SECTION SEVEN

SEXUAL MISCONDUCT-STUDENT CONDUCT PROCEDURES

I. PREPONDERANCE OF THE EVIDENCE
Just enough testimony and information to make it more likely than not that the fact sought to be proven is true. This preponderance is based on the more convincing information and its probable truth or accuracy, and not on the amount of information.

II. CONDUCT/INVESTIGATION PROCESS
Any person may file a complaint against a student for violations of the Standards of Conduct, including violations of the Sexual Harassment Policy. This procedure applies to any allegation of sexual harassment, sexual assault, sexual misconduct, sexual exploitation, and/or sexual exposure by a student, regardless of where the alleged violation occurred. For the purpose of this procedure, the Respondent must have been registered or enrolled at the University at the time of the alleged violation (including during an academic recess), and at the time that the complaint is made to the University.

A. Where to File a Complaint

- Complaints about Student Conduct: All complaints alleging sexual harassment or retaliation committed by students should be submitted to the Office of Student Affairs, 301 Taylor Hall, 970.943.2011.

- Complaints about Employee or Third Party Conduct: All complaints alleging sexual harassment or retaliation committed by employees and/or third parties should be submitted to the Director of Human Resources/Deputy Title IX Administrator, 321 Taylor Hall.

III. TITLE IX ADMINISTRATOR
Whenever a complaint is received, the Title IX Administrator will be advised of the complaint and may assist in the investigation or resolution of the complaint as directed by the School. The Title IX Administrator is:

Chris Luekenga
Associate VP for Student Affairs
Title IX Administrator
cluekenga@western.edu
970.943.2616
A. **Deputy Title IX Administrators:**
   - Human Resource Director – Kim Gailey, 970-943-2412
   - Director of Residence Life – Shelley Jansen, 970-943-3104
   - Assistant Athletic Director – Jill Mahoney, 970-943-2021
   - Student Affairs Designee(s) Sara Phillips, 970-943-2176; Jessica Vogan, 970-943-2891

B. **Responsibilities:** Compliance of sexual harassment policies for matters involving students, including training, education, communication, may assist in the investigation and administration of grievance procedure for all complaints of sexual misconduct.

IV. **EFFECT OF CRIMINAL PROCEEDINGS**
Because certain acts of sexual harassment may constitute both a violation of School Standards of Conduct policy and a criminal offense, the University encourages, but does not require students to report alleged criminal acts (e.g., sexual assault and sexual violence) promptly to appropriate law enforcement authorities. The standards for findings violations of criminal law are different from the standards for finding a violation of the University’s.

V. **STANDARD OF PROOF**
The standard of proof is the amount of information needed to establish a violation of policy has occurred. In the adjudication of student conduct issues, the University uses a “preponderance of evidence” standard, which means that the information demonstrates that it is more likely than not the alleged conduct or policy violation has occurred.

VI. **IMMEDIATE RESPONSE**
Depending on the nature of the complaint, the University reserves the right to take any and all interim steps it deems necessary to protect the Complainant, witnesses, or the Respondent. Examples of these interim measures may include, but are not limited to the following:
   - Issuing “no contact” directives;
   - Issuing temporary “PNG” or “no trespassing” directives;
   - Temporarily suspending a student’s enrollment; and
   - Obtaining restraining or similar protective orders through appropriate law enforcement and conduct mechanisms.
VII. INITIAL INQUIRY MEETINGS WITH COMPLAINANT AND RESPONDENT

The Title IX Administrator or deputy will schedule an intake meeting with the Complainant in order to provide the Complainant a general understanding of the policy, and to identify forms of support available and appropriate for the Complainant. The Title IX Administrator or Deputy will also seek to determine whether the Complainant wishes to pursue adjudication through the University’s Standards of Conduct.

Title IX Administrator or Deputy will schedule an intake meeting with the Respondent following the meeting with the Complainant in order to provide the Respondent a general understanding of the policy, and identify forms of support available to the Respondent. Following these initial meetings with the Complainant and Respondent, the Title IX Administrator or Deputy may conduct additional investigation by meeting with other individuals involved and witnesses or assign an investigator(s) to conduct an investigation.

