

<b>Title:</b> Procedures for Investigation of Title IX Sexual Harassment	<b>Procedure Number:</b> 3-B	Page 1 of 13
<b>Board Policy or Policies:</b> Policy 3.12 – Sexual Misconduct	<b>Adopted by:</b> Carrie Besnette Hauser, President & CEO  <b>Date of Adoption:</b> August 14, 2020	

## 1. Introduction

CMC prohibits discrimination on the basis of sex in its education and employment programs and activities in furtherance of its inclusivity objectives, as detailed in College policies 1.1 (inclusivity) and 3.12, together with college’s sexual misconduct procedure 3-A. This procedure is added in order to comply with the 2020 implementing regulations (34 C.F.R. Part 106) under Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-88). The college has retained its policy and procedures relating to sexual misconduct so that certain conduct not covered by this Procedure nonetheless may be prohibited under CMC’s sexual misconduct policy and procedure.

Inquiries regarding the application of Title IX and implementing regulations may be referred to the Title IX Coordinator identified in this Procedure, to the Assistant Secretary of the U.S. Department of Education, or both.

## 2. Definitions

The following definitions apply throughout this Policy:

- 2.1. “Complainant” means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.
- 2.2. “Decision-Maker” means the person, or group of persons, designated to make final decisions with respect to findings of fact, determinations of responsibility for policy or procedural violations, or sanctions to be imposed upon any person who is determined to be responsible for engaging in prohibited conduct. There may be more than one Decision-Maker. For example, a hearing officer or panel may decide on final findings of fact along with recommendations to another Decision-Maker for final determinations of responsibility and sanctions.
- 2.3. “Education Program or Activity” includes locations, events, or circumstances over which the Institution exercised substantial control over both the Respondent and the context in which the Sexual Harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the Institution.
- 2.4. “Formal Complaint” means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the Institution investigate the allegation of Sexual Harassment.
- 2.5. “Mandatory Reporter” means an employee who is obligated under this Procedure to

report instances of conduct that may constitute Sexual Harassment or Retaliation to the Title IX Coordinator.

- 2.6. “Party” means Complainant or Respondent.
- 2.7. “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment or Retaliation.
- 2.8. “Retaliation” means intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.
- 2.9. “Sexual Harassment” means conduct on the basis of sex that satisfies one or more of the following:
  - 2.9.1. An employee conditions the provision of an aid, benefit, or service of the Institution on an individual’s participation in unwelcome sexual conduct;
  - 2.9.2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Institution’s Education Program or Activity; or
  - 2.9.3. Sexual assault as defined in 20 U.S.C. § 1092(f)(6)(A)(v), dating violence as defined in 34 U.S.C. § 12291(a)(1), domestic violence as defined in 34 U.S.C. § 12291(a)(8), or stalking as defined in 34 U.S.C. 12291(a)(30).
- 2.10. “Supportive Measures” means non-disciplinary, non-punitive individualized services offered to the Complainant or Respondent, as further described in Section 5 below.
- 2.11. “Title IX Coordinator” shall be appointed by the college President & CEO from time to time. As of the date of this Procedure, CMC’s Title IX Coordinator is Lisa Doak, ldoak@coloradomtn.edu, 970-947-8351, CMC Central Services Office, Student Affairs, 802 Grand Avenue, Glenwood Springs, CO, 81601. Information regarding non-discrimination may be found at [www.coloradomtn.edu/notice-of-nondiscrimination](http://www.coloradomtn.edu/notice-of-nondiscrimination). For the purpose of this Policy, actions to be taken by the Title IX Coordinator may be completed by the Title IX Coordinator’s designee.

### **3. Jurisdiction/Applicability**

- 3.1. The provisions of this Procedure apply to all conduct that is included within the definition of Sexual Harassment, or any reported instances of alleged Sexual Harassment, that occur while the Complainant is in the United States and is participating in, or attempting to participate in, an Education Program or Activity of the Institution.

#### **4. Reports of Alleged Sexual Harassment**

- 4.1. At any time, any person may report sex discrimination, including alleged Sexual Harassment (whether or not the person reporting is the person alleged to be the victim of sex discrimination), in person, by mail, by telephone, or by electronic mail to the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.
- 4.2. Any Mandatory Reporter who receives a report of alleged Sexual Harassment must promptly report the alleged Sexual Harassment to the Title IX Coordinator.
- 4.3. Upon receiving a report of alleged Sexual Harassment, the Title IX Coordinator will promptly:
  - 4.3.1. Inform the Complainant of the method for filing a Formal Complaint.
  - 4.3.2. Inform the Complainant of the availability of Supportive Measures with or without the filing of a formal complaint.
  - 4.3.3. Offer Supportive Measures to the Complainant, the Respondent, or both, as detailed in Section 5 below.

