

## PROCEDURE

Effective Date: August 14, 2020

Approved By: Executive Director, CRTS

Authority: [POL-U1600.04](#)

### **PRO-U1600.04A TITLE IX GRIEVANCE PROCEDURE**

***This procedure applies to allegations of sexual harassment, as defined in 34 C.F.R. §106.30 and University policy on Preventing and Responding to Sexual harassment, POL-U1600.04***

#### **Preamble:**

This procedure is for receiving and investigating sexual harassment allegations arising during education programs and activities, which falls under Title IX.

Nothing in this procedure limits or otherwise restricts the University's ability to investigate and pursue discipline based on alleged violations of other federal, state, and local laws, their implementing regulations, and other college policies prohibiting gender discrimination through processes set forth in the University's code of student conduct, employment contracts, employee handbooks, and collective bargaining agreements.

Any individual found responsible for violating the University's Title IX policy is subject to disciplinary action up to and including dismissal from the University's educational programs and activities and/or termination of employment.

#### **1. Principles for Title Grievance Procedure**

- A) Respondent shall be presumed not responsible for the alleged conduct unless or until a determination of responsibility is reached after completion of the grievance and disciplinary processes.
- B) Discipline: Before imposing discipline, the University is responsible for gathering and presenting evidence to a neutral and unbiased decision maker establishing responsibility for a Title IX violation by a preponderance of the evidence.
- C) Confidentiality: The University will seek to protect the confidentiality of the investigation to the full extent permitted by law. Although the university will attempt to honor the request for confidentiality, it cannot guarantee complete confidentiality
  - i) Determinations regarding how to handle requests for confidentiality will be made by the Title IX Coordinator. Records maintained by the Civil Rights and Title IX Compliance Office may be subject to the Washington Public Records Act.
  - ii) The Title IX Coordinator will inform and attempt to obtain consent from the complainant before starting an investigation of alleged sexual harassment. If a complainant asks that their names not be revealed to the respondent or that the

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University not investigate the allegation, the Title IX Coordinator will inform the complainant that maintaining confidentiality may limit the ability of the University to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited

If the complainant still insists that their name not be disclosed or that the University not investigate, the Title IX Coordinator will determine whether the University can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the University community, including the complainant. Facts to be weighed in this determination may include, but is not limited to:

- The seriousness of the alleged sexual harassment;
- The age of the complainant;
- Whether the sexual harassment was perpetrated with a weapon;
- Whether the respondent has a history of committing acts of sexual harassment or violence or has been the subject of other sexual harassment or violence complaints or findings;
- Whether the respondent threatened to commit additional acts of sexual harassment or violence against the complainant or others; and
- Whether relevant evidence about the alleged incident can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

D) Privileged communication:

Title IX Administrators may not require, allow, rely upon, or otherwise use questions or evidence that seeks disclosure of privileged communications, unless the privilege has been effectively waived by the holder. This provision applies, but is not limited to information subject to the following:

- Spousal privilege;
- Attorney-client and attorney work privileges;
- Privileges available to members of the clergy and priest
- Privileges applicable to medical providers, mental health therapist and counsellors;
- Privileges applicable to sexual assault and domestic violence advocates; and
- Other legal privileges identified in RCW 5.60.060.
- All privileged communications are subject to exceptions as defined in law.

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### 1. **Complainant or Person who Refers Can File a Complaint**

Any employee, student, applicant, or visitor who believes that they have been the subject of sexual harassment should report the incident or incidents to the University's Title IX Coordinator. If the complaint is against that Title IX Coordinator, the complainant should report the matter to the President's office for referral to an alternate designee.

