COUNCIL ON POSTSECONDARY EDUCATION

TITLE IX
SEXUAL HARASSMENT
POLICY AND PROCEDURES

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COUNCIL ON POSTSECONDARY EDUCATION
TITLE IX SEXUAL HARASSMENT POLICY AND PROCEDURES

I. Policy Statement

It is the Policy of the Council on Postsecondary Education ("CPE"), its constituent institutions of higher education (specifically, Rhode Island College and the Community College of Rhode Island) and the Office of Postsecondary Commissioner (collectively referred to as the "Covered Entities") to prohibit all forms of unlawful Sexual Harassment occurring within the Covered Entities' Education Programs or Activities, as those terms are defined herein.

II. Purpose and Goals of Policy

A. Define the conduct that is prohibited Sexual Harassment at the Covered Entities;
B. Provide examples of such prohibited conduct;
C. Set forth the reporting options and procedures pertaining to such conduct that is witnessed, experienced or learned about by, or reported to, employees of the Covered Entities.
D. Set forth the process to investigate and adjudicate complaints of Sexual Harassment encompassed within this Policy.
E. Provide contact information for the Title IX Coordinator at each Covered Entity.
F. Provide a list of internal and external resources available to individuals who experience, witness, or are accused of acts of Sexual Harassment.

III. Background

Sexual Harassment, as defined herein, is prohibited in Education Programs or Activities by Title IX of the Education Amendments of 1972 and its implementing regulations ("Title IX") (see 34 C.F.R. § 106 et seq.). Sexual Assault, Domestic Violence, Dating Violence, and Stalking, as defined herein, are also prohibited under the Violence Against Woman Reauthorization Act of 2013 ("VAWA").

IV. Applicability

All faculty, staff, and students at all Covered Entities must comply with this Policy to help foster an inclusive and safe academic and work environment. This Policy applies to the perpetration of Sexual Harassment by one member of the Covered Entity's community (faculty, staff, student, or volunteer) against another. The Policy may also apply where one of the involved or affected parties is a visitor or a contractor performing work on behalf of the Covered Entity.

V. Remedies for Sexual Harassment

Administrators, faculty members, staff, students, contractors, guests, and other members of a Covered Entity's community who commit Sexual Harassment are subject to the full range of discipline including, but not limited to, verbal reprimand; written reprimand; mandatory training,

coaching, or counseling; mandatory monitoring; partial or full probation; partial or full suspension; permanent separation from the institution (i.e., termination or dismissal); physical restriction from the Covered Entity's property; cancellation of contracts; and any combination of the same. Disciplinary sanctions for violations of this Policy are imposed in accordance with applicable policies and collective bargaining agreements.

A Covered Entity will provide persons who have experienced Sexual Harassment ongoing remedies as reasonably necessary to restore or preserve access to the Covered Entity's education programs or activities.

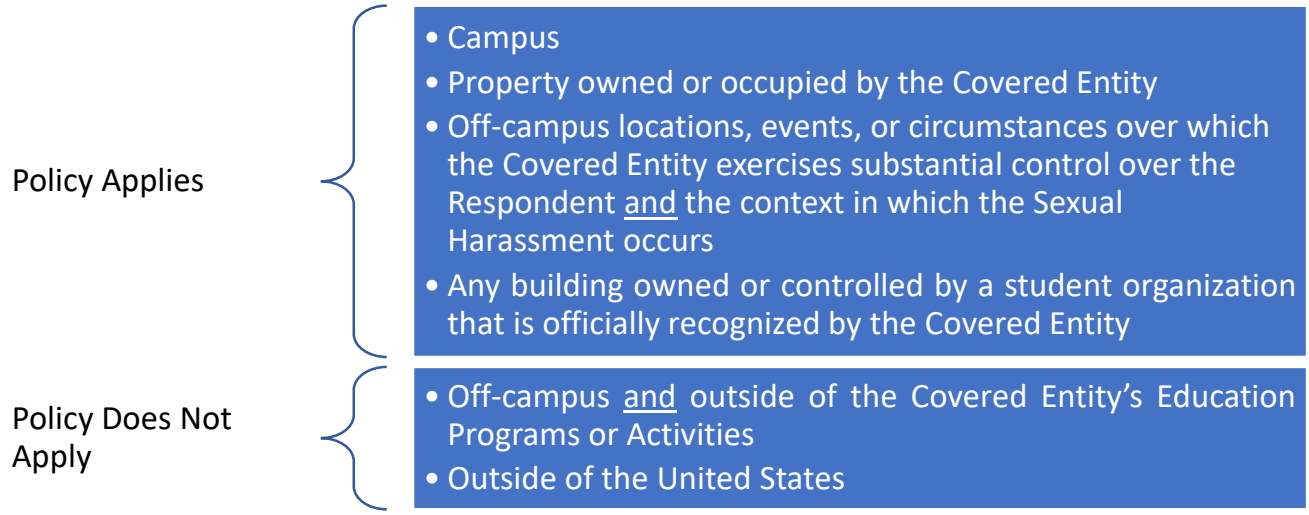
VI. Scope

This Policy applies to Sexual Harassment that occurs within the Covered Entities' Education Programs or Activities and its procedures are the exclusive means for resolving Formal Complaints of Sexual Harassment.

This Policy does not apply to Sexual Harassment that occurs off-campus, in a private setting, and outside the scope of a Covered Entity's Education Programs or Activities; such Sexual Harassment or other forms of sexual misconduct may be prohibited by a Covered Entity's Student Code of Conduct if committed by a student or employment policies if committed by an employee.

Consistent with the U.S. Department of Education's implementing regulations for Title IX, this Policy does not apply to Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in a Covered Entity's Education Programs or Activities, such as a study abroad program. Sexual Harassment that occurs outside the geographic boundaries of the United States may be governed by a Covered Entity's Student Code of Conduct if committed by a student or employment policies if committed by an employee.

The following graphic summarizes the geographic scope of this Policy:



VII. Other Forms of Sexual Misconduct or Sex Discrimination

Complaints involving allegations of sex discrimination that do not meet the definition of Sexual Harassment under this Policy are investigated and adjudicated in accordance with the Council for Postsecondary Education Non-Discrimination Policy and Complaint Procedures.

Each Covered Entity shall investigate complaints against their students involving sexual misconduct that does not meet the definition of Sexual Harassment under this Policy in accordance with procedures described in their respective student conduct policies or the Council for Postsecondary Education Non-Discrimination Policy and Complaint Procedures, as determined by the Covered Entity.

VIII. Definitions

A. "Sexual Harassment" is conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking.[1]

B. "Quid Pro Quo Sexual Harassment" occurs when an employee of a Covered Entity conditions the provision of an aid, benefit, or service of the Covered Entity on an individual's participation in unwelcome sexual conduct. The following is an example of "Quid Pro Quo Sexual Harassment:"

- A faculty member conditions a student's favorable evaluation on the student's submission to sexual advances. The faculty member then gives the student a poor evaluation after the student rejects the faculty member's advances.

C. "Hostile Environment Sexual Harassment" is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the Covered Entity's Education Programs or Activities. The following are examples of "Hostile Environment Sexual Harassment:"

- A student editor for the college newspaper continually and inappropriately touches another student newspaper staff member in a sexual manner over an extended period of time. The touching is unwelcome and continues even after the student editor is asked to stop. The conduct makes the staff member uncomfortable and creates an offensive environment in the newsroom.

