

	<b>Procedure for Resolving Complaints of Sexual Harassment, Sexual Assault, and Interpersonal Violence</b>	
	<b>Responsible Administrative Unit:</b> Title IX Office/Human Resources	<b>Procedure Contact:</b> Title IX Coordinator titleix@mines.edu

*The information contained within this document is intended to provide general information and guidelines to members of the Mines community and is not intended to, nor does it, create an express or implied contract between the Colorado School of Mines and its students. Mines reserves the right to change or eliminate any of the language herein at its discretion and without notice.*

## 1.0 PROCEDURE PURPOSE

The Colorado School of Mines (“Mines”) is committed to providing a safe learning, working and living environment for its students, faculty, staff and visitors. As part of this commitment, Mines Board of Trustees has adopted a policy Prohibiting Sexual Harassment, Sexual Assault, and Interpersonal Violence (“the Policy”). These procedures have been established to implement that Policy.

## 2.0 PROCEDURES

**2.1 Jurisdiction.** These procedures apply to any Report or Formal Complaint alleging a violation of conduct prohibited by the Policy that occurs within a Mines Education Program or Activity (including admissions and employment), against a person in the United States.

### 2.2 Reporting.

#### 2.2.1 Who May Submit a Report

Any individual who believes a violation of the Policy has occurred may submit a [Report to the Title IX Coordinator](#) at any time, whether or not the person reporting is the person alleged to be the victim of conduct alleged in the Report.

#### 2.2.2 Against Whom a Report May Be Submitted

Reports may be submitted against any individual alleged to have engaged in behavior prohibited by the Policy including individuals on an academic recess or leave of absence.

#### 2.2.3 Mandatory Reporting

Individuals designated as Mandatory Reporters are required to contact the Title IX Coordinator immediately whenever they observe or receive

information about instances of Sexual Harassment, Sexual Assault, and Interpersonal Violence. Reporting is necessary to ensure individuals who may be impacted by behavior prohibited by the Policy are advised of available services, resources, and Supportive Measures, and facilitates Mines' ability to track incidents, identify patterns, and take appropriate steps to protect the Mines community. Reporting by a Mandatory Reporter will not necessarily result in the filing of a Formal Complaint.

#### 2.2.4 How to Submit a Report

Reports should be made to the Mines Title IX Coordinator or to a Deputy Title IX Coordinator, identified on the [Mines Title IX website](#), who will advise the Title IX Coordinator. Reports may be submitted in person, by U.S. Mail, by e-mail, telephone, or through the online reporting form on the Student Life website.

#### 2.2.5 Anonymous Reports and Requests for Anonymity

Mines evaluates Reports submitted anonymously to determine whether additional steps are appropriate. If a reporting party requests anonymity, the Title IX Coordinator will consider how to proceed, taking into account the reporting party's wishes, Mines' obligations under Title IX, and obligations to the Respondent. However, if a Complainant submits a Formal Complaint, and requests an investigation to initiate the Formal Grievance Process, the Complainant's identity must be disclosed to Respondent.

#### 2.2.6 Concurrent Criminal Proceedings

Certain acts of Sexual Harassment, Sexual Assault, and Interpersonal Violence may constitute both a violation of Mines' Policy and a possible criminal offense. Mines encourages, but does not require, the reporting of alleged criminal acts to appropriate law enforcement authorities. For information about filing a criminal complaint, please contact Mines Police (303.273.3333).

#### 2.2.7 Protection of Information

Mines treats all Reports and Formal Complaints as confidential matters and will make reasonable efforts to protect the confidentiality of the process, any investigation or resolution, and all individuals involved with the process. It is important to understand that while Mines will treat information it has received with appropriate sensitivity, Mines officials may nonetheless need to share certain information with those at Mines responsible for complying with Title IX. It is also important to understand that during a formal investigation, witnesses may be able to determine the identity of the parties (or other witnesses) based on their involvement in the incident leading to the investigation.

#### 2.2.8 False Reports/Providing False Information

Intentionally submitting a materially false statement in bad faith in connection with a Report or Formal Complaint, or in the course of an investigation, may be investigated as a violation of the Student Code of Conduct, Faculty Handbook, or other Mines policy.

#### 2.2.9 Confidential Reporting Options

There are multiple confidential reporting options, both on and off campus.

- [Title IX Confidential Resources](#)
- [Counselors in the Counseling Center](#)
- [Health Care Providers in the Health Center](#)
- [The Blue Bench](#)
- [RAINN](#)

Resource information can be found at [www.mines.edu/title-ix/](http://www.mines.edu/title-ix/).

Mandatory Reporters can refer a student to a Confidential Resource, but must still report the misconduct to the Title IX Coordinator.

#### 2.2.10 Amnesty

Except in extreme circumstances, individuals who submitted Reports, the Complainant, Respondent, and witnesses will receive amnesty for potential violations of the [Student Code of Conduct](#) related to the underage consumption of alcohol and/or illegal drug use.

