Metropolitan State University of Denver

Procedure for Investigating and Responding to Complaints of Discrimination, Harassment, Sexual Misconduct, Interpersonal Violence, Stalking and Retaliation

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I. Introduction

The Board of Trustees at Metropolitan State University of Denver (“MSU Denver” or “the University”) is committed to maintaining an educational and employment environment free from discrimination, harassment, sexual misconduct, interpersonal violence (including domestic violence and dating violence), stalking and retaliation. MSU Denver shall not engage in unlawful discrimination in employment opportunities or educational services against any person because of race, color, religion, gender, age, national origin, ancestry, disability (mental & physical), veteran, marital status, pregnancy, or sexual orientation.

Procedure for Investigating and Responding to Complaints of Discrimination, Harassment, Sexual Misconduct, Interpersonal Violence, Stalking and Retaliation (“the Procedure”) describes how MSU Denver will investigate and respond to complaints arising under the MSU Denver policy prohibiting discrimination, sexual misconduct, and retaliation (“Policy”). The Procedure is meant to be utilized with the Policy and does not stand alone from the Policy. The Policy defines terms that are utilized throughout the Procedure.

II. Scope

The Policy and the Procedure apply to all members of the MSU Denver community, including, but not limited to students, faculty, staff, administrators, board members,

1 These terms are defined in MSU Denver’s policy prohibiting discrimination, sexual misconduct, and retaliation Sexual Misconduct Policy.
consultants/contractors, vendors, volunteers, guests, visitors, and other third parties engaged in business with MSU Denver. Each member of the MSU Denver community is responsible for complying with all MSU Denver policies and procedures, including the Policy and the Procedure.

The Procedure applies to all conduct that occurs on campus and to conduct that occurs off campus, including electronic conduct, if the conduct:

1) occurs in the context of an educational program or activity of MSU Denver;

2) has continuing adverse effects on campus, including creating possible risk to the greater MSU community; or,

3) has continuing adverse effects in an off-campus program or activity, including but not limited to study abroad, and Detroit Institute of Music Education, Denver ("DIME"), research or internship programs. If an alleged violation of the Policy might impact the greater MSU Denver community and/or is particularly egregious, the Procedure may be followed even in cases where the affected community member does not want MSU Denver to respond to the complaint.

The Procedure describes inquiries or investigations that are separate and apart from any law enforcement investigation. The Executive Director or the Office of Equal Opportunity/Title IX Coordinator (EO Director/Title IX Coordinator) or designee may direct an investigation into complaints of conduct that is prohibited by the Policy, whether or not it also constitutes a crime under applicable law. Such an investigation may concurrently investigate the same set of facts giving rise to both a possible violation of the Policy and applicable law. Reporting to law enforcement is encouraged but not required and does not negate the University’s obligation that may exist to investigate the matter. A concurrent police investigation could delay the timing of any investigation under the Procedure for a reasonable time period. If this occurs, the Complainant and Respondent would be notified of the delay.

Whether a Complainant or Respondent elects to participate in an investigation under the Procedure does not negate MSU Denver’s obligation to conduct a preliminary inquiry to determine whether the alleged conduct occurred in, or has a continuing effect on an MSU Denver educational program, activity or employment.

When the incident involves parties from more than one institution on the Auraria Campus, the institution with disciplinary authority over the Respondent shall be responsible for responding.
III. Reporting

Any person experiencing an immediate safety concern should contact 911 or the Auraria Campus Police Department at 303-556-5000.

Responsible employees, as defined in the Policy, who witness or receive information regarding an allegation of sexual harassment, sexual misconduct, or interpersonal violence shall report all known details to the EO Director/Title IX Coordinator or designee, who is a neutral factfinder. All other members of the MSU Denver community are strongly encouraged to report to the EO Director/Title IX Coordinator or designee any information about sexual harassment, sexual misconduct, or interpersonal violence known to the individual. Sexual harassment, sexual misconduct and/or interpersonal violence should be reported as soon after the incident as possible; however, there is no time limit on reporting. In circumstances where the complaint includes an allegation that a crime was committed, MSU Denver may be required to report the complaint to the police, keeping the name of the impacted party confidential. An affected party may choose to report their complaint to both MSU Denver and seek resolution under the Procedure. They may also report their complaint to law enforcement and pursue criminal charges. Both options may be pursued simultaneously or separately.