If the Complainant does not wish to pursue the formal conduct process or requests confidentiality, Title IX nevertheless requires the University to investigate and take reasonable and appropriate action in response to the complaint.

When confidentiality is requested or the Complainant does not wish to pursue adjudication, the University’s ability to respond and resolve the matter of concern may be more limited. Further, Title IX requires the University to consider the Complainant’s request for confidentiality in the context of its commitment to provide a reasonably safe and non-discriminatory environment for all community members. Although full confidentiality cannot be guaranteed, the Title IX Administrator will advise the Complainant regarding the degree of confidentiality that may be possible, and the measures that will be taken to try to ensure this confidentiality.

VIII. INFORMAL CONDUCT PROCESS

A Complainant who wishes to file a complaint with the Title IX Administrator, but who does not wish to pursue Formal Conduct, may request a less formal proceeding known as “Informal Conduct,” as described below. Although informal, this is an official conduct process; it is not mediation.

- **Purpose and Timing:** Informal Conduct provides an opportunity for the Complainant to provide the Title IX Administrator or Deputy with information about the subject incident, the impact of the incident, his/her wishes and expectations regarding future interactions with the Respondent, and needed support and protective measures. If approved by the complainant, the Title IX Administrator or Deputy will communicate this information to the Respondent and allow the Respondent an opportunity to respond. The Informal Conduct Process is expected to be completed in a reasonably brief period of time of the date the complaint is received by the Title IX Administrator or Deputy. If additional time is needed for this informal process, the Title IX
Administrator or Deputy will communicate this to the Complainant and Respondent in writing, citing the reasons for the additional time and providing an estimated date of completion.

- **Outcome of Informal Conduct:** Informal Conduct cannot result in a formal sanction involving suspension or expulsion of the Respondent. Informal Conduct resolution may, however, result in the imposition by the Office of Student Affairs protective measures and other appropriate actions based on the information derived from the proceedings, and any other relevant information known to the School at the time of the Informal Adjudication.

- **Election of Formal Conduct Process:** The University, the Complainant, or the Respondent may, at any time prior to the conclusion of the Informal Conduct Process, elect to end such proceedings and initiate Formal Conduct instead.

**IX. FORMAL CONDUCT PROCEDURES**

The Formal Conduct Process is utilized when a Complainant wishes to file a formal complaint with the University regarding the conduct of a student. The Formal Adjudication process, including the issuance of a written decision, should normally be completed within 60 calendar days of the Title IX Administrator or Deputies receipt of the formal complaint. If additional time is needed for this process, the Title IX Administrator or Deputy will communicate this to the Complainant and Respondent in writing, citing the reasons for the additional time and providing an estimated date of completion.

**A. Investigation and Conduct Meeting:** If the Complainant notifies the University that he/she wishes to pursue Formal Adjudication during the Intake meeting, the Title IX Administrator or Deputy will conduct an investigation to determine if the complaints have merit. If the complaints have merit, the Title IX Administrator will assign the case to an investigator.

1. The assigned investigator(s) will conduct a thorough, reliable and impartial investigation. This investigation will include interviews with the Complainant, Respondent and any identified witnesses. The investigators will also examine any evidence that might be available during the investigation. The Title IX Administrator or Deputy will notify the Respondent in writing that an official investigation will take place. The notification will provide the Respondent with the charge(s) against him/her. Notice will also be given to the Complainant.

   a) When appropriate, the Respondent, whether living on or off campus, may be temporarily suspended by the Vice President for Student Affairs or a designated member of the administrative staff, pending disposition of the case by the Title IX Administrator or Deputy.
b) With the approval of the Title IX Administrator or Deputy, an advisor or support person of his/her choosing may accompany the Respondent and/or the Complainant during any interview or conduct meeting. Such advisor may be an attorney. Since direct interaction with the Respondent and the Complainant involved is essential to this student’s educational relationship with the School, the advisor’s roles is limited to an advising role only. The advisor may not act as a representative of the Respondent or Complainant, speak on the Respondent’s or Complainant’s behalf, or participate directly in any meeting. Additionally, the advisor may not serve in a dual role in the meeting. For example, the advisor may not also serve as a witness. The Title IX Administrator, Deputy, or investigator holding the meeting may consult with or choose to have the University’s Legal Counsel present at the meeting in a similar advisory capacity.

