OEO/Title IX Coordinator's Title IX Procedures

1. Introduction

Metropolitan State University of Denver ("MSU Denver" or the "University") prohibits discrimination on the basis of sex in the education programs and all activities that it operates, and Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-88) and implementing regulations (34 C.F.R. Part 106)("Title IX") prohibits the University from such discrimination. Such prohibition extends to admissions and employment. Inquiries regarding the application of Title IX and implementing regulations may be referred to the Title IX Coordinator identified herein below, to the Assistant Secretary of the U.S. Department of Education, or both.

These procedures (hereinafter, the "Procedures") shall be read in conjunction with, and are implemented in accordance with, the University's Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Title IX Violations, and Retaliation (the "Title IX Policy" or the "Policy") and is intended to be consistent with Title IX. These Procedures only apply to alleged conduct that, if proved true, would constitute a Title IX violation. All other forms of discrimination, including sexual harassment and other forms of sexual misconduct prohibited by the Policy that, if proved true, would be considered discrimination, but would not be considered violations of Title IX, are addressed separately by the OEO's Anti-Discrimination Procedures.

2. Definitions

The following definitions apply to this Procedure:

- *Complainant* means an individual who alleges that they have been subjected to conduct that violates the Policy.
- *Respondent* means an individual who is alleged to have engaged in conduct that violates the Policy.
- *Education Program or Activity* means locations, events, classes or circumstances over which the University exercised substantial control over the Respondent and the context in which the alleged violation of the Policy occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University.
- *Formal Complaint* means a document filed by a Complainant, or signed by the Title IX Coordinator, alleging a violation of the Policy against a Respondent or multiple Respondents and requesting that the University investigate the allegation(s).
- *Mandatory Reporter* means an employee of the University who has the obligation to report an alleged violation of the Policy to the Title IX

Coordinator and is further defined in the University's Policy.

- *Party* means Complainant or Respondent.
- *Retaliation* is defined in the University's Policy and means intimidation, threats, coercion, slander, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulation, 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.
- *Sexual Harassment* is specifically defined in the University's Policy.
- *Supportive Measures* is defined in the University's Policy and means non-disciplinary, non-punitive individualized services offered to the Complainant or Respondent. Supportive Measures are discussed in further detail in Section 5 below.
- *Title IX Coordinator* is the individual listed below. 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. Name and contact information are posted in accordance with Title IX regulation and will be updated on a regular basis: Camille Torres, Executive Director, Office of Equal Opportunity & Title IX Coordinator, Jordan Student Success Building Suite 306, Phone: 303-615-0036, Email: ctorre36@msudenver.edu

3. Jurisdiction/Applicability

The provisions of this Procedure apply to all reported instances of an alleged violation of the Policy that occurs while the Complainant is in the United States of America and is participating in, or attempting to participate in, an Education Program or Activity of the University.

4. Reports of Policy Violations, Including Alleged Sexual Harassment

At any time, any person may report a violation of the Policy (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.

Any Mandatory Reporter who receives a report of alleged violation of the Policy must promptly report the alleged violation to the Title IX Coordinator.

Upon receiving a report of the alleged violation, the Title IX Coordinator will promptly:

i. Inform the Complainant of the method for filing a Formal Complaint.
ii. Inform the Complainant of the availability of Supportive Measures with or without the filing of a formal complaint.
iii. Offer Supportive Measures to the Complainant and the Respondent, as appropriate, and as detailed in Section 5 below.

5. Supportive Measures

The Title IX Coordinator, or designee, will ensure that Supportive Measures are offered to the Complainant and the Respondent, as appropriate and 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 when no Formal Complaint has been filed.

The purpose of Supportive Measures is to restore or preserve equal access to the Institution'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 University's educational environment, as well as measures designed to deter sexual harassment and other potential Policy violations.