- A male faculty member has a habit of touching the hair and shoulders of female students during class when he walks through the classroom reviewing

[1] Sexual assault, domestic violence, and stalking are also crimes under Rhode Island law. Information about these criminal offenses can be found in Appendix C.

their projects. Additionally, when he addresses female students, he often prefaces his comments with "hey, beautiful" or "hello gorgeous." Several students have changed courses as a result.

D. "Sexual Assault" includes the sex offenses of rape, attempted rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape as defined in 20 U.S.C. §1092(f)(6)(A)(v).[2] These sex offenses encompass the following prohibited conduct:

- The carnal knowledge[3] of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of a temporary or permanent mental or physical incapacity.

- Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of a temporary or permanent mental or physical incapacity.

- Using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of a temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything used by the offender other than the offender's genitalia.

- Touching the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of a temporary or permanent mental or physical incapacity.

- Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Rhode Island law.

- Sexual intercourse with a person who is under the statutory age of consent as defined by Rhode Island law.

E. "Domestic Violence" is felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom

[2] This Policy's definition of "Sexual Assault" is mandated by federal regulations implementing Title IX of the Education Amendments of 1972. Those regulations require the Covered Entities to adopt a definition of "Sexual Assault" that incorporates various forcible and non-forcible sex crimes as defined by the FBI's Uniform Crime Reporting System. See 34 C.F.R. § 106.30(a).

[3] "Carnal knowledge" exists where there is the slightest penetration of the vagina or penis by the sexual organ of the other person.

the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Rhode Island, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Rhode Island.

F. "Dating Violence" is physical violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship will be determined based on a consideration of the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

G. "Stalking" is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

H. "Consent" refers to words or actions that a reasonable person in the perspective of the Respondent would understand as agreement to engage in the sexual conduct at issue. A person who is Incapacitated is not capable of giving Consent.

I. "Coercion" is defined as direct or implied threat of force, violence, danger, hardship, or retribution sufficient to persuade a reasonable person of ordinary susceptibility to perform an act which otherwise would not have been performed or acquiesce in an act to which one would otherwise not have submitted. Coercion can include unreasonable and sustained pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. A person's words or conduct alone cannot amount to Coercion for purposes of this Policy unless they wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity.

J. "Incapacitated" refers to the state where a person does not appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition or disability, or due to a state of unconsciousness or sleep.

K. "Retaliation" is intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

L. "Complainant" means an individual who is reported to be the victim of conduct that could constitute Sexual Harassment.

M. "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

N. "Formal Complaint" means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the Covered Entity investigate the allegation of Sexual Harassment in accordance with this Policy. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the Covered Entity's education programs or activities. A "document filed by a Complainant" means a document or electronic submission (such as an email) that contains the Complainant's physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint.

O. "Supportive Measures" are non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to the Covered Entity's Education Programs or Activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report or the Covered Entity's education environment, or to deter Sexual Harassment.

   Examples of Supportive Measures include, but are not limited to: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.

P. "Education Programs or Activities" refers to all the operations of a Covered Entity, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life (where applicable), dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by the Covered Entity. It also includes off-campus locations, events, or circumstances over which the Covered Entity exercises substantial control over the Respondent and the context in which the Sexual Harassment occurs, including Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by the Covered Entity.

IX. UNDERSTANDING HOSTILE ENVIRONMENT SEXUAL HARASSMENT

In determining whether a hostile environment exists, the Covered Entity will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the Complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the

relationship between the parties (including accounting for whether one individual has power or authority over the other); the context in which the conduct occurred; and the number of persons affected.

Sexual Harassment need not be intentional. The intent of the person who is alleged to have committed such behavior is not relevant to determining whether a violation has occurred. The relevant determination is whether a reasonable person similarly situated could have reasonably considered the alleged behavior to be Sexual Harassment.

Sexual Harassment can arise from many different types of unwelcome verbal, nonverbal and physical conduct ranging from sexual gestures or teasing to sexual assault, acts of sexual violence, including domestic and dating violence, stalking and other coercive activity. Examples of such conduct and behaviors that may constitute Sexual Harassment include, but are not limited to, the following:

- Verbal: Sexual remarks, comments, jokes and innuendos, communicating unwelcomed stories about someone's social or sexual life, and propositions or pressure for social or sexual contact.

- Non-verbal: The display of sexually explicit stares, gestures, or suggestive pictures, including secretly video recording sexual acts or objects.

- Physical: Unwanted touching, patting, grabbing, pinching, including sexual assault, domestic violence, dating violence, stalking, and rape.

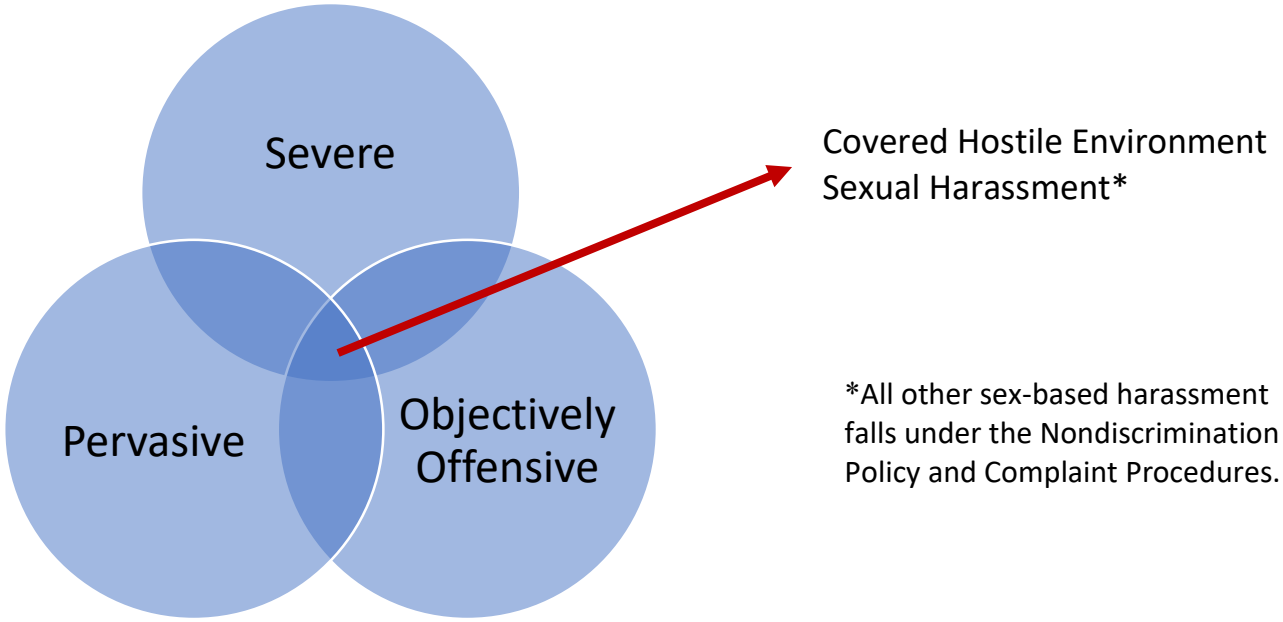
Acts that do not necessarily involve conduct of a sexual nature but are based on sex or gender-stereotyping, and which may include physical aggression, intimidation, hostility, humiliation, insulting and hazing, may also be considered Hostile Environment Sexual Harassment under this Policy. Specific examples of such behavior that may lead to a finding of Sexual Harassment include the following:

- A male employee is repeatedly taunted and insulted verbally by his co-workers for his "looking like a girl," "for acting like a girl" and "acting like a queer."

