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*The discipline of learning. The art of caring.*

**Provisional Policy for:  
Equal Opportunity Civil Rights Policy (EOCR)**

**Effective March 19, 2025**

BASED ON THE ATIXA 2024 ONE POLICY, ONE PROCEDURE (1P1P) MODEL.  
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**Western University of Health Sciences**  
**Provisional Policy for:**  
**Equal Opportunity Civil Rights Policy (EOCR) (Hereinafter, “the Policy”)**

**1. Purpose**

Western University of Health Sciences (“WesternU”) is committed to providing an educational and employment environment that is free from discrimination based on protected characteristics, harassment, and retaliation for engaging in protected activity.

WesternU values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the resolution process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, WesternU has developed policies and procedures that provide for prompt, fair, and impartial resolution of allegations of protected characteristic discrimination, harassment or allegations of retaliation.

**2. Notice of Nondiscrimination**

In accordance with all applicable federal, state, and local laws, Western University of Health Sciences (WesternU) is committed to ensuring a campus community free from unlawful discrimination. WesternU strictly prohibits unlawful discrimination in all its programs, activities, admissions, and employment. This policy applies to all aspects of the university, including education programs, employment, admissions, and any other WesternU activities.

WesternU prohibits discrimination based on the following characteristics:

- Race (including traits associated with race, such as hair texture and protective hairstyles)
- Ethnicity, Color, and National Origin
- Immigration Status and Ancestry
- Sex, Gender, Gender Identity, and Gender Expression
- Sexual Orientation
- Physical or Mental Disability
- Age
- Religion (including religious dress and grooming practices)
- Medical Condition and Genetic Information
- Marital Status
- Pregnancy (including childbirth, breastfeeding, or related medical conditions)
- Military or Veteran Status

- Perceived Characteristics - Discrimination is prohibited if an individual is perceived to have any of the above characteristics.
- Association with Protected Groups – Discrimination based on association with a person or group with one or more protected characteristics is also prohibited.
- Other Legally Protected Classes – WesternU complies with all federal, state, and local laws, regulations, and ordinances regarding discrimination.

WesternU is committed to providing an inclusive and equitable environment free from unlawful discrimination or harassment in all aspects of university life.

WesternU protects individuals against retaliation for exercising their rights under WesternU policy or law; reporting information or filing a good-faith complaint; for testifying, assisting, or participating in an investigation or resolution process or for refusing to participate in any manner in an investigation or Resolution Process under this Policy and Procedure.

Any student or employee who violates this policy, including its protections against retaliation may be subject to discipline.

WesternU will promptly and effectively address any such discrimination of which it has Knowledge/Notice using the resolution process in this policy.

WesternU has designated the Assistant Vice President for the Office of Title IX and Equal Opportunity (OTIXEO) to coordinate WesternU's compliance with federal and state civil rights laws regarding protected characteristics:

Cristina Alvarez, Title IX Coordinator  
Associate Vice President  
Office of Title IX and Equal Opportunity  
309 E. 2nd Street  
Pomona, CA 91766  
(909) 469-7038  
[alvarezc@westernu.edu](mailto:alvarezc@westernu.edu)  
[www.westernu.edu/otixeo](http://www.westernu.edu/otixeo)

Sara Aguirre, Deputy Civil Rights  
Officer/Deputy Title IX Officer  
Office of Title IX and Equal Opportunity  
309 E. 2nd Street  
Pomona, CA 91766  
[saguirre@westernu.edu](mailto:saguirre@westernu.edu)  
[www.westernu.edu/otixeo](http://www.westernu.edu/otixeo)

WesternU recognizes that allegations under this Policy may include multiple forms of discrimination and harassment as well as violations of other WesternU policies; may involve various combinations of students, employees, and other members of the WesternU community; and may require the simultaneous attention of multiple WesternU departments. Accordingly, all WesternU departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable WesternU policies, to provide uniform, consistent, efficient, and effective responses to alleged discrimination, harassment, or retaliation.

Throughout this policy, references to the Associate Vice President (AVP) of OTIXEO includes not only the AVP of OTIXEO but could also include a “designee.” There are times where it would be appropriate for the AVP of OTIXEO to designate certain duties to other individuals such as members of OTIXEO or external, trained professionals.

Inquiries about WesternU’s prohibitions against discrimination, harassment, and retaliation can be directed to Associate Vice President (AVP) for the Office of Title IX and Equal Opportunity (OTIXEO) or to the U.S. Department of Education, Office for Civil Rights.

The University complies with all federal and state laws that protect individuals with disabilities from discrimination based on their disability or perceived disability status. As such, reasonable accommodations and auxiliary aids and services are available to individuals with disabilities when such modifications and services are necessary to access the institution’s programs and services. For further information related to our compliance please contact:

**Students and Student Applicants:**

Marcelle Daniels  
Director, Harris Family Center for Disability and Health Policy  
Phone: 909-469-5385  
Email: [mdaniels@westernu.edu](mailto:mdaniels@westernu.edu)

**Employees and Employee Applicants:**

Mariela Diaz  
Human Resources, Leave of Absence Specialist  
Phone: 909-469-8366  
Email: [marieladiaz@westernu.edu](mailto:marieladiaz@westernu.edu)

**3. External Contact Information**

Complaints and inquiries regarding discrimination, harassment, and retaliation involving federal laws may be directed to:

**California:**

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

**U.S. Equal Employment Opportunity  
Commission**  
Roybal Federal Building  
255 East Temple Street, 4th Floor  
Los Angeles, CA 90012  
T: (800) 669-4000  
TTY: (800) 669-6820

Online Reporting: If you wish to fill out a complaint form online with the OCR, you may do so at: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

**Oregon:**

**U.S. Department of Education  
Office for Civil Rights Seattle  
Office**

915 Second Avenue, Room 3310  
Seattle, WA 98174-1099  
T: (206) 607-1600  
E: [OCR.Seattle@ed.gov](mailto:OCR.Seattle@ed.gov)

**U.S. Equal Employment Opportunity  
Commission, Seattle Office**

Federal Office Building  
909 First Avenue, Suite 400  
Seattle, WA 98104-1061  
T: (800) 669-4000  
Website: [eeoc.gov](http://eeoc.gov)

Online Reporting: If you wish to fill out a complaint form online with the OCR, you may do so at: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

**U.S. Department of Justice, Civil Rights Division**

950 Pennsylvania Avenue, NW,  
Washington, D.C. 20530  
T: (202) 514-3847  
E: [education@usdoj.gov](mailto:education@usdoj.gov)  
Website: <https://civilrights.justice.gov/>

Complaints and inquiries regarding discrimination, harassment, and retaliation involving federal laws related to healthcare may be directed to:

**U.S. Department of Health and Human Services**

Office for Civil Rights  
200 Independence Avenue, S.W.  
Room 509F HHH Bldg.  
Washington, D.C. 20201  
[OCRComplaint@hhs.gov](mailto:OCRComplaint@hhs.gov)  
T: (800) 368-1019  
TDD: (800) 537-7697  
<https://www.hhs.gov/civil-rights/filing-a-complaint/complaint-process/index.html>  
<https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf>



**NIH Grants:**

Allegations are to be submitted via Grantee Harassment Webform and/or Grantee Harassment Email for NIH Staff (e.g., Center for Scientific Review (CSR) staff, IC Research Integrity Officers (RIOs), Office of Management Assessment (OMA) referrals):

Webform: <https://public.era.nih.gov/shape/public/index.era>

Grantee Harassment Email: [GranteeHarassment@nih.gov](mailto:GranteeHarassment@nih.gov)

P: (301) 480-6701

Complaints and inquiries regarding discrimination, harassment, and retaliation involving state laws may be directed to:

**California Civil Rights Department**

320 West 4th Street, 10th Floor

Los Angeles, CA 90013

T: (800) 884-1684

TTY: (800) 700-2320

**Oregon Bureau of Labor and Industries, Civil Rights Division**

800 NE Oregon Street, Suite 1045,

Portland, OR 97232

T: (971) 673-0761

E: [help@boli.state.or.us](mailto:help@boli.state.or.us)

Website: [oregon.gov/BOLI](http://oregon.gov/BOLI)

**4. Other Resources****Optum Employee Assistance Program**

(Services are available for students and employees)

(800) 234-5465 –

<http://www.liveandworkwell.com> (access code: westernu)

Services: Counseling, Financial and legal advice, life balance support

**Optum Provider Contact Information:****California**

Dr. Ana Couch, Dr. Luis Orozco Optum On-Site Providers

(626) 391-8508 | [anna.couch@optum.com](mailto:anna.couch@optum.com) (Couch)

