

Title: Procedures for Investigation of Discrimination Complaints (does not include Sexual Misconduct Complaints – see <u>Background</u> below)	Procedure Number: 6-N; 5-A	Page 1 of 4
Board Policy or Policies: Policy 5.4 – Student Complaints; Policy 6.1 – Equal Access/Equal Opportunity/Anti-Harassment	Adopted by: Carrie Besnette Hauser, President Date of Last Revision: October 17, 2017 (adopted)	

Background

College Policy 6.1 prohibits discrimination against students or employees on the basis of age, color, disability, gender identity, marital status, national or ethnic origin, political affiliation, race, religion, sex (including pregnancy), sexual orientation, veteran status, and family and genetic information. College Policy 5.4 provides a statement of the college non-discrimination policy that is specific to students.

Both policies require the college to make available a complaint procedure for students and employees. This Procedure is adopted in order to satisfy such requirements.

Note: College Policy 3.12, Sexual Misconduct, and its related Procedure 3.12.1, address legal requirements set forth in Title IX of the Education Amendments of 1972 and its accompanying regulations ("Title IX"). Student or employee complaints regarding Sexual Misconduct or other violations of Title IX should be addressed in accordance with College Policy 3.12 and Procedure 3.12.1.

Administration of Complaints

The College hereby designates the following officials who are responsible for administering complaints relating to College Policies 5.4 or 6.1:

Student Complaints. The College's Title IX Coordinator will administer student discrimination complaints.

Employee Complaints. The College's Director of Human Resources will administer employee complaints under College Policies 5.4 or 6.1, with supervision and assistance to be provided by the College's Title IX Coordinator for employee complaints arising under Title IX.

Forms. All employee grievances related to discrimination, retaliation or harassment shall be filed on the grievance form provided by the Title IX Coordinator or the Director of Human Resources, as applicable. Grievance forms shall:

- a) be signed by the grievant;
- b) describe in detail the specific incident(s), occurrence(s), decision(s), and other factual matters believed to constitute unlawful discrimination, harassment, or retaliation;

c) name as the respondent(s) the individual, department, committee, or other body whom the grievant believes to have engaged in prohibited behavior; and

d) include a brief statement describing the resolution, relief or action requested by the grievant.

Notifications

The responsible administrators shall broadly disseminate written notice of the college's policy of nondiscrimination 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 responsible administrators identified above.

Retaliation

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

Reporting, Investigation and Grievance Procedures

The College expressly prohibits any prohibited discrimination carried out by employees, students, or third parties. The College will take steps to prevent recurrence of any such conduct 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 complaints of such discrimination. 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 complaints regarding prohibited discrimination in accordance with applicable law.

Reporting Prohibited Discrimination

An individual with questions or a possible complaint of prohibited discrimination should contact the appropriate College official set forth above under "Administration of Complaints." Current contact information for these officials is set forth in and Addendum to these Procedures.

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

Informal Resolution Process

Discrimination or other complaints alleging violation of College Policy 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. 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 a violation of College Policy involving prohibited discrimination by an employee, the Director of Human Resources, or a designee, will review the complaint to determine whether the conduct may be a violation, and also may conduct an investigation to determine whether or not the conduct occurred and, if the conduct occurred, what actions should be taken by the College.
- Following a report of a violation of College Policy involving prohibited discrimination by a student, the College employee designated in the Student Handbook, or a designee, will review the complaint to determine whether the conduct may be a violation, and also may conduct an investigation to determine whether or not the conduct occurred and, if the conduct occurred, what actions should be taken by the College.

In all cases, a formal investigation will include the following steps:

Promptly following a report as described above, any employee or student suspected or accused of violating College Policy 5.4 or 6.1 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 specific policy provisions that relate to the alleged violation.

The College will commence the investigation as soon as is practicable under the circumstances, 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 discrimination or harassment, subject to any factors which delay the investigation beyond the College's control. As part of the investigation, the College will establish a timeframe for how long it will take to issue a written outcome of the complaint by scheduling dates for a hearing, 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 person

designated as an investigator for any complaint (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 may 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 college nondiscrimination policies:

- 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 opportunity to identify witnesses who can provide information about the alleged conduct at issue.
- 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 opportunity to speak, ask questions, or present witnesses and other evidence on their own behalf. Questions may be posed to the investigator, but cross-examination by either the complainant or the respondent will not be permitted.
- 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 Investigator will include in the report findings of facts based solely on the evidence presented at the hearing.

The official designated by the College as the decision-maker for purposes of the investigation will review the Investigator's report and determine whether a violation of policy has occurred. The standard used to determine whether the respondent has violated College Policies 5.4 or 6.1 is whether it is more likely than not that the respondent has engaged in behavior prohibited by the Policy. 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 College decision-maker determines that it is more likely than not that a violation of a College's nondiscrimination 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 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 a College nondiscrimination 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 a nondiscrimination 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 reserves the right to 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 a College nondiscrimination 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 prohibited discrimination, including retaliation, and to correct discriminatory effects on the complainant and others.

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. Any appeal must be submitted in writing to the College 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, provided that the grounds for any appeal shall be limited to one of the following:

- 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
INQUIRIES OR COMPLAINTS
Regarding
COLLEGE NONDISCRIMINATION POLICIES

Colorado Mountain College does not discriminate on the basis of age, color, disability, gender identity, marital status, national or ethnic origin, political affiliation, race, religion, sex (including pregnancy), sexual orientation, veteran status, and family and genetic information, in its programs and activities as required by Title IX of the Education Amendments of 1972, Title II of the Americans with Disabilities Act of 1990, as amended, Section 504 of the Rehabilitation Act of 1973, Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and as provided in other applicable statutes and College policies. The College prohibits sexual and gender-based harassment, including sexual assault, and other forms of interpersonal violence.

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

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.