- A female program director is repeatedly called "bossy", "overly aggressive" and "un- lady like" by her male supervisors with some of these criticisms noted in her performance evaluations.

The Covered Entities encourage members of their communities to report any and all instances of Sexual Harassment, even if they are unsure whether the conduct rises to the level of a Policy violation.

The following diagram explains the scope of Hostile Environment Sexual Harassment as encompassed within this Policy, as compared to other forms of sex-based harassment addressed by the Nondiscrimination Policy and Complaint Procedures:



X. Consent and Incapacitation

A. Consent

Lack of consent is a critical factor in determining whether Sexual Harassment has occurred. Consent is a mutual, voluntary, and informed agreement to participate in specific sexual acts with another person that is not achieved through unreasonable manipulation, coercion, or any kind of physical force or weapon, and requires having cognitive ability to agree to participate. Consent requires an outward demonstration, through mutually understandable words, conduct or action, indicating that an individual has freely chosen to engage in the specific sexual acts. A verbal "no" constitutes lack of consent, even if it sounds insincere or indecisive.

Impairment or incapacitation due to alcohol and/or drug use, permanent/ temporary psychological or physical disability, and being below the age of consent (age 16) are factors which may make consent impossible.

Silence or an absence of resistance does not imply consent, and consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Even in the context of an ongoing relationship, consent must be sought and freely given for each specific sexual act. Consent may be withdrawn at any time. When consent is withdrawn, sexual activity must immediately stop.

B. Incapacitation

Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the "who, what, where, when, why or how" of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring.

Incapacitation can only be found when the Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober, reasonable person. One's own intoxication is not an excuse for failure to recognize another person's incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol of other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual's:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature of circumstances of the act

No single factor is determinative of incapacitation. Some common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness.

XI. Reporting Sexual Harassment

Any person may report Sexual Harassment to the Covered Entity's Title IX Coordinator. Reports may be made in person, by regular mail, telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. In-person reports must be made during normal business hours, but reports can be made by regular mail, telephone, or electronic mail at any time, including outside normal business hours.

In addition to reporting to the Title IX Coordinator, any person may report Sexual Harassment to a Covered Entity official with authority to institute corrective measures when Sexual Harassment has occurred. Such officials, referred to as "Reporting Officials," must promptly forward reports of Sexual Harassment to the Title IX Coordinator.

The name and contact information for each Covered Entity's Title IX Coordinator, as well as a list of Reporting Officials, if any, is attached hereto as Exhibits A and B.

XII. Employee Reporting

All employees of the Covered Entities are strongly encouraged to report Sexual Harassment to the Covered Entity's Title IX Coordinator when they receive a report of such conduct or witness such conduct. The report should include all known relevant details of the alleged Sexual Harassment.

Notwithstanding the language above, employees who are designated as Campus Security Authorities under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act") must fulfill their reporting obligations as described by the Covered Entity's policies.

All employees are required to report known or suspected cases of child abuse and/or neglect to the Rhode Island Department of Children, Youth and Families (DCYF) within 24 hours of becoming aware of such abuse/neglect. DCYF has a single, statewide toll-free hotline that operates twenty-four (24) hours per day, seven (7) days per week. The number is 1-800-RI-CHILD (1-800-742-4453).

XIII. Guidance for Individuals Reporting Sexual Assault, Domestic Violence, Dating Violence, or Stalking

If you believe you are the victim of Sexual Assault, Domestic Violence, or Dating Violence, get to safety and do everything possible to preserve evidence by making certain that the scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. For those who believe that they are victims of Sexual Assault, Domestic Violence, or Dating Violence, the Covered Entities recommends the following:

- Get to a safe place as soon as possible.
- Try to preserve all physical evidence of the crime—avoid bathing, using the toilet, rinsing one's mouth or changing clothes. If it is necessary, put all clothing that was worn at the time of the incident in a paper bag, not a plastic one.
- Do not launder or discard bedding or otherwise clean the area where the assault occurred- preserve for law enforcement
- Preserve all forms of electronic communication that occurred before, during, or after the assault
- Contact law enforcement by calling 911 or campus police.
- Get medical attention - all medical injuries are not immediately apparent. This will help collect evidence that may be needed in case the individual decides to press charges. Local hospitals have evidence collection kits necessary for criminal prosecution should the victim wish to pursue charges. Take a full change of clothing, including shoes, for use after a medical examination.
- Contact a trusted person, such as a friend or family member for support.
- Talk with counselors, health care providers, or other campus officials who can help explain options, give information, and provide emotional support.
- Talk with or make a report to the Title IX Coordinator.
- Explore this Policy and its avenues for resolution.

It is also important to take steps to preserve evidence in other investigations, such as Stalking, to the extent such evidence exists. Such evidence is more likely to be in the form of letters, emails, text messages, electronic images, etc. rather than evidence of physical contact and violence.

Once a report of Sexual Assault, Domestic Violence, Dating Violence, or Stalking is made, the victim has several options such as, but not limited to:

- obtaining Supportive Measures
- contacting parents or a relative
- seeking legal advice
- seeking personal counseling (always recommended)
- pursuing legal action against the perpetrator
- filing a Formal Complaint
- requesting that no further action be taken

The Covered Entity's Department of Public Safety can assist individuals in obtaining a personal protection order ("PPO").

XIV. Preliminary Assessment

Upon receipt of a report made pursuant to Section VI, the Title IX Coordinator will conduct a preliminary assessment to determine:

- Whether the conduct, as reported, falls or could fall within the scope of the Policy; and

- Whether the conduct, as reported, constitutes or could constitute Sexual Harassment.

If the Title IX Coordinator determines that the conduct reported could not fall within the scope of the Policy, and/or could not constitute Sexual Harassment, even if investigated, the Title IX Coordinator will close the matter and may notify the reporting party if doing so is consistent with the Family Educational Rights and Privacy Act ("FERPA"). The Title IX Coordinator may refer the report to other offices, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of the Policy, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator will proceed to contact the Complainant.

As part of the preliminary assessment, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if such identity is not apparent from the report.

XV. Contacting the Complainant

If a report is not closed as a result of the preliminary assessment and the Complainant's identity is known, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of

Supportive Measures; to discuss and consider the Complainant's wishes with respect to such Supportive Measures; to inform the Complainant of the availability of such Supportive Measures with or without filing a Formal Complaint; and to explain the process for filing and pursuing a Formal Complaint. The Complainant will also be provided options for filing complaints with the local or State police and information about resources that are available on campus and in the community.

XVI. Supportive Measures

If a report is not closed as a result of the preliminary assessment, the Covered Entity will offer and make available Supportive Measures to the Complainant regardless of whether the Complainant elects to file a Formal Complaint.

Contemporaneously with the Respondent being notified of a Formal Complaint, the Title IX Coordinator will notify the Respondent of the availability of Supportive Measures for the Respondent, and the Covered Entity will offer and make available Supportive Measures to the Respondent in the same manner in which it offers and makes them available to the Complainant. The Covered Entity will also offer and make available Supportive Measures to the Respondent prior to the Respondent being notified of a Formal Complaint, if the Respondent requests such measures.