(562) 219-4537 | [luis\\_orozco@optum.com](mailto:luis_orozco@optum.com) (Orozco)

*Drs. Couch and Orozco are based in Southern California but can see WesternU students remotely.*

Services: Counseling, coaching, and critical incident response services

**Oregon**

Lisa Schulz Optum On-Site Provider  
612-474-7165 | [Lisa\\_schulz@optum.com](mailto:Lisa_schulz@optum.com) (Schulz)

Services: Counseling, coaching, and critical incident response services

In addition, parties may speak to a variety of individuals for support and guidance in relation to any report of Prohibited Conduct. Comprehensive information on available resources, including community resources, emergency, and on-going assistance; mental health services; reporting options and other available support are as follows:

- For Emergency Medical and police services: Call 911 or 9-911 (on campus)
- Local Police Assistance:
  - Pomona Police Department, 490 West Mission Blvd, Pomona, CA 91766, (909) 622-1241 or (909) 620-2155
  - Lebanon Police Department, 40 N. 2nd Street, Unit 100, Lebanon, OR 97355, (541) 451-1751
- Local Campus Security Assistance:
  - Pomona: Mon – Sun 7 days a week, 24 hours a day (909) 706-3000/or Ext. 3000 Imperial Guard Services
  - Oregon: Mon – Sun 7 days a week, 6 a.m. to 1 a.m. (541) 259-0301 or Ext. 0301, Premier Security's direct line is (541) 968-4840.
- Local Medical Treatment:
  - Pomona Valley Hospital Medical Center  
1798 N. Garey Avenue Pomona, CA  
(909) 865-9500
  - San Antonio Regional Hospital  
999 San Bernardino Road Upland, CA  
(909) 920-4747
  - Samaritan Lebanon Community Hospital 525 N. Santiam Highway  
Lebanon, OR  
(541) 258-2101

For a complete summary of available resources, please visit our websites:

WesternU OTIXEO <https://www.westernu.edu/otixeo/resources>  
WesternU Employees <https://www.westernu.edu/hr/hr-benefits/>  
WesternU Students <https://www.westernu.edu/students/students-services/students-services-counseling/>

## **5. Disability-based Grievances and Complaints**

Grievances related to a student's disability status and/or provision of accommodations are addressed through the Harris Family Center for Disability & Health Policy ("CDHP"). Additional information regarding this office as well as applicable policies may be found at [www.westernu.edu/cdhp](http://www.westernu.edu/cdhp).

Employee grievances regarding their disability status and/or provision of accommodation are addressed through Human Resources ([www.westernu.edu/hr](http://www.westernu.edu/hr)). However, allegations of discrimination on the basis of an actual or perceived disability, including instances in which the provision of reasonable accommodations has a discriminatory effect, will be resolved under this policy.

For details relating to requests for disability accommodations offered to those participating in WesternU's Resolution Process, see the Accommodations and Support During the Resolution Process section below.

## **6. Scope**

It is the policy of WesternU to provide faculty, staff, and students, and applicants for employment and university admission, 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 prohibits discrimination, harassment, and retaliation whether engaged in by fellow employees, by a supervisor or manager, students, faculty, employees, volunteers, or by someone not directly employed by or connected to WesternU (e.g., an outside vendor, consultant, patient, visitor, or preceptor). This policy applies to conduct that occurs:

- On any University-owned or leased property;
- In the context of any University-related or sponsored business, educational or other program or activity, regardless of the location (including without limitation travel, research, conferences, fund-raising, admissions, or recruiting events, or internship programs);
- Through the use of University-owned or provided technology resources;
- When the conduct has a nexus to the University, such as, but not limited to, a continuing adverse effect or the creation or continuation of a hostile environment on campus; or
- Where otherwise deemed appropriate or required by applicable law.

This Policy is the exclusive means for individuals to file internal claims of discrimination, harassment based upon Protected Characteristics, abusive conduct/workplace bullying, Retaliation, or other Prohibited Conduct defined under this policy. Unless otherwise specified,

covered individuals or entities may not bring such concerns under any other University policy or procedure, including the Faculty Handbook.

Any complaint filed under any other policy or procedure alleging a civil rights violation must be referred to the Office of Title IX and Equal Opportunity (OTIXEO). Such claims cannot be considered by any other body unless assigned by OTIXEO.

WesternU may take actions as it deems appropriate to address situations it becomes aware of that involves conduct that is not considered Prohibited Conduct but has the potential to become Prohibited Conduct without further intervention. Such action may include but is not limited to: interim measures, adjustment of work or class schedules, individual or group training or education, other action needed to address an individual's conduct and its impact on the broader workplace or learning environment. Employees and Students are strongly advised to establish clear boundaries and directly express concerns or seek support if they find conduct makes them uncomfortable or has the potential to run counter to WesternU principle of Humanism.

## **7. Jurisdiction**

This Policy applies to WesternU's education programs and activities (defined as including locations, events, or circumstances in which WesternU exercises substantial control over both the Respondent and the context in which the conduct occurred), circumstances where WesternU has disciplinary authority, and to misconduct occurring within any building owned or controlled by a WesternU-recognized student organization. A Complainant does not have to be a member of the WesternU community to file a Complaint, at the discretion of the AVP of OTIXEO.

This Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to WesternU's education program or activities. WesternU may also extend jurisdiction to off-campus and/or to online conduct when the conduct affects a substantial WesternU interest.

For disciplinary action to be issued under this Policy, the Respondent must be a WesternU faculty member, student, or employee at the time of the alleged incident. If the Respondent is unknown or is not a member of the WesternU community, the AVP of OTIXEO, or designee, will offer to assist the Complainant in identifying appropriate institutional and local resources and support options, and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). WesternU can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

When a party is participating in a dual enrollment program, the Recipient will coordinate with the party's home institution to determine jurisdiction and coordinate providing supportive

measures and responding to the complaint under the appropriate policy and procedures based on the allegations and identities of the Parties.

When the Respondent is enrolled in or employed by another institution, the AVP of OTIXEO can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the AVP of OTIXEO may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the WesternU where nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse. If there are effects of that external conduct that impact a student or employee's work or educational environment, those effects can often be addressed remedially by the AVP of OTIXEO if brought to their attention.

## **8. Supportive Measures, Emergency Removal and Administrative Leave**

### ***A. Supportive Measures***

WesternU will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged discrimination, harassment, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to the WesternU's education program or activity, including measures designed to protect the safety of all Parties and/or WesternU's educational environment and/or to deter discrimination, harassment, and/or retaliation.

The AVP of OTIXEO promptly makes supportive measures available to the Parties upon receiving notice or knowledge or a Complaint. At the time that supportive measures are offered, if a Complaint has not been filed, WesternU will inform the Complainant, in writing, that they may file a Complaint with OTIXEO either at that time or in the future. The AVP of OTIXEO will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures. Oftentimes, the AVP of OTIXEO will utilize a member of the OTIXEO to coordinate supportive measures.

WesternU will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair WesternU's ability to provide those supportive measures. WesternU will act to ensure as minimal an academic/occupational impact on the Parties as possible. WesternU will implement measures in a way that does not unreasonably burden any party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Implementing contact restrictions (no contact directives) between the Parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the AVP of OTIXEO

Violations of no contact directives or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

### ***B. Emergency Removal of Student Respondent***

WesternU can act to remove a student Respondent accused of Prohibited Conduct from its education program or activities, partially or entirely, on an emergency basis when an individualized safety and risk analysis has determined that an imminent and serious threat to the health or safety of any student or other individual justifies removal. This risk analysis is performed by the AVP of OTIXEO and may be done in conjunction with other campus partners using its standard objective violence risk assessment procedures.

OTIXEO will promptly provide the student Respondent with written notice of any removal (including rationale).

### ***C. Administrative Leave of an Employee Respondent***

Following a report of Prohibited Conduct, WesternU may place a non-student employee on administrative leave during the pendency of the investigation and/or appeal process. In reaching a determination as to administrative leave, the AVP of OTIXEO will consult with the Respondent's immediate supervisor or designee, Chief Human Resources

Officer, Provost, or other appropriate officials. The AVP of OTIXEO will issue a notice of administrative leave to the Respondent.

## **9. Online Harassment and Misconduct**

WesternU policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on WesternU's education program and activities, or when they involve the use of WesternU networks, technology, or equipment.

