Enclosure 9h
April 1, 2015

COUNCIL ON POSTSECONDARY EDUCATION

SEXUAL HARASSMENT

AND

SEXUAL VIOLENCE POLICY

COUNCIL ON POSTSECONDARY EDUCATION
SEXUAL HARASSMENT AND SEXUAL VIOLENCE POLICY

POLICY STATEMENT

It is the policy of the Council on Postsecondary Education ("CPE"), its constituent institutions of higher education (specifically, the University of Rhode Island, Rhode Island College, 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 and sexual violence, as those terms are defined herein.

PURPOSE AND GOALS OF POLICY

(1) Defines the types of conduct that will be considered to be prohibited sexual harassment, sexual assault and sexual violence at the Covered Entities;
(2) Provides examples of such prohibited conduct;
(3) Sets forth the mandatory and discretionary reporting obligations and procedures pertaining to such conduct that is witnessed, experienced or learned about by, or reported to, employees of the Covered Entities.
(4) Provides a list of contacts, and internal and external resources, available to individuals who experience or witness acts of sexual harassment, sexual assault and sexual violence or who have questions relating to those subjects.

BACKGROUND

Sexual harassment, as defined herein, is prohibited in employment by Title VII of the 1964 Civil Rights Act and the Rhode Island Fair Employment Practices Act, and in education programs, activities and benefits by Title IX of the Educational Amendments of 1972 and Title VI of the 1964 Civil Rights Act.

Sexual violence (as defined herein) is prohibited in both the employment context, as well as in the educational programs, activities and benefits context, under Title IX of the Educational Amendments of 1972 ("Title IX") and the Violence Against Woman Reauthorization Act of 2013 ("VAWA").

APPLICABILITY

All faculty, staff, and students at all Covered Entities must comply with this policy in an effort to foster an inclusive and safe academic and work environment. This policy applies to the perpetration of sexual harassment, sexual assault or sexual violence by one member of the Covered Entity's community (faculty, staff, student, or volunteer) against another. Depending on the context, 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. The policy applies to all such behavior occurring on campus, and to behavior occurring off campus when the behavior arises in the context of a Covered Entity event or otherwise has a significant relation to, or could have a significant impact on, the Covered Entity's living, learning or employment environments.

SEXUAL HARASSMENT

Sexual Harassment is defined as unwelcome sexual advances, request for sexual favors, and any other verbal, non-verbal or physical conduct of a sexual nature when:

(1) Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's education, employment, or participation in programs or activities at the Covered Entity;

(2) Submission to or rejection of such conduct by an individual is used as a basis for decisions affecting that individual's education, employment, or participation in programs or activities at the Covered Entity; or

(3) Such conduct is so severe and pervasive that is has the purpose or effect of unreasonably interfering with an individual's education, employment or participation in programs or activities at the Covered Entity and/or creating an intimidating, hostile, offensive or abusive employment, academic, extracurricular or living or learning environment for the individual at the Covered Entity.

The following are just two examples of conduct and behavior that will very likely be considered sexual harassment under this policy:

(1) 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.

(2) 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 and hostile environment in the newsroom.

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 be lead to a finding of sexual harassment include, but are not limited to, the following:

(1) Verbal: Sexual remarks, comments, jokes and innuendos, communicating unwelcome stories about someone's social or sexual life, and propositions or pressure for social or sexual contact.
(2) Non-verbal: The display of sexually explicit stares, gestures or suggestive pictures, including secretly video recording sexual acts or objects.
(3) Physical: Unwanted touching, patting, grabbing, pinching, including sexual assault, domestic violence, dating violence stalking and rape.

Sexual harassment need not be intentional. The intent of the person who is alleged to have committed such behavior may not be 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.

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 sexual harassment under this policy. Specific examples of such behavior that may lead to a finding of sexual harassment include the following:

(1) 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."
(2) 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.

SEXUAL VIOLENCE

As used in this policy, the term sexual violence shall refer to (a) "sexual violence under Title IX" as that term is defined herein; (b) "sexual or relationship assault or violence under VAWA" as that term is defined herein; and/or (c) "sexual assault or relationship violence under Rhode Island law" as defined herein. *All forms of sexual assault and violence are prohibited under this policy.*

SEXUAL VIOLENCE UNDER TITLE IX

Sexual violence under Title IX, as described in the April 4, 2011 guidance issued by the U.S. Department of Education, is a form of sexual harassment, and refers to: physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and other forms of sexual coercion.

