



### **3-6-101 Appointment Procedures for Exempt Staff.**

**3-6-102 Hiring Pools.** Colleges/Schools/Departments are encouraged to develop college-wide/school- wide/department-wide hiring pools of candidates for temporary assignments. Assignments may be part or full-time but the duration of employment shall not exceed three (3) consecutive academic semesters.

(1) The Process:

- (a) In order to initiate a college-wide/school-wide hiring pool, the PAF & FA are prepared in the office of the Dean and forwarded to the offices of the Academic Vice President and the DAA.
- (b) The VA must include all affected disciplines within the college/school/ department as well as all general requirements, e.g., a minimum three (3) years teaching experience, terminal degree (see Appendix O).
- (c) Upon approval, the “pool” announcement shall be advertised for a minimum of twenty (20) calendar days, following the regular advertising procedures (see Appendix D).
- (d) The hiring pool must be updated and advertised on an annual basis. Updating and advertising will be done during Spring Semester so that the pool can be used the following academic year. To update, a letter shall be sent to each current member of the pool stating that if the member wishes to remain in the pool, they must submit either an updated vita or forward some affirmative response. The letter must include a closing date, e.g., 15-20 calendar days from date of mailing. If no response has been received by the closing date, an applicant’s file shall be removed from the pool. A copy of the letter shall be placed in the applicant’s file.

A current applicant's file must contain, at minimum, a vita, a notation of the date the initial application was received and dates of all updates, and copies of all correspondence, including the update letters. All applicant files shall be retained for a minimum of one fiscal year.

- (e) Each college/school/department shall establish an initial screening committee to evaluate applications as they arrive. The screening committee is to evaluate only if the applicants meet minimum qualifications for acceptance into the hiring pool. The files of those meeting the minimum qualifications are then forwarded to the respective program areas.

The screening committee must keep a written record of a:

All applicants and the number of denials and reason(s) for denial.

All applicants who are denied acceptance into the pool shall be so notified in writing.

A copy of this letter shall be kept in the applicants' file.

All applicants who are accepted into the pool shall be so notified in writing, and must enclose an AA/EO Data Card. The terms of acceptance must be stated in this letter, e.g., temporary assignment, need for annual update, etc.

- (f) Upon receipt of the files of qualified applicants, the department chair/school director shall appoint a review committee from faculty in the appropriate program area(s) to include a minimum of one member from an affected class. The review committee shall evaluate the files, make a list of those qualified to teach specific courses ranking them in priority order and forward the list to the department chair/school director.
- (g) When a vacancy occurs, the department chair/school director, in consultation with the designee in the appropriate program area, shall write a specific position description including all responsibilities and duties for that position, e.g., classes to be taught, course number, title and credit hours, supervisory duties, administrative duties, advisement, etc. The description must also state whether professional activity and/or

service shall be required for that position and the terms of said requirements. This information shall then be incorporated into the candidate's written contract.

The department chair/school director, or their designee in cases where the director is not in the appropriate program area, shall also make a written recommendation to the dean of the most qualified person from the pool to fill the position. The file of the person recommended must accompany the recommendation.

NOTE: For part-time hires, copies of contract order-related materials, forwarded to the Personnel Office, shall be concurrently sent to the Vice President for Academic Affairs, for information.

- (h) The Vice President for Academic Affairs shall review the files of those applicants recommended for full-time positions. Written authorization must be obtained from the Vice President for Academic Affairs before a contract is offered for such positions.
- (l) The contract formulation shall follow the regular guidelines for contracts for new hires.
- (ll) At the end of each semester, the Dean shall prepare a summary report of hiring pool activity for the semester. The report shall include the number of applicants in the pool, the hiring activity, and the names, sex and race of all hired from the pool. This report is to be submitted to the Office of Affirmative Action with a copy to the Vice President for Academic Affairs. (Sample form at Appendix P - actual form will be forwarded at the appropriate time.)

**3-6-102(1) Exceptional Appointments.** Hiring units are encouraged to plan for vacancies and for new positions so that the regular search process can be used. It is expected that all full-time positions will be filed through either the regular search process or from hiring pools.

The following process may be used in cases relating to emergencies only with the authorization of the DAA and President. Situations which may lead to a request for authorization include, but are not limited to, the following.

- (a) Search fails.
- (b) Time does not allow for a search, e.g., last minute resignations, deaths, budget considerations, leaves of absence.
- (c) Visiting faculty.
- (d) To assist the University in its efforts to increase diversity.
- (e) Unique credentials.

An exceptional appointment shall be initially authorized for one fiscal year, however, reappointments to temporary positions may be recommended by the Dean/Chair/Director or their designee in the case where the director is not in the appropriate program area, but must have the concurrence of the appropriate Vice President, verified by the DAA, and approved by the President.

(I) Process:

- (A) Dean/Chair/Director, or their designee in the case where the director is not in the appropriate program area, initiates "Request for Exceptional Appointment" form (sample form at Appendix Q, - actual form must be requested from the Office of Affirmative Action.) Supporting materials must be attached to the "Request." Materials must include the resume of individual recommended and such additional documentation to adequately assess qualifications for the position.
- (B) The Request is forwarded to the appropriate vice president for concurrence or non- concurrence.
- (C) The request is then forwarded to the DAA for verification and monitoring. When signed, the request is then forwarded to the President.
- (D) If the President approves the request, the hiring process shall be initiated by the hiring unit.

If the President does not approve the request, they shall state, on

the form, the rationale for the refusal and alternative methods of filling the position.

**3-6-103 Equal Opportunity.** Equal Opportunity in employment and education is an essential priority for the University of Northern Colorado and one to which the University is deeply committed. The University of Northern Colorado is dedicated to providing an equal opportunity climate and an environment free from discrimination and harassment. In accordance with established laws, the University prohibits discrimination based on race, religion, gender, age, national origin, disability, sexual orientation, gender identity, gender expression, military service, or political affiliation for employees in all aspects of employment and for students in academic programs and activities.

**3-6-104 Affirmative Action.**

(1) Conflict of Interest: Any relationship between a person involved in the employment selection process on behalf of the University and a candidate for appointment, which raises the appearance of undue influence or bias, including without limitation, biological relationship to the third degree of consanguinity; marital relationships past or present; past or present employment relationships; past or present professional association, e.g., co-authorship, enterprise/partnership, etc. Affirmative Action is the commitment to actively enhance the diversity of the workforce through a system of action oriented procedures. The University of Northern Colorado is committed to take “affirmative” steps to recruit, hire, and advance minorities and women when they are underrepresented in the University and are qualified and available in the labor force.

The University’s commitment to affirmative action includes achievement of relevant objectives as a part of its management performance evaluation system. This commitment is also reflected in the University’s affirmative action plan and its attendant procedures for recruitment and selection of exempt staff and faculty.

All procedures dealing with Affirmative Action and Equal Opportunity Employment are available in the Affirmative Action Office.

**3-6-105 Equal Opportunity.** [See also Board Policy Manual, Title 1, Article 1, Part 5, 1-

1-507.]

**3-6-106 Statement of Commitment to Employment Opportunities.** [See also Board Policy Manual, Title 1, Article 1, Part 5, 1-1-508.]

**3-6-107 Equal Opportunity for Students.** [See also Board Policy Manual, Title 1, Article 1, Part 4, 1-1-404.]

**3-6-107(1) Student Admission.** [See also Board Policy Manual, Title 1, Article 1, Part 4, 1-1-403.]

**3-6-107(2) Campus Activities.** [See also Board Policy Manual, Title 1, Article 1, Part 4, 1-1-413.]

**3-6-107(3) Student Housing.** [See also Board Policy Manual, Title 1, Article 1, Part 4, 1-1-414.]

**3-6-108 Policy on Discrimination and Sexual Harassment.** [See also Board Policy Manual, Title 1, Article 1, Part 5, 1-1-508(2).]

**3-6-109 Discrimination Grievance Procedure.** [See also Board Policy Manual, Title 2, Article 2, Part 2, 2-2-201(1)(a).]

**3-6-110 Employment Conditions.**

**3-6-111 Nepotism.** [See also Board Policy Manual, Title 1, Article 1, Part 5, 1-1-504.]

**3-6-112 Immunization Requirements.** Beginning July 2, 1988, in order to be employed at UNC, all individuals are required to complete and submit to Human Resources, a properly executed UNC Immunization Record Form. The Immunization Record must certify that the individual has immunity to Rubeola (Measles) and Rubella (German Measles), or is exempt from certification according to the criteria identified below:

Certification Requirements:

- (1) Rubeola (Measles) - Immunization administered 1968 or later (immunization must have been administered after first birthday); or physician diagnosed case; or before 1957 (are considered to have naturally acquired immunity).

- (2) Rubella (German Measles) - Immunization administered June 1969 or later (immunization must have been administered after first birthday); or a positive blood test for Rubella immunity performed by qualified medical personnel (diagnosis of disease or age are not acceptable proof of immunity).

