

3.3.1 Policy on Harassment

3.3.1 Policy on Harassment and Discrimination

Westminster College expects all members of its community to treat each other with respect and dignity. Westminster College seeks to create and maintain an academic, social and work environment in which all members of the community—students, staff, administrators, and faculty—are free from harassment and discrimination. Westminster College prohibits harassment and discrimination on its campus, as well as at, or on, any college sponsored activities and trips, of any of its community members or guests and visitors based on an individual's race, color, national or ethnic origin, religion, age, sex, gender, sexual orientation, marital status, veteran status, disability, or any other proscribed category set forth in federal or state regulations.

Harassment and/or discrimination subvert the mission of the college and threaten the careers, educational experiences and well being of its students, staff, administrators and faculty. Each member of the Westminster community has the right to work, study and/or socialize in an environment that is free from harassment or discrimination. Each member of the Westminster community, therefore, has the corresponding responsibility and obligation to conduct himself or herself so as to create an environment that is free of harassment or discrimination. This includes the acts of supervisors, managers, faculty, employee subordinates and peers, fellow students, guests, visitors, vendors, consultants, and customers. In addition to being responsible for their own conduct, supervisors and managers must ensure that their employees contribute to a work environment that is free of harassment and discrimination.

By issuing a clear policy to members of the Westminster community and by alerting, as well, those non-community members, such as vendors, consultants, and customers, with whom it has a relationship, Westminster College reaffirms its commitment not to tolerate any form of harassment or discrimination on its campus, at campus sponsored events, activities, or trips.

3.3.1.1 Definition – Harassment

Harassment comes in many forms. Speech and conduct that are protected by academic freedom as described in 3.3.1.1.C do not constitute harassment. Yet the following forms of speech and conduct not protected by academic freedom are prohibited forms of harassment.

- A. Sexual harassment includes but is not limited to unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct of a sexual nature:
 - 1. when submission to that conduct or communication is made either explicitly or implicitly a term or condition of employment, advancement or education;
 - or

2. when submission to or rejection of such conduct has the purpose or effect of interfering unreasonably with an individual's academic, professional or employment performance; or
 3. that creates an intimidating, hostile, or offensive academic, social or work environment.
- B. Other prohibited harassment may include, but is not limited to:
1. epithets, slurs, derogatory comments or jokes, intimidation, negative stereotyping, threats, assault or any physical interference with a Westminster community member's normal work or movement because of an individual's race, color, national or ethnic origin, religion, age, sex, gender, sexual orientation, marital status, veteran status, disability, or any other proscribed category set forth in federal or state regulations.
 2. written or graphic material placed on walls, bulletin boards or elsewhere on the campus or circulated by other means, including electronic media, that denigrates, shows hostility to, or aversion towards an individual or group because of an individual's race, color, national or ethnic origin, religion, age, sex, gender, sexual orientation, marital status, veteran status, disability, or any other proscribed category set forth in federal or state regulations.
- C. Westminster College is committed to the principles of free inquiry and free expression. Vigorous discussion and debate are fundamental to the College. All ideas, including those that may be offensive to some, may be discussed in the classroom provided that the discussion is a reasoned one with a clear academic purpose. Harassment, however, is neither legally protected expression nor the proper exercise of academic freedom; it compromises the integrity of the College, its tradition of intellectual freedom and the trust placed in its members.

3.3.1.1

Definition – Discrimination

Discrimination also comes in many forms. Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against employees or applicants on the basis of race, color, national origin, religion or sex. The Equal Employment Opportunity Commission (EEOC) was created to enforce these provisions. Other laws support Title VII in specific areas, to include:

- A. Americans with Disabilities Act (ADA). The ADA protects qualified individuals with a disability from discrimination in regard to job application procedures, hiring, promotion, termination, compensation, job training, and other terms and conditions of employment. To ensure this, the ADA requires equal opportunity and reasonable accommodation (see the college's policy on Equal Access for details).
- B. Age Discrimination in Employment Act (ADEA). The ADEA prohibits employers from discriminating against workers who are 40 years or older. The purpose of the act is to promote the employment of older workers based on their ability rather than their age, to prohibit arbitrary age discrimination

in employment, and to help employers and workers find ways of resolving problems arising from the impact of age on employment.