Although WesternU may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to WesternU, it will engage in a variety of means to address and mitigate the effects. These means may include use of the Resolution Process to address off-campus conduct whose effects contribute to limiting or denying a person access to WesternU's education program or activity.

## **10. Statement on Truthfulness**

WesternU prohibits individuals deliberately and knowingly providing false or malicious information or statements under this policy or procedure. Individuals who violate this prohibition will be subject to disciplinary action. All University community members are expected to provide truthful information in any report or proceeding under the Resolution Process and are further expected to cooperate in any such proceeding. For students, intentionally providing false information during a WesternU proceeding or to a WesternU employee may be considered a violation of the WesternU Standards of Student Conduct. For employees, intentionally providing false information may be considered a violation of Professional Code of Conduct.

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with, or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate WesternU policies.

This provision does not apply to reports made or information provided in good faith, even if the information alleged in the report is not later substantiated or no Policy violation is found to have occurred.

## **11. Prohibited Conduct**

Based on federal and state requirements, this Policy prohibits Civil Rights Discrimination and Harassment (i.e., non-sexual or sex-based discrimination) and other forms of Prohibited Misconduct (collectively Prohibited Conduct). This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but

controversial or sensitive, subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited discrimination, harassment, and retaliation that are also prohibited under WesternU Policy. When speech or conduct is protected by academic freedom and/or free speech it will not be considered a violation of WesternU Policy, though supportive measures will be offered to those impacted. All offense definitions below encompass actual and/or attempted offenses.

Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance sanctions, accordingly. Violation of any other WesternU policies may constitute discrimination or harassment when motivated by actual or perceived protected characteristic(s), and the result is a limitation or denial of employment or educational access, benefits, or opportunities.

Further, WesternU reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment, or (2) that is of a generic nature and not based on a protected characteristic. Addressing such conduct may not result in the imposition of discipline under WesternU Policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.

## **A. DEFINITIONS OF CIVIL RIGHTS PROHIBITED CONDUCT**

### **I. Discrimination**

Discrimination is different treatment with respect to a person's employment or participation in an education program or activity based, in whole or in part, upon the person's actual or perceived protected characteristic. Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or policy, such as for disability, religion, or creed or that a person is receiving unequal pay because of their protected characteristic.

Discrimination can take two primary forms:

#### **1) Disparate Treatment Discrimination:**

- Any intentional differential treatment of a person or persons that is based on a person's actual or perceived protected characteristic and that:
  - Excludes a person from participation in;



- Denies the person benefits of; or
- Otherwise adversely affects a term or condition of a person's participation in a WesternU program or activity.

**2) Disparate Impact Discrimination:**

- Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:
  - Excludes a person from participation in;
  - Denies the person benefits of; or
  - Otherwise adversely affects a term or condition of a person's participation in a WesternU program or activity.

**II. Hostile Environment Harassment**

Is unwelcome verbal, written, or physical conduct on the basis of actual or perceived protected characteristic(s), that based on the totality of the circumstances, is subjectively and objectively offensive, and is so sufficiently severe or pervasive, that it unreasonably interferes, limits, or denies a person's ability to participate in or benefit from WesternU's education program or activity.

Hostile Environment Harassment may occur when:

- Submitting to, or rejecting, the verbal, nonverbal, written, or physical conduct is explicitly or implicitly a basis for:
- Decisions that adversely affect or threaten employment, or which are being presented as a term or condition of the Complainant's employment; or
- Decisions that affect or threaten the Complainant's academic status or progress, or access to benefits and services, honors, programs, or activities available at or through the University.

Examples of Prohibited Conduct that may constitute Hostile Environment Harassment under this policy includes but is not limited to:

- Epithets, slurs, negative stereotyping, or threatening, intimidating, or hostile acts that relate to the individual or group's Protected Characteristic;
- Displaying material on University-owned or controlled premises that shows hostility or aversion to an individual or group that directly relates to a Protected Characteristic such as the display of the Confederate battle flag, the swastika, or the noose;

- Graphic, abusive, degrading, intimidating, or offensive jokes, comments, remarks, or gestures directed at an individual based upon the individual's Protected Characteristic;
- Gestures or attempted or actual physical contact or intimidation against an individual based on their Protected Characteristic;
- Initiating, perpetuating, or encouraging teasing, tricks, gossip, rumors, sabotage/workplace/education-based slights (such as taking undue credit, undermining work, or excluding an individual from projects, meetings, or other activities), and any other workplace acts or omissions taken because of a person's Protected Characteristic.

## **B. DEFINITIONS FOR OTHER FORMS OF PROHIBITED CONDUCT**

### **1. Abusive Conduct/Workplace Bullying:**

Bullying is defined as harassing or threatening 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. The behavior must be sufficiently severe, persistent, or pervasive that it denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment, or other programs or activities of the University. The conduct shall be evaluated taking into account the circumstances of the parties, relationship between the parties (including power imbalance); the frequency, nature and severity of the alleged conduct; whether the conduct was physically threatening; and whether the conduct may be protected as academic freedom or freedom of speech. A single act may constitute Bullying if especially severe or egregious.

Bullying may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct, including gestures, 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 bullying, unless severe and egregious.

Bullying may include repeated, unreasonable actions of individuals (or a group) which are intended to intimidate, degrade, humiliate, or undermine; or which create a risk to the health or safety of the employee(s) or student. Some examples include but are not limited to Unwarranted or invalid criticism;

- a. Blame without factual justification;
- b. Being treated differently than the rest of an employee's work group;
- c. Use of abusive and/or insulting language (written, electronic, or verbal);

- d. Purposely excluding, isolating, or marginalizing a person from normal work activities for non-legitimate business purposes;
- e. Being the target of shouting or other behavior intended to humiliate an employee;
- f. Excessive “prank” jokes or teasing of an employee;
- g. Interfering with an employee’s personal property or work equipment without a legitimate business or educational purpose;
- h. Sabotaging or undermining a person’s work performance;
- i. Spreading false information or malicious rumors;
- j. Circulating photos, videos, or information via e-mail, text messages, social media or other means without a legitimate business or educational purpose;
- k. Making threats to block a person’s academic or other advancement, opportunities, or continued employment at the University without a legitimate business or educational purpose; and/or
- l. Encouraging others to act, singly or in a group, to intimidate or harass other individuals.

Examples of conduct that generally does not constitute Bullying includes but is not limited to:

- a. Providing performance evaluations to employees, including negative evaluations;
- b. Delivering constructive criticism;
- c. Grading student performance, including negative assessments;
- d. Counseling or disciplining an employee for performance, engaging in misconduct, or violating University policy;
- e. Having a disagreement;
- f. Scheduling regular or ongoing meetings to address performance issues;
- g. Making unpopular statements or articulating positions on controversial issues;
- h. Participating in debates and expressing differences of opinion about academic decisions; and/or exercising academic freedom, including comments about instruction within the classroom, different approaches to curriculum, opposing opinions about policy issues, or academic achievement, even if the content is considered insulting by the Complainant and even if delivered passionately.

## **2. Retaliation:**

- a. Includes acts, words, intimidation, threats, reprisals, coercion, discrimination, and/or adverse employment or education actions against any person
- b. for the purpose of interfering with any right or privilege secured by Policy or law (including federal, state, or local laws or ordinances and their implementing regulations), or because the person has engaged in protected activity, including:
  - i. Reporting Information,
  - ii. Making a good faith report or formal complaint,
  - iii. Serving as a witness

- iv. Assisting, or
- v. Participating or refusing to participate in any manner in an investigation, report, proceeding, Resolution Process as defined under this Policy (including an Informal Resolution Process), remedial process or disciplinary processes arising out of a University policy/procedure, or any other appropriate steps taken by WesternU to promptly and effectively end any discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

**For purposes of this definition**, the exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for WesternU to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under the Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

Retaliation includes such conduct through associates or agents of a Reporting Party, Respondent, or participant in any investigation or proceeding related to this Policy.

Engaging in Retaliation for the purpose of discouraging others from engaging in an activity protected under this Policy is prohibited and suspicions of this conduct should be immediately reported to the AVP of OTIXEO. Individuals found to have engaged in Retaliation are subject to disciplinary action.

Examples of Retaliation include but are not limited to:

- Reprimanding or giving a performance evaluation that is lower than it should be;
- Transfers to a less desirable position;
- Engaging in verbal or physical abuse;
- Threatening to make, or actually make reports to authorities (such as reporting immigration status or contacting the police);
- Increased scrutiny;
- Spreading false rumors or;
- Making the person's work more difficult (for example, punishing an employee for filing a Formal Complaint by purposefully changing their work schedule to conflict with family responsibilities).

