May 4, 2010

Dear Members of the University Community,

For much of the past academic year, a task force established by the Faculty Senate has been at work on a new policy for handling allegations of sexual harassment. It identified several inadequacies in the current policy, among the most consequential of which are

- **insufficient visibility**, as the current policy is included within the Discrimination Review Procedures;
- **insufficient timeliness**;
- **lack of reporting requirement**, with the end result of leaving those bringing charges of sexual harassment with no indication of how their complaints had been evaluated;
- **lack of presidential review** of decisions rendered;
- **unclarity** with regard to who handles complaints when faculty, staff, students, and/or non-University personnel are involved.

Recent iterations of the draft have been presented to the Student Senate, the State Personnel Employees Executive Council (SPEEC), and the Professional Administrative Staff Council (PASC), and it has benefitted from their suggestions; at its meeting of May 3, the Faculty Senate unanimously decided to present the draft of a new policy to the University community for review.

Please note that the proposed policy does necessarily have limitations. Because of the many types of members of the University community, disciplinary action is covered elsewhere in University policy (one cannot, for instance, “fire” a student, and terminating an at-will employee is easier than terminating an contract employee). Balancing the rights of the party claiming abuse and the party charged with abuse always requires sensitivity. Finally, no policy can entirely prevent wrongdoing. However, it is our hope that a new policy will provide a more effective means of investigating allegations of sexual harassment, and mark the first step in a renewed commitment to responsible behavior and shared values.

The Faculty Senate will begin discussion of the draft at its meeting of May 17. If you have questions or concerns, please contact your college Senator(s), if you are faculty; otherwise please contact representatives of your governance group – or feel free to contact me directly. We look forward to presenting the best possible document to the President and the Board of Trustees.

Best wishes,

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Sexual Harassment Complaint Procedures

draft for Faculty Senate review

May 3, 2010

Purpose.

The University of Northern Colorado strives to provide an environment for work, study, and residence free of sexual harassment and exploitation of students, faculty, staff, administrators, and guests. Sexual harassment is therefore prohibited. The purpose of this policy is to provide a fair, orderly, and systematic process for addressing allegations of sexual harassment. The University adheres to the Equal Employment Opportunity Commission’s definition of sexual harassment as modified for the university setting. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct pertaining to sex or gender constitute sexual harassment when

I. such advances or requests are made under circumstances implying that one’s response might affect educational or personnel decisions that are subject to the influence of the person making the proposal; or

II. such speech or conduct is directed against another and is either abusive or severely humiliating, or persists despite the objection of the person targeted by the speech or conduct; or

III. such speech or conduct is reasonably regarded as offensive and substantially impairs the academic or work opportunity of students, colleagues, or co-workers. If it takes place in the teaching context, it must also be persistent, pervasive, and not germane to the subject matter. The academic setting is distinct from the workplace in that wide latitude is required for professional judgment in determining the appropriate content and presentation of academic material.

Complaints of sexual harassment that may be pursued under this policy are not limited to actions alleged to have occurred on University property or at any particular time of day, week, or year.

Definitions.

Complainant: A party who brings a complaint of sexual harassment as it is defined in this policy may be someone who believes he or she has experienced sexual harassment, or anyone else who is acting either on behalf of or independently of someone who may have experienced sexual harassment.

Respondent: A party who has been accused of sexual harassment as it is defined in this policy.
Working day: Time limits within which agents of the University must respond to a complaint of sexual harassment, or to any subsequent action in the following sexual harassment complaint procedure, are measured in working days. For the purpose of this policy, working days are all Mondays through Fridays, excluding all days on which the University is closed.

Scope.

(1) Applicability according to University status of complainant and respondent.

- If the respondent is a student, the complaint shall be reported to the Dean of Students and pursued according to 2-1-5 Student Conduct.
- If the respondent is a faculty or staff member, the complaint shall be reported to the Director of Human Resources Services and pursued according to this policy.
- Complainants alleging sexual harassment by nonmembers of the University community may file complaints with the Director of Human Resource Services if the harassment occurs on University property or in the course of University-sponsored events.