- C. Civil Rights Act of 1991 (CRA). The Civil Rights Act of 1991 amends Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the ADA, and the ADEA. The CRA of 1991 provides increased damages and jury trials in cases of intentional race, religious, sex, national origin, age, and disability discrimination.
- D. Equal Pay Act of 1963 (EPA). The EPA and Title VII prohibit gender-based differences in pay. The EPA prohibits differentials in pay that are based primarily on gender. Employers covered by the EPA must ensure that male and female employees are paid equal wages for performing substantially equal jobs.
- E. Immigration Reform and Control Act (IRCA). IRCA prohibits employers from knowingly hiring, recruiting, referring, or continuing the employment of aliens who are not authorized to work in the United States because they have entered the country illegally or their immigration status does not permit employment. At the same time, IRCA prohibits discrimination based on national origin and citizenship status.
- F. Pregnancy Discrimination Act (PDA). The PDA amends Title VII to prohibit an employer from treating pregnancy, childbirth, or related medical conditions any differently than it treats other temporary disabilities for purposes of employment, including hiring, firing, promotion, leaves of absence, benefits, pay increases, and other terms and conditions of employment. The PDA does not require employers to treat pregnant employees in any special manner with respect to employment-related matters, to establish any new programs where none currently exists, or to provide pregnancy-related disability leave to any employee.
- G. Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). USERRA was signed into law on Oct. 13, 1994, to replace and strengthen the Veterans' Reemployment Rights Act (VRRRA). Under USERRA, employers are prohibited from discriminating against employees in regards to firing, promotion, training, or any other employment benefits or advantages for the employees' past, present, or future participation in uniformed services.

3.3.1.2 Investigation

It is the college's policy to investigate all complaints in a fair, thorough, and prompt manner. It is important to remember that many instances of harassment or discrimination can be resolved through informal discussions, which do not require extensive procedures. Every effort will be made to eliminate harassment and discrimination from the college campus through these informal means.

However, if informal efforts are not successful, a complete formal investigation will be conducted. To the fullest extent possible, the college will keep complaints, any information obtained during the course of the investigation and

the terms of the resolution confidential from individuals who do not have a “need to know.” However, the demands of an investigation and the enforcement of the policy preclude any guarantee of confidentiality. The Westminster College member making the claim, as well as the individual accused of the harassment or discrimination, will be given a copy of the Westminster harassment and discrimination policy and procedures.

3.3.1.3 Resolution

Any Westminster community member found in violation of the harassment and discrimination policy on campus or at campus sponsored events, activities, or trips will be subject to disciplinary procedures, up to and including termination of employment or dismissal from the college. Disciplinary action is not limited to the individual committing the harassment or discrimination. It could also apply to that person’s supervisor and/or manager if he or she supported the harassment or discrimination, knew of the harassment or discrimination, or reasonably should have known of the harassment or discrimination and failed to take corrective action.

Disciplinary action will also be taken against any individual threatening or making reprisals against another person because that person rejected sexual harassment or reported any form of harassment or discrimination, or participated in an investigation. Upon completion of the investigation, the Director of Human Resources will present the findings and a recommendation to the appropriate cabinet member(s), i.e., VP of Business and Finance for staff, Dean of Faculty/VP of the College for faculty, and Dean of Student Life for students. If the results of the investigation confirm the offense, immediate disciplinary action, up to and including termination of employment or expulsion, will be taken. If the results do not confirm the offense, this information will be shared with the person initially bringing the complaint and the alleged offender. Either party can appeal to the President.

3.3.1.4 Posting of Harassment and Discrimination Policy

This policy will be inserted into the Faculty Handbook, the Staff Handbook, and the Student Life Handbook. The Dean of Student Life will also distribute copies each year to the president/head of each campus living unit. It will also be posted on the electronic bulletin board and college web site.

3.3.2 Procedures for Addressing Harassment and Discrimination Complaints

Prevention is the first and best tool to eliminate harassment and discrimination. However, any person who believes he is being harassed or discriminated against, or any member of the Westminster community who witnesses an incident of harassment or discrimination, should make a report to the Director of Human Resources, located in the Business Office of Westminster Hall, room 106, or at ext. 5226, the Dean of Faculty, in the Academic Office located on the main floor of Westminster Hall, room 127, or at ext. 5212, or other college personnel who have been trained to handle such complaints, to include the:

- Associate Dean of Faculty

- Dean of Student Life
- Chair of the Professional Standards Committee.