### 2) **Complaint Review**

Title IX Coordinator review the complaint and decide if the matter will go forward as a Title IX Claim or if it will be dismissed. At any point during the investigation process, if it is determined that the complaint does not fall within the Title IX guidance, the complaint is to be dismissed. The Title IX Coordinator may dismiss the Title IX claim based on the following:

- A) Mandatory dismissal- The Title IX Coordinator will dismiss the Title IX allegations, if during the course of a formal investigation under the Title IX Grievance Process, the investigator determines that the alleged misconduct in the Formal Complaint:
- Does not meet the definition of Sexual Harassment under Title IX, even if proved; or
  - Did not occur in the context of a College Education Program or Activity; or
  - Occurred outside the United States.
- B) Discretionary dismissal- The University may dismiss a Title IX claim in whole or in part, if:
- The complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint in whole or in part;
  - Respondent is no longer enrolled with or employed by the University; or
  - Specific circumstances prevent the University from gathering evidence sufficient to complete the investigation of the Title IX allegations in whole or in part.
- C) The Title IX Coordinator will provide both parties written notice if Title IX allegations are dismissed with an explanation for the dismissal.
- D) The complainant and respondent may request that the President or Designee review the cause for dismissal and / or re-open the investigation. Requests will only be considered under the following criteria: if new information is brought forward that would directly impact the decision, there is evidence of bias, and/or a material violation of the grievance procedure. This decision lies in the sole discretion of the President or Designee. Other appeal options do not apply.
- E) Mandatory or discretionary dismissal of a Title IX claim does not preclude the University from investigating and pursuing discipline based on allegations that a

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respondent violated other federal or state laws and regulations, University conduct policies, Student Conduct Code, and/or other codes and contractual provisions governing student and employee conduct.

- F) Records concerning the dismissals of a complaint will be maintained within the CRTC Office and if applicable the complaint will be forwarded to the appropriate office for resolution (OSL, HRO, College / Department).

### **3. Complaint Resolution**

The Title IX resolution processes are initiated when the Title IX Coordinator's Office receives a written complaint alleging that a respondent(s) sexually harassed a complainant and requesting that the University initiate an investigation (a Formal Complaint). A Formal Complaint must be either submitted by the complainant or signed by the Title IX Coordinator on behalf of the complainant. Formal complaints submitted to the Title IX Coordinator may be resolved through either informal or formal resolution processes. The University will not proceed with either resolution process without a Formal Complaint.

For purposes of this Title IX Grievance Procedure, the complainant must be participating in or attempting to participate in a University education program or activity at the time the Formal Complaint is filed.

- A) **Informal Resolution:**  
Under appropriate circumstances and if the impacted and responding parties agree, they may voluntarily pursue informal resolution during the investigation of a concern. Informal resolution is not appropriate when the allegations involve a mandatory the University community, or in cases where an employee is alleged to have sexually harassed a student.

If an informal resolution is appropriate, the impacted party and the responding party may explore remedies or resolution through:

- Guided conversations or communications conducted by Office of Student Life / HRO representative or a mutually agreed upon third party;
- Structured resolution process conducted by a trained mediator; or
- Voluntarily agreed on alterations to either or both of the parties' work or class schedules or student housing arrangements.

If the parties agree to an informal resolution process, the University will commence the process within 14 days after the parties agree to this option and conclude within 30 days of beginning that process; subject to reasonable delays and extensions for good cause shown. The informal process is voluntary. Either the impacted or

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responding party may withdraw from the informal resolution process at any time, at which point the formal investigation process will resume.

If the impacted and responding party voluntarily resolve a report, the University will record the terms of the resolution in a written agreement signed by both parties and provide written notice to both parties that the report has been closed. The CRTC will maintain a copy of all written agreements resulting from informal resolutions.

- B) **Formal Resolution:**  
Formal resolution means that the complainant's allegations of Sexual Harassment will be subjected to a formal investigation by an impartial and unbiased investigator. The investigator will issue a report summary of the evidence collected in the investigation. Upon completion of the investigation, the investigator will submit the final investigation report to the Title IX Coordinator who will distribute the report and evidence to the parties, as well as the disciplinary authority / disciplinary board responsible for determining disposition of the complaint, whether the respondent (s) are responsible for violation of University policy, and sanctions when applicable

#### **4. Investigation Practices: Formal Complaint Intake**

Upon receiving a Formal Complaint and determining that allegations qualify as Title IX claims, Title IX Coordinator/Title IX investigator will provide the parties with the following notices containing the following information:

- A) Notice of formal and informal resolution processes. A description of the University's grievance resolution procedures, including the informal resolution procedure.
- B) The investigator will serve the respondent and the complainant with a Notice of Investigation within 10 days of the initial interview with the respondent to allow the respondent sufficient time to prepare a response to the allegations and to inform the complainant that the University has commenced an investigation. The investigation notice will:
- Include the identities of the parties (if known), a description of the conduct alleged constituting Title IX Sexual Harassment, and the time and location of the incident (if known).
  - Confirm that the respondent is presumed not responsible for the alleged conduct and that the University will not make a final determination of responsibility until after the grievance and disciplinary processes have been completed.
  - Inform parties that they are both entitled to have an advisor of their own choosing, who may be an attorney.

