



## UNIVERSIDAD CENTRAL DE BAYAMÓN

PO Box 1725, Bayamón, P.R. 00960-1725 • Phone (787) 786-3030 • Fax. (787) 740-2200

1961-2016

### Executive Order ADM. 16-04

September 29, 2016

#### TO THE UNIVERSITY COMMUNITY

#### POLICY AND PROTOCOL FOR THE MANAGEMENT OF GRIEVANCES UNDER TITLE IX PROVISIONS

##### Introduction

Universidad Central de Bayamón promotes in the university community a safe environment conducive to the full realization and achievement of its mission and vision as a humanistic, Dominican and Catholic institution. UCB, in accordance with federal and state laws, rejects any kind of discrimination and promotes equal opportunity for study and employment to all students, prospective students, employees and employment applicants. The university establishes this policy as a firm believer in the right of every person to be treated equally regardless of age, race, color, sex, marriage, social or national origin, social status, political or religious beliefs, sexual orientation or gender identity, status as a Vietnam veteran, veteran or disabled person or person with a disability, or being a victim or perceived as a victim of domestic violence, sexual assault or stalking or any other category prohibited by law.

##### Legal Base

The Campus SaVe Act (May 7, 2013) amended the Violence Against Women Act (VAWA<sup>1</sup>) to prevent and address discrimination and violence against women in higher educational institutions. These amendments, in turn, impacted other laws, in particular, the provisions of Title IX of the Federal Higher Education Act of 1972 which prohibits sex-based discrimination in educational institutions receiving federal funds. To ensure compliance with the provisions of Title IX and other federal and state laws that ensure civil rights, Universidad Central de Bayamón has developed internal policies that prohibit discrimination based on sex, sexual orientation, gender identity and sexual harassment. Among these are the Policy for Equal Opportunity for Employment and Study, Institutional Regulation on Sexual Harassment and Affirmative Action Policy, among others.

##### Scope

All students, administrative employees and faculty will have the responsibility to observe the rules established in this policy. They will also be subject to investigation in the case of a grievance for alleged violation of the provisions of Title IX.

<sup>1</sup> For more information on "Violence against Women Act", please refer to <http://www.ifap.ed.gov/fregisters/attachments/FR102014FinalRuleViolenceAgainstWomenAct.pdf>

## Purpose

The following standards and procedures have been adopted by UCB for the purpose of receiving, investigating, and resolving grievances of discrimination for alleged violation of Title IX provisions. These procedures are designed to provide support for individuals who file a sex discrimination grievance and to ensure fair prosecution of individuals who are charged with an alleged violation of Title IX provisions. Investigations of alleged institutional discrimination or systemic discriminatory practices are intended to ensure that Universidad Central de Bayamón fulfills its commitment to provide the university community with healthy education and employment environment. These procedures also describe the efforts made by the Institution to carry out a thorough, fair and timely investigation as required by law.

Discrimination by sex, gender identity and sexual orientation, as well as sexual harassment and sexual violence are recognized as forms of discrimination in violation of the provisions of Title IX. The "sexual harassment" and "discrimination" referred to in this document refer generically and inclusively to all forms of discrimination based on sex.

## PROCEDIMIENTO PARA MANEJO DE QUERELLAS DE TÍTULO IX

### Definitions

1. **Sexual Discrimination:** Behavior or action that prohibits or limits a person's opportunity to benefit from, or participate in educational programs or activities, or employment opportunity by reason of gender. Examples of the types of discrimination that are covered under Title IX include, but are not limited to, sexual harassment, sexual assault, sexual violence, failure to provide equal opportunity for participation in educational programs and extracurricular activities such as athletic program, discrimination against pregnant women and discrimination in employment.
2. **Sexual Harassment:** A range of behaviors such as sexual harassment and sexual violence. It includes unwanted sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that:
  - a) is severe, persistent, or intimidating enough to limit a student's opportunities to participate or benefit from an educational program or create a hostile or abusive educational environment,
  - b) explicitly or implicitly affects an individual's employment, interferes with the performance of the employee, or creates an intimidating, hostile or offensive work environment.
3. **Stalking:** intimidating behavior that causes a person to fear for their safety or the safety of others. It includes verbal / physical discrimination or harassment based on the gender of the person but not of a sexual nature. The Universidad Central de Bayamón prohibits gender based harassment, which may include discrimination or inappropriate sexual behavior based on sexual orientation, gender identity or gender expression, and harassment or discrimination based on gender stereotypes.
4. **Consultation:** a request from a member of the university community to obtain information about the policy or procedures for handling grievances for alleged discrimination or sexual harassment. A consultation may also refer to an informal notification that an act of discrimination or sexual harassment has occurred or a request for information about where and how to file a grievance.
5. **Complaint:** description of the facts of an alleged violation of the provisions of Title IX for discrimination or sexual harassment. The Dean of Student Affairs and the Office of Human Resources may request that the complaint be filed in writing.

