WESTMINSTER COLLEGE

(INTERIM) POLICY ON SEXUAL ASSAULT, SEXUAL AND GENDER-BASED HARASSMENT, GENDER-BASED DISCRIMINATION, AND INTERPERSONAL VIOLENCE

(Title IX Policy)

Effective Date: August 19, 2016

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I. STATEMENT OF POLICY

Westminster ("College") is committed to providing a safe and non-discriminatory learning and working environment for all members of the Westminster community. The College does not discriminate on the basis of sex in any of its education or employment programs and activities. To that end, this policy prohibits specific forms of behavior that violate Title IX of the Education Amendments of 1972 ("Title IX"); Title VII of the Civil Rights Act of 1964 ("Title VII"); and/or the Utah Antidiscrimination Act of 1965. The policy also fulfills certain obligations the College has under the Violence Against Women Reauthorization Act of 2013 ("VAWA") and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act").

The College prohibits sexual assault, sexual and gender-based harassment, gender-based discrimination, sexual exploitation, interpersonal violence, and retaliation against a person for the good faith reporting of any of these forms of conduct or participation in any investigation or proceeding under this policy, complicity in the commission of any act prohibited by this policy, and false reporting (collectively "prohibited conduct"). These forms of prohibited conduct, which are defined in Section V of this policy, are unlawful, undermine the character and purpose of the College, and will not be tolerated. The College adopts this policy with a commitment to: (1) eliminating, preventing, and addressing the effects of prohibited conduct; (2) fostering the College’s community of trust, in which prohibited conduct is not tolerated; (3) cultivating a climate where all individuals are well-informed and supported in reporting prohibited conduct; (4) providing a fair and impartial process for all parties; and (5) identifying the standards by which violations of this policy will be evaluated and disciplinary action may be imposed. Students or employees who violate this policy may face disciplinary action up to and including expulsion or termination, and third parties who violate this policy may have their contractual or campus access rights terminated. The College will take prompt and equitable action to eliminate prohibited conduct, prevent its recurrence, and remedy its effects. The College conducts ongoing prevention, awareness, and training programs for students and employees to facilitate the goals of this policy.

It is the responsibility of every member of the Westminster community to foster an environment free of prohibited conduct. All members of the Westminster community are encouraged to take reasonable and prudent actions to prevent or stop an act of prohibited conduct. The College will support and assist community members who take such actions.

This policy applies to all reports of prohibited conduct occurring on or after the effective date of this policy. Where the date of the prohibited conduct precedes the effective date of this policy, the definitions of misconduct in existence at the time of the alleged incident(s) will be used. The procedures under this policy, however, will be used to investigate and resolve all reports made on or after the effective date of this policy, regardless of when the incident(s) occurred.
II. TO WHOM THIS POLICY APPLIES

This policy applies to students who are registered or enrolled for credit- or non-credit-bearing coursework (“students”); college employees, consisting of all faculty (full-time, part-time, adjunct faculty and instructors) (collectively “faculty”) and staff (collectively “employees”); and contractors, vendors, visitors, guests or other third parties (“third parties”). This policy pertains to acts of prohibited conduct committed by or against students, employees, or third parties when:

• the conduct occurs on College grounds or other property owned or controlled by the College;
• the conduct occurs in the context of a College employment or education program or activity, including, but not limited to, College-sponsored study abroad, research, on-line, or internship programs; or
• the conduct occurs outside the context of a College employment or education program or activity but has continuing adverse effects on or creates a hostile environment for students, employees, or third parties while on College grounds or other property owned or controlled by the College, or in any College employment or education program or activity.

The College administers a separate policy that addresses other forms of discrimination and harassment: The Policy on Preventing and Addressing Discrimination and Harassment Based on Race, Color, National Origin, Religion, Disability, and Other Protected Categories (“Equal Opportunity Policy”). This policy supersedes any conflicting provisions contained in the Equal Opportunity Policy. Where a reporting party jointly alleges conduct that may violate this policy and other conduct that may violate the Equal Opportunity Policy, the Title IX coordinator will determine how the reports should be addressed. The College’s response to claims of sexual assault, sexual or gender-based harassment, gender-based discrimination, and interpersonal violence will be governed by the procedures referenced in this policy.

