

**Office of Equity Protocol for Addressing Reports
of Protected Class Status-Based
Discrimination, Harassment, Intimidation and Retaliation**

I. Introduction

Case Western Reserve University (CWRU) is committed to addressing concerns about and allegations of discrimination, harassment, intimidation and retaliation in accordance with the CWRU [Policy Against Discrimination, Harassment, Intimidation and Retaliation](#) (*Policy*).

The *Policy* and these protocols apply to everyone in the CWRU community, including all students, all employees (including but not limited to faculty, staff and postdoctoral scholars and fellows), volunteers, visitors and other individuals participating in a university activity, educational or employment opportunity or program. The *Policy* covers conduct that occurs on university property, off-campus during a university activity, or off-campus outside of a university activity when the conduct creates or contributes to a hostile environment for students, employees, visitors or other individuals participating in a university activity.

The Office of Equity is responsible for implementing this Protocol (the “Protocol”) when responding to and/or investigating reports of discrimination, harassment, intimidation and retaliation. During the response to and/or investigation of a report of discrimination, harassment and retaliation, and depending on the person(s) impacted by the alleged discrimination, harassment, intimidation and/or retaliation, the Office of Equity will work with other offices as appropriate, including, but not limited to, the following:

- the Division of Student Affairs,
- the Office of the Dean of Students,
- the Department of Human Resources,
- the Office of the Provost,
- the Office of the President, and
- Department of Public Safety.

Concerns about discrimination and harassment based on gender, sexual orientation, gender identity or expression, or a person’s status as a woman or man, transgender, intersex person, or gender-nonconforming individual, or based on a student’s pregnancy or parental status, that fall within the jurisdiction of the CWRU [Policy Against Sex Discrimination](#), are investigated and addressed pursuant to that policy and its procedures. Concerns about sexual harassment in the form of sexual violence, including sexual assault, sexual exploitation, dating and domestic violence and stalking, are also addressed pursuant to the procedures in the CWRU [Policy Against Sex Discrimination](#). Concerns related to research misconduct, or other student, staff, or faculty misconduct may be addressed under other university policies, including but not limited to the CWRU Research Misconduct Policy, the Student Code of Conduct, the CWRU Faculty Handbook, or CWRU Human Resources policies.

The Office of Equity may follow this Protocol when responding to or investigating a report that a No Contact Directive, *Persona Non Grata* or Emergency Removal issued by the Office of Equity was violated by a person subject to it.

II. Definitions

- A. *Complainant(s)* - A member of the CWRU community who experienced the conduct that is or may be investigated pursuant to this Protocol.
- B. *Complaint* – A report to or received by the Office of Equity that (1) a member of the CWRU community has engaged in one or more violations of the *Policy*, which is accompanied by (2) a request for an investigation; or (3) about which the Office of Equity determines an investigation is necessary to protect members of the CWRU community from protected class status-based discrimination, harassment, intimidation and/or retaliation or to uphold CWRU's *Policy*.
- C. *Discrimination* – “Discrimination” is negative or adverse treatment of an individual based on any of the classifications listed below in the definition for “protected class status” or other legally protected status.
- D. *Harassment* - Harassment is unwelcome verbal, non-verbal, graphic, physical, electronic or other conduct that subjects an individual to an intimidating, hostile or objectively offensive educational or employment environment, is based on one or more of the characteristics listed below in the definition for “protected class status”, and which: (a) Denigrates, insults, ridicules, disparages or stereotypes an individual or an individual's conduct, family, friends, habits or lifestyle; and (b) Is sufficiently severe, persistent or pervasive and objectively offensive that it unreasonably limits or interferes with the individual's ability to participate in or benefit from the university's programs or activities or an employee's work performance. Petty slights, annoyances, and isolated incidents (unless extremely serious) generally do not implicate this policy.
- E. *Investigator* - A person designated by the Office of Equity to investigate a complaint of discrimination, harassment, intimidation and/or retaliation. A designee of the Office of the Provost, the Office of the President, the Department of Human Resources, the Division of Student Affairs and/or the Office of the Dean of Students, or other appropriate university office, may participate in the investigation of a complaint by the investigator.
- F. *Preponderance of the Evidence* - The standard of proof used to determine if the evidence learned in an investigation establishes a violation of the *Policy*. To meet the preponderance of the evidence standard, the evidence presented must establish for a reasonable person that it is more likely than not that a violation of the *Policy* occurred.
- G. *Protocol* - The Office of Equity's *Protocol for Addressing Reports of Protected Class Status-Based Discrimination, Harassment, Intimidation and Retaliation* set forth in this document.
- H. *Policy* - CWRU's *Policy Against Discrimination, Harassment, Intimidation and Retaliation*.
- I. *Protected class status* – A person's identity with a particular group based on race, sex or gender (including gender expression or identity, transgender or intersex status, sexual

