



COLORADO SCHOOL OF TRADITIONAL CHINESE MEDICINE

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CSTCM Student Title IX
Investigation & Hearing Process
("Student Title IX Process")
August 14, 2020

I. Preamble

The Colorado School of Traditional Chinese Medicine (CSTCM) has developed this process as part of our commitment to address sexual violence. This process sets forth fair and equitable procedures to review and adjudicate sexual violence allegations made against students. This process will be known as the Student Title IX Process.

A. Scope

This process is designed to address CSTCM's responsibilities under Title IX of the Education Amendments of 1972 relating to sexual harassment (including sexual violence, stalking and domestic and dating violence). Title IX prohibits discrimination on the basis of sex in educational programs and activities that receive federal financial assistance. This process will be relied on to implement this legal obligation and to address complaints of retaliation/intimidation and violations of CSTCM or Court-Ordered Directives related to the aforementioned conduct (collectively, Prohibited Conduct). Additionally, this process may also address related policy and Technical Standards violations that stem from the same allegations as the charged Prohibited Conduct.

B. Jurisdiction

This process addresses all instances in which a CSTCM student (the Responding Student) while in a degree-granting program is alleged to have engaged in Prohibited Conduct on campus or off campus under circumstances in which the alleged Prohibited Conduct either occurred in a School program or activity or such that it has the effect of potentially creating a hostile environment for the Complainant(s). A Complainant for purposes of this process is the individual(s) subjected to the alleged Prohibited Conduct.

C. Process Overview

This process includes an investigation phase undertaken by the Title IX Investigator. Following an investigation, a decision will be made about whether to charge a Responding Student with Prohibited Conduct. For matters that are not charged, the matter could proceed to a review of evidence (Evidentiary Review) by an Evidentiary Specialist if a party requests such a review. Responsibility for charged conduct is decided at a hearing by the Hearing Panel using trained decision-makers (Panelists). The hearing process is managed by the Title IX Coordinator. In matters in which an outcome is reached (either by not charging a matter or proceeding to a decision on a charge by the Hearing Panel), parties have a right to appeal the outcome.

II. Understanding Options Before Reporting: Confidential Resources

A Confidential Resource is an individual who by law is exempt from the obligation to report an allegation of Prohibited Conduct to the Title IX Coordinator or to law enforcement. Confidential Resources include the following individuals when acting in the capacity of providing medical care, advice, counseling or comfort:

Colorado Crisis Center (general mental health, open 24 hours all year round): **1-844-493-8255**

Adams County: (303) 289-4441 ~ **Alternatives to Family Violence**

Arapahoe: (303) 343-1851 ~ **Gateway**

Boulder: (303) 444-2424 ~ **Boulder County SafeHouse**

Denver – The Blue Bench (24 hour rape crisis line): (303) 322-7273

Denver - Brandon Center: (303) 620-9190

Denver Center for Crime Victims: (303) 894-8000

Denver - SafeHouse: (318) 318-9989

Denver - Servicios de La Raza (Se habla Español): (303) 458-7088

Douglas County: (303) 688-8484 ~ **Women's Crisis Center**

Jefferson County: (303) 420-6752 ~ **Family Tree Women in Crisis**

Longmont: (303) 772-4422 ~ **"Women in Crisis"**

National Hotline: 1-800-799-7233

Unless there is a belief that there is an imminent threat of harm to self or others, reporting a Title IX concern to one of these resources will not lead to a School or police investigation.

III. Reporting A Concern

A. Reporting to the School

To report a concern, contact the Title IX Coordinator at:

CSTCM
C/O Title IX Coordinator
1441 York St. Suite 202
Denver, CO 80206
amindirector@cstcm.edu

1. Direct Report from Complainant

The Title IX Coordinators will ask for the following information from the Complainant:

- Name of Complainant

- Name of Responding Party (if known)
- Date of the incident
- Date of report
- To whom report was made
- Location of the incident
- Time of the incident
- Nature of the conduct

2. Report from Responsible Employee

When staff members designated as Responsible Employees (see Appendix) have actual knowledge of a Title IX concern, these individuals are required to promptly report them to the Title IX Coordinator. The Title IX Coordinator is obligated to review the concern and follow up as appropriate. When the report comes from a Responsible Employee the Title IX Coordinator will ask for the information described above and additionally request:

- Name of the Responsible Employee
- Who reported the incident to Responsible Employee
- Date of report to the Responsible Employee

B. Reporting to Law Enforcement

For conduct that could also constitute a crime under Colorado law, a Complainant is encouraged but not required to contact the police by dialing 9-1-1 or the local police agency in the jurisdiction in which the alleged incident occurred.

C. Time Frame for Making a Formal Complaint

There is no specific time frame for individuals who have experienced Prohibited Conduct to make a formal School report pursuant to this process. Individuals are, however encouraged to make a report as soon as possible after the incident in question to maximize the School's ability to investigate and reach a finding.

IV. Confidentiality

A. Request for Confidentiality

Should the School become aware of a concern that Prohibited Conduct is alleged to have occurred; the Title IX Coordinator has an obligation to review the available information and determine whether to proceed to an investigation. The Complainant may ask the School not to disclose the Complainant's identity to the Responding Student. Should a Complainant make such a request for confidentiality, the Title IX Coordinator will inform the Complainant that the School's ability to respond to the allegations and investigate may therefore be limited if the request is granted. A Complainant who initially requests confidentiality is not prohibited from later waiving confidentiality and requesting that the School conduct a full investigation.