III. APPLICABLE PROCEDURES UNDER THIS POLICY

The specific procedures for reporting, investigating, and resolving prohibited conduct are based upon the nature of the respondent’s relationship to the College – that is, whether the respondent is a student, employee, or third party. Each set of procedures referenced below is guided by the same principles of fairness and respect for reporting parties, complainants, and respondents. “Reporting party” means the student, employee, or third party who reports a suspected violation of this policy. “Complainant” means the student, employee, or third party who files an official complaint with the College requesting that an investigation be initiated. In some cases, the College may be the complainant. “Respondent” means the student, employee, or third party who has been accused of violating this policy.

A student or employee determined by the College to have committed an act of prohibited conduct is subject to disciplinary action, up to and including expulsion or separation from the College. Third parties who commit prohibited conduct may have their relationships with the College terminated and/or their privileges of being on College premises withdrawn.
The procedures referenced below provide for a prompt and equitable response to reports of prohibited conduct. The procedures designate specific timeframes for major stages of the process and provide for thorough and impartial investigations that afford all parties notice and an opportunity to present witnesses and evidence and to be informed of the outcome of the investigation and any sanctions and/or remedial measures. The College applies the preponderance of the evidence standard when determining whether this policy has been violated. “Preponderance of the evidence” means that it is more likely than not that a policy violation occurred.

A. WHERE THE RESPONDENT IS A STUDENT

The procedures for responding to reports of prohibited conduct committed by students are detailed in Appendix A: Procedures for Reports and Investigations Against Students under the Title IX Policy.

B. WHERE THE RESPONDENT IS AN EMPLOYEE

The procedures for responding to reports of prohibited conduct committed by employees are detailed in Appendix B: Procedures for Reports and Investigations Against Employees under the Title IX Policy.

C. WHERE THE RESPONDENT IS BOTH A STUDENT AND AN EMPLOYEE

- The Procedures for Reports Against Students (Appendix A) will apply if the respondent is a full-time student but not a full-time employee;
- The Procedures for Reports Against Employees (Appendix B) will apply if the respondent is a full-time employee but not a full-time student; or
- If there is a question as to the predominant role of the respondent, the College’s Title IX coordinator will determine which of the procedures applies based on the facts and circumstances (such as which role predominates in the context in which the alleged prohibited conduct occurred).

D. WHERE THE RESPONDENT IS A THIRD PARTY

The College’s ability to take appropriate corrective action against a third party will be determined by the nature of the relationship of the third party to the College. The Title IX coordinator will determine the appropriate manner of resolution consistent with the College’s commitment to a prompt and equitable process consistent with federal law, federal guidance, and this policy.
RESPONSIBLE ADMINISTRATOR – TITLE IX COORDINATOR

Under Title IX:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

The Title IX coordinator is charged with monitoring the College’s compliance with Title IX; ensuring appropriate education and training; coordinating the College’s investigation, response, and resolution of all reports under this policy; and ensuring appropriate actions to eliminate prohibited conduct, prevent its recurrence, and remedy its effects. The Title IX coordinator is available to meet with any student, employee, or third party to discuss this policy or the accompanying procedures. The College has also designated deputy Title IX coordinators who assist the Title IX coordinator in the discharge of these responsibilities. The Title IX coordinator delegates authority to a deputy Title IX coordinator to act on their behalf when appropriate under the circumstances. The Title IX coordinator and deputy Title IX coordinators receive appropriate training to fulfill their responsibilities.

Concerns about the College’s application of Title IX, VAWA, Title VII, or the Clery Act may be addressed to the Title IX coordinator; the United States Department of Education, Clery Act Compliance Division (at clery@ed.gov); the United States Department of Education, Office for Civil Rights (at OCR@ed.gov or (800) 421-3481); and/or the Equal Employment Opportunity Commission (at info@eeoc.gov or (800) 669-4000).

The Title IX coordinator and deputy Title IX coordinators can be contacted by telephone, email, or in person during regular office hours:

**Jason Schwartz-Johnson**
Title IX Coordinator
Malouf 107
jsj@westminstercollege.edu
(801) 832-2262

**Julie Freestone**
Deputy Title IX Coordinator
Bamberger 106
jfreestone@westminstercollege.edu
(801) 832-2573

**Scott Gust**
Deputy Title IX Coordinator
Foster 102
sgust@westminstercollege.edu
(801) 832-2449
IV. SUPPORTIVE MEASURES, RESOURCES, AND REPORTING