The Covered Entity will maintain the confidentiality of Supportive Measures provided to either a Complainant or Respondent, to the extent that maintaining such confidentiality does not impair the Covered Entity's ability to provide the Supportive Measures in question.

XVII. Emergency Removal and Administrative Leave

At any time after receiving a report of Sexual Harassment, the Title IX Coordinator may remove a student Respondent from one or more of the Covered Entity's Education Programs or Activities on a temporary basis if the Covered Entity's threat assessment committee conducts an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal. In the event the Title IX Coordinator imposes an interim removal, the Title IX Coordinator must offer to meet with the Respondent within twenty-four hours and provide the Respondent an opportunity to challenge the interim removal.

In the case of a Respondent who is a non-student employee (administrator, faculty, or staff), and in its discretion, the Covered Entity may place the Respondent on administrative leave at any time after receiving a report of Sexual Harassment, including during the pendency of the investigation and adjudication process.

For all other Respondents, including independent contractors and guests, the Covered Entity retains broad discretion to prohibit such persons from entering onto its campus and other properties at any time, and for any reason, whether after receiving a report of Sexual Harassment or otherwise.

XVIII. Formal Complaint

A Complainant may file a Formal Complaint with the Title IX Coordinator requesting that the Covered Entity investigate and adjudicate a report of Sexual Harassment in accordance with these procedures. Provided, however, that at the time the Complainant submits a Formal Complaint, the Complainant must be participating in, or attempting to participate in, one or more of the Covered Entity's education programs or activities.

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by regular mail, or by email using the contact information specified in Exhibit A or B.

In any case, including a case where a Complainant elects not to file a Formal Complaint, the Title IX Coordinator may file a Formal Complaint on behalf of the Covered Entity if doing so is not clearly unreasonable. Such action will normally be taken in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the Covered Entity's community. No person other than the Complainant or the Title IX Coordinator may submit a Formal Complaint.

If the Complainant or the Title IX Coordinator files a Formal Complaint, then the Covered Entity will commence an investigation and proceed to adjudicate the matter as specified in these procedures. In all cases where a Formal Complaint is filed, the Complainant will be treated as a party, irrespective of the party's level of participation.

In a case where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator will not act as a Complainant or otherwise as a party for purposes of the investigation and adjudication processes.

XIX. Consolidation of Formal Complaints

The Covered Entity may consolidate Formal Complaints of Sexual Harassment where the allegations arise out of the same facts or circumstances. Where the investigation and adjudication process involve more than one Complainant or more than one Respondent, references in this Policy to the singular "party," "Complainant," or "Respondent" include the plural, as applicable. A Formal Complaint of Retaliation may be consolidated with a Formal Complaint of Sexual Harassment.

XX. Dismissal Prior to Commencement of Investigation

In a case where the Complainant files a Formal Complaint, the Title IX Coordinator will evaluate the Formal Complaint and <u>must</u> dismiss it if the Title IX Coordinator determines:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or

- The conduct alleged in the Formal Complaint falls outside the scope of the Policy specified in Section VI (i.e., because the alleged conduct did not occur in the Covered Entities' Education Programs or Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

In the event the Title IX Coordinator determines the Formal Complaint should be dismissed pursuant to this section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal. The dismissal is a final determination unless modified or overturned on appeal. The Title IX Coordinator may refer the subject matter of the Formal Complaint to other offices and procedures, as appropriate.

XXI. Notice of Formal Complaint

Within five (5) business days of the Title IX Coordinator receiving a Formal Complaint, the Title IX Coordinator will transmit a written notice to the Complainant and Respondent that includes:

- A physical copy of this Policy or a hyperlink to this Policy;
- Sufficient details known at the time so that the parties may prepare for an initial interview with the investigator, to include the identities of the parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident (if known);
- A statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
- Notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice;
- Notifying the Complainant and Respondent of their right to inspect and review evidence;
- Notifying the Complainant and Respondent of the Covered Entities' prohibitions on retaliation and false statements; and
- Information about resources that are available on campus and in the community.

Should the Covered Entity elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the Covered Entity will provide a supplemental written notice describing the additional allegations to be investigated.

XXII. Investigation

A. Commencement and Timing

After the written notice of Formal Complaint is transmitted to the parties, an investigator selected by the Title IX Coordinator will undertake an investigation to gather evidence relevant to the alleged misconduct, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with the Covered Entity and not with the parties. The investigation will culminate in a written investigation report that will be submitted to

the adjudicator during the selected adjudication process. Although the length of each investigation may vary depending on the totality of the circumstances, the Covered Entity strives to complete each investigation within ninety (90) calendar days of the transmittal of the written notice of Formal Complaint.

B. Equal Opportunity

During the investigation, the investigator will provide an equal opportunity for the parties to be interviewed, to present witnesses (including fact and expert witnesses), and to present other inculpatory and exculpatory evidence. Notwithstanding the foregoing, the investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant. The investigator will not restrict the ability of the parties to gather and present relevant evidence on their own.

The investigation is a party's opportunity to present testimonial and other evidence that the party believes is relevant to resolution of the allegations in the Formal Complaint. A party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, surprise, or excusable neglect.

C. Documentation of Investigation

The investigator will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses may be documented by the investigator's notes, audio recorded, video recorded, or transcribed. The particular method utilized to record the interviews of parties and witnesses will be determined by the investigator in the investigator's sole discretion, although whatever method is chosen shall be used consistently throughout a particular investigation.

D. Access to the Evidence

At the conclusion of the evidence-gathering phase of the investigation, but prior to the completion of the investigation report, the investigator will transmit to each party and their advisor, in either electronic or hard copy form, all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence the Covered Entity may choose not to rely on at any hearing and inculpatory or exculpatory evidence whether obtained from a party or some other source. Thereafter, the parties will have ten (10) calendar days in which to submit to the investigator a written response, which the investigator will consider prior to completing the investigation report.

The parties and their advisors are permitted to review the evidence solely for the purposes of this complaint resolution process and may not photograph or disseminate the evidence to the public.

E. Investigation Report

After the period for the parties to provide any written response as specified above has expired, the investigator will complete a written investigation report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. When the investigation report is complete, the investigator will transmit a copy to the Title IX Coordinator. The investigator will also transmit the investigation report to each party and their advisor, in either electronic or hard copy form. The parties and their advisors are provided the report for the purposes of this complaint resolution process and may not disseminate the report to the public.

XXIII. Adjudication

A. Hearing Officer

After receipt of the investigation report, the Title IX Coordinator will promptly appoint a hearing officer who will oversee the hearing process and render a determination of responsibility for the allegations in the Formal Complaint, at the conclusion of the hearing process. The Title IX Coordinator will see that the hearing officer is provided a copy of the investigation report and a copy of all evidence transmitted to the parties by the investigator.

B. Hearing Notice and Response to the Investigation Report

After the hearing officer is appointed by the Title IX Coordinator, the hearing officer will promptly transmit written notice to the parties notifying the parties of the hearing officer's appointment; setting a deadline for the parties to submit any written response to the investigation report; setting a date for the pre-hearing conference; setting a date and time for the hearing; and providing a copy of the Covered Entity's Hearing Procedures. Neither the pre-hearing conference, nor the hearing itself, may be held any earlier than ten (10) calendar days from the date of transmittal of the written notice of hearing.