orientation and sexual harassment not covered by the CWRU policy against sex discrimination), pregnancy, religion, color, age, national or ethnic origin, veteran and/or military status, genetic information, disability, marital status or parental status, participation in protected activity (retaliation), and/or any other status protected by state or federal law, rule or regulation.

- J. *Respondent(s)* - A member of the CWRU community who is alleged to have violated the [Policy Against Discrimination, Harassment, Intimidation and Retaliation](#) and whose conduct is or may be investigated under this Protocol. A student organization or CWRU unit (for example, a college, program or committee, office or department) may also be a "Respondent."
- K. *Retaliation* - Any overt or covert act of reprisal, interference, restraint, penalty, discrimination, intimidation or harassment, against any person or group for exercising any rights under the *Policy* as described above. The Office of Equity may investigate as retaliation a report that a student organization conducted an internal investigation of whether a member of the student organization engaged in discrimination, harassment and/or intimidation, reached a conclusion that a member of the student organization engaged or did not engage in discrimination, harassment and/or intimidation, or determined that a member of the student organization experienced or did not experience discrimination, harassment and/or intimidation.

III. General Provisions

- A. Any person reporting, experiencing, or being accused of protected class status-based discrimination, harassment, intimidation and/or retaliation, may have a support person present during all proceedings pursuant to this Protocol to provide advice and support. A support person may not speak for the individual being supported or otherwise participate in the investigation process.
- B. Other than an individual who has reported or experienced discrimination, harassment, intimidation and/or retaliation, or the person who is accused of engaging in that conduct, all employees, students and other members of the CWRU community must cooperate with this Protocol, including providing information when requested to do so. CWRU community members required to cooperate, but fail to do so, may be subject to disciplinary action pursuant to this Protocol, the Student Code of Conduct, HR policies, or the CWRU Faculty Handbook.
- C. A person who reports or has experienced discrimination, harassment, intimidation and/or retaliation, or a person who is accused of engaging in that conduct, is not required to participate in the investigation process described in this Protocol. The investigation process, however, will not cease because a person does not participate in this process. Instead, the investigation will proceed without the information that person could have provided. This may result in an outcome based solely on information made available during the investigation by others. In addition, a person who declines to provide information during the investigation cannot provide that information after the Investigation Report is issued. A person who declines to provide information during the investigation cannot appeal pursuant to this Protocol on the grounds that there is new information available that was not previously available during the investigation.

- D. When warranted by the circumstances, the Vice President – Equity in the Office of Equity, or designee has authority to reasonably extend any of the time limits contained in this Protocol.
- E. Conflict of interest: Concerns about conflicts of interest or bias of the investigator must be raised with the Vice President – Equity or designee within three (3) working days of the discovery of the possible conflict. The Vice President - Equity or designee will have five (5) working days to determine whether a conflict exists and recommend appropriate action. If the concern is about the conflict of interest or bias of the Vice President – Equity, the determination about whether a conflict of interest or bias exists will be made by the Vice President for Student Affairs in student matters, the Vice President of Human Resources in staff matters, and the Provost in faculty or postdoctoral fellow or scholar matters, or a designee.