A. SUPPORTIVE, INTERIM, AND REMEDIAL MEASURES

The College offers a wide range of appropriate measures to provide support and guidance to students and employees throughout the initiation, investigation, and resolution of a report of prohibited conduct. The College also offers reasonable measures to protect reporting parties, complainants, and respondents and facilitate their continued access to College employment or education programs and activities. Available measures include supportive measures (before an investigation has been initiated), interim measures (during an investigation), and remedial measures (after an investigation finding has been issued). These measures include the following:

- Housing relocation
- No contact orders limiting or preventing communication
- Limiting access to facilities, activities, or programs
- No trespass orders
- Academic schedule changes
- Alternate course completion options
- Arranging for incompletes or withdrawal from a course or from campus without penalty
- Leaves of absence
- Changing work schedules, job assignments, or work locations
- Interim suspension
- Administrative leave
- Referrals to counseling services and other health providers on and off campus
- Referrals to community and national organizations and resources
- Rescheduling an exam or extending assignment deadlines
- Access to academic supports, such as tutoring
- Preserving eligibility for academic, athletic, or other scholarships, financial aid, internships, study abroad, or foreign student visas

The College will maintain the privacy of any supportive, interim, or remedial measures to the greatest extent possible, and will promptly address the violation of any of these measures. The Title IX coordinator has the discretion to impose and/or modify any supportive, interim, or remedial measure and is available to meet with a reporting party, complainant, or respondent to address any concerns about the provision of these measures.

The College will provide reasonable supportive, interim, and remedial measures to third parties as appropriate and available, taking into account the role of the third party and the nature of any contractual relationship with the College.
B. CONFIDENTIAL AND NON-CONFIDENTIAL RESOURCES

The College is committed to protecting the privacy of all individuals involved in the investigation and resolution of a report under this policy. The College also is committed to providing assistance to help students, employees, and third parties make informed choices. With respect to any report under this policy, the College will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to assess the report and to take steps to eliminate prohibited conduct, prevent its recurrence, and remedy its effects.

Privacy and confidentiality have distinct meanings under this policy.

Privacy: Privacy means that information related to a report of prohibited conduct will be shared with a limited circle of College employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the College response to reports of prohibited conduct receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”). The privacy of an individual’s medical and related records generally is protected by the Health Insurance Portability and Accountability Act (“HIPAA”), and there are additional protections under FERPA and Utah law. Access to an employee’s personnel records may be restricted in accordance with Utah law and/or human resources departmental policies.

Confidentiality: Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other person without the express permission of the individual. The College has designated individuals who have the ability to have confidential communications as “confidential employees.” Confidential employees cannot reveal confidential information to any third party unless there is an imminent threat of harm to self or others. Non-identifying, aggregate data may be shared for statistical purposes consistent with the Clery Act.

Consistent with the definition of confidential employees, the following resources are available for students and employees seeking confidential, trauma-informed counseling and support:
CONFIDENTIAL RESOURCES

<table>
<thead>
<tr>
<th>Resource</th>
<th>Telephone Number</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape Recovery Center</td>
<td>(801) 467-7273</td>
<td>2035 South 1300 East</td>
</tr>
<tr>
<td>Campus Counseling Center</td>
<td>(801) 832-2237</td>
<td>Shaw Center Lower Level – students only</td>
</tr>
<tr>
<td>Westminster Student Health Center</td>
<td>(801) 832-2239</td>
<td>Shaw Center Lower Level – students only</td>
</tr>
<tr>
<td>Coalition Against Sexual Abuse/Rape and Sexual Assault</td>
<td>(801) 746-0404</td>
<td>284 West 400 North, Open 9-5</td>
</tr>
<tr>
<td>State-wide crisis line</td>
<td>(888) 421-1100</td>
<td>24-hour crisis line</td>
</tr>
<tr>
<td>National Sexual Assault Hotline</td>
<td>(800) 656-4673</td>
<td>24-hour hotline</td>
</tr>
<tr>
<td>Cigna Life Assistance Program (EAP)</td>
<td>(800) 538-3543</td>
<td>Employee Assistance Program – Full-time employees only</td>
</tr>
</tbody>
</table>

The following resources are not confidential, meaning that any reports of prohibited conduct to them must be shared with the Title IX coordinator. However, they are available to provide assistance and support to reporting parties, complainants, and respondents.