6. **Claimant:** Student or employee of Universidad Central de Bayamón who claims that he or she has been subjected to discriminatory practices or sexual harassment. The claimant may also be a third party who files a grievance on behalf of another member of the university community who allegedly has been subjected to sexual harassment or discrimination. The claimant may be individuals or groups of persons who have allegedly been discriminated against or subjected to sexual harassment.
7. **Defendant:** Student or employee of Universidad Central de Bayamón who allegedly discriminated against or stalked another person (s). Complaint may be, but not limited to, individuals, groups, programs, academic or administrative units or the Institution.
8. **Witness:** Student or employee at Universidad Central de Bayamón who has information about the alleged discrimination or sexual harassment that can demonstrate, refute, or provide evidence to investigate a grievance.
9. **Investigation:** Information obtained through a process conducted by the Title IX Coordinator for the purpose of determining whether an alleged violation of Title IX provisions occurred and providing recommendations for resolving the grievance and terminating discriminatory conditions or sexual harassment.

### **Procedures for Reporting and Responding to Alleged Violations of Title IX Provisions**

The Dean of Student Affairs and the Office of Human Resources are responsible for coordinating efforts for research, resolution, corrective action, and monitoring of the educational and employment environment to stop, remedy, and prevent sex-based discrimination. President, Vice President, Deans, Directors and Supervisors are responsible for identifying and reporting discriminatory behavior. All employees responsible for supervising staff and ensuring the safety of employees (including students participating in the Work and Study Program in the performance of their duties) have the responsibility to report observed and / or notified discriminatory conduct. President, Vice President, Deans, Directors and Supervisors should be directly involved in the investigation and resolution of grievances of discrimination or sexual harassment.

In the case of employees, the Office of Human Resources will investigate discrimination complaints in consultation with the supervisor of the defendant, as long as the supervisor is not the alleged perpetrator of the acts. President, Vice-President, Deans, Directors and Supervisors are responsible for monitoring the conduct of the respondent and for disciplinary action if the defendant continues to violate Title IX, institutional policy or established procedures, with persistent discriminatory conduct and / or acts of retaliation.

In the case of students, the Dean of Student Affairs will investigate discrimination grievances and will be responsible for monitoring the conduct of the defendant and taking appropriate disciplinary action if the defendant continues to violate Title IX, Institutional or established procedure presenting persistent discriminatory conduct and / or acts of reprisals.

Discrimination Grievances of a student or other member of the community, against an employee of the Office of Human Resources and / or the Office of Student Affairs shall be filed with the President of the Institution or the Compliance Officer.

## **Handling Grievances for violation of the provisions of Title IX; Responsibilities of Title IX Coordinator**

Universidad Central de Bayamón has designated Title IX Coordinators to the Dean of Student Affairs and the Director of the Office of Human Resources. The Title IX Coordinator is responsible for:

- a. Addressing all grievances and referrals of alleged violations of the provisions of Title IX in the Institution.
- b. Keeping a record of all grievances and referrals for the period established by the Institution according to the Institution's policy of retention of documents.
- c. Conducting research that meets the parameters required by the Federal Department of Education.
- d. Drafting a Findings Report.
- e. Identifying specific corrective measures to stop, remedy and prevent sexually discriminatory behavior including sexual harassment and other types of sexual abuse.
- f. Providing recommendations on corrective measures, including training, guidance and / or progressive discipline, when necessary.
- g. Making the legal consultation in any case that merits the implementation of a progressive discipline process in order to comply with what is established in policies, norms and institutional regulations.
- h. Monitoring the implementation of corrective measures in order to ensure that corrective action was taken as recommended.
- i. Requesting an Institutional Administrator responsible for implementing a corrective action, as recommended by the Title IX Coordinator, and who decides not to adopt such recommendation, to submit a document stating the reasons.