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Complaints about Student Conduct also may be submitted to the Dean of Students. Click here to File a Report.

To learn more about Student Sexual Misconduct and Title IX, visit: https://msudenver.edu/deanofstudents/sexualmisconducttitleix/

MSU Denver has an obligation to maintain an environment free of sex discrimination: therefore, Responsible Employees have mandatory reporting and response obligations and may not be able to honor a Complainant’s request for confidentiality. In the event confidentiality cannot be maintained, the University will share information only as necessary and only with people who need to know to fulfill the purposes of the Policy, the Procedure, and applicable law, such as investigators, witnesses, administrators, and the Respondent. MSU Denver will comply with the Family Educational Rights and Privacy Act (“FERPA”) and other confidentiality laws as they apply to investigations.

Students and employees who want to discuss a complaint in strict confidence may use the confidential support resources listed below:

Appendix A – Student Resources
Appendix B – Employee Resources

Reports of alleged violation of the Policy shall be made in good faith. Reports found to be groundless, false, malicious, or in retaliation against an individual may result in disciplinary action against the reporter. The Policy prohibits retaliation in all its forms. Allegations of false reporting, if made in retaliation against the Respondent, witnesses, or anyone involved in an investigation may be separately investigated as a violation of the Policy or the Student Code of Conduct or employment policies.

IV. Interim Measures

Depending on the nature of the complaint, MSU Denver may take any and all interim measures it deems necessary to protect the MSU Denver community or any of its individual members. The Parties involved in allegations of prohibited conduct are entitled to receive information and assistance regarding support services and interim measures whether the Complainant chooses to file a formal complaint with the University and/or report a crime to local law enforcement, or not. Neither Complainant nor Respondent are required to pursue a remedy under the Procedure for the University to respond to a request for interim measures. Parties are encouraged to contact the EO Director/Title IX Coordinator or designee to make a request for interim measures. The University will maintain the confidentiality of any interim measures to the extent that such confidentiality does not impair the ability to provide the interim measure. The purpose of implementation is to address safety concerns and minimize, to the extent reasonable and practical, the impact on the involved Parties.

After receiving a report of prohibited conduct, the EO Director/Title IX Coordinator or designee will contact the parties and encourage them to meet individually to discuss the need for any interim measures and provide appropriate resources both on and off campus. Examples of interim measures with respect to sexual misconduct may include:

A. No-contact orders;
B. Requests for academic adjustments;
C. Changes to dining and transportation arrangements;
D. Adjustments to on-campus working arrangements;
E. Temporary or permanent exclusions from campus; and
F. Limitation or prohibition regarding participating in University activities absent written authorization from an appropriate University official.

V. Expectations and Responsibilities

Through the Procedure, the Complainant and the Respondent can expect:

A. To be provided with information and an explanation regarding the Policy and the Procedure;
B. The option to report the allegation(s) to local law enforcement;
C. Interim measures that are reasonable and practicable;
D. Information regarding and assistance obtaining available resources for medical treatment, or counseling;
E. Written notice of an investigation, including information regarding the conduct alleged and potential Policy violation;
F. Reasonable time to respond to allegations as well as prompt and equitable resolution of complaints under these Procedures;
G. An opportunity to offer information or evidence and identify witnesses relevant to the inquiry or investigation;
H. A potential complainant may choose not to file a complaint or participate in the investigation; however, all other University employees are expected to cooperate with an investigation. Failure to participate may limit but will not eliminate the investigation;
I. The opportunity to have a support person or advisor of their choice, subject to the limitations outlined in section VII.C to attend meetings or proceedings requested or required by the Procedure where the party’s presence is requested;
J. Access to any information used by the decision makers in making a final decision;
K. The opportunity to submit concerns or issues about the process including investigator bias or conflict of interest;
L. Written notice of investigatory outcomes;
M. The opportunity to respond to or appeal an investigative determination and any sanction imposed;
N. Both freedom from and the responsibility to refrain from retaliation; and
O. The responsibility to provide truthful and complete information to the best of one’s ability.

