

Office of Equal Opportunity Procedures 2013-2014

I. PURPOSE

The Office of Equal Opportunity establishes these Procedures to assist in carrying out its responsibilities in the administration and enforcement of the University of Denver's policies related to nondiscrimination and assuring the University's compliance with applicable laws, including: Executive Order 11246; Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Americans with Disabilities Act (ADA) of 1990 and as amended by ADA Amendments Act of 2008; the Rehabilitation Act of 1973; the Vietnam Era Readjustment Assistance Act; the Genetic Information Nondiscrimination Act of 2008; Title 24, Article 34 of the Colorado Revised Statutes; and Denver Municipal Ordinances. University Policy and these Procedures are intended to comply with the prohibitions of these laws, as amended, as well as other applicable federal, state, and local anti-discrimination laws.

The Office of Equal Opportunity reviews and investigates complaints alleging discrimination, harassment, retaliation and/or sexual misconduct in violation of University Policy and applicable laws. Consistent with federal, state and local law, and University policies related to non-discrimination, the Office of Equal Opportunity conducts neutral investigations of complaints of: discrimination (including harassment) on the basis of race, color, national origin, age, religion, disability, sex, sexual orientation, gender identity, gender expression, marital status, veteran status, or genetic information; complaints of retaliation, sexual harassment; sexual misconduct; and complaints alleging failure to provide reasonable accommodations for disability and religion.

II. DEFINITIONS

- A. **Complaint of Discrimination.** A charge filed in accordance with either these or other University procedures that alleges a violation of any University policy or federal, state, or local law related to discrimination.
- B. **Complainant.** A party who files a complaint alleging that he or she has been the subject of a discriminatory act. As necessary, the University reserves the right to initiate a complaint, to serve as complainant, and to initiate proceedings without a formal complaint. A reporting party and complainant need not be the same person.

- C. Corrective Action. Any action levied against an employee found responsible for violating University policy by the employee's supervisor and any other appropriate administrator.
- D. Discriminatory Act. Any action taken in violation of the University's Discrimination and Harassment Policy.
- E. Investigator. An objective, neutral fact-finder. The investigator may or may not be an Office of Equal Opportunity investigator.
- F. Office of Equal Opportunity. This office is responsible for reviewing complaints of discrimination, harassment and/or sexual misconduct. Its review will include factual findings and determinations of responsibility for violating the Discrimination and Harassment Policy, Section 3.10.010.
- G. Outcomes. Required educational opportunities, restrictions, and/or expectations outlined for a student found responsible for violating University policy.
- H. Outcome Council. A body composed of trained members to review the report from the Office of Equal Opportunity, and issue outcomes to student respondents only.
- I. Preponderance of the Evidence. The standard of proof that the Office of Equal Opportunity applies to its investigations. An allegation is proven by a preponderance of the evidence if, based on the information provided, it is more likely to have occurred than not to have occurred.
- J. Reporting Party. Any person who has shared a concern or incident of discrimination or harassment, including sexual misconduct. The reporting party need not be the complainant.
- K. Respondent. An individual accused of violating University policies.
- L. Written Notice. A general statement concerning the University policy that has allegedly been violated.

III. INITIATING A COMPLAINT AND COMPLAINT PROCESSING

- A. Who may file a complaint. Employees, students, applicants for employment, participants in University-sponsored activities, and other persons affiliated with the University may file a complaint of discrimination, harassment, and/or sexual misconduct with the Office of Equal Opportunity in accordance with these procedures.

1. Supervisors must immediately report any complaints they receive or incidents of alleged harassment or discrimination they witness to the Director of Human Resources and/or the Office of Equal Opportunity.

2. Any University faculty or staff members (including Student Conduct and Housing and Residential Education staff, Campus Safety Officers, Coaches, etc.) informed of a concern of sexual misconduct are required to notify the Title IX Coordinator, identified below.

The amount of identifiable information that the faculty or staff member will be required to share concerning sexual misconduct matters will depend on the nature of the allegation. Nevertheless, the Title IX Coordinator may request to meet with the impacted party to discuss his/her options and resources.

