

Sexual Misconduct Complaint, Investigation and Resolution Procedure for Complaints Involving Employees or Third Parties

This procedure is promulgated under the Western State Colorado University (Western) Board of Trustees Policy Prohibiting Sexual Misconduct and is intended as the means for implementing the policy.

1. General Complaint Information

1.1 Who May File a Complaint

Any employee, student, or third party not affiliated with Western who is present on campus or who has interactions with students and employees through University-sponsored activities (“Third Party”) who believes he or she has been the recipient of sexually harassing behavior, including retaliation, may file a complaint. Complaints may be filed against employees, students, or Third Parties.

1.2 Choice of Remedies

Complainants are not permitted to simultaneously file an unlawful discrimination claim under the University’s Anti-Discrimination Policy or the State of Colorado Personnel Board Rules, and a sexual misconduct claim under the University’s Sexual Misconduct Policy and this associated Complaint Procedure against the same individual arising out of an identical set of facts.

1.3 Promptness in Filing Complaint

A complaint may be filed at any time, but individuals who feel they have been victims of sexual misconduct are strongly encouraged to come forward as soon as possible after the occurrence of the incident, event, or other action alleged to constitute sexual misconduct or retaliation.

1.4 Timing

The University will address and resolve sexual misconduct matters promptly and effectively. It is the University’s intent that the entire process for investigating and resolving complaints be concluded within 60 calendar days following receipt of a formal complaint. However, the length of time will vary depending on the complexity of the investigation, the severity and extent of the misconduct, the quantity and availability of witnesses, and other factors of significance that may affect the length of the investigation. If the formal complaint process cannot be completed within 60 calendar days from the receipt of the formal complaint by the University, the Complainant and the Respondent will be informed in writing of the reasons for the delay and provided an estimated date of completion.

1.5 Where to File a Complaint

1.5.1 Complaints about Employee or Third Party Behaviors. All Complaints alleging sexual misconduct or retaliation committed by employees and/or Third Parties, whether informal or formal, should be submitted to the Deputy Title IX Administrator/Director of Human Resources, Human Resources Office (970-943-3142).

1.5.2 Complaints about Student Misconduct. All Complaints alleging sexual misconduct or retaliation committed by students against Employees or Third Parties should be submitted to the Title IX Administrator/Associate Vice President for Student Affairs, Office of Student Affairs, 301 Taylor Hall, (970-943-2616).

1.6 Employee Obligation to Report

Any employee, including any faculty member, who is aware of sexually harassing or retaliatory behavior, must promptly report the sexually harassing behavior or retaliatory action to the Title IX Administrator, Chris Luekenga; or to the Deputy Title IX Administrator/Director of Human Resources.

1.7 Types of Complaints

Complaints may be made informally or formally. Informal complaints may be made orally or in written form; formal complaints must be in writing.

1.8 Confidentiality

If a Complainant requests confidentiality, the University will take reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality to the extent possible. The University's ability to comply with a Complainant's request for confidentiality cannot be guaranteed.

Although the University will treat complaints that are made under the University-controlled complaint process as confidential to the extent possible, the University will forward any report it receives of Sexual Assault/Violence to the Gunnison Police Department.

1.8.1 Confidential Reporting

a) On-Campus Confidential Resources

Should a complainant wish to speak with an individual in confidence, they should speak with someone at the University's Counseling Center. Counselors generally will only report to the University that an incident occurred without revealing any personally identifying information. Disclosures to these individuals will not trigger a University investigation into an incident against the victim's wishes.

Individuals may report confidentially to the following campus resources that provide support and guidance:

Campus Counseling Center

Crystal Hall 104
970.642.4615
After Hours Emergency: 970.252.6220

OR

Campus Health Clinic

Tomichi Hall 104
970.943.2707

b) Gunnison Community Confidential Resources

Individuals may report confidentially to the following off-campus resources that provide support and guidance:

Center for Mental Health

710 N. Taylor Street
970.641.0229

Project Hope-Victims Support Services

24/7 Helpline: 970.275.1193
970.641.2712 Office
www.hope4gv.org

1.9 Local Law Enforcement Reporting

Individuals may report any complaint of sexual assault, violence, stalking or other sexual misconduct to the Police.