B. No Guarantee of Confidentiality

The Title IX Coordinator will inform the Complainant that due to various federal and state laws, it is not always possible to guarantee confidentiality regarding incidents of Prohibited Conduct. Under those laws, the School's decision to share information with others is subject to a balancing test that requires the School to consider a range of factors when a Complainant's request for confidentiality would preclude a meaningful investigation or potential discipline of the Responding Student.

These factors include, but are not limited to:

- Multiple reports of Prohibited Conduct relating to a single Responding Student;
- A report that Prohibited Conduct involved a weapon, physical restraints or battery;
- The age of the Complainant; and
- The availability of other School means to obtain relevant evidence.

C. Granting Confidentiality

If a request for confidentiality is granted, the Title IX Coordinator will retain information regarding the report, including the name of the Responding Student (if known), in its files for tracking purposes, noting that the report was not fully investigated.

Even under circumstances where confidentiality is granted and there is no adjudicated finding of the matter, there are support resources and services available to assist such students (see **Section II**).

D. Denying a request for Confidentiality

If the Title IX Coordinator determines that the School cannot honor the request for confidentiality and must disclose the Complainant's identity to the Responding Student and pursue an investigation, it will inform the Complainant before making this disclosure and put in place Interim Measures as necessary to protect the Complainant and CSTCM community.

V. Decision to Undertake an Investigation & Scope of Investigation

Except for matters in which a request for confidentiality is granted, the School investigates those concerns brought to the Title IX Coordinator in which they determine if the allegations are plausible under the totality of the circumstances and, if true, would constitute Prohibited Conduct.

Where the Title IX Coordinator determines that an allegation of Prohibited Conduct includes one or more Complainants and more than one Responding Student, the Title IX Coordinator may investigate the events together or as a single matter and institute a single hearing process for the resolution of all the concerns. Similarly, where the Title IX Coordinator determines that there are multiple allegations of Prohibited Conduct involving one Responding Student by more than one Complainant, the Title IX Coordinator may investigate the events together as a single matter and institute a single hearing process for the resolution of all the concerns. In the rare circumstance when allegations of Prohibited Conduct are coupled with allegations of violations of other School policies, such as the Technical Standards, the Title IX Coordinator may determine that a joint hearing before the Hearing Panel is appropriate.

VI. Interim Measures

Once an individual has come forward with concern of Prohibited Conduct or the Title IX Coordinator is otherwise made aware of such a concern, the School will promptly take steps to ensure that the Complainant has equal access to the School's educational programs and activities and to protect the Complainant as necessary, including taking Interim Measures before the final outcome of the investigation.

Interim Measures are determined on a case-by-case basis and may include counseling services, academic accommodations, no-contact directives, stay away letters/campus bans, limitations on extracurricular activities, and removal from the School community.

VII. Support During the Investigation and Hearing Process

Once the school determines that it will undertake an investigation, the parties will be notified and the parties may seek counsel.

A. Support Person

Each party may choose to seek the help of a Support Person during this process. The Support Person may offer guidance to the party, and may speak or advocate on behalf of the party at the school proceedings within reason. Any Support Person who violates these expectations may be directed to resign as the Support Person.

Only one Support Person will be allowed to accompany a party to the hearing room.

B. Attorney

Each party may elect to identify an attorney to serve as their Support Person, and to accompany them in the hearing room. Such an individual is obligated to follow the requirements for Support Persons stated in Section VII.A above. While a Support Person may be an attorney, the attorney has no different role in the process and serves as a Support Person in the same capacity as a non-attorney.

The School does not reimburse parties for legal fees.

VIII. Responsibilities and Rights of the Parties and Witnesses

During an investigation and hearing under this process, the parties and witnesses have the following responsibilities and rights.

A. Responsibilities of the Parties and Witnesses

1. The responsibility to be truthful, to cooperate with the process (except as provided in IX C. 3), and to follow the directions of School staff and agents responsible for administering this process;
2. The responsibility not to retaliate against or intimidate any individual who has reported a Title IX concern or who has participated as a party or witness in the process; and
3. The responsibility to keep confidential (by not disseminating beyond Support Persons or advisors) documents and materials received from the School during this process and as part of this

responsibility to destroy, when so directed by the School, all documents provided by the School, except Outcome Letters.

B. Rights of the Parties and Witnesses

1. The right to be reasonably protected from retaliation and intimidation where one has reported a Title IX concern or participated as a party or witness in the process; and
2. The right not to be disciplined for drug and alcohol violations (relating to voluntary ingestion) or similar Technical Standards violations in connection with the reported incident that do not place the health or safety of a person at risk.

C. Rights of the Parties

1. The right to receive a written Notice of Concern (see Section IX.A) that provides sufficient detail about the allegations and the applicable School policies for the Responding Student to be able to respond and for both parties to understand the scope of the investigation;
2. The right to decline to give a statement about the allegations or attend the hearing;
3. The right to participate in the investigation, including identifying witnesses and identifying and/or providing relevant information to the investigator;
4. The right to receive a written Notice of Charge or no charge decision;
5. The right to review the Hearing File at the point of a charge or no charge decision;
6. The right to object to the inclusion or exclusion of information or witnesses in the post-charge Hearing File, including by requesting a review by an Evidentiary Specialist;
7. The right to have the matter heard by a neutral Hearing Panel consisting of three trained panelists who will determine the matter using a preponderance of the evidence standard and who will not prejudge the outcome of the case because there has been a charge;
8. The right to receive an Outcome Letter;

9. The right to appeal the outcome; and
10. The right to receive an Appeal Outcome Letter.

IX. Formal Investigation

The formal investigation phase is the period during which the Investigator gathers information about the allegations and it begins when the Title IX Coordinator issues a Notice of Concern. This period of time is the parties' opportunity to provide input regarding the collection of evidence. New evidence and/or rebuttal evidence may be provided by the parties after a charge issues only when it meets the standard for new and/or rebuttal evidence set forth in Section XI.A.3 below.