#### 2.2.11 Response to Reports/Preliminary Inquiry

Upon receiving a Report, the Title IX Coordinator, or designee, will promptly contact the Complainant to explain the Policy, these Procedures, and the availability of Supportive Measures and support resources (discussed in Section 2.3). The Title IX Coordinator, or designee, will review the options available to the Complainant, including:

- Reporting to law enforcement;
- The right to seek Supportive Measures and resources from Mines, regardless of whether a Formal Complaint is filed;
- Filing a Formal Complaint and initiating the Formal Grievance Process; and
- Requesting informal, alternate resolution through these Procedures (“Alternate Resolution”).

At its discretion, the Title IX Office may conduct a preliminary inquiry upon receiving a Report or Formal Complaint. A preliminary inquiry may include, but is not limited to, evaluating whether the Report implicates a policy enforced by the Title IX Office or other offices on campus. If the reported misconduct would not constitute a violation of the Policy, or is subject to dismissal as discussed below, the Title IX Office may refer the matter to the appropriate office or division on campus best situated to address the reported misconduct.

### 2.3 Safety and Supportive Measures. Mines will provide support to any Impacted Party, including the Complainant, and Respondent, as

appropriate, and with consideration of the wishes of the Impacted Party. Supportive Measures are available regardless of whether a Complainant decides to file a Formal Complaint. Mines may also take any and all measures it deems necessary to protect the Complainant, the Respondent, witnesses, and/or the Mines community. Supportive Measures will be implemented in a manner that minimizes the burden on the parties to the extent reasonably possible. Such measures may take many forms, including, but not limited to the following:

- Recommending issuance of mutual “no contact” directives;
- Providing escorts to the parties so they can transition between classes and activities without risk of running into the other party;
- Coordinating class schedules for the parties to eliminate or decrease conflicts;
- Providing information about obtaining protective orders through appropriate law enforcement and judicial mechanisms;
- Moving one or both of the parties to a different campus housing unit;
- Providing assistance with modifying class schedule;
- Providing academic support services, such as tutoring and testing in the Testing Center;
- Arranging for a party to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the party’s academic record;
- Providing assistance with modifying work schedule or office location;
- Providing referrals for counseling and/or victim’s support services;
- Providing referrals for medical services;
- Assigning a Process Resource to the Complainant and/or Respondent;
- Providing additional campus-wide, office or department specific training; and
- Any other steps Mines determines are reasonable and appropriate given the circumstances.

**2.4 Emergency Removal.** If Mines concludes, based on an individualized safety and risk analysis, that a Respondent poses an immediate threat to the physical health or safety of a student, employee or other individual arising from the allegations of Sexual Harassment, Sexual Assault or Interpersonal Violence, the Respondent may be temporarily suspended from access to campus through written notice by appropriate Mines officials.

A student who has been suspended on an interim basis may submit a written appeal to the Vice President of Student Life within ten (10) business days following the interim suspension decision. The appeal must explain why the student believes that the suspension should be lifted or modified. The Vice President of Student Life, or their designee, will render a written decision within ten (10) business days following receipt of the appeal.

An employee who has been placed on Administrative Leave under these procedures may submit a written appeal to the area Vice President or Provost, as applicable, within ten (10) business days following the imposition of leave. The appeal must explain why the employee believes the Administrative Leave should be lifted or modified. The area Vice President or Provost hearing the appeal, or their designee, will render a written decision within ten (10) business days following receipt of the appeal.

**2.5 Records Retention.** The Title IX Coordinator is the custodian of all records regarding Reports and Formal Complaints of Sexual Harassment, Sexual Assault, or Interpersonal Violence, as defined herein, including all documents, records, transcripts and recordings related to any actions, Supportive Measures, investigation, Formal or Alternate Grievance Process, and Appeal taken in response to a Report or Formal Complaint. In addition, the Title IX Coordinator shall post on the Title IX website all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an Alternate Grievance Process. All materials shall be retained for a period of seven (7) years.

### **3.0 FORMAL COMPLAINT & GRIEVANCE PROCESS**

**3.1 Filing a Formal Complaint.** A Formal Complaint may be filed with the Title IX Coordinator in person, by U.S. mail, by e-mail, using the contact information on the [Mines Title IX Website](#), or through the online reporting form on the Student Life website. A Complainant must be participating in, or attempting to participate in, Mines' Education Program or Activity at the time a Formal Complaint is filed. In cases where the Title IX Coordinator determines the nature of the reported misconduct creates a risk to the greater Mines community, taking into account the nature and severity of the alleged misconduct and/or past allegations against the Respondent, the Title IX Coordinator, may sign and file a Formal Complaint and initiate the Formal Grievance Process on behalf of Mines. In addition, the Title IX Coordinator may consolidate Formal Complaints where the allegations arise out of the same facts or circumstances.

