



# Policy

## Title: Non-Discrimination, Anti-Harassment, and Non-Retaliation

**Effective Date:** 03/01/2018

**Statement:** It is the policy of WesternU to provide applicants for employment and student admission, faculty, staff, and students a workplace and an academic environment that emphasizes dignity and respect for others and to maintain an environment for prospective applicants, faculty, staff, and students that is free of all forms of discrimination, harassment, and retaliation. ***This policy does not apply to sexual discrimination and/or sexual harassment. Please refer to the University's Sexual Harassment and Sexual Misconduct Policy for details available at <https://www.westernu.edu/hr/title-ix/>.***

**Purpose:** To promote a safe and congenial environment that encourages mutual respect and upholds the philosophy of caring and humanism for the entire University community in order to optimize the health, happiness, and productiveness of its students, faculty, and staff.

### **Related Policy Information:**

All members of the WesternU community should be aware that the University is concerned about discrimination, harassment, and retaliation and is prepared to take action to prevent and correct such behavior.

Individuals who engage in such behavior are subject to discipline, up to and including termination or dismissal/expulsion. WesternU considers discrimination, harassment in all its forms, and retaliation to be a serious offense. These types of conduct create exposure and liability for the University and the individual.

Retaliation against a person who reports, complains about, or participates in the investigation of discrimination and/or harassment is also prohibited. Retaliation occurs when an adverse action is taken on an employee or on a student because the employee or the student participated in a protected activity.

A hostile or offensive environment for another person can be created by sending e-mails that have content that is based on race, sex, national origin, disability, sexual orientation, or any other legally protected characteristic. Further, images on a computer monitor that contain matter that can be offensive to others could give rise to complaints of harassment.

Information concerning an allegation of discrimination, harassment and/or retaliation will be handled in a confidential manner insofar as possible.

Any employee or agent of WesternU who receives a complaint of discrimination, harassment and/or retaliation or who otherwise learns of the occurrence of harassment has the responsibility to take prompt steps to ensure that the matter is addressed, even if the complainant refuses to be identified.

WesternU supervisory personnel have a responsibility and are required to discourage and eliminate conduct inconsistent with this policy. Supervisors are required to report any occurrence of discrimination, harassment, and retaliation they are aware of.

Depending on the circumstances, the person against whom the complaint has been made may be placed on administrative leave pending investigation. Other interim measures may also be implemented to minimize any potential negative impact on the parties and/or to maintain the integrity of the investigation. Appropriate remedial action will be taken depending upon the outcome of the investigation.

No employee or student will be retaliated against for making a complaint, for bringing inappropriate conduct to the attention of management, or for participating in any investigation or hearing.

Persons who are not employees of the University, but who perform work at the University for its benefit (such as contractors and their employees, temporary employees provided by agencies, visitors employed in joint projects, etc.) must comply with this policy. Complaints against such individuals will be investigated and addressed.

The legitimate exercise of supervisory responsibilities or academic functions within the University, such as, but not limited to, the oversight of performance, conduct or academic management of faculty, staff or students shall not be considered discrimination, harassment or retaliation. Additionally, a concern or complaint containing isolated incidents (unless severe), petty slights, annoyances involving rude, discourteous or non-collegial behavior will generally not rise to the level of a violation of this policy and should be addressed to a Supervisor.

#### **PROCEDURE FOR REPORTING A COMPLAINT OF DISCRIMINATION, HARASSMENT, and/or RETALIATION**

If possible, and if the individual is comfortable, an individual who experiences discrimination, harassment, and/or retaliation from a supervisor, manager, other employee, or non-employee should make it clear to the alleged policy violator that such behavior is offensive, unwelcome, contrary to the policy, and inform the offending party to stop the behavior.

Whether or not the individual can confront the alleged violator, such behavior should be brought immediately to the attention of the Director of Employee Relations/Title IX Coordinator in the Office of Human Resources. Additionally, a report can be filed by completing the Discrimination, Harassment and Retaliation Complaint Form. The complaint form for employees and third parties and for students are both available on the WesternU website at [www.westernu.edu/hr/hr-forms/](http://www.westernu.edu/hr/hr-forms/). The complaint form should be submitted to the Director of Employee Relations/Title IX Coordinator in the Office of Human Resources.