IV. Privacy and Confidentiality

- A. Reports of discrimination, harassment, intimidation and/or retaliation are treated as confidentially as possible. The Office of Equity shares information about a report or investigation with individuals who need to know that information to fulfill CWRU's obligation to investigate, keep the campus safe, maintain an environment conducive to student and employee academic and/or professional success, comply with external grant reporting requirements, or as required by law.
- B. Reports of discrimination, harassment, intimidation and/or retaliation will be shared as necessary so that support may be provided to persons impacted by the reported conduct.
- C. A person who has reported or experienced discrimination, harassment, intimidation and/or retaliation, or who is accused of engaging in such conduct, may share information relating to that report or investigation with people who provide them advice, support and/or assistance to the extent necessary to enable these individuals to provide effective advice, assistance and/or support.
- D. CWRU will comply with requests or subpoenas for records related to a Complaint or investigation as required by law.

V. Interim Measures

- A. Upon learning that CWRU community member may be experiencing discrimination, harassment, intimidation and/or retaliation, the Office of Equity will take measures to support the individual and others impacted by that conduct, including any person experiencing the conduct and any person accused of engaging in that conduct. This support is non-disciplinary, non-punitive and may include issuance of No Contact Directives and collaboration with the appropriate CWRU administrators to make reasonable adjustments to the workplace, educational environment, academic arrangements and/or campus living arrangements, among others. When the person reported to have engaged in discrimination, harassment, intimidation and/or retaliation is not affiliated with CWRU, a No Contact Directive, Persona Non Grata order or interim action may include a prohibition barring that person from campus. The Office of Equity will inform and work with the Office of Student Affairs, the Office of the

Provost, Human Resources, and other CWRU administrators with a need to know of the implementation of interim measures.

- B. At the request of an individual who reports experiencing discrimination, harassment, intimidation and/or retaliation, the Office of Equity may issue and maintain interim mutual, substantially identical No Contact Directives based on a report, and without a subsequent complaint or investigation.
- C. If the Office of Equity determines that a person accused of engaging in discrimination, harassment, intimidation and/or retaliation represents a threat or potential threat to the campus community, interim measures may include:
 - 1. An emergency removal, if that person is a student,
 - 2. Placement on a leave of absence, if that person is a staff member or postdoctoral scholar or fellow, or
 - 3. Recommendation to the President of a suspension under Chapter 3(IV)(D)(3) of the Faculty Handbook if that person is a faculty member.
- D. CWRU may remove an individual who is accused of engaging in discrimination, harassment, intimidation and/or retaliation entirely or partially from an education program, campus activities or the workplace on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other CWRU community member justifies removal. This risk analysis is performed by the Vice President - Equity or designee and may occur in conjunction with the Threat Assessment and Behavioral Intervention Team using its standard objective violence risk assessment procedures.
- E. In all cases in which an emergency removal is imposed on one or more students or student organizations, the student, or, in the case of a student organization, two (2) representatives from the student organization, will be given notice of the action and the option to request to meet with the Vice President - Equity prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to explain why the action/removal should not be implemented or should be modified. A student or student organization person accused of violating the *Policy* may be accompanied by a support person at this meeting. The person accused of violating the *Policy* will be given access to a written summary of the basis for the emergency removal prior to the meeting, or as soon as possible thereafter, to allow for adequate preparation.
- F. The purpose of this meeting is not to determine if the person accused of violating the *Policy* engaged in discrimination, harassment intimidation and/or retaliation, but is intended to determine only whether the emergency removal is appropriate. When this meeting is not requested within 48 hours, objections to the emergency removal will be deemed waived.
- G. There is no appeal process for emergency removal decisions.
- H. Violation of an emergency removal under this Protocol may be investigated as retaliation pursuant to this Protocol which may result in sanctions up to and including separation from CWRU on a temporary or permanent basis.
- I. CWRU will implement the least restrictive emergency removal possible in light of the circumstances and safety concerns. As determined by the Vice President - Equity, these actions could include, but are not limited to: removing a student from a residence hall,

temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics, and alternative coursework options to ensure as minimal an academic or employment-related impact as possible on the person being removed.

- J. If the person facing emergency removal is an employee, emergency removal may involve implementing existing employee policies and procedures for interim action.

