

COUNCIL ON POSTSECONDARY EDUCATION

COMPLAINT PROCEDURES

for

DISCRIMINATION, SEXUAL HARASSMENT & SEXUAL VIOLENCE

Approved June 17, 2015

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INTRODUCTION: GENERAL COMPLAINT PROCEDURES **PERTAINING TO EMPLOYEES**

These complaint procedures apply to complaints by or regarding employees of the Council on Postsecondary Education (the "Council"), at the University of Rhode Island, Rhode Island College, and The Community College of Rhode Island (the "Institutions") and the Office of the Postsecondary Commissioner ("OPC"), alleging unlawful discrimination, harassment, and retaliation as well as all types of sexual harassment and sexual violence that are prohibited by Title IX (including sexual assault, sexual battery, rape and sexual coercion) and all types of sexual or relationship assault or violence that are prohibited by the Violence Against Women Reauthorization Act ("VAWA") of 2013, (which are sexual assault, domestic violence, dating violence, and stalking). All of the sexual and relationship offenses prohibited under Title IX and VAWA, which are also all prohibited by the Council's Sexual Harassment and Sexual Violence Policy, will hereinafter be collectively referred to by the general term "sexual violence."

The Council prohibits discrimination, including harassment and retaliation, on the basis of race, color, creed, national or ethnic origin, gender, gender identity or expression, religion, disability, age, sexual orientation, genetic information, marital status, citizenship status or status as a special disabled veteran, recently separated veteran, Vietnam era veteran, or any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. The Council also prohibits all forms of sexual harassment and sexual violence.

These procedures are also applicable to complaints and cases that may arise under, and are intended to be consistent and compliant with the procedural and substantive provisions of, applicable state and federal law and regulations including but not limited to Titles VI and VII of the Civil Rights Act of 1964, as amended; Title IX of the 1972 Educational Amendments to the Higher Education Act; the Age Discrimination in Employment Act of 1967; Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of

1974, as amended; the Equal Pay Act of 1963; the Americans with Disabilities Act of 1990; ADA Amendment Act of 2008; the Higher Education Act of 1965, as amended; the Violence Against Women Reauthorization Act of 2013; the Genetic Information Nondiscrimination Act, Executive Order 11246, as amended; Executive Order 91-39; Executive Order 92-2; and Rhode Island General Law §28-5.1, as amended.

These procedures also describe the process for individual members of the relevant campus communities (e.g., faculty, staff or students), and employees of the Office of Postsecondary Commissioner (“OPC”), to follow in the event they believe themselves or others, to have been victim of unlawful discrimination, harassment, retaliation, sexual harassment, or sexual violence. These procedures also describe the required process for the investigation and resolution of allegations of such wrongful conduct by the institutions and OPC.

Complaints regarding the institutions' President or the Commissioner of Postsecondary Education should be filed with the Office of General Counsel for the Council on Postsecondary Education.

A complaint may also be filed against institutional service providers, vendors, and other contractors. In these instances, the Affirmative Action Office shall determine, within its discretion, appropriate response and action.

The provisions of the collective bargaining agreements governing unionized employees may provide additional mechanisms for addressing allegations of discrimination.

OFFICES FOR COMPLAINANTS TO CONTACT

If any member of the relevant campus communities (e.g.: faculty, staff or students) or employees of the OPC believe that their rights (and/or the rights of others) have been violated and wish further information, advice or assistance in filing a complaint, they should, as a first step contact:

University of Rhode Island

Affirmative Action Office/ Title IX Coordinator (Roxanne Gomes)

201 Carlotti Administration Building

Kingston, Rhode Island 02881

Phone: (401) 874-2442

TTY - via RI Relay at 1-800-745-5555

Rhode Island College

Affirmative Action Office/Title IX Coordinator (Margaret Lynch-Gadaleta)

Roberts Hall 301

600 Mt. Pleasant Avenue

Providence, Rhode Island 02908

Phone: (401) 456-8387

TTY - via RI Relay at 1-800-745-5555

Community College of Rhode Island

Affirmative Action Office/Title IX Coordinator (Elizabeth Canning)