#### **5. Supportive Measures; Interim Actions**

- 5.1. The Title IX Coordinator will ensure that Supportive Measures are offered to the Complainant and/or the Respondent as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent. Supportive Measures may be offered before or after the filing of a Formal Complaint, or where no Formal Complaint has been filed.
- 5.2. The purpose of Supportive Measures is to restore or preserve equal access to the college's Education Program or Activity without unreasonably burdening the other Party. Supportive Measures include measures designed to protect the safety of all Parties or the Institution's educational environment, as well as measures designed to deter sexual harassment.
- 5.3. Supportive Measures may include, but are not limited to:
  - 5.3.1. Referral to counseling, medical, or other health care services;
  - 5.3.2. Referral to other community-based service providers;
  - 5.3.3. Student financial aid counseling and academic advising;
  - 5.3.4. Academic support, extensions of deadlines or other program- or course-related adjustments;
  - 5.3.5. Modifications of work or class schedules;
  - 5.3.6. Campus escort services;
  - 5.3.7. Mutual restrictions on contact between the Parties;

- 5.3.8. Changes in work or housing locations;
- 5.3.9. Leaves of absence;
- 5.3.10. Safety planning;
- 5.3.11. Increased security and monitoring of certain areas of the campus, and
- 5.3.12. Other similar measures.

5.4. Supportive Measures do not include disciplinary sanctions against another person. The Formal Resolution Process, as detailed in Section 8 below, must be completed before disciplinary sanctions may be imposed on a Respondent.

5.5. CMC may suspend or temporarily remove a Respondent from its Education Programs or Activities on an emergency basis if the Title IX Coordinator:

5.5.1. Undertakes an individualized safety and risk analysis, performed by the Title IX Coordinator in conjunction with the Campus Student Care Support Team using its standard objective violence risk assessment procedures.

5.5.2. Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal; and

5.5.3. Provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

5.6. CMC may place a non-student employee Respondent on administrative leave during the pendency of the Formal Resolution Process set forth in Section 8 below.

5.7. CMC will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that confidentiality would not impair the ability of the Institution to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

## **6. Fair and Equitable Process**

6.1. 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.

6.2. CMC will not make credibility determinations based on a person's status as a Complainant, Respondent, or witness.

6.3. A Respondent is presumed not responsible for alleged conduct until a determination regarding responsibility is made at the conclusion of the Formal Resolution Process set forth in Part 8 below.

- 6.4. Throughout the processes described herein, the college will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence.
- 6.5. 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; or the need for language assistance or accommodation of disabilities.

## **7. Informal Resolution Process**

- 7.1. The informal resolution process is sometimes offered as a voluntary means of settling disputes without proceeding to the hearing described below. Informal resolution may include, for example, early neutral evaluation, negotiation, conciliation, mediation, and arbitration. Participation in an informal process is voluntary, and no party shall be required to engage in this alternative process.

### Availability of Informal Resolution Process

- 7.2. The Title IX Coordinator may offer the informal resolution process to the Parties in certain circumstances after a formal complaint is filed and only if all Parties voluntarily consent, in writing, to the informal resolution process. At 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 described below.
- 7.3. The informal resolution process is not available to resolve allegations of Sexual Harassment in which the Complainant is a CMC student and the Respondent is a CMC employee.
- 7.4. The informal resolution process, if available, may be implemented any time prior to reaching a determination regarding responsibility.

### Notice of Availability

- 7.5. If the informal resolution process is available, the Title IX Coordinator will issue written notice to the parties disclosing:
  - 7.5.1. The allegations;
  - 7.5.2. The requirements of the informal resolution process, including the circumstances under which it precludes the Parties from resuming a Formal Complaint arising from the same allegations;
  - 7.5.3. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and

7.5.4. That either Party may withdraw from the informal resolution process and resume the formal grievance process prior to agreeing to a resolution.

#### Timeframe

7.6. CMC will make a good faith effort to promptly complete the informal resolution process, without jeopardizing the rights of a Party.

#### Disposition of Grievance

7.7. After the Parties have agreed to a resolution that is accepted by the Title IX Coordinator, neither Party may appeal the resolution.

### **8. Formal Resolution Process**

#### Formal Complaint

8.1. 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 by contacting Lisa Doak, ldoak@coloradomtn.edu, 970-947-8351, CMC Central Services Office, Student Affairs, 802 Grand Avenue, Glenwood Springs, CO, 81601. Reports or complaints may also be submitted via CMC's online reporting portal known as CMC Cares. Formal complaints require either digital or physical signature. CMC will investigate the allegations in a formal complaint.

