WESTMINSTER COLLEGE

(INTERIM) POLICY ON PREVENTING AND ADDRESSING DISCRIMINATION AND
HARASSMENT BASED ON RACE, COLOR, NATIONAL ORIGIN, RELIGION,
DISABILITY, AND OTHER PROTECTED CATEGORIES

(EQUAL OPPORTUNITY POLICY)

Effective Date: August 19, 2016

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I. STATEMENT OF POLICY

Westminster (“College”) is committed to providing a safe and non-discriminatory environment for all members of the College community. The College will not tolerate discrimination, harassment, or retaliation in the workplace, academic setting, or in its programs or activities based on race, color, national origin, ethnicity, age, disability, religion, veteran status, or genetic information, complicity, false reporting, and retaliation. To that end, this policy prohibits specific forms of behavior that violate Executive Order 11246, Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, as amended, the Genetic Information Nondiscrimination Act of 2008, and the Utah Antidiscrimination Act of 1965.

The College also prohibits sexual assault, sexual and gender-based harassment, gender-based discrimination, sexual exploitation, interpersonal violence, and other conduct that violates Title IX of the Education Amendments of 1972 (“Title IX”) or the College’s obligations under the Violence Against Women Reauthorization Act of 2013 (“VAWA”) and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”). Those categories of prohibited conduct are governed by the College’s Policy on Sexual Assault, Sexual and Gender-Based Harassment, Gender-Based Discrimination, and Interpersonal Violence (“Title IX Policy”), which also establishes separate procedures that outline reporting options and explain how the College assesses, investigates, and resolves reports of such prohibited conduct against students and employees. The Title IX Policy and related procedures supersede any conflicting information contained in this Equal Opportunity Policy or its related procedures with respect to the conduct the Title IX Policy specifically prohibits. Where a complaint alleges conduct that may violate this policy and other conduct that may violate the Title IX Policy, the Title IX coordinator will determine how the reports should be addressed.

II. TO WHOM THIS POLICY APPLIES

This policy applies to all Westminster College students, faculty, staff, and third parties.

III. APPLICABLE PROCEDURES UNDER THIS POLICY

A report may be made to an equal opportunity representative by any present or former employee of the College, student, applicant for admission or employment, or participant in a College program or activity, who believes they have been discriminated against, harassed, or retaliated against in violation of this policy. Any such report must be filed within 300 days of the incident, as described in more detail in the procedures for reports and investigations under this Equal Opportunity Policy, Appendix A.
IV. DEFINITIONS

1. Bias – Bias is an unfair prejudice in favor of or against one thing, person, or group compared with another.

2. College – College refers to Westminster College.

3. Complainant – The student, employee, or third party who files an official complaint with the College requesting that an investigation of prohibited conduct be initiated.

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

5. Conflict of Interest – A conflict of interest occurs where a party has multiple interests, and one of those interests could influence the party’s relationship with another interest. Under this policy, actual or potential conflicts arise when financial, professional, academic, or personal considerations compromise, or have the appearance of compromising, a person’s judgment and ability to perform their duties and responsibilities to act in a fair and impartial manner.

6. Discrimination – Conduct that denies or limits a person’s ability to benefit from or fully participate in educational programs or activities or employment opportunities because of that person's protected characteristics or statuses, excepting any treatment permitted or required by law. Discrimination occurs when the conduct:
   a) adversely affects a term or condition of an employee’s employment, a student’s education, or a third party’s access to College programs or activities; or
   b) is used as the basis for or a factor in decisions affecting an employee’s employment, a student’s education, or a third party’s access to College programs or activities.

7. Employees – College faculty, staff, and student-employees.

8. Equal Opportunity Representative – An individual with assigned duties to represent the College in equal opportunity matters. Contact information for the College’s equal opportunity representatives is below:

   **Jason Schwartz-Johnson**
   Equal Opportunity Officer
   Malouf 107
   jsi@westminstercollege.edu
   (801) 832-2262
9. Faculty – Full-time, part-time, adjunct faculty, and instructors of the College.

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

11. Harassment – Unwelcome conduct directed against a person based on one or more of that person’s protected characteristics or statuses, which conduct has the purpose or effect of (i) unreasonably interfering with an individual’s employment, academic performance or participation in College programs or activities; or (ii) creating a working, learning, program or activity environment that a reasonable person would find intimidating, hostile or offensive.

12. Prohibited Conduct – The College prohibits discrimination and harassment against a person based on protected characteristics or statuses, and complicity, retaliation, and false reporting under this policy.

13. Protected Characteristics or Statuses – Race, color, national origin, ethnicity, age, disability, religion, veteran status, or genetic information.

