

# Roger Williams University and Roger Williams University School of Law

## Sexual Harassment Policy & Procedures

### POLICY STATEMENT

Sexual Harassment is a form of gender-based discrimination which violates federal and state law as well as Roger Williams University and Roger Williams University School of Law (hereinafter “university”) policy prohibiting discrimination on the basis of gender. It is forbidden by the university and it is inexcusable regardless of circumstances. Transgressions and supervisory condonation of such transgressions will result in disciplinary action, up to and including termination. This policy applies to students, faculty, staff, and university officers equally as described below. Further, its mandate shall, to the extent contractually feasible, be applied fully to contractually affiliated entities at the university.

### PROSCRIBED CONDUCT

There are currently two (2) distinctly recognizable and forbidden forms of sexual harassment, both of which constitute terminable conduct.

1. Quid Pro Quo Harassment: This harassment is an intentional, intolerable exploitation of a position of power and authority such as unwelcome sexual advances, requests, or demands for sexually based favors or other gender based verbal or physical conduct where submission to or rejection of such conduct by an individual is used, by the person(s) in a position of power or authority, as a basis for employment, academic, or institutional environment decisions affecting such individual.
2. Hostile Environment Harassment: This harassment arises where one or more members of the university community engage in gender based conduct that unreasonably creates an intimidating, hostile, or offensive working and/or study environment that has the effect of altering one’s work or academic performance and the conditions of employment or study at the university. It may arise independent of the supervisor/subordinate or teacher/student relationship (e.g., co-worker to co-worker) and the conduct need not be overtly sexual in nature but merely gender differentiating. As a general guiding principal established herein, no gender based actions that are not specifically and officially endorsed by the university (e.g.; separate rest room facilities) are authorized or condoned. Currently, as established under controlling case law interpretation of both state and federal laws, hostile environment sexual harassment consists of conduct that: (1) would not have occurred but for the victim’s gender and (2) is sufficiently severe or pervasive as (3) adjudged by the reasonable person (of the same gender as the victim under Rhode Island law) to (4) adversely affect a victim’s work or other conditions of employment or academic performance or study environment. The university will continue to provide education and training as to illegal and intolerable conduct rising to the level of sexual harassment.

### ENFORCEMENT

The university will fully investigate all charges of sexual harassment filed pursuant to this policy and render a deliberative finding, taking immediate corrective action in cases where the record so warrants. Individuals found to have engaged in such misconduct shall be accordingly disciplined. This misconduct is grave on its face and terminable. Supervisory personnel who witness what they believe is harassing conduct of subordinates or colleagues or are in receipt of formal or informal allegations of such conduct

are obligated to report same to the university through the procedures detailed below.

All employees or students who witness or have tangible evidence of potentially harassing conduct are responsible to cooperate fully and honestly with the university in its investigation of such alleged conduct. Failure to do so impedes the university's search for facts necessary to appropriate determination and is, in itself, disciplinable. Employees and students who fully, honestly and forthrightly cooperate with the university in its investigation and the enforcement of this policy shall be deemed to be operating within the scope of employment and/or as agents of the university and for such cooperation shall be covered by the university's indemnification policy.

### **EDUCATION AND TRAINING**

As a necessary, proactive measure of policy integrity and enforcement, the university will provide mandatory education and training for members of the university community to ensure understanding and appreciation of the Policy, the laws as amended and re-interpreted from time-to-time, (which serve as a basis for this policy and its proscriptive measures) and the Procedures. This education and training will be coordinated through the university's Department of Human Resources and provided by or through formally designated members of the university community with knowledge of the laws and this policy's parameters. Information regarding provision of university education and training on sexual harassment may be obtained from the Department of Human Resources. Information and guidance as to this policy and its procedures as well as to respond to specific questions relative to the law of sexual harassment may be obtained from the Office of General Counsel.

### **CONFIDENTIALITY**

While all reasonable efforts will be made to respect the confidentiality of all parties to, witnesses of, and any other employee or student with evidence of, sexual harassment charge(s), the university is obligated to fully address all charges of such conduct and cannot guarantee total confidentiality where it will impede the search for truth and the necessary findings of fact as it relates to the law and university policy. A thorough investigation, including discussing witnesses' accounts and confronting the accused will often transpire. A charge of sexual harassment is most serious, cannot and will not be taken lightly and cannot and will not be "off the record".