If the Title IX Coordinator determines that the reasons given by the Institutional Administrator who decides not to adopt a corrective action recommendation are not sufficient, he or she shall submit the matter to the President of the institution. The President, in consultation with the Title IX Coordinator, shall direct the Institutional Administrator to implement appropriate corrective measures to ensure that discriminatory conduct is not repeated and to avoid the effects of such discriminatory conduct on the claimant and other members of the University community.

In some circumstances, investigations and handling of grievances may be referred to other Institutional offices; however, the final disposition is in the hands of the Title IX Coordinator for the purpose of ensuring that the Institution complies with the provisions of Title IX. To ensure compliance of the entire Institution with this policy and with federal and state laws, the President must be aware of all incidents of discriminatory sexual conduct and the results of the investigation, regardless of where the incident took place, the investigation, and the result. The Office of the President, through its units, will be in charge of supervising and coordinating the resolution of grievances with concurrent jurisdiction over Title IX in cases of discrimination or sexual harassment.

These procedures apply to all members of the university community.

### **Options to Resolve the Case**

Employees, students or any member of the university community who files a discrimination or sexual harassment grievance should be informed of the options available to address possible violations of the institutional policy that prohibits discrimination and sexual harassment. These options include case solving through informal processes,

referrals to other Institutional offices or assistance or guidance programs, formal investigation by the Title IX Coordinator, and resources available outside the institutional processes. The Institution will respond, as far as possible, to discrimination grievances filed anonymously or submitted by third parties that have not been directly impacted by discrimination or sexual harassment. However, the response to such grievances may be limited if the information contained in the report cannot be verified.

Claimants and members of the university community who file a sexual harassment or discrimination grievance should be informed of possible outcomes of the investigation, including temporary protection, recommendations for individuals who have been the victims of alleged sexual harassment and discrimination and disciplinary action which could be taken against the defendant as a result of the complaint, including information on the procedures leading to such results.

**Retaliation:** An individual who has been a victim of retaliation (e.g., threats, intimidation, or adverse actions in the workplace employment or academic environment) because he or she filed a bona fide sexual harassment or discrimination complaint, (b) helped someone to file a discrimination or sexual harassment grievance or (c) participated in any way in the investigation or settlement of a complaint for alleged sexual harassment or discrimination, may file a grievance for retaliation. The retaliatory complaint shall be referred to the Title IX Coordinator (the Dean of Student Affairs or the Office of Human Resources) for legal consultation.

**Temporary Measures:** Universidad Central de Bayamón may at any time in the process of handling discrimination or sexual harassment complaints decide to:

In the case of an employee, suspension from employment and salary for a certain term, transferring to another office or authorizing another type of temporary corrective measure, while conducting the investigation, including but not limited to, avoiding contact with the claimant.

#### **a) Informal Investigation**

La Universidad Central de Bayamón encourages the parties involved to resolve the situation cooperatively, provided that this process does not constitute a violation of the Title IX Institutional Policy as determined by the Title IX Coordinator and affects the educational or work environment. Informal research should include a fact report, but it usually does not reach the level of a formal investigation.

Informal investigation includes, but is not limited to, referring persons involved to a mediation program, avoiding contact between the parties involved, referral of the parties involved to a counseling program, or educational and / or training program. Follow-up, after a period of time, is required in situations that are resolved through the informal investigation process, in order to ensure that corrective measures have been effectively implemented and that the parties involved are following the measures. All steps taken to help resolve the grievance should be documented.

The informal investigation procedure does not apply to all types of grievances for alleged discrimination or sexual harassment. In some cases, a formal investigation should be conducted as determined by the Title IX Coordinator.

