

COUNCIL ON POSTSECONDARY EDUCATION

NONDISCRIMINATION POLICY

AND

COMPLAINT PROCEDURES

CPE Approved (6-17-2015)

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**COUNCIL ON POSTSECONDARY EDUCATION
NONDISCRIMINATION POLICY AND COMPLAINT PROCEDURES**

I. Policy of Nondiscrimination

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”) prohibit students, employees, contractors, volunteers, and visitors (collectively, “community members”) from engaging in discrimination and harassment based on any individual’s race, color, creed, national or ethnic origin, gender, gender identity or expression, religion, disability, age, sexual orientation, genetic information, marital status, citizenship status, veteran status, and any other legally protected characteristic. This prohibition applies to all the Covered Entities’ educational programs and activities—including admissions—as well as all employment actions, including but not limited to recruiting, hiring, promotion, demotion, compensation, and benefits.

The Covered Entities will investigate all complaints made under this Policy and, if necessary, take action to prevent the recurrence of prohibited discrimination, harassment, or retaliation and remedy its effects.

II. Background

This Policy and Complaint Procedures are applicable to complaints that may arise under, and are intended to be consistent and compliant with, the procedural and substantive provisions of applicable state and federal law and regulations.

III. Applicability

All faculty, staff, and students of the 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 prohibited discrimination or 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.

IV. Relationship to the Sexual Harassment Policy and other Policies Addressing Sexual Misconduct

Complaints involving Sexual Harassment as defined by the Title IX Sexual Harassment Policy shall be addressed exclusively through that policy and process. This Policy addresses all other forms of sex-based discrimination, including sex-based Harassment that does not rise to the level of Sexual Harassment as defined in the Title IX Sexual Harassment Policy.

Complaints of sexual violence and other forms of sexual misconduct that fall outside the scope of the Title IX Sexual Harassment Policy will be addressed through this Policy as a form of sex discrimination if the Respondent is a non-student. If a complaint of sexual violence or other sexual misconduct involves a student Respondent at Rhode Island College, it will be addressed through this Policy. If a complaint of sexual violence or other sexual misconduct involves a student Respondent at the Community College of Rhode Island, it will be addressed through the CCRI Student Conduct Code.

V. Harassment and Discrimination

- A. Harassment: Harassment prohibited under this Policy is defined as verbal or physical conduct (including conduct using technology) directed toward an individual because of their membership in a protected class (or a perception that someone is a member of a protected class) that has the purpose or effect of substantially interfering with the individual's educational or work performance, or creating an intimidating, hostile or offensive working or academic environment.

A person's subjective belief that behavior is intimidating, hostile, or offensive does not make that behavior harassment. The behavior must create a hostile environment from both a subjective and objective perspective and must be so severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives a member of the community of the ability to participate in or to receive benefits, services, or opportunities from the Covered Entity's education or employment programs and/or activities. In determining whether a hostile environment exists, the Covered Entity examines the context, nature, scope, frequency, duration, and location of incidents, as well as the relationships of the persons involved.

Examples of harassment can include offensive jokes, slurs, name calling, intimidation, ridicule or mockery, or displaying or circulating offensive objects and pictures that are based on a protected class.

- B. Discrimination: Discrimination prohibited under this Policy is defined as treating someone differently because of their membership in a protected class (or a perception that someone is a member of a protected class) in matters of admissions, employment, housing, services, or any other educational programs or activities of the Covered Entity. Disparate treatment discrimination occurs when there has been an adverse impact on the individual's work or educational environment, individuals outside of the protected class have received more favorable treatment, and there is no legitimate, non-discriminatory reason for the action. Disparate impact discrimination occurs when a Covered Entity's Policy or practice adversely impacts persons in a protected class even though the Policy or practice is neutral on its face.

VI. Terminology

“Complainant” means an individual who is reported to be the victim of conduct that could constitute discrimination or harassment in violation of this Policy.

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute discrimination or harassment in violation of this Policy.

VII. Complaints Alleging Sexual Misconduct

The types of Sexual Misconduct prohibited by this Policy as a form of sex discrimination are defined below. Sexual Misconduct is an umbrella term that encompasses Sexual Assault, Non-Consensual Sexual Contact, Sexual Exploitation, Dating Violence, Domestic Violence, and Stalking as defined herein. It is important to note that Sexual Misconduct is prohibited regardless of the sexual orientation, gender, gender identity, or gender expression of the Complainant or Respondent.

