

Metropolitan State University of Denver

Procedure for Investigating and Responding to Complaints of Discrimination, 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.¹ MSU Denver prohibits discrimination in employment opportunities or educational services against any person because of:

- 1. Race;
- 2. Creed;
- 3. Color;
- 4. Sex;
- 5. Gender;
- 6. Gender Identity or Expression;
- 7. Pregnancy;
- 8. National Origin;
- 9. Nationality;
- 10. Age;
- 11. Ancestry;
- 12. Marital, Domestic Partnership, or Civil Union Status;
- 13. Religion;
- 14. Affectional or Sexual Orientation;
- 15. Atypical Hereditary Cellular or Blood Trait;
- 16. Genetic Information;
- 17. Liability for Military Service;
- 18. Protected Veteran Status;

¹ These terms are defined in MSU Denver's policy prohibiting discrimination, and retaliation (the "Policy").

19. Mental or Physical Disability, including perceived disability, AIDS and HIV-related illnesses;
20. Harassment (related to any of the forgoing categories);
21. Retaliation for filing a complaint of, or participating in an investigation of discrimination and harassment; and/or
22. Any other category protected by law.

This procedure for Investigating and Responding to Complaints of Discrimination, Harassment, and Retaliation (“the Procedure”) describes how MSU Denver will investigate and respond to complaints arising under the Policy. The Procedure is meant to be utilized with the Policy and not apart 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, 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, which includes all building and properties owned, utilized, or occupied by MSU Denver, 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;
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; or
4. is carried out by an MSU Denver employee that is “on the clock,” or working for MSU Denver at the time the conduct occurred.

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 warrants an investigation under the circumstances described above.

The Procedure describes inquiries or investigations that are separate and apart from any law enforcement investigation. The Executive Director of the Office of Equal Opportunity/Title IX Coordinator (OEO 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 a possible violation of the Policy and applicable law. Under certain circumstances, reporting to law enforcement may be required, but reporting to law enforcement does not negate the University’s separate 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.

When the incident involves parties from more than one institution on the Auraria Campus, the institution with disciplinary authority over the Respondent will usually be the primary responder or investigator; however, each institution will exercise its jurisdictional discretion, as it deems appropriate.

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 discrimination or retaliation shall report immediately all known details to a supervisor and/or the OEO 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 OEO Director/Title IX Coordinator or designee. Discrimination and retaliation should be reported as soon as possible.

In circumstances where the complaint includes an allegation that a crime was committed, MSU Denver may be required to report such complaint to the police. An affected party may choose to report their complaint to MSU Denver and seek resolution under the Procedure and 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 and concerns about student welfare also may be submitted to the Dean of Students.

MSU Denver has an obligation to maintain an environment free of discrimination and retaliation; 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.

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

IV. Interim Measures

Depending on the nature of the complaint, MSU Denver may take 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 OEO Director/Title IX Coordinator or designee, or the Dean of Students, in the case of students, to make a request for interim measures. Whether they are requested or not, the OEO/Title IX Coordinator will recommend interim measures if they are needed. Interim measures are approved and carried out by supervisors, in the case of employees, and by the Dean of Students, in the case of students.

The University will maintain the confidentiality of any interim measures to the extent possible and 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 or complaint of prohibited conduct, the OEO Director/Title IX Coordinator or designee, will contact the parties to discuss the need for interim measures and provide a description of appropriate resources, on and off campus. Examples of interim measures may include, but are not limited to:

- a. No-contact orders;
- b. Academic adjustments;
- c. Changes to dining and transportation arrangements;
- d. Adjustments to on-campus working arrangements;
- e. Temporary or permanent exclusions from campus; and/or
- f. Limitation or prohibition regarding participating in University activities absent written authorization from an appropriate University official.

V. Expectations During an Investigation

Complainants and the Respondents will be:

- a. Provided with information and explanations regarding the Policy and the Procedure;
- b. Apprised of their options to report the allegation(s) to local law enforcement;
- c. Informed of interim measures that are reasonable and practicable;
- d. Given information and assistance for obtaining medical treatment and counseling;
- e. Provided written notice of an investigation with information regarding the conduct alleged and potential Policy violation;
- f. Allowed reasonable time to respond to allegations;
- g. Given an opportunity to offer information or evidence and identify witnesses relevant to the inquiry or investigation;
- h. In the case of students, will be reminded of the voluntary nature of filing complaints and participating in investigations;
- i. In the case of employees, will be reminded that all University employees are expected to cooperate with an investigation;
- j. Accorded the opportunity to have a support person or advisor of their choice (subject to the limitations outlined in section VIII.C) to attend meetings or proceedings requested or required by the Procedure where the party's presence is

- requested;
- k. Provided the opportunity to review evidence and the draft investigative report, and make comments on the report as well as the investigation;
- l. Given the opportunity to submit concerns or issues about the process including investigator bias or conflict of interest;
- m. Provided written notice of investigatory outcomes and a copy of any investigative report or letter or memorandum, in lieu of a report; and
- n. Allowed the opportunity to respond to or appeal an investigative determination and any sanction imposed.