VI. Preliminary Inquiry

After receiving a report of alleged conduct prohibited under the Policy, the EO Director/Title IX Coordinator or designee will conduct a preliminary inquiry. This preliminary inquiry is not an investigation. Rather, it is an initial gathering of information that will enable the University to assess the need to take any immediate action to address the safety and health needs of the Complainant, Respondent and the MSU Denver community. In addition, this provides an opportunity to assess next steps for investigating reported conduct, if necessary. At this stage, the EO Director/Title IX Coordinator or designee will determine if the allegations, assuming they are true, would rise to the level of a violation of the Policy and warrant a full investigation.

This preliminary inquiry may include, but is not limited to, information gathering from the Parties, soliciting written statements, meeting with witnesses, and gathering other information necessary to make decisions as to the appropriate resolution. A determination will be made as to whether an informal resolution or formal investigation is appropriate. Allegations of sexual or interpersonal violence are not eligible for informal resolution. MSU Denver reserves the right to reopen an inquiry at any time.
If a Complainant requests that the process not move forward or refuses to participate, the University will weigh that request against the University’s obligation to address any risk of harm to the Complainant or other individuals in the community and the nature of the incident or conduct at issue. Except in limited circumstances in which a Complainant’s request not to proceed to investigation is granted, the EO Director/Title IX Coordinator will proceed to Informal Resolution. For further information, please see Additional Considerations – Requests for Confidentiality or No Investigation.

During this inquiry and to the extent determined appropriate, the EO Director/Title IX Coordinator and other University officials may conduct a threat assessment to determine the risk of harm to the Parties or to the University community. The EO Director/Title IX Coordinator or designee will use the information gathered to determine how to move forward, be it with no further action, informal resolution or a formal investigation.

VII. Informal Resolution Procedure

The following Informal Resolution Procedure may not be used to resolve allegations of Sexual Assault or interpersonal Violence (domestic violence or dating violence), as each of those terms is defined in the Policy

The informal resolution process is a voluntary process that includes a facilitated conversation with the intention of resolving certain categories of complaints at the lowest level. All Parties and the EO Director/Title IX Coordinator or designee must agree to participate and to the resolution contemplated. The EO Director/Title IX Coordinator or designee will assess the request for informal resolution against the severity of the alleged violation and the potential risks to campus community members. If the EO Coordinator/Title IX Coordinator or designee determines that informal resolution is appropriate, the EO Director/Title IX Coordinator or designee will notify the Parties. The EO Director/Title IX Coordinator will designate a University representative to facilitate a dialogue with the Parties in an attempt to reach a resolution. The complaint will be deemed resolved when the Parties expressly agree to an outcome that is acceptable to them which is approved by the EO Director/Title IX Coordinator in consultation with other appropriate University administrators. Either Party may withdraw from the informal resolution process at any time. The informal resolution process will be conducted in accordance with procedures specified by the EO Director/Title IX Coordinator, as determined in his/her sole discretion.

Pursuing an informal resolution does not preclude later use of a formal investigation if new information becomes available or if the informal resolution does not achieve its intended purpose. The EO Director/Title IX Coordinator or designee may initiate an investigation at any time that the EO Director/Title IX Coordinator deems it appropriate, soley at the discretion of the EO Director/Title IX Coordinator.
VIII. Formal Investigation

A. Notice of an Investigation. If it is determined that the reported conduct could rise to the level of Policy violation and an investigation is required, the EO Director/Title IX Coordinator or designee will prepare a written notice to the Complainant and Respondent that will include:

1. Brief factual description of the allegations, including the portions of the Policy that are alleged to have been violated;
2. Any interim measures in place about which either Party must be made aware;
3. Identity of Complainant and Respondent; (*in limited circumstances where override factors may exist, the University may investigate without a named Complainant);
4. Identity of the Investigator(s);
5. Standard of proof to be used; and
6. Request for the Respondent to contact the Investigator within a prescribed period of time for an interview.