A. Prohibited Conduct

1. Sexual Assault, which includes any of the following:
 - a. 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 consent;
 - b. Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without consent, including instances where a person is incapable of giving consent because of age or because of temporary or permanent mental incapacity
 - c. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
 - d. Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent. The age of consent in Rhode Island is 16 years of age (See RIGL § 1137-6).
2. Non-Consensual Sexual Contact: Any touching (however slight) with any part of the body or other object, by any person upon another, without consent, for the purpose of sexual gratification.
3. Sexual Exploitation: Purposefully taking sexual advantage of another person without consent. Sexual exploitation may include, but not be limited to, voyeurism; disseminating, streaming, or posting pictures or videos of another in a state of undress or of a sexual nature without the person’s consent; or exposing one’s genitals to another person without consent.

4. Domestic Violence: Physical violence committed by a current or former spouse or intimate partner of a victim, by a person with whom 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 or 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.
5. Dating Violence: Physical violence or the threat of physical violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the person against whom the physical violence or the threat of physical violence has been committed. The existence of such a relationship shall be determined based on factors such as the length and type of relationship, and frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.
6. Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress. For the purposes of this definition "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. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

B. Relevant Definitions

1. Consent: An affirmative and willing agreement to engage in specific forms of sexual contact with another person. Consent requires an outward demonstration, through mutually understandable words, conduct or action, indicating that an individual has freely chosen to engage in sexual activity or contact. Consent cannot be obtained through: (1) the use of coercion or force; or (2) by taking advantage of the incapacitation of another individual. Silence, passivity, or the absence of resistance does not imply consent. Consent can be withdrawn at any time. When consent is withdrawn, sexual activity must immediately stop. Prior consent does not imply current or

future consent; even in the context of an ongoing relationship, consent must be sought and freely given for each instance of sexual activity or contact.

2. Incapacitation: Incapacitation means the person is incapable of giving consent. A person is incapacitated if that person is in a physical or mental state that causes the person to be unable to make a knowing and voluntary choice to engage in the sexual activity or contact. A person may also become incapacitated due to many factors, including the use of alcohol and/or drugs, or when the person is asleep or unconscious, or due to intellectual or other disability. When determining incapacitation, the inquiry is whether a sober, reasonable person in the Respondent's position should have known that the Complainant was incapacitated and could not provide consent. Evidence of incapacitation may include, but is not limited to, slurred speech, bloodshot eyes, the smell of alcohol on breath, unsteadiness when walking, vomiting, unusual behavior, etc.
3. Coercion: Conduct, which can be verbal and/or physical, that includes intimidation, manipulation, or threats (either express or implied), that would reasonably cause a person to be in fear of immediate or future harm and that is undertaken to compel a person to engage in sexual activity or contact.
4. Force: The use of or threat of physical violence or intimidation, which prevents an individual's from making a knowing and voluntary choice to engage in sexual activity or contact.

C. Complainant Rights and Options

The Complainant shall be provided an explanation of his/her rights and options, which shall include a description of available options for, and assistance in, changing academic, living, transportation, and working situations, as well as information about:

- the importance of seeking immediate medical attention for sexual violence
- other available health care and counseling services
- the importance of preserving evidence for proof in the investigation or subsequent proceedings, or for obtaining a protective order
- to whom the alleged sexual violence should be reported
- options regarding notifying law enforcement and/or campus authorities, including notification of the Complainant regarding the Complainant's right to:
 - notify either police (local or campus) or campus authorities
 - be assisted by campus authorities in notifying law enforcement if the Complainant so chooses
 - decline to notify such authorities

- the rights of Complainants and the institutions in notifying law enforcement of the protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.

If the Complainant alleging Sexual Misconduct is a student, the student shall also be referred to the appropriate Student Affairs Office responsible for advising student victims of alleged Sexual Misconduct, which shall provide further relevant information and assistance to the student, as required by applicable law and institutional policies.

D. 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 sexual misconduct 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 encourages students to report incidents of violence to institution officials. The Complainant, Respondent, 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.

E. Prevention and Awareness Programs

The Covered Entities are committed to creating educational programs designed at preventing Sexual Misconduct, including sexual assault, dating and domestic violence and stalking as they are defined in this Policy as well as in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"). The Covered Entities' ongoing educational and primary prevention and awareness programs for all faculty, staff and employees (including incoming students and new employees) are designed to: promote awareness; prevent sexual misconduct and relationship violence; and to remind the entire community of the College's prohibition against sexual and misconduct and relationship violence, including sexual assault, dating and domestic violence and stalking. A description of each Covered Entity's educational and primary prevention and awareness programs can be found in its most recent Annual Security Report.

F. Bystander Intervention

Bystander intervention refers to safe and positive options that may be carried out by an individual(s) to prevent harm or intervene when there is a risk of Sexual Misconduct, including sexual assault, dating and domestic violence or stalking, against a person(s) other than the individual. Safe and positive options for bystander intervention include: recognizing prohibited conduct and situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying effective ways to intervene and take action provided that the intervention or action can be undertaken in a way that ensures the safety of the bystander. For more information about bystander intervention please contact the Covered Entity's

Affirmative Action Officer/Title IX Coordinator. A description of each Covered Entity's educational and primary prevention and awareness programs, including bystander intervention, can be found in its most recent Annual Security Report.

