



BOARD OF GOVERNORS
UNIVERSITY OF PUERTO RICO

CERTIFICATION NUMBER 130
2014-2015

I, Ana Matanzo Vicens, Secretary of the Board of Governors of the University of Puerto Rico, DO HEREBY CERTIFY THAT:

The Board of Governors, in its regular meeting on the 13th day of April of 2015, having considered the recommendations of its Appeals and Laws and Regulations Committee, has agreed:

WHEREAS: On January 8, 2015, by way of Certification No. 45 (2014-2015), the Board of Governors proposed the approval of an *Institutional Policy against Sexual Harassment at the University of Puerto Rico*, with the purpose of establishing the University of Puerto Rico policy regarding sexual harassment, defining different types of sexual harassment and the procedures to follow in order to address grievances or complaints of this nature, and establishing a policy to protect against retaliations for reporting alleged acts of sexual harassment for participating in related proceedings, among other purposes; moreover, establishing that Circular No. 95-06 of September 12, 1995, Circular No. 88-07 of May 27, 1988 (Regulation No. 3925), Board of Trustees Certification No. 45 (2008-2009), and any other certification, circular, regulation, or any other rules incompatible with this new policy shall be rendered ineffective hereby on the day it takes effect.

WHEREAS: Pursuant to the Uniform Administrative Procedure Act for the Commonwealth of Puerto Rico, Law No. 170 of August 12, 1988, as amended, the Board published on January 12, 2015 a notice of the proposed action on the Internet and in one newspaper of general circulation in Puerto Rico. A period of thirty (30) days from the date of publication of the notice was allowed for written comments to be submitted or to file a substantiated petition for public hearings.

WHEREAS: The Board of Governors, within such time and before reaching a definitive decision regarding the adoption of the aforementioned proposed Regulation, received one comment

that was analyzed with the assistance of UPR Central Administration officers.

WHEREAS: The Board of Governors evaluated and considered the comment received and agreed to incorporate the various recommendations that improved the proposed policy; likewise, using its experience, technical competency, specialized knowledge, discretion, and good judgment when reaching a decision regarding the definitive provisions of the policy.

NOW THEREFORE: Pursuant to the expressions set forth herein, the Board of Governors resolved to:

1. Approve the new *Institutional Policy against Sexual Harassment at the University of Puerto Rico* to establish a University policy regarding sexual harassment, define the different types of sexual harassment and the procedures to follow in order to address grievances of this nature, and establish a policy to protect against retaliation for reporting alleged acts of sexual harassment or for participating in related proceedings;
2. Determine that this new *Institutional Policy against Sexual Harassment at the University of Puerto Rico* be filed at the Department of State for the Commonwealth of Puerto Rico, pursuant to the aforementioned Uniform Administrative Procedure Act;
3. Provide that this new policy shall take effect thirty (30) days after filing at the Department of State.

IN WITNESS WHEREOF, I issue the present certification, in San Juan,

Puerto Rico, today, April 15, 2015.



[signature Ana Matanzo Vicens]
Ana Matanzo Vicens
Secretary

Institutional Policy against Sexual Harassment at the University of Puerto Rico

Certification No. 130 (2014-2015)

**Registered on April 30, 2015 at the PR State Department
as Regulation Number 8581**

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Article I-Title

This document shall be known as “**INSTITUTIONAL POLICY AGAINST SEXUAL HARASSMENT AT THE UNIVERSITY OF PUERTO RICO**”.

Article II- Legal Basis

This Institutional Policy is adopted and promulgated pursuant to the faculties conferred by Article 3 of Law No. 1 of January 20, 1966, 18 L.P.R.A. § 602 *et seq.*, as amended, known as “University of Puerto Rico Act,” and according to the provisions of Article II, Section I of the Constitution of the Commonwealth of Puerto Rico, and in harmony with the following laws:

- “Act to Prohibit Sexual Harassment in the Workplace,” Law No. 17 of April 22, 1988, as amended, which imposes responsibility on the employer to prevent, discourage, and avert sexual harassment and to establish a policy on sexual harassment in compliance with this obligation, as well as to adopt adequate and effective internal procedures to address sexual harassment complaints.
- “Act to Prohibit Sexual Harassment in Learning Institutions,” Law No. 3 of January 4, 1998, 3 L.P.R.A. § 149a-149k, as amended by Law No. 38 of January 24, 2006, applicable to institutions of higher education, as recognized by the Supreme Court of Puerto Rico in Aguadilla v. Lorenzo Hernández, 184 DPR 1001(2012).