SEXUAL OR RELATIONSIP VIOLENCE OR ASSAULT UNDER VAWA

Sexual or relationship violence or assault under VAWA refers to the following offenses, as defined herein: Sexual Assault-VAWA; Domestic Violence-VAWA; Dating Violence-VAWA; and Stalking-VAWA.

SEXUAL ASSAULT- VAWA

An offense that meets one of the following definitions of rape, fondling, incest, or statutory rape used in the FBI's Uniform Crime reporting Program.

Rape ---The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling—The touching of 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 his/her age or because of his/her temporary or permanent mental incapacity.

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

Statutory Rape—Sexual intercourse with a person who is under the statutory age of consent.

DATING VIOLENCE- VAWA

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 shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition—

(A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(B) Dating violence does not include acts covered under the definition of domestic violence.

DOMESTIC VIOLENCE- VAWA

A felony or misdemeanor crime of violence committed—

(A) By a current or former spouse or intimate partner of the victim;

(B) By a person with whom the victim shares a child in common;

(C) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;

(D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or

(E) 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 the jurisdiction in which the crime of violence occurred.

STALKING- VAWA

(i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

(A) Fear for the person's safety or the safety of others; or

(B) Suffer substantial emotional distress.

(ii) For the purposes of this definition—

(A) *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, including social media, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(B) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.

(C) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

SEXUAL OR RELATIONSIP VIOLENCE OR ASSAULT UNDER RHODE ISLAND LAW

Sexual or Relationship Assault or Violence under Rhode Island Law refers to the following offenses, as defined herein and fully set forth on **EXHIBIT A** attached hereto and made a part hereof:

SEXUAL ASSAULT – RI (as defined in R.I.G.L §11-37-1 through §11-37-6)

DATING VIOLENCE – RI (as defined in R.I.G.L. §16-22-24)

DOMESTIC VIOLENCE –RI (as defined in R.I.G.L.§12-29-2)

STALKING – RI (as defined in R.I.G.L. §11-59-1 though §11-59-2)

RETALIATION

Retaliation against any complainant or witness is prohibited and shall be treated as a separate violation under this policy as well as any of the Covered Entity's community standards and Non-Discrimination Policy.

Furthermore, no officer, employee, student or agent of any of the Covered Entities shall retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising their rights or responsibilities under any provision of law, or any of the Covered Entity's policies or procedures, relating to campus security or campus crime reporting, including any laws and policies relating to the reporting of, and required responses to, allegations of sexual violence.

REPORTING PROCEDURES AND AVAILABLE RESOURCES

Each of the Covered Entities shall establish, and make known to their students and employees, their (legally compliant) "reporting procedures" for the reporting of instances or complaints of sexual harassment and sexual violence, including a description of which employees shall be responsible for reporting, and which official(s) shall be responsible for receiving such reports. The Covered Entities shall also publish and make available to all of their students and employees information about "available resources" for individuals who believe they are victims of, witnesses to, or are simply concerned about, sexual harassment or 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 "reporting procedures" descriptions, and "available resources" listings, for the University of Rhode Island, Rhode Island College, the Community College of Rhode Island, and the Office of the Postsecondary Commissioner, are attached hereto as Exhibits B, C, D and E respectively, and are incorporated by reference into this policy. Each Covered Entity shall be obligated to keep their "reporting procedures" descriptions and "available resources" listings current, and to promptly provide all updates to them (i.e. revisions to Exhibits B, C, D or E) to the Council, which will substitute the updated exhibits for the old ones and attach them to this policy.

INVESTIGATIONS AND DISCIPLINARY ACTIONS

Each Covered Entity shall investigate complaints and allegations of sexual harassment and sexual violence **against their employees**, pursuant to the Council for Postsecondary Education Discrimination Complaint Procedures. Each Covered Entity shall also investigate complaints and allegations of sexual harassment and sexual violence **against their students** in accordance with procedures described in their respective student conduct policies. Individual Covered Entity employees found in violation of this policy may be subject to disciplinary action up to and including remedial education, written reprimand, suspension and/or termination.

EXHIBIT A

ADDITIONAL DEFINITIONS RELEVANT TO "SEXUAL OR RELATIONSIP ASSAULT OR VIOLENCE UNDER RHODE ISLAND LAW"

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

***"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.

***"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.

***"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.

The following words and phrases, when used in the above definition, 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.