This written notice does not constitute a finding or a determination of responsibility.

B. Standard of Review/Burden of Proof.

The standard of proof required for a finding of responsibility is a preponderance of the evidence. This means that there must be a determination, based on the evidence, that it is "more likely than not" the behavior occurred.

C. Information about Advisors.

In connection with an allegation of sexual misconduct involving sexual or interpersonal violence, other inappropriate sexual contact, or stalking, each Party, may have a single advisor of such Party’s choice present during any stage of investigation under the Policy proceeding, including any related meeting, investigation, interview, or hearing, held pursuant to the Policy and subject to all of the following exceptions. The advisor:

1. cannot be a witness to the incident or circumstances giving rise to the complaint;
2. cannot advise multiple parties to the same complaint;
3. may be an attorney; however, their role will be subject to the same limitations as any other advisor;
4. cannot be an employee of MSU Denver (including faculty, administrative faculty or staff); and
5. can be another student as long as the advisor does not hold a position of supervision, authority or trust over the person they are advising.
Advisors may not respond for the Party they are advising, actively participate in the proceedings, or, otherwise, disrupt the proceedings. However, the relevant Party may ask to suspend any meetings, interviews, or hearings briefly to obtain private consultation related to the proceeding in progress. An advisor is subject to the same privacy and non-retaliation expectations applicable to the Party they are advising. Special requests with regard to scheduling of interviews or reviews, generally will not be made for any advisors if it will unreasonably delay the process. The advisor is not permitted to attend a meeting or proceeding without the prior approval of the EO Director/Title IX Coordinator or designee, determined solely at the discretion of the EO Director/Title IX Coordinator. The University reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation, as determined in the sole discretion of the EO Director/Title IX Coordinator or designee.

D. Designation of Investigator.

The EO Director/Title IX Coordinator or designee will designate at least one investigator to conduct a prompt, fair, and impartial investigation of the reported conduct and prepare a report of investigative findings (the “Investigative Report”). At the University’s discretion, the investigator may be an internal or an external investigator and more than one investigator may be assigned. All investigators – internal or external – will be selected from a group of investigators with specific training and experience investigating allegations of discrimination, sexual or interpersonal violence, sexual harassment, and stalking. The investigation process will be thorough, unbiased and impartial. The EO Director/Title IX Coordinator or designee will provide the Parties with the name of the Investigator(s) in the Notice of Investigation. As soon as possible, but no later than three (3) business days after delivery of the identity of the Investigator(s), the Parties should inform the EO Director/Title IX Coordinator (in writing) of any conflicts of interest with regard to the selected Investigator(s). The EO Director/Title IX Coordinator will consider the nature of the conflict and determine if different individuals should be assigned as Investigator(s). The EO Director/Title IX Coordinator’s decision regarding any conflicts is subject to his or her sole discretion and final. The EO Director/Title IX Coordinator may consult with other University personnel to discuss conflicts of interest.

E. Nature of the Investigation.

The investigation will normally consist of separate interviews with the Complainant, the Respondent, and any witnesses whom the Investigator(s) believes may provide necessary and relevant information. The investigation may include the review of documentation or other items relevant to the reported conduct. The Investigator(s) will provide the Parties with written notice of meetings at which their presence is required. In all cases, the Investigator(s) may be present for these meetings as articulated in section VIII.C. of this Procedure.
have the independent authority to evaluate the relevance of witnesses and other information offered by the Parties and to assess the credibility of witnesses interviewed. If an investigation by law enforcement is being conducted concurrently with the MSU Denver investigation, the investigators may share relevant information.