#### Dismissal

8.2. The Title IX Coordinator will dismiss a Formal Complaint, and no investigation will be conducted under this policy, if:

8.2.1. The conduct alleged in the Formal Complaint would not constitute Sexual Harassment even if proved; or

8.2.2. The conduct alleged in the Formal Complaint did not occur within the Jurisdiction/Applicability of the policy, as described in Section 3 above.

8.3. The Title IX Coordinator may dismiss a Formal Complaint, or any allegations therein, at any time during the investigation or hearing, if:

8.3.1. The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;

8.3.2. The Respondent is no longer enrolled or employed by the Institution; or

8.3.3. Specific circumstances prevent the Institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

- 8.4. The dismissal of a Formal Complaint does not preclude the college from conducting an investigation or taking action under CMC's Sexual Misconduct policy or procedures, code of student conduct, anti-discrimination policies, or other applicable policies with regard to prohibited conduct that is not subject to this Procedure.
- 8.5. 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.

#### Consolidation

- 8.6. 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.

#### Timeframe for Conclusion

- 8.7. CMC will make a good faith effort to complete the formal resolution process, including the hearing but excluding appeals, reasonably promptly under the circumstances, without jeopardizing the rights of a Party.

#### Written Notice

- 8.8. 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:
  - 8.8.1. Notice of this Procedure and the processes within this Procedure, including the informal resolution process described above;
  - 8.8.2. The identities of the Parties involved, if known;
  - 8.8.3. The conduct allegedly constituting sexual harassment;
  - 8.8.4. The date and location of the incident, if known;
  - 8.8.5. A statement that the Respondent is presumed not responsible for the alleged conduct;
  - 8.8.6. A statement that a determination regarding responsibility is made at the conclusion of the formal resolution process;
  - 8.8.7. A statement that Parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
  - 8.8.8. A statement that Parties may inspect and review evidence;
  - 8.8.9. A statement that knowingly making false statements or knowingly submitting false information during this process is prohibited.

- 8.9. If, during the course of an investigation, the Institution decides to investigate additional allegations about the Complainant or Respondent relating to the same facts or circumstances but not included in the earlier written notice, the Institution will provide notice of the additional allegations to the Parties whose identities are known.

#### Advisor

- 8.10. Each Party has the right to have an advisor of her or his choice, but Parties are not required to have an advisor. The advisor may be, but need not be, an attorney.
- 8.11. The advisor may be present at any proceedings that are part of the formal resolution process. If a Party wishes to have an advisor present at a proceeding, the college will work within reason to schedule the proceeding so the advisor may attend, without unreasonably delaying the progress of the formal resolution process. Except as described below, a Party's advisor may not speak on behalf of the Party.

#### Investigation

- 8.12. CMC, 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.
- 8.13. CMC 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 the Institution obtains that Party's voluntary written consent to do so for the resolution process.
- 8.14. During the investigation, each Party has an opportunity to present witnesses and evidence to the investigator.
- 8.15. The investigator will provide, in advance and with reasonable opportunity to prepare, written notice of the date, time, location, participants, and purpose of any investigative interview or other meeting to any Party whose participation is invited or expected.
- 8.16. Prior to conclusion of the investigation, the Title IX Coordinator or investigator will send to each Party and to each Party's advisor, if any, all evidence obtained as part of the investigation, whether or not the Institution intends to rely on such evidence in reaching a determination regarding responsibility, that is directly related to the allegations raised in the Formal Complaint.



- 8.17. Each Party may submit a written response, which the investigator will consider prior to conclusion of the investigation and completion of the investigative report. 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 to the Party, unless the deadline is extended for good cause.
- 8.18. The investigator will 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.
- 8.19. 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. Each Party may submit a written response to the report, which the Title IX Coordinator will submit to the hearing officer(s) for consideration at the hearing. 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.

### Hearing and Decision-Makers

#### *General Conduct of the Hearing*

- 8.20. The hearing officer, if acting alone, or the hearing panel, if more than one hearing officer is appointed, shall conduct a live hearing, either in-person or remotely. Prior to the hearing, the hearing officer(s) will review the investigative report and the written responses provided by the Parties, if any.
- 8.21. The hearing may occur in person or virtually, at the discretion of the hearing officer or panel. If either Party submits a request no later than three 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.
- 8.22. Hearings will be recorded. The recording will be available to the Parties for inspection and review.

#### *Standard of Evidence; Relevance*

- 8.23. The determination of responsibility will be made by the hearing officer(s) using the preponderance of the evidence standard.