A party's written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history, or for any other reason;
- A list of any witnesses that the party contends should be requested to attend the hearing pursuant to an attendance notice issued by the hearing officer;
- A list of any witnesses that the party intends to bring to the hearing without an attendance notice issued by the hearing officer;

- Any objection that the party has to the Covered Entity's Hearing Procedures;
- Any request that the parties be separated physically during the pre-hearing conference and/or hearing;
- Any other accommodations that the party seeks with respect to the pre-hearing conference and/or hearing;
- The name and contact information of the advisor who will accompany the party at the pre-hearing conference and hearing;
- If the party does not have an advisor who will accompany the party at the hearing, a request that the Covered Entities provide an advisor for purposes of conducting cross-examination.

A party's written response to the investigation report may also include:

- Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence; and
- Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

C. **Pre-Hearing Conference**

Prior to the hearing, the hearing officer will conduct a pre-hearing conference with the parties and their advisors. During the pre-hearing conference, the hearing officer will discuss the hearing procedures with the parties; discuss the witnesses the parties have requested be served with notices of attendance and/or witnesses the parties plan to bring to the hearing without a notice of attendance; and resolve any other matters that the hearing officer determines, in the hearing officer's discretion, should be resolved before the hearing.

D. **Issuance of Notices of Attendance**

After the pre-hearing conference, the hearing officer will transmit notices of attendance to any Covered Entity employee (including administrator, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will advise the subject of the specified date and time of the hearing and advise the subject to contact the hearing officer immediately if there is a material and unavoidable conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, coaches, and other supervisors are required to excuse the subject of the obligation, or provide some other accommodation, so that the subject may attend the hearing as specified in the notice.

The Covered Entity will not issue a notice of attendance to any witness who is not an employee or a student.

E. **Hearing**

After the pre-hearing conference, the hearing officer will convene and conduct a hearing pursuant to the Covered Entity's Hearing Procedures. The hearing will be recorded (audio or audiovisual) or transcribed. The recording or transcript will be made available to the parties for inspection and review on reasonable notice, including for use in preparing any subsequent appeal.

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the hearing will be conducted with the hearing officer, the parties, the advisors, witnesses, and other necessary Covered Entity personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the hearing officer's discretion, the hearing may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

While the Hearing Procedures and rulings from the hearing officer will govern the particulars of the hearing, each hearing will include, at a minimum:

- Opportunity for each party to address the hearing officer directly and to respond to questions posed by the hearing officer;
- Opportunity for each party's advisor to cross-examine directly, orally, and in real time, relevant questions, and follow up questions, of the other party and any witnesses, including questions that support or challenge credibility;
- Opportunity for each party to raise contemporaneous objections to testimonial or non-testimonial evidence and to have such objections ruled on by the hearing officer and a reason for the ruling provided;
- Opportunity for each party to submit evidence that the party did not present during the investigation due to mistake, inadvertence, surprise, or excusable neglect; and
- Opportunity for each party to make a brief closing argument.

Except as otherwise permitted by the hearing officer, the hearing will be closed to all persons except the parties, their advisors, the investigator, the hearing officer, the Title IX Coordinator, and other necessary Covered Entity personnel. Witnesses will be sequestered from one another at the hearing until such time as their testimony is complete.

During the hearing, the parties and their advisors will have access to the investigation report and evidence that was transmitted to them before the conclusion of the investigation.

While a party has the right to attend and participate in the hearing with an advisor, a party and/or advisor who materially and repeatedly violates the rules of the hearing in such a way as to be materially disruptive, may be barred from further participation and/or have their participation limited, as the case may be, in the discretion of the hearing officer.

Subject to the minimum requirements specified in this section, the hearing officer will have sole discretion to determine the manner and particulars of any given hearing, including with respect to the length of the hearing, the order of the hearing, and questions of admissibility. The hearing officer will independently and contemporaneously screen questions for relevance in addition to resolving any contemporaneous objections raised by the parties and will explain the rational for any evidentiary rulings.

The hearing is not a formal judicial proceeding and strict rules of evidence do not apply. The hearing officer will have discretion to modify the Hearing Procedures, when good cause exists to do so, and provided the minimal requirements specified in this section are met.

F. Subjection to Questioning

The hearing officer may consider statements of persons who were not present at the hearing or who were present but refused to answer cross-examination or other questions if such statements were (i) made against the interests of that person, (ii) made by a party and the statement is offered by the opposing party, (iii) made by a non-party witness unable to attend the hearing due to circumstances beyond that individual's control, (iv) made for the purpose of obtaining medical diagnosis or treatment, or (v) contained in a document where there are sufficient indications of the document's authenticity and trustworthiness, so long as the statements are deemed reliable and relevant by the hearing officer and not otherwise subject to exclusion under this policy. Such statements may include, but are not limited to, statements in police reports or other official reports, medical records, court records and filings, investigation notes of interviews, investigation transcripts, emails, written statements, affidavits, text messages, and social media postings.

In applying this section, the hearing officer will not draw an inference about the determination regarding responsibility based solely on a party or a witness's absence from the live hearing and/or refusal to submit to questioning by the parties' advisors.

G. Deliberation and Determination

After the hearing is complete, the hearing officer will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness.

The hearing officer will take care to exclude from consideration any evidence that was ruled inadmissible at the pre-hearing conference, during the hearing, or because it constitutes impermissible sexual history information. The hearing officer will resolve disputed facts using a preponderance of the evidence (i.e., "more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the Policy as alleged in the Formal Complaint.

H. Discipline and Remedies

In the event the hearing officer determines that a student or other non-employee Respondent is responsible for violating this Policy, the hearing officer will, prior to issuing a written decision, consult with an appropriate Covered Entity official with disciplinary authority over the Respondent and such official will determine any discipline to be imposed. The hearing officer will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.

In the event the hearing officer determines that an employee Respondent is responsible for violating this Policy, the hearing officer will, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant. The hearing officer will refer the matter to the appropriate Vice President, Provost, or Associate Commissioner, along with a recommendation regarding appropriate disciplinary and/or corrective action that comports with applicable personnel policies and collective bargaining agreements. The Vice President, Provost, or Associate Commissioner shall consult with the Covered Entity's Office of Human Resources and determine the appropriate disciplinary and/or corrective action in accordance with applicable personnel policies and collective bargaining agreements.

I. Written Decision

After reaching a determination and consulting with the appropriate Covered Entities official and Title IX Coordinator, the hearing officer will prepare a written decision that will include:

- Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;
- A description of the procedural steps taken by the Covered Entity upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing.
- Findings of fact, made under a preponderance of the evidence standard, that support the determination;

- A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;

- The discipline determined by the appropriate Covered Entity official (for students and non-employees) or the discipline recommended to the appropriate Covered Entity official (for employees);

- Whether the Complainant will receive any ongoing support measures or other remedies as determined by the Title IX Coordinator; and

- A description of the Covered Entity's process and grounds for appeal.

The hearing officer's written determination will be transmitted to the parties. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal.

Although the length of each adjudication by hearing will vary depending on the totality of the circumstances, the Covered Entities strives to issue the hearing officer's written determination within fourteen (14) business days of the conclusion of the hearing.

XXIV. Dismissal During Investigation or Adjudication

The Covered Entity shall dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that one or more of the following is true:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or

- The conduct alleged in the Formal Complaint falls outside the scope of the Policy.