#### **b) Formal Investigation**

In response to allegations of discrimination or sexual harassment where the claimant does not wish to engage in informal investigation, where informal investigation is not desirable, or in cases where informal investigation has not been successful, the Title IX Coordinator should initiate a formal investigation. In cases where there is no written complaint, such as situations involving third party complaint, the Title IX Coordinator must initiate a formal investigation, after conducting a preliminary investigation of the facts and informing the allegedly affected person of discriminatory conduct over the decision to initiate a formal investigation.

Investigations of grievances of alleged discrimination or sexual harassment should include the following norms:

1. The Title IX Coordinator is the person designated by the Institution to conduct a formal investigation of alleged discrimination or sexual harassment and to coordinate corrective action against such complaints.
2. The defendant will receive a written statement specifying the details of the alleged discriminatory conduct that gave rise to the grievance. If the defendant cannot be located, all notification attempts must be documented.
3. Persons conducting investigations into discriminatory conduct must be familiar with the institutional policy prohibiting discrimination or sexual harassment and have been trained or experienced in conducting investigations.

The investigation will generally include interviews with the parties if available, interviews with witnesses when necessary, and a review of relevant documents as appropriate, as set out in the Institutional Handbook for Grievances and Grievance Handling (Attachment). Disclosure of facts to witnesses shall be limited to information that is reasonably necessary to disclose to conduct a fair and thorough investigation. Participants in an investigation should be advised that maintaining confidentiality is essential to protect the integrity of the investigation and is advised to refrain from discussing with third parties the details to be investigated.

4. At any time during the investigation, the investigator may request provisional protection or other security measures to protect the claimant or witnesses. These security measures may include, but are not limited to:
  - In the case of employees, separation of the parties or limiting contact between the parties or transfer of office, among others.
  - In the case of students, separating the parties or limiting the contact between the parties, transferring from the classroom or recommending another study mode, among others.

Failure to comply with the terms of the provisional protection may be considered a breach of the Institutional policy that prohibits discrimination and sexual harassment and may result in drastic disciplinary action resulting in: written reprimand, suspension or separation.

5. The investigation shall be completed as soon as possible and in most cases within 60 calendar days after receipt of the complaint in writing. In the event that an investigation cannot be completed within the established 60 days, the parties will be notified in writing.
6. Generally an investigation will consist of a written report that must include a written statement of the situation or complaint, a summary of the situation to be investigated, findings and conclusions and a determination of the investigator indicating there was a violation of the Institutional framework policy and the provisions of Title IX. Investigations of grievances of discrimination or sexual harassment may yield three possible outcomes:

- a) Verifiable: There is a high level of probability that the grievance of discriminatory conduct is true.

- b) **Non-verifiable:** It cannot be determined by the investigation whether the discriminatory conduct complaint is true or false. There is insufficient evidence to prove or refute that the allegation is true or false.
  - c) **Unfounded:** There is a high level of probability that the complaint of discriminatory conduct is not true, even if it was presented in good faith; it is false. A grievance where the arguments are unfounded does not mean that the complaint is incorrect or that premeditated false information was offered.
7. No person shall report a grievance if the person is aware that the information is false or premeditatedly providing false information during the investigation process. Filing a false claim or giving false information is a violation of institutional policy that prohibits discrimination and could lead to drastic disciplinary action including, but not limited to,; verbal or written warning, suspension or separation. In case the Title IX Coordinator has evidence that the claimant provided false information, he or she will be referred to the corresponding consultation and legal action.
  8. The report should also include recommendations aimed at resolving the complaint or situation, including but not limited to: educational programs, counseling / counseling, mediation, recommendations to the claimant and a recommendation for the application of progressive discipline, as appropriate and necessary.
  9. The report generated may be used as evidence in other processes that are related to the grievance, such as: subsequent complaints, offenses and / or to establish disciplinary actions.
  10. Both the claimant and the defendant shall be notified in writing that the investigation and the results of the investigation have been completed. The claimant will be notified in writing of the results of the investigation and of the corrective actions, if any of these corrective actions are related to the claimant, such as: the defendant should not have contact or approach the claimant. The claimant must be notified if the grievance was referred for disciplinary action, but will not be notified of the details of the recommended disciplinary action without the consent of the defendant. The claimant may be notified in writing that the situation was referred for corrective action, but will not be informed of the details of the recommended disciplinary action, without the consent of the claimant. The defendant shall be notified in writing of the findings of the investigation and the recommendations to resolve the complaint, and shall be notified of the corrective action referrals and recommendations for the implementation of disciplinary action.
  11. Both the claimant and the defendant may request in writing a copy of their investigation report under the institutional policy on privacy and access to personal information and under paragraph B, below.
  12. A copy of the investigation report will be given only to those administrators directly responsible for implementing corrective and preventive measures to avoid discriminatory behavior and sexual harassment.
  13. Regardless of the method used to resolve the complaint or the outcome thereof, at the discretion of the claimant, he or she may file a complaint at any time with the Anti-Discrimination Unit, Equal Employment Opportunity Commission, State Commission of Civil Rights, the United States Department of Education, the United States Department of Labor, or consult legal counsel (paid by the claimant).

