

# CSU-Pueblo Policy Library

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## CSU-PUEBLO POLICY: TITLE IX, SEXUAL HARASSMENT AND GENDER DISCRIMINATION

Policy Title: Title IX, Sexual Harassment and Gender Discrimination	Category: Human Resources
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Contact: Human Resources Web: <a href="http://www.csupueblo.edu/HR">http://www.csupueblo.edu/HR</a> Email: <a href="mailto:hr@csupueblo.edu">hr@csupueblo.edu</a>	Effective Date: 8/6/2020  Viewing/Downloading Options: <ul style="list-style-type: none"><li>• <a href="#">Web - Formatted (this page)</a></li><li>• <a href="#">Web - Printable</a></li></ul>

### A. POLICY PURPOSE:

In 1972 the Federal Education Amendments, known as Title IX, were signed into law. The law states “no person in the [United States](#) shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to [discrimination](#) under any education program or activity receiving Federal financial assistance. The Department of Education promulgated new regulations under Title IX in May 2020. This policy addresses the requirements of the new regulations and the University’s response to Sexual Harassment and Gender Discrimination.

### B. POLICY APPLIES TO (Persons affected by):

Students, Employees and Campus Community Members.

### C. DEFINITIONS:

1. Actual Knowledge - Notice of Sexual Harassment or allegations of Sexual Harassment to the University’s Title IX Coordinator or any Official With Authority.
2. Campus Community Members - Individuals who have applied for admission, or those who visit campus or work on campus that are not students or employees of the University.

3. Complainant - An individual who, at the time of filing a Formal Complaint, is participating in or attempting to participate in an Education Program or Activity and who is alleged to be the victim of conduct that could constitute Sexual Harassment.
4. Consent to sexual activity is consent that is informed, knowing and voluntary. Consent is active, not passive, and requires cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. Silence, in and of itself, cannot be interpreted as consent. Sexual activity with someone known, or who should be known, to be mentally or physically incapacitated by alcohol or other drug use, unconscious or in a state of blackout, or otherwise unable to give consent, is not valid consent. A person is considered to be incapable of giving consent when the person lacks the cognitive ability to make an important life decision, and this measure applies even when the same persons have engaged with one another in consensual sex in the past.
5. Dating Violence - The term “dating violence means violence committed by a person
  - a. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - b. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - i. The length of the relationship.
    - ii. The type of relationship.
    - iii. The frequency of interaction between the persons involved in the relationship.
6. Deliberate Indifference - A response to Sexual Harassment by the University that is clearly unreasonable in light of the known circumstances.
7. Domestic Violence - The term “domestic violence” includes 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 a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, 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 jurisdiction.
8. Education Program or Activity - The term “education program or activity” includes locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

9. Employee - An individual employed by the University and receiving compensation.
10. Formal Complaint - A document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the University investigate the allegation of Sexual Harassment.
11. Gender Discrimination - (Also referred to as Sex Discrimination) Discrimination based on a person's gender, gender identity or sexual orientation.
12. Official with Authority - ("OWA") Any official of the University who has authority to institute corrective measures on behalf of the University and in turn has the obligation to report alleged Sexual Harassment and alleged Retaliation to the Title IX Coordinator.
13. Party - The Complainant or Respondent.
14. Respondent - An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment and/or Gender Discrimination.
15. Retaliation - Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.
16. Sexual Assault - An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. The definition of "sexual assault" includes rape, fondling, incest, and statutory rape.
17. Sexual Harassment - Conduct on the basis of sex that satisfies one or more of the following:
  - a. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
  - b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity; or
  - c. Sexual assault as defined in 20 U.S.C. § 1092(f)(6)(A)(v), dating violence as defined in 34 U.S.C. § 12291(a)(1), domestic violence as defined in 34 U.S.C. § 12291(a)(8), or stalking as defined in 34 U.S.C. 12291(a)(30).
18. Stalking - The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - a. Fear for his or her safety or the safety of others; or
  - b. Suffer substantial emotional distress.

19. Student – A person who is enrolled in courses offered by the University either full-time, part-time, pursuing undergraduate, graduate, professional or continuing education. These classes may be offered on the Pueblo campus, at another location or online, or a combination of these.

20. Supportive Measures - Non-disciplinary, non-punitive individualized services offered, as appropriate, to the Complainant or Respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

21. Title IX Coordinator - Interim Title IX Coordinator Kat Abernathy, Executive Director of Human Resources and Institutional Equity, Admin Bldg #307, 719-549- 2256, Kat.abernathy@csupueblo.edu. Information regarding the Title IX Coordinator will be updated regularly. For the purpose of this Policy, actions to be taken by the Title IX Coordinator may be completed by the Title IX Coordinator’s designee.

22. University – Refers to Colorado State University Pueblo.

## **D. POLICY STATEMENT:**

CSU Pueblo is committed to providing an environment free of sexual harassment and gender discrimination for its students and staff. CSU Pueblo does not discriminate on the basis of sex in the education programs and activities that it operates and is prohibited from such discrimination pursuant to Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-88) and implementing regulations (34 C.F.R. Part 106). This prohibition extends to admissions and employment.