**3.2 Response to Formal Complaint.** Upon receipt of a Formal Complaint and request for investigation, the Title IX Coordinator will initiate the Formal Grievance Process outlined below. Once a Formal Complaint is filed, the Complainant or Respondent can choose at any time to switch from the Formal Grievance Process to the Alternate Grievance Process, so long as both Parties agree.

**3.3 Dismissal of Formal Complaints.**

### 3.3.1 Mandatory Dismissal

If the misconduct alleged in the Formal Complaint (1) does not meet the definition of Sexual Harassment, Sexual Assault, or Interpersonal Violence, as defined below; or (2) did not occur within a Mines Education Program or Activity or against a person in the United States; or (3) that the Complainant was not participating in or attempting to participate in a Mines Education Program or Activity at the time the Formal Complaint was filed, Mines must **dismiss** the Formal Complaint.

### 3.3.2 Discretionary Dismissal

Mines may dismiss a Formal Complaint or any allegations within a Formal Complaint any time after filing (1) if the Complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw the Formal Complaint or any allegations therein; or (2) if the Respondent is no longer enrolled or employed by Mines; or (3) if specific circumstances prevent Mines from gathering evidence sufficient to reach a determination as to the allegations in the Formal Complaint.

### 3.3.3 Notice of Dismissal

When a Formal Complaint is dismissed, Mines will promptly send written notice of the dismissal and reasons therefor simultaneously to the Parties. A dismissal under this section does not preclude Mines from addressing and adjudicating the alleged misconduct under other Mines Policies, including the Student Code of Conduct. Dismissal of a Formal Complaint may be appealed as set forth in section 4.0 below.

- 3.4 Grievance Process.** The Formal Grievance Process provides a formal, structured mechanism for the equitable, impartial, and prompt resolution of Formal Complaints. The steps outlined below are the exclusive process for resolving Formal Complaints and imposing disciplinary sanctions or other remedies that are not Supportive Measures. No one facilitating the Formal Grievance Process shall require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege (such as the attorney/client privilege or the doctor/patient privilege) unless the person holding the privilege has waived the privilege.

#### 3.4.1 Timing

Mines will make reasonable efforts to complete the investigation of Formal Complaints within 60 to 90 calendar days of the start of the investigation. However, circumstances may affect that timeline, and the investigation and hearing may take longer than 60-90 calendar days to complete. If circumstances require an extension of this anticipated time-frame or a temporary delay of the Formal Grievance Process (such as absence of a party, a witness or a party's Advisor; or concurrent law enforcement activity), the Title IX Coordinator will provide written notice to Complainant

and Respondent of the delay or extension, and the reasons for the action. The Complainant and/or Respondent may ask for an update from the Title IX Office at any point.

#### 3.4.2 Standard of Proof

The standard of proof is the amount of evidence needed to establish a Policy violation has occurred and is the *preponderance of evidence* standard, which means the evidence demonstrates it is more likely than not the alleged conduct occurred. Mines bears the burden of proof with respect to establishing a Policy violation under these Procedures. A Respondent is presumed not responsible for alleged misconduct unless and until a determination of responsibility is reached at the conclusion of the Formal Grievance Process.

#### 3.4.3 Notice of Allegations

Prior to initiating an investigation into a Formal Complaint, the Title IX Coordinator will provide the Parties with a Notice of Allegations that includes: (1) a description of the allegations of Sexual Harassment, Sexual Assault, or Interpersonal Violence in the Formal Complaint, including the identities of the Parties involved (if known), the date and location of the alleged misconduct, if known, the identity of the Investigator, (2) information about the Formal Grievance Process and Alternate Resolution Process, and (3) other information regarding the investigation. The Notice shall also include a statement that the Respondent is presumed not responsible for the alleged misconduct and inform the parties that they may have an Advisor of their choice who may be, but is not required to be, an attorney. If new or additional allegations are later included in the scope of the investigation, a Revised Notice will be provided to all Parties.

#### 3.4.4 Advisor

The Complainant and Respondent may have an Advisor of their choosing present at all stages of Formal Grievance Process, including the investigation stage, hearing stage, and appeal. An Advisor may be, but is not required to be, an attorney. Except as expressly set forth below, an Advisor may not directly participate in the proceedings. In addition, Advisors are subject to the following limitations:

- A. The Advisor cannot be a witness to the alleged misconduct described in the Formal Complaint.
- B. In cases involving multiple Complainants or Respondents, the Advisor cannot be another Complainant or Respondent.
- C. To minimize conflicts of interest, the Advisor should not be an employee of Mines, with the exception of an assigned employee Advisor.
- D. The Advisor may be a student at Mines. However, the Advisor should not be in a current position of supervision, authority, or Position of Trust over the party whom they are supporting or the other Party.