Complaints of discrimination, harassment, and/or retaliation may also be reported by employees and third parties directly to any one of the following members of management:

- the employee's immediate supervisor (unless the complaint is about the supervisor);
- Executive Director or Director of the Department (including Associate or Assistant Directors);
- College Dean (including Vice, Associate or Assistant Deans);

- Provost (including Vice Provost, or Associate Vice Provost);
- Vice Presidents or Assistant Vice Presidents;
- Chief Financial Officer;
- University President.

If the situation involves a student, the student can report the complaint to:

- the Student Affairs Professional in the College
- Vice President for University Student Affairs
- Deans (including Vice, Associate or Assistant Deans);
- Provost (including Vice Provost, or Associate Vice Provost);
- Vice Presidents or Assistant Vice Presidents;
- University President.

WesternU seeks the cooperation of every member of the WesternU community who is discriminated, harassed, and/or retaliated or who witness the discrimination, harassment, and/or retaliation of another.

Employees or students who believe they are victims of, or witnesses to, discrimination, harassment, and/or retaliation are strongly encouraged to report such incidents as soon as possible immediately after the incident.

Under no circumstances is an individual compelled to report the discrimination, harassment, and/or retaliation to a supervisor or academic instructor whom he/she is accusing of the policy violation.

**Due to the exigent and sensitive nature of situations involved with discrimination, harassment, and/or retaliation, any person with knowledge of any of these prohibited conducts, is not required to go through their chain-of-command to make a report. Any person can immediately and directly contact the Director of Employee Relations/Title IX Coordinator.**

When complaints are received, they will be investigated promptly, thoroughly, and objectively by a properly trained staff/person. Close collaboration occurs with the Vice President for University Student Affairs in situations involving students.

WesternU, at its discretion, may implement interim measures to protect the safety and well-being of either party as well as safeguard the integrity of the investigation.

When warranted, disciplinary action, up to and including termination, dismissal/expulsion will be taken against the individual found to have violated this policy. Throughout the complaint and investigation process, every effort will be made to provide confidentiality to the fullest extent possible and protect against retaliation.

Investigative interviews will be conducted promptly. The charging party and the responding party will be apprised of the progress of the investigation by the Investigator/Resolution Office, and will be given the opportunity to respond to charges and/or counter charges; however, the investigative file will not be circulated to the charging party and the responding party.

Investigations are completed based on a good-faith effort for a fair and impartial process to provide all parties with an unbiased and objective resolution. Based on the findings and conclusions, the Investigator/Resolution Officer shall make a final determination in consultation with the Director of Employee Relations/Title IX Coordinator and other key University stakeholders, including other members of the Title IX program. After the conclusion of the investigation, a report will be prepared by the Investigator/Resolution Office, presenting in summary the findings and conclusions/recommendations of the investigation. The report will be submitted by the Investigator/Resolution Office to the Director of Employee Relations/Title IX Coordinator.

The Investigator/Resolution Officer shall typically communicate the final outcome to the charging party and the responding party, unless another individual is deemed to be more appropriate for the circumstances.

If the final decision requires corrective measures, the Dean or the Department Head shall immediately implement the required action(s). The remedies for violation of this policy will depend on the nature of the offense, and may include, but are not limited to one more of the following actions:

- Mandatory counseling;
- Documented verbal counseling/reprimand/corrective action;
- Written counseling/reprimand/corrective action;
- Suspension without pay (temporary academic suspension for students);
- Termination of employment (dismissal/expulsion from the program for students);

In determining whether or not the alleged conduct occurred and/or constitutes a violation of this policy, consideration will be given to the record of the incident as a whole and to the totality of the circumstances, including the context in which the alleged incidents occurred. The findings and conclusions of the investigation are based on the "reasonable person" standard and the preponderance of the evidence.

A proven occurrence of conduct that violates this policy may result in severe disciplinary action, up to and including immediate termination of employment. An occurrence for students who are also employees of the University and are found to be in violation of this policy may result in a report to the Dean or his/her Designee in accordance with the policy on standards of student conduct, as described in the University catalog.