In all cases of doubt or ambiguity (e.g., students or staff with teaching assignments, faculty or staff enrolled in classes, multiple complainants and/or respondents), the complaint shall be reported to the Director of Human Resource Services, who shall, with the Dean of Students, determine whether to apply the procedures in this policy or those under 2-1-5 Student Conduct, and otherwise coordinate efforts as appropriate.

(2) Relation to Sexual Assault Complaint Procedures. This policy and the University of Northern Colorado Sexual Assault Special Complaint Procedures, which shall be used for all allegations of sexual assault (see 2-1-507 Special Procedures—Sexual Assault Cases), are not mutually exclusive.

(3) Relation to Academic Disciplinary or Grievance Procedures. Disciplinary action recommended at any stage of this process shall go through the appropriate disciplinary procedures. This policy does not replace established faculty, graduate student, undergraduate student or staff disciplinary, grievance, or appeal procedures, including, but not limited to, faculty tenure appeals. However, the chair of a faculty, graduate student, undergraduate student or staff grievance committee that receives a grievance or appeal that includes an allegation of sexual harassment must immediately notify the Director of Human Resource Services or the Dean of Students as appropriate of such allegations. The Dean of Students and the Director of Human Resource Services shall coordinate appropriate efforts.

(4) Relation to redress options under federal and state law. The University recognizes the right of all complainants to file charges with the appropriate federal or state agency with or without first pursuing a resolution of the complaint through the University’s procedures.

General Considerations.
(1) Timeliness. Complaints should be filed with the Director of Human Resource Services as soon as possible after the date upon which the action took place or when the complainant has knowledge of the alleged sexual harassment. After the initial filing of a complaint, the Director of Human Resource Services may reasonably extend all other time periods established in this policy. A request for a time extension by either the complainant or the respondent shall require written justification.

(2) Confidentiality. To the extent permitted by law and the requirement to investigate, University personnel shall use their best efforts to keep sexual harassment complaints confidential throughout the processing of the complaint.

(3) Record Keeping. A record of any complaint submitted for consideration in accordance with this policy shall be kept on file by the Director of Human Resource Services. The file shall include all pertinent documentation related to the complaint. These records may be open to the public to the extent required by the Colorado Open Records Act.

(4) Representation. All parties may be represented by advisors at any point in the initiation, filing, processing or hearing of a complaint.

Complaint Procedures.

The complainant shall be afforded two administrative options for pursuing complaints of sexual harassment: the informal complaint procedure and the formal complaint procedure. The complainant may initially choose either procedure and pursue it to its conclusion, or may, at any time,

- discontinue one procedure in favor of the other (e.g., switch from the informal to the formal complaint procedure);
- discontinue the complaint procedure entirely (note that the University may, at its discretion, still pursue the matter at hand);
- engage in procedures beyond the University’s purview (e.g., civil or criminal proceedings).

(1) Informal Complaint Procedure.

Informal complaint resolution focuses on conciliation. The goal of an informal resolution is to ensure that the behavior characterized as sexual harassment ceases and that the matter is resolved expeditiously. The purpose of an informal resolution is not to establish guilt or innocence, but to provide a resolution upon which both the complainant and the respondent agree.

(a) Informal complaints should be made to the Director of Human Resource Services. In cases involving students, complaints may be made to the Dean of Students, who shall
promptly inform the Director of Human Resource Services of the complaint.

(b) Informal complaint resolution may be achieved by, but is not limited to, any of the following steps:

(i) Action taken by the complainant to address the matter directly with the accused;
(ii) Action to resolve the complaint with the alleged offender’s supervisor or director;
(iii) Intervention by the Director of Human Resource Services and the supervisor or director to record the complaint.

(2) Formal Complaint Procedure.

(a) Where to File: A formal complaint shall be filed with the Director of Human Resource Services or with the Dean of Students in case either the complainant or the respondent is a student.