The Covered Entity may dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that any one or more of the following is true:

- The Complainant provides the Title IX Coordinator written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case those discrete allegations may be dismissed);

- The Respondent is no longer enrolled or employed by the Covered Entity; or

- Specific circumstances prevent the Covered Entity from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event the Title IX Coordinator determines that a Formal Complaint should be dismissed pursuant to this section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal. The Title IX Coordinator may refer the subject matter of the Formal Complaint to other offices or procedures, as appropriate. The dismissal is a final determination unless modified or overturned on appeal.

XXV. Appeal

Either party may appeal the determination of an adjudication, or a dismissal of a Formal Complaint, on one or more of the following grounds:

- A procedural irregularity affected the outcome;
- There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;
- The Title IX Coordinator, investigator, or hearing officer had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome.

No other grounds for appeal are permitted.

A party must file an appeal within seven (7) business days of the date they receive notice of dismissal or written determination. The appeal must be submitted in writing to the Covered Entity's designated appeal officer. The appeal must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks.

Promptly upon receipt of an appeal, the appeal officer will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the appeal officer determines that the appeal is not timely, or that it fails to invoke a permitted ground for appeal, the appeal officer will dismiss the appeal and provide written notice of the same to the parties.

If the appeal officer confirms that the appeal is timely and invokes at least one permitted ground for appeal, the appeal officer will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within seven (7) business days. The appeal officer shall also promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

Upon receipt of any opposition, or after the time period for submission of an opposition has passed without one being filed, the appeal officer will promptly decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal and the rationale.

The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the appeal officer has resolved all appeals, either by dismissal or by transmittal of a written decision.

No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, the Covered Entity strives to issue the appeal officer's written decision within (21) business days of an appeal being filed.

XXVI. Advisor of Choice

The Complainant and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. The advisor may be any person the party chooses.

Except for the questioning of witnesses during the hearing, the advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the advisor, or communicate with the Covered Entity about the matter without the party being included in the communication. In the event a party's advisor of choice engages in material violation of the parameters specified in these procedures, the Covered Entity may preclude the advisor from further participation, in which case the party may select a new advisor of their choice.

In the event a party is not able to secure an advisor to attend the hearing, the Covered Entity will provide the party an advisor, without fee or charge, who will conduct questioning on behalf of the party at the hearing. The Covered Entity will have sole discretion to select the advisor it provides. The advisor the Covered Entity provides may be, but is not required to be, an attorney.

The Covered Entity is not required to provide a party with an advisor in any circumstance except where the party does not have an advisor present at the hearing, and one is provided to conduct questioning on behalf of the party.

XXVII. Treatment Records and Other Privileged Information

During the investigation and adjudication processes, the investigator and adjudicator are not permitted to access, consider, disclose, permit questioning concerning, or otherwise use:

- A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party; or

- Information or records protected from disclosure by any other legally recognized privilege, such as the attorney client privilege

unless the Covered Entity has obtained the party's voluntary, written consent to do so for the purposes of the investigation and adjudication process.

Notwithstanding the foregoing, the investigator and/or adjudicator may consider any such records or information otherwise covered by this section if the party holding the privilege affirmatively discloses the records or information to support their allegation or defense.

XXVIII. Sexual History

During the investigation and adjudication processes, questioning regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. Notwithstanding the foregoing, a Complainant who affirmatively uses information otherwise considered irrelevant by this section for the purpose of supporting the Complainant's allegations, may be deemed to have waived the protections of this section, but only to the limited extent the Complainant has used the information.

XXIX. Informal Resolution

At any time after the parties are provided written notice of the Formal Complaint, and before the completion of any appeal, the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in mediation, facilitated resolution, or other form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties.

The specific manner of any informal resolution process will be determined by the parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the parties that:

- Describes the parameters and requirements of the informal resolution process to be utilized;
- Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another Covered Entities official, or a suitable third-party);
- Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party's ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint; and
- Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence.

During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended. A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized.

If the parties do not reach a resolution through the informal resolution process, the Complainant may choose to proceed with the formal investigation and adjudication process outlined in these procedures.

If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their written signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by the Covered Entity, except as otherwise provided in the resolution itself, absent a showing that a party induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either party or to the Covered Entity. Informal resolution reached pursuant to this section is not subject to appeal.

Absent extension by the Title IX Coordinator, any informal resolution process must be completed within twenty-one (21) calendar days. If an informal resolution process does not result in a resolution within twenty-one (21) calendar days, and absent an extension, abeyance, or other contrary ruling by the Title IX Coordinator, the informal resolution process will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution.

Other language in this section notwithstanding, informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student.

XXX. Presumption of Non-Responsibility

From the time a report or Formal Complaint is made, a Respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made final.

XXXI. Resources

The Covered Entities shall publish and make available to all students and employees, information about “available resources” for individuals who believe they are victims of, witnesses to, or are simply concerned about, Sexual Harassment and other forms of sexual violence. Such “available information” should include a list of internal and external agencies, offices, hotlines, websites, or

other information resources or service providers the Covered Entity believes would be important or valuable resources for their students and employees.

The current "available resources" listings for Rhode Island College, the Community College of Rhode Island, and the Office of the Postsecondary Commissioner are attached hereto as Exhibits A and B respectively and are incorporated by reference into this Policy. Each Covered Entity shall be obligated to keep their "available resources" listings current, and to promptly provide all updates to them (i.e. revisions to Exhibits A and B) to the Council, which will substitute the updated exhibits for the old ones and attach them to this Policy.

XXXII. Conflicts of Interest, Bias, and Procedural Complaints

The Title IX Coordinator, investigator, hearing officer, appeals officer, and informal resolution facilitator will be free of any material conflicts of interest or material bias. Any party who believes one or more of these officials has a material conflict of interest or material bias must raise the concern promptly so that the Covered Entity may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal.

XXXIII. Objections Generally

Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a prompt and timely manner so that the Covered Entity may evaluate the matter and address it, if appropriate.

XXXIV. Constitutional Rights and Academic Freedom

The Covered Entities will construe and apply this Policy consistent with the First Amendment to the U.S. Constitution and the principles of academic freedom specified in its handbooks. In no case will a Respondent be found to have committed Sexual Harassment based on expressive conduct that is protected by the First Amendment and/or the principles of academic freedom specified in the Covered Entity's handbooks.

XXXV. Relationship with Criminal Process

This Policy sets forth the Covered Entities' processes for responding to reports and Formal Complaints of Sexual Harassment. The Covered Entities' processes are separate, distinct, and independent of any criminal processes. While the Covered Entities may temporarily delay its processes under this Policy to avoid interfering with law enforcement efforts if requested by law enforcement, the Covered Entities will otherwise apply this Policy and its processes without regard to the status or outcome of any criminal process.

XXXVI. Civil Lawsuits

The Complainant may choose to file a civil lawsuit against the Respondent, whether or not criminal charges have been filed. A civil lawsuit provides the Complainant the opportunity to recover actual damages, which may include compensation for medical expenses, lost wages, pain, suffering, and emotional distress.

XXXVII. Amnesty

The health and safety of every student is of utmost importance. The Covered Entities recognize that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that an incident of violence occurs, including, but not limited to, domestic violence, dating violence, stalking, or sexual assault may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The Covered Entities strongly encourage students to report incidents of violence to institution officials. The reporting party, responding party, a bystander acting in good faith, or a reporting individual acting in good faith, who discloses any incident of violence to the Covered Entity or law enforcement will not be subject to the Covered Entity's student conduct code for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the incident of violence.