Gunnison Police Department
Emergency 911
970.641.8200

1.10 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. The University Title IX Administrator may be contacted as follows:

Chris Luekenga
Associate Vice President for Student Affairs
Taylor Hall 301
Gunnison, CO 81231
Telephone: 970-943-2616
e-mail: cluekenga@western.edu or tixadministrator@western.edu

2.0 INFORMAL COMPLAINT PROCEDURE

2.1 Purpose and Timing

Under certain circumstances, an informal sexual misconduct complaint and resolution process may be appropriate, effective and desirable for a variety of reasons. Further, it may provide a more expedient path to resolution than the formal process entails. The informal resolution efforts will be focused on bringing the Complainant's concerns to the attention of the Respondent and, if the concerns are valid, obtaining the voluntary cooperation of the parties to address and resolve the matter.

If a complaint is filed informally, the process is expected to be completed in a relatively brief period of time, usually within 10 calendar days of the date the complaint is received by Human Resources. If additional time is needed for the informal process, Human Resources will communicate this to the Complainant and Respondent in writing, citing the reasons for the additional time and providing an estimated date of completion.

2.2 Process

As a general matter, the Human Resources Office will try to resolve informal complaints expeditiously and to the satisfaction of all concerned. If the Complainant desires to informally resolve the complaint, a variety of possible means to resolve the complaint may be used at the discretion of the Human Resources Office. Examples of the method and means used to try and achieve resolution may include, but are not limited to:

- Negotiating an agreement whereby the Respondent agrees to cease the behavior;
- Assisting the Respondent to better understand the effects of his or her conduct and ways in which this behavior might be changed;
- Participation in educational programs about equal opportunity, discrimination and/or harassment;
- Verbal or written reprimands;
- Withdrawal of University-conferred privileges;
- Providing advice to the Complainant regarding how to handle a situation;
- Working with faculty, department heads or other employees in whom Complainant has trust and with whom the Complainant is comfortable to address the concerns;
- Providing assistance to supervisory personnel to address the matter with the Respondent; and
- Engaging an external investigator; or
- Termination of employment.

The resolution sought depends upon the circumstances of the complaint as well as the wishes of the parties involved. There is no requirement that, once the informal resolution process is started, it must be completed prior to filing a formal complaint. The Complainant or Respondent may choose, at any time before the informal resolution process is completed, to stop the informal resolution process and ask for a formal resolution process to begin.

3.0 FORMAL COMPLAINT PROCEDURE

3.1 Purpose and Timing

The purpose of this procedure is to provide a formal, structured mechanism for the prompt and fair internal resolution of complaints alleging sexual misconduct. The steps outlined below are the exclusive forum for the internal resolution of sexual misconduct complaints regarding the actions of an employee or non-student Third Party at Western. The investigation and issuance of a final decision related to a formal complaint should be completed within 60 calendar days of the University's receipt of the formal complaint, except in circumstances out of the ordinary.

3.2 Contents of Formal Complaint

A formal complaint must be in writing and contain at least these four elements:

- A description of the behaviors or actions upon which the complaint is based;
- Identification of the alleged perpetrator(s) of Sexual Misconduct (Respondent(s));
- A statement of the Complainant's desired outcome and resolution; and
- The signature of the Complainant.

3.3 Immediate Institutional Response

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 steps may include, but are not limited to:

- Issuing "no contact" directives;
- Issuing temporary "no trespassing" directives;
- Placing an employee on administrative leave with pay; and
- Obtaining restraining or similar protective orders through appropriate law enforcement and judicial mechanisms.