A. Notice of Concern

If the School determines that it will investigate a concern (see Section V), the parties will receive a written Notice of Concern from the Title IX Coordinator.

Within 48 hour of receiving the Notice of Concern, both the Complainant and the Responding Student will be asked to identify any academic or other significant conflicts that would affect the timing of the investigation and potential hearing. The Title IX Coordinator will consider this input in finalizing a Hearing Schedule.

B. Method of Information Gathering

After the Notice of Concern is issued, the Title IX Coordinator will assign an Investigator to the matter. The Investigator may gather information in multiple ways. The Investigator may collect documents and other information and may also interview parties and/or witnesses. In addition, a Complainant or Responding Student may:

- Submit documentary information to the Investigator;
- Submit a list of witnesses to be interviewed by the Investigator; and/or
- Request that the Investigator attempt to collect documents and other information that are not accessible to the requesting party.

The Investigator may decline to gather information if:

- The request seeks information about the Complainant’s past sexual history with anyone other than the Responding Student;
- The request seeks information about the Responding Student’s past sexual history with anyone other than the Complainant, unless such information could prove or disprove a pattern of conduct or knowledge or wrongdoing;
- The request seeks information that is unreasonably duplicative;
- The request is unlikely to yield evident as defined by Section XI.A below;
- The request seeks information that the requesting party could obtain from another source with greater convenience or less burden;
- The request unreasonably invades the privacy interests of a party or witness or seeks information protected by federal or state law; or
- The burden of complying with the request is likely to substantially outweigh the benefit of the information as relevant evidence in the hearing.

C. Potential Outcomes of Investigation: No Charge Decision, Non-Hearing Resolution or Charge Decision, Withdrawal of Complaint

Following an investigation, or possibly during the investigation in the event of a Non-Hearing Resolution or withdrawal of complaint, the Title IX Coordinator will adopt one of the following options:

1. No Charge Decision

If the Title IX Coordinator concludes that a reasonable Hearing Panel could not find by a preponderance of the evidence that the alleged Prohibited Conduct occurred, no charge will issue, and the Title IX Coordinator will issue an Outcome Letter. The Outcome Letter can be appealed pursuant to Section XIII.

2. Non-Hearing Resolution

If the Title IX Coordinator concludes that a reasonable Hearing Panel could find by a preponderance of the evidence that the alleged Prohibited Conduct occurred, but there is not a significant dispute among the parties and the Title IX Coordinator about the proper outcome of the matter (including administrative remedies and disciplinary sanctions), the Title IX Coordinator may suggest to the parties a resolution without a hearing. In no case shall the parties be required to engage in discussions together regarding a proposed resolution.

- Parties voluntary, written consent is require before using a non-hearing resolution.
- A non-hearing resolution is not available if a party objects to such resolution.
- Non-hearing resolutions will result in an Outcome Letter.
- The administrative remedies and disciplinary sanctions will have the same force and effect as though they were imposed following a hearing.
- Non-hearing resolutions cannot be appealed.
- Non-hearing resolutions may not be used if one of the parties is an employee of the school.

3. Charge Decision

If the Title IX Coordinator concludes that a reasonable Hearing Panel could find by a preponderance of the evidence that the alleged Prohibited Conduct occurred and that a Non-Hearing Resolution option is not feasible, the Title IX Coordinator will notify both the Complainant and the Responding Student in writing that the matter has been charged and referred to a Hearing Panel to decide the matter.

The Charge Letter will consist of a summary of the investigation sufficient to support the referral to a hearing and will not contain any conclusions or finds regarding responsibility. Specifically, the Charge Letter will contain (1) the specific allegations of Prohibited Conduct; and (2) the applicable School Policy.

Shortly after receipt of the Charge Letter, the parties will receive electronic access to view the Hearing File prepared by the investigator. Additionally, the parties will receive a log of evidence that was collected as part of the investigation but redacted or excluded from the Hearing File, as well as the rationale for these redactions and exclusions. The log will be sufficiently detailed such that parties can bring forward any evidentiary concerns to the Evidentiary Specialist.

4. Withdrawal of a Complaint

A Complainant may notify the Title IX Coordinator at any time that the Complainant does not wish to proceed with the investigation and/or hearing process. If such a request is received, the Title IX Coordinator will inform the Complainant that the School's ability to respond to the allegation may be limited if the allegations are withdrawn.

The Title IX Coordinator will consider the factors in Section IV.B in reaching a determination as to whether to terminate the investigation and/or hearing process. In the event that the Title IX

Coordinator determines that the investigation will continue, the Title IX Coordinator will notify the Complainant of that determination. The Title IX Coordinator will include in that notification a statement that the Complainant is not required to participate in the investigation and/or hearing process but that the process will continue.

X. Timing of Matters Proceeding to a Hearing

A. Hearing Schedule

Generally, the School will seek to reach a Non-Hearing Resolution or to complete a hearing within 60 calendar days from the date of issuance of the Notice of Concern, although the School will not compromise a thorough and fair process in order to meet the 60-day guideline. Additionally, the School will seek to conclude any post-hearing appeal and to issue the Appeal Outcome Letter within 15 calendar days after receipt of all appeal materials from the parties. These timelines may be extended for School breaks or other reasonable delays, such as extensions granted to the parties upon a showing of good cause (discussed in X.B below). If a deadline falls on a weekend or holiday, there will be an automatic extension to the next business day.