NON-CONFIDENTIAL RESOURCES

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<thead>
<tr>
<th>Resource</th>
<th>Telephone Number</th>
<th>Address</th>
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<tr>
<td>Dean of Students Office</td>
<td>(801) 832-2230</td>
<td>Shaw Center</td>
</tr>
<tr>
<td>Office of Spiritual Life</td>
<td>(801) 832-2232</td>
<td>Shaw Center Lower Level</td>
</tr>
<tr>
<td>Resident Advisors</td>
<td>(801) 832-2245</td>
<td>Residence Halls</td>
</tr>
<tr>
<td>Resident Life Staff Members</td>
<td>(801) 832-2245</td>
<td>Shaw Center Lower Level</td>
</tr>
</tbody>
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C. EMPLOYEE AND COLLEGE RESPONSIBILITY TO REPORT PROHIBITED CONDUCT

1. **Employee Responsibility to Report Disclosures of Prohibited Conduct:** An employee’s responsibility to report incidents of prohibited conduct depends on whether they are designated as a “confidential employee” or a “responsible employee.”

   **Confidential employee** means an employee of the Campus Counseling Center or the Westminster Student Health Center. A confidential employee will not disclose information about prohibited conduct to third parties, including the College; provided however, that confidential employees may be required by law to report such information to law enforcement in the event of imminent threat of harm to self or others.

   **Responsible employee** means any faculty or staff who is not an employee of the Campus Counseling Center or the Westminster Student Health Center. A responsible employee is required to report to the College’s Title IX coordinator all
relevant details obtained directly or indirectly about an incident of prohibited
conduct that involves any student or employee as a reporting party, complainant,
respondent, or witness, including dates, times, locations, and names of parties and
witnesses.

2. **College Responsibility to Report Prohibited Conduct to Law Enforcement, the
State, or the Campus Community:** Under Utah law, the College is required to report
to law enforcement and/or the Utah Department of Family Services suspected sexual
or physical abuse involving persons under 18 years of age where the sexual partner is
more than three years older and entices or coerces participation in sexual activity. Also,
der under certain circumstances, the College may be required to notify law enforcement
and/or the campus community of prohibited conduct in order to provide a safe, non-
discriminatory environment for all students. When issuing timely warnings to the
College community, the College withholds the names and other personally identifying
information of reporting parties while still providing enough information for
community members to make safety decisions.

3. **College Responsibility for Clery Act Reporting:** Pursuant to the Clery Act, the
College includes statistics about certain offenses in its annual security report and
provides those statistics to the United States Department of Education in a manner that
does not include any personally identifying information about individuals involved in
an incident. The Title IX coordinator is responsible for providing information
pertaining to reports of prohibited conduct to the College employee responsible for
reporting under the Clery Act.

D. REPORTING PROHIBITED CONDUCT

There are multiple channels for reporting prohibited conduct. A reporting party may choose
to report to the College, to law enforcement, to both, or to neither. Reporting parties may
simultaneously pursue criminal actions through law enforcement and investigations
through the College’s procedures. The College will support reporting parties in
understanding, assessing, and pursuing these options.

1. **Reporting to Law Enforcement**

Reporting parties have the right to notify or decline to notify law enforcement. In
keeping with its commitment to taking all appropriate steps to eliminate, prevent, and
remedy all prohibited conduct, the College urges reporting parties to report prohibited
conduct immediately to local law enforcement by contacting:

a) 911 (for emergencies)
b) Salt Lake Police Department (801) 799-3000

Police have unique legal authority, including the power to seek and execute search
warrants, collect forensic evidence, make arrests, and assist in seeking emergency
protective orders. Although a police report may be made at any time, reporting parties
should be aware that a statute of limitations may apply to certain crimes in Utah. The College will assist reporting parties in notifying law enforcement if they choose to do so.

2. Reporting to the College

The College also urges anyone who experiences or becomes aware of an incident of prohibited conduct to report the incident immediately to the College through the following reporting options:

a) Contact the College’s Title IX coordinator or a deputy Title IX coordinator by telephone, email, or in person during regular office hours at their respective locations, email addresses, and/or phone numbers listed above;

b) Submit a report online at westminstercollege.edu/titleix. A report may be made anonymously. However, if any information identifying the complainant or respondent is given, the report will no longer be considered anonymous and the College will proceed accordingly; or

c) Contact Campus Patrol at (801) 832-2525.