### 3. **Failure to Comply/Process Interference**

- Intentional failure to comply with the reasonable directives of the AVP of OTIXEO in the performance of their official duties, including with the terms of a no contact order
- Intentional failure to comply with emergency removal or interim suspension terms
- Intentional failure to comply with sanctions
- Intentional failure to adhere to the terms of an Informal Resolution agreement
- Intentional interference with the Resolution Process, including, but not limited to:
  - Destruction of or concealing of evidence
  - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence
  - Intimidating or bribing a witness or party

**9. Complicity:** Complicity is any act that knowingly aids, facilitates, promotes, or encourages the commission of the Prohibited Conduct by another person.

**10. Violation of a University Directive:** Any individual may be found in violation for failure to comply with a University directive regarding a restrictive supportive measure (e.g. violating the terms of a No-Contact order)

## **12. Standard of Proof**

WesternU uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that WesternU will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s).

## **13. Reports/Complaints of Discrimination, Harassment, and/or Retaliation**

A Report provides notice to WesternU of an allegation or concern about discrimination, harassment, or retaliation and provides an opportunity for the AVP of OTIXEO to provide information, resources, and supportive measures. A Formal Complaint provides notice to WesternU that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a report and may decide at a later time to make a Formal Complaint. Reports or Formal Complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- 1) File a Formal Complaint with the AVP of OTIXEO or to any member of OTIXEO. Such a Formal Complaint may be made at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office of the AVP of

OTIXEO or any other OTIXEO member listed in this Policy.

- 2) Submit a Formal Complaint online at [www.westernu.edu/otixeo](http://www.westernu.edu/otixeo). Anonymous Complaints are accepted, but the Complaint may give rise to a need to try to determine the Parties' identities. Anonymous Complaints typically limit WesternU's ability to investigate, respond, and provide Remedies, depending on what information is shared. Measures intended to protect the community or redress or mitigate harm may be enacted. It also may not be possible to provide supportive measures to Complainants who are the subject of an anonymous Complaint.

Reporting carries no obligation to initiate a Complaint, and in most situations, WesternU is able to respect a Complainant's request to not initiate a resolution process. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where WesternU may need to initiate a resolution process. If a Complainant does not wish to file a Formal Complaint, WesternU will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by filing a Formal Complaint that allows WesternU to discuss and/or provide supportive measures, in most circumstances.

#### **14. Time Limits on Reporting**

There is no time limitation on filing a Formal Complaint to the OTIXEO. However, if the Respondent is no longer subject to WesternU's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide Remedies may be more limited or impossible.

Acting on Formal Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy) is at the AVP of OTIXEO's discretion; they may document allegations for future reference, offer supportive measures and/or Remedies, and/or engage in informal or formal action, as appropriate.

#### **15. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a determination of a Policy violation.

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate WesternU policies.

## **16. Confidentiality/Privacy**

WesternU makes every effort to preserve the Parties' privacy. WesternU will not share the identity of any individual who has made a Complaint of harassment, discrimination, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of discrimination, harassment, or retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title VI and VII), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation, or resolution proceeding arising under these policies and procedures.<sup>1,2</sup>

WesternU reserves the right to determine which WesternU officials have a legitimate educational interest in being informed about student-related incidents that fall under this Policy, pursuant to FERPA.

Only a small group of officials who need to know will typically be told about the Complaint. The circle of people with this knowledge will be kept as tight as possible to preserve the Parties' rights and privacy, and release is based on a legitimate business purpose.

Consistent with FERPA, WesternU may contact students' parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student prior to doing so.

## **17. Unauthorized Disclosure of Information**

To protect the privacy of those involved, the Parties and Advisors are required to sign a confidentiality agreement prior to attending an interview or otherwise participating in WesternU's resolution process. The confidentiality agreement restricts unauthorized disclosure of information and evidence obtained solely through the resolution procedure. The confidentiality agreement will not restrict the ability of either Party to discuss the allegations under investigation.

## **18. Federal Timely Warning Obligations**

WesternU must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the WesternU community.

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<sup>1</sup> 20 U.S.C. 1232g

<sup>2</sup> 34 C.F.R. § 99

WesternU will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## **19. Amnesty**

WesternU community encourages the reporting of misconduct by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to WesternU officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the WesternU community that Complainants choose to file a Formal Complaint of misconduct to WesternU officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process.

To encourage reporting and participation in the process, WesternU maintains a Policy of offering Parties and witnesses amnesty from minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident. Granting amnesty is a discretionary decision made by WesternU, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

### **A. Students**

WesternU maintains an amnesty policy for students who offer help others in need.

### **B. Employees**

Sometimes, employees are hesitant to report discrimination, harassment, or retaliation they have experienced for fear of getting in trouble themselves. WesternU may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident.

## **20. Federal Statistical Reporting Obligations**

Certain institutional officials (those deemed Campus Security Authorities) have a duty to report the following for federal statistical reporting purposes (Clery Act):

- 1) All "primary crimes," which include criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;



- 2) Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- 3) Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking;<sup>3</sup>
- 4) Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations;
- 5) Instances of Hazing.

All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on- or off-campus or in the surrounding area, but no addresses are given) must be shared with the Clery Coordinator for publication in the Annual Security Report and daily campus crime log. Campus Security Authorities include student affairs/student conduct staff, campus law enforcement/public safety/security, local police, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

## **21. Independence and Conflicts of Interest**

The AVP of OTIXEO manages OTIXEO and acts with independence and authority, free from bias and conflicts of interest. The AVP of OTIXEO oversees all resolutions under this Policy and these procedures. The members of the Resolution Pool are vetted and trained to ensure they are not biased for or against any party in a specific Complaint, or for or against Complainants and/or Respondents.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the AVP of OTIXEO, contact the WesternU Senior Vice President, Special Projects. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other Resolution Pool member should be raised with the AVP of OTIXEO.

## **22. Revision of this Policy**

This Policy is applicable and succeeds previous policies addressing discrimination, harassment, and/or retaliation, though previous policies and procedures remain in force for incidents occurring before August 1, 2024.

The AVP of OTIXEO reviews and updates these policies and procedures regularly. WesternU reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

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<sup>3</sup> VAWA is the Violence Against Women Act, enacted in 1994 and codified in part at 42 U.S.C. sections 13701 through 14040.

If government laws or regulations change or court decisions alter the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws that frame such policies and codes, generally.

This Policy is effective January 9, 2025.

## **RESOLUTION PROCESS (Hereinafter the “Resolution Process”)**

### **1. Overview**

WesternU will act on any Formal Complaint of a potential violation of the (“the Policy”) that the AVP of OTIXEO<sup>4</sup> or any other Responsible Employee receives by applying the Resolution Process below.

The procedures below apply to all allegations of Prohibited Conduct involving students, employees, or third parties.

### **2. Notice/Complaint**

Upon receipt of a Formal Complaint, the AVP of OTIXEO will initiate a prompt initial evaluation to determine WesternU’s next steps. The AVP of OTIXEO will contact the Complainant/source of the Complaint to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

### **3. Misconduct**

Collateral misconduct is defined to include potential violations of other WesternU policies not incorporated into the Policy that occur in conjunction with alleged violations of the Policy, or that arise through the course of the investigation, for which it makes sense to provide one resolution for all allegations. Thus, the collateral allegations may be charged along with potential violations of the Policy, to be resolved jointly under these Procedures. In such circumstances, the AVP of OTIXEO may consult with WesternU officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs) to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the discretion of AVP of OTIXEO. All other allegations of misconduct unrelated to incidents covered by the Policy will typically be addressed separately through procedures described in the student, faculty, and staff handbooks.

### **4. Initial Evaluation**

The AVP of OTIXEO conducts an initial evaluation typically within ten (10) business days of receiving a Formal Complaint of alleged misconduct.<sup>5</sup> The initial evaluation typically includes:

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<sup>4</sup> Anywhere this procedure indicates “AVP of OTIXEO,” a trained designee may be substituted.