G. Risk Reduction

Risk reduction is defined as options designed to decrease perpetration and bystander inaction, increase empowerment in order to promote safety, and help individuals and communities address conditions that facilitate violence. A description of each Covered Entity's educational and primary prevention and awareness programs, including risk reductions, can be found in its most recent Annual Security Report.

VIII. Retaliation

It is a violation of this Policy to retaliate against any member of a Covered Entity's community who reports or assists in making a complaint of discrimination or harassment or who participates in the investigation of a complaint in any way. Persons who believe they have experienced retaliation in violation of this Policy can make a complaint in the manner set forth in this Policy.

Retaliation consists of materially adverse action taken against a person because the person made a good faith report of discrimination or harassment or participated in the investigation of a report of discrimination or harassment, such as by serving as a witness or support person. Examples of retaliation include, but are not limited to: pressuring a person to withdraw a complaint, rumor spreading, ostracism, destruction of property, sending threatening text or social media messages, encouraging friends or co-workers to relay unwelcomed messages, taking negative employment action, or suspending a person from an activity or limiting their involvement because they made a report of discrimination or harassment.

A finding of retaliation or a threat of retaliation shall constitute a separate violation of this Policy, subject to separate or consolidated disciplinary procedures, and is not dependent upon a finding of a violation of any other section of the Policy.

IX. Good Faith Reports

The Covered Entities encourage the good faith reporting of discrimination and harassment. However, the Covered Entities will not allow this Policy or the complaint resolution procedures to be abused for improper means. Therefore, if a Covered Entity's investigation reveals that a complaint was knowingly false, the complaint will be dismissed and the person who filed the false complaint may be subject to discipline, up to and including termination and/or expulsion. Such disciplinary action will not constitute prohibited retaliation. A person makes a bad faith report of discrimination or harassment if, at the time they make the report, they know the report is false or frivolous. Further, the Covered Entities may take disciplinary action against any person who knowingly provides false information during the investigation and resolution of a complaint of discrimination and harassment and such disciplinary action will not constitute prohibited retaliation.

X. Scope of Complaint Procedures

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

XI. Filing a Complaint

Complaints alleging discrimination or harassment in violation of this Policy, or questions regarding the Policy and its procedures, should be directed to the following offices:

Rhode Island College

Affirmative Action Office/Title IX Coordinator (Margaret Lynch-Gadaleta)
600 Mt. Pleasant Avenue
Providence, Rhode Island 02908
Phone: (401) 456-8000
TTY - via RI Relay at 1-800-745-5555

Community College of Rhode Island

Affirmative Action Office/Title IX Coordinator (Sheila Wahl)
400 East Avenue Warwick, Rhode Island 02886
Phone: (401) 825-1000
TDD: (401) 825-2313

Office of Postsecondary Commissioner

Affirmative Action Office/Title IX Coordinator (Interim: Ann Marie Coleman)
560 Jefferson Boulevard, Warwick, Rhode Island 02886
Phone: (401) 736-1100
TDD: (401) 734-9481

A complaint may also be filed with the above listed offices against institutional service providers, vendors, and other contractors. In such instances, the Covered Entity shall determine, within its discretion, appropriate response and action. Complaints regarding an institution’s President or the Commissioner of Postsecondary Education should be filed with the Office of General Counsel for the Council on Postsecondary Education.

Complaints involving prohibited discrimination, including harassment or retaliation, against a group or class of individuals, reflecting an apparent pattern and practice of discrimination, shall be investigated and addressed pursuant to these procedures by the Covered Entity regardless of whether there is an identified Complainant.

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

XII. Third-Party Reporting

Any individual may make a report of discrimination or harassment. The report may be made without disclosing the identities of the parties involved. However, the Covered Entity's ability to respond to the third-party report of discrimination or harassment may be limited by the amount of information provided.

XIII. Employee Reporting

All employees of the Covered Entities are strongly encouraged to report discrimination or harassment in violation of this Policy when they receive a report of such conduct or witness such conduct. The report should be made to the appropriate office listed in Section XI above and should include all known relevant details of the alleged discrimination or harassment.

Employees with supervisory authority over other employees are required to report discrimination or harassment in violation of this Policy about which they have information, except mental health counselors, pastoral counselors, psychologists, health services staff, or other employees with a professional license that requires confidentiality. Failure to report in accordance with this Policy may be grounds for discipline, up to and including termination.