400 East Avenue

Warwick, Rhode Island 02886

Phone: (401) 825-1230

TDD: (401) 825-2313

Office of Postsecondary Commissioner

Affirmative Action Office/Title IX Coordinator (Kim Bright)

560 Jefferson Blvd, Suite 100

Warwick, RI 02886

Phone: (401) 736-1100

TDD: (401) 734-9481

INFORMATION FOR COMPLAINANTS ALLEGING SEXUAL VIOLENCE

In cases involving allegations of sexual violence, Complainants shall, in addition, be provided an explanation of his/her rights and options, which shall include a description of available options for, and assistance in, changing academic, living, transportation, and working situations, as well as information about:

1. the importance of seeking immediate medical attention for sexual violence
2. other available health care and counseling services
3. the importance of preserving evidence for proof in the investigation or subsequent proceedings, or for obtaining a protective order
4. to whom the alleged sexual violence should be reported
5. options regarding notifying law enforcement and/or campus authorities, including notification of the Complainant regarding the Complainant's right to:
 - a. notify either police (local or campus) or campus authorities
 - b. be assisted by campus authorities in notifying law enforcement if the Complainant so chooses
 - c. decline to notify such authorities
6. the rights of Complainants and the institutions in notifying law enforcement if the protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.

If the Complainant alleging sexual violence is a student, the student shall also be referred to the appropriate Student Affairs Office responsible for advising student victims of alleged sexual violence, which shall provide further relevant information and assistance to the student, as required by Title IX, VAWA, local law and institution/OPC policies. If the complaint alleges sexual violence, the complaint investigation and proceedings shall provide a prompt, fair and impartial process (which includes the provision to the parties of timely and equal access to any information that will be used during the formal resolution process) and shall be conducted by an official (or officials) who do not have a conflict or bias for or against the Complainant or Respondent and who have received annual training on methods and processes for conducting complaint investigations and proceedings in a manner that protects the safety of victims and promotes accountability, and any other training required by law or University policy.

COMPLAINTS AGAINST STUDENTS

In the event that an employee files a complaint against a student, the Affirmative Action Officer/Title IX Coordinator and the Division/Office of Student Affairs will determine which office will proceed with the processing of the complaint. Proceedings involving student-to-student complaints will be adjudicated through the Division/Office of Student Affairs and must comply with the procedural guidelines contained in the institution's student handbook.

REPORTING BY RESPONSIBLE EMPLOYEES

The required general procedures pertaining to the reporting of instances or complaints of sexual harassment and sexual violence are set forth in the Council on Postsecondary Education Sexual Harassment and Sexual Violence Policy. The more specific reporting procedures established by each Institution and the OPC are set forth in Attachments B, C, D and E of that Policy. Those specific reporting procedures list the "responsible employees" at each of the Institutions and the OPC who are required to report complaints and incidents of sexual harassment and sexual violence reported to them or of which they become aware.

Those same "responsible employees" shall also be required under these Procedures to report all other instances and allegations of other types of discrimination (i.e. discrimination other than sexual harassment and sexual violence), including but not limited to racial or gender discrimination, or retaliation, to their institution's/OPC's Affirmative Action Office.

FILING DEADLINES

To provide adequate opportunity for a prompt investigation, that enables access to the most current evidence, parties are encouraged to file complaints as soon as possible. All complaints under this procedure must normally be filed within 365 days after the last of alleged discriminatory act occurred. The Institution's/Office's ability to respond to complaints filed beyond this time is limited. However, complaints or cases involving allegations of continuing unlawful discrimination, harassment, sexual harassment,

sexual violence, or retaliation may be fully investigated, including occurrences beyond the 365-day time frame, so long as the last act of alleged discrimination occurred within the prescribed filing deadline (365 days).

ADVISORS AND SUPPORTERS

All parties meeting with an Affirmative Action Officer/Title IX Coordinator may be accompanied by an individual of their choice (who may be an attorney) for support and/or advice. This individual: may not address or question the investigator, other parties or witnesses; may not present evidence or make arguments; and shall not have any role other than to accompany and communicate with the party requesting support.

DISCRIMINATION AGAINST GROUPS

Cases involving unlawful discrimination, including harassment or retaliation, against a group or class of individuals, reflecting an apparent pattern and practice of discrimination, must be appropriately acted upon by the Affirmative Action Officer/Title IX Coordinator regardless of whether there is an identified complainant.