There is no time limit for reporting prohibited conduct to the College under this policy; however, the College’s ability to respond may diminish over time, as evidence may erode, memories may fade, and respondents may no longer be affiliated with the College. If the respondent is no longer a student or an employee, the College will provide reasonably appropriate supportive measures, assist the reporting party in identifying external reporting options, and take reasonable steps to eliminate prohibited conduct, prevent its recurrence, and remedy its effects.

3. No Discipline for Drug and Alcohol Violations

To encourage the reporting of prohibited conduct, the College will not pursue disciplinary action for disclosure of illegal personal consumption of drugs or alcohol where such disclosures are made in connection with a good faith report or investigation of prohibited conduct.

E. REQUESTS FOR ANONYMITY OR THAT NO INVESTIGATION OR DISCIPLINE BE PURSUED

If a party reports prohibited conduct to the College but requests anonymity or that no investigation into a particular incident be conducted or disciplinary action pursued, the College must weigh the reporting party’s request against the College’s obligation to provide a safe, non-discriminatory environment for all students, including the reporting party. If the College honors the request, a reporting party must understand that the College’s ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator(s) may be limited. Although rare, there are times when the College may not be able to honor a reporting party’s request for anonymity or that no investigation or discipline be pursued in order to provide a safe, non-discriminatory
environment for all students. The College has designated the Title IX coordinator to evaluate such requests.

When weighing a reporting party’s request for anonymity or that no investigation or discipline be pursued, the Title IX coordinator will consider the following factors:

1. The increased risk that the alleged perpetrator will commit additional acts of sexual or interpersonal violence, such as:
   a) whether there have been other sexual or interpersonal violence complaints about the same alleged perpetrator;
   b) whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence; or
   c) whether the alleged perpetrator threatened further sexual or interpersonal violence against the reported victim/survivor or others;
2. Whether the sexual or interpersonal violence was committed by multiple perpetrators;
3. Whether the sexual or interpersonal violence was committed by deceit or manipulation;
4. Whether the sexual or interpersonal violence was perpetrated with a weapon;
5. Whether the reported victim/survivor is a minor;
6. Whether the reported victim/survivor was incapacitated;
7. Whether the College possesses other means to obtain relevant evidence of the sexual or interpersonal violence (e.g., security cameras or personnel, physical evidence); and
8. Whether the reporting party’s report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors could lead the College to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, the College will likely respect the reporting party’s request for anonymity or that no investigation or discipline be pursued.

If the College determines that it cannot carry out a reporting party’s request, the College will inform the reporting party prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the College’s response. If the College pursues an investigation, it may be required to disclose the identity of the reporting party and provide all relevant details to the respondent so that they have an opportunity to fully defend themselves against any accusations. Only confidential employees – those listed in Section C above – are able to assure reporting parties of anonymity, subject to limited exceptions. The College will remain ever mindful of the reporting party’s well-being and will take ongoing steps to protect the reporting party from retaliation or harm and work with them to create a safety plan.

The College may not require a reporting party to participate in any investigation or disciplinary proceeding. Because the College is under a continuing obligation to address the issue of sexual and interpersonal violence campus-wide, reports of prohibited conduct (including non-identifying reports) will also prompt the College to consider broader remedial action – such as increased monitoring, supervision, or security at locations where the reported sexual or interpersonal violence occurred; increasing education and prevention efforts, including to
targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

If the College determines that it can respect a reporting party’s request for anonymity or that no investigation or discipline be pursued, the College will also take immediate action as necessary to protect and assist them.

V. PROHIBITED CONDUCT UNDER THIS POLICY

Conduct under this policy is prohibited regardless of the sex, sexual orientation, gender identity, or gender expression of the reporting party, complainant, respondent, or third party. Prohibited conduct includes the following forms of behavior as further defined below: sexual assault; sexual harassment; gender-based harassment; gender-based discrimination; sexual exploitation; interpersonal violence including dating violence, domestic violence, and stalking; retaliation; complicity; and false reporting.

A. SEXUAL ASSAULT

**Sexual assault** is actual or attempted sexual or intimate contact with another person without their consent or when they are incapable of giving consent.

1. Prohibited Conduct
   a) Intentionally touching another person’s intimate parts (breasts, buttocks, groin, or genitals, whether clothed or unclothed) without that person’s consent;
   b) Coercing, forcing, or attempting to coerce or force a person to touch their own or another person’s intimate parts without the consent of the person who is being coerced or forced to act;
   c) Rape, which is defined as penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by any sex organ of another person, without that person’s consent;
   d) Sexual activity with a minor under 18 years of age where the sexual partner is more than three years older and entices or coerces participation in sexual activity.