XXXVIII. Vendors, Contractors and Third Parties

The Covered Entities do business with various vendors, contractors, and other third parties who are not students or employees of the Covered Entities. Notwithstanding any rights that a given vendor, contractor, or third-party Respondent may have under this Policy, the Covered Entity retains its right to limit any vendor, contractor, or third-party's access to campus for any reason. And the Covered Entity retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third-party irrespective of any process or outcome under this Policy.

XXXIX. Bad Faith Complaints and False Information

It is a violation of this Policy for any person to submit a report or Formal Complaint that the person knows, at the time the report or Formal Complaint is submitted, to be false or frivolous. It is also a violation of this Policy for any person to knowingly make a materially false statement during the course of an investigation, adjudication, or appeal under this Policy. Violations of this section are not subject to the investigation and adjudication processes in this Policy; instead, they will be addressed under the Code of Student Conduct in the case of students and other Covered Entity policies and standards, as applicable, for other persons.

XL. Retaliation

It is a violation of this Policy to engage in Retaliation. Reports and Formal Complaints of retaliation should be filed directly with the Title IX Coordinator. Any report or Formal Complaint of Retaliation will be processed under this Policy in the same manner as a report or Formal Complaint of Sexual Harassment. The Covered Entity retains discretion to consolidate a Formal Complaint of Retaliation

with a Formal Complaint of Sexual Harassment for investigation and/or adjudication purposes if the two Formal Complaints share a common nexus.

XLI. Confidentiality

The Covered Entity will keep confidential the identity of any individual who has made a report or Formal Complaint of Sexual Harassment or Retaliation including any Complainant, the identity of any individual who has been reported to be a perpetrator of Sexual Harassment or Retaliation including any Respondent, and the identity of any witness. The Covered Entity will also maintain the confidentiality of its various records generated in response to reports and Formal Complaints, including, but not limited to, information concerning Supportive Measures, notices, investigation materials, adjudication records, and appeal records. Notwithstanding the foregoing, the Covered Entity may reveal the identity of any person or the contents of any record if permitted by FERPA, if necessary to carry out the Covered Entity's obligations under Title IX and its implementing regulations including the conduct of any investigation, adjudication, or appeal under this Policy or any subsequent judicial proceeding, or as otherwise required by law. Further, notwithstanding the Covered Entity's general obligation to maintain confidentiality as specified herein, the parties to a report or Formal Complaint will be given access to investigation and adjudication materials in the circumstances specified in this Policy.

While the Covered Entities will maintain confidentiality specified in this section, the Covered Entity will not limit the ability of the parties to discuss the allegations at issue in a particular case. Parties are advised, however, that the manner in which they communicate about, or discuss a particular case, may constitute Sexual Harassment or Retaliation in certain circumstances and be subject to discipline pursuant to the processes specified in this Policy.

Note that certain types of Sexual Harassment are considered crimes for which the Covered Entity must disclose crime statistics in its Annual Security Report that is provided to the campus community and available to the public. These disclosures will be made without including personally identifying information.

XLII. Extension of Deadlines

All deadlines and other time periods specified in this Policy are subject to modification by the Covered Entity where, in the Covered Entity's sole discretion, good cause exists. Good cause may include, but is not limited to, the unavailability of parties or witnesses; the complexities of a given case; extended holidays or closures; sickness of the investigator, adjudicator, or the parties; and unforeseen weather events.

XLIII. Other Violations of this Policy

Alleged violations of this Policy, other than violations of the prohibitions on Sexual Harassment and Retaliation, will be subject to review under the Student Code of Conduct for students and applicable personnel policies for employees. Examples of such violations include, but are not limited to, failure

to abide by Supportive Measures or dissemination of evidence in contradiction to Section XXII.D of this Policy.

XLIV. Education

Each Covered Entity shall provide information regarding its education and primary prevention and awareness programs as required by VAWA as an appendix to this Policy.

XLV. Outside Appointments and Dual Appointments

The Covered Entities retains discretion to retain and appoint suitably qualified persons who are not Covered Entity's employees to fulfill any function of the Covered Entity under this Policy, including, but not limited to, the investigator, hearing officer, informal resolution officer, and/or appeals officer.

The Covered Entities also retain discretion to appoint two or more persons to jointly fulfill the role of investigator, hearing officer, informal resolution officer, and/or appeals officer.

XLVI. Training

The Covered Entities will ensure that Covered Entity officials acting under this Policy, including but not limited to the Title IX Coordinator, investigators, hearing officers, administrative officers, informal resolution facilitators, Covered Entities provided advisors, and appeals officers receive training in compliance with 34 C.F.R. § 106.45(b)(1)(iii) and any other applicable federal or state law.

XLVII. Recordkeeping

The Covered Entities will retain those records specified in 34 C.F.R. § 106.45(b)(10) for a period of seven years after which point in time they may be destroyed, or continue to be retained, in the Covered Entities' sole discretion. The records specified in 34 C.F.R. § 106.45(b)(10) will be made available for inspection, and/or published, to the extent required by 34 C.F.R. § 106.45(b)(10) and consistent with any other applicable federal or state law, including FERPA.

EXHIBIT A
Title IX Coordinator and Resource Listings
for
Rhode Island College

TITLE IX COORDINATOR CONTACT INFORMATION
Margaret (Peggy) Lynch-Gadaleta
Title IX Coordinator
Director of Institutional Equity
301 Roberts Hall Providence, Rhode Island 02908
Phone: (401)-456-8387
mlynchgadaleta@ric.edu
http://www.ric.edu/titleIX/Pages/default.aspx

LIST OF REPORTING OFFICIALS
Title IX Coordinator

AVAILABLE RESOURCES

The College recognizes that some individuals, for a variety of reasons, may be reluctant to cooperate or participate in the investigation or file a complaint without the advice or counsel of a sympathetic party. The following resources are available to provide assistance and information to anyone who is concerned or witnessed incident(s) of sexual harassment and sexual violence or sexual assault:

Internal Resources:

Counseling Center – Brown Residence Hall Suite 100, 401-456-8094
http://www.ric.edu/healthservices/Pages/default.aspx
Health Services – Brown Residence Hall, 401-456-8055
http://www.ric.edu/healthservices/Pages/default.aspx
Office of Student Life – Student Union #408, 401-456-8061
http://www.ric.edu/studentlife/Pages/default.aspx
Residential Life and Housing – Penfield Residence Hall, 401-456-8240
http://www.ric.edu/residential-life/Pages/default.aspx
Human Resources– Building #6, East Campus, 401-456-8218
http://www.ric.edu/humanresources/Pages/default.aspx
Campus Police – Welcome Center, 401-456-8201 or 401-456-8522
http://www.ric.edu/campuspd/Pages/default.aspx

External Resources:

U.S. Department of Education Office for Civil Rights, Boston Office

5 Post Office Square, 8th Floor
Boston, MA 02109-3921
(617)-289-0111
https://www.ed.gov/category/location/massachusetts

Rhode Island Commission for Human Rights
180 Westminster Street, 3rd Floor
3rd Floor Providence, RI 02903
Phone: (401)-222-2661
Fax: (401)-222-2616
TTY (Relay RI): (401)-222-2664
http://www.richr.ri.gov/

Equal Employment Opportunity Commission Boston Area Office
J.F.K. Federal Building, Room 475
475 Government Center
Boston, MA 02203
Toll Free 1-866-408-8075
617-565-3200
https://www.eeoc.gov/field-office/boston/location