## **Privacy**

The Institution shall protect the privacy of the parties involved in a complaint for discrimination or sexual harassment to the extent permitted by federal, state and internal laws of the Institution. Reporting the investigation of a complaint for alleged discrimination or sexual harassment may result in obtaining very confidential and privileged information from members of the university community. The Institution may be under obligation to disclose personal information as established by state legislation.

### **a) Confidentiality of Reports of Discrimination or Sexual Conduct Not Accepted**

The Title IX Coordinator must create a balance between the right to privacy of the parties involved while complying with the institutional responsibility to ensure a safe and healthy educational and employment environment. All members of the university community have the right to confidentiality, but it is not always possible or appropriate. Requests from individuals relating to confidentiality in reports of discrimination or sexual conduct not accepted will be considered to resolve the complaint in an appropriate manner; However, such applications shall be subject to a double judgment in response to the Institution's legal responsibility to ensure a work and learning environment that is free from sexual discrimination or abuse and the procedural rights of the defendant to be informed of the accusations and source. A certain level of disclosure may be necessary to ensure a full and fair investigation.

### **b) Confidential Resources**

In the Institution there are confidential support resources. These confidential resources may be Professional Counselors from the Guidance and Counseling Center, Psychologists from Empowerment Program, professional nurses from the First Aid Office, , among others. Because the content of the conversations held with these resources is confidential, the disclosure to third parties of such conversations is not allowed. The Institution may not register the complaint; therefore, the information obtained from such conversations may not be considered by the Institution as a complaint for discrimination or sexual harassment.

## **Annual Report**

The Title IX Coordinator is responsible for maintaining records of complaints filed related to discrimination or sexual harassment, investigations, and rulings. These records shall be kept for a period of six (6) years, after having determined the resolution of the case. The records may be kept for a period of more than six years, at the discretion of the Title IX Coordinator, in those cases where the parties have continue to work or enroll in the Institution. All complaints pending for litigation or investigation shall be kept in accordance with the instructions given by the legal counsel of the Institution. The request for information should be directed to the Title IX Coordinator as applicable.

## **Consensual Relationships**

Institutional administrators are responsible for supervising and evaluating the work performance of an employee or teaching staff responsible for assessing a student's academic performance are exposed to high levels of risk by establishing romantic relationships or close social relationships with their students or subordinates. Faculty and administrative staff who choose to enter into such relationships should be aware that they must be objective when assessing the student's academic performance and / or the employee's job performance.

Institutional administrators and faculty should be aware that by establishing romantic relationships or close social relationships with any student or subordinate employee may be subject to formal investigations if the student or subordinate employee decides to file a complaint for alleged discrimination or sexual harassment. Even when both parties have given their consent to the development of such relationships, serious doubts can arise about the validity of consent, conflicts of interest, and unfair treatment of others; the member of the faculty or institutional manager



responsible for supervising will be responsible for the consequences resulting from this type of unethical and unprofessional behavior.

**Effective**

This Regulation shall have immediate effect, and repeals any other guideline, standard, policy procedure that is in contraposition with the provisions herein.

Approved:

Lillian Negrón Colón, Ph.D.  
President

ENA