



ADMINISTRATIVE POLICY STATEMENT

Policy Title: Sexual Harassment Policy and Procedures

APS Number: 5014

APS Functional Area: **HUMAN RESOURCES**

| | |
|--|--|
| Brief Description: | This policy defines sexual harassment and related terms and the procedures and processes for reporting and investigating allegations of policy violations. |
| Effective: | July 20, 2012 (Updated 11/29/2012) |
| Approved by: | President Bruce D. Benson |
| Responsible University Officer: | Vice President, Employee and Information Services |
| Responsible Office: | Office of the Vice President, Employee and Information Services |
| Policy Contact: | Office of the Vice President, Employee and Information Services |
| Supersedes: | Sexual Harassment Policy and Procedures, July 1, 2009 |
| Last Reviewed/Updated: | July 20, 2012 |
| Applies to: | All Campuses |

Reason for Policy: This policy defines sexual harassment and related terms and the procedures and processes for reporting and investigating allegations of policy violations.

I. INTRODUCTION

Regent Policy 2-J, adopted on June 23, 2003, established that consistent with the [*Laws of the Regents, Article 10, Non-Discrimination*](#), the University will not tolerate acts of sexual harassment or related retaliation against or by any employee or student in its educational programs and activities.

II. POLICY STATEMENT

The University of Colorado is committed to maintaining a positive learning, working and living environment. The University does not discriminate on the basis of race, color, national origin, sex, age, disability, creed, religion, sexual orientation, or veteran status in admission and access to, and treatment and employment in, its educational programs and activities. (Regent Law, Article 10). In pursuit of these goals, the University will not tolerate acts of sexual harassment or related retaliation against or by any employee or student.

This policy (1) provides a general definition of sexual harassment and related retaliation; (2) prohibits sexual harassment and related retaliation; and (3) sets out procedures to follow when a member of the University community believes a violation of the policy has occurred. It also is a violation of this policy for anyone acting knowingly or recklessly either to make a false complaint of sexual harassment or to provide false information regarding a complaint.

Robust discussion and debate are fundamental to the life of the University. Consequently, this policy shall be interpreted in a manner that is consistent with academic freedom as defined in Regent Law, Article 5 D, last amended 10/10/02.

It is intended that individuals who violate this policy be disciplined or subjected to corrective action, up to and including termination or expulsion.

III. DEFINITIONS

Appointing authority - an appointing authority is the individual with the authority or delegated authority to make ultimate personnel decisions concerning a particular employee.

Disciplinary authority - a disciplinary authority is the individual who has the authority or delegated authority to impose discipline upon a particular employee or student.

Supervisor - A supervisor is anyone who has the authority to hire, promote, discipline, evaluate, grade or direct faculty, staff, or students.

Complainant - a complainant is a person who is subject to alleged sexual harassment.

Respondent - a respondent is a person whose alleged conduct is the subject of a complaint.

Sexual harassment - Sexual harassment consists of interaction between individuals of the same or opposite sex that is characterized by unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, living conditions and/or educational evaluation; (2) 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 (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working or educational environment.

Hostile environment sexual harassment: (described in subpart (3) above) 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" must be based on all of the circumstances. These circumstances could include the frequency of the conduct, its severity, and whether it is threatening or humiliating. Examples which may be policy violations include the following: an instructor suggests that a higher grade might be given to a student if the student submits to sexual advances; a supervisor implicitly or explicitly threatens termination if a subordinate refuses the supervisor's sexual advances; and a student repeatedly follows an instructor around campus and sends sexually explicit messages to the instructor's voicemail or email.

Retaliation: Retaliation is prohibited by this Policy. To be considered retaliation, a causal connection is required between a materially adverse action and the act of (1) reporting an allegation of sexual harassment; or (2) participating in support of an investigation of sexual harassment. A materially adverse action is one that would dissuade a reasonable person from reporting an allegation of sexual harassment, or participating in support of an investigation of an allegation of sexual harassment. A determination of whether an action is materially adverse is made on a case by case basis. Students and employees who believe they have been retaliated against because of testifying, assisting or participating in a proceeding, investigation, or hearing relating to an allegation of sexual harassment, should meet with and seek the advice of their campus sexual harassment officer, whose responsibilities include handling retaliation.

IV. POLICIES AND PROCEDURES

A. Obligation to Report

In order to take appropriate corrective action, the University must be aware of sexual harassment or related retaliation. Therefore, anyone who believes that s/he has experienced or witnessed sexual harassment or related retaliation should promptly report such behavior to a campus sexual harassment officer (see campus Appendix discussed below) or any supervisor (see section B below).