B. Initiating a complaint. A person who wishes to report a concern or complaint regarding discrimination, harassment, or sexual misconduct may do so by contacting the Office of Equal Opportunity:

Office of Equal Opportunity
2199 S. University Blvd.
Mary Reed Building, RM 422
303-871-7436
EqualOpportunity@du.edu

At the time of filing, the Complainant should provide his or her current contact information. It is the Complainant's responsibility to notify the Office of Equal Opportunity of any changes to his or her contact information.

C. Time for filing a complaint. Complainants are encouraged to raise concerns of discrimination, harassment, and sexual misconduct within 180 days of the last incident. Nevertheless, the University reserves the right to review matters outside the 180 days in its efforts to maintain a safe and productive environment for all of its community members.

D. Conflict of interest. If the complaint relates to actions committed by the staff of the Office of Equal Opportunity, the complaint should be directed to the Director of Human Resources, who shall appoint an appropriate investigator.

- E. Confidentiality. The University of Denver takes complaints of discrimination, harassment, and sexual misconduct very seriously. Individuals who believe that they have been impacted by an act of discrimination, harassment, and/or sexual misconduct are encouraged to share concerns with the Office of Equal Opportunity. To assess the allegations, as well as address and prevent inappropriate conduct, the Office of Equal Opportunity reviews all complaints.

While these matters are treated as confidentially as possible, complete confidentiality cannot be guaranteed. Complainants and Respondents should be aware that certain individuals, including, but not limited to interviewees and other responsible University administrators, may legitimately receive some or all of the information contained in the complaint and resulting from the investigation. Individuals who desire complete anonymity are still encouraged to reach out to the Office of Equal Opportunity to discuss their options.

An individual who is seeking confidential support and does not wish to file a complaint should speak with on-campus health or counseling professionals¹, members of the clergy,² or on-campus victim advocates.³ Speaking with Health and Counseling Services, the University Chaplin, or C.A.P.E does not constitute a report of a discriminatory act. Though, these resources are also available to Complainants and Respondents.

¹ Health and Counseling Services
2240 East Buechel Blvd. Suite 3N
Denver, CO 80208
Phone: 303.871.2205

² University Chaplain
Driscoll Student Center South, Suite 29
2050 East Evans Avenue
Denver, CO 80208
Phone: 303.871.4488

³ Center for Advocacy, Prevention and Empowerment (C.A.P.E)
2222 S. High Street
Nelson Residence Hall, Room 103
Denver, CO 80210
Phone: 303-871-3853

IV. COMPLAINTS AGAINST EMPLOYEES OR OTHER NON-STUDENTS

A. Investigation

1. The Office of Equal Opportunity will investigate all timely complaints of discrimination, harassment, and/or sexual misconduct that contain sufficient allegations, if assumed to be true, to support a violation of University policy.

2. Respondent shall be given Written Notice of the complaint, as well as the opportunity to provide information concerning the allegations. Notice is delivered via electronic mail to a person's preferred email address as updated by the individual in webCentral, or otherwise provided. Notice may also be delivered in person, or to an individual's University or permanent address, as reported to Human Resources. Copies of the Respondent's written notice shall be provided to the Respondent's supervisor.

3. Investigations will be completed as soon as possible, but in all cases will be completed within 60 days, unless additional time is necessary due to the complexity of the investigation or for other good cause.

4. The investigator shall conduct interviews as necessary, review documents, and any other relevant information concerning the alleged discriminatory acts.

5. The parties may provide any relevant information to the investigator, including the names of witnesses to contact and/or documents to review at any time before the investigation is closed.

B. Findings and corrective actions

1. Upon completion of an investigation, the investigator shall issue a written report of his or her findings. The Office of Equal Opportunity shall then issue a letter of determination indicating whether or not a policy violation occurred. This letter of determination shall be sent to the Complainant, the Respondent, and the responsible administrators.

The Office of Equal Opportunity does not have the authority to impose corrective or disciplinary action upon a finding of a discriminatory act.

2. The Respondent's supervisor will be responsible for deciding upon and imposing corrective action as soon as reasonably possible,

but no more than one month after receiving the final determination. The Respondent's supervisor shall notify the Office of Equal Opportunity of the corrective or disciplinary action imposed, if any.

Following any decision on whether or not to impose corrective action, the Office of Equal Opportunity shall notify the Complainant of such decision to the extent possible and consistent with University policies and procedures related to the confidentiality of employee personnel files.

C. Appeal

1. Faculty and staff members who receive Corrective Action pursuant to these procedures may appeal such penalties through the University's Employee Dispute Resolution/Grievance Process.