If there are fewer than two members of one gender represented in this group, the President will appoint members from the staff and/or faculty to ensure that at least two members of each gender are represented by this group and available to handle harassment or discrimination complaints. The Director of Counseling and Chaplain may also be a good source to discuss concerns, although neither is considered a first point-of-contact for the purposes of this policy because of their inherent role and client privilege.

There are several informal avenues, as well as a formal investigation, available to reach a satisfactory resolution of harassment or discrimination. Informal procedures are recommended as the first option for reaching a resolution but these informal procedures are *not* a prerequisite to a formal complaint and investigation. Every effort will be made to insure confidentiality, but because of the demands of an investigation and the enforcement of the policy, confidentiality cannot be guaranteed.

Immediate reporting of harassment or discrimination is important in reaching a prompt and equitable resolution. The college encourages all members of the Westminster College community to report any complaint in a timely manner and exhaust all internal remedies first before seeking assistance outside of the college. We can only help if we know there is a problem.

Individuals may always pursue complaints directly with the government agencies that deal with unlawful harassment and discrimination claims, e.g., the US Equal Employment Opportunity Commission (EEOC), the Office for Civil Rights (OCR) of the U.S. Department of Education, and the State of Missouri Department of Fair Employment and Housing (DFEH). These agencies are listed in the Government section of the telephone book.

While the College encourages individuals who believe they are being harassed or discriminated against to firmly and promptly notify the offender that his or her behavior is unwelcome, the College also recognizes that power and status disparities between an alleged harasser and a target may make such a confrontation difficult. In the event that such informal, direct communication between individuals is either ineffective or undesirable, the following steps should be followed in reporting a harassment or discrimination complaint.

- A. *Informal Reporting of the Incident.* All members of the Westminster College community, its employees, students, guests, visitors, vendors, consultants, and customers are urged to report any suspected harassment or discrimination to the following college personnel who have been trained to handle such complaints, to include the:
- Director of Human Resources,
 - Dean of Faculty
 - Associate Dean of Faculty
 - Dean of Student Life
 - Chair of the Professional Standards Committee

The report may initially be made orally or in writing. However, reports made orally will be submitted in writing before a formal investigation can be initiated. The college has a “Harassment/Discrimination Incident Form” that will be used to insure that all vital information is reported.

Once an allegation of harassment or discrimination has been made to one of the contact persons, that individual will discuss with the complainant the three informal options discussed below.

1. *Direct Communication.* An individual may act on concerns about harassment or discrimination directly, by addressing the other party in person or by letter, describing the unwelcome behavior or action and its effect, and stating that the behavior or action must stop.
2. *Consultation or Advising.* Consultation or advising about harassment or discrimination is available from the Director of Human Resources, the Dean of Faculty, or others as named above, dependent on suitability to the complainant and availability. The initial contact person need not necessarily be the consultant or advisor. Since consultation or advising is intended to provide a forum for free and open discussion between the complainant and one of the contact persons, no record will be kept of the advising conversation other than an incident report. This report, used only to keep a yearly record of the number of different types of reported incidents, will be transmitted by the contact person to the Director of Human Resources. Every attempt will be made to protect the privacy of the individuals involved in these consultations about harassment or discrimination.
3. *Mediation Option.* The goal of this option is to provide a forum where the complainant and the accused can, with the aid of a mediator, come to a mutually agreed upon resolution. Mediation will occur only if both the complainant and the accused are willing to participate in the process and can agree upon the selection of a trained mediator. One of the college contact persons noted earlier may assist in completing these arrangements.

The mediator, once selected, will meet separately and privately with only the complainant and the accused, will try to clarify their perceptions and attempt to develop a mutually acceptable understanding that can insure the parties are comfortable with their future interactions. Possible outcomes of mediation include explicit agreements about future conduct, changes in workplace assignments, substitution of one class for another, or other relief the mediator and the parties agree is appropriate. Both the complainant and the accused have the right to reject any proposed solution under the mediation option.

