

DISCRIMINATION COMPLAINT PROCESS
FOR THE UNIVERSITY OF RHODE ISLAND

ORIGINATOR: Office of Affirmative Action
DATE: August, 1985 (revised)
POLICY: #85-1

GENERAL INFORMATION REGARDING COMPLAINTS:

These complaint procedures apply to complaints by members of the University community alleging that their rights under the University's Affirmative Action Plan or Sexual Harassment Policy have been violated. The University prohibits discrimination/harassment on the basis of race, sex, religion, age, color, creed, national origin, disability and sexual orientation. These procedures are also applicable to complaints which may arise under Titles VI and VII of the Civil Rights Act of 1964, as amended; Title IX of the 1972 Educational Amendments to the Higher Education Act; the Age Discrimination in Employment Act of 1967; Sections 503/504 of the Rehabilitation Act of 1973, as amended; Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974; the Equal Pay Act of 1963; the Americans with Disabilities Act of 1990; Executive Order 11246, as amended; Executive Order 91-39; Executive Order 92-2; and Rhode Island General Law 28-5.1, as amended.

Copies of the above-mentioned regulations are available in the University of Rhode Island Library, the Affirmative Action Office or the Office of the General Counsel.

If members of the campus community (e.g., faculty, staff or students) believe that their rights have been violated and wish further information, advice or assistance in filing a complaint, they should contact:

Affirmative Action Office
University of Rhode Island
201 Carlotti Administration Building
Kingston, Rhode Island 02881
Phone: 401-792-2442
TDD: 401-792-2120

In the event that a person files a complaint involving a student as the alleged offender (hereinafter referred to as respondent), the Affirmative Action Office and the Division of Student Affairs will determine which office will proceed with the processing of the complaint. Proceedings involving complaints against students must comply with procedural guidelines contained in the Student Handbook. (Sections 21-24 and 32-44)

All complaints must be filed within 365 days of the occurrence of the alleged discriminatory act. Complaints involving allegations of continuing discrimination will be fully investigated, including occurrences beyond the 365-day time frame, so long as the last act of alleged discrimination occurred within the prescribed statute of limitations (365 days).

All parties meeting with the Affirmative Action Officer may be accompanied by an individual of their choice for support. This advocate or representative may not act as an attorney, have a voice in the proceedings, or have any formal role other than to accompany and communicate with the party requesting support. The assistance of counsel must be passive assistance only.

If discrimination, harassment or retaliation is observed by or reported to a University official (administrators, managers and supervisors), that official must either take appropriate action to resolve the matter or refer the case to the Affirmative Action Office. The official is not required to initiate a formal investigation but is responsible for taking reasonable and prompt steps to ensure that the matter is resolved or referred to the Affirmative Action Office. The fact that the alleged victim does not wish to file a formal complaint does not relieve the official of this responsibility.

Cases involving discrimination against a group or class of individuals, reflecting a pattern and practice of discrimination, involving criminal violations and direct violations of affirmative action mandates must be investigated and/or acted upon by the Affirmative Action Officer regardless of whether there is an identified complainant. Further, informal resolution of such cases is not an option.

Individuals shall not knowingly file false charges or accusations of discrimination/harassment. Such charges or accusations are strictly prohibited and will result in disciplinary action. There shall be no disciplinary action, retaliation or reprisal for bringing a complaint in good faith.

NOTE: This document, while reflecting the general complaint process which will be followed, is not static. The University reserves the right to alter and/or deviate from the procedural guidelines contained herein, when such is warranted by either the circumstances of a case or the institution's duty to comply with state and federal mandates.

The Affirmative Action Officer reserves the right to authorize a designee to serve in the Officer's capacity in the execution of these procedures.

SPECIFIC PROCEDURES

INITIAL CONSULTATION

The Affirmative Action Officer will establish with the complainant a time and date for consultation. In consultation, the Affirmative Action Officer will discuss the individual's concerns, review the complaint process, and describe the available resolution options (informal resolution, mediation and formal resolution).

As a result of the initial consultation, the Affirmative Action Officer will draw preliminary conclusions as to whether or not the subject matter is appropriate to the Affirmative Action Office.

The Affirmative Action Officer may contact any other pertinent individuals who may have knowledge of or information relating to the matter, with the permission of the complainant. If it is determined that the case should not be

addressed by the Affirmative Action Office, the Affirmative Action Officer will refer the complainant to the appropriate office or department.

Following the preliminary review, if it is determined that the Affirmative Action Office shall retain responsibility for the case, the Affirmative Action Officer will ascertain from the complainant which of the resolution options the individual has elected. The selected option will be verified by the complainant's signature. Selection of an option at this time may not preclude the complainant from electing another option at a later time, where appropriate, as determined in consultation with the Affirmative Action Officer.

At the time at which an option is selected, the complainant will also be asked to make a decision regarding confidentiality. A request for confidentiality will be honored by the University, to the extent permitted by law and University policy. However, it must be understood that while some concerns or complaints can be resolved without disclosing one's identity, often successful resolution cannot be achieved under such circumstances. 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.

