been designated to handle employee inquiries regarding the Americans with Disabilities Act, the Rehabilitation Act, and other employee complaints of unlawful discrimination other than Title IX matters:

Angela Wurtsmith

Director of Human Resources
awurtsmith@coloradomtn.edu
970-947-8311
802 Grand Avenue
Glenwood Springs, Colorado 81601

Employee inquiries under Title IX should be directed to the Title IX Coordinator listed under Student Inquiries above.

Other Resources

U.S. Department of Education, Cesar E. Chavez Memorial Building, 1244 Speer Boulevard, Suite 310, Denver, CO 80204-3582, Telephone: 303-844-5695, OCR.Denver@ed.gov.

Colorado Department of Higher Education, 1560 Broadway, Suite 1600, Denver, CO 80202, Telephone: 303-862-3001, highered.colorado.gov.

U.S. Equal Employment Opportunity Commission, Denver Field Office, 303 E. 17th Avenue, Suite 410, Denver, Colorado 80203, Telephone 800-669-4000, www.eeoc.gov/employees/howtofile.cfm.

Colorado Civil Rights Division, 1560 Broadway, Suite 1050, Denver, Colorado 80202, Telephone 303-894-2997, CCRD@dora.state.co.us.