CRIMINAL VIOLATIONS

If a complaint or case reported to the Title IX Coordinator or Affirmative Action Office involves potential criminal violations, that Coordinator or Office shall forward a report of the complaint or case to the campus police and to the appropriate President or the Commissioner of Postsecondary Education where applicable.

In cases involving allegations of sexual violence or other crimes, Complainants shall also be informed of their right to file a complaint with campus police or local law enforcement authorities. However, regardless of whether a Complainant files a complaint with local law enforcement authorities, and regardless of any investigations or other actions taken by local law enforcement, the Institution/OPC will continue to have

an obligation to undertake and duly complete its own internal complaint and investigation procedure.

NON-RETALIATION

Retaliation against any Complainant or witness is prohibited and shall be treated as a separate violation of the Institution's or OPC's community standards and Non-Discrimination Policy. Specifically, no officer, employee, or agent of the Institutions or OPC under the Council's jurisdiction shall retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for filing a complaint or participating in any investigation or proceeding brought pursuant to this policy.

There shall be no disciplinary action, retaliation or reprisal for bringing a complaint in good faith. Individuals shall not, however, knowingly make false charges of discrimination, harassment, retaliation, sexual harassment, or sexual violence.

MODIFICATION OF PROCEDURES

These procedures constitute the general complaint process to be followed by the Institutions and OPC in addressing and resolving complaints and cases of unlawful discrimination, harassment, retaliation, sexual harassment and sexual violence. The Institutions and OPC shall have the right to reasonably alter and/or deviate from the procedural guidelines contained herein when it is warranted by either the circumstances of a case or required by applicable state and federal law and regulations. The Institutions and OPC shall also have the right to authorize and appoint a designee to serve in the Affirmative Action Officer's capacity in the execution of these procedures.

The parties are to be provided timely written notice of any such designation and of any substantive deviation from the procedural guidelines.

SPECIFIC PROCEDURES

INITIAL CONSULTATION

The Affirmative Action Officer/Title IX Coordinator shall meet with the Complainant to discuss the Complainant's concerns, and review the complaint procedure, determine the appropriate jurisdiction, and explain the different methods available to resolve the complaint under these procedures. (See: formal resolution and informal resolution, where applicable).

The purpose of this initial step is to assist individuals to identify the source of the concern and provide the Complainant with information concerning Institutional/OPC resources, policies and procedures; so that the Complainant might best assess the most appropriate course of action, given their circumstances.

PROCEDURAL OPTIONS

If it is determined that the Affirmative Action Office shall retain responsibility for the case, the Affirmative Action Officer/Title IX Coordinator will ascertain from the Complainant which of the following procedural resolution options he/she prefers to utilize.

Informal Resolution (Not an Option for Sexual Violence Cases)

Formal Resolution

The selected option will be verified by the Complainant's signature. Selection of an option at this time will not preclude the Complainant from electing another option at a later time, where appropriate, as determined in consultation with the Affirmative Action Officer/Title IX Coordinator. Informal Resolution may only be utilized when both the Complainant and Respondent agree to it.

If it is determined that the case should not be addressed by the Affirmative Action Office, the Affirmative Action Officer or Title IX Coordinator will refer the Complainant to the appropriate office or department.

INTERIM PROTECTIVE MEASURES

If, during the initial consultation, the Affirmative Action Officer/Title IX Coordinator determines that immediate action may be necessary to protect the rights, interests, or safety of the Complainant, Respondent or the campus community, the Affirmative Action Officer/Title IX Coordinator will advise the institution's/OPC's human resources office and Division/Office of Student Affairs (if applicable) of the situation. Upon consultation with appropriate institution/OPC officials, immediate action may be taken which may include temporary changes in duties and responsibilities, directives to Complainant and Respondent regarding personal contact, warnings to the Respondent and, in severe cases, and the immediate suspension of the Respondent pending the completion of a formal investigation. These remedial and protective actions may be coordinated with any similar actions independently provided by the Institution upon the request of the Complainant.