#### **APPEAL PROCESS:**

For appeals by faculty, staff, and other third parties, the Appeal Officer, or his/her designee, is the final appeal authority for either party. The party receiving a sanction as a result of the investigation can submit an appeal. A party who has not received a disciplinary action or sanction is not eligible to appeal the outcome of the investigation. An appeal must be submitted in writing directly to the Director of Employee Relations/Title IX Coordinator within ten (10) working days of the date that the final decision is communicated to the accused harasser and the charging party. This timeframe may be extended for good cause.

The appeal must be based on the following grounds:

- (1) The appealing party has substantive and relevant new information that was not available at the time of the investigation that might change the outcome of the decision.
- (2) A procedural error occurred, which may change the outcome of the decision.
- (3) The corrective measure(s)/sanction(s) was/were disproportionate to the infraction/misconduct.

Disagreement with the outcome of the investigation is not, by itself, a ground for appeal. The appeal must include documentation of evidence to substantiate the basis for the appeal.

If the appeal is determined to be valid and is accepted, the Appeal Officer shall issue a written notice of the appeal decision to the parties of the case.

While the appeal is in process and requested by the appellant, the Appeal Officer may, at his/her sole discretion, hold the disciplinary action or sanction in abeyance, if appropriate and/or warranted.

For appeals by a student, the Provost, or his/her designee, will be the final appeal authority, in accordance with the guidelines and timeframes under the Student Appeal Process, as described in the University catalog.

A false complaint of harassment, which is known to be false by the complainant, or is made with gross disregard of its truth or falsity, may also result in severe disciplinary action, and may include one or more of the following actions:

- Mandatory counseling,
- A documented verbal counseling/reprimand/corrective action,
- Written counseling/reprimand/corrective action,
- Suspension without pay (temporary academic suspension for students),
- Termination of employment (dismissal/expulsion from the program for students).

In addition to the internal remedies established by Western University of Health Sciences, external remedies are available for employees through the California Department of Fair Employment and Housing and the United States Equal Employment Opportunity Commission. For more information, you may contact these agencies at:

**California Department of Fair Employment and Housing**

320 West 4th Street, 10th Floor  
Los Angeles, CA 90013  
(800) 884-1684 or (800) 700-2320  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov)

1845 South Business Center Drive, #127  
San Bernardino, CA 92408-3426  
(909) 383-4711  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov)

**Oregon State Civil Rights Division**

Bureau of Labor and Industries

800 NE Oregon St., # 1045  
Portland, OR 97232  
(971) 673-0764  
[credmail@boli.state.or.us](mailto:credmail@boli.state.or.us)

### **United States Equal Employment Opportunity Commission**

Los Angeles District Office  
255 East Temple, 4th Floor  
Los Angeles, CA 90012  
(800) 669-4000 (213) 894-1000  
[www.eeoc.gov](http://www.eeoc.gov)

San Francisco District Office (for Oregon)  
350 The Embarcadero, Suite 500  
San Francisco, CA 94102-1260  
(800) 669-4000  
[www.eeoc.gov](http://www.eeoc.gov)

External remedies are available for students through the United States Department of Education Office of Civil Rights. For more information, you may contact:

### **United States Department Education Office for Civil Rights**

#### **California:**

U.S. Department of Education  
50 Beale Street, Suite 7200  
San Francisco, CA 94105-1813  
T: (415) 486-5555  
F: (415) 486-5570  
E: [OCR.SanFrancisco.ed.gov](mailto:OCR.SanFrancisco.ed.gov)

#### **Oregon:**

U. S. Department of Education  
915 Second Avenue, Room 3310  
Seattle, WA 98174-1099  
T: (206) 607-1600  
F: (206) 607-1601  
E: [OCR.Seattle@ed.gov](mailto:OCR.Seattle@ed.gov)

#### **Definitions:**

**Discrimination:** Disparate adverse treatment of an individual based on that individual's protected category, such as race, color, national origin (including language use restrictions), age, sex, marital status, pregnancy,(which includes childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), religion, religious creed (including religious dress and grooming practices), disability (both physical and mental) including HIV and AIDS, sexual orientation, gender, gender identification, gender expression, military and veteran

status, ancestry, citizenship, ethnicity, creed, genetic information, medical condition (cancer and genetic characteristics), denial of Family and Medical Care Leave, or any other legally protected characteristic.