XIV. Confidential Resources

The Covered Entities shall maintain a list of confidential resources available to students and employees who experience discrimination or harassment in violation of this Policy. Those resources shall be included in the "available resources" materials attached hereto as Exhibits A and B.

XV. Reporting Deadlines

The Covered Entities encourage persons to make complaints of discrimination and harassment as soon as possible. Doing so enables the Covered Entity to conduct a prompt investigation and gather the most current evidence.

Complaints alleging violation of this Policy other than Sexual Misconduct must be filed within 365 days after the last act of alleged discriminatory conduct occurred. Complaints involving allegations of continuing unlawful discrimination or harassment may be filed and investigated pursuant to these procedures, even if they include specific acts outside the 365-day time frame, so long as the last act of alleged discrimination occurred within the prescribed filing deadline (365 days).

There is no reporting deadline for complaints alleging Sexual Misconduct in violation of this Policy, although the Covered Entity's ability to respond fully may be limited by the passage of time.

XVI. Criminal Violations

The Covered Entities strongly encourage anyone who becomes aware of behavior that may constitute a violation of Rhode Island State Law to report the incident to local law enforcement. The Covered Entity can provide support, resources and assistance to those who do so. Information about campus police and local law enforcement agencies and how to make a police report can be found on the Covered Entities' websites.

Except for complaints involving Sexual Misconduct, if a complaint involves potential criminal violations, the Covered Entity shall notify the campus police and the appropriate President or the Commissioner of Postsecondary Education where applicable. In cases involving allegations of Sexual Misconduct, the Covered Entity shall inform Complainants of their right to: (1) to notify law enforcement authorities, including campus police; (2) to be assisted by campus authorities in notifying law enforcement authorities if the Complainant chooses; or (3) to decline to notify such authorities. The Covered Entity College will comply with a Complainant's request for assistance in notifying law enforcement to the extent it is consistent with law. The Complainant's choice to report to law enforcement will not impact the implementation of accommodations and/or protective measures if applicable. The Complainant has the right to file a criminal complaint and a complaint under this Policy simultaneously.

Regardless of whether a Complainant files a complaint with local law enforcement authorities, and regardless of any investigations or other actions taken by local law enforcement, the Covered Entity will continue to have an obligation to undertake and duly complete its own internal complaint and investigation procedure.

XVII. Procedural Options

Any person(s) who believes they have been the victim of discrimination, harassment, or retaliation in violation of this Policy, or who witnesses acts of discrimination, harassment, or retaliation in violation of this Policy, may file a formal complaint with the Covered Entity's Affirmative Action Office/Title IX Coordinator as listed in Section XI of this Policy.

If it is determined that a complaint falls within this Policy, the Covered Entity's Affirmative Action Officer/Title IX Coordinator will contact the Complainant to determine which of the following procedural resolution options the Complainant prefers to utilize:

- Informal Resolution (Not an Option for Sexual Misconduct Cases)
- Formal Resolution

The selected option will be verified by the Complainant's signature. Selection of one option does not preclude the Complainant from electing a different option later in the process, subject to the approval of the Affirmative Action Officer/Title IX Coordinator. Informal Resolution may only be utilized when mutually agreed upon by both the Complainant and Respondent.

If it is determined that the complaint does not fall within the scope of this Policy, the Covered Entity's Affirmative Action Officer/Title IX Coordinator will refer the Complainant to the appropriate office or department.

XVIII. Confidentiality

Upon receipt of a report or complaint of prohibited discrimination or harassment, the Covered Entity's Affirmative Action/Title IX Officer will review any confidentiality requests from the Complainant. The Covered Entity will make all reasonable efforts to honor requests for confidentiality, to the extent permitted by law. However, it must be understood that while some concerns or complaints can be resolved without disclosing one's identity, successful resolution may not always be achieved under such circumstances and the Covered Entity's ability to investigate the complaint or proceed with appropriate corrective or disciplinary action may be prevented or significantly hampered. Further, individuals who are directly accused of unlawful and/or discriminatory behavior and who, as a result, may be subject to disciplinary action, are entitled to a copy of the formal complaint and/or a summary of the charges against them so that they may prepare a proper defense.

The Covered Entities will keep identifying information about complainants, respondents, and witnesses confidential in accordance with all applicable legal requirements, and such information will generally only be shared on a need-to-know basis with individuals such as investigators, campus security personnel, student affairs officials, and other officials who are involved in responding to the complaint or who are legally required to receive such information. All individuals who participate in formal or informal proceedings under this Policy, or otherwise gain knowledge about the matter subject to the proceedings, shall treat all information acquired, whether written or oral, as confidential, provided however, that the parties to a proceeding may share such information with their personal advisors, advocates, and representatives.