#### Exemption Requirements:

- (1) In a health emergency, the University President or their designee shall have the right to request from any employee or other person in extended presence on University premises for proof of immunization or exemption from immunization as defined by the University. In the absence of either, the designee may require any person without proof of immunization or an exemption to remove themselves from University premises for the duration of the health emergency employee(s) so affected may use any accrued and unused sick or annual leave.
- (2) Individuals, who for medical, religious, or personal beliefs refuse to provide the immunization information, must complete the appropriate statement of exemption in the UNC Immunization Record Form.

#### Suspension:

Employees who do not have proof of immunity against Rubeola or Rubella and have signed an exemption may be suspended from employment and placed on sick leave (to the extent available) or unpaid leave of absence.

### **3-6-113 Fringe Benefits.**

### **3-6-114 Statutory.**

**3-6-114(1) Worker's Compensation.** The University provides worker's compensation coverage for employees in accordance with the laws of the State of Colorado. For details concerning coverage and benefits, contact Human Resources.

Effective May 1, 1988, procedures have changed regarding Worker's Compensation. If these procedures are not followed, State Compensation

Insurance Authority will not pay the claim.

- (a) Report the injury to your supervisor and Human Resources. You will then be referred to a designated provider at Occupational Medicine, North Colorado Medical Center.
- (b) If the injury is an emergency, go to North Colorado Medical Center's Emergency Room at 1801 16th Street. Then follow-up with Human Resources.
- (c) Identify UNC as the Worker's Compensation employer to the doctor or North Colorado Medical Center.
- (d) In all cases of injury to University of Northern Colorado employees first occurring after March 1, 1988, in order to be entitled to benefits under the Workmen's Compensation Act for services rendered to the injured employee by any physician, the injured employee must use a physician selected by the University of Northern Colorado unless permission is otherwise given by the University, the University's Worker's Compensation insurer, or the Division of Labor of the State Department of Labor and Employment.

**3-6-114(2) Unemployment Compensation.** The University provides unemployment insurance coverage for employees in accordance with the laws of the State of Colorado. For detailed information concerning coverage and benefits, contact Human Resources.

**3-6-114(3) Pension.** The University provides pension, disability and survivor benefits through the Public Employees' Retirement System and the optional retirement plan. For details concerning coverage and benefits, contact University Personnel.

**3-6-114(4) Liability.** University employees are provided liability coverage under the State of Colorado self-insurance program.

**3-6-115 Carrier.** The following benefits are provided to certain University employees. The descriptive statement provided for each benefit is a summary statement. Details of coverage and benefits may be obtained from Human Resources. The



University reserves the right to modify coverage's, change carriers or terminate invested benefits as is determined appropriate in the best interest of the University.

**3-6-115(1) Tax-Sheltered Annuities.** All full-time employees of the University are authorized to participate on an optional basis in a tax-sheltered annuity program under Internal Revenue Code (IRC) 403(b), as amended by Public Law 93-406 (Employee Retirement Income Security Act of 1974). Certain commercial life insurance companies and TIAA/CREF have been approved for participation in this plan. Other tax sheltered investment programs are available through the 401(K) plan offered by PERA, and the 457 deferred compensation plan offered by the state of Colorado.

The employee elects to join the program by signing a statement of intent to elect an Exclusion Allowance and a salary reduction agreement. Election of the tax shelter plan is open all year. Transfers between variable and fixed features of annuity contract can be made according to policy provisions.

Contracts may be purchased with only one company during any calendar year. Actual computation of the maximum employee contribution is controlled by federal government regulations and must be determined for each individual employee.

The annuity is paid by reducing the gross appointment salary of the employee by a stipulated constant amount and the purchase coextensively of an annuity contract to be funded by an annuity from an authorized company.

Tax shelter does not affect the percentage contribution to the Public Employees Retirement Fund which must be based upon and computed from the gross appointment salary of the employee less any pre-tax contributions to IRS Section 125 benefit plans.

**3-6-116 Health Insurance.** The University currently provides qualified and eligible exempt employees accidental death and dismemberment and health and dental insurance benefits under a group policy arrangement. The University pays one-half of the premium for employee coverage for all employees with assignments of at least .50 FTE. With certain limited exceptions, all employees with assignments of at 3-6-116

least .50 academic year FTE are required to participate. For details concerning coverage and eligibility contact Human Resources.

**3-6-117 Life Insurance.** The University currently provides qualified and eligible exempt employees life insurance under a group policy arrangement. The amount of life insurance is based upon the employee's age and basic annual earnings level. The University pays one-half of the premium for employee coverage for all employees with assignments of at least .50 FTE are required to participate. For details concerning coverage and eligibility contact Human Resources.

**3-6-118 Disability Insurance.** The University currently provides qualified and eligible employees disability insurance under a group policy arrangement. Such coverage is coordinated with the disability benefits provided under the Public Employees' Retirement System. Coverage begins after a qualifying period. The University pays one-half of the premium for employee coverage for all employees with assignments of at least .50 FTE. With certain limited exceptions, all exempt employees with assignments of at least .50 FTE are required to participate. For details concerning coverage and eligibility contact Human Resources.

**3-6-119 Travel Insurance.** The University currently provides qualified and eligible exempt position employees travel insurance coverage for University-related business travel. Premiums are paid by the University. For details contact Human Resources.

**3-6-120 Health Insurance for Retirees.** Beginning January 30, 1988, University faculty, administrative and professional personnel eligible to retire under PERA or ORP rules will relinquish enrollment entitlement to all UNC sponsored health care insurance programs. At time of retirement, all PERA eligible retirees qualify for and may elect to enroll in one of PERA's health care insurance programs. University faculty and professional administrative staff retiring from UNC under the ORP, who are not eligible for PERA benefits, may elect to participate in the medical plan established for the ORP pension plan. As provided by the Consolidated Omnibus Budget Reconciliation Act (COBRA); UNC faculty, administration and professional personnel refusing enrollment in a PERA sponsored health care insurance plan, may elect to continue the UNC group health insurance coverage for a maximum of 18 months upon payment of a monthly premium equal to 102% of contract premium rates for active employees. Further continuance of dependent health/dental insurance coverage past 18 months is contingent upon qualifying events regulated by COBRA, but in any event shall not exceed 36 months.

UNC faculty, administration and professional personnel may continue dental coverage as provided by COBRA upon retirement. Coverage is for a maximum of 18 months, and cannot exceed age 65, upon payment of a monthly premium equal to 102% of contract premium rates for active employees.

### **3-6-121 University Benefits.**

**3-6-121(1) Dependent Tuition Grants.** For the purpose of this section, the following definitions shall apply:

- (a) "Employee" shall mean all exempt and classified staff and officers of the University of Northern Colorado, excluding graduate assistants, teaching assistants and other persons whose primary purpose for being at UNC is not employment as determined by the President.
- (b) "Full time" shall mean, with respect to employment, an assignment of 1.0 FTE for exempt staff and 40 hours per week during the fiscal year for state classified staff.
- (c) "Dependent" shall mean an employee's spouse or other dependents as defined in Section 152 of the Internal Revenue Code of 1954, as amended except for those employees who are full time (.50 FTE and greater).
- (d) "Spouse" shall mean an individual to whom an employee is married. The initial formation of a marriage shall be determined in accordance with Section 143 of the Internal Revenue Code of 1954, as amended.

Entitlement to the Dependent Scholarship for dependent children will be limited to those who qualify for dependent status and who have not attained age 25. All applications for tuition grant for subsequent semesters would be denied after age 25.

Dependents of UNC full-time employees are entitled to receive a grant in the amount of the cost of in- state tuition for purpose of enrolling in and attending courses at UNC. The grant will be paid directly to UNC for each course in which an employee's dependent is enrolled and accepted. In order for a dependent to qualify for a tuition grant the employee must be continuously employed at UNC during the entirety of the academic term for which the grant is made.

Dependents of part-time employees shall be entitled to receive a percentage of

a tuition grant. The percentage shall be equal to the percentage of full-time equivalency which is assigned to the employee's position.

Dependents of employees are eligible for a tuition grant for any academic term beginning after the employee's first day of employment with UNC.

Dependents of employees are eligible for a tuition grant for a tuition grant for any academic term beginning after the employee's first day of employment with UNC. Employees terminating their employment with UNC prior to the completion of a course for which a tuition grant has been allowed for any of their dependents, under the auspices of this policy, shall be obligated to reimburse the University for a percentage of the tuition. The percentage shall be equal to the percentage determined by dividing the number of hours actually accounted as hours worked by the employee during the academic term in which the course is conducted by the number of assigned hours required to be worked by the employee during the academic term in which the course is conducted. Such amount must be remitted to the University prior to the employee's last day of work or if not so remitted it may be deducted from the employee's last pay, at the discretion of the University.

Tuition grant benefits for dependents are subject to the same eligibility requirements and limitations as for employees to the extent applicable, provided, however, that dependents shall be entitled to continue to receive tuition grant benefits under this policy after the employee's death subject to the following conditions:

- (1) In the case of a dependent spouse, the benefits shall continue until remarriage or death;
- (2) In the case of dependent children, the benefits shall continue as long as the child qualifies for dependent status and has not attained age 25, or after having received benefits fails to enroll in and complete any course work at the University for a period of 365 consecutive days, whichever occurs first in time.