Should mediation lead to a mutually acceptable resolution by the complainant and the accused, the mediator will prepare a summary report, agreed to by both parties, that outlines the charges and the resolution. That report will be placed in the accused closed personnel

file, kept separately from the accused's official personnel file. (Applies only to faculty.)

The college reserves the right to conduct an investigation as needed.

- B. *Formal Investigation of the Complaint.* If the complainant does not pursue the informal options, or if the informal procedures result in no mutually acceptable resolution, the aggrieved party(ies) may submit a written request for a formal investigation to the Director of Human Resources or the Dean of Faculty. Complaints of harassment and/or discrimination must be brought in a timely manner. Both college officials have available a "Harassment/Discrimination Incident Report" form. The Dean of Faculty will forward any reports to the Director of Human Resources in order to begin the formal investigation.

The Director of Human Resources, upon receipt of a formal harassment or discrimination complaint, will within a reasonable period present the accused a written copy of the complaint and will provide both the accused and the complainant a copy of relevant campus policies and procedures relevant to allegations of harassment or discrimination.

While the complainant and the accused have the right to consult legal counsel, they may be accompanied during the process by only one individual from within the Westminster College Community. The purpose of the investigation is to ascertain the truth behind the allegations of harassment or discrimination.

The Director of Human Resources will perform a prompt investigation of the formal complaint. The investigation will be conducted in a way that respects, to the extent possible, the privacy of all of the persons involved. Upon the recommendation of the Director of Human Resources, the President of the College may retain professional investigators to assist in the investigation.

The task of the investigation is to determine the facts. The designated investigator will interview all persons, including the complainant and the accused, who can provide relevant information about the alleged conduct. The need for confidentiality must be expressed to each interviewee. The objective of each interview is to gather and document detailed facts about what was said, what was done, when and where the conduct occurred, and what each believes was the inappropriate behavior or activity. The investigator will also search thoroughly for corroborative evidence of any nature. All members of the Westminster community are obligated to cooperate fully with the investigator(s). This includes testimony by relevant witnesses and the production of records or other forms of evidence that might lead to a fair resolution of the issues involved.

Depending on the circumstances surrounding the complaint, the parties involved, and the parties' request(s) regarding confidentiality, the parties may be given access to evidence collected in the investigation. Confidentiality of the complaint will be maintained to the extent the college finds it practicable. In no case will the investigator(s) consider statements

against the accused unless the accused has heard or been given a copy of the statements, and unless the accused has been given an opportunity to refute any unfavorable inferences which might otherwise be drawn. As in the mediation phase, the College will keep complaints, any information obtained during the course of the investigation and the terms of resolution confidential from individuals who do not have a “need to know.”

Members of the Westminster College community must cooperate during both informal reporting and formal investigations of harassment and discrimination complaints. Failure to cooperate will be grounds for disciplinary action.

False statements made by a member of the Westminster College community during either the informal reporting or the formal investigation of a harassment or discrimination complaint will be grounds for disciplinary action.

Federal law and college policy prohibit retaliation against any member of the college community for bringing complaints of harassment or discrimination of any kind to the attention of college officials. Disciplinary action will be taken against any individual threatening or making reprisals against another person because that person rejected sexual harassment or reported any form of harassment or discrimination, or participated in an investigation.

- C. *Resolution Procedure.* Based on the factual information gathered, the investigator determines whether the conduct or activity complained of constitutes any of the categories of harassment or discrimination based on an individual’s race, color, national or ethnic origin, religion, age, sex, gender, sexual orientation, marital status, veteran status, disability, or any other proscribed category set forth in federal or state regulations. The investigator will make a recommendation to the appropriate cabinet member(s) who will determine corrective action. The investigator may also recommend that the complaint should be rejected as clearly unfounded.

Whatever the outcome, both parties will be given a summary report advising them of the disposition of the matter. A report of a justified complaint will be placed in the accused’s official personnel file. No records will be retained in individual personnel files in cases where the individual accused was not informed that there was a complaint or was exonerated.

The Director of Human Resources will track reports of harassment and discrimination for statistical purposes and report at least annually to the Cabinet concerning their number, nature, and disposition.