The identity of, and identifying information about, complainants will not be disclosed in any public safety notices, final determination reports, or statistical reports that may be issued or made publicly available as required or permitted by law. If the Covered Entity is compelled by law, such as through a subpoena or court order issued in a legal proceeding, or through a public records request, to provide such information to third parties, the Institution or Office will make a reasonable effort, prior to complying with the request, to notify the individual, so that the individual may seek a protective order or take other actions as they may deem appropriate.

XIX. Threat Assessment and Interim Protective Measures

When the Affirmative Action Officer/Title IX Coordinator (or designee) becomes aware of a potential violation of this Policy, they will, in consultation with other administrators, as appropriate, conduct an initial threat assessment to determine whether there is reasonable cause to believe that the Respondent poses a continuing, significant threat of harm to the health, safety, and welfare of others or to the campus community, and whether interim measures are necessary to alleviate or mitigate that risk.

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

The Covered Entity will maintain the confidentiality of Interim 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 Interim Measures in question.

XX. Participation in Investigations

All members of the Covered Entity's community are encouraged and expected to fully and truthfully cooperate with any investigation and resolution under these procedures. Employees who fail to cooperate and/or participate may face discipline, up to and including termination. In the event an alleged victim refuses to participate under these procedures, the Covered Entity may proceed as a Complainant without the participation of the alleged victim where the Affirmative Action Officer/Title IX Coordinator determines that doing so is necessary to protect the safety of the community. In the event a Respondent refuses to participate, the complaint procedures will be completed despite the Respondent's lack of participation and may result in a finding of responsibility *in absentia*.

XXI. Informal Resolution

The Informal Resolution Procedure offers an option to discuss, evaluate, and resolve allegations of discrimination without beginning a Formal Resolution/Investigation. The informal procedure is intended to effectuate the resolution of a complaint by reconciling the parties' differences and/or rectifying the alleged discriminatory action(s).

Complaints that involve discrimination against a group or class of individuals or may involve criminal violations, may not be resolved through use of the informal resolution process. Informal resolution will also not be used in cases involving allegations of sexual violence. The determination of what is appropriately resolved through informal resolution will be made by the Covered Entity's Affirmative Action Officer/Title IX Coordinator.

During the informal resolution process, emphasis is placed on:

- Identifying the source of the allegations/concerns(s);

- Exploring alternatives to resolve the complaint; and
- Instituting solutions to address the current concerns(s) and eliminate the possibility of similar issues occurring in the future.

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

A. Step One: Notifying the Parties

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

B. Step 2: Information Gathering

In an effort to fully understand the facts and positions of the Complainant and the Respondent, the Affirmative Action Officer/Title IX Coordinator shall take steps they deem necessary to gather additional information from the parties or from others perceived to have knowledge of the allegations.

C. Step 3: Resolution or Next Steps

If all parties agree to participate in the informal resolution process, the Affirmative Action Officer/Title IX Coordinator will make all reasonable attempts to resolve the matter within thirty (30) days. The specific details of each case will determine the best possible means for achieving a satisfactory resolution. If the complaint is resolved, the terms of the resolution will be reduced to writing and signed by the parties.

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

XXII. Formal Resolution

The formal resolution process under these procedures consists of a fact-finding investigation to determine whether a preponderance of the evidence exists to support the allegation(s). Written findings shall be issued for all investigations. The formal investigation and related proceedings, which are described below, shall provide a prompt, fair, and impartial investigation and resolution of the allegations.

A. Step 1: Complainant's Written Statement

Normally, a signed incident complaint form containing a written statement of allegations initiates the formal process. In order to enable the Investigator to most effectively investigate the complaint, the written statement of allegations must contain a detailed description of the conduct being complained about, date and/or time period of the alleged conduct, the name(s) of the alleged

offender(s), the name(s) of the alleged victim(s), the names of any alleged witnesses, and the name of the person filing the complaint. The Affirmative Action Officer/Title IX Coordinator will assist anyone for whom completion of the complaint form is difficult or impractical. Anonymous complaints, and complaints filed by individuals who request confidentiality, will be investigated by the Covered Entity to the extent possible pursuant to these procedures.

B. Step 2: Notifying the Respondent

Once the complaint has been filed, the Affirmative Action Officer/Title IX Coordinator will notify the Respondent(s) by written letter of its existence and provide the Respondent with a copy of the signed complaint.