EXHIBIT B

Title IX Coordinator and Resource Listings
for
The Community College of Rhode Island

TITLE IX COORDINATOR CONTACT INFORMATION

Alix Ogden
Interim Title IX Coordinator
400 East Avenue, Warwick, Rhode Island 02886
Tel: 401-825-1004
aogden@ccri.edu

Michael Cunningham
Dean of Students & Deputy Title IX Coordinator
400 East Avenue, Warwick, Rhode Island 02886
Tel: 401-825-2379
mjcunningham2@ccri.edu

LIST OF REPORTING OFFICIALS

Title IX Coordinator
Director of Human Resources
Dean of Students

AVAILABLE RESOURCES

Various on-campus support and counseling services are available for victims of sexual assault. CCRI offers counseling services:

Warwick: 401-825-2301
Lincoln: 401-333-7160
Providence: 401-455-6063
Newport: 401-851-1625

Students may contact CCRI's Health Services at 401-825-2103 or email nurse@ccri.edu. Hours of operation for these services vary and this should not be considered an emergency contact. Check the website for current hours of operation.

Off-campus services that are available 24 hours/7 days a week include:
Day One: 401-421-4100

The personnel in these offices can provide advice and counseling, detailed information on health issues and reporting procedures, or referrals to other resources.

COLLEGE POLICE

LINCOLN	401-333-7035
NEWPORT	401-851-1620
PROVIDENCE	401-455-6050
WARWICK	401-825-2109

External Resources:

U.S. Department of Education Office for Civil Rights, Boston Office
5 Post Office Square, 8th Floor
Boston, MA 02109-3921
617-289-0111

Rhode Island Commission for Human Rights
180 Westminster Street, 3rd Floor
Providence, RI 02903
401-222-2662

Equal Employment Opportunity Commission, Boston Area Office
J.F.K. Federal Building, Room 475
475 Government Center
Boston, MA 02203
Toll Free 1-866-408-8075
617-565-3200

EXHIBIT C
RHODE ISLAND STATE LAW:
SEXUAL OR RELATIONSIP ASSAULT OR VIOLENCE

SEXUAL ASSAULT- (R.I.G.L. 11-37-1 thru 11-37-6)

§ 11-37-1. Definitions.

The following words and phrases, when used in this chapter, have the following meanings:
(1) "Accused" means a person accused of a sexual assault.
(2) "Force or coercion" means when the accused does any of the following:
(i) Uses or threatens to use a weapon, or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.
(ii) Overcomes the victim through the application of physical force or physical violence.
(iii) Coerces the victim to submit by threatening to use force or violence on the victim and the victim reasonably believes that the accused has the present ability to execute these threats.
(iv) Coerces the victim to submit by threatening to at some time in the future murder, inflict serious bodily injury upon or kidnap the victim or any other person and the victim reasonably believes that the accused has the ability to execute this threat.
(3) "Intimate parts" means the genital or anal areas, groin, inner thigh, or buttock of any person or the breast of a female.
(4) "Mentally disabled" means a person who has a mental impairment which renders that person incapable of appraising the nature of the act.
(5) "Mentally incapacitated" means a person who is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or who is mentally unable to communicate unwillingness to engage in the act.
(6) "Physically helpless" means a person who is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.
(7) "Sexual contact" means the intentional touching of the victim's or accused's intimate parts, clothed or unclothed, if that intentional touching can be reasonably construed as intended by the accused to be for the purpose of sexual arousal, gratification, or assault.
(8) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, and anal intercourse, or any other intrusion, however slight, by any part of a person's body or by any object into the genital or anal openings of another person's body, or the victim's own body upon the accused's instruction, but emission of semen is not required.
(9) "Spouse" means a person married to the accused at the time of the alleged sexual assault, except that such persons shall not be considered the spouse if the couple are living apart and a decision for divorce has been granted, whether or not a final decree has been entered.
(10) "Victim" means the person alleging to have been subjected to sexual assault.

§ 11-37-2. First degree sexual assault.

A person is guilty of first degree sexual assault if he or she engages in sexual penetration with another person, and if any of the following circumstances exist:
(1) The accused, not being the spouse, knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless.
(2) The accused uses force or coercion.
(3) The accused, through concealment or by the element of surprise, is able to overcome the victim.
(4) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation.

§ 11-37-4. Second degree sexual assault.

A person is guilty of a second-degree sexual assault if he or she engages in sexual contact with another person and if any of the following circumstances exist:
(1) The accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless.
(2) The accused uses force, element of surprise, or coercion.
(3) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation.

§ 11-37-6. Third degree sexual assault.

A person is guilty of third degree sexual assault if he or she is over the age of eighteen (18) years and engaged in sexual penetration with another person over the age of fourteen (14) years and under the age of consent, sixteen (16) years of age.

DOMESTIC VIOLENCE- (R.I.G.L. 12-29-2)

§ 12-29-2. Definitions.

(a) "Domestic violence" includes, but is not limited to, any of the following crimes when committed by one family or household member against another:

(1) Simple assault (§ 11-5-3);
(2) Felony assaults (chapter 5 of title 11);
(3) Vandalism (§ 11-44-1);
(4) Disorderly conduct (§ 11-45-1);
(5) Trespass (§ 11-44-26);
(6) Kidnapping (§ 11-26-1);
(7) Child-snatching (§ 11-26-1.1);
(8) Sexual assault (§§ 11-37-2, 11-37-4);

(9) Homicide (§§ 11-23-1 and 11-23-3);
(10) Violation of the provisions of a protective order entered pursuant to § 15-5-19, chapter 15 of title 15, or chapter 8.1 of title 8 where the respondent has knowledge of the order and the penalty for its violation, or a violation of a no contact order issued pursuant to § 12-29-4;
(11) Stalking (chapter 59 of title 11);
(12) Refusal to relinquish or to damage or to obstruct a telephone (§ 11-35-14);
(13) Burglary and Unlawful Entry (chapter 8 of title 11);
(14) Arson (chapter 4 of title 11);
(15) Cyberstalking and cyberharassment (§ 11-52-4.2);
(16) Domestic assault by strangulation § 11-5-2.3; and
(17) Electronic tracking of motor vehicles (§ 11-69-1).

(b) “Family or household member" means spouses, former spouses, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past three (3) years, and persons who have a child in common regardless of whether they have been married or have lived together, or persons who are, or have been, in a substantive dating or engagement relationship within the past one year which shall be determined by the court's consideration of the following factors:

(1) The length of time of the relationship;
(2) The type of the relationship;
(3) The frequency of the interaction between the parties.

(d) "Victim" means a family or household member who has been subjected to domestic violence.

STALKING- (R.I.G.L. 11-59-1 through 11-59-2)

§ 11-59-1. Definitions.

For the purpose of this chapter:
(1) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(2) "Harasses" means a knowing and willful course of conduct directed at a specific person with the intent to seriously alarm, annoy, or bother the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, or be in fear of bodily injury.

§ 11-59-2. Stalking prohibited.

(a) Any person who: (1) harasses another person; or (2) willfully, maliciously, and repeatedly

follows another person with the intent to place that person in reasonable fear of bodily injury, is guilty of the crime of stalking.

(b) Stalking shall be deemed a felony punishable by imprisonment for not more than five (5) years, by a fine of not more than ten thousand dollars ($10,000), or both.