3.4 Notification of Legal Counsel, Title IX Administrator and Management

Promptly after receipt of the complaint, Human Resources will provide the complaint to the University's legal counsel, the Western Title IX Administrator, and appropriate University management personnel. For the purpose of this procedure, the University management personnel to be notified typically include the President, the Vice President in whose area the Respondent is employed or enrolled, the Respondent's supervisor and the next level supervisor, if appropriate.

3.5 Acknowledgment of Complaint and Notification of Respondent

Western will send the Complainant written acknowledgement of the complaint, notify the Respondent of the complaint in writing, and provide the Respondent with a copy of the complaint. The acknowledgement and notification process from the point of accepting the complaint through the issuance of letters to the Complainant and the Respondent will normally not exceed five (5) calendar days. Western will make best efforts to notify the Complainant by phone or e-mail prior to the delivery of the complaint to the Respondent.

3.6 Investigation Authorization Form

Unless the complaint is initiated by the President, the Complainant will be required to execute a Sexual Misconduct Complaint Investigation Authorization Form *prior to* any investigation of the complaint.

3.7 Investigation of Complaint

3.7.1 Process

The complaint will be investigated as discreetly and expeditiously as possible with due regard to thoroughness and fairness to all parties. The investigator(s) will examine relevant documents and interview witnesses, and may interview other individuals with material

information who are identified by the parties. The investigator(s) reserve the right to assess the relevance and evaluate the credibility of witnesses to be interviewed who are offered by the Complainant and the Respondent. The University, in its sole discretion, reserves the right to assign any part or all of the investigation to an external investigator in lieu of having the complaint internally investigated.

3.7.2 Confidentiality of Investigative Materials

All materials and documents prepared or compiled by the investigators during the course of investigating a sexual misconduct complaint hereunder will be kept confidential to the fullest extent of the law.

3.8 Report of Investigation Findings

After the conclusion of the investigation, the investigator(s) will prepare and submit a joint written report of findings to the President¹. The report of findings will be provided to the Complainant and Respondent within a reasonable time following the issuance of the University's decision.

3.9 Decision and Resolution of the Complaint

The President¹ will issue a final written decision regarding the complaint to both the Complainant and the Respondent. The decision will be addressed to the Complainant and will contain a statement of whether or not sexual misconduct was found to have occurred, the remedies to be provided to the Complainant, if any, and the sanctions to be imposed upon the Respondent, if any. The decision, including any sanctions, will also be communicated to the Responded in writing. The completion of the written report of findings and the issuance of the University's decision will normally be completed within 20 calendar days from the end of the investigation.

3.10 Appeal of Final Decision

There shall be no internal appeal of a decision that sexual misconduct has occurred that is issued pursuant to subsection 3.9 above. However, certified classified staff and tenured faculty members who receive corrective or disciplinary action as a result of such a determination under this procedure may avail themselves of appeal processes provided through the State Personnel Rules or the Handbook for Professional Personnel, as appropriate.

4.0 COMPLAINANT AND VICTIM SUPPORT

The University will provide support to the Complainant, any other victims it identifies during the course of its investigation, and the Western campus community as reasonable and appropriate under the circumstances. Such support may take many forms, including, but not limited to the following:

- Providing counseling and victim's support services;
- Providing medical services;
- Arranging for the Complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record;

¹ If the President is the Respondent, the Chairman of the Board of Trustees will be the decision maker.

- Ensuring that the Complainant and the Respondent do not attend the same classes or that the Complainant is not enrolled in a class taught by the Respondent;
- Providing an escort to the Complainant so that he/she can move safely between classes and activities;
- Moving the Complainant or Respondent to a different residence hall;
- Providing academic support services, such as tutoring;
- Reviewing any disciplinary actions taken against the Complainant to see if there is a causal connection between the misconduct and the misconduct that may have resulted in the Complainant being disciplined;
- Additional campus-wide office or department specific training or access to assistance; and
- Any other steps the University determines are appropriate given the nature and circumstances of the misconduct.