Employees and dependents who receive tuition grants under this policy shall be obligated to pay in a timely manner all other costs associated with enrollment at the University and the particular course of study being pursued. Dependents in

degree seeking programs must meet Standards of Satisfactory Academic progress established by the Office of Financial Aid in order to be eligible to receive the tuition grant.

Benefits under this policy are not transferable. Graduate tuition grants may be subject to tax withholding. Eligibility for receipt of the Dependent Scholarship may be granted only if application is received one day prior to the first day of classes.

**3-6-121(2) Employee Tuition Grant.** The following procedures and policies have been formulated by a University committee to accommodate the implementation of a program whereby University employees, faculty, classified staff and exempt employees will be allowed to take classes without payment of tuition.

- (a) Permanent employees paid through Human Resources are eligible to enroll without tuition charges, on a space available basis, according to the following schedule:

Annualized Employment FTE	Credit Hours Available
.01 - .49	Not eligible
.50 - .66	3 Credits per FY
.67 - .82	4 Credits per FY
.83 - .99	5 Credits per FY
1.0 -	6 Credits per FY

Employees may take the entire credit hour benefit any time during the year. Employees who utilize this benefit in one term and leave the University prior to the end of their appointment period will be required to reimburse the University

for tuition waivers received and not earned.

- (b) A full-time employee is defined as one with a 1.0 FTE assignment for faculty and professional staff, or 40 hours per week during the fiscal year for state classified staff.
- (c) Human Resources will monitor the number of eligible hours. All registration materials will be available in Human Resources, Carter Hall Room 2002.
- (d) Eligibility for class enrollment is available at the time of employment.
- (e) Since enrollment is on a space-available basis, employees are required to register on the day following registration.
- (f) Prior to registration the employee must secure the approval of their immediate supervisor, the department head, and Human Resources.
- (g) Supervisors are encouraged to allow employees to enroll in any class of their choice.
- (h) Classes taken during working hours require that the time be made up. Employees eligible for overtime reimbursement are required to make up class hours within the same work week. Time must be made up within the same semester for employees not eligible for overtime.
- (i) State Fiscal Rules provide for the waiving of tuition charges. UNC will waive fees except for any course related fees (e.g. science labs).
- (j) The tuition waiver does not apply to Outreach classes.
- (k) A high school diploma is not required prior to enrollment in University classes.

**3-6-121(3) Credit Union.** Credit Union services are available to University employees in accordance with the policies, regulations and procedures established by the College Credit Union of Greeley.

**3-6-121(4) Aims/UNC Exchange Tuition Grant.** The following regulations have been formulated to provide for the joint implementation of a program whereby

ongoing employees of the University of Northern Colorado and Aims Community College will be permitted to take courses at the other institution without payment of tuition.

- (a) Employees will receive tuition grants in the amount of in-state tuition only.
- (b) Employees must pay all other applicable fees.
- (c) University off-campus courses and Aims non-credit courses are not available for this exchange program.
- (d) Each institution's current definition of ongoing employee will be acceptable to the other.
- (e) The applicant is responsible for meeting all admission and registration requirements at the institution of enrollment.
- (f) In order to take advantage of the Exchange Program, the University and Aims College will require each participant to complete the Tuition Grant Form signed by their respective Human Resources personnel and cognizant supervisor prior to enrolling in courses. The forms are available from Human Resources.
- (g) For UNC employees, the Tuition Grant Form will be processed through the Aims Office of Financial Aid. For Aims employees, the Tuition Grant Form will be processed through the Aims Personnel Office. Forms for personnel from both institutions must be completed prior to registration.
- (h) Employees will not enroll for courses at times that interfere with their home institution responsibilities.
- (i) UNC policy will restrict UNC employees participating in this program to a maximum of 6 hours of tuition-free credit per academic term. These hours must be taken to be available -- that is, the hours available are not cumulative. In addition to Aims courses, UNC employees may take 6 semester hours per year from UNC. The University has established a University Employee Benefits Committee. [See also 3-1-102.]

**3-6-122 Employment Contracts.** Guidelines for Personnel Contracts. All full-time and part-time exempt employee contracts (including GA, TA and GRA) shall be on forms approved by the University and prepared in accordance with the University. Human Resources shall be the responsible office for disseminating these forms and procedures.

**3-6-123 Separation From Service.** Upon leaving the University, all employees must check out with Human Resources. Procedures are explained regarding PERA Refunds, continuation of Health and Dental insurances, return of University property and basic check out policies.

**3-6-124 Merit Pay.** All personnel within the University will undergo an evaluation process. These evaluations will be used for all personnel decisions, including merit pay.

**3-6-124(1) Guidelines for the Recruitment and Selection of Teaching Assistants, Graduate Assistants and Graduate Research Assistants.** The policies and procedures outlined apply to the filling of all TA, GA, and GRA positions regardless of funding source.

**3-6-125 Discrimination Complaint Procedures - Purpose and Scope.** Consistent with Board Policy 1- 1-508 and applicable Federal and State law, these Discrimination Complaint Procedures of the University of Northern Colorado (“DCP”) apply to all Complaints of Discrimination, Harassment and/or Retaliation, as those terms are defined below, with respect to students, faculty and/or staff. For additional provisions applicable to “formal complaints” of “sexual harassment” alleged to have occurred on or after August 14, 2020 as described in the “Title IX Rule” referenced in Section 3-6-135, below, should the Title IX Rule be in force and effect on or after August 14, 2020, please see Sections 3-6-135 through 145.

The DCP contains the only University processes that can be utilized by University students, faculty and/or staff for claims of Discrimination, Harassment and/or Retaliation and no other review, grievance or appeal processes of any type (including but not limited to those contained in Board Policy 2-2-106 and 2-3-1201) may be utilized unless specifically stated to the contrary in the DCP. If an allegation of Discrimination, Harassment and/or Retaliation is made during any other review, grievance or appeal process, such review, grievance or appeal will be held in abeyance pending resolution of such allegation under the DCP.



### 3-6-126 Definitions

The following definitions apply to the DCP:

- (1) "Arbitrary and/or capricious" means a Decision that is devoid of factual support and/or based on a personal grudge or bias.
- (2) "Appeal Meeting" means the meeting convened by the Appeal Decision Maker at which the Complainant and the Respondent have the opportunity to make an oral presentation in support of their respective positions about the appeal(s).
- (3) "Burden of proof," as it applies to a Decision under the DCP, means the requirement that the person who makes an assertion must prove that assertion by a "preponderance of the evidence."
- (4) "Collaborator" means an Investigator who works with another Investigator or a Decision Maker who works with another Decision Maker to issue a Decision.
- (5) "Complainant" means the person who brings a Complaint alleging Discrimination, Harassment or Retaliation. The Complainant may allege that they or another person has been subjected to Discrimination, Harassment or Retaliation. If the Complaint alleges that one or more persons other than the Complainant have been subjected to Discrimination, Harassment or Retaliation, any such person(s) are deemed a Complainant as that term is used in the DCP.
- (6) "Complaint" means the document filed under the DCP by the Complainant.
- (7) "Days" means calendar days. In computing any time period stated in the DCP, the day on which the period of time begins to run will not be counted and the last day of the period will be included unless it is a Saturday, Sunday or day designated as "university holiday," "university closed" or "spring break" on the UNC Calendar maintained on the University website, in which case the period will end on the next day which is not a Saturday, Sunday or day designated as "university holiday," "university closed" or "spring break."

- (8) "Decision" means the written decision issued by the Decision Maker(s).
- (9) "Decision Maker" means an individual who issues a Decision.
- (10) "Disciplinary Action" means an action described in a Decision or Appeal Decision implemented with respect to a Respondent employee.
- (11) "Discrimination" means acts prohibited under Title VI and Title VII of the Civil Rights Act of 1964, Executive Order 11246, the Equal Pay Act of 1963, the Americans with Disabilities Act, the Family and Medical Leave Act, the Age Discrimination in Employment Act of 1967, the Colorado Anti-Discrimination Act, the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Uniformed Services Employment and Reemployment Rights Act and/or the Vietnam Veterans' Readjustment Assistance Act of 1974.
- (12) "Harassment" means unwelcome and/or nonconsensual Discrimination that is severe OR pervasive and creates an intimidating, hostile or abusive work or educational environment.
- (13) "Interim action" means an action taken while a Complaint is pending to provide reasonable protection to the Complainant, the Respondent or any other person who might be adversely affected prior to issuance of a Decision or Appeal Decision.
- (14) "Investigator" means the person who investigates a Complaint and who may also be a Decision Maker with respect to that Complaint.
- (15) "Judicial Proceeding" means a proceeding in a State, Federal or Municipal court.
- (16) "No contact order" means an order issued by the University that prohibits a person from contacting a person or persons or limits the circumstances under which such contact may occur.