(b) Contents of a Complaint: A formal complaint must be signed and dated, and include a detailed statement of the alleged incident(s) including:

(i) name, address, university affiliation and telephone number of the complainant;
(ii) nature(s), date(s) and description of the alleged incident(s);
(iii) name(s) of person(s) responsible for the alleged incident(s);
(iv) any background information that the complainant believes to be relevant, including names of and contact information for possible witnesses;
(v) additional background information as appropriate; and
(vi) requested relief or corrective action.

If a complaint contains incomplete information, the Director of Human Resource Services shall promptly gather the needed information.

(c) Notification of the Dean of Students: Within five (5) working days of receipt of a formal complaint from a student, the Director of Human Resource Services shall forward a copy of the complaint to the Dean of Students if applicable.

(d) Notification of Administrative Officers: Within five (5) working days of receipt of a formal complaint, the Director of Human Resource Services shall notify the appropriate Vice President(s) of whose division(s) the complainant and respondent are members. All informed persons shall maintain the confidentiality of the information during the complaint process.

(e) Processing of Complaint: Within five (5) working days of receipt of a formal complaint, the Director of Human Resource Services shall provide a copy of the complaint to the respondent. The respondent must submit a written response to the
allegations of sexual harassment within ten (10) working days to the Director of Human Resource Services.

(f) Role of the Director of Human Resource Services: Within thirty (30) working days after receipt of the respondent’s written response, the Director of Human Resource Services must complete an investigation and take one of the following steps:

(i) allow the parties to sign a written statement of agreement resolving the complaint;

(ii) dismiss the complaint on the grounds that the evidence submitted in support of the complaint or developed in the investigation does not warrant further action.

In either case, the Director of Human Resource Services shall notify all persons who have officially been informed of the complaint pursuant to (d) above of his or her decision.

(g) Withdrawal of a Complaint: Withdrawal of a complaint by the complainant for any reason, including an agreement between the parties, will not necessarily result in the termination of the University’s investigation into the allegations. Withdrawal of complaints must be communicated in writing to the Director of Human Resource Services.

(h) Right of Appeal: Either party may appeal decisions rendered in the process according to the procedures outlined below, with the exception of the President’s decision, which is final.

Sexual Harassment Complaint Appeal Committee.

(1) Appeal to Hearing Panel: If either of the parties disagrees with the actions of the Director of Human Resource Services, either party may file an appeal. All appeals must be made in writing and received by the Director of Human Resource Services within ten (10) working days of notification of the outcome of the formal complaint procedure. If an appeal is filed, the Director of Human Resource Services shall forward the investigative file to the chairperson of the Hearing Panel.

(2) The Hearing Panel shall consist of three persons, chosen by the Vice President to whom the Director of Human Resource Services reports, from among the following constituencies:

- six administrative staff members appointed by the Professional Administrative Staff Council (PASC);
- six classified staff members appointed by the State Personnel Employees Executive Council (SPEEC);
- six faculty members appointed by the Faculty Senate;
six students (three graduate students, three undergraduate students) appointed by the Student Senate.

Of the three members of the Hearing Panel, two shall be from the constituency of which the respondent is a member, and one from the constituency of which the complainant is a member. The panel shall elect its chairperson, who will retain a vote.

(3) Hearing: The Director of Human Resource Services shall convene a Hearing Panel which shall conduct a hearing within twenty (20) working days of receipt of the appeal, and notify both parties of the date, time and location of the hearing. The hearing shall be scheduled to ensure that the complainant, respondent and witnesses are able to participate.

(4) Objections to Hearing Panel Member(s): The complainant or the respondent may voice objections to any member of the Hearing Panel at least five (5) working days prior to the hearing. The appropriate Vice President shall consider the objections, along with any concerns about alleged conflicts of interest, and shall determine whether any member of the committee has a conflict of interest that disqualifies him or her from service. Another member from the same constituency from which the conflicted member was selected shall replace any member who is deemed to have a conflict.

(5) If any participant in the hearing requires special accommodations, the Director of Human Resource Services shall be notified at least two (2) working days before the beginning of the hearing.

Hearing Procedure.