2. Consent
   a) Consent is present when clearly understandable words or actions manifest a knowing, voluntary agreement between parties to engage in specific sexual or intimate contact with each other.
   b) When determining whether consent was present, the College will consider whether a reasonable, sober person would consider the words or actions of the parties to clearly express a knowing, voluntary agreement between them to engage in specific sexual or intimate contact with each other.
   c) Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent.
   d) Consent cannot be inferred from
      i. Silence, passivity, acceptance, or lack of resistance alone;
ii. A current or previous dating or sexual relationship;
iii. Consent given on a prior occasion;
iv. Consent given to another person (i.e., consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person);
v. Attire; or
vi. Buying dinner or spending money on a date.

e) Consent to one sexual activity does not imply consent to another sexual activity.
f) Consent can be withdrawn at any time and for any reason.
g) Consent is not effective if it is obtained through the use of physical force, violence, duress, intimidation, coercion, or the threat, either express or implied, of bodily injury. Whether the party used such methods to attempt to obtain consent will be determined by the perception of a sober, reasonable person in the same or similar circumstances.

   i. Force is the use or threat of physical violence or physical strength to overcome an individual’s freedom or will to choose whether or not to participate in sexual activity. There is no requirement that a party resists the sexual advance or request, but resistance will be viewed as a clear demonstration of non-consent.

   ii. Coercion is the use of an unreasonable amount of pressure to compel another individual to initiate or continue sexual activity against their will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. Coercion is more than an effort to persuade, entice, or attract another person to have sexual relations. When a person makes clear that they do not want to have sexual relations, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure can constitute coercion. In evaluating whether coercion was used, the College will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.

   h) Consent may never be given by:

   i. Persons who are incapacitated (whether as a result of drugs, alcohol, prescription medications, or lack of sleep), unconscious, asleep, or otherwise physically helpless or mentally or physically unable to make informed, rational judgments;

   ii. Persons under 18 years of age where the sexual partner is more than three years older and entices or coerces participation in sexual activity; or

   iii. Persons with certain mental disabilities, if their disability was reasonably knowable to a sexual partner.

   i) Additional guidance on consent can be found in, Utah Code Ann. 76-5-406 (2015).

3. Incapacitation

   a) In evaluating consent in cases of alleged incapacitation, the College asks two questions: (1) Did the respondent know that the complainant was incapacitated and, if not, (2) Should a sober, reasonable person in the same situation have known that
the complainant was incapacitated? If the answer to either of these questions is “yes,” consent was absent and the conduct is in violation of this policy.
b) Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking or using drugs. The impact of alcohol and other drugs varies from person to person.
c) One is not expected to be a medical expert in assessing incapacitation. One must look for the common and obvious warning signs that show that a person is unable to make informed, rational judgments. Although every individual may manifest signs of incapacitation differently, typical signs include slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, and incontinence. A person who is incapacitated may not be able to understand some or all of the following questions: “Do you know where you are?” “Do you know how you got here?” “Do you know what is happening?” “Do you know whom you are with?”
d) One should be cautious before engaging in sexual activity when either party has been drinking alcohol or using drugs. The introduction of alcohol or drugs may create ambiguity as to whether consent has been sought or given. If one has doubt about either party’s level of intoxication, the safe thing to do is to forego all sexual activity.
e) The use of alcohol or drugs does not diminish one’s responsibility to obtain consent and does not excuse prohibited conduct under this policy.

4. Guidance on Consent

a) It is important not to make assumptions about whether a potential partner is consenting. In order to avoid confusion or ambiguity, participants are encouraged to talk with one another before engaging in sexual activity.
b) If confusion or ambiguity arises during sexual activity, participants are encouraged to stop and ensure that there is a mutual willingness to continue that sexual activity.

B. SEXUAL AND GENDER-BASED HARASSMENT

1. Sexual harassment is any unwelcome sexual advances, request for sexual favors, or other verbal or physical conduct of a sexual nature when either of the conditions outlined in 2(a) or 2(b) below are present.