- (17) "PNG (persona non grata)" means an order issued by the University that prohibits a person from being on University property or a defined portion of University property.
- (18) "Preponderance of the evidence" means that considering all the evidence, an assertion is more probably true than not true, even to the slightest degree. If the person making an assertion fails to meet their burden of proof or if the evidence weighs so evenly that the Decision Maker(s) are unable to say that there is a preponderance on either side, the Decision Maker(s) must resolve the question against the person who has the burden of proof.
- (19) "Quasi-judicial proceeding" means a proceeding, such as those before the State Personnel Board, which is substantially similar to a Judicial Proceeding but does not occur in a Federal, State or Municipal Court.
- (20) "Remedy" means an action described in a Decision or an Appeal Decision to be implemented with respect to a Complainant in order to mitigate the effects of the actions of a Respondent.
- (21) "Respondent" means a person who the Complainant alleges has engaged in Discrimination, Harassment and/or Retaliation.
- (22) "Retaliation" means an adverse action against an individual that occurs because they have complained of Discrimination or Harassment in good faith or because they have provided information in good faith in an investigation of alleged or potential Discrimination or Harassment.
- (23) "Sanction" means an action described in a Decision or an Appeal Decision to be implemented with respect to a Respondent student.
- (24) "Standard of review," as it applies to an Appeal Decision under the DCP, means the requirement that the person who appeals a Decision must prove that the Decision was "arbitrary and/or capricious."
- (25) "Title IX Coordinator" means the University employee responsible for overseeing the University's compliance with the provisions of Title IX.

(26) "University" means the University of Northern Colorado.

(27) "University Counsel" means the University employee who acts as the chief legal officer for the University.

### **3-6-127 General Procedures.**

(1) **Filing a Complaint.** A Complaint under the DCP is initiated by contacting the appropriate person described below and submitting the Discrimination Complaint Form described in subsection (3), below. The contacts described below may be face-to-face, by telephone or electronic/online means:

(a) If the Complainant is a student, by contacting the Assistant Dean of Students/Office of Student Engagement ("Asst DOS") or the Title IX Coordinator.

(b) If the Complainant is faculty or staff, by contacting the Director of Human Resources Services ("Dir HR").

(c) If the Complainant is a person who is not a student, faculty or staff, by contacting the Title IX Coordinator or Dir HR.

(d) If the Respondent is the Asst DOS, Dir HR, and/or the Title IX Coordinator, by contacting the Senior Vice President/Chief Academic Officer.

(2) **Investigation Where Discrimination Complaint Form Not Submitted.**

When a University official, including but not limited to the President, a Senior Vice President, University Counsel, Title IX Coordinator, Asst DOS and/or Dir HR becomes aware of allegations that, if true, constitute Discrimination, Harassment and/or Retaliation, the University may investigate such allegations regardless of whether a Discrimination Complaint Form is submitted and, if reasonable and appropriate, may identify the Complainant(s) and Respondent(s) with respect to such allegations and proceed with the Formal Complaint Procedures described in the DCP.

(3) **The Discrimination Complaint Form.** After the Complainant contacts the appropriate individual as stated in subsection (1), above, the Complainant will be requested to complete a Discrimination Complaint Form ("Form") to provide information about the Complaint.

(a) **Contents.** The Complainant will provide the following information in the Form:

(i) The name of the Complainant;

(ii) The name of the Respondent(s);

(iii) A description of the events that the Complainant believes constitute Discrimination, Harassment and/or Retaliation;

(iv) The names of persons who the Complainant believes have information that would support the allegations of Discrimination, Harassment and/or Retaliation;

(v) The remedy or outcome requested by the Complainant;

(vi) Acknowledgment by the Complainant that the University may have the obligation to

(A) disclose the names of the Complainant and Respondent, as well as relevant facts about the alleged events, including date, time and location, to the Title IX Coordinator, the University Counsel and other University officials and employees pursuant to the DCP, and

(B) investigate these events whether or not a Complaint is filed;

(vii) A request, if any, by the Complainant that their identity remain confidential;

(viii) Acknowledgment by the Complainant that they have the right to contact law enforcement authorities to discuss whether the events they have described may be grounds to file a criminal complaint;

(ix) Acknowledgment by the Complainant that the DCP has been made available to them for their review; and

(x) The signature (either electronically or in hard copy) of the Complainant.

(b) **Request for Confidentiality.** If the Complainant requests that their identity be kept confidential, the University will evaluate, and grant or

deny such request in the context of the University's responsibility to provide a safe and nondiscriminatory environment to all students and employees. Among other things, a request for confidentiality by the Complainant may limit the University's ability to initiate or to investigate the Complaint or to impose sanctions or disciplinary action against the Respondent.

- (c) **Notification to the Title IX Coordinator and University Counsel.** The Title IX Coordinator and University Counsel will be notified of the Complaint and will be given a copy of the Form completed by the Complainant.
- (d) **Notification to Law Enforcement Authorities.** Based upon the events that have been alleged in support of a Complaint, the University may deem it appropriate to notify law enforcement authorities of the allegations of the Complaint.
- (e) **Notification to the Respondent.** The Respondent will be notified of the Complaint and will be given a copy of the completed Form subject to redaction of information contained in the form if the University determines that a Complainant's request for confidentiality will be granted.
- (f) **Consent to Disclosure Under FERPA.** To the extent Complainant and/or Respondent have rights to consent to disclosure of education records under the Family Educational Rights and Privacy Act ("FERPA"), filing a Complaint and/or submitting a Response to a Complaint pursuant to the DCP constitutes consent under FERPA by the Complainant and Respondent to disclosure by the University of information and materials received, compiled or prepared in the course of the investigation of the Complaint in order to comply with its responsibilities under the DCP.

**3-6-128 Interim Actions.** The University will take interim actions it believes are reasonable and necessary to protect the Complainant, the Respondent, and/or any identified persons who may have information relevant to the Complaint. These interim actions may include, but are not limited to, no contact orders, adjustments to class schedules, adjustments to housing assignments, PNG orders, and interim suspension of students, administrative leave of faculty or staff and/or information about sources of advocacy, counseling, and support.

**3-6-129 Limitations on Disclosure to the Public and University Officials, Employees and Students**

- (1) The University will take all reasonable and appropriate measures to object to disclosure under the Colorado Open Records Act of all information and materials received, compiled or prepared in the course of the investigation of a Complaint, including all recommendations, Decisions and Appeal Decisions.
- (2) All information and materials received, compiled or prepared in the course of the investigation of a Complaint, including all recommendations, Decisions and Appeal Decisions, may be shared only with those University officials or employees who need to be informed in order to:
  - (a) Fulfill their supervisory responsibilities over the Complainant or Respondent, and/or
  - (b) Facilitate the efficient operation of the University, and/or
  - (c) Implement and/or monitor the remedies, sanctions or disciplinary action issued with respect to the Complaint.

**3-6-130 Initiation of External Procedures.** The Complainant and/or Respondent have the right to initiate applicable judicial, quasi-judicial (including but not limited to the State Personnel Board) or governmental agency (including but not limited to the Equal Employment Opportunity Commission, the Colorado Civil Rights Division, the United States Department of Labor Office of Civil Rights and/or the United States Office of Federal Contract Compliance Programs) processes, at any time after a Complaint is filed. If any such processes are initiated by either the Complainant or Respondent, the University may, in its discretion, suspend or terminate further action under the DCP.

**3-6-131 Time Limits and Extensions.** Any time requirement or deadline under the DCP may be shortened or extended:

- (1) If agreed to in writing by:
  - (a) The Complainant, the Respondent and the Title IX Coordinator or Dir HR, as the case may be, under the Informal Complaint Procedures, or
  - (b) The Complainant, the Respondent and the Decision Maker or Appeal Decision Maker, as the case may be, under the Formal Complaint

Procedures, or

(2) In order to prevent manifest injustice to one or more of the parties or other participants as determined by:

(a) The Title IX Coordinator or Dir HR, as the case may be, under the Informal Complaint Procedures, or

(b) The Decision Maker or Appeal Decision Maker, as the case may be, under the Formal Complaint Procedures.

### **3-6-132 Informal Complaint Procedures.**

(1) **Purpose.** The purpose of the Informal Complaint Procedures is to attempt to resolve the Complaint to the satisfaction of the Complainant and the Respondent by use of voluntary mediation.

(2) **When Informal Complaint Procedures Are Not Allowed.** The Complaint may not proceed under the Informal Complaint Procedures if:

(a) The Complainant and/or the Respondent do not agree to utilize the Informal Complaint Procedures,

(b) The Complaint contains allegations that, if true, would constitute a violation of criminal laws,

(c) Criminal or civil judicial, quasi-judicial and/or governmental agency proceedings have been filed based on the allegations of the Complaint, and/or

(d) The Complaint contains a request for confidentiality by the Complainant.

(3) **Agreement to the Informal Complaint Procedures.** Provided the Complaint is one that is allowed to proceed under the Informal Complaint Procedures, if the Complainant or the Respondent requests that the Informal Complaint Procedures be utilized and the other party does not object to the request, the Informal Complaint Procedures will be utilized.

(4) **Withdrawal of Request By the Complainant or Respondent.** At any time,



the Complainant or the Respondent may, at their discretion, request that the Informal Complaint Procedures terminate. If either the Complainant or the Respondent so requests, the Informal Complaint Procedures will terminate and the Complaint will proceed under the Formal Complaint Procedures described below.