#### 3.4.5 Investigation Process

The allegations in the Formal Complaint will be investigated as discreetly and expeditiously as possible with due regard to thoroughness and impartiality. Upon receipt of a formal Complaint, Mines will designate one or more investigators of its choosing with relevant training and experience in investigating allegations of Sexual Harassment, Sexual Assault, and Interpersonal Violence. The investigator will examine all relevant evidence, including both inculpatory and exculpatory evidence, including documents, communications and other available evidence, and interview the Parties, witnesses, and others individuals with relevant information. The investigator may interview the Respondent and Complainant more than once to address information gathered during the course of the investigation. All materials and documents prepared or compiled by the investigator, will be kept confidential to the extent possible.

#### 3.4.6 Improper Inquiries

Investigations under these procedures may not include discussion of or inquiry into the Complainant's attire on the date of the incident(s) or the Complainant's sexual history as a rationale or reason for the alleged misconduct. The Complainant's sexual predisposition and prior sexual behavior are only relevant if offered to prove someone other than Respondent committed the alleged conduct, or if they concern specific incidents with respect to Respondent and are offered to prove consent. In addition, investigations must not access, consider, disclose or otherwise use a party's records that are made or maintained by a physician or other mental health professional in connection with the provision of treatment without first obtaining a party's voluntary, written consent.

#### 3.4.7 Personal Participation

Mines students and employees are expected to personally participate in the investigation. Support Persons and Advisors may not answer questions posed by the investigator during an interview. Failure of the Complainant or Respondent to cooperate with an investigation will result in issuance of an Investigation Report based on the totality of information the investigator was able to gather at the time of the investigation.

#### 3.4.8 Evidence Review Step

Prior to completion of the Investigation Report, the Title IX Coordinator will send each party and the parties' Advisors a copy (in either electronic or hard-copy form) of the evidence obtained during the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence the investigator does not intend to rely upon in preparing the Investigation Report. Each party will have an opportunity to inspect and review the evidence, and ten (10) days to submit a written response to the evidence, which the investigator will consider prior to completion of the



Investigation Report. The evidence made available at this stage will also be available to each party to reference during the Hearing.

#### 3.4.9 Confidential Investigation Report

At the conclusion of the Evidence Review Step, the investigator will prepare a confidential Investigation Report that will include information about the investigation procedures utilized, relevant policy provisions and definitions, a summary of the relevant evidence collected and reviewed, interview summaries, as well as the investigator's factual findings, utilizing a preponderance of the evidence standard. The investigator will assess the relevance of all evidence obtained during the investigation – including both inculpatory and exculpatory evidence – and evaluate the credibility of all parties, witnesses and others. The Investigation Report will be provided to both parties at least ten (10) days prior to the Hearing. The parties may prepare and submit a written response to the Investigation Report to the hearing officer prior to or during the Hearing.

#### 3.4.10 Hearing

The Title IX Coordinator will schedule a hearing to occur no sooner than ten (10) days following issuance of the Investigation Report, and provide the parties and witnesses whose participation is invited or expected, written notice of the date, time, location, participants, identity of and contact information for the hearing officer, and other relevant information about the Hearing, including rules of decorum, the hearing format, and rules regarding the presentation of evidence and questioning of witnesses. The hearing will be conducted by a hearing officer selected by Mines, who may or may not be the decision-maker. During the hearing, all parties will have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The hearing shall occur in real time but, at the request of either party (or at the discretion of the Title IX Coordinator or hearing officer), the hearing may be conducted remotely with some or all of the parties, hearing officer, and witnesses in separate rooms, so long as all participants can simultaneously see and hear one another.

##### A. Personal Participation

Except as set forth below, the parties shall personally participate in all aspects of the hearing. Parties may consult with their Advisor or Support Person during the hearing. The Advisor is able to participate and advocate on behalf of a party during the hearing. The Support Person may not actively participate or advocate on behalf of a party during the Hearing.

##### B. Cross-Examination By An Advisor

During the Hearing, the hearing officer will permit each party's Advisor to ask the other party and any witness all relevant questions and follow-up questions, consistent with the rules of evidence. If a party does not have an Advisor present at the Hearing, one will be provided

to conduct cross-examination. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant unless offered to prove someone other than Respondent committed the alleged conduct, or if they concern specific incidents with respect to Respondent and are offered to prove consent. If a party or witness does not submit to cross-examination, the decision-maker may not rely on any statement of that party or witness in reaching a determination regarding responsibility.

C. Hearing Recording

An audio or audiovisual recording, or transcript, of the hearing will be created, maintained, and made available to the parties for inspection and review upon request to the Title IX Coordinator.