Supportive Measures may include, but are not limited to:

i. Counseling;
ii. Extensions of deadlines or other course-related adjustments;
iii. Modifications of work or class schedules;
iv. Campus escort services;
v. Mutual restrictions on contact between the Parties;
vi. Changes in work space locations;
vii. Leaves of absence;
viii. Increased security and monitoring of certain areas of the campus; and
ix. Other similar measures.

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

The University may remove a Respondent (including, but not limited to, interim suspension, or issuance of a persona non-grata letter) from its Education Program or Activity on an emergency basis if the University:

i. Undertakes an individualized safety and risk analysis;
ii. Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of a Policy violation

justifies removal; and

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

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

The Institution will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the Supportive Measures.

The Title IX Coordinator, or designee, in conjunction with the University's Student Services office, is responsible for coordinating the effective implementation of Supportive Measures.

6. Fair and Equitable Process

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 Complainant(s) or Respondent(s) generally, or an individual Complainant or Respondent.

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

A Respondent is presumed not responsible for alleged conduct until a determination regarding responsibility is made at the conclusion of the Formal Resolution Process outlined in Section 8, below.

Throughout the processes described herein, the University will objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence.

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

The informal resolution process is voluntary. It is designed to resolve complaints without a hearing while meeting the needs and interests of the parties. It is available only after a formal complaint has been filed and at any time during the investigation. All parties and the Title IX

Coordinator or designee must agree in writing to participate for an informal resolution procedure to be used, and all parties must agree in writing to the proposed resolution. If the parties are unable to agree, or if any Party chooses not to engage in or to withdraw from the informal resolution procedure before it concludes, then the informal resolution procedure will terminate, and formal grievance procedures will be followed.

Informal resolution is not available under any of the following circumstances:

- There has not been a formal complaint made by the Impacted Party or signed by the Title IX Coordinator.
- The allegations in the formal complaint include that a MSU Denver employee sexually harassed a MSU Denver student.

The 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 Title IX Coordinator or designee determines that informal resolution is appropriate, the Title IX Coordinator or designee will notify the parties. The written notification will include disclosure of:

i. The allegations in the formal complaint;
ii. The requirements of the informal resolution process, including the circumstances under which the parties would be precluded from resuming a formal complaint arising from the same allegations;
iii. The caution that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process;
iv. The consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The Title IX Coordinator or designee will facilitate a dialogue with the parties to seek 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 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 Title IX Coordinator, as determined in the Title IX Coordinator's 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 Title IX Coordinator or designee may initiate an investigation at any time that the Title IX Coordinator deems it appropriate, solely at the discretion of the Title IX Coordinator.

8. Formal Resolution Process

A Formal Complaint may be brought to the attention of the Title IX Coordinator by contacting:

Camille Torres
Executive Director, Office of Equal Opportunity Title IX Coordinator
Jordan Student Success Building Suite 306
Phone: 303-615-0036 Email: ctorre36@msudenver.edu

The University will consider for investigation the allegations in a Formal Complaint.

Dismissal or Reassign

The Title IX Coordinator will dismiss or reassign a Formal Complaint, and no investigation will be conducted under this Procedure, if:

i. The conduct alleged in the Formal Complaint would not constitute Sexual Harassment even if proved; or
ii. The conduct alleged in the Formal Complaint did not occur within the Jurisdiction/Applicability of the Policy, as described in Section 3 above.

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

i. The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
ii. The Respondent is no longer enrolled or employed by the Institution; or
iii. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

The dismissal or reassignment of a Formal Complaint under Section 8 of these Procedures does not preclude the University from conducting an investigation or taking action under other applicable policies or procedures (including, but not limited to, the OEO Anti-Discrimination Procedures) with regard to conduct that is not specifically subject to these Procedures.

Upon dismissal or reassign of the Formal Complaint or any allegations therein, the Title IX Coordinator will promptly send written notice of the dismissal or reassign and the reasons therefor simultaneously to the Parties.

Consolidation

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

The University will make a good faith effort to complete the Formal Resolution process, including the hearing but excluding appeals, within an average of sixty to ninety days, without jeopardizing the rights of a Party.