(5) **Responsibility for Leading and Monitoring.** The Informal Complaint Procedure will be led and monitored by the:

- i. Title IX Coordinator if the Complainant is a student or
- ii. Dir HR where the Complainant is faculty or staff.

(6) **Steps In Pursuance of Resolution.** The Title IX Coordinator or Dir HR (or designee), as the case may be, will meet with the Complainant and the Respondent (either together or separately, as determined by the Title IX Coordinator/Dir HR, who shall take into consideration the wishes of the Complainant and Respondent) to discuss resolution of the Complaint in a manner acceptable to both parties. Such meeting will be held no later than 21 days after the Complaint is filed.

(7) **If Resolution Achieved.** If a mutually acceptable resolution is achieved, the terms and conditions of the resolution will be documented in writing and signed by (a) the Title IX Coordinator or Dir HR, as the case may be, (b) the Complainant and (c) the Respondent. A mutually acceptable resolution must be achieved no later than 10 days after the meeting described in subsection (6), above unless the deadline to do so is extended under Section 3-6-131(2)(a)(i) or (b)(i).

(8) **If Resolution Not Achieved.** If a mutually acceptable resolution is not achieved, the Complaint will proceed under the Formal Complaint Procedures described below.

### **3-6-133 Formal Complaint Procedures.**

(1) **Respondent's Response to the Complaint.** The Respondent will be asked to provide a written response that contains their position with respect to the allegations of the Complaint within 10 days of the date on which the Respondent was provided with a copy of the Form.

(2) **Contents.** In the written response, the Respondent should provide:

- (a) Their response to the allegations of the Complaint,
  - (b) The names of persons who the Respondent believes have information that would support the Respondent's position and
  - (c) Documents or materials that the Respondent believes support the Respondent's position.
- (3) **Burden of Proof.** The Complainant has the burden to prove that they have been subjected to Discrimination, Harassment and/or Retaliation.
- (4) **Investigation of the Complaint.**
- (a) **The Investigatory Process.** The Investigator(s) will review the Form and the written response of the Respondent and will gather additional relevant information by:
    - (i) Interviews of persons who may have relevant knowledge including but not limited to the Complainant, the Respondent and/or persons identified in any written or oral information provided in the course of the investigation of the Complaint and/or
    - (ii) Retrieval of relevant documents and/or other materials.
  - (b) **Advisor for the Complainant and/or the Respondent.** At any interview by the Investigator(s) of the Complainant or the Respondent the party interviewed may have one person of their choosing present at the interview as an advisor. The advisor may confer with the party during interview (if the party so requests) but may not otherwise participate in or make any presentation during the course of the interview. The advisor may not submit any written materials to the Investigator(s), the Decision Maker(s), or any consultant employed by the University to conduct or assist with the investigation of the Complaint.
  - (c) **Conduct of the Investigation.** The Investigator(s) will investigate the Complaint as discreetly and expeditiously as possible with due regard for thoroughness and fairness to the Complainant, the Respondent and any other persons who may have relevant information.
  - (d) **Assessing the Information Gathered.** The Investigator(s) and Decision Maker(s) will assess the information gathered in the course of the

investigation, including the credibility of the Complainant, the Respondent and of any other person who provides information about the Complaint.

- (e) **When Investigator(s) is/are not Decision Maker(s).** When the Investigator(s) is/are not the Decision Maker(s), the Investigator(s) will provide the Decision Maker(s) with a written recommendation regarding the investigation that will contain each of the items described in Section 3-6-133(5)(b)(i) through (iii), below.
- (f) **Use of Outside Consultants.** The University may, in its sole discretion, hire a consultant(s) not employed by the University to conduct or assist with the investigation of a Complaint.

**(5) The Decision Making Process.**

- (a) **Investigator as Decision Maker.** Except as otherwise described in the DCP, the Investigator will be the Decision Maker and will issue promptly, with due regard for the nature, scope, and complexity of the investigation, a Decision regarding the Complaint.
- (b) **Contents of the Decision.** The Decision will:
  - (i) Summarize the matters at issue in the Complaint,
  - (ii) Describe the Decision Maker's conclusions about whether the Complainant has met their burden of proof that Discrimination, Harassment and/or Retaliation have occurred and the reasons in support of those conclusions and, if the Decision Maker concludes that Discrimination, Harassment and/or Retaliation have occurred:
    - (A) Identify the persons who have been subjected to Discrimination, Harassment and/or Retaliation,
    - (B) Describe the Remedies to be implemented with respect to the Complainant and
    - (C) Describe the Sanctions or Disciplinary Action that will be implemented with respect to the Respondent.
- (c) **Notification of the Decision.** A copy of the Decision will be

provided promptly by the Decision Maker to the Complainant, the Respondent, and the University Counsel.

(d) **Implementation of Decision.** Except as otherwise described in the DCP, the Decision Maker will (i) implement or (ii) direct and monitor the implementation of any Remedies, Sanctions and/or Disciplinary Action described in the Decision.

(e) **Decision Final and Binding If Not Appealed.** If any portion of the Decision subject to appeal is not appealed as permitted under the Appeal Process described below, that portion of the Decision is final and binding on the University, the Complainant and the Respondent.

**(6) The Appeal Process.**

(a) **Who May File an Appeal.** An appeal of the Decision may be filed by either the Complainant or the Respondent.

(b) **Matters That May Be Appealed.** An appeal is permitted only with respect to the following matters that may be contained in the Decision:

(i) Remedies, and/or

(ii) Sanctions (but only to the extent that a student is suspended or expelled from the University) and/or

(iii) Disciplinary Action(s) (but only to the extent that the faculty and/or staff suffers termination of employment, demotion or reduction in compensation).

(c) **Matters That May Not Be Appealed.** No appeal may be filed with respect to the conclusion of whether Discrimination, Harassment and/or Retaliation have occurred, except in the case of a tenured faculty member who chooses to avail themselves of 2-3-1101(3), who can appeal any conclusion of whether Discrimination, Harassment and/or Retaliation have occurred.

(d) **Standard of Review.** The standard of review that shall be applied by the Appeal Decision Maker in any Appeal Decision is whether the Decision is "arbitrary and/or capricious." If the appealing party fails to satisfy that burden, the Appeal Decision Maker must affirm the Decision.

- (e) **Reversal or Modification of the Decision.** In order for the Appeal Decision Maker to conclude that the Decision should be reversed or modified, the Appeal Decision Maker must find that the Remedies, Sanctions and/or Disciplinary Action(s) described in the Decision are “arbitrary and/or capricious.”
- (f) **Deadline for Filing an Appeal.** An appeal must be filed by submitting a written Appeal Form with the Appeal Decision Maker no later than 5 days from the date the Decision is provided simultaneously to the Complainant and the Respondent. No appeal will be allowed as a response to an appeal filed by the other party.
- (g) **Contents of the Appeal Form.** The Appeal Form shall describe succinctly:
  - (i) The portion(s) of the Decision that are appealed, and
  - (ii) The relief requested in the appeal.
- (h) **Notification of the Appeal.** After the deadline for filing an appeal has occurred, the Appeal Decision Maker shall provide promptly to the parties all Appeal Forms filed.
- (i) **Initial Review of the Appeal Forms.** The Appeal Decision Maker will perform an initial review of each Appeal Form to determine if the party submitting the Form has appealed a matter outside of the scope of Section 3-6-133(6)(b) and, if so, will inform both parties that the appeal is denied as to each such matter.
- (j) **Written Position Statements in Support of the Appeal.** The Complainant and the Respondent will have 5 days from the notification of the appeal by the Appeal Decision Maker to submit simultaneous written position statements regarding the appeal(s). The written position statements shall address:
  - (i) Whether the portions of the Decision that have been appealed should be affirmed or reversed,
  - (ii) Whether the relief requested in the appeal should be granted, and
  - (iii) The reasons in support of the submitting party’s position.

- (k) **Notification of Written Position Statements.** The Appeal Decision Maker shall provide promptly to the parties the written position statements filed.
- (l) **The Appeal Meeting.** If the Appeal Decision Maker, the Complainant and/or the Respondent requests that an Appeal Meeting be held, separate Appeal Meetings will occur between the Appeal Decision Maker and each party not more than 21 days after the deadline for submission of the written position statements. If the Complainant, the Respondent and the Appeal Decision Maker specifically agree to do so, the Appeal Meeting will be a joint Appeal Meeting attended by both the Complainant and the Respondent.
- (m) **Appeal Advisor for the Complainant and the Respondent.** At the Appeal Meeting, the Complainant and the Respondent may each have one person of their choosing to be present as an advisor. The advisor may confer with the appealing party during the Appeal Meeting but may not otherwise participate in, make any presentation to, or submit any written materials to the Appeal Decision Maker.
- (n) **Conduct of the Appeal Meeting.** At the Appeal Meeting, the Appeal Decision Maker may:
- (i) Limit the length of the oral presentations, provided that the same time limit is imposed for each party's presentation, and
  - (ii) Ask questions during or at the conclusion of the parties' presentations regarding matters relevant to the appeal(s).
- (o) **The Appeal Decision.** The Appeal Decision Maker will issue a written Appeal Decision not more than 10 days following the (i) submission of the written position statements or (ii) the conclusion of the Appeal Meeting(s), if Appeal Meeting(s) are held.
- (p) **Contents of the Appeal Decision.** The Appeal Decision will:
- (i) State the Appeal Decision Maker's conclusions about whether the portions of the Decision that have been appealed should be affirmed or reversed,
  - (ii) State whether the relief requested in the appeal(s) is granted, and

(iii) Describe the reasons in support of the Appeal Decision Maker's conclusions about (i) and (ii), above.