3.4.11 Institutional Decision-Maker

Following the Hearing, the appropriate institutional decision-maker will issue a written determination regarding responsibility simultaneously to all Parties. The decision-maker may not be the same person who serves as the Title IX Coordinator or the investigator. If the Respondent is found responsible for a violation of Mines' Policy, the decision will include a determination regarding sanctions, as well as any remedies to be provided to Complainant. The Title IX Coordinator is responsible for effective implementation of any remedies.

- A. If the Respondent is a student (including graduate students and student employees), the decision-maker will be the Dean of Students, or their designee.
- B. If the Respondent is an academic or administrative faculty member, the decision-maker will be the appropriate area Vice President or Provost, or their designee.
- C. If the Respondent is a classified employee, the decision-maker will be the appointing authority for the position the classified employee holds.
- D. If the Respondent is a Vice President or Provost, or otherwise holds a position that reports directly to the President, the decision-maker will be the President or the President's designee.
- E. If the Respondent is the President, the decision-maker will be the Chair of the Board of Trustees.

3.4.12 Sanctions

Sanctions for engaging in Sexual Harassment, Sexual Assault, or Interpersonal Violence are limited by Mines institutional authority. Possible sanctions imposed by Mines include the following:

- A. Educational sanctions;
- B. Participation in relevant awareness and prevention training programs or seminars;
- C. Oral reprimand and warning;
- D. Written reprimand and warning;
- E. Student probation;

- F. Removal from or reassignment within campus housing;
- G. Limitations on campus employment;
- H. Limitations on participation in Mines-related activities;
- I. Restitution;
- J. Suspension,
- K. Expulsion;
- L. Termination of employment or appointment;
- M. Initiation of the Tenure Revocation or Termination for Cause Process set forth in the Faculty Handbook;
- N. Corrective or Disciplinary Action under the State Personnel Board Rules; and
- O. Prohibition of entering the Mines campus or attending Mines' sponsored events.

#### **4.0 APPEAL PROCESS**

**4.1 Appeal Process.** Both the Complainant and Respondent have the right to appeal the decision or sanctions. An appeal will only be considered if it includes all of the following: 1) the specific aspect of the decision or sanction being appealed; 2) appropriate grounds for an appeal (as set forth below); and 3) a detailed description of the rationale that supports the selected grounds.

**4.2 Grounds for Appeal.** Not all decisions can be appealed. An appeal is not appropriate for the simple reason that one disagrees with the decision. An appeal will only be accepted if it is demonstrably based on one (or more) of the four reasons set forth below. Except as required to explain and support an appeal based on new information, an appeal shall be limited to a review of the investigation record, the Hearing, and the final decision, and not contain new information that was not shared with the investigator or presented at the Hearing. Appropriate reasons for appeal:

- A. Appropriateness of Sanctions: Appealing whether the sanction(s) imposed was appropriate in relation to the Policy violation for which Respondent was found responsible.
- B. Procedural Irregularities: Appeal asserting irregularities in the application of these Procedures that affected the outcome of the matter. Minor procedural deviations that do not materially affect the outcome are not a basis for reversing a decision.
- C. New Information: Appeal requesting consideration of new information or other relevant facts that are sufficiently material to affect the outcome but only when such information was not available at the time the determination regarding responsibility or dismissal of the Formal Complaint was made.
- D. Bias: Appeal asserting that the Title IX Coordinator, investigator(s), hearing officer, or decision-maker had a conflict of interest or bias for

or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

**4.3 Submitting an Appeal Request.** The appealing party must submit a completed [Title IX Appeal Request Form](#) to the decision-maker on appeal within seven (7) calendar days of the date of the decision. It is the appealing party's obligation to complete the form in its entirety and provide any and all materials they wish to be considered along with the form. Requests for an extension of time to file an appeal must be submitted in writing to the appropriate office prior to the expiration of the appeal deadline and may be granted in the sole discretion of the decision-maker on appeal. Upon timely receipt of an appeal, the decision-maker on appeal will notify the non-appealing party, the initial decision-maker, and Title IX Coordinator that an appeal has been received and will move forward. The non-appealing party will then have seven (7) calendar days to submit a written statement in support of, or challenging the decision.

No late appeals will be accepted unless an extension was granted consistent with this section. If no timely appeal is received, the initial decision is final and no further appeal is permitted.

**4.4 Decision-Maker on Appeal.**

- A. Student Appeal: When the appealing party is a student, the appeal must be filed with the Vice President of Student Life, who may designate their responsibilities to the Associate Vice President for Student Life.
- B. Employee Appeal: When the appealing party is an administrative or academic faculty member, or a classified employee, the appeal must be filed with the President or the President's designee.
- C. President Appeal: When the appealing party is the President, a Vice President, the Provost, or otherwise holds a position that directly reports to the President, the appeal must be filed with the Board of Trustees as a whole.