V. Informal Resolution of Reports and Complaints

- A. Complaints and reports of discrimination, harassment, intimidation and/or retaliation may be resolved informally.
- B. An informal resolution may consist of individual or joint discussions facilitated by the Office of Equity with people impacted by the report of discrimination, harassment, intimidation and/or retaliation, an appropriate administrator or others, or guidance from the Office of Equity about options or strategies for resolving the concern. An informal resolution will result in action to ensure that the conduct ceases, doesn't recur and its negative effects are remedied.
- C. Any person engaging in discussions to informally resolve a concern about discrimination, harassment, intimidation and/or retaliation, or the Office of Equity may terminate those discussions at any time, and/or request an investigation by the Office of Equity of the concern.
- E. Efforts to achieve an informal resolution may occur concurrently with an ongoing investigation.

VII. Investigations of Complaints of Discrimination, Harassment, Intimidation and/or Retaliation

- A. The Office of Equity will investigate reports of discrimination, harassment, intimidation and/or retaliation when the conduct described in the report, if true, would constitute a violation of the *Policy Against Discrimination, Harassment, Intimidation and/or Retaliation*, and an investigation is requested or the Office of Equity determines an investigation is necessary to preserve or achieve access to CWRU's educational programs or opportunities.
- B. A complaint is made when a person reports conduct prohibited by the *Policy* and signs a document describing the reported conduct and requesting an investigation by the Office of Equity. Receipt by the Office of Equity of an email from a person reporting a violation of the *Policy* and requesting an investigation constitutes a complaint.
- C. The Office of Equity will comply with a request by a person experiencing discrimination, harassment, intimidation and/or retaliation to remain anonymous if it is possible to do so while also protecting the health and safety of the CWRU community.
- D. Within five (5) working days following receipt of a complaint, the Office of Equity will review the complaint and determine next steps pursuant to this Protocol.

- E. If the Office of Equity has jurisdiction to investigate a complaint, an investigator will be assigned to investigate it. If the Office of Equity does not have jurisdiction, the Vice President – Equity or designee may refer the complainant to other appropriate resources or CWRU processes.
- F. The Office of Equity may determine that an initial assessment and pre-investigation is needed to determine whether the complaint reports conduct prohibited by the *Policy*. The Office of Equity will advise the person who reported experiencing conduct that may be prohibited by the Policy and the person accused of engaging in that conduct of the outcome of the initial assessment and pre-investigation.
- G. If the complaint is by or about a student, a designee from the Division of Student Affairs or the Office of the Dean of Students may participate in the investigation, such as advising the Office of Equity and by attending interviews of students impacted by reported discrimination, harassment, intimidation and/or retaliation, or witness interviews, and reviewing drafts of findings.
- H. If the complaint is by or about a faculty member, a designee from the Office of the Provost or Office of the President may participate in the investigation, including advising the Office of Equity on faculty-specific matters (including reviewing and advising on drafts of findings). The designee from the Office of the Provost may also attend interviews of faculty impacted by the reported discrimination, harassment, intimidation and/or retaliation or interviews of faculty witnesses. Additionally, if the complaint is about a faculty member, the Office of Equity may notify the Office of Research and Technology Management to assess implications under grant awards or contracts on which the faculty member is supported or serves as PI or Key Personnel.
- I. If the complaint is by or about a staff member, a designee from Human Resources may participate in the investigation, including advising the Office of Equity on staff-specific matters (including reviewing and advising on drafts of findings). A designee from Human Resources may also attend interviews of staff impacted by the reported discrimination, harassment, intimidation and/or retaliation or interviews of staff witnesses.
- J. Beginning with the receipt of a complaint, and including the initial assessment and pre-investigation, the Office of Equity will provide the person who reported experiencing conduct that may be prohibited by the Policy and the person accused of engaging in that conduct with regular updates on the steps taken pursuant to this Protocol.

VIII. Investigation Process

- A. The initial notification to the person accused of violating the *Policy* will include a summary or a description of the basis for the investigation, and links to applicable policies and this Protocol.