2. Gender-based harassment is any unwelcome conduct of a nonsexual nature based on a person’s actual or perceived sex, including conduct based on sexual orientation, gender identity, gender expression, and nonconformity with gender stereotypes when either of the conditions outlined in (a) or (b) below are present.

a) Quid pro quo harassment – Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person’s education, employment, living environment, or participation in a College program or activity; or
i. Hostile environment – Such conduct has the purpose or effect of (a) unreasonably interfering with an individual’s employment, academic performance or participation in College programs or activities, or (b)
creating a working, learning, program or activity environment that a reasonable person would find intimidating, hostile or offensive.

ii. In determining whether sex or gender-based harassment has created a hostile environment, the College considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not enough, that the conduct was unwelcome to the individual who was harassed. The College will also need to find that a reasonable person in the same position would have perceived the conduct as undesirable or offensive enough to create or contribute to a hostile environment.

iii. To make the ultimate determination of whether a hostile environment exists, the College considers a variety of factors related to the severity, persistence, or pervasiveness of the sexual or gender-based harassment, including (a) the type, frequency, and duration of the conduct, (b) the identity and relationships of persons involved; (c) the number of individuals involved; (d) the location of the conduct and the context in which it occurred; and (e) the degree to which the conduct affected a person’s education, employment, living environment, or participation in a College program or activity. The more severe the sexual or gender-based harassment, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single instance of sexual assault is sufficient to create a hostile environment. Likewise, a series of incidents may be sufficient even if one incident of sexual or gender-based harassment is not particularly severe.

C. GENDER-BASED DISCRIMINATION

**Gender-based discrimination** is conduct that denies or limits a person’s ability to benefit from or fully participate in educational programs or activities or employment opportunities because of their sex, gender, gender identity, gender expression, or sexual orientation, excepting any treatment permitted or required by law. Discrimination occurs when the conduct:

1. Adversely affects a term or condition of an employee’s employment; a student’s education, or a third party’s access to College programs or activities; or
2. Is used as the basis for or a factor in decisions affecting an employee’s employment, a student’s education, or a third party’s access to College programs or activities.

D. SEXUAL EXPLOITATION

**Sexual exploitation** is purposely or knowingly doing any of the following:

1. Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give consent to sexual activity;
2. Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or livestreaming of images);
3. Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person’s intimate parts (including genitalia, groin, breasts, or buttocks) in a place where that person would have a reasonable expectation of privacy);
4. Recording or photographing private sexual activity and/or a person’s intimate parts (including genitalia, groin, breasts, or buttocks) without consent;
5. Disseminating or posting images of private sexual activity and/or a person’s intimate parts (including genitalia, groin, breasts, or buttocks) without consent; or
6. Prostituting another person.

E. INTERPERSONAL VIOLENCE

Interpersonal violence is an umbrella term that includes dating violence, domestic violence, and stalking.

1. Dating violence is any act of physical violence or threatened act of physical violence that occurs between individuals who are involved or have been involved in an intimate or romantic relationship. The factors used in determining the existence of such a relationship include the length of the relationship, the type of relationship, and the frequency of the interaction between the persons involved in the relationship.
2. Domestic violence means any misdemeanor or felony crime of violence committed against a current or former spouse, current or former cohabitant, person similarly situated under domestic or family law, or anyone else protected under domestic or family violence law.
3. Stalking is a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear bodily injury or to experience substantial emotional distress. Course of conduct means two or more acts, including acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person’s property. Substantial emotional distress means significant mental suffering or anguish. Stalking includes “cyber-stalking,” a form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.

F. RETALIATION

Retaliation means any adverse action taken against a person for making a good faith report of prohibited conduct or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing, or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy.

All parties to the investigation are expected to maintain the confidentiality of the proceedings and refrain from retaliatory behaviors during the proceeding and after the matter is closed. Repeating allegations of prohibited conduct that have been investigated
and closed may give rise to a claim of retaliation. Anyone found to have engaged in retaliatory behaviors may be subject to disciplinary sanctions under this policy.

Retaliation does not include good faith actions lawfully pursued in response to a report of prohibited conduct.

G. COMPLICITY

Complicity is any act taken with the purpose of aiding, facilitating, promoting, or encouraging the commission of an act of prohibited conduct by another person.

H. FALSE REPORTING

False reporting is providing information in any report or proceeding under this policy that is intentionally false or made maliciously without regard for the truth. This provision does not apply to reports made in good faith, even if the facts alleged in the report are not substantiated by an investigation.

The allegation of prohibited conduct may have severe consequences and therefore the College takes very seriously the validity of reported information. All College community members are expected to provide truthful information in any report or proceeding under this policy. An individual who provides information during the course of an investigation that is later found to have been intentionally false or made maliciously without regard for the truth may be subject to disciplinary sanctions under this policy. False or malicious reporting may also violate state criminal statutes and civil defamation laws.