If, during the initial consultation, the Affirmative Action Officer determines that immediate action may be necessary to protect the rights or interests of the complainant, respondent or the University community, the Affirmative Action Officer will conduct a preliminary inquiry to verify the need for immediate action and will advise the University General Counsel of the situation. Upon consultation with appropriate University 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.

All written records generated during the initial consultation will be used for reporting aggregate statistical data only and no file will be established in the name of either party.

INFORMAL RESOLUTION

This informal procedure is intended to effect a resolution of the matter by reconciling the parties' differences and/or rectifying the alleged discriminatory action(s). Complaints that the Affirmative Action Officer evaluates as involving discrimination against a group or class of individuals, that reflect a pattern and practice of discrimination, or involve criminal violations may not be resolved through use of the informal process option. If, after preliminary review of the matter, it is the judgement of the Affirmative Action Officer that the case should not be addressed by the Affirmative Action Office, the informal procedure shall be terminated.

If the complainant has elected informal resolution, the Affirmative Action Officer finds the complaint should be addressed by the office and the respondent is agreeable, the Affirmative Action Officer will initiate the informal complaint procedure. The Affirmative Action Officer will meet with both

parties, make inquiries to ascertain pertinent facts, and consult with other personnel to facilitate the process.

The Affirmative Action Officer 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 attempts at informal resolution are not effective or the terms of the informal resolution are subsequently broken, the complainant may exercise either of the remaining options.

All written records generated during informal resolution will be used for reporting aggregate statistical data only and no files will be established in the name of either party.

MEDIATION

Mediation is an option that the complainant may select. It is neither mandated nor required by the University. Upon preliminary review of the allegations, the Affirmative Action Officer will determine whether the case is appropriate for mediation. Examples of those that may not be appropriate for mediation include complaints that involve discrimination against a group or class of individuals, reflect a pattern and practice of discrimination, involve criminal violations or in which there is a significant imbalance of power or authority between the parties. (Note: This is not an exhaustive listing.)

If the complainant's selection of mediation is appropriate, the Affirmative Action Officer will contact the respondent to determine if the respondent is willing to participate cooperatively. If the respondent does not give consent, the complainant has the right to exercise either the informal or formal resolution option.

If all parties agree to the mediation process, the Affirmative Action Officer will assign the case to a mediator within fifteen (15) days. The mediator must be neutral, objective and agreeable to both parties. The mediator will promptly arrange a meeting of both parties, during which the parties will develop a memorandum of understanding as to the purposes, goals and scheduling of the mediation session. The mediator will preserve this documentation in writing.

At the conclusion of mediation, the parties will develop and the mediator will preserve in writing, a plan for resolution of the complaint and future interactions between the parties. The written plan will be signed by both parties and submitted to the Affirmative Action Officer for review and approval. The Affirmative Action Officer will not approve any plan which would violate University guidelines, state and/or federal laws, regulations or mandates. If the plan is approved by the Affirmative Action Officer, the plan will take effect immediately according to its own terms.

If the Affirmative Action Officer disapproves of the plan, or if the mediation fails to result in a written resolution, the complainant may exercise the right to proceed to formal resolution. If mediation is unsuccessful and the complaint proceeds to investigation and/or a hearing, the mediator will not testify or participate in any manner, whatsoever, in such proceedings. Further, no

written records generated during the mediation process will be retained in the Affirmative Action Office.

NOTE: The mediation process will respect the rights of all parties pursuant to institutional collective bargaining agreements.

FORMAL RESOLUTION

Any person(s) who believes they have been the victim of discrimination/harassment may file a formal complaint with the Affirmative Action Office. A person who witnesses discrimination/harassment against another may also file a formal complaint. Third party complaints on behalf of a group or class of individuals, that reflect a pattern or practice of discrimination/harassment or that reflect a clear violation of state or federal statutes and regulations will be processed by the Affirmative Action Office. Third party complaints on behalf of an individual will not be processed unless the alleged victim(s) gives the Affirmative Action Office permission to proceed.

There is no requirement that a person filing a formal complaint must have first utilized the informal or mediation process.

A signed complaint form (incident report) must be filed for the formal process to be initiated. The complaint form must contain a detailed description of the conduct being complained about, the name of the alleged offender(s), the name of the victim(s), and the name of the person filing the complaint.

Further, the complainant must attest to the veracity of the allegations. A written statement of allegations will be accepted in lieu of a complaint form, if the written statement contains the necessary elements listed above.

The Affirmative Action Officer will provide assistance to anyone for whom completion of the complaint form is difficult or impractical.

Upon receipt of a signed complaint, the Affirmative Action Officer will notify the respondent and all parties identified as being involved in the alleged incident of its existence. Notice will be delivered by hand or mail. A copy of the written complaint or statement will also be provided to the respondent. The respondent will be provided an opportunity to make a formal statement in rebuttal. Formal statements will also be requested of the other parties identified in the complaint. In providing notice to the parties, the Affirmative Action Officer must identify the pertinent policies, procedures, statutes and regulations involved, explain the investigative process, and the rights and responsibilities of all parties. Until such information is provided, no one will be required to provide a formal statement.