**4.6 Appeal Decision.** When an appeal is allowed to move forward, the decision-maker on appeal, or their designee, will review the entire investigation file, hearing transcript, and any other information considered by the decision-maker. Within a reasonable period of time (generally ten (10) business days) following receipt of all pertinent information, the decision-maker on appeal will issue an Appeals Decision Letter that: 1) upholds the original decision; 2) reverses the original decision; or 3) modifies the original decision. The Appeal Decision is final and binding on the parties.

## 5.0 ALTERNATE RESOLUTION PROCESS

A Complainant who files a Formal Complaint but wishes to pursue a less formal resolution process may request an “Alternate Resolution.” The Alternate Resolution Process is a restorative process with the goal of repairing harm and rebuilding trust through active accountability and inclusive decision-making. The process requires that both the Complainant and the Respondent voluntarily agree to participate and requires approval from the Title IX Coordinator. The Alternate Resolution Process does not include a formal investigation and cannot result in significant sanctions, such as expulsion or suspension. Although described as an alternate process, this is an official Mines resolution process. The Alternate Resolution Process can be used to resolve Formal Complaints alleging Sexual Harassment, Sexual Assault, and Interpersonal Violence, except that Formal Complaints alleging *quid pro quo* harassment by a Mines employee against a student cannot be resolved under the Alternate Resolution Process. The Alternate Resolution Process may be utilized at any time prior to issuance of a determination regarding responsibility. The Title IX Coordinator may, at their discretion, decline to approve any case to be resolved through an Alternate Resolution Process.

**5.1 Initial Meeting with Complainant.** If the Complainant elects the Alternate Resolution Process, they will meet with the Title IX Coordinator, or designee, to discuss 1) the outcome they desire from the process; 2) what specific type of process best meets their needs; and 3) other pertinent information. The Title IX Coordinator reviews the intake form and the Consent to Participate form and affirms whether an Alternate Resolution Process is appropriate for the conduct that occurred.

**5.2 Initial Meeting with Respondent.** The Title IX Coordinator, or designee, will meet with the Respondent to inform them that the Complainant prefers the Alternate Resolution Process and review the Consent to Participate form. The Respondent may 1) decline to participate in the process; or 2) agree to participate in the process. If the Respondent declines participation in the Alternate Resolution Process, the process defaults to the Formal Grievance Process as described in section 3.0. If the Respondent agrees to participate in the Alternate Resolution Process, the Complainant will be notified, and the Alternate Resolution Process will begin. The Title IX Coordinator provides the final approval for the case to move forward as an Alternate Resolution Process.

**5.3 Alternate Resolution Process.** The Alternate Resolution Process may be pursued when it has been determined to be the preferred process by both the Complainant and the Respondent. However, at any point in the process, either party can decline participation and the process reverts to the Formal Grievance Process. Additionally, the Title IX Coordinator can

stop the Alternate Resolution Process if deemed inappropriate to move forward – such as the parties are not proceeding in good faith or the Respondent is not willing to acknowledge harm – and the process would then revert to the Formal Grievance process.

#### 5.3.1. Facilitators

The Facilitators are trained to facilitate the Alternate Resolution Process. The Title IX Office will typically assign two Facilitators per case. The Facilitators will typically be Mines employees; however, they may also be employees of an external organization.

#### 5.3.2. Preconference Meetings

The Complainant and the Respondent will meet with a Facilitator individually to discuss the process, answer questions, and establish expectations to ensure the process can be helpful to both parties.

#### 5.3.3. Alternate Resolution Processes

The following processes can be used to resolve a complaint under this section.

- A. A Restorative Conference is a facilitated dialogue between Complainant and Respondent by a trained facilitator. The trained facilitators use a script to guide the dialogue. They discuss harm and what steps the Respondent can take to repair the harm. The Complainant and the Respondent are typically allowed a Support Person. Restorative Conferences can include shuttle negotiations or face-to-face (in-person or virtual) meetings.
- B. A Restorative Circle is similar to a Restorative Conference, but involves a larger number of people. The Circle is typically organized in five rounds (convening, harm/concern, brainstorming, agreements, and closing reflection). The facilitator sets a tone of respect, hope, and support.

**5.4 Alternate Resolution Agreement.** Before the closing of the Alternate Resolution Process, the Complainant and the Respondent will contribute to drafting an Agreement outlining expectations, conduct, actions, and any other agreements deemed relevant and appropriate by the parties and the Facilitators. Both parties will sign the Agreement. The Agreement is subject to final review by the Title IX Coordinator. If the parties cannot come to an agreement, the issue is referred back to the Title IX Coordinator.

#### 5.4.1. Title IX Coordinator Disapproves the Agreement

If the Title IX Coordinator disagrees with part or all of the drafted agreement, the Title IX Coordinator can schedule another meeting with the parties and the Facilitators to discuss modifications. The parties have independent discretion to agree to any modifications.

#### 5.4.2. Title IX Coordinator Approves the Agreement

The Alternate Resolution Process concludes when the Title IX Coordinator approves and signs the drafted Agreement. The Agreement is retained per the recording keeping requirements of these procedures in section 2.5.