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

15. Reporting Party – The student, employee, or third party who reports suspected prohibited conduct.

16. Respondent – The student, employee, or third party who has been accused of engaging in prohibited conduct.

17. Responsible Employees – The following employees by designation:
a) All faculty, deans, staff of the office of the dean of students, and senior team members are required to report to the equal opportunity representative all relevant details obtained directly or indirectly about an incident of prohibited conduct under the Equal Opportunity Policy that involves any student as a reporting party, complainant, respondent, or witness.

b) All supervisors, management personnel, and senior team members are required to report to the equal opportunity representative all relevant details obtained directly or indirectly about an incident of prohibited conduct under the Equal Opportunity Policy involving any employee over which they have authority, directly or indirectly, as a reporting party, complainant, respondent, or witness.

18. Retaliation – Retaliation is any adverse action taken against a person for making a good faith report of prohibited conduct or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing, or any other conduct that would discourage a reasonable person from engaging in activity protected under this policy. Retaliation does not include good faith actions lawfully pursued in response to a report of prohibited conduct.

19. Students – Refers to students who are registered or enrolled for credit- or non-credit bearing coursework.

20. Supervisor – As used throughout this policy, supervisor refers to any person who has authority to undertake or recommend tangible employment decisions affecting an employee or academic decisions affecting a student; or to direct an employee’s work activities or a student’s academic activities.

21. Third parties mean contractors, vendors, visitors, or guests of the College.

V. PROHIBITED CONDUCT

The College prohibits discrimination or harassment in the workplace, academic setting, or in its programs or activities based on race, color, national origin, ethnicity, age, disability, religion, veteran status, or genetic information, except where any such treatment is permitted or required by law. The College further prohibits complicity, retaliation, and false reporting.

VI. RESPONSIBILITY OF SUPERVISOR

Supervisors are responsible for:

- knowing and understanding this policy;
- explaining this policy to persons under their supervision;
- taking appropriate action to prevent discrimination and harassment;
- being receptive to concerns and complaints of discrimination and/or harassment; and
- taking appropriate action (in consultation with equal opportunity representative) when they become aware of potential violations of this policy.
Supervisors who do not fully perform their responsibilities under this policy may be subject to disciplinary action up to and including termination.

VII. RESPONSIBILITY TO REPORT PROHIBITED CONDUCT

A. It is the responsibility of every member of the Westminster community to foster an environment free of any form of harassment or discrimination based on race, color, national origin, ethnicity, age, disability, religion, veteran status, or genetic information, as well as retaliation for good faith reporting of prohibited conduct or participation in any investigation or related proceedings. As such, all members of the Westminster community are encouraged to take reasonable and prudent actions to prevent, stop, or report an act of prohibited conduct. The College will support and assist community members who take such actions.

B. In addition, certain College employees designated as responsible employees are required by College policy to report an act of prohibited conduct.

1. Information to be Reported
   Responsible employees must report all known, relevant details of prohibited conduct reported to them, including dates, times, locations, and names of parties and witnesses to the equal opportunity representative.

2. Notice of Responsible Employee Status
   a) All faculty must include in their syllabi each semester a notice approved by the provost stating that they are responsible employees and providing notice of reporting options.
   b) When any person begins to disclose an incident of prohibited conduct, a responsible employee should inform the reporting party of their designation as a responsible employee and inform them of reporting options.

3. Request for Information Not Disclosure
   A request by a student, employee, or third party for information regarding resources, supportive measures, or College procedures, without providing any details about an incident of prohibited conduct, is not a disclosure for purposes of this policy and therefore does not trigger a responsible employee’s reporting obligations.

VIII. RESPONSIBILITY OF COOPERATION AND PARTICIPATION

Employees and Students are required to cooperate and participate fully in any investigation and/or request for information by the investigator.
IX. RESPONSIBLE ADMINISTRATOR – EQUAL OPPORTUNITY ADMINISTRATOR

The Equal Opportunity administrator is responsible for enforcing the Equal Opportunity Policy and its related procedures on behalf of the College.

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

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

XI. DISCIPLINARY SANCTIONS

Violations of this policy may result in sanctions and corrective actions, up to and including termination and/or expulsion.