The School will strive to complete an investigation and make a charging decision within 20 calendar days. The Investigator (working with the Title IX Coordinator) will then create the initial hearing file in five days. However, in more complex cases involving, for instance, multiple allegations and/or witnesses, the investigation may take longer. The parties will be notified in writing of any changes to this timing.

At the time a case is charged by the Title IX Coordinator, the Title IX Coordinator will also issue a timetable that schedules all key dates for the matter (Hearing Schedule) that take into consideration the academic and other conflicts identified in response to the Notice of Concern. Unless an extension is granted based on a showing of good cause, the parties are obligated to follow the Hearing Schedule. Except as provided in Section XIII, the Hearing Schedule will be case-specific but generally will use the following timeframes as guidelines:

- Five calendar days for parties to bring forward evidentiary concerns regarding the Hearing File to the Evidentiary Specialist, if any (and to offer new evidence and/or rebuttal evidence, if any);
- Five calendar days for the Evidentiary Specialist to provide a written response to evidentiary concerns;

- Following the finalization of the Hearing File by the Evidentiary Specialist, five calendar days for the parties to provide a written response to the Hearing File;
- Two calendar days for the Title IX Coordinator (working with the Investigator and/or Evidentiary Specialist as necessary) to redact any information from the written responses that do not comport with the evidentiary decisions in the matter;
- The Title IX Coordinator will release the names of the panelists to the parties and the names of the parties and witnesses to the panelists. Request for recusal must be made within 24 hours;
- The Title IX Coordinator will release the Hearing File and party responses to the Hearing Panel in advance of the hearing, such that the Hearing Panel has sufficient time to review and analyze the file, The parties will be notified in writing when the Hearing File is released;
- Following a finding that a Responding Student is responsible, two calendar days to provide a sanction statement (discussed in XII.C);
- Following the hearing and receipt of the Outcome Letter, ten calendar days to file an appeal;
- Following the receipt of the party's appeal (if any), seven calendar days to respond;
- The appeal decision will be issued within 15 calendar days.

B. Extensions

Extensions are only granted for good cause. A request for an extension must be made, in writing and with reasons provided, to the Title IX Coordinator. The Title IX Coordinator will endeavor to respond to an extension request promptly, in writing, ideally within 24 hours.

XI. Pre-Hearing Process

Once a matter is charged, the matter goes through the following pre-hearing steps.

A. Use of Evidence

As described in Section IX, during the investigation phase, the Investigator gathers information relating to the matter. During the pre-hearing process, the Investigator reviews this information and identifies that portion of the materials that meet the following evidentiary guidelines based on the charges that were issued. This evidence is then placed in the Hearing File, which contains the material that will be reviewed by the panelists to make a decision on a charge.

The rules of evidence applicable to court proceedings do not apply to this process.

In general, evidence may be presented during a hearing if it is relevant, not unduly repetitious and the sort of information a reasonable person would find reliable. Evidence is relevant if (1) it makes a fact that is of consequence in determining the action more or less likely than it would be without the evidence; or (2) it reflects on the credibility of a testifying party or witness in a material way and the value of this evidence is not outweighed by its prejudicial effect.

As provided in IX.C.3, information gathered during the investigation that is not relevant to the charged conduct will not be placed into the Hearing File; irrelevant information appearing within a witness statement or other evidence will be redacted. Parties will receive a log describing gathered evidence that was not included in the Hearing File.

1. Reputation and Character Evidence, Including Past Sexual History

Reputation and character evidence concerns a party's positive or negative traits, truthfulness or untruthfulness, ethics, or morals. During the fact-finding portion of a hearing, such evidence is not generally admissible to establish a person acted in accordance with the character or trait. Accordingly, past conduct or violations by the Responding Student will not be considered in the fact-finding portion of a hearing, except to prove or disprove pattern of conduct or knowledge or wrongdoing.

Past sexual history between the Responding Student and Complainant is only relevant when the past sexual incident or history provides compelling evidence on a disputed issue, including credibility. Past sexual history between the Complainant and any other individual will not be considered, except in the extraordinary circumstance that the Complainant affirmatively provides evidence of lack of sexual experience, which can then be rebutted if such rebuttal evidence would provide compelling evidence on a disputed issue, including credibility. Past sexual history between the Responding Student and any other party may only be considered if such information could prove or disprove a pattern of conduct or knowledge or wrongdoing.

2. Expert Witnesses

Expert witnesses may be permitted only if the Investigator decides that:

- The case requires special expertise in order to have the Hearing Panel understand a technical matter, such as forensic evidence;

- An understanding of that technical matter is likely to affect the Hearing Panel’s finding; and
- The Investigator determines that there is not a more efficient method of obtaining the information necessary to resolve that technical matter.

If allowed, an expert witness may be retained by a party or by the Title IX Coordinator. If an expert witness is retained by a party, that party will be responsible for any costs incurred, and the other party will be allowed to respond to that expert’s written or oral testimony. If an expert witness is consulted by the Title IX Coordinator, the parties will be allowed to respond to that expert’s written or oral testimony. Expert witnesses must be identified in the investigation phase and must be willing to submit to an interview with the Investigator.

3. “New” Evidence and/or Rebuttal Evidence

“New” evidence is evidence that was not available at the time of the charge decision, could not have been available based on reasonable and diligent inquiry, and is relevant to the matter. Rebuttal evidence is evidence presented to contradict other evidence in the Hearing File, which could not have been reasonably anticipated by the party to be relevant information at the time of the investigation.

This section is not intended to permit a party who has declined to give a statement about the incident during the investigation to give such a statement for the first time after the Hearing File has been created. This section is intended to be invoked in rare instances to allow for the inclusion of information that was not available during the investigation or that could not have been reasonably anticipated to be relevant to rebut an issue that came to light.