F. The Parties' Identification of Potential Witnesses and Documentation.

During the investigation, both Parties will have an equal opportunity to be heard, submit information, and identify witnesses who may have relevant information. The Parties should identify any witnesses the Party wants the Investigator(s) to interview and provide any other information as early in the process as possible, but such information must be received before the investigation is completed. The Parties may also provide the Investigator(s) with questions they would like the Investigator(s) to ask the other Party. All information and questions described in this section must be presented to the Investigator(s) in writing and include a brief description as to how the persons, documents, and/or items are relevant to the investigation. This information must be provided to the Investigator(s) during the investigation. Proposed witnesses must have observed the incident at issue or have information relevant to the incident and cannot be offered solely to provide information about a Party's character. The Investigator(s) have authority to determine what witnesses, information and/or questions are likely to provide information relevant to the investigation.

G. Investigation Prohibitions.

Neither Party will be permitted to directly question or cross-examine the other Party directly during the investigation or disciplinary proceedings; questions for the other Party may be submitted to the Investigator(s) as described above. Moreover, the Investigator(s) generally will not gather or consider information related to either Party's sexual history outside of the conduct in question except as relevant to the alleged policy violation, as determined in the sole discretion of the Investigator(s).

H. Failure to Participate.

The EO Director/Title IX Coordinator or designee will determine whether an investigation shall proceed without the participation of the Complainant. If a Respondent chooses not to participate in the investigation after receiving adequate notice of the investigation, the investigation shall still proceed and a disciplinary decision may be reached based on the information gathered in the course of the investigation, even without the Respondent's participation.
I. **Deadlines/Extensions of Time.**

It is the expectation that all Parties adhere to the deadlines requested by the EO Director/Title IX Coordinator or designee. Extensions of time will be granted in circumstances where there is a demonstrated need. This shall be done in writing and each Party will be notified of the extension granted.

J. **Written Evidence Summary.**

At the conclusion of the investigation, a Written Evidence Summary will be drafted for the Complainant and Respondent to review. This document will contain the relevant facts gathered by the investigator with witness names redacted. Each Party will have 5 business days to review the investigative file and may respond, in writing, to the document. If additional information is provided to the Investigator(s) at this time that was not previously known and warrants further investigation, the Investigator(s) will notify the Parties and then provide an amended Written Evidence Summary.

K. **Investigative Report.**

At the conclusion of an investigation (including the Written Evidence Summary step), the Investigator(s) shall prepare a written investigative report that will include a statement of factual findings and a determination as to whether or not there was a policy violation. The Investigator(s) may also submit the investigative report to the Office of General Counsel for review for legal sufficiency.

L. **Notice of Finding.**

The EO Director/Title IX Coordinator or designee, shall advise the Complainant and Respondent simultaneously in writing of the result or outcome of any investigation conducted under the Procedure. A copy of the final, redacted investigative report shall be made available for in-person review by the Complainant and Respondent. In limited circumstances, the EO Director/Title IX Coordinator or designee may make available redacted copies of the investigative report and may be shared with those individuals with a need to know, including but not limited to, the Complainant, Respondent, Respondent’s supervisor, and Respondent’s appointing/disciplinary authority as applicable for employees, or the Dean of Students or Vice President for Student Affairs for students.

IX. **Determination of Sanctions**

A. **Students.** Sanctions regarding students and student groups, organizations and teams will be determined by the Dean of Students Office. The Conduct Officer

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3 The investigative file will contain witness identities, therefore, both the Complainant and Respondent will have access to the witness names during file review.
will determine if Student Code of Conduct charges will be pursued. If a student is charged with a violation of the Student Code of Conduct and found responsible, potential sanctions may result in a range from a warning through suspension or expulsion. For more information regarding the Student Conduct Process, please refer to Article IV: Conduct Process in the Student Code of Conduct. The Dean of Students Office will provide the EO Director/Title IX Coordinator with notification of the sanction(s) imposed.