Written Notice

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 at least five days before any initial interview. The notice of allegations will include (at a minimum):

i. Notice of the Policy and the processes within these Procedures, including the informal resolution process described in Section 7 above;
ii. The identities of the Parties involved, if known;
iii. The conduct allegedly constituting sexual harassment;
iv. The date and location of the incident, if known;
v. A statement that the Respondent is presumed not responsible for the alleged conduct;
vi. A statement that a determination regarding responsibility is made at the conclusion of the formal resolution process;
vii. A statement that Parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
viii. A statement that Parties may inspect and review evidence;
ix. A statement that, pursuant University policies and the Student Code of Conduct, knowingly making false statements or knowingly submitting false information during this process is prohibited and may be subject to sanction or discipline.

If, during the course of an investigation, the University 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.

9. Advisor

Each Party has the right to have an advisor of their choice, but Parties are not required to have an advisor.

The advisor may be, but need not be, an attorney.

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 University 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 in Section 14 below, a Party's advisor may not speak on behalf of the Party.

10. Investigation

The University will consider for investigation the allegations in a Formal Complaint.

The University, 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.

The University 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 University obtains that Party's voluntary written consent to do so for the resolution process.

During the investigation, each Party has an opportunity to present witnesses and evidence to the investigator.

The investigator will provide 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, usually within 10 days of receipt of the Complaint.

Prior to conclusion of the investigation, the Title IX Coordinator or the investigator will send and/or allow in person inspection to each Party and to each Party's advisor, if any, all evidence obtained as part of the investigation, whether or not the University intends to rely on such evidence in reaching a determination regarding responsibility, that is directly related to the allegations raised in the Formal Complaint.

Each Party may submit a written response, which the investigator will consider prior to conclusion of the investigation and completion of the investigative report.

i. The written response, if any, must be submitted to the Title IX Coordinator or the investigator, as appropriate by the deadline designated by the Title IX Coordinator or the investigator, which will be at least ten business days after the Title IX Coordinator or the investigator sends the evidence to the Party, unless the deadline is extended for good cause.

The investigator will create an investigative report that fairly summarizes relevant evidence.

i. The investigator must conduct an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.
ii. 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.
iii. Each Party may submit a written response, which the Title IX Coordinator will submit to the hearing officer ("Hearing Officer" as described below) for consideration at the hearing.
iv. 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.

11. Hearing

General Conduct of the Hearing

The University will assign a Hearing Officer to conduct and preside over the Title IX hearing. The Hearing Officer serves as the decision maker and will be the individual making the final decision of responsibility at the hearing. The Hearing Officer may not be the Title IX Coordinator or Investigator.

The Hearing Officer will conduct a live hearing. Prior to the hearing, the Hearing Officer will review the investigative report and the written responses provided by the Parties, if any.

The Title IX Coordinator and/or the Hearing Officer will provide both parties with a copy of Hearing Procedures five business days prior to the hearing. The Hearing Procedures will govern the conduct of the hearing and will describe how the hearing will proceed.

The hearing may occur in person or virtually, at the University's sole discretion. If either Party submits a request no later than ten business 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.

Hearings will be recorded. Recordings or transcripts will be available to the Parties for inspection and review.

12. Standard of Evidence

The determination of responsibility will be made by the Hearing Officer using the preponderance of the evidence standard.

Preponderance of evidence means that the evidence shows it is more likely than not that the conduct occurred or, stated another way, that there is a greater than 50% chance that the claim is true.

13 Relevant Evidence Considered

In making a determination of responsibility or sanctions, the Hearing Officer 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.

The Hearing Officer will not consider:

Evidence about the Complainant's sexual predisposition or prior sexual behavior, except that the Hearing Officer may consider:

i. 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
ii. Evidence concerning specific incidents of the Complainant's prior sexual behavior with respect to the Respondent, when offered to prove consent.

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.

The Hearing Officer 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.

Information protected under a legally recognized privilege, unless the person holding

such privilege has waived the privilege.

The Hearing Officer 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.