### **RETALIATION**

Retaliatory action under any and all circumstances taken against an individual who files a complaint of sexual harassment honestly and in good faith, or who is cooperating with the university's investigation into such allegation, is prohibited and terminable.

### **MALICIOUS ALLEGATIONS/ACTIONS**

False charges of sexual harassment made knowingly or with wanton reckless disregard for the truth and veracity thereof, shall be considered malicious charges and are not within the scope of anyone's employment. The university reserves the right to impose sanctions against the accuser up to and including termination. Repeated filing of frivolous charges will be considered reckless disregard for the truth and veracity of said charges. Neither failure to substantiate a sexual harassment charge nor a university finding that sexual harassment did not occur, of itself, constitutes malicious charge(s).

### **ELECTION OF REMEDIES**

Neither this Policy nor its correlative Procedures preclude the accuser from filing charges with any

external agency or otherwise seeking redress pursuant to law. At such election, at any stage of the process, the procedure will be handled directly by the university's Office of General Counsel, but shall otherwise continue to operate through to resolution as set out under "PROCEDURES" below.

#### **- PROCEDURES -**

The university's sexual harassment policy must be adhered to by all members of the university community. Any student or employee who honestly feels subjected to or has witnessed sexual harassment, as outlined in the policy and elaborated upon in educational sessions provided by the university, should immediately report the conduct to the university designated intake agent(s) as follows:

1. Students report the conduct to the Office of the Dean of Students (Kathleen McMahon X3032).
2. Employees report the conduct to the Office of the President (Rick Hale X3079).
3. Alternatively, at either the election of the reporting/charging party or the referral of either of the two offices listed above, the Office of the General Counsel (X5567) shall serve as intake agent.
4. Should the allegations involve personnel in either of the offices set out in 1. and 2. above, or personnel in the Office of the President, the matter shall be reported directly to the Office of General Counsel. If the allegations involve personnel in the Office of General Counsel, the matter shall be reported to the Office of the President.

Immediately upon receiving notification of conduct alleged to be gender based harassment, the Office identified above, as the initial intake agent of the university except under Provision 4., shall notify the Office of General Counsel (if it is not already serving as the intake agent) and commence investigation of the alleged conduct, maintaining confidences to the extent practicable. The investigation and all subsequent steps in the procedure will be conducted in accordance with direction from the Office of General Counsel.

Should Provision 4., above, be invoked concerning an allegation of gender-based misconduct in the Office of General Counsel, investigation will be conducted by or at the direction of the Office of the President, using the procedure outlined below, while adjusting the process as necessary to avoid conflict of interest within the Office of General Counsel.

The President, Senior Vice President(s), or Vice President(s) supervising the division of the accuser and the accused shall, to the extent not compromising the integrity of this policy and procedure, be apprised of the matter following initial intake and shall be kept apprised of and involved, as appropriate, in the investigation and findings.

#### **STEP 1 – INTERVENTION**

This process is prerequisite to formal hearing and the recording of the university's official, investigated findings of whether or not sexual harassment has occurred and/or whether a malicious claim has been filed. It provides no specific sanctions but addresses each matter individually, as confidentially as practicable, and seeks formal resolution by written agreement of all parties to the conduct alleged by the accused, to be gender based, harassing, unwelcome, and intolerable.

The intervention process shall include the following:

1. Interview, by an intake agent, of the accuser and creation of a separate formal record to be maintained in the intake office with final copy, following failed or successful resolution of the intervention, to the Office of General Counsel.

The intervention may include the following:

1. Interview, by an intake agent, of the accused, setting forth the allegations and making record of the response, complete with specific information as to rebuttal witnesses and other information offered that is conducive to resolution.
2. Discussion with both accuser and accused of formal resolution to which each would agree in writing before involving testimony and evidentiary practices that may erode the confidentiality of the complaint and the parties.
3. If both parties are amenable to formal resolution at the intervention step as proposed by the university through its intake agents(s), a formal agreement will be prepared by the Office of General Counsel after consultation and debriefing with the intake agent, provided to accuser and accused for signing and then implemented according to its terms.