**5.5 Violations of the Agreement and Incomplete Actions in the Agreement.** If the Respondent violates the Alternate Resolution Agreement, such violation could be considered retaliation. Such instances of alleged retaliation will be investigated and addressed as a separate policy violation. If the Respondent has not completed the decided upon actions in the Agreement by the predetermined date, a hold may be placed on the Respondent's account until the terms of the Agreement are met.

## 6.0 DEFINITIONS

**Advisor** means an individual selected by either the Complainant or Respondent, or an individual assigned to the Complainant or Respondent by Mines in instances where the Complainant or Respondent does not select their own Advisor. The Advisor's role is further defined in section 3.4.4.

**Complainant** means a person who is alleged to be the victim of Sexual Harassment, Sexual Assault, or Interpersonal Violence.

**Coercion** means compelling an individual to do some act against their will through the use of psychological pressure, physical force, or threats.

**Confidential Resource** means individuals designated by the Title IX Office who serve in a confidential capacity. Confidential Resources can explain options and resources to Complainants and Respondents, but they do not have authority to institute sanctions. Communications with a Confidential Resource will not automatically trigger a Report to the Title IX office.

**Consent** means positive, unambiguous, and voluntary agreement to engage in specific sexual activity throughout a sexual encounter. Consent is active, not passive. It is critical to note the nuances of consent:

- Consent must be affirmative. Consent consists of an outward demonstration indicating an individual has freely chosen to engage in sexual activity. Relying on non-verbal communication can lead to misunderstandings. Silence, in and of itself, cannot be interpreted as Consent. Consent may not be inferred from silence, passivity, lack of resistance, or lack of an active response alone. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving Consent.

- Consent cannot be inferred in the context of a current or previous sexual relationship.
- Consent to some sexual acts does not imply consent to others.
- Past Consent to a given act does not imply or grant present or future Consent.
- Consent must be ongoing throughout a sexual encounter and can be revoked at any time.
- Consent cannot be obtained by fear, threat, coercion, intimidation, and/or force.
- Consent cannot be obtained from someone who is Incapacitated as that term is defined in these procedures.
- Consent cannot be obtained from someone who is not of legal age (Colorado Revised Statutes § 18-3-402).

**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 the: (i) length of the relationship, (ii) the type of relationship, and (iii) the frequency of interaction between the persons involved in the relationship.

**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.

**Deputy Title IX Coordinators** work with the Title IX Coordinator to facilitate intakes, serve as Process Resources, and may serve in other discreet areas of Title IX processes.

**Education Program or Activity** includes locations, events, or circumstances over which Mines exercises substantial control over the individual accused of misconduct, and the context in which the misconduct occurs. It includes any buildings owned or controlled by any student organization that is officially recognized by Mines.

**Formal Complaint** means a document filed by a Complainant (or in some circumstances the Title IX Coordinator) alleging Sexual Harassment, Sexual Assault or Interpersonal Violence, as defined herein, and requesting an investigation of the alleged misconduct. A Formal Complaint may be filed with the Title IX Coordinator in person, by U.S. Mail, by e-mail, or through the



online reporting form on the [Student Life website](#) for students or the [SpeakUp@Mines website](#) for employees, and must contain a physical or digital signature, or other indication that the Complainant is the person filing the Formal Complaint. A Complainant must be participating in, or attempting to participate in, a Mines Education Program or Activity at the time a Formal Complaint is filed.

**Impacted Party** means any individual, including the Complainant and the Respondent, directly or indirectly affected by sexual harassment, sexual assault, or interpersonal violence.

**Incapacitation** may result from alcohol or other drug use, sleep, unconsciousness, illness, mental disability or other factors. The use of alcohol or drugs, in and of itself does not render a person incapacitated. Incapacitation is a state beyond drunkenness or intoxication. The impact of alcohol and drugs varies from person to person. Incapacitation is a state where a person cannot make a rational, reasonable decision because they lack the capacity to give affirmative consent (for example, to understand the who, what, when, where, why, and/or how of sexual interaction). An individual's intoxication does not excuse their obligation to obtain Consent.

**Interpersonal Violence** is used as an umbrella term for Domestic Violence, Dating Violence, and Stalking, as defined herein.

**Mandatory Reporter** means all Mines employees and some student employees who are in Positions of Trust. Mandatory Reporters are required to contact the Title IX Coordinator immediately whenever they observe or receive information about instances of Sexual Harassment, Sexual Assault, and Interpersonal Violence. Employees exempt from this requirement include Confidential Resources and employees with some form of legal privilege.

**Mines Official** means any person employed by Mines, performing assigned administrative or professional responsibilities.