The Affirmative Action Officer/Title IX Coordinator will offer to schedule a preliminary meeting with the Respondent at which the Affirmative Action Officer/Title IX Coordinator will: share the written complaint and details of the allegation(s); explain the Respondent's rights and responsibilities under the process; describe any potential sanctions that may result from a finding of responsibility; and answer any questions the Respondent may have. At the preliminary meeting, the Respondent will also be provided with information regarding the Respondent's rights, including the right to have the complaint heard under these procedures; the right to receive notice of all violations of this Policy which have been reported, as well as any ancillary violations being alleged against the Respondent; the right to be heard by an impartial arbiter under this process; and the right to hear a description of all relevant information presented to the investigator(s) and adjudicator(s) that supports a finding of responsible or not responsible. Throughout this process, the Respondent will be informed of any new information that arises, which may impact the Respondent's rights under this Policy.

C. Step 3: Respondent's Written Response

The Respondent(s) will be provided an opportunity to file a formal written response. The formal response shall be filed with the Affirmative Action Officer/Title IX Coordinator by the Respondent(s) within ten business (10) days from the date the Respondent(s) received the signed complaint.

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

D. Step 4: Investigation Process

Upon receipt of the Respondent's written response, or if no written response is received after ten (10) business days, the Affirmative Action Officer/Title IX Coordinator or designee will initiate an investigation. The Affirmative Action Officer/Title IX Coordinator will serve as the investigator or appoint an internal investigator(s) or an external investigator(s), or both. The role of the investigator(s) is to analyze and document the available evidence to support reliable decisions, synthesize all available evidence—including both inculpatory and exculpatory evidence—and take into account the unique and complex circumstances of each case. The investigator is neutral, objective, and does not act as an advocate for either party.

The investigator(s) will provide the opportunity for both the Complainant and the Respondent to present witnesses and evidence. The investigator will interview the Complainant, the Respondent, and any relevant witnesses. The investigator is authorized to contact all persons who may have information relevant to the complaint and shall have access to all relevant college/OPC records. The investigator shall also collect and evaluate other available records and information relevant to the complaint and investigation (e.g. email communications, medical test results, photographs), as appropriate. The investigator(s) will determine, in the investigator(s)' sole discretion, what information is relevant. Character evidence will not be considered; and pattern evidence (evidence of previous conduct) will only be considered if the previous conduct is so substantially similar to the conduct cited in the instant matter to indicate a pattern of behavior.

In cases involving Sexual Misconduct, past sexual history will typically not be considered except possibly where consent is at issue. Specifically, prior consensual sexual activity between the Complainant and the Respondent, while not determinative, may be relevant to determining whether consent was sought and received. Past sexual history may also be considered under very limited circumstances, for example, to explain injury. However, consent to one sexual act will never be considered to constitute consent to another sexual act.

Medical and counseling records are privileged and confidential. Therefore, those records will not be required to be disclosed.

If, during the investigation, the Complainant indicates a desire to withdraw the complaint, the Complainant shall sign a written statement of withdrawal containing the reasons therefore and the case may be closed at the discretion of the Affirmative Action Officer/Title IX Coordinator. The Affirmative Action Officer/Title IX Coordinator may continue to conduct the investigation and take action to address the issues raised by the Complainant regardless of the Complainant's wishes if the Affirmative Action Officer/Title IX Coordinator determines that doing so is necessary and in the best interests of the campus community.

The investigator shall maintain a record of the investigation, including any interviews, which shall be retained as an official record.

E. Preliminary Investigation Report

At the conclusion of the investigation, the investigator will prepare a preliminary written report. The preliminary report will contain a summary of the alleged conduct in violation of Policy; summary of the response to the allegations; summary of the scope of the investigation; summary of the relevant exculpatory and inculpatory evidence; and summarizes material facts on which the parties agree and disagree. The report will include copies of all relevant evidence received and considered during the investigation. Both parties will be provided a copy of the preliminary report and have three (3) business days to respond to it in writing. In their responses, the parties may ask clarifying questions, seek clarifying information, clarify information previously shared, offer additional comments, suggest additional witnesses, or identify any other relevant information or evidence to assure the thoroughness and sufficiency of the investigation. The Complainant and the Respondent may also

request that the investigator ask clarifying questions of the other party, provided the questions are directly relevant to the complaint.

If, after receiving the written responses from the Complainant and the Respondent regarding the Preliminary Investigation Report, the investigator(s) determines that no further inquiry is required, the investigation will be deemed complete and final. If, in the sole discretion of the investigator(s), further inquiry is necessary, the investigator(s) will follow up on the information and ask any clarifying questions of the parties and witnesses before finalizing and completing the investigation. Any additional relevant information received and/or answers to clarifying questions will be included in the Final Investigation Report.

The final investigative report shall normally be issued to the Affirmative Action Officer/Title IX Coordinator within ninety (90) calendar days after the complaint is filed. When more than ninety (90) days is needed to complete the investigation, the Affirmative Action Officer/Title IX Coordinator or designee shall notify the parties and direct the investigator to proceed as expeditiously as possible. Allegations or evidence of violations of policies and procedures that are discovered during the investigation, but which are outside the scope of this Policy, shall be referred to the appropriate office for resolution.