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- Inform parties they have a right to review, inspect and comment on evidence directly related to the allegations at the conclusion of the investigation but prior to the drafting of a final report.
  - Inform parties about student conduct code provisions and employment policies that prohibit students and employees from knowingly submitting false information during the grievance and disciplinary processes.
- C) Amended investigation notice- If during the course of the investigation, the University decides to investigate Title IX Sexual Harassment allegations about the complainant or respondent that are not included in the investigation notice, the University will issue an amended notice of investigation to both parties that includes this additional information.
- D) Interview and meeting notices. Before any interviewing or meeting with a party about Title IX allegations, the University shall provide the party with a written notice identifying the date, time, location, participants, and purpose of the interview or meeting with sufficient time for the party to prepare for the interview or meeting.

### **5. Investigation Process – Required Procedures**

- A) During the investigation, the Investigator:
- i) Will provide the parties with equal opportunity to present relevant statements, and other relevant evidence (inculpatory and exculpatory).
  - ii) Will not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence, except when a no contact order has been imposed based on an individualized and fact specific determination that a party poses a threat to the health, safety, or welfare of another party and/or witnesses or when contact with a party and/or witness is prohibited by court order. A University-imposed no contact shall be no broader than is necessary to protect the threatened party or witness and must provide the impacted party or their advisor with alternative means of gathering and presenting relevant evidence from the protected witness and/or party.<sup>18</sup> However, to maintain the integrity of the investigation, it might be in the interest of both parties to limit discussing the facts of the case or their interviews with parties who may ultimately be witnesses in the case.
  - iii) Will allow each party to be accompanied by an advisor of their choosing, who may be an attorney, to any grievance related meeting or interview. In addition to an advisor, both parties can also be accompanied by a support person. Support person and advisors' roles during the investigation meetings or interviews will be limited to providing support and advice to the party, they shall directly advocate or address the investigator. Advisors will not represent or otherwise advocate on behalf of the parties during the investigation process. An attorney representing a party must enter

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a notice of appearance with the Title IX Coordinator and the Investigator at least five (5) days before the initial interview or meeting they plan to attend, so that the University can secure its own legal representation, if necessary.

Recording of Interviews- No unauthorized audio or video recording of any kind is permitted during investigation meetings. If investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.

- iv) Will provide both parties and their respective advisors with an equal opportunity to review the draft investigation report and to inspect and review any evidence obtained during the investigation that is directly related to the allegations raised in the Formal Complaint, including inculpatory or exculpatory evidence regardless of its source, as well as evidence upon which the investigator does not intend to rely in the final investigation report. After disclosure, each party will receive ten (10) days in which to submit a written response, which the investigator will consider prior to completion of the investigation report. If a party fails to submit a written response within ten (10) days, the party will be deemed to have waived their right to submit comments and the investigator will finalize the report without this information.

The written investigation report will be comprehensive and fully summarize the investigation, all witness interviews, and address all relevant evidence, copies of which are to be included in an appendix to the report. The written investigation report does not include the determination of responsibility.

- v) Will forward the final report to the Title IX Coordinator, who will distribute the report and evidence to the parties, as well as the disciplinary authority / disciplinary board responsible for determining disposition of the complaint, whether the respondent (s) are responsible for violation of University policy. If the respondent is deemed to be responsible the same disciplinary board will determine appropriate sanctions.

### **6) Investigation Process – Consolidation of Formal Complaints**

When multiple Sexual Harassment allegations by or against different parties arise out of the same facts or circumstances, the University may consolidate the investigation of Formal Complaints, provided consolidation can be accomplished in compliance with confidentiality protections imposed by the Family Educational Records and Privacy Act (FERPA). This includes instances when allegations of sexual assault are lodged by a single complainant against multiple respondents, or when multiple complainants lodge sexual assault complaints against single or multiple respondents.