B. Evidentiary Review Process

If a party objects to evidence included or excluded from the Hearing File, or if a party wants to submit new evidence and/or rebuttal evidence after the parties have viewed the file, the party may make a written request of not more than 1,500 words in length (excluding the submission of proposed new or rebuttal evidence) for review by the Evidentiary Specialist. New evidence and/or rebuttal evidence, if any, should be attached to the written request.

In order to consider the objections to the Hearing File, the Evidentiary Specialist will have access to all materials gathered by the Investigator during the investigation. The parties must submit the objections by the date set in the Hearing Schedule, generally five calendar days from the date the

Hearing File is made available to the parties. The Evidentiary Specialist will make a decision based on the standards described in Section XI above and will provide a written decision that will be binding. The Evidentiary Specialist has the authority to make all evidentiary decisions relating to what information is relevant; that is, what information should be included or excluded from the Hearing File. The Evidentiary Specialist will work with the Title IX Coordinator to complete the finalized Hearing File.

During the hearing, parties and witnesses must comply with the evidentiary decisions that have been made by the Evidentiary Specialist.

Objections to the inclusion or exclusion of evidence that were, or could have been, resolved through the Evidentiary Review before the hearing cannot be the basis for an appeal, unless the appealing student demonstrates that the evidentiary decision was clearly erroneous and substantially affected the reviewing panel's decision to the detriment of the appealing student.

C. Response Statement to Hearing File

After the Hearing File has been finalized, each party may submit a written statement of their position of the Title IX Coordinator that is no more than 1,500 words in length.

- This statement is each party's opportunity to respond to the Hearing File and the charges made and to provide a statement to the panelists about what the party believes the evidence shows.
- No attachments will be accepted; references to evidence should be made to material in the existing Hearing File.
- No new and/or rebuttal evidence may be submitted.
- No information may be submitted that goes beyond the scope of the matter that is charged.

The parties must submit this statement by the date set in the Hearing Schedule, generally five calendar days after the Hearing File is finalized.

The Title IX Coordinator, in consultation with the Investigator and Evidentiary Specialist as necessary, will remove information from a position statement that goes beyond the scope of the charge or that violates the evidentiary guidelines provided above in Section XI.A.

XII. Hearing Process

A. Hearing Panel Selection

Each case will be heard by a panel of three trained panelists, who will be selected from a pool consisting of faculty and staff appointed by the Academic Dean. The panelist pool will be diverse and representative of the CSTCM community. No panel will include more than two individuals from these two groups.

The name of the panelists will be provided to the parties in advance of the hearing. No person who has a conflict of interest may serve on the Hearing Panel. A conflict of interest exists if the panelist has prior involvement in or knowledge of the allegations at issue in the case, has a personal relationship with one of the parties or witnesses, or has some other source of bias. Either party may assert, in writing, that a Hearing Panel member has a conflict of interest. The Title IX Coordinator will determine whether such a conflict exists. A request to recuse a panelist based on a conflict must be submitted to the Title IX Coordinator with 24 hours of receipt of the names of the panelists. If the Title IX Coordinator determines that a panelist has a conflict of interest, that Hearing Panel member will be replaced by an alternate.

B. Hearing

The Investigator will attend and observe the hearing and will be available to answer any questions from the Hearing Panel about the investigation.

The Hearing Panel will meet with the parties and witnesses for the purpose of making findings of fact. The parties and witnesses may not speak to matters beyond the scope of the Hearing File (for example, by raising potential misconduct allegations that go beyond the scope of the charged conduct). Parties and witnesses must not disclose or reference information to the Hearing Panel that was excluded by the Investigator and/or Evidentiary Specialist. The Hearing Panel is expected to ask questions of the parties and/or witnesses.

1. Parties' Participation. Parties must appear in person. The parties will not be in the same room at the same time with each other and may listen to testimony by telephone (or other similar technology).
2. Witness Participation. Parties are permitted to listen to witnesses as they are speaking to the Hearing Panel. The Hearing Panel is not obligated to speak to all witnesses; the Hearing Panel does not

need to meet with a witness if the witness statement is sufficient and the credibility of the witness is not an issue.

3. Questions from the Parties: At the conclusion of a party's or witness' session with the Hearing Panel, there will be a break so that a party listening the hearing is able to submit written follow-up questions to the Title IX Coordinator by email. The Hearing Panel has the ultimate authority as to what questions to ask. The recommended practice is to cover relevant subject matter areas requested by the parties that have not already been covered and that are likely to elicit information necessary to make findings of fact.

C. Deliberation

Using a preponderance of the evidence standard, the Hearing Panel will determine responsibility based on the contents of the Hearing File and the parties; and witnesses; statements and responses to questions. A finding that the Responding Student has violated School Policy or a School directive must be unanimous. The finding of responsibility will occur after a reasonable time for deliberation, but generally no more than 12 hours after the end of the hearing.

D. Sanction Phase

Upon finding a responsibility, the process will move to the Sanction Phase. The parties may submit a statement regarding discipline that is no more than 1,500 words in length. This document is the opportunity for the parties to suggest disciplinary outcomes and to provide aggravating or mitigating circumstances for the Hearing Panel to consider. The Title IX Coordinator, in consultation with the Investigator and Evidentiary Specialist, will remove information or speculation from these statements that would not be relied upon by reasonable people in making sanction determinations. Parties must submit this statement by the date determined by the Title IX Coordinator, generally two calendar days after the finding of responsibility.

The Title IX Coordinator will set a date for the Hearing Panel to meet for the Sanction Phase. The parties do not meet with the Hearing Panel during this phase. At the Sanction Phase, the Hearing Panel will receive:

- The sanction statements;

- Notice of the interim measures that were in place during the process; and
- Notice of any disciplinary history of the Responding Student.