F. Investigation Conclusion and Written Decision

Upon receipt of the final investigation report, the Affirmative Action Officer/Title IX Coordinator will refer the matter to the appropriate institutional official to reach a determination regarding whether the preponderance of the evidence supports a finding that the Policy has been violated. In reaching a decision, the institutional official will review the final investigation report and meet separately with the parties to provide them with an opportunity to discuss whether any of the allegations are supported by a preponderance of the evidence and constitute a violation of Policy. In advance of the meeting, the parties will be permitted to submit relevant questions to the institutional official to be asked of the other party. The institutional official will have sole discretion to determine whether the questions submitted are appropriate and relevant to the issues in dispute.

After reaching a determination, the institutional official will prepare a written decision that will include a statement of, and rationale for, each allegation that constitutes a separate potential violation of this Policy, including a determination regarding responsibility for each separate potential incident. The written decision shall also articulate findings of fact, made under a preponderance of the evidence standard, that support the determination.

Unless otherwise indicated in the report, the date of the report shall be considered the date upon which the results of the investigation become final. The Affirmative Action Officer/Title IX Coordinator or designee will simultaneously provide copies of the written decision to the Complainant and the Respondent. The Complainant and Respondent will also be advised of the appeal process at that time.

XXIII. Advisor of Choice

The Complainant and the Respondent have the same opportunity to be accompanied to any related meeting or proceeding by one advisor of their choice for support, guidance and/or advice. Employees may also be accompanied by their union representative in accordance with the applicable collective bargaining agreement. The Covered Entity will not limit the choice of the advisor or presence of the advisor for either the Complainant or Respondent in any meeting or proceeding, provided that the advisor complies with the guidelines for advisors outlined in this Policy. Notwithstanding the foregoing, the advisor may not be a witness and, in cases involving multiple Complainants or Respondents, the advisor cannot be another Complainant or Respondent.

The advisor's role is to provide support, guidance and/or advice only. Except where required by applicable collective bargaining agreements or relevant labor laws, the advisor may not participate in any manner during any related meeting or proceeding, including interviews or hearings. This advisor may not: (1) address or question the investigator(s), or other parties or witnesses; (2) present evidence or make arguments; or (3) have any role other than to accompany and communicate with the party requesting support and/or advice. The Complainant or the Respondent may request a break during any meeting and/or proceeding to allow the Complainant or the Respondent to confer with their respective advisor in private.

The Covered Entity reserves the right to remove or dismiss a support/person advisor who fails to follow this Policy and applicable provisions of the complaint procedures, in which case the party will be allowed to select a different support person.

The Covered Entity may consider reasonable requests to reschedule a meeting or proceeding because an advisor cannot be present, however, the Covered Entity is not required to do so and will not do so if it unreasonably delays the process.

XXIV. Appeal Procedures

Either party (Complainant or Respondent) may appeal the investigation finding. Such appeals shall be filed with the Covered Entity's President (or designee). The appeal shall be filed with the Commissioner of Postsecondary Education if the respondent is an employee of the Office of the Postsecondary Commissioner or President of a Covered Entity. The appeal may be decided by the President or the Commissioner or their designee ("Appeals Officer"). Parties wishing to file an appeal must do so within ten (10) days after receiving the Affirmative Action Officer's/Title IX Coordinator's final report.

The appeal process will not involve reinvestigation of the complaint. Appeals may be filed only on the following grounds:

- There is a substantial likelihood that newly discovered information, not available at the time evidence was presented to the investigator, would result in a different decision;
- There was a procedural error significant enough to call the outcome into question and the procedural error was either unknown during the investigation or the appealing party objected to the procedural error in writing prior to the issuance of the final report; or

- There was bias or a conflict of interest on the part of the investigator, provided that the bias or conflict was unknown during the investigation or the appealing party raised the issue of bias/conflict prior to the issuance of the final investigation report;

Appeal decisions (which shall include a statement of the rationale for the decision) shall be rendered within thirty (30) days after the request for appeal is received unless extended for good cause as reasonably determined by the Appeals Officer. Copies of the appeal decision shall be simultaneously provided to the parties, with a copy also to be sent to the appropriate Vice President/Provost or Associate Commissioner.

XXV. Disciplinary Action and Remedial Action

If a complaint of discrimination or harassment is found to be substantiated, the Covered Entity will take appropriate corrective, disciplinary, and remedial action to stop the inappropriate conduct, address its effects, and prevent its recurrence. Students, faculty, and employees found to be in violation of this Policy will be subject to discipline, including but not limited to written reprimand, suspension, probation, demotion, termination, or expulsion. Affiliates and program participants may be removed from the Covered Entity's programs and/or prevented from returning to campus.