XII. TRAINING

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

XIII. RELATED POLICIES

A. Title IX Policy on Sexual Assault, Sexual and Gender-Based Harassment, Gender-Based Discrimination, and Interpersonal Violence and accompanying procedures

B. Policy on Consensual Relationships

XIV. HISTORY

Interim policy adopted August 19, 2016

XV. SIGNATURE, TITLE, AND DATE OF APPROVAL

Approved: /s/ Stephen R. Morgan, President

Date Approved: August 19, 2016
# WESTMINSTER COLLEGE

**PROCEDURES FOR REPORTS AND INVESTIGATIONS UNDER THE EQUAL OPPORTUNITY POLICY**

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I. INTRODUCTION

Westminster ("College") is committed to providing a safe and non-discriminatory environment for all members of the College community. The College prohibits discrimination and harassment on the basis of race, color, national origin, ethnicity, age, disability, religion, veteran status, or genetic information, complicity, false reporting, and retaliation (collectively “Prohibited Conduct”).¹ These forms of Prohibited Conduct, which are defined in Section V of the College’s Policy on Preventing and Addressing Discrimination and Harassment Based on Race, Color, National Origin, Religion, Disability, and other Protected Categories (“Equal Opportunity Policy”), are unlawful, undermine the character and purpose of the College, and will not be tolerated.

This appendix identifies the procedures the College follows when it receives a report alleging Prohibited Conduct by an Employee or Student. The College uses these procedures to investigate and adjudicate any such allegations and to impose disciplinary sanctions against Employees or Students found responsible for violating the policy.²

II. RECEIVING A REPORT OF PROHIBITED CONDUCT

The College encourages anyone who experiences or becomes aware of an incident of Prohibited Conduct by an Employee, Student, or Third Party to immediately report the incident to the College. The College’s equal opportunity representatives are responsible to receive reports of Prohibited Conduct, conduct an initial assessment of the report, and determine whether an investigation should be pursued. Contact information for the College’s equal opportunity representatives is below:

**Jason Schwartz-Johnson**  
Equal Opportunity Officer  
Malouf 107  
jsj@westminstercollege.edu  
(801) 832-2262

**Julie Freestone**  
Equal Opportunity Administrator  
Bamberger 106  
jfreestone@westminstercollege.edu  
(801) 832-2573

¹ In addition, The College’s Policy on Sexual Assault, Sexual and Gender-based Harassment, Gender-based Discrimination, and Interpersonal Violence prohibits discrimination or harassment on the basis of sex, gender, gender identity, gender expression, and sexual orientation by Employees.

² These procedures should be read in conjunction with the Equal Opportunity Policy. Capitalized terms used and not otherwise defined in these procedures are defined in the policy.
III. INITIAL ASSESSMENT OF REPORT AND DETERMINATION WHETHER INVESTIGATION PURSUED

A. INITIAL ASSESSMENT

Upon receiving a report of Prohibited Conduct, an equal opportunity representative will assess the allegations to determine whether supportive measures are appropriate. Supportive measures may include, but are not limited to, no contact orders preventing or limiting communication, changes to academic or work schedules, limiting access to facilities or programs, administrative leave, or interim suspension. In making this assessment, the equal opportunity representative will consider the totality of the circumstances, the nature and severity of the allegations, and whether the allegations implicate a potential, ongoing safety threat to the Reporting Party or the College community. The equal opportunity representative will consult with administrators, as appropriate.

B. DETERMINATION REGARDING WHETHER INVESTIGATION PURSUED

1. Request for Investigation

When a Reporting Party requests an investigation in writing, the equal opportunity officer will consider the information provided by the Reporting Party to determine the course of the investigation, including in their discretion, whether the allegations meet the threshold of a policy violation and whether a formal investigation as described in Section IV below will be pursued. The equal opportunity officer will also review whether the report has been timely filed. To be timely, a report must be filed within 300 days of the incident.

2. Request for No Investigation

A Reporting Party may request that no investigation be pursued. The College will seek to honor the Reporting Party’s request, if it is possible to do so, while also protecting the health and safety of the Reporting Party and the College community. Where the equal opportunity officer determines that a Reporting Party’s request(s) cannot be honored, they will take appropriate measures to ensure the privacy and safety of the Reporting Party.
IV. INVESTIGATION

A. INVESTIGATION OF OTHER FORMS OF DISCRIMINATION OR HARASSMENT

If a report of Prohibited Conduct also implicates other conduct prohibited by the Title IX policy, the Title IX coordinator will evaluate all reported allegations to determine whether the alleged Prohibited Conduct and the alleged Title IX policy violation(s) may be appropriately investigated together without unduly delaying the resolution of the report of Prohibited Conduct. Where the Title IX coordinator determines that a single investigation is appropriate, the investigation will be conducted in accordance with the Title IX procedures.

B. ASSIGNMENT OF INVESTIGATOR

After assessing any actual or perceived conflicts of interest and/or bias, the equal opportunity officer will cause a prompt, thorough, fair, and impartial investigation to be conducted.