#### **TIME LIMITS**

From receipt of accusation to intervention resolution, a period of thirty (30) calendar days is the time limit for Step 1 intervention upon all parties to the allegation. The time limit may be extended by formal agreement of the accuser and the university. Where the accused has been properly joined at the intervention step, extension of time limits need also evidence the accused's agreement. Absent resolution or mutual agreement to extend the time limit, the allegation will be forwarded to Step 2 of the procedure.

#### **STEP 2 – FACT FINDING**

Unless the accuser expressly wishes to withdraw the allegations, Step 2 shall be convened and shall proceed, either (1) thirty (30) days failing formal resolution at Step 1 following initial intake interview and explanation of the procedure or (2) immediately, if the accuser does not wish to proceed at Step 1, but wishes to commence a formal investigation.

1. The record established at Step 1 shall be forwarded to the designee (Factfinder) of the President.
  - a. If the matter involves the Office of the President, the Factfinder will be the Office of General Counsel.
2. From inception of Step 2 through formal finding by the Factfinder, not more than sixty (60) calendar days shall elapse absent special circumstances and in no event shall more than ninety (90) days elapse, except by consent of the parties.
3. The Factfinder shall review the record established at Step 1 and investigate the allegation(s) further as warranted. This investigation, as illustrative of the search for credible facts, would include:
  - a. Re-examination of the accuser and/or accused as warranted.
  - b. Discussion with and testimony by witnesses
  - c. Gathering of credible non-testimonial evidence corroborating or rebutting the allegation(s), response and testimonial evidence.

While good faith effort at maintaining circumspect publication and disclosure of allegations, corroboration, rebuttal and the personnel involved will be the order of this Policy and Procedure, confidentiality cannot be promised to the extent it impedes credible resolution of the allegations.

4. At the conclusion of the fact finding process, the designee shall determine either:
  - a. There is no cause for a finding of sexual harassment.
  - OR
  - b. There is cause, based on the facts found, to find sexual harassment.
  - AND/OR
  - c. There has been a malicious filing of a sexual harassment complaint.

The Factfinder's determination, with the basis therefore, shall be set out in writing and forwarded in confidence to the President of the university (or in the case of a determination involving the Office of the President, to the General Counsel and Senior Vice President for Legal Affairs) with official, sealed copy to the accuser, the accused, the university's Assistant Vice President of Human Resources, General Counsel & Senior Vice President for Legal Affairs, and the Senior Vice President or Vice President(s) of the accused and the accuser. If the allegation involves a student as accuser, accused or both, an official, sealed copy will also be forwarded to the Dean of Students and the Vice President for Student Affairs.

### **STEP 3 – SANCTIONS**

Should there be a finding of sexual harassment or malicious filing of such charge(s) following Step 2 herein, the matter will be formally referred to the Office of General Counsel (if not already residing therein) who, following consultation with the appropriate university officers, will provide counsel and professional services as to appropriate sanction(s) and the implementation thereof. Sanctions may include, by way of illustration but not limitation, termination or expulsion, suspension, probation, reprimand, warning, directed counseling and/or mandatory education and training.

### **STEP 4 – GRIEVANCE**

Appeal of a finding accompanied by disciplinary sanctions (as set out in Step 3 above), shall be referred to the university's standing policies for handling employee grievances and/or student appeals of disciplinary sanctions.

### **WITHDRAWAL OF ALLEGATION**

If the accuser determines to withdraw the allegation(s) of sexual harassment at any time during any step in the procedure, the withdrawal must be in writing and specify voluntary retraction of the complaint. This action will not preclude further investigation, findings, or sanctions as imposed by the University.

### **EMPLOYMENT DISCRIMINATION ENFORCEMENT AGENCY**

Rhode Island Commission for Human Rights, Ten Abbott Park Place, Providence, RI 02903 (401-277-2661).

*Revised January 24, 2012*