B. Supervisor's Obligation to Report

Any supervisor who experiences, witnesses or receives a written or oral report or complaint of sexual harassment or related retaliation shall promptly report it to a campus sexual harassment officer. This section of the policy does not obligate a supervisor who is required by the supervisor's profession and University responsibilities to keep certain communications confidential (e.g., a professional counselor or ombudsperson) to report confidential communications received while performing those University responsibilities. Each campus shall have an [appendix](#) to this policy designating the supervisory positions that qualify under this exception.

C. Investigation Process

1. Reports or complaints under this policy shall be addressed and resolved as promptly as practicable after the complaint or report is made. Ordinarily, investigations shall be concluded and reports submitted to the standing review committee no later than 60 days following the receipt of a complaint. Ordinarily, the final report shall be sent to the Chancellor or President no later than 30 days after the committee's receipt of the draft report of the investigation.

It is the responsibility of the sexual harassment officer(s) to determine the most appropriate means for addressing the report or complaint. Options include, but are not limited to: 1) investigating the report or complaint in accordance with paragraph C.3. below; 2) with the agreement of the parties, attempting to resolve the report or complaint through a form of alternative dispute resolution (e.g., mediation); or 3) determining that the facts of the complaint or report, even if true, would not constitute a violation of this policy.

The campus sexual harassment officer(s) may designate another individual (either from within the University, including an administrator, or from outside the University) to conduct or assist with the investigation or to manage an alternative dispute resolution process. Outside investigators shall have training, qualifications and experience as will, in the judgment of the sexual harassment officer, facilitate the investigation. Anyone designated to address an allegation must adhere to the requirements of this policy and confer with the sexual harassment officer(s) about his or her progress. (See campus [appendix](#) for a list of resources for further assistance or additional information.)

2. All reports or complaints shall be made as promptly as feasible after the occurrence. (A delay in reporting may be reasonable under some circumstances, as determined on a case-by-case basis. An unreasonable delay in reporting, however, is an appropriate consideration in evaluating the merits of a complaint or report.)
3. If an investigation is conducted: The complainant and the respondent shall have the right to:
 - a. Receive written notice of the report or complaint, including a statement of the allegations, as soon after the commencement of the investigation as is practicable and to the extent permitted by law;
 - b. Present relevant information to the investigator(s); and
 - c. Receive, at the conclusion of the investigation and appropriate review, a copy of the investigator's report, to the extent permitted by law.
4. The Chancellor, the respondent's appointing authority and the respondent's supervisor shall be notified that an investigation is taking place. The sexual harassment officer shall advise the respondent's appointing authority whether the respondent should be relieved of any supervisory or evaluative authority during the investigation and review. If the respondent's appointing authority declines to follow the recommendation of the sexual harassment officer, s/he shall send a letter explaining the decision to the Chancellor with a copy to the sexual harassment officer.
5. At the conclusion of an investigation, the investigator shall prepare a written report which shall include a statement of factual findings and a determination of whether this policy has been violated. The report shall be presented for review to the standing review committee.
6. The standing review committee shall consist of employees who have received appropriate training regarding implementation of this policy.
7. The standing review committee may consult with the investigator, consult with the parties, request that further investigation be done by the same or another investigator, or request that the investigation be conducted again by another investigator. The standing review committee may adopt the investigator's report as its own or may prepare a separate report based on the findings of the investigation. The standing review committee may not, however, conduct its own investigation or hearing. Once the standing review committee has completed its review, the investigator shall send the final report to the complainant and the respondent, to the extent permitted by law.

The report also shall be sent to the Chancellor, or, in the case of System Administration¹, to the President. If a Chancellor is the respondent or complainant, the report shall be sent to the President. If the President or the Secretary of the Board of Regents is the respondent or complainant, the report shall be sent to the Board of Regents.