- 8.24. In making a determination of responsibility or sanctions, the hearing officer(s) may only consider relevant evidence. 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.
- 8.25. Hearing officers will not consider:
- 8.25.1. Evidence about the Complainant's sexual predisposition or prior sexual behavior, except that hearing officers may consider:
    - 8.25.1.1. 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
    - 8.25.1.2. Evidence concerning specific incidents of the Complainant's prior sexual behavior with respect to the Respondent, when offered to prove consent.
  - 8.25.2. 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.
  - 8.25.3. Hearing Officers 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.
  - 8.25.4. Information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- 8.26. Hearing officers must conduct an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.

#### *Witness Examination*

- 8.27. Hearing officers will allow each Party's advisor to examine witnesses upon request by the Party. Cross examination may not be conducted by either Party. Cross examination may only be conducted by an advisor acting on a Party's behalf.
- 8.28. If a Party wishes to ask cross examination questions of a Party or witness and does not have an advisor, the college will select and provide an advisor to the Party, free of charge, for the limited purpose of conducting cross examination.

- 8.29. Only relevant cross-examination questions may be asked of a Party or witness. Before a Party or witness answers a question, hearing officers will determine whether the question is relevant and explain any decision to exclude a question as not relevant.

### *Remedies/Sanctions*

- 8.30. The college will, from time to time, allocate decision-making responsibilities among one or more persons, including non-employee professionals. The responsibilities to be allocated include findings of fact, determinations of responsibility, or determinations of sanctions. Such allocations will be determined prior to or upon receipt of a complaint that may require a formal hearing.
- 8.31. Remedies are designed to restore or preserve equal access to the college's Education Program or Activity. Remedies may be disciplinary or punitive and need not avoid burdening the Respondent. The Title IX Coordinator is responsible for the effective implementation of remedies.
- 8.32. If a Respondent is found responsible for Sexual Harassment under this Policy, potential sanctions include expulsion (permanent), suspension, probation, removal from employment at CMC, conditional employment, conditional enrollment, or other sanctions as determined appropriate by the sanction officer

### *Written Determination*

- 8.33. After considering the investigative report, including any Party's written responses to the investigative report and all relevant evidence presented at the hearing, one or more Decision-Makers will issue a written determination with respect to the authority allocated by the college to such Decision-Makers. The Title IX Coordinator will provide the written determination simultaneously to the Parties.
- 8.34. The written determination will include:
- 8.34.1. Identification of the allegations potentially constituting Sexual Harassment.
  - 8.34.2. 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.
  - 8.34.3. Findings of fact supporting the determination.
  - 8.34.4. Conclusions regarding the application of college policy and legal requirements to the facts;
  - 8.34.5. A statement of, and rationale for, the result as to each allegation, including:
    - 8.34.5.1. A determination regarding responsibility;
    - 8.34.5.2. Any disciplinary sanctions imposed on the Respondent;

- 8.34.5.3. Whether remedies will be provided to the Complainant; and
- 8.34.5.4. Procedures and permissible bases for the Parties to appeal.

8.35. The written determination becomes final five business days after it is sent to the Parties, unless an appeal is filed.

## Appeal

### *Appealable Issues*

- 8.36. Either Party may appeal:
- 8.36.1. Dismissal of a Formal Complaint or any allegations therein; or
  - 8.36.2. A determination regarding responsibility.
- 8.37. No other issue may be appealed.

### *Bases for Appeal*

- 8.38. A Party may only appeal on one or more of the following bases:
- 8.38.1. Procedural irregularity that affected the outcome of the matter;
  - 8.38.2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter (the requirement of a basis for appeal is not satisfied simply because evidence was not presented during the proceedings, if the evidence was reasonably available at the time the determination was made); or
  - 8.38.3. The Title IX Coordinator, investigator, hearing officer, 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.

### *Filing an Appeal*

8.39. If a Party wishes to file an appeal, the Party must notify the Title IX Coordinator in writing no later than five business days after the notice of dismissal or written determination is sent to the Party. The written appeal must state with specificity the issues being appealed and the bases for the appeal as described above.

### *Timeframe for Completion of Appeal*

8.40. CMC will make a good faith effort to complete the appeal within 15 business days. This timeframe for completion of appeal may be extended for good cause. If the timeframe 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.

## *Appeal Procedure*

8.41. After receiving a timely written appeal, the Title IX Coordinator will notify the Parties in writing:

8.41.1. That the appeal was filed; and

8.41.2. The process for submitting a written statement in support of, or challenging, the issues being appealed.

8.42. 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 any recording or transcript of the hearing.

8.43. 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. The Title IX Coordinator will provide the written determination of appeal simultaneously to the Parties. The result of the appeal is final.

## **9. Retaliation**

9.1. Retaliation is prohibited. A report of alleged Retaliation may be made to the Title IX Coordinator in person, by mail, by telephone, or by electronic mail. Any Mandatory Reporter who receives a report of alleged Retaliation must promptly report the alleged Retaliation to the Title IX Coordinator.