VI. Preliminary Inquiry

After receiving a report of alleged conduct prohibited under the Policy, the OEO Director/Title IX Coordinator or designee will conduct a preliminary inquiry, which is an initial gathering of information to enable the University to assess the need for immediate action regarding the safety and health needs of the parties and the MSU Denver community. Also, the OEO 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 an 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. A determination will be made as to whether an informal resolution or an investigation is appropriate. Allegations of sexual or interpersonal violence shall not be subject to informal resolution. MSU Denver reserves the right to reopen an inquiry at any time. The OEO Director/Title IX Coordinator may open an investigation under his or her own authority. 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. For further information, please see [Additional Considerations – Requests for Confidentiality or No Investigation](#).

During this inquiry and to the extent determined appropriate, the OEO 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 OEO 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 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 OEO Director/Title IX Coordinator or designee must agree to the procedure and to the resolution contemplated. The OEO 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 OEO Director /Title IX Coordinator or designee determines that informal resolution is appropriate, the OEO Director/Title IX Coordinator or designee will notify the Parties. The OEO Director/Title IX Coordinator will designate a University representative to facilitate a dialogue with the Parties in an attempt to reach a resolution. The OEO Director/Title IX Coordinator will not be participant in the procedure.

The Complaint will be deemed resolved when the Parties expressly agree to an outcome that is acceptable to them, and which is accepted by the OEO 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 OEO 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 OEO Director/Title IX Coordinator or designee may initiate an investigation at any time that the OEO Director/Title IX Coordinator deems it appropriate, solely at the discretion of the OEO Director/Title IX Coordinator, which is why it would be a conflict of interest for the OEO Director/Title IX Coordinator to participate in the Informal Resolution Procedure.

VIII. 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 warranted, the OEO Director/Title IX Coordinator or designee will prepare a written notice to the Complainant and Respondent that will include:

- i. Brief factual description of the allegations, including the portions of the Policy that are alleged to have been violated;
- ii. Any interim measures that may have been approved;
- iii. Identity of Complainant and Respondent;
- iv. Identity of the Investigator(s);
- v. Standard of proof to be used; and
- vi. 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 review/burden of proof required for a finding of responsibility is a preponderance of the evidence, meaning that it is “more likely than not” that the alleged behavior occurred.

c. Information about Advisors.

In all investigations, meetings, or interviews conducted by OEO, each party, may have a single advisor present, consistent with the Policy and subject to all of the following. The advisor:

- i. cannot be a witness to the incident or circumstances giving rise to the complaint;
- ii. cannot advise multiple parties to the same complaint;
- iii. may be an attorney; however, their role will be subject to the same limitations as any other advisor;
- iv. can be another student; and
- v. 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 OEO Director/Title IX Coordinator or designee, determined solely at the discretion of the OEO 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 OEO Director/Title IX Coordinator or designee.

d. Designation of Investigator.

The OEO 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 relevant training and experience. The investigation process will be thorough, unbiased, and impartial. The OEO 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 OEO Director/Title IX Coordinator (in writing) of any potential conflicts of interest with regard to the selected Investigator(s). The OEO Director/Title IX Coordinator will consider the nature of the conflict and determine if different individuals should be assigned as Investigator(s). The OEO Director/Title IX Coordinator's decision regarding any conflicts is subject to his or her sole discretion and is final. The OEO 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) 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 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, in their sole discretion, 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 during the investigation. Questions for the other Party may be submitted to the Investigator(s) as described above.

h. Failure to Participate.

The OEO Director/Title IX Coordinator or designee will determine whether an investigation shall proceed without the participation of the Complainant, which will be based primarily on whether critical findings of fact are possible 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.

OEO expects that all Parties adhere to the deadlines requested by the OEO Director/Title IX Coordinator or designee. Extensions of time will be granted, at the sole discretion of the OEO Director/Title IX Coordinator or designee, in circumstances where there is a demonstrated need and the request is reasonable. This shall be done in writing and each Party will be notified of the extension granted.

j. Draft Investigative Report and Investigative File.

At the conclusion of the investigation, a draft Investigative Report will be completed, and provided to the Complainant and Respondent to review and comment. The Parties also will be permitted to review all evidence gathered, with witness names redacted. Each Party will have five (5) business days to review the investigative file and may respond in

writing, only. If additional information is provided to the Investigator(s) at this time that was not previously known and, at the sole discretion of the Investigator, warrants further investigation, the Investigator(s) will notify the Parties.

If the investigative report is revised after receipt of Party comments, the parties will be provided further opportunity to comment on the document.

k. Final Investigative Report.

At the conclusion of an investigation, the Investigator(s) shall prepare a written investigative report, memorandum or letter in lieu of a 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. Final Investigative Report.

The OEO 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 investigative report shall be provided to the Complainant and Respondent. Copies of the Investigative Report will be provided to other MSU Denver personnel with a need to know, including, but not limited to, relevant academic and work supervisors, Dean of Students, Office of Student Conduct, and Vice President for Student Affairs.