Based on a careful review of the foregoing information, the Hearing Panel will impose sanctions using the guidelines provided in Appendix B. The sanction determination will be provided to the Title IX Coordinator who will determine the remedies appropriate for the matter, as set forth in Appendix C. The Title IX Coordinator will then issue written Outcome Letters to the parties that will include a description of the sanctions and the remedies. The Title IX Coordinator will provide the Registrar with copies of the Outcome Letters for the purpose of maintaining a disciplinary record for the responsible student.

The Hearing Panel and the Title IX Coordinator respectively must explain decisions on responsibility and sanctions (if applicable) and remedies with enough specificity for the parties to be able to file meaningful appeals.

The consideration of whether remedies and sanctions go into immediate effect or are held in abeyance pending appeal or some combination thereof, will be determined on a case-by-case basis by the Title IX Coordinator based on considerations provided in Appendix C.I.

XIII. Appeal

A. Parties' Right to Appeal

The parties may appeal the Outcome Letter. Each party may submit a written appeal of up to 6,000 words in length, which will be shared with the other party. The parties must submit the appeal by the date determined by the Title IX Coordinator, generally ten calendar days from the receipt of the Outcome Letter.

The grounds for appeal are limited to the following:

1. Were there any procedural irregularities that substantially affected the outcome of the matter to the detriment of the appealing party?
2. Was there any substantive new evidence that was not available at the time of the no charge decision or hearing and that could not have been available based on reasonable and diligent inquiry that would substantially affect the outcome of the decision?

3. Is the decision on the findings one that a reasonable Investigator (in an appeal of a no charge decision) or Hearing Panel (in an appeal of a finding of responsibility and/or sanction) might have made?
4. For matters that proceeded to sanctioning and imposition of remedies, are the sanction and/or remedies ones that could have been issued by reasonable persons given the findings of the case?

In composing appeals, parties should format their responses following these four grounds as the organizational structure.

Upon receipt of the party's appeal, the Title IX Coordinator will share it with the other party. Each party may submit a response to the other party's appeal (no more than 3,000 words). Each party must submit this response by the date determined by the Title IX Coordinator, generally seven calendar days after the other party's appeal has been shared. The appealing party will have access to the other party's response to the appeal, but no further responses will be permitted.

B. Appeal Decision

The Appeal Officer will be selected from the Hearing Panel Pool. The Appeal Officer will provide the final appeal decision no later than 15 calendar days after receipt of all appeal documents. As needed, the Appeal Officer will consult with the Title IX Coordinator regarding the management of ongoing remedies. The Appeal Officer may reject the appeal in whole or in part, issue a new decision regarding responsibility, issue new or revised sanctions and remedies, or refer the matter to a new panel.

C. Board of Directors Review of Expulsion

For matters in which the decision of the Appeal Officer is to uphold a determination to expel a student, the Board of Directors will have the final review of the matter. Both the Responding Student and Complainant are permitted to write a letter to the Board of Directors of no more than 3,000 words in opposition or support of the expulsion.

XIV. Ongoing Management

If there is a finding of responsibility, the Title IX Coordinator will have ongoing responsibilities to monitor the sanctions imposed and to administer and adjust safety and administrative remedies for the parties.

XV. Expedited Process for Violations of School Directives and Court Orders

During this process and after the Responding Student has been found responsible for engaging in Prohibited Conduct, if there is a new allegation that the Responding Student has violated a Court Order or a School Directive relating to the matter, the Title IX Coordinator will expeditiously investigate the concern. The Title IX Coordinator may shorten the minimum times to respond under Section X.A in order to bring such a matter to a hearing on an expedited basis.

The expedited process is only available for Responding Students following a final determination of responsibility through a hearing or Non-Hearing Resolution. Reports of alleged violations of School Directives or Court Orders prior to final determination either will be incorporated into the pending matter or referred separately through this process.

Appendix A: Definitions

Appeal Officer: a faculty or staff member of the Hearing Panel Pool designated to hear appeals of matters pursuant to this process

Appeal Outcome Letter: a written letter describing the Appeal Officer's final determination of a matter brought forward on appeal.

Complainant: the party to the process who has allegedly experienced the alleged Prohibited Conduct at issue. CSTCM uses this term to provide consistency with the Office for Civil Rights and many peer institutions. Use of this term does not necessarily indicate that this person either reported the conduct or requested that the School pursue the matter.

Concern: an allegation that a student has engaged in Prohibited Conduct.

Consent: Consent is an affirmative act or statement by each person that is informed, freely given and mutually understood. It is the responsibility of each person involved in a sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity (and each act during the activity). Affirmative consent must be ongoing throughout a

sexual activity and can be revoked at any time. Lack of protest or resistance does not mean consent, nor does silence mean consent. Consent to one act by itself does not constitute consent to another act. The existence of a dating relationship between the person involved, or the fact of past sexual relations, should never by itself be assumed to be an indicator of consent. Whether one has taken advantage of a position of influence over another may be a factor in determining consent.

Evidentiary Specialist: a person with specialized knowledge in evidence (such as a person with legal training) retained by the School, in the event of an objection to the inclusion or exclusion of evidence in the Hearing File, to resolve evidentiary concerns and finalize a Hearing File.

Evidentiary Review: the process managed by the Evidentiary Specialist, where a party objects to the inclusion or exclusion of evidence in the Hearing File, to finalize the Hearing File that will be considered by the Hearing Panel using the evidentiary process described in Sections XI.A & B.

Hearing File: the information collected during the investigation that is deemed relevant to be considered by the Hearing Panel.