- D. *Appeal or Grievance and Disciplinary Procedures.* If either the complainant or the accused believe that the initial investigation failed to follow the above procedures, was biased, or if new evidence is found, an appeal, or grievance, may be made to the President of the College. **(Note: Faculty, see Section E below.)** An appeal can be made by submitting a written request to the President within thirty (30) calendar days of notification of the final

investigative report. If the President is involved, the appeal can be made to the Chairman of the Westminster Board of Trustees.

If, after an initial review of the appeal, the President judges that the procedures described in subsection 3.3.2 above were not followed, or that the investigation and/or decisions based on the investigation were biased, discriminatory, capricious, or arbitrary, or that new evidence has been brought forward which might alter the final decision, the President may decide to review the case. The President may interview both the complainant and the accused, as well as any witnesses.

If the reason for reconsideration is new evidence, the President may refer the case to the investigator and appropriate cabinet member(s) for consideration.

While the accused has the right to consult legal counsel, he/she may be accompanied during the appeal process by only one individual from within the Westminster College Community. Upon a determination that the appeal is justified, the President will recommend that appropriate corrective action be taken. After reviewing the appeal, the President may also decide that the appeal should be rejected as clearly unfounded.

Results and findings of the appeals process will be clearly stated and substantiated by evidence. After the appeal process is complete, the Director of Human Resources or the Dean of Faculty and VP of the College, with the assistance of President, will send a written report of the appeal findings to both parties. A report of a justified appeal will be placed in the accused's official personnel file. The results and findings may form the basis for disciplinary action.

Any Westminster community member found in violation of the college's harassment and discrimination policy will be subject to disciplinary procedures, up to and including termination of employment or expulsion from the college. Disciplinary action is not limited to the individual committing the harassment or discrimination. It could also apply to that person's supervisor and/or manager if he or she supported the harassment or discrimination, knew of the harassment or discrimination, or reasonably should have known of the harassment or discrimination and failed to take corrective action.

E. Process for Faculty. If the accused party is a faculty member the procedures outlined in section 2.8.5 of the Faculty Handbook will be followed.

If, in accordance with 2.8.5.2.1, the faculty member does contest the allegations but does not provide information sufficiently compelling for the Dean of Faculty to conclude that no violation occurred, or if the faculty member does not correct the problem(s) within a time period stated, or if the faculty member contests the degree of punishment, the Professional Standards Committee will investigate following the procedures described in Appendix G. The Director of Human Resources will provide a copy of the complete file to the Professional Standards Committee. The committee, in

executive session (members only), will meet with each witness named in that file solely to determine whether they are willing at this stage to reveal their identity during a formal PSC hearing. Testimony, obtained during the Director of Human Resources' investigation phase, of witnesses who do not wish to reveal their identity to the accused during a formal PSC hearing will not be considered by the PSC in its deliberations.

3.3.3 Consensual Relationships

Westminster College strongly discourages faculty members from engaging in a sexual or romantic relationship with a Westminster College student, or staff members in supervisory positions from engaging in sexual or romantic relationships with subordinates in a *direct reporting relationship*, unless married to the student or subordinate. Because of the potential for abuse of power, harassment, bias, and favoritism, the college considers that a conflict could exist when any faculty member or supervisor, as described above, engages in a relationship with a student or subordinate that goes beyond friendship to the romantic or sexual.

However, the school understands the impracticability of enforcing a “no dating” policy and is sensitive to issues of privacy. Therefore, although discouraged, if a relationship does exist, we encourage voluntary compliance with reporting and disclosure of relationships, to include voluntary reporting and disclosure when the relationship ends, to the Dean of Faculty or the Director of Human Resources. A voluntary reporting policy allows the college to work with employees to establish guidelines for appropriate conduct, and avoids the embarrassment of prying into employee’s intimate affairs that a “no dating” policy can require.

While consensual relationships are not prohibited, we expect employees involved in a workplace relationship to conduct themselves professionally at work, and to leave their private affairs at home. We encourage employees to think ahead as to how they will handle their jobs if the relationship terminates. Dating and consensual dating relationships can lead to sexual harassment, even though the relationship began as consensual.