Article III- Purpose

The purpose of this Policy is to regulate the filing, investigation and adjudication of claims and complaints of alleged acts of sexual harassment and retaliation carried out by members of the university community or visitors against students, employees, faculty, contractors, or persons who visit the university to receive services or orientation.

Article IV- Definitions

For the purposes of this Policy, the following terms are defined:

- A. Appointing Authority – Chancellor of the academic unit where the incident took place. In the case of the University of Puerto Rico Central Administration or an academic unit assigned to it, it refers to the President.
- B. Contractor – Any natural person or legal entity who works for or renders services under contract to the University of Puerto Rico.
- C. Employee – Any person who renders services in exchange for a wage, salary or any other form of remuneration as a career, confidential, part-time, or temporary employee, wage worker, or any other type of appointment within the structure of the University of Puerto Rico or any applicant for employment.
- D. Student – Any person taking one or more courses of any kind or nature in any of

- the academic units of the University of Puerto Rico. Individuals who drop out of the Institution after allegedly incurring in conduct in violation of the provisions of this Institutional Policy, individuals who are not officially matriculated during a particular term of study but maintain a continuing relationship with the Institution, or individuals who have been notified of admission to the University shall also be considered “students”. In addition, persons living in student residences belonging to the University shall be considered students, even if not matriculated.
- E. Sexual Harassment – Conduct of a sexual nature and other behaviors with sexual connotations that are unsolicited or rejected by the person against whom said conduct or behaviors are directed and that affect the dignity of the person, as defined by Law No. 17 of 2008, as amended.
 - F. Investigator – Person designated by the Director of the Office of Human Resources or the Director of Legal Affairs to carry out an initial investigation of a claim for alleged sexual harassment or retaliation.
 - G. . Examining Officer – Person designated by the President or a Chancellor of the University of Puerto Rico to preside a formal administrative proceeding, following the filing of a sexual harassment complaint and the filing of charges to said effect.
 - H. Professor – Member of the faculty, as defined by the General Regulations of the University of Puerto Rico.
 - I. Claim – Petition or a verbal or written grievance presented by a student, employee, applicant for employment, contractor, or visitor to the University of Puerto Rico, in which the person alleges he or she was the object of sexual harassment by an employee, student, visitor, or contractor of the University of Puerto Rico or of retaliation.
 - J. Claimant – Person who files a claim in which he or she alleges to be the object of sexual harassment or witnessed said acts against another person with the right to file a claim, pursuant to the Policy on sexual harassment and retaliation established herein.
 - K. Complainant – Appointing Authority o authorized representative of the University of Puerto Rico who files a complaint for sexual harassment or retaliation.
 - L. Complaint – Action brought by the Appointing Authority against the accused after an investigation into the alleged acts stated in the complaint and finding that charges should be filed against the accused.
 - M. Accused – Person who is charged with committing sexual harassment against another person or with taking retaliatory measures against someone.
 - N. Retaliation – Those actions taken by the employer or the employee which constitute an adverse decision regarding the claimant’s terms or conditions of employment,

- academic standing or services rendered as a result of having filed a claim or has offered testimony in any claim, complaint, or administrative proceeding for sexual harassment.
- O. Supervisor – Person who exercises a certain level of control, manages or evaluates employees, and whose recommendation is taken into considerations when hiring, classifying, firing, promoting, transferring, establishing compensation or shifts, location or conditions of work, and duties and assignments that an employee carries out.
- P. Visitor – Person who visits the University of Puerto Rico, but who is not an employee or contractor.

Article V- Institutional Policy and Objectives

Sexual harassment in the workplace or in the academic environment is an illegal and discriminatory practice incompatible with the best interests of the University of Puerto Rico. Under no circumstances shall any person be permitted to create an environment characterized by sexual harassment in any of its types or manifestations in the workplace or in the academic environment.