- B. The purpose of the investigation is to identify facts which permit the Office of Equity to evaluate the allegations of discrimination, harassment, intimidation and/or retaliation, and formulate a remedial response, if appropriate.
- C. Depending on the facts and circumstances of the case and in the discretion of the investigator, the investigator may interview the person reporting the discrimination, harassment, intimidation and/or retaliation, the person experiencing that conduct (if different from the person reporting it), the person accused of engaging in that conduct and witnesses with relevant information. The investigator may also gather and review relevant records, including video and audio recordings, text and email messages, police reports and other information. The person reporting discrimination, harassment, intimidation and/or retaliation, the person experiencing that conduct (if different from the person reporting it), and the person accused of engaging in that conduct have the right to identify witnesses and provide records to the Investigator. The investigator may share a summary of the meeting or a transcript edited for readability with a person interviewed by the investigator.
- D. Investigations should be concluded within a reasonable time following the receipt by the Office of Equity of the complaint. The Investigator will regularly update the person who may have experienced conduct that violates the *Policy* and the person accused of engaging in that conduct of the progress of the investigation.
- E. After analyzing all the information, the Investigator will prepare a written report containing the following: the allegations, a description of the investigation, the evidence learned in the investigation, factual findings, the basis on which the conclusions were reached, recommended action steps and/or remedial measures, and other relevant information. A draft of the report without the conclusions as to whether discrimination, harassment, intimidation or retaliation occurred will be shared with the person who may have experienced conduct prohibited by the Policy and the person accused of violating the Policy, who will be invited to provide written comments to the investigator about the report, which will be included in the final investigation report. The final investigation report will be issued after the time for the persons involved to review and comment on the draft investigation report expires.
- F. An investigation may result in a finding that a preponderance of the evidence establishes one or more violations of the *Policy*, or a preponderance of the evidence does not establish a violation of the *Policy*.
- G. The investigator may recommend remedial action, such as education by the Office of Equity, without finding a violation of the *Policy*.

IX. Appeal

- A. The person experiencing the alleged discriminatory, harassing, intimidating or retaliatory conduct and/or the person accused of engaging in that conduct may request an appeal in writing to the Vice President – Equity or designee within three (3) business days of the date of receipt of the investigation report or summary.

- B. The Appeal Officer will review and decide the appeal. The Vice President – Equity will serve as the Appeal Officer if the Investigator was not the Vice President – Equity. If the Vice President – Equity was the Investigator in the matter then the Equity Director in the Office of Equity will serve as the Appeal Officer.
- C. The request for appeal will be forwarded to the Appeal Officer for consideration to determine if the request meets the grounds for appeal. This assessment is not a review of the merits of the appeal, but solely a determination as to whether the request for appeal is based on one of the permitted grounds for appeal and is timely filed.
 - 1. Procedural irregularity that affected the outcome.
 - 2. New evidence that was not reasonably available during the investigation could affect the outcome of the matter; and
 - 3. The Investigator(s) had a conflict of interest or bias that affected the outcome of the matter.
- D. The Appeal Officer will deny the Request for Appeal if it is not based on one or more of the above three grounds for appeal. The Appeal Officer will then notify the individuals with a right to appeal that the appeal is denied because it is not based on one of the above grounds for appeal.
- E. Appeal process
 - 1. If the request for appeal is based on one or more of the grounds listed above, the Appeal Officer will share the appeal with the other persons with the right to appeal and the Investigator(s).
 - 2. The Appeal Officer will send the request for appeal to the other persons with a right to appeal and the Investigators, and instruct them that they may respond within 3 business days to the appeal, if they choose to do so.
 - 3. The Appeal Officer will render a decision in within ten (10) business days, unless this period is extended for good reason by the Vice President – Equity or designee, who will notify the Parties.
 - 4. An outcome of the appeal will be sent to all persons with a right to appeal by the Office of Equity.
- F. The Office of Equity will not work on implementing remedial measures recommended in the Investigation Report until the outcome of any appeal or the expiration of the time available to appeal.

X. False Allegations

- H. A false allegation occurs when an individual knowingly makes a false report of discrimination, harassment, intimidation and/or retaliation, or intentionally gives false information during the investigation or proceeding relating to such an allegation. A false allegation does not include a report made in good faith about suspected discrimination, harassment, intimidation and/or retaliation that is based on a reasonable belief that the conduct has both occurred and violates

the Policies, even if, upon investigation, the report is not substantiated. The Office of Equity may investigate, pursuant to this Protocol, whether an individual made a false allegation.

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