WITNESSES

The Affirmative Action Officer/Title IX Coordinator may contact any other pertinent individuals who may have knowledge of or information relating to the matter.

CONFIDENTIALITY

At the time at which a procedural option is selected, the Complainant will also be asked to make a decision regarding confidentiality. The Institution/OPC will make all reasonable efforts to honor requests for confidentiality, to the extent permitted by law. However, it must be understood that while some concerns or complaints can be resolved without disclosing one's identity, often successful resolution cannot be achieved under such circumstances. Further, individuals who are directly accused of unlawful and/or discriminatory behavior and who, as a result, may be subject to disciplinary action, are entitled to a copy of the formal complaint and/or a summary of the charges against them so that they may prepare a proper defense.

Any member of the Council, employees of the Office of the Postsecondary Commissioner, or students or employees of the colleges or university who participate in formal or informal proceeding under this policy or otherwise gain knowledge thereof shall treat all information acquired, whether written or oral, as confidential, provided however, that the parties to a proceeding may share such information with their personal advisors, advocates and representatives.

The Institutions and OPC will keep identifying information about Complainants and victims confidential in accordance with all applicable legal requirements, and such information will generally only be shared on a need-to-know basis with those college, university, and OPC officials such as investigators, campus security personnel, student affairs officials, and other institutional or OPC officials who are involved in responding to the complaint or who are legally required to receive such information. In cases where an individual wishes to file a complaint but not be identified, their request will be honored to the full extent permitted by law, but the individual will be advised that the college's, university's, or OPC's ability to investigate the complaint or proceed with appropriate corrective or disciplinary action may be prevented or significantly hampered. The identity of, and identifying information about, Complainants and victims will not be disclosed in any public safety notices, final determination reports, or statistical reports that may be issued or made publically available as required or permitted by law. If the Institution or Office is compelled by law, such as through a subpoena or court order issued in a legal proceeding, or through a public records request, to provide such information to third parties, the Institution or Office will make a reasonable effort, prior to complying with the request, to notify the individual, so that the individual may seek a protective order or take other actions as they may deem appropriate.

INFORMAL RESOLUTION

This informal procedure is intended to affect the resolution of a complaint by reconciling the parties' differences and/or rectifying the alleged discriminatory action(s). Complaints that the Affirmative Action Officer/Title IX Coordinator determines as involving

discrimination against a group or class of individuals, or involving likely criminal violations may not be resolved through use of the informal resolution process. Informal resolution will also not be used in cases involving allegations of sexual violence.

If, after preliminary review of the matter, it is the judgment of the Affirmative Action Officer/Title IX Coordinator that the case should not be addressed by the Affirmative Action Office/Title IX Coordinator, the informal procedure shall be terminated and the case shall, if applicable, be referred to the appropriate office.

If the parties agree to the informal resolution procedure, the Affirmative Action Officer/Title IX Coordinator will make all reasonable attempts to resolve the matter within thirty (30) days. The specific details of each case will determine the best possible means for achieving a satisfactory resolution. If attempts at informal resolution are not effective, if the terms of the informal resolution are subsequently broken, or if for any reason the Complainant wishes to discontinue the informal resolution process, the Complainant may exercise the remaining option.

If the complaint is resolved during the informal procedure the terms of the resolution will be reduced to writing and signed by the parties.

The Informal Resolution Procedure offers an option to discuss, evaluate and resolve allegations of discrimination without beginning a Formal Resolution/Investigation.

No official findings of fact are made about the alleged behavior, which may be discriminatory and/or violate Institution/OPC policy. Rather, emphasis is placed on:

1. Identifying the source of the allegations/concerns(s).
2. Exploring alternatives to resolve the complaint.
3. Instituting solutions to address the current concerns(s) and eliminate the possibility of similar issues occurring in the future.

Steps in the Informal Resolution Process

The following steps shall be taken in an effort to resolve complaints in an informal manner.

Step 1: Notifying the parties

Upon receipt of a complaint, the Office of Affirmative Action/Title IX Coordinator shall notify and meet with the Complainant and the Respondent.

Step 2: Information gathering

In an effort to fully understand the facts and positions of the Complainant and the Respondent, the Investigator shall take steps that he/she deems necessary to gather additional information from the parties or from others perceived to have knowledge of the allegations.