D. Reporting Process

- 1a. If a policy violation is found, the report(s) shall be sent to the disciplinary authority for the individual found to have violated the policy, and the disciplinary authority must initiate a disciplinary process against that individual. The disciplinary authority shall have access to the records of the investigation. If disciplinary action is not taken, the appointing authority and the Chancellor, or in the case of System Administration, the President, shall be notified accordingly.
- 1b. Following a finding of violation of the policy, the disciplinary authority shall forward to the sexual harassment officer and to the Chancellor, or in the case of System Administration, the President, a statement of the action taken against an individual for violation of this policy.
- 1c. If a policy violation is not found, the appointing authority and the Chancellor, or in the case of System Administration, the President, shall be notified accordingly.
2. The sexual harassment officer shall advise the complainant and respondent of the resolution of any investigation conducted under this policy.
3. A copy of the investigator's written report as approved by the standing review committee, shall be provided to: 1) the complainant; 2) the respondent; and 3) the respondent's appointing authority.
4. In all cases, the sexual harassment officer shall retain the investigator's report, as approved by the standing review committee, for a minimum of three (3) years or for as long as any administrative or legal action arising out of the complaint is pending.
5. All records of sexual harassment reports and investigations shall be considered confidential and shall not be disclosed publicly except to the extent required by law.
6. Complaints Involving Two or More Campuses: When an alleged policy violation involves more than one campus, the complaint shall be handled by the campus with disciplinary authority over the respondent. The campus responsible for the investigation may request the involvement or cooperation of any other affected campus and should advise appropriate officials of the affected campus of the progress and results of the investigation.
7. Complaints By and Against University Employees and Students Arising in an Affiliated Entity: University employees and students sometimes work or study at the worksite or program of another organization affiliated with the University. When a policy violation is alleged by or against University employees or students in those circumstances, the complaint shall be handled as provided in the affiliation agreement between the University and the other entity. In the absence of an affiliation agreement or a provision addressing this issue, the University may, in its discretion, choose to 1) conduct its own investigation, 2) conduct a joint investigation with the affiliated entity, 3) defer to the findings of an investigation by the affiliated entity where the University has reviewed the investigation process and is satisfied that it was fairly conducted, or 4) use the investigation and findings of the affiliated entity as a basis for further investigation.

E. No Limitations on Existing Authority

No provision of this policy shall be construed as a limitation on the authority of a disciplinary authority under applicable policies and procedures to initiate disciplinary action. If an individual is disciplined for conduct that also violates this policy, the conduct and the discipline imposed shall be reported to a campus sexual harassment

¹ For the purposes of this policy, System Administration includes the Office of the Secretary of the Board of Regents and the Department of Internal Audit.

officer. If an investigation is conducted under this policy and no policy violation is found, that fact does not prevent discipline of the respondent for inappropriate or unprofessional conduct under other applicable policies and procedures.

F. Information and Education

The President's Office shall provide an annual report documenting: (1) the number of reports or complaints of policy violations; (2) the categories (i.e., student, employee, or other) and sexes of the parties involved; (3) the number of policy violations found; and (4) examples of sanctions imposed for policy violations.

Each campus shall broadly disseminate this policy, distribute a list of resources available on the campus to respond to concerns of sexual harassment and related retaliation, maintain the campus appendix to the sexual harassment policy, and develop and present appropriate educational programs. Each campus shall maintain information about these efforts, including a record of how the policy is distributed and the names of individuals attending training programs.

V. RELATED POLICIES, PROCEDURES, FORMS, GUIDELINES, AND OTHER RESOURCES

- A. Administrative Policy Statement, "[Conflict of Interest in Cases of Amorous Relationships](#)," provides that an amorous relationship between an employee and a student or between two employees constitutes a conflict of interest when one of the individuals has direct evaluative authority over the other and requires that the direct evaluative authority must be eliminated.
- B. For related complaint, grievance or disciplinary processes, refer to Regent Policies [5. H. Faculty Senate Grievance Process](#) and [5. I. Faculty Dismissal for Cause Process](#) (for faculty), State Personnel Board Rules (for classified employees), and campus student disciplinary policies and procedures (for students).
- C. Frequently Asked Questions (FAQs)
- D. Campus Appendices
 - 1. [Boulder](#)
 - 2. [Colorado Springs](#)
 - 3. [Denver](#)

VI. HISTORY

Correction: 11/29/2012 correction to strike Section IV.G. which was not shown in final version for July 20, 2012.

Supersedes: Sexual Harassment Policy and Procedures, Jul 1, 2009

Supersedes: Sexual Harassment Policy and Procedures, July 1, 2003

Supersedes: University Policy on Sexual Harassment, November 14, 1996

Supersedes: University Policy on Sexual Harassment, July 1, 1999

Initial Policy: University Policy on Sexual Harassment, June 5, 1989

VII. KEY WORDS

| |
|---|
| regent, law, article 10, sexual, harassment, 2-J, discrimination, retaliation, race, color, national origin, gender, sex, age, disability, creed, religion, sexual orientation, veteran, hostile, working, environment, conduct, offensive. |
|---|