(q) **Decision Final and Binding.** The Appeal Decision is final and binding on the University, the Complainant and the Respondent.

### **3-6-134 Investigators, Decision Makers, Collaborators and Appeal Decision Makers**

#### **(1) If both the Complainant and the Respondent are students:**

(a) The Investigator and Decision Maker is the Assistant DOS, provided, however, that in addition to the designation of an Investigator under Section 3-6-133(4)(f), the Assistant DOS may designate another University employee as Investigator and

(b) The Appeal Decision Maker is the Senior Vice President/Chief Academic Officer.

#### **(2) If both the Complainant and the Respondent are faculty and/or staff:**

(a) The Investigator is the Dir HR,

(b) The Decision Maker is the Senior Vice President or Vice President who has supervisory authority over the Respondent, and

(c) The Appeal Decision Maker is the Senior Vice President who was not the Decision Maker. If a Senior Vice President was not the Decision Maker, the Appeal Decision Maker will be a Senior Vice President selected by the Title IX Coordinator.

#### **(3) If the Complainant is a student and the Respondent is faculty and/or staff:**

(a) The Investigators are the Assistant DOS and the Dir HR, both of whom will act as Collaborators,

(b) The Decision Makers are the Assistant DOS and the Senior Vice President or Vice President who has supervisory authority over the Respondent, both of whom will act as Collaborators and

(c) The Appeal Decision Maker is the Senior Vice President who was not a Decision Maker. If a Senior Vice President was not a Decision Maker, the Appeal Decision Maker will be a Senior Vice President selected by the Title IX Coordinator.

**(4) If the Complainant is faculty and/or staff and the Respondent is a student:**

(a) The Investigators are the Dir HR and the Assistant DOS, both of whom will act as Collaborators,

(b) The Decision Makers are the Assistant DOS and the Senior Vice President or Vice President who has supervisory authority over the Complainant, both of whom will act as Collaborators, and

(c) The Appeal Decision Maker is the Senior Vice President who was not a Decision Maker. If a Senior Vice President was not a Decision Maker, the Appeal Decision Maker will be a Senior Vice President selected by the Title IX Coordinator.

**(5) If the Complainant and/or the Respondent is a Trustee, the President, University Counsel, or Internal Auditor:**

(a) The Investigator is a consultant (as described in Section 3-6-133(4)(e)) selected collaboratively by the Dir HR and the Title IX Coordinator,

(b) The Decision Maker is a Senior Vice President selected collaboratively by the Dir HR and the Title IX Coordinator, and

(c) The Appeal Decision Maker is a Senior Vice President who was not the Decision Maker selected collaboratively by the Dir HR and the Title IX Coordinator.

**(6) If the Complainant and/or the Respondent is a Vice President, the Dir HR, the Title IX Coordinator or the Assistant DOS, such person(s) shall not serve as Investigator, Decision Maker or Appeal Decision Maker and their replacement(s) shall be selected by, in order of precedence, the following individuals who are not the Complainant or the Respondent: the Senior Vice President/Chief Academic Officer, the Senior Vice President/Finance and Administration, the remaining Vice Presidents in order of seniority, the Dir HR, the Title IX Coordinator or the Assistant**



DOS.

(7) **If the Respondent is a tenured faculty member and the disciplinary action of the Decision Maker(s) is the Respondent's dismissal (termination of employment)**, the Respondent may, within the time limit stated in Section 3-6-133(6)(f), provide written notification to the Appeal Decision Maker of their decision to exercise their right to appeal using either:

(a) The procedures described in Board Policy 2-3-1101(3), in which case the Appeal Decision Maker will communicate to the President the Decision of the Decision Maker, or

(b) The Appeal Process described in the DCP.

If the Respondent files a timely appeal but does not provide written notification of their choice of the alternative processes described in subsections (a) and (b), above, the procedures described in Board Policy 2-3-1101(3) will be used with respect to Respondent's appeal.

(8) Notwithstanding the investigation and decision making processes of a Complaint as described in the DCP, if the Disciplinary Action to be implemented with respect to a Respondent who is a tenured faculty member is their dismissal (termination of employment), such Respondent is entitled to all the processes contained in Board Policy 2-3-1101(3).

(9) **If the Respondent is a student and the sanction of the Decision Maker(s) is the Respondent's suspension or expulsion from the University**, the Respondent may, within the time limit stated in Section 3-6-133(6)(f), provide written notification to the Appeal Decision Maker of their decision to exercise their right to appeal using either:

(a) The procedures described in Board Policy 2-1-504(1), in which case the Appeal Decision Maker will communicate to the Chief Disciplinary Officer of the University the Decision of the Decision Maker, or

(b) The Appeal Process described in the DCP.

If the Respondent files a timely appeal but does not provide written notification of their choice of the alternative processes described in

subsections (a) and (b), above, the procedures described in Board Policy 2-1-504(1) will be used with respect to Respondent's appeal.

- (10) A Respondent who, under subsection (7) or (9), above, requests the Appeal Process described in the DCP waives their right to the procedures referenced in Subsection (7)(a) or (9)(a), above as the case may be.

### **3-6-135 Additional Procedures on or After August 14, 2020 – Purpose and Scope**

Should the provisions of part 106 of title 34 of the Code of Federal Regulations published by U.S. Department of Education in the Federal Register on May 6, 2020 ("Title IX Rule") be in force and effect on or after August 14, 2020, the following provisions of the DCP shall be applicable to "formal complaints" of "sexual harassment" alleged to have occurred on or after August 14, 2020 as those terms are defined in the Title IX Rule and the provisions of the DCP in Sections 3-6-136 through 145, below. To the extent any of these sections conflict with other provisions of the DCP, the provisions of Sections 3-6-136 through 145 shall supersede other provisions of the DCP only with respect to the Grievance Process for Formal Complaints of Sexual Harassment (as defined below.) In all other circumstances, the provisions of the DCP other than those in Sections 3-6-136 through 145 shall remain in force and effect.

### **3-6-136 Additional Definitions**

The following additional definitions apply to the DCP under the circumstances, and to the extent provided, in Section 3-6-135, above.

- (1) "Actual Knowledge" means notice of Sexual Harassment or allegations of Sexual Harassment to the University's Title IX Coordinator or to any University official, other than the Respondent(s), who has authority to institute corrective measures on behalf of the University and does not include mere vicarious liability or mere constructive notice. For the purposes of this definition, a University official, other than the Respondent(s), who has authority to institute corrective measures on behalf of the University does not include an individual who has (a) the mere ability or obligation to report Sexual Harassment; (b) the mere ability or obligation to inform a University student about how to report Sexual harassment; or (c) was merely trained to report Sexual Harassment or to inform a University student about how to report Sexual Harassment.
- (2) "Administrative Leave" means the placement of a Respondent who is a non-student employee of the University on leave of absence during the pendency

of a Grievance Process.

- (3) "Dating Partner" means a person who is or has been in a social relationship of a romantic or intimate nature with another person and where the determination of whether the two persons are Dating Partners is determined by consideration of (a) the length of the relationship; (b) the type of relationship; and (c) the frequency of interaction between the two persons.
- (4) "Dating Violence" means physical violence committed by a Dating Partner of the victim.
- (5) "Determination Regarding Responsibility" (which may be referred to below as the "Determination") means a written document issued by a Decision-Maker following a Live Hearing in which findings, conclusions, and Remedies and Disciplinary Sanctions (if a Respondent has been determined to have engaged in Sexual Harassment), are outlined, as further described in Section 3-6-143, below.
- (6) "Decision-Maker" means the person (who may not be the Title IX Coordinator or an investigator of the allegations of the Formal Complaint) who presides over the Live Hearing and issues a Determination Regarding Responsibility after the conclusion of the Live Hearing.
- (7) "Disciplinary Sanctions" means, and may include, (1) as to a University student, the Outcomes described in Section 3-2-203(8)(a) through (j) of the University Regulations and (2) as to a University employee, any action permitted by law and/or University policy, including but not limited to, placement in the employee's personnel file of the Determination Regarding Responsibility and any other information or documents compiled in the course of the Grievance Process in which the employee is a respondent, completion of required education, or of research or written materials relevant to Sexual Harassment of which the employee was found responsible, suspension (either with or without pay), demotion, or termination of or dismissal from employment with the University.
- (8) "Domestic Violence" means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to the spouse or victim under the domestic or family violence laws of the State of Colorado, or by any other

person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Colorado.