DATING VIOLENCE- RI (R.I.G.L. 16-22-24)

"Dating violence" means a pattern of behavior where one person uses threats of, or actually uses, physical, sexual, verbal or emotional abuse to control his or her dating partner.

The following words and phrases, when used in the above definition, have the following meanings:

> "***Dating partner***" means any person involved in an intimate association with another primarily characterized by the expectation of affectionate involvement whether casual, serious or long-term.

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

"***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 (§§ 11-5-1, 11-5-2, and 11-5-4);
(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 (§§ 11-59-1 et seq.);
(12) Refusal to relinquish or to damage or to obstruct a telephone (§ 11-35-14);
(13) Burglary and Unlawful Entry (§ 11-8-1 et seq.);
(14) Arson (§ 11-4-2 et seq.);
(15) Cyberstalking and cyberharassment (§ 11-52-4.2); and
(16) Domestic assault by strangulation § 11-5-2.3.

The following words and phrases, when used in the above definition, have the following meanings:

"***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 if 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 frequence of the interaction between the parties.

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

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

"Stalking" means when a person: (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.

The following words and phrases, when used in the above definition, have the following meanings:

(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.

EXHIBIT B

Reporting Procedures and Resource Listings
for
The University of Rhode Island

REPORTING

Any person who feels that they may have been the target of or witness to sexual harassment, including sexual violence or sexual assault is encouraged to seek redress through the following:

(1) Student-to-student complaint - Office of Student Life, URI Police Department
(2) Student-to-faculty complaint - Department Chair, College Dean, URI Police Department
(3) Student-to-staff or staff-to-staff or faculty-to-faculty or faculty-to-staff complaint: Human Resources, Chair or Dean, URI Police Department or:

The University of Rhode Island's Office of Affirmative Action, Equal Opportunity and Diversity
Title IX Coordinator - Roxanne M. Gomes, Administrator
Deputy Title IX Coordinator - Gerard J. Holder, Investigator
201 Carlotti Administration Building
Kingston, Rhode Island 02881
Phone: 401-874-2442
Fax: 401-874-2995
TTY Via Relay 711
uri.edu/affirmativeaction

The following individuals shall be considered "responsible employees" at URI for purposes of reporting complaints and incidents of sexual harassment and sexual violence under the CPE's Sexual Harassment and Sexual Violence Policy: All Senior University Officials, including all University Officers and all Senior Administrators with a rank of Director or higher (e.g. Directors, Vice Presidents, President); All Full Time and Part Time Faculty; All Academic Deans and Department Chairs; All employees who are responsible supervisors for one or more other employees; All Resident Assistants; All coaches; and All other individuals designated as "Campus Security Authorities," as listed in the University's Annual Crime Statistics and Fire Safety Report ("Clery Report"). Notwithstanding the foregoing, mental health counselors, pastoral counselors, psychologists, health services employees or other employees with a professional license that requires confidentiality, or employees supervised by any such employees, are not considered responsible employees for reporting purposes, and shall not report incidents of sexual harassment or sexual violence in a way that identifies the student, without the student's consent.

All such responsible employees are obligated to report all actual, suspected or alleged incidents of sexual harassment and sexual violence which are reported to them, or of which they become aware, to the Office of Affirmative Action/Title IX Coordinator (when the

alleged perpetrator is an employee) or the Office of Student Life (when the alleged perpetrator is a student).

AVAILABLE RESOURCES

The University 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 – 401-874-2288 Health Services – 401-874-2246
Office of Student Life – 401-874-2101 Women's Center 401-874-2097
CCE Department of Student Services – 401-277-5000

Campus Police:
Kingston Campus 401-874-2121
College of Continuing Education 401-277-5155
Narragansett Bay Campus 401-874-4910

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

Other Resources: Click here for emergency services.

EXHIBIT C

Reporting Procedures and Resource Listings
for
Rhode Island College

[Enter RIC "Reporting Procedures" and "Available Resources" here]

EXHIBIT D

Reporting Procedures and Resource Listings
for
The Community College of Rhode Island

[Enter CCRI "Reporting Procedures" and "Available Resources" here]

EXHIBIT E

Reporting Procedures and Resource Listings
for
The Office of the Postsecondary Commissioner

[Enter OPC "Reporting Procedures" and "Available Resources" here]