If the respondent elects not to participate in the formal resolution process, the case will be investigated without the respondent's involvement. Those who refuse to participate in an investigation will not be permitted to submit information concerning the subject of the complaint to the Affirmative Action Office once the investigation has been completed.

If, during the investigation, the complainant indicates a desire to withdraw the complaint, the case will be closed and the complainant will not be permitted to refile the complaint absent extraordinary circumstances. However, in cases

where the investigation discloses a clear violation of University policy and/or state or federal statutory mandates, the Affirmative Action Officer must take action to address those violations regardless of the complainant's wishes.

The Affirmative Action Officer or designee will act as investigator. The investigator is neutral, objective, and does not act as an advocate for either party. At any time during the investigative process, parties may be accompanied by an individual of their choice for support. Additionally, the advocate or representative may also assist in the preparation of information to be provided to the investigator. However, during the investigative proceedings, this individual may not act as an attorney, have a voice in the proceedings, or have any formal role other than to accompany and communicate with the party requesting support. The individual may not speak to or question the investigator during the fact-finding sessions.

The investigator is authorized to contact any and all University personnel and other individuals (e.g., agents, subcontractors, volunteers, or guests) who may have information relevant to the complaint. The investigator will have access to all relevant records. The investigator will maintain a record of interviews and investigation. The Affirmative Action Office will retain this document as a permanent confidential record.

Based on the findings of the investigation, the Affirmative Action Officer shall prepare a confidential final report which shall include: a description of the alleged discriminatory acts, a listing of the evidence collected, an evaluation of the pertinent evidence, a conclusion regarding whether the conduct constitutes discrimination/harassment and/or a violation of University policies and procedures, and a recommendation concerning the appropriate remedy. Potential violations of University policies and procedures, which are discovered during the investigation but which are outside the jurisdiction of the Affirmative Action Office, will be referred to the appropriate office or department for resolution. The final report must be issued within ninety (90) days after the complaint is filed. The Affirmative Action Officer will provide copies of the report to the complainant, respondent and appropriate administrator(s). The complainant and respondent will also be advised of the appeal process at that time.

Either party (complainant or respondent) may appeal the Affirmative Action Officer's findings. Such appeals will be addressed by the President's designee(s). Parties wishing to file an appeal must do so within ten (10) days after receiving the Affirmative Action Officer's final report. The appeal process will not involve re-investigation of the complaint.

Appeals must raise specific issues related to the Affirmative Action Officer's findings. Appeal decisions must be rendered within thirty (30) days after the request for appeal is received.

When charges of discrimination, harassment and/or retaliation are substantiated, the Vice President/Provost, in consultation with the Affirmative Action Officer, will render a determination regarding the appropriate disciplinary and/or corrective action. The Affirmative Action Officer's input will be limited to issues presented in the case and specific questions regarding compliance with federal and state mandates. All decisions regarding disciplinary action shall be exclusively the province of the Vice

President/Provost. Questions regarding disciplinary action will involve consideration of the procedural requirements of collective bargaining agreements and statutory mandates. The Vice President/Provost will be responsible for the implementation of all such disciplinary/ corrective action measures. The Vice President/Provost may remand the required disciplinary action to the appropriate Dean and/or Supervisor. At a minimum, the action taken must protect the complainant from future discrimination, harassment or retaliation and resolve any procedural or statutory violations. Depending on the case, substantiated evidence of discrimination, harassment and/or retaliation can result in suspension or termination. Implementation of disciplinary action measures will adhere to University policies and procedures, as well as collective bargaining agreements.

A record of the outcome of each case will remain a part of the permanent confidential file of the case maintained by the Affirmative Action Office.

Following closure of a case, the Affirmative Action Officer may monitor the actions of the complainant and the respondent to ensure continued compliance.

CONFIDENTIALITY STATEMENT:

Any member of the University community who in any way participates in proceedings regarding a complaint, response, investigation and/or disciplinary action is strongly urged to keep all information and documents related thereto confidential.

RETALIATION STATEMENT:

Any retaliatory action of any kind by any member of the University community against the complainant or any other person as a result of efforts to secure redress under these procedures, or to cooperate in inquiry, or participate in any activity governed by this procedure, is prohibited and shall be regarded as a separate and distinct violation of community standards and the University's Non-Discrimination Policy.

OUTSIDE AGENCIES

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

Office of Civil Rights, Region I
U.S. Department of Education
J.W. McCormack Post Office and Courthouse Building
Room 222, 01-0061
Boston, Massachusetts 02109

United States Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs
J.W. McCormack Post Office and Courthouse Building
Room 810
Boston, Massachusetts 02109

Rhode Island Commission for Human Rights
10 Abbott Park Place
Providence, Rhode Island 02903

Rhode Island Office for Civil Rights
Department of Education
22 Hayes Street
Providence, Rhode Island 02908

Rhode Island Equal Opportunity Office
One Capitol Hill
Providence, Rhode Island 02908

(Effective 8/2/94)