CSU Pueblo prohibits Sexual Harassment and Gender Discrimination by and against Students and/or Employees. When the University has actual knowledge of Sexual Harassment in an Education Program or Activity of the University against a person in the United States, it will respond promptly in a manner that is not Deliberately Indifferent. Such allegations shall be investigated and properly handled up to and including dismissal from the University and termination of employment. CSU Pueblo will provide an opportunity to informally resolve issues of Sexual Harassment and Gender Discrimination and will provide an opportunity to resolve matters through a formal grievance process that will include a live hearing. An opportunity to appeal any decision will be afforded to both parties.

Any Title IX complaint will be handled by the procedures promulgated with this Policy. This includes a Title IX complaint that also alleges violations of other University policies.

## **E. POLICY PROVISIONS:**

### **1. Jurisdiction**

The provisions of this Policy apply to all reported instances of alleged Sexual Harassment that occur while the Complainant is in the United States and is participating in, or attempting to participate in, an Education Program or Activity of the University. The University may apply similar procedures to allegations of Sexual Harassment that occur outside of the United States or outside of an Education Program or Activity.

## 2. Reports of Alleged Sexual Harassment

At any time, any person may report Sex Discrimination, including Sexual Harassment (whether or not the person reporting is the person alleged to be the victim of Sex Discrimination), in person, by mail, by telephone, or by electronic mail to the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Any Official With Authority who receives a report of alleged Sexual Harassment must promptly report the alleged Sexual Harassment to the Title IX Coordinator. Upon receiving a report of alleged Sexual Harassment, the Title IX Coordinator will promptly 1) Inform the Complainant of the method for filing a Formal Complaint; 2) Inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint; and 3) Offer Supportive Measures to the Complainant, the Respondent, or both.

## 3. Supportive Measures

The Title IX Coordinator will ensure that Supportive Measures are offered to the Complainant and/or the Respondent as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent. Supportive Measures may be offered before or after the filing of a Formal Complaint, or where no Formal Complaint has been filed.

The purpose of Supportive Measures is to restore or preserve equal access to the University's Education Program or Activity without unreasonably burdening the other Party. Supportive Measures include measures designed to protect the safety of all Parties or the Institution's educational environment, as well as measures designed to deter Sexual Harassment.

Supportive Measures may include, but are not limited to:

- a. Counseling
- b. Extensions of deadlines or other course-related adjustments
- c. Modifications of work or class schedules
- d. Campus escort services
- e. Mutual restrictions on contact between the Parties
- f. Changes in work or housing locations

- g. Leaves of absence
- h. Increased security and monitoring of certain areas of the campus
- i. Other similar measures

Supportive Measures do not include disciplinary sanctions. The formal resolution process must be completed before disciplinary sanctions may be imposed on a Respondent. However, the University may remove a Student Respondent from its Education Program or Activity on an emergency basis if the appropriate University committee does the following:

- a. Undertakes an individualized safety and risk analysis;
- b. Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal; and
- c. Provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

The University may place a non-student employee Respondent on administrative leave during the pendency of the formal resolution process.

The University will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

#### 4. Process

The University will provide a fair and equitable process that will include an opportunity for informal resolution in all matters except for an allegation of sexual harassment between a student and an employee. Informal resolution can only be undertaken if voluntary and agreed to by both parties. If the informal resolution process does not resolve the matter, or if no informal resolution occurs, then a formal resolution process (grievance process) will be followed. The university will provide a grievance procedure for students and employees consistent with the Title IX regulations, and such procedures will treat the Complainant and the Respondent equitably. The formal resolution process will include a live hearing, the right to an advisor for each party, cross examination by the advisor of the Parties and witnesses, and relevancy determination of questions asked during the hearing. Upon a finding after the hearing, the Parties will have the right to appeal. The burden of proof is on the University to prove by a preponderance of the evidence that a violation of this policy has occurred.

#### 5. Training

All training materials of Employees and Students will be published on the University webpage.

## 6. Retention of records

All records relevant to proceedings under this policy shall be retained by the University for seven (7) years.

## 7. Retaliation

Retaliation against a Complainant, Respondent, or any person involved in the investigation will not be tolerated. Those found to have retaliated against any individual will be disciplined according to the applicable disciplinary procedures based on their status at the University.

## **E. RESPONSIBILITIES:**

The Title IX Coordinator is responsible for this policy.

## **F. RELATED LAWS, POLICIES & PROCEDURES:**

Title IX Procedures

Student Code of Conduct

Faculty Handbook

<https://www.csupueblo.edu/institutional-equity/policies-and-procedures/index.html>

## **G. AUTHORITY:**

Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-88) and implementing regulations (34 C.F.R. Part 106).

## **APPROVED**

Colorado State University Pueblo

Timothy Mottet, President

Board of Governors of the Colorado State University System

Date: 08/07/2020

This Policy supersedes the Policy Against Discrimination, Protected Class Harassment, Sexual Misconduct, Intimate Partner Violence (Domestic Violence, Dating Violence), Stalking, and Retaliation as to Title IX matters within the jurisdictional scope of this Policy.