C. NOTICE OF INVESTIGATION

The equal opportunity officer will notify the Complainant and the Respondent, in writing, of the commencement of an investigation. Such notice will (1) identify the Complainant and the Respondent; (2) specify the dates, times (if known), locations, and nature of the alleged Prohibited Conduct; (3) identify potential policy violation(s); (4) identify the investigator(s); (5) explain the prohibition against retaliation; (6) instruct the parties to preserve any potentially relevant evidence in any format; (7) inform the parties how to challenge participation by the investigator on the basis of bias or conflict of interest; and (8) provide a copy of the policy and these procedures.

D. INVESTIGATION PROCESS

1. Overview

The investigator will conduct a formal interview of the Complainant and the Respondent(s). During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, and to identify witnesses who may have relevant information. The investigator will meet with appropriate witnesses and gather other available evidence, including, but not limited to, electronic records of communications (via voicemail, text message, email, and social media sites), reports, and photographs.

2. Advisors

During the investigation, the Complainant and Respondent have the right to choose and consult with an advisor. The advisor may not be a party or witness involved in the investigation. The parties may be accompanied by their respective advisors at any meeting or proceeding related to the investigation under these procedures. While the
advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings.

3. **Timeframe for Completion of Investigation; Extension for Good Cause**

   Typically, the period from commencement of an investigation through delivery of the letters of determination to the parties will not exceed sixty (60) calendar days. This timeframe may be extended for good cause. The equal opportunity officer will notify the parties in writing of any extension of this timeframe and the reason for such extension.

4. **Findings of Fact**

   The investigation is a neutral fact-gathering process. Following the fact-gathering process, the investigator will make findings of fact after consideration of the evidence, credibility of the witnesses, and any other available information.

5. **Investigation Summary**

   After the investigator has completed the investigation, they will prepare an investigation summary which will include the names and dates of meetings with Complainant, Respondent, and witnesses; a summary of evidence; and a clear and concise statement setting forth their findings of fact. Any relevant documentation will be attached to the investigation summary.

E. **DETERMINATION OF POLICY VIOLATION**

   Based on the findings of fact and any related evidence, the equal opportunity officer will make determinations of policy violations. Using the preponderance of evidence standard, the equal opportunity officer will determine whether it is more likely than not that the Respondent engaged in Prohibited Conduct in violation of the policy.

F. **DETERMINATION OF SANCTIONS**

   1. **Determination of Sanctions**

      In the event the equal opportunity officer determines by a preponderance of the evidence that the Respondent engaged in Prohibited Conduct in violation of the policy, they will determine appropriate sanctions. In determining appropriate sanctions for faculty, the equal opportunity officer will consult with the president, the provost, and the appropriate school dean, as further described in the faculty manual. In determining appropriate sanctions for staff and student employees, the equal opportunity officer will consult with the executive director of human resources.

      The equal opportunity officer will consider the following factors in determining appropriate sanctions:
• The severity, persistence, or pervasiveness of the Prohibited Conduct;
• Whether the Prohibited Conduct is violent in nature;
• The impact or implications of the Prohibited Conduct within the College community with reference to the maintenance of a safe, nondiscriminatory and respectful environment conducive to learning and working;
• Prior misconduct by the Respondent known to the College, as determined by the Respondent’s relevant prior disciplinary history at the College or elsewhere;
• The sanctions that have been levied for similar Prohibited Conduct under similar circumstances in the past; and
• Any other mitigating, aggravating, or compelling factors.

Violations of the policy may result in sanctions and corrective actions, up to and including expulsion or termination of employment.

G. NOTICE OF DETERMINATION

The equal opportunity officer will provide letters of determination to Complainant and Respondent that will state whether the Respondent is responsible or not responsible for any policy violations, sanctions that will be imposed as appropriate to each party, and the procedures for appealing the determination.

V. APPEAL OF DETERMINATION

A. GENERAL PROCEDURES

1. Grounds

Within five school days of receiving the determination letter, the Complainant or the Respondent may appeal the determination in writing. The grounds for appeal are the following:

• *Procedural Error* – The investigation was not conducted in accordance with these procedures and this resulted in substantial error in the determination of whether there was a policy violation.
• *Bias* – The equal opportunity officer conducted the investigation or reached a determination in a biased or partial manner.
• *New Evidence* – There is evidence which was available at the time of the determination, but unknown to the equal opportunity officer, and not in the possession of the party providing the new evidence that would substantially affect the determination.