14. Witness Examination

The Hearing Officer will allow each Party's advisor to examine witnesses.

Cross examination may not be conducted by either Party. Cross examination may only be conducted by an advisor acting on a Party's behalf.

If a Party wishes to ask cross examination questions of a Party or witness and does not have an advisor, the University will select and provide an advisor to the Party, free of charge, for the limited purpose of conducting cross examination.

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

15. Written Determination

After considering the investigative report, including any Party's written response to the investigative report, and all relevant evidence presented at the hearing, the Hearing Officer will issue a written determination.

The Title IX Coordinator will provide the written determination simultaneously to the Parties.

The written determination will include:

i. Identification of the allegations potentially constituting Sexual Harassment;
ii. 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;
iii. Findings of fact supporting the determination;
iv. Conclusions regarding the application of the Policy to the facts;
v. A statement of, and rationale for, the result as to each allegation, including:
vi. A determination regarding responsibility;
vii. Any disciplinary sanctions imposed on the Respondent;
viii. Whether remedies will be provided to the Complainant; and

ix. Procedures and permissible bases for the Parties to appeal.

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

16. Appeal

Appealable Issues:

Either Party may appeal:

i. Dismissal or reassign of a Formal Complaint or any allegations therein; or
ii. A determination regarding responsibility.

No other issue may be appealed.

Bases for Appeal

A Party may only appeal on one or more of the following bases:

i. Procedural irregularity that affected the outcome of the matter; or
ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal or reassign was made, that could affect the outcome of the matter; or
iii. This 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.
iv. The Title IX Coordinator, investigator, or Hearing Officer 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

If a Party wishes to file an appeal, the Party must notify the Title IX Coordinator in writing no later than seven business days after the notice of dismissal or written determination is sent to the Party.

The written appeal must state with specificity:

i. The issues being appealed; and
ii. The bases for the appeal.

Timeframe for Completion of Appeal

The University will make a good faith effort to complete the appeal within twenty (20) business days.
The timeframe for completion of appeal may be extended for good cause. If the timeframe

for completion of appeal 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

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

i. That the appeal was filed;
ii. The process for submitting a written statement in support of, or challenging, the issues being appealed;
iii. The appeal, including any written statements submitted by the Parties, will be considered by the appeal officer ("Appeal Officer" as described below). The Appeal Officer may also consider the investigative report, including any Party's written response to the investigative report, all relevant evidence presented at the hearing, and the audio recording, audiovisual recording, or the transcript of the hearing.
iv. The Appeal Officer will be appointed by the Title IX Coordinator, at the Title IX Coordinator's sole discretion, and may not be the Title IX Coordinator, the investigator, or the Hearing Officer.
v. The Appeal Officer will issue a written determination of appeal, which will describe the result of the appeal and the rationale for the result.
vi. The Title IX Coordinator will provide the written determination of appeal simultaneously to the Parties.

The result of the appeal is final.

17. Remedies/Sanctions

At the conclusion of the hearing and the presentation of all evidence, the Hearing Officer will make a determination of responsibility using the preponderance of evidence standard described above. The Hearing Officer will neither issue nor make a determination of whether or not sanctions are appropriate. After the Hearing Officer issues their determination of responsibility, the University, through the Title IX Coordinator, will determine whether or not sanctions are appropriate and how they will be implemented—in conjunction and in cooperation with either:

i. the Dean of Students/Student Conduct office for student Respondents, or
ii. the Human Resources office for staff employees, or
iii. the Human Resources office in coordination with Deans/Chairs/Provost (as may be appropriate under the Faculty Handbook) for Faculty employee respondents.

Remedies are designed to restore or preserve equal access to the University'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 coordination and implementation of remedies.

If a Respondent is found responsible for Sexual Harassment under this Policy, potential sanctions may include up to and including suspension or expulsion for student Respondents, and up to and including termination for employee Respondents.

17 Retaliation

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.

Allegations of Retaliation may be investigated and adjudicated under applicable University policies.