The Affirmative Action Officer/Title IX Coordinator will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant. Remedial steps may include individual counseling, as well as academic, work, or transportation accommodations for the Complainant, separation of the parties, and training for the Respondent and other persons.

In matters where there is a finding that a student or other non-employee Respondent is responsible for violating this Policy, the appropriate Covered Entity official with disciplinary authority over the Respondent will determine any discipline to be imposed.

In matters where there is a finding that an employee Respondent is responsible for violating this Policy, it will be referred to the appropriate Vice President, Provost, or Associate Commissioner, or their designee, who 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. The Vice President/Provost/Associate Commissioner will be responsible for the implementation of all such disciplinary/corrective action measures.

In matters involving findings of Sexual Misconduct, written notice of the disciplinary determination will be provided to the Complainant.

A record of the outcome of each case will remain a part of the permanent file of the case maintained by the Affirmative Action Office/Title IX Coordinator.

XXVI. Post-Proceeding Protective Measures

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

XXVII. Presumption of Non-Responsibility

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

XXVIII. Rights of the Parties

During the investigation and resolution of a complaint, the Complainant and Respondent shall have equal rights. They include:

- Receiving copies of all relevant policies which apply to the allegation(s);
- Written explanation of rights and options;
- Written notification of existing counseling, health, mental health, victim advocacy, legal assistance, chaplain and pastoral care support, and other services available on campus and in the community;
- Equal opportunity to identify and have considered witnesses and other relevant evidence;
- The opportunity to provide written questions to the investigator and adjudicator to be asked of the other party or witnesses;
- Timely notice of meetings providing sufficient time to prepare for meaningful participation;
- Similar and timely access to relevant information considered by the investigator;
- Equal opportunity to review any statements or evidence provided by the other party; and
- Equal access to review and comment upon any information independently developed by the investigator.

XXIX. Resources

The Covered Entities shall publish and make available to their students and employees, information about “available resources” for individuals who believe they are victims of, witnesses to, or are simply concerned about, discrimination and harassment.

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.

XXX. Conflicts of Interest, Bias, and Procedural Complaints

The Affirmative Action Officer/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.

XXXI. 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 discrimination or 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.

XXXII. Vendors, Contractors and Third Parties

This Policy applies to the conduct of vendors, contractors, and third parties. Persons who believe they have been discriminated against or harassed in violation of this Policy should make a complaint in the manner set forth in this section. Third parties who violate this Policy may be subject to sanctions by the Covered Entity, including, but not limited to, loss of campus privileges, loss of future contracts, employment and enrollment.

XXXIII. 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.

XXXIV. Training

These procedures will be implemented by officials who receive annual training on the issues related to Discrimination and Harassment, including Sexual Violence, Domestic Violence, Dating Violence, and Stalking, and on methods and processes for conducting complaint investigations and proceedings in a manner that protects the safety of victims and promotes accountability.

XXXV. Recordkeeping

Throughout all stages of the investigation and resolution, the Affirmative Action Officer/Title IX Coordinator is responsible for maintaining documentation regarding the investigation including documentation of all proceedings conducted under these complaint procedures.

The complaint file (including the investigator's notes, communications from the parties, investigation reports, determination letters, evidence collected during the investigation, and documentation of remedial measures) shall be retained for a minimum of seven years and shall be stored in a manner reasonably designed to maintain its confidentiality. However, nothing in this Policy shall limit the Covered Entity's right to use the complaint file, or portions thereof, in connection with the Covered Entity's business, the investigation or resolution of other complaints, in the course of litigation, or in connection with any investigation by any government agency.

XXXVI. Outside Agencies

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

Office of Civil Rights, Region I
US Department of Education
5 Post Office Square, 8th Floor
Boston, MA 02109-3921
Tel.: (617) 289-0111
Fax: (617) 289-0150

<http://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

United States Equal Employment Opportunity Commission
John F. Kennedy Federal Building
475 Government Center
Boston, MA 02203
Phone: 1-866-408-8075
Fax: 617-565-3196

<http://www.eeoc.gov/field/boston/index.cfm>

Rhode Island Commission for Human Rights
180 Westminster Street, 3rd Floor
Providence, Rhode Island 02903
Tel: 401-222-2662
Fax: 401-222-2616

<http://www.richr.state.ri.us/frames.html>

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>

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) 222-2662

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

Sheila Wahl
Assistant Director, AA, EO and Diversity/Title IX Coordinator
400 East Avenue, Warwick, Rhode Island 02886
Tel: 401-825-1004
swahl1@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

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 Westminister 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 RELATIONSHIP 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.