c) The Complainant and Respondent may each submit a list of relevant witnesses to the Title IX Administrator, Deputy, or investigator. The investigator, or Title IX Administrator or Deputy will make a determination as to whether a particular witness will be permitted to provide information related to the matter. If permitted, the investigator, Title IX Administrator or Deputy will arrange for witnesses to meet with them independently.

d) Adjudication meetings associated with a complaint of sexual harassment are considered private, educational interactions between the Respondent and the University. All meetings are considered closed to anyone not directly involved in the proceedings. Admission of any other persons to the meeting shall be at the sole discretion of the conduct meeting educator.

e) Pertinent records, exhibits and written statements may be accepted as information for consideration. The Respondent will be allowed to review and respond to any such records the conduct meeting educator (s) considers as the basis for the complaints.

f) The Respondent will be afforded the opportunity to present his/her own version of the incident or events by personal statement, as well as through written statements of witnesses to the incident.

g) At the Conduct Educators sole discretion, any interview, conduct meeting or hearing may be recorded. This recording is the property of the University. If such a recording exists and the Respondent or Complainant wishes to obtain a copy of the recording, a request must be submitted in writing to the Vice President of Student Affairs. Once such request has been received, the Vice President of Student Affairs will follow the applicable provisions of the Colorado Open Records Act, C.R.S. §§ 24-72-200.1, et seq., to respond to the request.
h) If information presented in the investigation or any conduct meeting creates the need for clarification or additional investigation, or to accommodate scheduling conflicts with witnesses, the investigator, Title IX Administrator or Deputy may schedule additional meetings and/or continue the meeting at a later time and date.

i) If the investigation involves more than one student offender or multiple Respondents, the Title IX Administrator or Deputy may permit the meeting concerning each student to be conducted either jointly or separately.

j) The Title IX Administrator or Deputy may make special accommodations to address concerns regarding the personal safety, well-being, or fears of confrontation or retaliation on the part of the Respondent(s), Complainant(s), and/or other witnesses during any meetings.

k) Formal rules of process, procedure, or information as established and applied in the civil or criminal justice system do not apply to the Conduct Meeting.

l) If the Respondent does not appear for any scheduled Conduct Meeting, a decision may be reached taking into consideration the totality of the information related to the complaints available at the time of the meeting.

m) Unless otherwise directed in this policy and procedure, all materials and documents prepared or compiled by the investigator, Title IX Administrator or Deputy during the course of investigation and conduct process of a sexual harassment complaint hereunder shall be kept confidential to the fullest extent of the law in order to protect participants and promote candor.

n) After meeting with the Respondent, Complainant, witnesses and having thoroughly looked at the evidence available, considered all pertinent information, the investigator, will issue a written finding of the facts to the Title IX Administrator or Deputy. The Title IX Administrator or Deputy will determine if the case should be heard by a Conduct Panel. If a recommendation for a conduct panel is determined, the Title IX Administrator or Deputy will assign trained members to the Conduct Panel and set a date for the Panel to hear the case. The Conduct Panel will deliberate the investigation and make a determination of responsible or not responsible. If a determination of responsible is mad, the hearing panel will then deliberate on the appropriate sanction(s). Findings, including conduct sanctions, if any, for the Respondent, will be provided concurrently to the Respondent and Complainant. If additional time is needed, the investigator, Title IX Administrator or Deputy will notify the
Respondent and Complainant in writing, citing the reasons for the additional time and providing an estimated date of completion.

o) Both the Respondent and the Complainant have the right to appeal the Conduct Panels decision. All requests for an appeal must be submitted in writing to the Office of the Student Affairs within seven (3) class days of the date of the hearing, Title IX Administrator or Deputy’s written decision. The Student Appeal Process will govern any appeals (SECTION FIVE. III).