In full compliance with this responsibility, the Institutional Policy established herein shall be disclosed to all employees and students, who shall receive orientation regarding the prohibition of sexual harassment in the workplace and in the academic environment. Every employee and student shall be responsible for notifying immediately any claim or act of sexual harassment known to them.

Article VI- Interpretation

This Policy shall be interpreted in accordance with the provisions of the laws and regulations conferring it authority, in order to ensure the speedy adjudication of sexual harassment claims for all claimants, employees, professors, students, contractors, and visitors, as well as the due process of law and the fair and prompt attention of all matters presented.

Article VII- Confidentiality

Investigative procedures and records in regards to claims and complaints filed shall be kept confidential.

Records from the investigation shall be kept in secure place specially designated for such purposes in the Office of Human Resources, the Office of Legal Affairs, the Office of the Dean of Students, or to the Disciplinary Board of each corresponding unit. Submitted reports should be kept with these records and no copies may be circulated to any office within the University, unless a request is made to examine the records as part of the appeals process.

Once the Appointing Authority's decision to impose a disciplinary measure is notified, the records and the investigation report are no longer confidential, and shall be open to inspection by any of the parties under written request.

No information shall be disclosed regarding sexual harassment complaints that have been filed and are under investigation or those that have been dismissed during any stage of proceedings.

Article VIII- Sexual Harassment and its Modalities

- A. Sexual harassment in the workplace, in the academic environment or rendering services consists of any kind of unsolicited sexual approach, requests for sexual favors, or any other verbal or physical acts that are sexual in nature or can be reproduced using any means of communication, including, but not limited to, the use of multimedia tools through the web or any electronic method, or when one or more of the following circumstances is present:
1. When submission to such conduct implicitly or explicitly becomes a term or condition of employment, study or services from a person.
 2. When submission to or rejection of such conduct by a person is used as a basis for academic or employment decisions of any kind regarding the affected individual.
 3. When that conduct has the effect or purpose of unreasonably interfering with the individual's academic or work performance or when it creates an intimidating, hostile, and offensive environment in which to work or learn.
- B. Sexual harassment applies to situations in which the prohibited conduct occurs between individuals of the same sex or of the opposite sex. There are two (2) categories:
1. *Quid pro Quo* – Harassment that involves sexual favors as a condition or requisite for obtaining benefits in the workplace, academic environment or services. This type of harassment is present when submitting or accepting such conduct implicitly or explicitly becomes a term or condition of employment or affects the individual's academic standing, or when submitting, accepting or rejecting the prohibited conduct is used as a basis for academic or employment decisions of any kind regarding the affected individual.
 2. Hostile or offensive environment to work or learn - Harassment that, although it bears no financial impact, creates a hostile or offensive workplace or academic environment. Therefore, submitting a person to expressions or acts of a sexual nature in a generalized or severe form that has the effect of altering the individual's condition of employment or

academic standing or creates a hostile and/or offensive environment in which to work or learn, including the use of information technology tools belonging to the University of Puerto Rico or other private electronic means to cause a hostile or offensive environment, constitutes sexual harassment.

Article IX- Informal Procedure

- A. Any individual who believes he or she has been subjected to acts constituting sexual harassment at the University of Puerto Rico may file a claim to open an investigation, if deemed necessary, and have University authorities take the appropriate actions. This applies to relationships between faculty-student, student-student, employee-student, employee-employee, supervisor-employee, and vice versa, and with members of the community, applicants for employment or admission to the University. It also applies to contractors and visitors in analogous situations to the aforementioned.
- B. If the claimant were an employee of the University, he or she must file a claim with the supervisor, dean or office director of the assigned office. Said supervisor, dean or director, in turn, shall refer the matter immediately to the corresponding Office of Human Resources. In any case, the claimant may present the matter initially to the director of the corresponding Office of Human Resources. The claimant may also refer the matter to the unit's Equal Employment Opportunity Office for orientation and later referral to the Office of Human Resources.
- C. If the claimant were a student, he or she must file a claim with the Student Advocacy Office or the Office of the Dean of Students.
- D. If the claimant were a contractor or visitor, he or she must file a claim with the Office of Human Resources of the institutional unit where the incident took place.
- E. The written claim or initial report of a verbal claim should contain the following information:
 - 1. Name of the person presenting the claim or grievance
 - 2. Contact information
 - 3. Date and place where the incident took place
 - 4. A brief account of the incident
 - 5. Names of witnesses and of the person against whom the sexual harassment claim is filed
- F. Informal proceedings shall be confidential and no information whatsoever shall be disclosed to third parties. Whenever possible, the wishes, concerns and interests expressed by the claimant shall be addressed first and foremost.
- G. In order to protect the claimant, available and appropriate interim measures may be established as soon as possible, for example:

1. Arranging so that the claimant reports to another supervisor and that communications between the accused and his or her supervisor be mediated by this supervisor, in cases where the supervisor is the accused party.
2. Limiting interactions at the workplace to the presence of others, so the claimant may not have to be alone with the accused during working hours.
3. Any other measure that, under the particular circumstances of the case, are deemed necessary.

These interim measures may be taken *motu proprio* by Chancellors, the President or his or her authorized representative, as applicable, or they may be requested by the parties immediately after presenting the claim or complaint. If adopted, they shall stay in effect during the investigation and until the adjudication of the complaint. The interest of the claimant shall be taken into consideration when deciding to adopt these measures. These measures shall not be construed as disciplinary actions against the party to whom they apply.

- H. The investigation shall contain sworn statements by the claimant and the person against whom the claim is presented and any other person who has partial or full knowledge of the alleged facts. No inquiry will be made into the history or previous sexual behavior of the claimant, nor shall it be part of any purpose of the investigation. The manner of dressing is irrelevant to the controversy. Therefore, it may be given no consideration during the investigation.
- I. The person against whom a claim is presented shall be have opportunity to be informed of the allegations against him or her and to present his or her position or defense. Provided, however, that during this stage of proceedings, the right to due process of law available in formal proceedings does not apply. Nonetheless, he or she may attend the meeting with legal representation.
- J. If the claimant does not participate in the investigation or decides to withdraw the claim, the investigation shall continue, taking this fact and all available evidence into consideration.
- K. The investigation shall be initiated within a reasonable period of time, which shall not be longer than seven (7) working days, in order to ensure its timely resolution. Within a reasonable period, no longer than fifteen (15) working days, absent exceptional circumstances, the office charged with the investigation shall file a report to the Appointing Authority with the outcome of the investigation and his or her recommendations.
- L. If charges are found to proceed, formal proceedings shall be initiated. Regardless of the decision, parties shall receive notice of the Appointing Authority's determination.

Article X- General Provisions

- A. All supervisors or employees who are aware of an act of sexual harassment at the University of Puerto Rico are obligated to report the situation to the corresponding office immediately, in accordance with Article IX – Informal Procedure.
- B. Any employee with direct knowledge of an act of sexual harassment or has witnessed such acts is obligated to report the situation immediately to the Office of Human Resources of the institutional unit. Any student with direct knowledge of an act of sexual harassment or has witnessed such acts must report said situation to the Student Advocacy Office or the Office of the Dean of Students immediately. Failure to report these acts or behaviors in a timely fashion will be considered a violation of the Policy herein established and may be grounds for disciplinary action.
- C. Acts of sexual harassment may originate from supervisors to employees and/or to third parties, such as visitors, from employee to employee, from faculty to students, from students to students, from employees to students, and vice versa in all cases. All claims, information or reports of alleged acts of sexual harassment received shall be investigated thoroughly and expeditiously. After determining the veracity of the alleged acts, appropriate actions or corrective measures shall be taken to remedy the situation. Whenever acts of sexual harassment originate from third parties not employed by the University, the necessary corrective measures that are reasonable at the disposal of the University and in accordance with the law will be established to ensure the immediate cessation of said acts. The scenarios described herein shall not be construed as an exhaustive list of all acts.
- D. Anonymous claims will not be investigated.
- E. Before any employee or contractor begins rendering services at the University of Puerto Rico, the employee or contractor must certify that he or she received a copy of this Policy by the Office of Human Resources of the corresponding institutional unit.
- F. Allegations to establish that the claimant allowed the advances and invitations or that the claimant previously sustained a relationship with the alleged harasser shall not be considered hindrance for an investigation.
- G. No retaliations may be taken against a claimant for having filed a claim for sexual harassment. However, nothing herein shall limit the liability of individuals, employees or students who, knowingly, raise frivolous claims by this Policy.
- H. At any time the claimant may withdraw his or her claim in writing.
- I. Any person who is required by the investigator assigned to the case to testify or present any form of evidence has the duty and obligation to cooperate in providing