**Harassment:** Any unwelcome verbal, written, or physical conduct considered by a reasonable person to demean, disrespect, intimidate, and create discomfort, or a hostile or offensive work environment for another individual based upon race, color, national origin (including language use restrictions), age, sex, marital status, pregnancy,(which includes childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), religion, religious creed (including religious dress and grooming practices), disability (both physical and mental) including HIV and AIDS, sexual orientation, gender, gender identification, gender expression, military and veteran status, ancestry, citizenship, ethnicity, creed, genetic information, medical condition (cancer and genetic characteristics), denial of Family and Medical Care Leave, or any other legally protected characteristic. Such conduct is considered harassment where the conduct has the effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile or offensive environment; and

- The conduct is severe, persistent and pervasive enough to deny or limit the individual's participation in or full benefit of employment or academic opportunities at WesternU; or
- The conduct is severe and pervasive enough to create a work or academic environment that a reasonable person would find intimidating, hostile, offensive, or abusive.

Another form of harassment is abusive conduct which is also considered bullying. See the following definition of bullying.

**Bullying:** Abusive conduct is also called bullying. Under California Government Code 12950.1, abusive conduct means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless severe and egregious.

In the academic setting, the above definition of bullying is applicable when the conduct of the faculty, staff, or another student occurs in the school environment or during a school program where the conduct is repeated and with malice that a reasonable person would find hostile, offensive, and unrelated to any legitimate pedagogical context and/or the school's academic program

**Hostile Work Environment:** discriminatory or harassing conduct that is severe and pervasive based upon race, color, national origin (including language use restrictions), age, sex, marital status, pregnancy,(which includes childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), religion, religious creed (including religious dress and grooming practices), disability (both physical and mental) including HIV and AIDS, sexual orientation, gender, gender identification, gender expression, military and veteran status, ancestry, citizenship, ethnicity, creed, genetic information, medical condition (cancer and genetic characteristics), denial of Family and Medical Care Leave, or any other legally protected

characteristic. Petty slights, annoyances, disagreements/arguments/debates due to differences of opinion and/or perspectives, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work or academic environment that would be intimidating, hostile, abusive, or offensive to reasonable people.

**Retaliation:** An adverse action taken against an individual for participating in a protected activity such as making a good faith complaint of discrimination, harassment (sexual or other than sex-based), and/or retaliation, filing a complaint or lawsuit under federal or state law or University policy of the prohibited conduct, or participating in the investigation of any such allegations. Adverse actions may include, but are not limited to the following acts, when such action is taken because the individual brought forward a good faith complaint, participated in an investigation, or protested the alleged discrimination, harassment or retaliation:

- Adverse academic action or employment action (e.g. disciplinary memo/sanction, demotion, suspension, termination/expulsion).
- Lowering of a grade or a performance evaluation score.
- Being given a poor academic recommendation or performance evaluation.
- Exclusion from educational or employment opportunities (e.g. participation in meetings/trainings).
- Limited scholarly activities (e.g. exclusion from teaching or research, or rotation).
- Spreading negative information about the individual involved in a complaint.

**Legislation:**

Age Discrimination in Employment Act

Americans with Disabilities Act

Americans with Disabilities Act Amendment Act

Fair Employment and Housing Act

Genetic Information Non-discrimination Act

Title VI and VII of the Civil Rights Act of 1964

**Related Procedures:** Appealing Ruling on Investigation of Discrimination, Harassment, and/or Retaliation for Employee or Third Party; Reporting a Complaint of Discrimination, Harassment, and-or Retaliation for Employees or Third Party; Reporting a Complaint of Discrimination, Harassment, and-or Retaliation, and Appeal for Students

**Responsible Department:** Office of Human Resources

**Policy Contact:** Abracosa, Geri

**Designation:** Director, Employee Relations

**Email:** [gabracosa@westernu.edu](mailto:gabracosa@westernu.edu)

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