Hearing Panel: the three-person panel of trained members of the School's community that will consider allegations and determine, applying a preponderance of the evidence standard, whether the Responding Student has violated School policy relating to Prohibited Conduct.

Hearing Schedule: a time-table specific to each matter that schedules key dates for the matter after it has been charged.

Incapacitation: Incapacitation means that a person lacks the ability to voluntarily agree to sexual activity because the person is asleep, unconscious, mentally and/or physically helpless, otherwise unaware that sexual activity is occurring or unable to appreciate the nature and quality of the act. Incapacitation is not the same as legal intoxication. A party who engages in sexual conduct with a person who is incapacitated is responsible for sexual misconduct. It is not a defense to Sexual Misconduct that the Responding Student's belief in affirmative Consent arose from the intoxication of the Responding Student.

Interim Measures: When the School has notice of an allegation of Prohibited Sexual Conduct, a qualified School staff member may impose interim safety measures, which will generally remain

in effect throughout the duration of the School investigation. In imposing interim measures, a qualified School staff member should consult with the Title IX Coordinator.

Investigator: the person assigned by the Title IX Coordinator to investigate allegations of Prohibited Conduct. The Investigator shall have been trained on all elements of an investigation as required by federal and state law.

Non-Hearing Resolution: a resolution to a concern as described in Section IX.C.2.

Notice of Concern: a written communication from the Title IX Coordinator to the Responding Student indicating that a concern has been raised that the Responding Student may have engaged in Prohibited Conduct and that the School has decided to investigate the allegations (see Section V).

Outcome Letter: a written letter describing the outcome in a matter and rationale for the outcome.

Parties: the term used to refer collectively to Complainant(s) and Responding Student(s).

Prohibited Conduct: Sexual Harassment, Sexual Assault, Sexual Misconduct, Relationship Violence (domestic violence and dating violence), and Stalking in addition to Retaliation, intimidation, and violation of the School or Court-Ordered directives related to these allegations.

Relationship Violence: This is CSTCM's umbrella term that includes dating and domestic violence. Relationship Violence is physical violence relating to current or former romantic or intimate relationship, regardless of the length of the relationship. Relationship Violence also includes threatening conduct that would cause reasonable persons to be fearful of their safety.

Responding Student: a CSTCM student in a degree-granting program alleged to have engaged in Prohibited Conduct on campus or off campus under circumstances in which alleged Prohibited Conduct either occurred in a School program or activity or had the effect of creating a hostile environment on campus for the Complainant(s).

Responsible Employee (who must report Prohibited Conduct to Title IX Coordinator): Except for School-recognized confidential resources, all School faculty and staff members (including student staff members) with knowledge of unreported concerns relating to Prohibited Sexual Conduct are required to report such allegations to the Title IX Coordinator. Reporting by

these individuals is required regardless of whether impacted party has or has indicated they will contact the appropriate office.

Retaliation: Direct or indirect intimidation, threats, coercion, harassment, or other forms of discrimination against any individual who has brought forward a concern or participated in the School's Title IX process.

School Directive Violation or Court Order Violation: Violation of any directive issued by the School that restricts the activities of an individual in connection with an allegation or finding of Prohibited Conduct; or violation of any formal order issued by a state or federal court or authorized police officer, that restricts a student's access to another CSTCM community member, such as an emergency, temporary, or permanent restraining order.

Sexual Assault: an act of Sexual Misconduct accomplished by use of (i) force, violence, duress, or menace; or (ii) inducement of Incapacitation or knowingly taking advantage of an Incapacitated person.

Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, and other visual, verbal, or physical conduct of a sexual nature (something beyond the mere expression of views, words, symbols, or thoughts that some person finds offensive) constitute sexual harassment when the conduct is sufficiently severe, persistent, or pervasive so as to interfere with or limit a reasonable student's ability to participate in or benefit from the School's services, activities, or opportunities.

Determining what constitutes sexual harassment depends on the specific facts and context in which the conduct occurs. Sexual harassment may take many forms: subtle and indirect or blatant and overt. For example, it may:

- Be conduct toward an individual of the opposite sex or the same sex.
- Occur between peers or between individuals in a hierarchical relationship.
- Be aimed at coercing an individual to participate in an unwanted sexual relationship or it may have the effect of causing an individual to change behavior.
- Consists of repeated actions or may even arise from a single incident if sufficiently egregious.

Whether the unwanted sexual conduct rises to the level of creating an intimidating or hostile environment is determined using both a subjective standard (that is, a person has been offended by the conduct) and an objective standard (that is, a reasonable person would find the conduct to

be sufficiently severe, persistent or pervasive so as to interfere with the ability to participate in or benefit from the School's services, activities, or opportunities).

Sexual Misconduct: The commission of a sexual act, whether by a stranger or nonstranger and regardless of the gender of any party, which occurs without indication of Consent.

1. The following acts or attempted acts can be the subject of a Sexual Misconduct or Sexual Assault charge:
 - a) Vaginal or anal intercourse;
 - b) Digital penetration;
 - c) Oral copulation; or
 - d) Penetration with a foreign object.

2. **Additional Acts of Sexual Misconduct.** The following completed acts can be the subject of a Sexual Misconduct charge:
 - a) Unwanted touching or kissing of an intimate body part (whether directly or through clothing); or
 - b) Recording, photographing, transmitting, viewing, or distributing intimate or sexual images or sound recordings without the knowledge and Consent of all parties involved.

Stalking: The repeated following, watching, or harassing of a specific person that would cause reasonable persons to (a) fear for their own safety or the safety of others, or (b) suffer substantial emotional distress.