**Person in a Position of Trust** means any person employed by Mines who has significant influence or responsibility over a student or another employee, including, but not limited to, their health, welfare, education, employment, or supervisory or advisory responsibilities. All Mines non-student employees may be considered a Person in a Position of Trust. Some student employees, by virtue of their position, are also considered a Person in a Position of Trust, including, but not limited to: Residence Life Student Staff, Peer Mentors, Teaching Assistants, Research Assistants who supervise other students, and any other student employee who meets the definition of having influence or responsibility over another student.

**Process Resource** means a resource provided by Mines to the Complainant or Respondent involved in cases of alleged Sexual Harassment, Sexual Assault, or Interpersonal Violence. Staff members who serve as Process Resource are trained to provide individual support, guidance, and information to students throughout the investigation and adjudication process. Process Resource are not confidential resources and do not “represent” the party, but are there to provide information and guidance. The Process Resource cannot serve as a Support Person.

**Report** means any disclosure of Sexual Harassment, Sexual Assault, or Interpersonal Violence received by the Title IX Coordinator. Any individual who believes a violation of the Policy has occurred may submit a Report, whether or not the person reporting is the person alleged to be the victim of conduct alleged in the Report.

**Respondent** means an individual reported to be the perpetrator of conduct that could constitute Sexual Harassment, Sexual Assault or Interpersonal Violence under the Policy.

**Retaliation** means a negative or adverse action against an individual for reporting an allegation of Sexual Harassment, for cooperating or participating in an investigation or another proceeding related to such allegation, for refusing to participate in any investigation or proceeding related to such allegations, or for engaging in activities to oppose Sexual Harassment, Sexual Assault, or Interpersonal Violence. Complaints or incidents of Retaliation will be addressed as separate violations of this policy.

**Sexual Assault** includes the following forcible and non-forcible sex offenses:

- Rape—(Except Statutory Rape) The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- Sodomy—Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- Sexual Assault With An Object—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- Fondling—The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of

his/her age or because of his/her temporary or permanent mental or physical incapacity

- Incest—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- Statutory Rape—Nonforcible sexual intercourse with a person who is under the statutory age of consent

**Sexual Exploitation** means when the actor knowingly observes or takes an image or recording of another individual's intimate body parts without that individual's Consent when the individual has a reasonable expectation of privacy, and the observation or the image or recording is for the actor's own sexual gratification. Sexual Exploitation also occurs if the actor shares or publishes visual image or recording of sexual activity, nudity, or suggestive activity without the prior consent of all recorded parties and recipients.

**Sexual Harassment** means conduct on the basis of sex that satisfies one or more of the following:

- (1) Conditioning the provision of an aid, benefit, or service of Mines (such as employment terms or conditions, employment decisions, or decisions concerning academic progress or evaluation) on an individual's participation in unwelcome sexual conduct; OR
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to Mines' Education Program or Activities (including admissions and employment).

Examples of behavior that may constitute Sexual Harassment include, but are not limited to:

- Repeated verbal or physical sexual/romantic advances;
- Repeated lewd, suggestive or otherwise inappropriate comments about another person's appearance;
- Intentional inappropriate physical contact with another person's body;
- Repeated requests for sexual favors;
- Repeated lewd or sexually suggestive comments, jokes, innuendoes, or gestures; and
- Sexual Exploitation

**Supportive Measure** means a range of resources, support services, and measures to protect the safety and well-being of Impacted Party including the Complainant and the Respondent, that are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available, regardless of whether a Formal Complaint has been filed, and designed to restore and promote equal access to the educational environment without unreasonably burdening the other Party.

**Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to--

- (1) Fear for his or her safety or the safety of others; or
- (2) Suffer substantial emotional distress.

Examples of behavior that may constitute Stalking include, but are not limited to:

- Making a credible threat to another person and repeatedly following, approaching, contacting, or surveilling that person or a friend or a member of that person's immediate family;
- Making a credible threat to another person and repeatedly communicating in any form that person or a friend or a member of that person's immediate family; or
- Repeatedly following, approaching, contacting, surveilling, or communicating with another person, or a friend or a member of that person's immediate family that would cause a reasonable person to suffer serious emotional distress and does cause that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship to suffer serious emotional distress.

**Support Person** means a person chosen by the Complainant or Respondent to provide support through the investigation, Hearing, and adjudication processes. A Support Person can be an attorney, but is not required to be an attorney. A Support Person may also serve as an Advisor during the Hearing. If they do not serve in the capacity of Advisor, they may not attend the Hearing.

**Title IX Coordinator** is the Mines employee who is primarily responsible for Mine's Title IX compliance efforts.

## 7.0 HISTORY AND REVIEW CYCLE

The procedures within this document will be reviewed at least every 2 years, or as needed by the Responsible Administrative Unit.

Issued: May 1, 2012.

Revised August 19, 2015

Revised November 3, 2015

Revised July 1, 2016

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Updated January 22, 2019 (updated the contact person)

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