VI. RIGHTS

A. PROCEEDINGS FREE OF CONFLICTS OF INTEREST AND/OR BIAS

Students, employees, and third parties involved in a report or investigation of prohibited conduct have the right to proceedings that are free of conflicts of interest and/or bias.

- A conflict of interest occurs where a party has multiple interests, and one of those interests could influence the party’s relationship with another interest. Under this policy, actual or potential conflicts arise when financial, professional, academic, or personal considerations compromise, or have the appearance of compromising, a person’s judgment and ability to perform their duties and responsibilities to act in a fair and impartial manner.
- Bias is an unfair prejudice in favor of or against one thing, person, or group compared with another.

B. ACCESS, INFORMATION, AND ASSISTANCE

Students, employees, and third parties involved in a report or investigation of prohibited conduct also have the right to:
1. Access to resources and support: All parties will be provided access to on and off campus resources, and accommodations will be made available as appropriate.
2. Be fully informed regarding process: Reporting parties, complainants, and respondents will be informed about the nature and procedures of the investigative process.
3. Investigation updates: Complainants and respondents will be updated as an investigation moves forward.
4. An advisor: Complainants and respondents will be allowed one advisor of their choice during the investigation process. The College will offer trained advisors to help the parties navigate the investigation process.
5. Notice at the conclusion of the investigation: Complainants and respondents will be notified in writing of the finding, determination, sanctions, and appeal rights.
6. Notice of closing of investigation: All parties to the investigation, including reporting parties, complainants, respondents, and third parties, will be notified in writing that the matter has been investigated and closed.

VII. DISCIPLINARY SANCTIONS

The policy prohibits a broad range of conduct, all of which is serious in nature. The propriety of any particular sanction is reviewed on an individual basis based on the unique facts and circumstances of the particular case. In keeping with the College’s commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, this policy provides the Title IX coordinator with wide latitude in the imposition of sanctions tailored to the facts and circumstances of the prohibited conduct, the impact of the conduct on the complainant and College community, and accountability for the respondent. The imposition of sanctions is designed to eliminate prohibited conduct, prevent its recurrence, and remedy its effects, while supporting the College’s educational mission and legal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved, or so deleterious to the educational and/or employment environment that it requires severe sanctions.

Violations of this policy may result in sanctions and corrective actions, up to and including termination and/or expulsion, as set forth in more detail in applicable procedures under this policy.

VIII. VIOLATIONS OF CRIMINAL LAW

Behavior that violates this policy may also constitute a crime under state law. For example, the State of Utah criminalizes and punishes forms of sexual assault, domestic violence, stalking, and false reporting. This compilation of criminal statutes is not exhaustive but is offered to notify the College community that some forms of prohibited conduct may subject a person to criminal prosecution and punishment in addition to any sanctions under this policy. Sexual Assault: Unlawful Sexual Activity, Utah Code Ann. 76-5-401; Rape, Utah Code Ann. 76-5-402; Forcible Sodomy, Utah Code Ann. 76-5-403; Forcible Sexual Abuse, Utah Code Ann. 76-5-404; Aggravated Sexual Assault, Utah Code Ann. 76-5-405; Domestic Violence: Utah Code Ann. 77-36-1; Stalking: Utah Code Ann. 76-5-106.5; Criminal Defamation: Utah Code Ann. 76-9-404.
IX. PREVENTION AND AWARENESS PROGRAMS

The College is committed to the prevention of prohibited conduct through regular and ongoing education and awareness programs. Incoming students and new employees receive primary prevention and awareness programming as part of their orientation.

X. TRAINING

Incoming students and newly hired employees are required to complete training within 60 days of joining the Westminster community to understand their responsibilities under this policy. Thereafter, all students and employees are required to participate in mandatory training as determined by the responsible administrator to be appropriate or necessary.

XI. RELATED POLICIES

1. The Policy on Preventing and Addressing Discrimination and Harassment Based on Race, Color, National Origin, Religion, Disability, and Other Protected Categories

2. Policy on Consensual Relationships

XII. HISTORY

Interim policy adopted on August 19, 2016

XIII. SIGNATURE, TITLE AND APPROVAL DATE

Approved: _________________________________________

Stephen R. Morgan, President

Date Approved: August 19, 2016