2. Appealing Party

To appeal a determination, the appealing party must submit to the equal opportunity administrator a written statement citing the grounds for appeal and providing an explanation of their position.
3. **Equal Opportunity Administrator Duties Regarding Appeal**

Upon receipt of a notice of appeal, the equal opportunity administrator will:
- inform the party who has not appealed, in writing, of the appeal;
- appoint a panel of three trained staff or faculty members, without conflicts of interest, to serve as members of the appeal panel;
- provide the appeal panel the investigator’s interview notes; the investigation summary, including any documentary evidence; and the determination letters.

4. **Appeal Panel**

Within ten (10) school days of their appointment, the appeal panel will meet at a mutually agreeable time to consider the information provided to them and to determine whether the determination should be upheld. The appeal panel has the discretion to speak to the Complainant, Respondent, witnesses, investigators, or equal opportunity officer in reaching its conclusion but is not required to do so. The appeal panel will not review any other written evidence or documentation besides that provided by the equal opportunity administrator.

B. **DECISION OF APPEAL PANEL; NO FURTHER APPEALS**

1. **Affirmation of Determination**

   If the appeal panel determines by a majority vote that there was neither bias nor failure of process, it will affirm the determination and submit its affirmation letter to the equal opportunity administrator. The determination will be final and not subject to further appeal. The equal opportunity administrator will provide the affirmation letter to the parties within five school days.

2. **Procedural Error**

   If the appeal panel decides by a majority vote that the investigation was not conducted in accordance with these procedures, it will submit a letter to the equal opportunity administrator setting forth specific procedural error(s). The equal opportunity administrator will re-open the investigation and re-examine the evidence in light of the identified procedural error(s) and provide a revised investigation summary, if appropriate. The equal opportunity administrator may assign new investigators to examine the evidence if appropriate under the circumstances. The equal opportunity administrator will issue new determination letters and the determination may be appealed in accordance with these procedures by the party who did not file the original appeal.

3. **Bias**

   - **Bias in Investigation** – If the appeal panel decides by a majority vote that the investigation was conducted in a biased or partial manner, it will submit a letter to
the equal opportunity administrator setting forth the specific ways in which the investigation was biased or partial. The equal opportunity administrator will take such action as necessary to correct the bias or partiality, which may include assigning a new investigator(s) and/or re-opening the investigation. Once any additional fact finding is complete and a revised investigation summary is received, if appropriate, the equal opportunity administrator will issue a new determination letter and the determination may be appealed in accordance with these procedures.

- **Bias in Determination** – If the appeal panel decides by a majority vote that the equal opportunity officer was biased or partial in reaching the determination, it will submit a letter to the equal opportunity administrator setting forth the specific ways in which, in its opinion, the determination was biased or partial and requesting a review of the determination. The equal opportunity administrator will review all documentation provided to the appeal panel and issue a new determination letter and the determination may be appealed in accordance with these procedures.

4. **No Further Appeal**

There is no right of appeal beyond the appeal panel. Any concerns with the adequacy of an investigation can be addressed to the Department of Education, Office for Civil Rights, at OCR@ed.gov or (800) 421-3481; or the Equal Employment Opportunity Commission, at info@eeoc.gov or (800) 669-4000, as appropriate.

VI. **CLOSURE OF INVESTIGATION**

A. **NOTICE OF CLOSURE**

1. **Notice to Parties**

Within five (5) school days of the parties’ receipt of the determination letters or at the conclusion of the appeal process, the equal opportunity officer or equal opportunity administrator, as applicable, will provide the Complainant, Respondent, Reporting Party, and witnesses written notification that the investigation has been closed and that retaliation is Prohibited Conduct.

2. **Notice to Provost**

In the event that the Respondent is a faculty member, at the conclusion of the investigation (including the appeal process), the equal opportunity officer or equal opportunity administrator, as applicable, will provide the provost a copy of the Respondent’s determination letter and a written notification that the investigation has been closed.
3. **Notice to Dean of Students**

In the event that the Respondent is a student, at the conclusion of the investigation (including the appeal process), the equal opportunity officer or equal opportunity administrator, as applicable, will provide the Dean of Students a copy of the Respondent’s determination letter and a written notification that the investigation has been closed.

4. **Notice to Executive Director of Human Resources**

In the event that the Respondent is staff, at the conclusion of the investigation (including the appeal process), the equal opportunity officer or equal opportunity administrator, as applicable, will provide the Executive Director of Human Resources a copy of the Respondent’s determination letter and a written notification that the investigation has been closed.

**B. RECORDS RETENTION**

The College will retain all records relating to a report of Prohibited Conduct, including investigation files and personnel record documentation of disciplinary or other personnel actions, in accordance with appropriate College policy.