B. Teaching Faculty. The EO Director/Title IX Coordinator or designee will provide the Dean of the College/School with a copy of the Investigative Report. The Dean will determine an appropriate sanction(s). If the Dean determines that a sanction of dismissal is recommended, the sanction will be reviewed under Section VII.B.7(b) of the faculty handbook. The Dean will then provide written notification to the EO Director/Title IX Coordinator of the action taken with regard to the faculty member.

C. Non-Faculty Employees. Sanctions regarding non-faculty employees, as defined by the University, will be determined by the Employee’s Vice President (or his/her designee) or in the case of an employee in the Athletics Department or who reports to the President, the President’s designee. The Director of Human Resources (or his/her designee) will be consulted on any sanction. The EO Director/Title IX Coordinator will provide such official(s) with a copy of the Investigative Report. Notice will be provided to the EO Director/Title IX Coordinator of sanction(s) imposed.

D. Third Parties. Sanctions regarding outside vendors, independent contractors and other third parties will be determined by the Director of Human Resources (or his/her designee). The EO Director/Title IX Coordinator will provide such official with a copy of the Investigative Report and will be notified of any sanction(s) imposed.

E. Types of Sanctions.

1. Employees, including Faculty Members. Sanctions imposed with respect to Respondents who are employees or faculty members may include, but are not limited to, one or more of the following: dismissal from employment, non-renewal of an employment contract, suspension, probation, reprimand, warning, training and/or counseling, no-contact order, among others.

2. Students. Sanctions may include, but are not limited to, one or more of the following: expulsion, suspension, probation, reprimand, warning, restitution, education/counseling, no-contact order, restriction from extracurricular programs or activities, loss of leadership opportunity or positions in activities, housing restriction/relocation, and/or loss or restriction from MSU Denver employment.

3. Student Groups, Organizations and Teams. Sanctions for groups, organizations and teams may include suspension, revocation or denial of
registration or recognition, probation, reprimand, warning, restitution, education, restriction, among other possible sanctions.

4. Considerations. In determining an appropriate sanction, the University may take into account any one or all of the following:

   i. The nature and circumstances of the misconduct.
   ii. The impact of the misconduct on the Complainant.
   iii. The impact of the misconduct on the University community.
   iv. The disciplinary history of the Party deemed responsible.
   v. Any other mitigating or aggravating circumstances in order to reach a fair and appropriate resolution in each case.
   vi. Range of sanctions typically imposed for similar violations.

5. Additional Remedies. The sanctioning authority may also identify additional remedies to address the effects of the conduct on the impacted Party. Remedies may include extending or making permanent any interim or safety measures. If a Complainant or Respondent declined or did not take advantage of a specific service or resource previously offered, the University may re-offer the service as applicable or necessary. The EO Director/Title IX Coordinator or designee also may consider broader remedial action for the campus community, such as increased supervision or monitoring, targeted or increased education and prevention efforts, and review of policies and procedures. In addition, irrespective of the finding under the Procedure, the EO Director/Title IX Coordinator or designee may refer any matter raised, but not addressed hereunder, that may potentially violate any other University policy, rule, or procedure to the appropriate University officials to address such matters.

X. Notification of Investigation Outcome

Upon completion of the investigation including sanctioning, as necessary, the EO Director/Title IX Coordinator or designee will inform the Parties simultaneously and in writing of (i) the outcome of the disciplinary proceeding; and (ii) the procedures for either Party to appeal the result of the disciplinary proceeding. The EO Director/Title IX Coordinator or designee will also inform other University officials with a legitimate educational or employment interest about the outcome of the finding. Notice to these other individuals will be accompanied with a request that the information should remain confidential except in situations in which disclosure is necessary to protect the safety of the community.

XI. Appeal

Students wishing to appeal a Title IX outcome/finding or sanction(s) shall adhere to the Student Conduct Appeal Process found on the Dean of Student’s web site.

Employees may contact the office of Human Resources for more information regarding disciplinary appeals.