2. Members of the faculty shall also have all applicable appeal rights available to them pursuant to the Faculty Personnel Guidelines Relating to Appointment, Promotion, and Tenure.

3. Appeals brought by staff members who are subject to a collective bargaining agreement or other University guidelines which provide for separate or alternative appeal rights shall be subject to the applicable provisions of those agreements.

4. A complainant may appeal the determination of the Office of Equal Opportunity or responsible supervisor in writing to the next most immediate decision maker consistent with the Employee Dispute Resolution process.

V. COMPLAINT AGAINST STUDENTS

Throughout their involvement in the Office of Equal Opportunity's investigative process, the Outcome Council's consideration of Outcomes, and/or appeal proceedings, the Respondent, and Complainant have the rights and responsibilities listed below.

- The right to be treated with dignity and respect.
- The right to be informed of the Discrimination and Harassment Policies and Procedures.
- The right to a prompt and thorough investigation.
- The right to object to the participation of a member of the Outcome Council based on a demonstrable significant bias.
- The right to request reasonable accommodations (i.e., for disability,

language barriers, or location/proximity concerns) to ensure full participation in the process. Requests must be received in a timely manner, 24 hours before any meeting time.

- The right to privacy throughout the process to the extent possible and with the exception of University administrators that legitimately need to know status of the process.
- The right to be free from intimidation and harassment and, upon request, to have reasonable steps taken by the University to prevent unnecessary or unwanted contact with involved parties.
- The right to written notification of a pending investigation resulting from a report concerning a potential policy violation. This notice will include the following:
 - A general statement concerning the University policy that has allegedly been violated;
 - The consequences and process if a party chooses not to participate in the investigative process; and
 - A copy of his or her rights and responsibilities.
- The right to share information in support of his/her own perspective during the investigative process.
- The right to provide the names of other individuals, during the investigative process, who have information directly relevant to the incident.
- The right to have a support person of his or her choice present throughout the process. The support person may consult with the individual, but may not actively participate in any proceeding including the investigative process and/or serving as a witness. Furthermore, a support person may not sit in a proceeding in the absence of the individual to be supported.
- The responsibility to notify his/her support person of the time, date, and location of any meeting associated with the investigative process. Meetings need not be rescheduled to accommodate a support person.
- The responsibility to provide notification that a support person will be present for meetings no later than 48 hours before the scheduled meeting. Failure to provide names prior to the meeting may be grounds to exclude a support person.
- The responsibility to ensure the University has been provided with accurate address and other contact information so that notification is not unduly delayed.

A. Investigation

1. The Office of Equal Opportunity will investigate all timely complaints of discrimination, harassment, and/or sexual misconduct that contain sufficient allegations, if assumed to be true, to support a violation of University policy.

2. Discrimination, harassment and sexual misconduct matters will not be referred to the Restorative Justice Program or any other alternative dispute resolution.

3. Investigations will be completed as soon as possible, but in all cases will be completed within 60 days, unless additional time is necessary due to the complexity of the investigation or for other good cause.

4. The Complainant shall be given the opportunity to provide information concerning the allegations through an interview by an investigator from the Office of Equal Opportunity and/or a designee.

5. The Office of Equal Opportunity will provide Written Notice of an investigation to the Respondent informing him or her generally of the allegations and process. Notice is delivered via electronic mail to a person's preferred email address as updated by the individual in webCentral, or otherwise provided. Notice may also be delivered in person, or to an individual's University or permanent address, as reported to the University Registrar.

6. The Respondent shall be given the opportunity to provide information concerning the allegations through an interview by an investigator from the Office of Equal Opportunity and/or a designee.

7. The parties may provide any relevant information to the investigator, including the names of witnesses to contact and/or documents to review at any time before the investigation is closed.

8. The investigator shall conduct additional interviews as necessary, review documents and any other relevant information concerning the alleged discriminatory acts.

9. The investigator completes a report of factual findings, including a determination of responsibility for violating a University policy or not. Responsibility determinations are based on a preponderance of the evidence.

B. Findings and Outcomes

1. A summary of findings will be provided to the Complainant and the Respondent. The summary includes determinations regarding responsibility for violating the Discrimination and Harassment policy

and/or the Honor Code. There are three possible conclusions to an investigation:

- a) A violation of a policy.
- b) There is no violation of the policy, but a determination that the reviewed behavior warrants educational outreach.
- c) No violation of a policy.