<sup>5</sup> If circumstances require, the AVP of OTIXEO, or designee, the Senior Vice President for the Division of Compliance, Ethics, and Culture will designate another person to oversee the Resolution Process should an allegation be made about AVP of OTIXEO or the AVP of OTIXEO be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

- Assessing whether the reported conduct may reasonably constitute a violation of the Policy.
  - If the conduct may not reasonably constitute a violation of the Policy, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. It may then be referred to another process, if applicable.
- Determining whether WesternU has jurisdiction over the reported conduct, as defined in the Policy.
  - If the conduct is not within WesternU jurisdiction, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. If applicable, the conduct will be referred to the appropriate WesternU office for resolution.
- Offering and coordinating supportive measures for the Complainant.
- Offering and coordinating supportive measures for the Respondent, as applicable.
- Notifying the Complainant, or the person who reported the allegation(s), of the resolution processes, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below.
- Determining whether the Complainant wishes to make a Complaint.
- Notifying the Respondent of the available resolution options, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below, if a Complaint is made.

### ***Helping a Complainant to Understand Options***

If the Complainant indicates they wish to initiate a Formal Complaint, the AVP of OTIXEO will help to facilitate the Complaint, which will include working with the Complainant to determine whether the Complainant wishes to pursue one of three resolution options:

- A supportive and remedial response, and/or
- Informal Resolution, or
- The Resolution Process described below.

The AVP of OTIXEO will seek to abide by the wishes of the Complainant but may have to take an alternative approach depending on their analysis of the situation.

If the Complainant elects for the Resolution Process below, and the AVP of OTIXEO has determined the Policy applies and that WesternU has jurisdiction, they will route the matter to the appropriate Resolution Pool Member, will provide the Parties with a Notice of Investigation and Allegation(s), and will initiate an investigation consistent with these Procedures.

If any Party indicates (either verbally or in writing) that they want to pursue an Informal Resolution option, the AVP of OTIXEO will assess whether the matter is suitable for Informal Resolution and refer the matter accordingly.

If the Complainant indicates (either verbally or in writing) that they do not want any action taken, no Resolution Process will be initiated (unless deemed necessary by the AVP of OTIXEO) though the Complainant can elect to initiate one later, if desired.

### **AVP of OTIXEO's Authority to Initiate a Complaint**

If the Complainant does not wish to file a Complaint, the AVP of OTIXEO, who has ultimate discretion as to whether a Complaint is initiated, will offer supportive measures and determine whether to initiate a Complaint themselves. To make this determination, the AVP of OTIXEO will evaluate that request to determine if there is a serious and imminent threat to someone's safety or if WesternU cannot ensure equal access without initiating a Complaint. The AVP of OTIXEO will consider the following non-exhaustive factors to determine whether to file a Complaint:

- The Complainant's request not to proceed with initiation of a Complaint.
- The Complainant's reasonable safety concerns regarding initiation of a Complaint.
- The risk that additional acts of discrimination would occur if a Complaint is not initiated.
- The severity of the alleged discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.
- The age and relationship of the Parties, including whether the Respondent is a WesternU employee;
- The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals;
- The availability of evidence to assist a Decision-maker in determining whether discrimination occurred;
- Whether WesternU could end the alleged discrimination and prevent its recurrence without initiating its resolution process.

If deemed necessary, the AVP of OTIXEO may consult with appropriate WesternU employees, and/or conduct a violence risk assessment to aid their determination whether to initiate a Complaint.

When the AVP of OTIXEO initiates a Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged conduct that could constitute a violation of this Policy.

### **1. Consolidation of Complaints**

The University may consolidate Formal Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party (*i.e.*, counterclaim), where the allegations arise out of the same or substantially similar facts or circumstances. All parties will receive simultaneous, timely notification of any such consolidation. During the course of the investigation, the investigation may reveal the existence of additional or different potential policy violations, which may also be consolidated following notification to the parties of the amended notice of investigation allegations.

### **2. Counter-Complaints**

WesternU is obligated to ensure that the Resolution Process is not abused for retaliatory purposes. Although WesternU permits the filing of counter-complaints, the AVP of OTIXEO will use an initial evaluation, described above, to assess whether the allegations in the counter-complaint are made in good faith. When counter-complaints are not made in good faith, they will not be permitted. Notwithstanding, a counter complaint submitted in bad faith may be considered potentially retaliatory and may constitute a violation of the Policy. Counter-complaints determined to have been reported in good faith will be processed using the Resolution Process below. At the AVP of OTIXEO's discretion, investigation of such claims may take place concurrently or after resolution of the underlying initial Complaint.

### **3. Dismissal of Complaint**

WesternU **may** dismiss a Complaint if, at any time during the investigation or Resolution Process, one or more of the following grounds are met:

- 1) WesternU is unable to identify the Respondent after taking reasonable steps to do so
- 2) WesternU no longer enrolls or employs the Respondent.
- 3) A Complainant voluntarily withdraws any or all of the allegations in the Complaint, and the AVP of OTIXEO declines to initiate a Complaint.
- 4) Specific circumstances, including a Complainant's decision not to respond to outreach by the OTIXEO Office, prevent the University from gathering evidence sufficient to reach a determination as to the Notice or Complaint or its allegations.
- 5) WesternU determines the conduct alleged in the Complaint would not constitute a Policy violation, if proven.

In addition to other members of OTIXEO, as authorized by the AVP of OTIXEO, a Decision-maker can recommend dismissal of a complaint to the AVP of OTIXEO, if they believe the grounds are met. A Complainant who decides to withdraw a Complaint may later request to reinstate or refile it.

Upon any dismissal, WesternU will promptly send the Complainant written notification of the dismissal and the rationale for doing so. If the dismissal occurs after the Respondent has been made aware of the allegations, WesternU will also notify the Respondent of the dismissal.

#### **4. Advisors (See Appendix B)**

### **Resolution Options Overview**

This Resolution Process, consisting of Informal Resolution or Administrative Resolution, is WesternU's chosen approach to addressing all forms of discrimination on the basis of protected characteristics, harassment, retaliation, and Other Prohibited Conduct under the Policy. The process considers the Parties' preferences but is ultimately determined at the AVP of OTIXEO's discretion.

Resolution proceedings are confidential. All individuals present at any time during the Resolution Process are expected to maintain the confidentiality of the proceedings in accordance with WesternU Policy.

#### **A. Informal Resolution**

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the AVP of OTIXEO at any time prior to a Final Determination, or the AVP of OTIXEO may offer the option to the Parties, in writing. WesternU will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution.

Before initiation of an Informal Resolution process, WesternU will provide the Parties with a NOIA that explains:

- The allegations.
- The requirements of the Informal Resolution process.
- That, prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and to initiate or resume WesternU's Resolution Process;
- That the Parties' agreement to a resolution at the conclusion of the Informal Resolution process will preclude the Parties from initiating or resuming the Resolution Process arising from the same allegations.
- The potential terms that may be requested or offered in an Informal Resolution agreement, including notification that an Informal Resolution agreement is binding only on the Parties.

- What information WesternU will maintain, and whether and how it could disclose such information for use in its Resolution Process.

WesternU offers four categories of Informal Resolution:

- 1) **Supportive Resolution.** When the AVP of OTIXEO can resolve the matter informally by providing supportive measures (only) designed to remedy the situation.
- 2) **Educational Conversation.** When the AVP of OTIXEO can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and institutional expectations or can accompany the Complainant in their desire to confront the conduct.
- 3) **Accepted Responsibility.** When the Respondent is willing to accept responsibility for violating Policy and is willing to agree to actions that will be enforced similarly to sanctions, and the Complainant(s) and WesternU are agreeable to the resolution terms.
- 4) **Alternative Resolution.** When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.

The individual facilitating an Informal Resolution must be trained and cannot be the Investigator or Appeal Officer.

It is not necessary to pursue Informal Resolution first in order to pursue an Administrative Resolution Process. Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the Administrative Resolution Process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Administrative Resolution, should Informal Resolution not be successful, unless agreed to by all Parties.

If an investigation is already underway, the AVP of OTIXEO has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.



## **Categories of Informal Resolution**

### **(1) Supportive Resolution**

The AVP of OTIXEO will meet with the Complainant to determine reasonable supportive measures that are designed to restore or preserve the Complainant's access to WesternU's education program and activity. Such measures can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received the NOIA, the AVP of OTIXEO may also provide reasonable supportive measures for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options, and the AVP of OTIXEO does not initiate a Complaint.

### **(2) Educational Conversation**

The Complainant(s) may request that the AVP of OTIXEO address their allegations by meeting (with or without the Complainant) with the Respondent(s) to discuss concerning behavior and institutional policies and expectations. Such a conversation is non-disciplinary and non-punitive. Respondent(s) are not required to attend such meetings, nor are they compelled to provide any information if they attend. The conversation will be documented as the Informal Resolution for the matter if it takes place. In light of this conversation, or the Respondent's decision not to attend, the AVP of OTIXEO may also implement remedial actions to ensure that policies and expectations are clear and to minimize the risk of the recurrence of any behaviors that may not align with Policy.