- (9) "Emergency Removal" means the removal of a Respondent from the University's Education Program or Activity after the University (a) undertakes an individualized safety and risk analysis,
  - (b) determines that an immediate threat to the physical health or safety of any student or individual arising from the allegations of Sexual Harassment against the Respondent justifies removal, and
  - (c) provides the Respondent with notice and an opportunity to challenge the removal immediately after it occurs.
- (10) "Filed," in connection with a Formal Complaint, means submitted to the Title IX Coordinator in person, by mail, or by electronic submission, using the office address, electronic mail address and/or telephone number listed for the Title IX Coordinator on the University website.
- (11) "Formal Complaint" means a document or electronic submission filed by a Complainant or signed by the Title IX Coordinator (that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person who has submitted it) that alleges Sexual Harassment by a Respondent and requests that the University investigate the allegation(s) of Sexual Harassment and, at the time the Formal Complaint was filed, the Complainant was participating, or attempting to participate, in a University Education Program or Activity.
- (12) "Grievance Process" means the process of the University that addresses a Formal Complaint and complies with the requirements of 34 C.F.R. Section 106.45.
- (13) "Informal Resolution" means attempts in which the parties may engage voluntarily to attempt to resolve the allegations of the Formal Complaint prior to the issuance of a Determination Regarding Responsibility by the Decision-Maker and may result in dismissal of the Formal Complaint or a portion(s) thereof.
- (14) "Remedies" means actions of the University that are taken after the Grievance Process has been completed, and after a Determination Regarding Responsibility has been issued in which a Respondent has been determined to have engaged in Sexual Harassment and that imposes Disciplinary Sanctions on the Respondent in order to restore or preserve equal access to

University Education Programs or Activities.

- (15) "Sexual Assault" means penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or an attempt to do any of the above, without the consent of the victim.
- (16) "Sexual Harassment" means conduct on the basis of sex occurring in the United States (a) in which a University employee conditions the provision of an aid, benefit, or service of the University on a person's participation in Unwelcome Sexual Conduct; (b) that constitutes Sexual Assault (as defined in 20 U.S.C. Section 1092(f)(6)(A)(v)); (c) that constitutes Dating Violence (as defined in 34 U.S.C. Section 12291(a)(10)); (d) that constitutes Domestic Violence (as defined in 34 U.S.C. Section 12291(a)(8)); and/or (e) that constitutes Stalking (as defined in 34 U.S.C. Section 12291(a)(9)).
- (17) "Stalking" means a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for their safety or the safety of others or (b) suffer substantial emotional distress.
- (18) "Supportive Measures" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed, which are designed to restore or preserve equal access to a University Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or to deter Sexual Harassment, and may include counseling, extensions of deadlines or other course-related adjustment, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the University campus, and other similar measures, and such measures must be maintained as confidential by the University to the extent that maintaining such confidentiality would not impair the ability of the University to provide such measures.
- (19) "University Education Program or Activity" means locations, events, or circumstances over which the University exercises substantial control over the respondent and the context in which Sexual Harassment occurs and includes any building owned or controlled by a Registered Student Organization as that term is defined in Section 3-2-203(12) of the University Regulations.

- (20) “Unwelcome Sexual Conduct” means behavior of a sexual nature determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a University Education Program or Activity.

### **3-6-137 Initiation of the Grievance Process**

- (1) **Notice of Allegations** Within five (5) days after a Formal Complaint is filed, the University shall provide written notice of the Formal Complaint” to each Complainant and Respondent identified.
- (2) **Contents** The written notice shall contain:
- (a) A description of the Grievance Process, as well as the Informal Resolution Process;
  - (b) A statement that the Respondent(s) is presumed not responsible for the alleged conduct and that a Determination Regarding Responsibility will be made at the conclusion of the Grievance Process;
  - (c) A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, who may inspect and review evidence obtained as part of the investigation that is directly related to the allegations of the Formal Complaint pursuant to 34 C.F.R. Section 106.45(b)(5)(i), be present during any meeting or proceeding at which the parties may be present during the Grievance Process to advise their respective party, provided however, other than at the Live Hearing, the advisor may not otherwise participate in, make any presentation during, or submit any written materials on behalf of their party;
  - (d) A statement that, pursuant to Section 3-2-204(17)(b) and (c) of the University Regulations the parties are prohibited from making knowingly false statements or submitting knowingly false information during the Grievance Process; and
  - (e) Sufficient details of the allegations of Sexual Harassment contained in the Formal Complaint including:

- (i) The identities of the persons involved in the incident, if known;
- (ii) The conduct alleged to constitute Sexual Harassment; and
- (iii) The date and location of the incident during which the Sexual Harassment is alleged to have occurred, if known.

(3) **Notice of Additional Allegations** If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not described in the original written notice of allegations, the University shall provide notice of the additional allegations to the parties whose identities are known.

### **3-6-138 Dismissal of a Formal Complaint**

(1) **Required Dismissal** After the University investigates the allegations of a Formal Complaint it shall dismiss the Formal Complaint, or certain of the allegations of Sexual Harassment alleged in the Formal Complaint, if the University determines the conduct alleged, even if proved:

- (a) Would not constitute Sexual Harassment;
- (b) Did not occur in a University Education Program or Activity; and/or
- (c) Did not occur within the United States.

(2) **Permitted Dismissal** After the University investigates the allegations of a Formal Complaint it may dismiss the Formal Complaint, or certain of the allegations of Sexual Harassment alleged in the Formal Complaint, if at any time prior to the issuance of the Determination Regarding Responsibility:

- (a) The Complainant notifies the Title IX Coordinator in writing that the Complainant wishes to withdraw the Formal Complaint or any allegations in it;
- (b) The Respondent is no longer enrolled in the University, if a student, or employed by the University, if an employee, as the case may be; and/or
- (c) Specific circumstances prevent the University from gathering evidence sufficient to reach a Determination Regarding Responsibility as to the Formal Complaint or the allegations of Sexual Harassment in it.

- (3) **Notice of Dismissal** Upon dismissal by the University as required or permitted above, the University shall send promptly written notice of the dismissal and the reasons for the dismissal to each party simultaneously.

### **3-6-139 Informal Resolution of a Formal Complaint**

- (1) **Procedure** After a Formal Complaint is filed that alleges Sexual Harassment and at any time prior to the issuance of a Determination Regarding Responsibility by the Decision-Maker, the University may offer to facilitate informal resolution between/among the parties by which the parties agree voluntarily to resolve the allegations contained in the Formal Complaint, including but not limited to allegations of Sexual Harassment, without proceeding further in the Grievance Process. The University, as part of the offer of informal resolution must:

- (a) Provide each party with the Notice of Allegations described in Section 3-6-137, above;
- (b) Obtain each party's voluntary written consent to engage in the informal resolution process;
- (c) Inform each party in writing that:
  - (i) If the parties reach an informal resolution that the terms and conditions of such resolution must be in writing and will preclude the parties from resuming the Grievance Process with respect to the allegations of Sexual Harassment in the Formal Complaint; and
  - (ii) Each party has the right, at any time, to withdraw from the informal resolution process and resume the Grievance Process with respect to the Formal Complaint.

- (2) **When Informal Resolution may not be Offered or Facilitated by the University** The University shall not offer to facilitate or facilitate the informal resolution process to resolve allegations of a Formal Complaint that a University employee engaged in Sexual Harassment of a University student, provided, however, that this prohibition does not preclude the parties from engaging voluntarily in discussions between them that results in a resolution of the allegations and notification by the Complainant that they wish to withdraw the Formal Complaint or any of the allegations in it.



- (3) **Additional Time to be Provided by Decision-Maker** The Decision-Maker shall provide additional time, as necessary, to allow the parties to engage in informal resolution of the Formal Complaint pursuant to this section 3-6-139, or other voluntary discussions between/among the parties in pursuance of resolution of the Formal Complaint, when all parties agree that it is reasonable and appropriate that additional time should be provided.

### **3-6-140 Consolidation of Formal Complaints**

The University may consolidate Formal Complaints that contain allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party, where the allegations of Sexual Harassment arise out of the same facts or circumstances.