- the requested testimony or evidence.
- J. The cessation of conduct constituting sexual harassment shall not provide sufficient cause to suspend the investigation.
 - K. The person charged with carrying out the investigation shall notify all parties participating in the sexual harassment or retaliation proceedings of their rights under applicable laws and regulations.

Article XI- Formal Procedure

- A. Formal proceedings are initiated with the filing of a written complaint by the Appointing Authority of the institutional unit where the accused studies or renders services, in order to impose the appropriate disciplinary actions in accordance with the General Regulations of the University of Puerto Rico or the General Student Regulations, as applicable.
- B. The complaint must include:
 - 1. Concise account of the alleged conduct of the accused.
 - 2. A detailed account of the legal provisions and regulations allegedly infringed and the disciplinary actions proposed.
 - 3. Notice to the accused of his or her right to have legal representation.
 - 4. Notice to the accused that failure to respond to the complaint within of fifteen (15) working days after receiving notice of the complaint, the Examining Officer shall proceed to set the date and celebrate the administrative hearing and may emit a default judgment. If the accused were a student, the period in which to respond to the complaint shall not exceed thirty (30) calendar days, in accordance with the General Student Regulations.
- C. Notice of the complaint shall be given to the accused in a period of time not exceeding fifteen (15) working days since charges were filed.

Article XII- Examining Officer

Concurrent with the filing of the complaint, the Appointing Authority of the institutional unit where the accused studies or renders services shall designate an Examining Officer to oversee the complaint proceedings and receive the related evidence.

The Examining Officer shall give written notice to the claimant and the accused of the date, time and place of the administrative hearing in order to receive all evidence the parties may present regarding the alleged facts contained in the complaint. The Examining Officer shall inform the parties that all legal arguments should be filed in a period of time not exceeding five (5) working days prior to the date of the hearing.

Article XIII- Administrative Hearing

- A. The administrative hearing shall be public, unless a party files a written and duly substantiated petition requesting that the hearing be held in private. In such a case, the Examining Officer presiding the hearing may rule to hold the hearing in private if he or she finds that the requesting party would otherwise be subject to irreparable harm. Each party by him or herself, or by way of legal counsel, may present relevant and testimonial evidence. During the proceedings, formal evidentiary rules shall not apply, unless the Examining Officer determines that applying all or some of the rules may be necessary to conduct the administrative proceedings in an orderly fashion. In any case, the admission of evidence during the proceedings shall be governed by the general rules of relevance, materiality, and competence that the evidence offered could have regarding the controversy at hand.
- B. During the administrative hearing, each party shall have the right to be heard, confront the evidence and cross-examine the witnesses presented by the opposing party.

Article XIV- Report from the Examining Officer

When the hearings have concluded, the Examining Officer shall issue a written report to the Appointing Authority for the institutional unit where the accused studies or renders services. Said report shall contain:

1. Account of the proven facts.
2. Account of the formulated conclusions of law.
3. Recommendations regarding the disposition of the case. Except where just cause is found, the report must be submitted in a period of time not exceeding thirty (15) calendar days from the day the case was remitted for decision.

Article XV- Appointing Authority

The Appointing Authority of the institutional unit where the accused studies or renders services shall decide the outcome of the case after reviewing the report submitted by the Examining Officer and impose the appropriate disciplinary actions, if any, according to the General Regulations of the University of Puerto Rico or the General Student Regulations. The Appointing Authority shall notify the accused of his or her decision in writing by

certified mail with acknowledgment of receipt and shall. Notice shall also been given to the accused of his or her right to appeal the decision to the forum and within the time period established by University regulations regarding appellate procedure. The Appointing Authority shall inform the final outcome in writing to the alleged victim by certified mail with acknowledgment of receipt.