### **(3) Accepted Responsibility**

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for **all** alleged Policy violations, the ongoing process will be paused, and the AVP of OTIXEO will determine whether Informal Resolution is an option.

If Informal Resolution is available, the AVP of OTIXEO will determine whether all Parties and WesternU are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or Remedies. If so, the AVP of OTIXEO implements the accepted finding that the Respondent is in violation of WesternU Policy, implements agreed-upon restrictions and Remedies, and determines the appropriate responses in coordination with other appropriate WesternU Officials, as necessary.

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Resolution Process will either continue or resume.<sup>6</sup>

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the discrimination or harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

#### **(4) Alternative Resolution**

The institution offers a variety of alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community Remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent(s); indirect action by the AVP of OTIXEO or other appropriate WesternU officials; and other forms of resolution that can be tailored to the needs of the Parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an alternative resolution process.

The AVP of OTIXEO may consider the following factors to assess whether alternative resolution is appropriate, or which form of alternative resolution may be most successful for the Parties:

- The Parties' amenability to alternative resolution
- Likelihood of potential resolution, considering any power dynamics between the Parties
- The nature and severity of the alleged misconduct
- The Parties' motivation to participate
- Civility of the Parties
- Results of a violence risk assessment/ongoing risk analysis
- Respondent's disciplinary history
- Whether an emergency removal or other interim action is needed
- Skill of the alternative resolution facilitator with this type of Complaint
- Complaint complexity

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<sup>6</sup> The Parties may not want discussions that take place within Informal Resolution to be admissible in a later Resolution Process, but essential facts must and do transfer from the informal process to subsequent resolution proceedings.

- Emotional investment/capability of the Parties
- Rationality of the Parties
- Goals of the Parties
- Adequate resources to invest in alternative resolution (e.g., time, staff, etc.)

The AVP of OTIXEO has the authority to determine whether alternative resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. The AVP of OTIXEO will determine whether additional individual or community Remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

The AVP of OTIXEO maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement, etc.). The results of Complaints resolved by alternative resolution are not appealable.

If an Informal Resolution option is not available or selected, WesternU will initiate or continue an investigation and subsequent Resolution Process to determine whether the Policy has been violated.

### **Formal Administrative Resolution Process (see Section 10 below)**

#### **1. Expectations of the Parties**

The Investigator may receive any information presented by the parties, but the Investigator, not the parties, is responsible for gathering relevant evidence. The Complainant and Respondent will be asked to identify witnesses and provide other relevant information, such as documents, communications, and other evidence, if available. The parties are encouraged to provide all relevant information as soon as possible to facilitate prompt resolution. In the event that a party declines to voluntarily provide material information or delays in doing so, the University's ability to conduct a prompt, thorough, and equitable investigation may be

impacted. The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence, but the parties should be advised that doing so in a way that constitutes Prohibited Conduct may subject them to additional policy violations.

## **2. Resolution Process Pool**

The Resolution Process relies on a pool of trained professionals (“the Pool”) to carry out the process<sup>7</sup>, including the role of the Investigator<sup>8</sup>.

## **3. Notice of Investigation and Allegations (NOIA)**

Prior to an investigation, the AVP of OTIXEO will provide the Parties with a detailed written NOIA. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.

The NOIA typically includes:

- A meaningful summary of all allegations, including the date and location of the alleged incident(s) (if known)
- The identity of the involved Parties (if known)
- The specific policies/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence
- The name(s) and contact information of the Investigator(s)
- A statement that WesternU presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity during the review and comment period to inspect and review all relevant evidence
- A statement that retaliation is prohibited
- Information about the confidentiality of the process, including that the Parties and their Advisors (if applicable) may not share WesternU work product obtained through the Resolution Process

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<sup>7</sup> External, trained third-party neutral professionals may also be used to serve in Pool roles.

<sup>8</sup> The University may use the single investigator model, in which the Investigator and the Decision-maker roles are held by a single individual, unless otherwise prohibited by law.

- A statement that the Parties may have an Advisor of their choice who may accompany them through all steps of the Resolution Process
- A statement informing the Parties that WesternU's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how a party may request disability accommodations or other support assistance during the Resolution Process
- An instruction to preserve any evidence that is directly related to the allegations

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address(es) as indicated in official WesternU records, or emailed to the Parties' WesternU-issued email or designated accounts. Once mailed, emailed, and/or received in person, the notification will be presumptively delivered.

#### **4. Resolution Timeline**

WesternU will make a good faith effort to complete the Resolution Process within ninety to one hundred twenty (90-120) business days, including any appeals, which the AVP of OTIXEO extend as necessary for appropriate cause. The Parties will receive regular updates on the progress of the Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

Investigations are completed expeditiously, normally within sixty to ninety (60-90) business days, though some investigations may take longer, depending on issues such as the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.

If a party or witness chooses not to participate in the Resolution Process or becomes unresponsive, WesternU reserves the right to continue it without their participation to ensure a prompt resolution. Non-participatory or unresponsive Parties retain the rights outlined in this Policy and the opportunity to participate in the Resolution Process.

WesternU may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to a request from law enforcement to temporarily delay the investigation temporarily, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. WesternU will promptly resume its Resolution Process as soon as feasible. During such a delay, WesternU will implement and maintain supportive measures for the Parties as deemed appropriate.

WesternU action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

WesternU will make a good faith effort to complete the Resolution Process as promptly as circumstances permit and will regularly communicate with the Parties to update them on the progress and timing of the process.

## **5. Ensuring Impartiality**

Any individual materially involved in the administration of the Resolution Process, including the AVP of OTIXEO, Investigator(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

At any time during the Resolution Process, the Parties may raise a concern regarding bias or conflict of interest, and the AVP of OTIXEO will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the AVP of OTIXEO, concerns should be raised with the Senior Vice President of Special Projects.

## **6. Investigator Appointment**

Once an investigation is initiated, the AVP of OTIXEO appoints an Investigator(s) to conduct it. These Investigators may be members of the Resolution Process Pool, or any other properly trained Investigator, whether internal or external to WesternU's community.

## **7. Witness Role and Participation in the Investigation**

The University expects all employees to cooperate fully in the investigation of Complaints. In addition, except as limited under applicable laws, employees may be required to participate in the Resolution Process, and declining to cooperate in an investigation is subject to discipline up to and including termination of employment under other applicable University policy. The University will ensure that all participating employees are protected from retaliation for such participation. Student witnesses and witnesses from outside the WesternU community cannot be required to participate but are encouraged to cooperate with WesternU investigations and to share what they know about a Complaint.

Interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, WebEx, etc.), or, in limited circumstances, by telephone. WesternU will take appropriate steps to ensure the security/privacy of remote interviews.

## **8. Evidentiary Considerations**

The Investigator(s) will only consider evidence that is deemed relevant and not otherwise impermissible.

Relevant Evidence is that which may aid in determining whether the allegation occurred, or whether the behavior constitutes a violation of Policy.

Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

Within the limitations stated above, the investigation and determination can consider character evidence, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

## **9. Respondent Admits Responsibility**

At any point in the proceedings, if a Respondent elects to admit to the charged violations and waive further process, the Investigator(s) are authorized to accept that admission, adopt it as their finding/Final Determination, and administer sanctions. This would also waive the Respondent's rights to appeal for the Respondent. If the Respondent rejects the finding/Final Determination/sanctions, or does not admit to all conduct charged, the Resolution Process continues to its conclusion.

The Complainant retains their right to appeal a determination when a Respondent admits responsibility.

## **10. Formal Administrative Resolution**

Formal Administrative Resolution components: When WesternU authorizes a Formal Complaint for formal administrative resolution, the process will typically include the following steps that are described below in sections **Investigation** and **Notice of Outcome**, respectively:

1. Investigation
2. Determination of Responsibility
3. Appeals

Student Respondents: Upon the conclusion of the investigation, the matter will be referred to their respective College for handling under applicable student conduct policies. The AVP of OTIXEO will assess matters that may apply to multiple policies to determine the appropriate action.

Employee Respondents: Upon the conclusion of the investigation, if corrective action is applicable, the matter may be referred to Human Resources and the appropriate supervisor to implement the required sanction(s). The AVP of OTIXEO will assess matters that may apply to multiple policies to determine the appropriate action.

## **11. Investigation**

All investigations are adequate, thorough, reliable, impartial, prompt, and fair. They involve interviewing all relevant Parties and witnesses, obtaining relevant evidence, and identifying sources of expert information, as necessary.