### **3-6-141 Investigation of a Formal Complaint**

- (1) **Responsibility for Conducting the Investigation** The Title IX Coordinator or their designee shall investigate the allegations of Sexual Harassment in the Formal Complaint as described in Section 3-6-133(4)(a) and (c), above, and the burden of proof is on the University to gather evidence sufficient to reach a Determination Regarding Responsibility as to the Respondent(s).
- (2) **Procedures During the Investigation** During the investigation, the University may not restrict the ability of the parties to discuss the allegations under investigation or to gather and present relevant evidence and shall;
- (a) Provide each party with the opportunity to have an advisor of their choice, who may be, but is not required to be, an attorney, who may inspect and review evidence obtained as part of the investigation that is directly related to the allegations of the Formal Complaint pursuant to 34 C.F.R. Section 106.45(b)(5)(i), be present during any hearings, investigative interviews or other meeting at which the parties may be present during the Grievance Process to advise their respective party, provided however, other than at the Live Hearing, the advisor may not otherwise participate in, make any presentation during, or submit any written materials on behalf of the party for whom they are the advisor;
  - (b) Provide each party who is expected to participate in the Grievance Process written notice of the date, time, location, participants, and purpose(s) of all hearings, investigative interviews or other meetings,

with sufficient time for the parties to prepare to participate;

- (c) Provide each party an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint including evidence upon which the University does not intend to present in the Live Hearing with respect to the Decision-Maker's issuance of their Determination Regarding Responsibility, as well as inculpatory or exculpatory evidence whether obtained from a party or other source;
- (d) Provide each party and their respective advisor, if any, the evidence subject to inspection and review in electronic format or hard copy;
- (e) Provide each party at least ten (10) days to submit a written response to such evidence, which the investigator will consider prior to completion of the investigation report;
- (f) Make all such evidence available for each party's inspection and review at any hearing and give each party equal opportunity to refer to such evidence during the Live Hearing, including for the purposes of cross-examination; and
- (g) Create an investigation report that fairly summarizes relevant evidence and, at least 10 days prior to the Live Hearing, shall provide each party and their respective advisor, if any, the investigation report in electronic format or hard copy for their review and written response, if any.

### **3-6-142 The Live Hearing**

- (1) **The Location and Method by Which the Live Hearing Will Occur** The Grievance Process shall include a Live Hearing that will be conducted virtually, with technology that enables the participants to see and hear each other simultaneously.
- (2) **Decision-Maker's Responsibilities with Respect to the Live Hearing** The Live Hearing that shall be presided over by the Decision-Maker, who shall:
  - (a) Make all decisions regarding the scheduling and conduct of the hearing, except as otherwise provided in Sections 3-6-135 through 145 or in 34 C.F.R Section 106.45(b)(6);
  - (b) Provide an equal opportunity for the parties to present witnesses,

including fact and expert witnesses, as well as inculpatory and exculpatory evidence;

- (c) Permit each party's advisor to ask the other party and any witnesses only relevant questions and follow-up questions, including questions challenging the credibility of the parties and any witnesses as further described in Section 3-6-142(3), below;
- (d) Permit only relevant documentary and other physical materials to be received in at the Live Hearing; and
- (e) Not permit questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent or lack thereof.

(3) **Standard of Evidence** The standard of evidence used in the Live Hearing and by the Decision- Maker in their Determination Regarding Responsibility is the "preponderance of the evidence" as described in Section 3-6-126(18).

(4) **Procedures and Requirements Regarding Cross-Examination** Cross-examination of the parties and other witnesses during the Live Hearing shall be conducted consistent with the following procedures and requirements:

- (a) Cross-examination of a party or other witness may only be conducted by a party's advisor and not by the party themselves;
- (b) If a party does not have an advisor present at the Live Hearing, the University will provide, without fee or charge to that party, an advisor of the University's choice, who may, but is not required to, be an attorney to conduct cross-examination on behalf of that party;
- (c) Only relevant cross-examination questions and other questions may be asked of a party or witness, as determined by the Decision-Maker;
- (d) Before a Complainant or Respondent or a witness answers a cross-examination or other question, the Decision-Maker shall first determine whether the question is relevant to the issues in the Live Hearing and

shall explain their decision to exclude a question that they determine is not relevant; and

- (e) If a party or witness does not submit themselves to cross-examination at the Live Hearing, the Decision-Maker shall not rely on any statement of that party or witness in reaching the Determination Regarding Responsibility, provided however, that the Decision-Maker shall not draw an inference in the Determination based solely on a party's or witness's absence from the Live Hearing or refusal to answer cross-examination or other questions.

- (5) **Recording or Transcript of the Live Hearing** The University, in its discretion, will create an audio or audiovisual recording or a written transcript of the Live Hearing and make the recording or transcript available for the inspection and review of each party.

### **3-6-143 The Decision-Maker's Determination Regarding Responsibility**

- (1) **Issuance and Matters Addressed in the Determination Regarding Responsibility** After the Live Hearing has concluded, the Decision-Maker shall issue a written Determination Regarding Responsibility ("Determination") regarding the allegations of Sexual Harassment in the Formal Complaint, which Determination shall apply the "preponderance of the evidence" standard. The Determination must:

- (a) Describe the allegations potentially constituting Sexual Harassment;
- (b) Describe the procedural steps taken from the Filing of the Formal Complaint through the issuance of the Determination including any:
  - (i) Notifications to each party;
  - (ii) Interview of the parties and witnesses;
  - (iii) Site visits;
  - (iv) Methods used to gather other evidence; and
- (c) State the Decision-Maker's findings of fact supporting the Determination;
- (d) State the conclusions regarding the application of the relevant

University policies and relevant provisions of the DCP to the facts;

- (e) State the result as to each allegation and the rationale for such result, including the Determination regarding responsibility, any Disciplinary Sanctions the University is to impose on the Respondent, and any Remedies designed to restore or preserve equal access to the University Education Program or Activity that the University will provide to the Complainant; and
- (f) The University procedures and permissible bases for the Complainant and Respondent to appeal the Determination, if either of them decides to do so.

(2) **To whom the Determination is Provided** The Decision-Maker must provide the Determination to each of the parties and to the Title IX Coordinator simultaneously.

(3) **When the Determination Becomes Final** The Determination becomes final either on the date that the University provides the parties with the Determination of the result of an appeal, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be considered timely.

### **3-6-144 Appeals**

(1) **Who may Appeal and Under What Circumstances** Either party may appeal from (1) a written Determination Regarding Responsibility or (2) the University's dismissal of a Formal Complaint or any of the allegations in a Formal Complaint, on the following bases only:

- (a) Procedural irregularity that affected the outcome of the matter;
- (b) New evidence that was not reasonably available at the time the Determination Regarding Responsibility or dismissal of the Formal Complaint (or any allegations contained in the Formal Complaint was issued, that would have affected the outcome of the matter; and/or
- (c) The Title IX Coordinator, investigator(s) or Decision-Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent involved in the Formal Complaint, that affected the outcome of the matter.

(2) **Deadline for Filing an Appeal** The deadline for filing an appeal and the

procedures followed regarding such appeals is will be as stated in Section 3-6-133(6).

(3) **The Appeal Decision-Maker** The Appeal Decision-Maker is:

- (a) The Dean of Students if the Complainant and Respondent are both University students; and
- (b) The Dean of Students and the Senior Vice President or Vice President who has supervisory authority over the Respondent if the Complainant is a University student and the Respondent is a University employee, in which case the Dean of Students and Senior Vice President or Vice President who will collaborate to prepare the Appeal Decision.

### **3-6-145 Confidentiality**

The University must maintain as confidential the identity of:

- (1) any person who has made a report of or Filed a Formal Complaint of Sexual Harassment;
- (2) any Complainant;
- (3) any Respondent;
- (4) any person who has been reported to have engaged in Sexual Harassment; and
- (5) any witness who has provided information in any portion of the Grievance Process or Live Hearing;

except as may be permitted by FERPA, required by law, and/or to carry out the purposes of 34 C.F.R. Section 106 including the conduct of any Grievance Process or judicial proceeding arising thereunder.

### **Policy History**

#### **3-6-102 HIRING POOLS.**

Subsection 3-6-102(1) The Process (a)(b)(e)(f)(g) amended (Mar 2011)

Subsection 3-6-102(1) Exceptional Appointments (e)(l)(A) amended (Mar 2011)

Section 3-6-102 amended (Mar 2011)

**3-6-125 DISCRIMINATION COMPLAINT PROCEDURES – PURPOSE AND SCOPE.**

3-6-125 Section added (Apr 2015)

Section 3-6-125 amended (Aug 2020)

**3-6-126 DEFINITIONS.**

3-6-126 Section added (Apr 2015)

**3-6-127 GENERAL PROCEDURES.**

3-6-127 Section added (Apr 2015)

**3-6-128 INTERIM ACTIONS.**

3-6-128 Section added (Apr 2015)

**3-6-129 LIMITATIONS ON DISCLOSURE TO THE PUBLIC AND UNIVERSITY OFFICIALS, EMPLOYEES AND STUDENTS.**

3-6-129 Section added (Apr 2015)

**3-6-130 INITIATION OF EXTERNAL PROCEDURES.**

3-6-130 Section added (Apr 2015)

**3-6-131 TIME LIMITS AND EXTENSIONS.**

3-6-131 Section added (Apr 2015)

**3-6-132 INFORMAL COMPLAINT PROCEDURES.**

3-6-132 Section added (Apr 2015)

**3-6-133 FORMAL COMPLAINT PROCEDURES.**

3-6-133 Section added (Apr 2015)

3-6-133(6)(c) Section amended (May 2015)

**3-6-134 INVESTIGATORS, DECISION MAKERS, COLLABORATORS AND APPEAL DECISION MAKERS.**

3-6-134 Section added (Apr 2015)

**3-6-135 through 3-6-145 ADDITIONAL TITLE IX RULE PROCEDURES ON OR AFTER AUGUST 14, 2020.**

3-6-135 through 3-6-145 Sections added (Aug 2020)