Step 3: Resolution or Next Steps

If all parties agree to the informal resolution process, the Affirmative Action Officer/Title IX Coordinator will make all reasonable attempts to resolve the matter within thirty (30) days. The specific details of each case will determine the best possible means for achieving a satisfactory resolution.

If the informal resolution process fails to resolve the matter to the satisfaction of both the parties, or the terms of the informal resolution as subsequently broken, either may request a Formal Resolution/Investigation of the charge within 10 calendar days of concluding the Informal Resolution Process.

FORMAL RESOLUTION

Any person(s) who believes they have been the victim of discrimination, harassment, retaliation, sexual harassment or sexual violence, or who witnesses acts of discrimination, harassment, retaliation, sexual harassment or sexual violence against others, may file a formal complaint with the Affirmative Action Office/Title IX Coordinator. Utilizing the informal process is not a prerequisite. A formal review consists of conducting an investigation, fact-finding, determining whether sufficient credible evidence exists to support the allegation(s), and issuing written findings. The formal investigation and related proceedings, which are described below, shall provide a prompt, fair, and impartial investigation and resolution of the allegations.

Step 1: Complainant's Written Statement

Normally, a signed incident complaint form containing a written statement of allegations initiates the formal process. In order to enable the Investigator to most effectively investigate the complaint, the written statement of allegations should contain a detailed description of the conduct being complained about, the name(s) of the alleged offender(s), the name(s) of the alleged victim(s), the names of any alleged witnesses, and the name of the person filing the complaint. The Affirmative Action Officer/Title IX Coordinator will provide assistance to anyone for whom completion of the complaint form is difficult or impractical. The person or persons filing the complaint and/or the alleged victim of discrimination shall be referred to hereinafter as the "Complainant." Anonymous complaints, and complaints filed by individuals who request confidentiality, will be investigated by the Institution/OPC to the extent possible pursuant to the procedures set forth herein.

Step 2: Notifying the Respondent

The person or persons identified as the alleged offender shall be referred to hereinafter as the "Respondent." Once the complaint has been filed, the Affirmative Action Officer/Title IX Coordinator will notify the Respondent(s) by written letter of its existence and provide him/her/ them with a copy of the signed complaint.

Step 3: Respondent's Written Response

The Respondent(s) will be provided an opportunity to file a formal response. The formal response shall be filed with the Affirmative Action Office/Title IX Coordinator by the Respondent(s) within twenty (20) days from the date the Respondent(s) received the signed complaint.

If the Respondent fails to timely file a formal response and/or elect(s) not to participate in the formal resolution process, the case will proceed and be investigated with or without the involvement of the Respondent.

If, during the investigation, the Complainant indicates a desire to withdraw his/her complaint, the Complainant shall sign a written statement of withdrawal containing the

reasons therefore and the case may be closed in the discretion of the Affirmative Action Officer/Title IX Coordinator. However, the Affirmative Action Officer/Title IX Coordinator may continue to conduct the investigation and take action to address the issues raised by the Complainant regardless of the Complainant's wishes.

Step 4: Investigation Process

The Affirmative Action Officer/Title IX Coordinator or designee will act as investigator. The investigator is neutral, objective, and does not act as an advocate for either party. The investigator is authorized to contact any and all persons who may have information relevant to the complaint and shall have access to all relevant College/ University/OPC records. The investigator shall also collect and evaluate other available records and information relevant to the complaint and investigation (e.g. email communications, medical test results, photographs), as appropriate. The investigator shall maintain a record of the investigation, including any interviews, which shall be retained as an official Affirmative Action Office record.