After an interview, Parties and witnesses will be asked to verify the accuracy of the summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the period designated for verification, objections to the accuracy of the summary will be deemed to have been waived, and no changes will be permitted.

The Investigator(s) typically take(s) the following steps, if not already completed and not necessarily in this order:

- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses.
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible.
- Interview the Complainant and the Respondent and conduct any necessary follow-up interviews with each, as necessary.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes of the relevant evidence/testimony from their respective interviews and meetings.
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses. Document which questions were asked with a rationale for any changes or omissions in the investigation report.
- Where possible, complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide the Parties with regular status updates throughout the investigation.
- Ask the Parties to provide a list of questions they would like asked of the other party or any witnesses. The Investigator will ask those questions deemed relevant, and for any question deemed not relevant, will provide a rationale for not asking the question.



- Write a draft investigation report that fairly summarizes the relevant information gathered during the investigation. Investigator has the discretion to determine the relevance of any witness or evidence.
- Provide the Parties and their respective Advisors an electronic copy of the draft investigation report as well as an opportunity to inspect and review all relevant evidence obtained as part of the investigation for a review and comment period of ten (10) business days so that each party may meaningfully respond to the evidence. The Parties may elect to waive all or part of the review period.
- Makes a Final Determination of responsibility on all allegations within ten (10) business days based on a preponderance of the evidence of the statements and relevant evidence provided during the Investigation process (See **Notice of Outcome** Section).

## 12. Notice of Outcome

The Investigator will prepare a confidential Final Investigative Report (FIR), including the final finding of responsibility or non-responsibility. In determining whether 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. To reach this determination, WesternU will apply the Standard of Evidence and issue a Notice of Outcome to both Parties. The FIR remains confidential and will only be shared as a function of the student conduct hearing process outlined in the University Catalog – if the Respondent is a student; or, if the Respondent is a faculty member, as a function of the Adequate Cause for Dismissal process outlined in the University Faculty Handbook.

The AVP of OTIXEO will issue the written Notice of Outcomes to the Parties within ten (10) business days following the conclusion of the investigation. The Notice of Outcome will include:

- (i) Identification of the allegations potentially constituting Prohibited Conduct;
- (ii) A description of the procedural steps taken from the receipt of the Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
- (iii) Findings of fact supporting the determination;
- (iv) Conclusions regarding the application of the Policy to the facts;
- (v) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, and whether Remedies designed to restore or preserve equal access to the University’s education program or activity will be provided to the Complainant and;
- (vi) The procedure governing the sanctioning process.

The AVP of OTIXEO will provide the Parties with the Notice of Outcome simultaneously, or without significant time delay between notifications. The Notice of Outcome may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official WesternU records, or emailed to the Parties' WesternU-issued or designated email account. Once mailed, emailed, and/or received in person, the outcome notification is presumptively delivered.

Depending on the status of the parties (Employee, Student, Third Party), the imposition of sanctions may occur separately from the issuance of the Notice of Outcome. In such instances, the Notice of Outcome is not subject to appeal. In instances where the Notice of Outcome includes a Sanction or Corrective Action section, only the sanction or corrective action is subject to appeal. Further, if a sanction is issued in relation to the Notice of Outcome, that sanction may be subject to appeal. The determination of responsibility is not subject to appeal. Once implemented, sanctions or corrective action typically will take effect immediately and will not be stayed pending the resolution of any appeal.

### **Sanctions**

For employees: Upon the issuance of the Notice of Outcome, the matter will be referred to Human Resources and the respective supervisor for the separate implementation of disciplinary sanctions, if needed. Any resulting sanctions will be subject to appeal under this policy, and/or, if the Employee-Respondent is a faculty member, grievance rights, if applicable, as defined in Appendix II. Grievance Procedure of the University Faculty Handbook.

For students: Upon the issuance of the Notice of Outcome, the matter will be referred to the College Dean of the Respondent for the facilitation of the student conduct hearing process and appropriate disciplinary sanctions, if needed. Any resulting sanctions will be subject to appeal under the Student Appeals policy in the University Catalog.

### **Remedies**

The AVP of OTIXEO will review the determination of responsibility and sanction, if any, to determine whether additional Remedies for the Complainant or the University community are necessary to restore and preserve equal access to the University's education program and activity. Examples of such Remedies may include the continuation or initiation of supportive measures, including the provision of counseling, academic services, escort services, and/or training for members of the University community, as well as making modifications to academic, or employment.

### **Withdrawal or Resignation Before Complaint Resolution**

**Students:**

Should a student Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a student Respondent withdraws from WesternU, the Resolution Process may continue, or the AVP of OTIXEO may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, WesternU will still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the Complaint is dismissed or pursued to completion of the Resolution Process, WesternU will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

When a student withdraws or leaves while the process is pending, the student may not return to WesternU in any capacity until the Complaint is resolved and any sanctions imposed are satisfied. If the student indicates they will not return, the AVP of OTIXEO has discretion to dismiss the Complaint. The Registrar and Office of Admissions will be notified, accordingly. If the student Respondent takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely. If found in violation, that student is not permitted to return to WesternU unless and until all sanctions, if any, have been satisfied.

**Employees:**

Should an employee Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If an employee Respondent leaves their employment with WesternU with unresolved allegations pending, the Resolution Process may continue, or the AVP of OTIXEO may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, WesternU may still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

When an employee resigns and the Complaint is dismissed, a note will be placed in the employee's file that they resigned with allegations pending.

**Appeal**

The AVP of OTIXEO will designate an Appeal Officer, to hear the appeal.

The Respondent has the right to appeal the resulting sanction as contained in the Notice of Sanctions based on the following three limited grounds:

1. A procedural irregularity that affected the outcome. Procedural or technical irregularities will not be sufficient to sustain an appeal unless found to have affected the sanction decision of the Complaint;
2. New evidence that was not reasonably available at the time the Determination of Responsibility was made, that could materially impact the sanction decision. The appeal must specify the new evidence that was not reasonably available at the time of the determination, why the evidence was unknown or unavailable, and how the evidence could affect the sanction decision; ; or
3. The AVP of OTIXEO, Investigator(s), or Sanctioning Officer had a conflict of interest or bias for or against complainants or respondents generally or the specific Complainant or Respondent that affected the outcome. The appeal must specify the basis on which the party believes there is an actual conflict of interest or bias that affected the outcome of the matter.

#### **A. Request for Appeal**

A written request for appeal ("Request for Appeal") must be submitted to the AVP of OTIXEO within five (5) business days of the delivery of the Notice of Sanctions.

The Request for Appeal will be forwarded to the Appeal Officer for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the request will be denied by the Appeal Officer, and the Respondent and their Advisor will be simultaneously notified in writing of the denial and the rationale.

If any of the information in the Request for Appeal meets the grounds in this Policy, then the Appeal Officer will notify the Respondent and Advisor.

#### **B. Appeal Determination Process**

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeals Officer will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, making changes to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions are made using the preponderance of the evidence standard of proof.

An appeal is not an opportunity for the Appeal Officer to substitute their judgment for that of the original Decision-maker merely because they disagree with the finding and/or sanction(s).

### **C. Appeal Outcome**

Upon receipt of an appeal request, the Appeal Officer will review materials provided and issue a written decision with a rationale. The possible appeal decisions include but are not limited to:

- i. Uphold/Let the sanctions stand;
- ii. Modify the sanctions or impose different sanctions; or
- iii. Suspend the sanctions.

A Notice of Appeal Outcome letter (“Appeal Outcome”) will be sent to the Respondent. The Appeal Outcome will specify the finding on each appeal ground for appeal, any specific instructions for reconsideration, all sanction(s) that may result which WesternU is permitted to share according to federal or state law, and the rationale supporting the essential findings to the extent WesternU is permitted to share under federal or state law.

Written notification may be delivered by one or more of the following methods: in person, mailed to the Parties’ local or permanent address as indicated in official institutional records, or emailed to the Parties’ WesternU-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, the Appeal Outcome will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Sanction Determination; further appeals are not permitted related to matters which fall under this Policy, even if a sanction is changed on remand. When appeals result in no change to the sanction, that decision is final. When an appeal results in a new sanction, that sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

### **Long-Term Remedies/Other Actions**

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented or Informal Resolution terms, the AVP of OTIXEO may implement additional long-term Remedies or actions with respect to the Parties and/or the WesternU community that are

intended to stop the discrimination, harassment, and/or retaliation, remedy the effects, and prevent recurrence.

These Remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Course and registration adjustments, such as retroactive withdrawals
- Education to the individual and/or the community
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the AVP of OTIXEO, certain long-term supportive measures may also be provided to the Parties even if no Policy violation is found.

When no Policy violation is found, the AVP of OTIXEO will address any Remedies WesternU owes the Respondent to ensure no effective denial of educational access.

WesternU will maintain the confidentiality of any long-term Remedies/actions/measures, provided confidentiality does not impair WesternU's ability to provide these services.

### **Failure to Comply with Sanctions, Responsive Actions, and/or Informal Resolution Terms**

All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the final Decision-maker(s), including the Investigator, Appeal Officer or the Informal Resolution agreement.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or for any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from WesternU.

Supervisors are expected to enforce the completion of sanctions/responsive actions for their employees.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the AVP of OTIXEO's satisfaction.

## **Recordkeeping**

For a period of at least seven (7) years following the conclusion of the Resolution Process, WesternU will maintain records of:

- 1) Each discrimination, harassment, and retaliation resolution process, including any Final Determination regarding responsibility or appeal..
- 2) Any disciplinary sanctions imposed on the Respondent.
- 3) Any supportive measures provided to the Parties and any Remedies provided to the Complainant or the community designed to restore or preserve equal access to WesternU's education program or activity.
- 4) Any appeal and the result therefrom.
- 5) Any Informal Resolution and the result therefrom.
- 6) Any training records.

WesternU will also maintain any and all records in accordance with federal and state laws.

### **1. Accommodations and Support During the Resolution Process**

#### **Disability Accommodations**

WesternU is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to WesternU's Resolution Process.

Anyone needing such accommodations or support should contact the AVP of OTIXO, who will work with disability support colleagues as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

#### **Other Support**

WesternU will also address reasonable requests for support for the Parties and witnesses, including:

- Language services/Interpreters
- Access and training regarding use of technology throughout the Resolution Process
- Other support as deemed reasonable and necessary to facilitate participation in the Resolution Process

### **2. Revision of these Procedures**

These procedures succeed any previous procedures addressing discrimination, harassment, and retaliation for incidents occurring on or after August 1, 2024. The AVP of OTIXEO will regularly review and update these procedures. WesternU reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If governing laws or regulations change, or court decisions alter, the requirements in a way that impacts this document, this document will be construed to comply with the most recent governing laws or regulations or court holdings.

This document does not create legally enforceable protections beyond the protections of the background federal and state laws that frame such policies and codes, generally.

This policy and its procedures have been reviewed and updated to comply with the vacatur of the 2024 Title IX Rule issued by the U.S. District Court for the Eastern District of Kentucky on January 9, 2025.



## **APPENDIX A: DEFINITIONS**

The following definitions apply to this Policy and its Procedures.

- **Advisor.** Any person chosen by a party who may accompany the party to all meetings related to the Resolution Process and advise the party on that process.
- **Associate Vice President of OTIXEO.** The designated WesternU employee(s) whose responsibility is to coordinate WesternU's compliance with this policy and procedure. As used in these policies and procedures, the "AVP of OTIXEO" also includes their designee(s). This role includes, but is not limited to the following:
  - Receiving reports of Policy violations.
  - Implementing Supportive Measures.
  - Facilitating the Complaint Resolution Process.
  - Dismissal of formal complaints that do not rise to the level of policy violations. In these instances, the matter may be referred to another process if it does not meet the definition of Prohibited Conduct.
  - Implementing informal resolutions.
  - Implementing Remedies.
  - Record-keeping
- **Appeal Officer.** The person or panel who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met, and directs responsive action(s), accordingly.
- **Complainant.** A student or employee who is alleged to have been subjected to conduct that could constitute discrimination, harassment, retaliation, or other prohibited conduct under the Policy; or a person other than a student or employee who is alleged to have been subjected to conduct that could constitute discrimination or harassment or under the Policy and who was participating or attempting to participate in WesternU's education program or activity at the time of the alleged discrimination, harassment, retaliation, or other prohibited conduct.
- **Complaint.** A written request to WesternU that can objectively be understood as a Formal request for WesternU to investigate and make a determination about the alleged Policy violation(s).
- **Day.** A business day when WesternU is in normal operation. All references in the Policy to days refer to business days unless specifically noted as calendar days.
- **Decision-maker.** The person or panel who reviews evidence, determines relevance, and makes the Final Determination of whether Policy has been violated.

- **Employee.** A person employed by WesternU either full- or part-time, including student employees when acting within the scope of their employment.
- **Final Determination.** A conclusion by the standard of proof that the alleged conduct did or did not violate Policy.
- **Informal Resolution.** A resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a Final Determination in the Resolution Process.
- **Investigation Report.** The Investigator's summary of all relevant evidence gathered during the investigation. Variations include the Draft Investigation Report and the Final Investigation Report.
- **Investigator.** The person(s) authorized by WesternU to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report.
- **Office of Title IX and Equal Opportunity Compliance Initiatives (OTIXEO).** The WesternU office assigned to receive complaints and facilitate the process outlined under this Policy. The OTIXEO is comprised of an AVP of OTIXEO, a Deputy Civil Rights Officer, and any member of the Resolution Process Pool.
- **Notice.** When an employee, student, or third party informs the AVP of OTIXEO of the alleged occurrence of discriminatory, harassing, retaliatory, and/or other prohibited conduct.
- **Parties.** The Complainant(s) and Respondent(s), collectively.
- **Protected Characteristic.** Any characteristic for which a person is afforded protection against discrimination and harassment by law or WesternU Policy.
- **Relevant Evidence.** Evidence that may aid a Decision-maker in determining whether the alleged discrimination, harassment, retaliation, or other prohibited conduct occurred, or in determining the credibility of the Parties or witnesses.
- **Remedies.** Typically, post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to WesternU's Education Program and Activity.
- **Resolution Process.** The investigation and resolution of allegations of prohibited conduct under this Policy, including Informal Resolution and Formal Administrative Resolution.
- **Respondent.** A person who is alleged to have engaged in conduct that could constitute discrimination based on a protected characteristic, harassment, or retaliation for engaging in a protected activity under this Policy, or other prohibited conduct.

- ***Sanction.*** A consequence imposed on a Respondent who is found to have violated this Policy.
- ***Sanctioning Officer.*** Designated individual who is responsible for determining the appropriate sanction.
- ***Student.*** Any person who has gained admission.

## **APPENDIX B: Advisors in the Resolution Process**

### **A. Who Can Serve as an Advisor?**

The Parties may each have an Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings and interviews within the Resolution Process, including intake. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>9</sup>

WesternU cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not, or cannot afford an attorney, WesternU is not obligated to provide an attorney to advise that party.

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Parties are expected to provide the AVP of OTIXEO with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.

If a party requests that all communication be made through their attorney Advisor instead of to the party, WesternU will agree to copy both the party and their Advisor on all communications.

### **B. Advisor's Role in the Resolution Process**

Advisors should help the Parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

The Parties are expected to ask and respond to questions on their own behalf throughout the Resolution Process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.

### **C. Records Shared with Advisors**

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<sup>9</sup> "Available" means the party cannot insist on an Advisor who simply does not have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being an AVP of OTIXEO who has an active role in the matter, or a supervisor who must monitor and implement sanctions. Additionally, choosing an Advisor who is also a witness in the process creates potential for bias and conflicts of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Decision-maker(s).

Advisors are entitled to the same opportunity as their advisee to access relevant evidence, and/or the same written investigation report that accurately summarizes this evidence.

Advisors are expected to maintain the confidentiality of the records WesternU shares with them, per Section 16 of the Policy addressing Confidentiality. Advisors may not disclose any WesternU work product or evidence WesternU obtained solely through the Resolution Process for any purpose not explicitly authorized by WesternU.

Accordingly, Advisors will be asked to sign Confidentiality Agreements. WesternU may decline to share materials with any Advisor who has not executed the Confidentiality Agreement. WesternU may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by WesternU's confidentiality expectations.

#### **D. Advisor Expectations**

WesternU generally expects an Advisor to adjust their schedule to allow them to attend WesternU meetings/interviews when planned, but WesternU may change scheduled meetings/interviews to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

WesternU may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview by telephone, video conferencing, or other similar technologies.

All Advisors are subject to the same WesternU policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings.

#### **E. Advisor Policy Violations**

Any Advisor who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with WesternU's established rules of decorum, will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview may be ended, or other appropriate measures implemented.