(1) The parties shall provide the Hearing Panel with all documents to be used and relied upon at the hearings, as well as the name, address, and telephone number of any advisors and witnesses, no fewer than five (5) working days prior to the date of the hearing. The Director of Human Resource Services shall facilitate an exchange of information between the parties three (3) working days before the date of the hearing.

(2) The parties shall be afforded a reasonable opportunity for oral opening and closing statements, and to present witnesses and relevant documents or other evidence concerning the subject matter of the complaint.

(3) Any witness present may be cross-examined. The Hearing Panel may, at its discretion, accept affidavits from witnesses unable to appear.

(4) The Hearing Panel shall have the right to question witnesses, to examine documentary evidence presented, and to summon other witnesses. Witnesses shall not be present during the testimony of any party or other witness.
(5) The hearing shall be recorded on devices supplied by the Director of Human Resource Services. Recordings shall be maintained for a period of three (3) years by University Counsel after final ruling of the complaint. Either party may request access to the recording of the hearing at any time during this period, but no copies shall be made except pursuant to a subpoena. Deliberations of the Hearing Panel shall not be recorded, and all notes made by the members of the Hearing Panel shall be destroyed once it renders its decision.

(6) The Hearing Panel shall deliberate in closed session. Decisions shall be made by simple majority vote within five (5) working days of the end of the hearing. The Hearing Panel’s decision shall be communicated in writing to the Director of Human Resource Services within five (5) working days of the end of deliberations, and shall include the reason(s) for the decision. Within five (5) working days of receipt of the decision, the Director of Human Resource Services shall provide a copy of the written decision to the complainant, the respondent, and the appropriate Vice President(s). If the Hearing Panel overturns the findings of the Director of Human Resource Services, the findings shall be forwarded to the appropriate Vice President.

(7) If either party takes exception to the decision of the Hearing Panel and wishes to appeal further, that party shall, within five (5) working days of receipt of the Hearing Panel’s decision, notify the Director of Human Resource Services of an intent to appeal. The notification must be in writing. If no notification of intent to appeal is received within the allotted time, the case will be closed. An appeal of the Hearing Panel’s decision shall be made in writing to the Vice President of the division of which the respondent is a member within twenty (20) working days of receipt of the Hearing Panel’s decision.

**Vice Presidential Appeal.**

If either party appeals to the Vice President of the division of which the respondent is a member, that Vice President shall decide the complaint on its merits, and may hear new evidence and conduct additional investigation as necessary. Either party may be requested to appear for an interview by the appropriate Vice President. In addition to upholding or reversing the Hearing Panel’s decision, the Vice President may remand the case to the Hearing Panel with further instructions or order the formation of a new Hearing Panel. The Vice President shall issue a written decision within twenty (20) working days from the date of receipt of the appeal. The decision shall be distributed to the complainant, the respondent, and the appropriate Vice President(s).

**Presidential Appeal**

Either party may appeal the decision of the Vice President to the President.

The President is neither required nor expected to conduct a new hearing, but shall review the
complaint and subsequent decision to ensure that the complaint was handled in accordance
with established protocol, and that the hearing and recommendations of the Hearing Panel are
not arbitrary, capricious, or discriminatory; do not violate the rights of the parties; and do not
violate the requirements of due process to both parties. The President shall issue a written
decision within twenty (20) working days from the date the appeal was received. The decision
shall be distributed to the complainant, the respondent, and the appropriate Vice President(s).
The President’s decision is final.

Retaliation.

Retaliation against a party who reports sexual harassment, who assists someone with a report
of sexual harassment, or who participates in any manner in an investigation or resolution of a
sexual harassment complaint is prohibited, and acts of retaliation are subject to disciplinary
action.

Malicious or False Accusations

Because sexual harassment often involves personal interactions that are not witnessed by
others, complaints of sexual harassment cannot always be verified by additional evidence. Lack
of corroborating evidence should not discourage persons from complaining of sexual
harassment under this policy. However, persons who make complaints that are later found to
have been intentionally false or made maliciously without regard for the truth may be subject
to disciplinary action. Complaints made in good faith, even if the facts of the complaint cannot
be substantiated by investigation, shall not be punishable by the University.