Where there is no determination of responsibility for a policy violation, the investigation will be closed and the process concluded. However, the University may still initiate community-based remedial efforts such as, educational sessions.

Additionally, the complaint or conclusion of an investigation may need to be shared with an academic unit for consideration of applicable codes of professional or ethical standards.

2. The Office of Equal Opportunity does not have the authority to impose outcomes upon a finding of a discriminatory act. Where there is a determination of responsibility for a policy violation, the Office of Equal Opportunity will refer the matter to the Outcome Council for a determination of Outcomes.

3. The Outcome Council will review the report issued by the Office of Equal Opportunity, including a determination of responsibility for violating the Discrimination or Harassment policy and/or the Honor Code. If available, the Outcome Council will consider impact statements from the parties in writing. Additionally, if available, the Outcome Council will take into consideration written statements and past disciplinary records, as appropriate. Based on the appropriate information provided and available to the Outcome Council, it will impose Outcomes. Its determinations of Outcomes concerning undergraduate students are forwarded to the Director of the Office of Student Conduct and those regarding graduate students to the Director of Student Services in the Office of Graduate Studies; and thereafter shall be forwarded to the Respondent and Complainant.

C. Appeal

1. Any party may appeal Outcome determinations, pursuant to the appeal criteria. Appeals will only be considered in the following circumstances:

- a) The existence of procedural error(s) so substantial that it would likely alter the investigative findings and ultimate Outcomes;
- b) Presentation of new and significant evidence which was not reasonably available at the time of the initial investigation and would likely alter the investigative findings and ultimate Outcomes; and/or
- c) The Outcomes imposed are substantially disproportionate to the violation.

Merely disagreeing with the decision is not grounds for appeal. The appellate process exists solely to review the procedures used to review allegations of discrimination, harassment, or sexual misconduct, and not to re-hear a matter in its entirety.

2. An appeal will only be considered if submitted to the appellate officer identified by the Outcome Council within five calendar days of the date on the notice of the Outcomes. An extension of these deadlines may be requested if extenuating circumstances arise.
3. If an Appeal is received from either the Complainant or Respondent, or both parties, the other party(ies) involved in the matter will be notified that an appeal has been received. Neither Complainants nor Respondents have the right to view the appeal information unless it is released by the appellate officer. The appellate officer reserves the right to forward any and all portions of the appeal to the other party(ies) as needed in order to address matters raised in the appeal. In such situations, the other party(ies) will be given the opportunity to submit a written response, which will only be considered when provided to the appellate officer within the expressed deadline.
4. If the appellate officer determines that new evidence should be considered, the complaint will be returned to the Office of Equal Opportunity to be reviewed in light of the new information, only.
5. If the appellate officer determines that a material procedural error occurred, it may return the complaint to the Office of Equal Opportunity with instructions to reconvene the investigative process to cure the error. In rare cases where the procedural error cannot be cured by the Office of Equal Opportunity (as in cases of bias), the appellate officer may order a new review of the matter.
6. If the appellate officer determines that the outcomes imposed are disproportionate to the violation, the appellate officer may return the matter to the Outcomes Council with or without recommendations.

7. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student to his/her prior status, recognizing that some opportunities lost may be irretrievable in the short term.

VI. EXTERNAL COMPLAINTS

An individual who believes that he or she has been subjected to unlawful discrimination, harassment, or retaliation has the right to file a complaint with an appropriate local, state, or federal agency, such as the Department of Education Office of Civil Rights, the Equal Employment Opportunity Commission, or the Colorado Civil Rights Division, within the agency's applicable time limits.

In addition, any person who is dissatisfied with the University's internal procedures utilized for handling complaints or who is dissatisfied with the result of the investigation or the sanctions imposed may seek redress through these means to the extent allowed by law. The complainant should be aware that filing a complaint with the Office of Equal Opportunity or any other University office does not extend or postpone the deadline for filing with external agencies.

The fact that an investigation has been filed with an external agency will in no way affect an investigation under these procedures. If a complaint is filed with an external agency or court, the University reserves the right to determine, in its discretion, whether University internal dispute resolution processes should be discontinued or continued separately.