IX. Determination of Sanctions

- a. Students. The Dean of Students Office/Student Conduct Office will receive a copy of the Final Investigative Report. Based on the findings in the Final Investigation Report, the imposition of sanctions or disciplinary action for students and student groups, student organizations and student teams will be determined by the Dean of Students Office. The Dean of Students Office/Student Conduct Office 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 OEO Director/Title IX Coordinator with notification of the sanction(s) imposed.
- b. Faculty. The OEO Director/Title IX Coordinator or designee will provide the Department Chair, College/School Dean, and the Provost with a copy of the Investigative Report. The Department Chair, Dean of the College/School, and/or the Provost will be responsible for determining whether any sanctions should be imposed and/or disciplinary action taken based on the findings in the Investigative Report. The OEO Director/Title IX Coordinator will request that the Chair, Dean, or Provost provide written notification to the OEO Director/Title IX Coordinator of any further administrative or disciplinary action taken with regard to the faculty member.

- c. Non-Faculty Employees. The OEO Director/Title IX Coordinator or designee will provide copies of the Investigative Report to the employee's Supervisor and/or 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 OEO Director/Title IX Coordinator will request of such personnel that they provide to the OEO Director/Title IX Coordinator notice of any administrative or disciplinary action taken.
- d. Third Parties. The OEO Director/Title IX Coordinator will provide copies of the Investigative Report to the Director of Human Resources (or his/her designee) and other University personnel for investigations involving outside vendors, independent contractors and other third parties. The OEO Director/Title IX Coordinator will request that such personnel provide notification of any further administrative or disciplinary action taken.
- e. Sanctions. OEO is a neutral, fact-finding investigative office, only. It does not involve itself in determining sanctions or disciplinary action for anyone. The following information about sanctions is provided for informational purposes only. For comments or questions about sanctions, in the case of students, the Office of Student Conduct should be consulted. In the case of faculty, the Office of the Provost should be consulted. In the case of other staff, Human Resources should be consulted.
 - i. 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.
 - ii. 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.
 - iii. 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.
 - iv. Considerations: In determining an appropriate sanction, the University may take into account any one or all of the following:
 - 1. The nature and circumstances of the misconduct.
 - 2. The impact of the misconduct on the Complainant.
 - 3. The impact of the misconduct on the University community.
 - 4. The disciplinary history of the Party deemed responsible.
 - 5. Any other mitigating or aggravating circumstances in order to reach a fair and appropriate resolution in each case.
 - 6. Range of sanctions typically imposed for similar violations.

X. Appeal

Process for Student Appeals:

Students wishing to appeal an outcome shall adhere to the Student Conduct Appeal Process found on the [Dean of Student's web site](#).

Process for Employee Appeals:

Either an employee Complainant or employee respondent may file a written appeal of the result or outcome (hereafter, "the investigative determination") of any investigation conducted under the Procedure for Investigating and Responding to Complaints of Discrimination. All appeals must be made in accordance with the process outlined below.

Basis for Appeal

An appeal may be filed only to determine:

- 1) Whether procedural irregularities substantially affected the investigative determination; OR
- 2) If new evidence is now available that substantially could affect the outcome of the matter, which was not reasonably available at the time the investigative determination was made.

How to File an Appeal

Appeals must be submitted in writing to the original investigator within seven (7) calendar days after the investigative determination is issued. The appeal must indicate the specific basis for the appeal (see above), supporting arguments and documentation, and any other relevant information the appealing party wishes to include. The appealing party should be aware that all appeals are documentary reviews, and no interviews or additional investigation will be conducted. Generally, appeals are determined solely on the merits of the documents submitted. Appeal documents therefore should be as complete and succinct as possible. All sanctions that may be imposed because of the investigative determination of the case will not go into effect until either the deadline for filing an appeal passes and no appeal is filed or, if a timely appeal is filed, the appeal is decided, whichever comes first. The appealing party may not present any new evidence unless the party can demonstrate that it could not, with reasonable diligence, have been discovered or produced during the course of the investigation.

Notification and Opportunity to Respond

If an appeal is received, the original investigator will notify the other party or parties to the original complaint in writing, and the party or parties will be provided seven (7) calendar days to respond in writing to the appeal. The response should be sent to the original investigator. No party is required to respond to an appeal. Not responding to an appeal does not imply agreement with the appeal.

Appeal Decisions

After the submission of all documentation or the seven-day deadline for response has passed, the investigator will transfer to the President or her designee(s) (hereafter, "the appellate officer(s)"), who will consider all documentation received. Upon review of the appeal and all documentation received, the appellate officer(s) may:

- 1) Uphold the initial decision in its entirety;
- 2) Direct that the original investigator reconsiders the investigative determination including the new evidence; OR
- 3) Direct that a new investigation be conducted (by either the original investigator or different investigators, whichever approach may be determined at the sole discretion of

the appellate officer(s)) conducted in accordance with the processes outlined under the Procedure for Investigating and Responding to Complaints of Discrimination.

The appellate officer(s) shall not make new findings of fact. The appellate officer(s) shall review all documentation submitted, make the final decision upon appeal, and concurrently provide the parties with a written Notice of Appeal Decision within 21 (twenty-one) calendar days of receiving all final documentation related to the appeal.