Title IX Coordinator: the individual at CSTCM responsible for overseeing the School's compliance with Title IX, and VAWA amendments to the Clery Act.

Witness: a person asked to give information or a statement in a matter under this process.

Appendix B: Sanctions Guidelines

Expulsion is the expected sanction for finding of Sexual Assault. The Hearing Panel must impose sanctions that reflect the seriousness of the incident and the harm caused to the Complainant and, as relevant, the CSTCM community. Beyond Sexual Assault, expulsion may be the appropriate outcome in other matters considered under this process and every sanction deliberation should begin with consideration of expulsion. Sexual Misconduct is extremely serious and (in instances

in which expulsion is not warranted) separation from the School for some period of time is expected.

Like findings of responsibility, the Hearing Panel can impose sanction of expulsion only when the Hearing Panel is unanimous on that outcome. Sanctions other than expulsion can be imposed if the majority of the Hearing Panel agrees.

Sanctions include the following:

- Expulsion – permanent separation from the School without the option of re-enrollment in any future degree-granting CSTCM program.
- Delay in the conferral of degree for a period of between one – nine trimesters (that is, up to three academic years) – this sanction is only available for students in their final trimester at CSCTM.
- Suspension from the School for a period between one - nine trimesters (that is, up to three academic years).
- Probation – Should the Responding Student face any other disciplinary matter at CSTCM that decision-making body would be informed in the sanction phase that the student was on probation and would consider the probation as an aggravating factor in imposing discipline.

Hearing panelists may consider past disciplinary outcomes for similar matters, but are not required to give any weight to past outcomes.

Appendix C: Interim Measures & Remedies

I. Interim Measures

The following interim measures may be implemented by the Title IX Coordinator or its designee while an investigation is pending:

- a) Academic accommodations, including the possibility of removal of the Responding Student from a course
- b) No contact directives, stay-away letters, or campus bands
- c) Limiting Responding Student's extracurricular activities
- d) In rare instances, removing the Responding Student from the CSTCM community while the investigation is pending
- e) Other safety measures or accommodations as appropriate for the particular matter

When implementing Interim Measures, the Title IX Coordinator will consider a number of factors in determining which measures should be put in place, such as:

- The safety of the community;
- The safety of the Complainant;
- The severity of the allegations;
- The education environment of the parties; and
- Any academic or other School-related programs and activities with which the parties are involved.

Pursuant to guidance from the U.S. Department of Education, when adopting Interim Measures, the Title IX Coordinator will minimize the burden on the Complainant. To the extent non inconsistent with the obligations above, the School will take into account the Responding Student's academic, living, and extracurricular activities during the process of setting interim accommodations, including circumstances in which the Responding Student might have priority to attend a class or event.

The Title IX Coordinator will provide written notification of Interim Measures to both parties, although a measure affecting only one party will not be shared with the other party. The Title IX Coordinator may make adjustments to the Interim Measures as necessary.

III. Remedies

If the Hearing Panel finds the Responding Student responsible and determines the sanction, the Title IX Coordinator must then implement remedies with the goal of enabling the Complainant to reasonably obtain the education benefits available to CSTCM students while remaining free from

unreasonable interaction with the Responding Student on campus for a reasonable period of time. In instances in which the Responding Student is not expelled, the School must also provide an education to the Responding Student with the expectation that the Responding Student will follow appropriate School directives to give priority in most activities and programs to the Complainant, except in circumstances in which the Responding Student should have clear priority to a class, program, or activity. The role of the Hearing Panel is to institute sanctions and (if necessary) the Title IX Coordinator will implement remedies. Sanctions and remedies will then be overseen by the Title IX Coordinator.

Remedies may be modified by the Title IX Coordinator as circumstances change over the course of the Complainant's student career at CSTCM. Remedies that are both substantially different from those initially entered following a hearing and that substantially alter a Responding Student's access to education, campus or extracurricular activities may be reviewed through the limited appeal inquiry provided in Section XIII.A.4.

The Title IX Coordinator should consider whether remedies in the following categories are appropriate and, if so, what the remedies should be. These categories are illustrative only; the Title IX Coordinator may implement such remedies as deemed appropriate for the particular case.

A. Restrictions on Responding Student

1. Presence on Campus

- a. Should the Responding Student be permitted on campus for any purpose while expelled or on suspension?
- b. Is a campus stay-away directive for some period of time appropriate?
- c. If the parties will be on campus together at any time, should the Responding Student be directed to stay at least 50 feet from the Complainant?

2. Academics

- a. Should the Responding Student be permitted to take courses with the Complainant?
- b. If a general priority to the Complainant is appropriate, are there some courses for which the Responding Student should have priority?

3. Extracurricular Activities & Programs

- a. Should the Responding Student be permitted to engage in activities and programs with the Complainant?
 1. If a general priority to the Complainant is appropriate, are there some activities or programs for which the Responding Student should have priority?

2. Should the Responding Student be permitted to attend voluntary social activities such as Chinese New Year's Celebration or BBQ?

4. Leadership

1. Should the Responding Student hold student leadership positions?

B. Educational Counseling and Training for the Responding Student\

1. Would the Responding Student benefit from educational counseling or training, such as sexual harassment training or training regarding anger management?

C. Additional Remedies for the Complainant, which will be directed by the Title IX Coordinator. Unless one of these remedies affects the Responding Student, these should remain confidential and should only be included in the Outcome Letter for the Complainant.

1. Counseling assistance
2. Academic accommodations
3. Other accommodations

D. Timeframe for Remedies

1. The Title IX Coordinator should indicate a timeframe for the remedies (noting that it might be appropriate for some remedies to have have different timeframes; e.g., no leadership position for two years and no extracurricular activities for one year.)