Article XVI- Unforeseen Situations

Any situation not considered by this Policy shall be resolved in a manner consistent with public policy and with the provisions contained in special legislation against sexual harassment and in applicable law. In any unforeseen case, decisions reached shall consider public interest, the interest of the University in institutional order and the right of all persons to the due process of law. Whenever possible, swift resolution should be ensured. The complaint should be resolved within six (6) months since its was filed, absent exceptional circumstances. In all cases not provided for herein, the University of Puerto Rico regulatory statues contained in the General Student Regulations and the Rules Regulating Disciplinary Proceedings Affecting University Personnel, Certification No. 44, 1984-1985 of the former Council on Higher Education, as amended by Certification No. 94, 1989-1990 of the Council on Higher Education, shall apply.

Article XVII- Other Remedies; Statute of Limitations

The filing of a complaint under this Policy shall not bar the claimant from other legal remedies available, including appealing to the appropriate federal or state agency or forum. In no case shall the filing a claim or complaint under this Policy interrupt the statute of limitations established by law or administrative rules and regulations.

Article XVIII- Procedure for Summary Suspension

The provisions of this Policy do not alter the faculties of the Appointing Authority to activate the procedure for summary suspension of any member of the University community, in accordance with applicable rules and regulations.

Article XIX- Policy against Retaliations

- A. The University of Puerto Rico shall maintain a work and learning environment free from retaliations brought as a result of filing or participating in investigative or adjudicative proceedings. In no case may an individual be terminated, suspended, threatened, or discriminated against regarding the terms, conditions, location, benefits, or privileges of employment or affect his or her academic standing for having offered or brought, verbally or in writing, any testimony, expression or information in an legislative, investigative or judicial forum regarding acts of sexual harassment.
- B. The employer and all supervisors shall ensure that no retaliations are taken in his or her area by any employee, supervisor, professor, student, contractor, or third

- party related to the Institution.
- C. An employee who feels he or she is or has been a victim of retaliation in the workplace must file a claim with the supervisor, dean or director of the office assigned to the area where he or she works. These employees shall refer the matter immediately to the corresponding Office of Human Resources or Equal Employment Opportunity Office. However, the employee may refer the matter initially to the director of the Office of Human Resources of the corresponding unit. Provided, this provision applies exclusively to University of Puerto Rico employees.
 - D. A student who feels he or she is or has been has been victim of retaliation in the academic environment or in the rendering of services must file a claim with the Student Advocacy Office of his or her institutional unit. This employee shall refer the matter immediately to the corresponding Office of Human Resources when the alleged acts of sexual harassment stems from an employee. Provided, this provision of the Institutional Policy applies exclusively to University of Puerto Rico students.
 - E. All claims received regarding alleged retaliations shall be investigated.
 - F. The investigation and all formal and informal proceedings arising from such investigation shall be carried out in accordance with the provisions of Articles IX and XI of this Institutional Policy.

Article XX- Separability

If any article or segment of this Institutional Policy is declared unconstitutional, invalid or void by a court of justice or authority with jurisdiction, the remaining provisions and parts of this Policy shall not be affected, hindered or invalidated thereby. Rather, its effect shall be limited to the article or segment so declared unconstitutional or void.

Article XXI- Interim Provisions

This Policy shall affect Certification No. 45 (2008-2009) of the former Board of Trustees; Circular No. 95-06 of September 12, 1995, and all certification, circular, regulation, procedure or part thereof inconsistent with these provisions. The procedures herein established shall take precedent over any other that prove inconsistent.

All claims and complaints under investigation at the moment this Policy enters into effect shall continue until its final resolution. The procedural rights herein established for the claimant and the accused shall be applicable to them after this Policy takes effect.

Article XXII- Effectiveness

This Institutional Policy shall take effect thirty (30) days after filing at the Department of State.