Step 5: Final Investigative Report

A final investigative report shall be prepared which sets forth the findings of the Affirmative Action Officer/Title IX Coordinator or designee and the basis and rationale for his/her conclusion(s). Unless otherwise indicated in the report, the date of the report shall be considered the date upon which the results of the investigation become final. In making his/her findings, the Affirmative Action Officer/Title IX Coordinator or designee shall utilize the evidentiary standard of "preponderance of the evidence." The final investigative report shall normally be issued within sixty (60) days after the complaint is filed. When more than sixty (60) days is needed to complete the investigation, the Affirmative Action Officer/Title IX Coordinator or designee shall notify the parties and proceed as expeditiously as possible. Allegations or evidence of violations of policies and procedures that are discovered during the investigation but which are outside the jurisdiction of the Affirmative Action Officer/Title IX Coordinator shall be referred to the appropriate office for resolution. The Affirmative Action Officer/Title IX Coordinator or designee will simultaneously provide copies of the report to the Complainant and the Respondent, and will also send a copy to the appropriate Vice President/Provost or

Associate Commissioner. The Complainant and Respondent will also be advised of the appeal process at that time.

POST-INVESTIGATION PROCEDURES

APPEAL PROCEDURES

Either party (Complainant or Respondent) may appeal the Affirmative Action Officer's/Title IX Coordinator's findings. Such appeals shall be filed with the Institution's President or the Commissioner of Postsecondary Education as appropriate. The Appeal may be conducted by the President or the Commissioner or their designee. Parties wishing to file an appeal must do so within ten (10) days after receiving the Affirmative Action Officer's/Title IX Coordinator's final letter. The appeal process will not involve reinvestigation of the complaint. Appeals must raise specific issues related to the Affirmative Action Officer's/Title IX Coordinator's findings. Appeal decisions (which shall include a statement of the rationale for the decision) shall be rendered within thirty (30) days after the request for appeal is received unless extended for good cause as reasonably determined by the Appeals Officer. Copies of the appeal decision shall be simultaneously provided to the parties, with a copy also to be sent to the appropriate Vice President/Provost or Associate Commissioner.

DISCIPLINARY ACTION

When the investigative findings of the Affirmative Action Officer/Title IX Coordinator or designee (together with the appeal decision in cases in which there is an appeal) are received by the appropriate Vice President, Provost, or Associate Commissioner, he/she in consultation with the Institution's/OPC's Office of Human Resources, shall render a written determination (which includes a statement of the rationale for the determination) regarding the appropriate disciplinary and/or corrective action, if any, and provide a copy of the written determination to the Respondent. In cases involving allegations of sexual violence, a copy of the written determination will also be provided

to the Complainant. Such disciplinary and/or corrective action may include but are not limited to: reprimand, required counseling, suspension, demotion, or termination.

Disciplinary action will follow the procedural requirements of applicable collective bargaining agreements and any applicable statutory and judicial mandates. The Vice President/Provost/Associate Commissioner will be responsible for the implementation of all such disciplinary/corrective action measures. A record of the outcome of each case will remain a part of the permanent file of the case maintained by the Affirmative Action Office/Title IX Coordinator.

POST-PROCEEDING PROTECTIVE MEASURES

In appropriate cases, the Vice President/Provost or Associate Commissioner, in consultation with the Institution's/OPC's Office of Human Resources and/or Director/Office of Student Affairs, may direct that certain measures be instituted or provided, to protect or safeguard the Complainant or victim of the misconduct, and/or to prevent or minimize the possibility of a further harmful incident or offense. Such protective measures may include: no trespass orders, no contact directives, counseling, reassignment of work duties, workplace relocation, referral to institutional offices capable of providing support, advice or other resources (e.g. EAP, Housing, Woman's Center, Residence Life), or any such other action(s) that may be described in the Institution's/OPC's policies and that are deemed appropriate under the circumstances.

OUTSIDE AGENCIES

All individuals shall be informed regarding their right to seek redress through the following outside agencies:

Office of Civil Rights, Region I
US Department of Education
5 Post Office Square, 8th Floor
Boston, MA 02109-3921
Tel.: (617) 289-0111
Fax: (617) 289-0150
<http://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

United States Equal Employment Opportunity Commission
John F. Kennedy Federal Building
475 Government Center
Boston, MA 02203
Phone: 1-800-669-4000
Fax: 617-565-3196 *<http://www.eeoc.gov/field/boston/index.cfm>*

Rhode Island Commission for Human Rights
180 Westminster Street, 3rd Floor
Providence, Rhode Island 02903
Tel: 401-222-2661 401-222-2664
Fax: 401-222-2616
<http://www.richr.state.ri.us/frames.html>
