

INTER AMERICAN UNIVERSITY OF PUERTO RICO
NORMS AND PROCEDURES TO ADDRESS ALLEGED VIOLATIONS TO THE
PROVISIONS OF TITLE IX
Normative Document G-0820-049

Introduction

These norms and procedures are issued in accordance with the institutional policy for Title IX compliance approved by the Board of Trustees on May, 22, 2015. By approving this policy, the Board acknowledged the institutional responsibility to address formal complaints in cases of alleged violations to Title IX. To comply with this responsibility, the following norms and procedures are established.

I. Legal Basis

On May 6, 2020, the United States Department of Education enacted new regulations to refocus the scope of Title IX, mainly relating to behaviors that constitute "sexual harassment" under Title IX, and when the institutional response or lack of response could be considered inconsistent with the new regulation and, consequently, constitute a potential transgression to the Civil Rights Act of 1964.

These norms and procedures are enacted by virtue of the authority conferred on the President by the Board of Trustees in the Bylaws of the University. They are framed in the University's policies for compliance with the provisions of Title IX and applicable federal and state laws.

II. Scope

The norms and procedures described in this normative document apply to the whole university community, including all supervisors, employees, professors and students of all levels, provided that for the purposes of this article all people within reach and control of the University will be considered. These people are responsible for complying with these norms and procedures and will be subject to investigation in cases of alleged violations to Title IX, as defined in the institutional policy.

The protections afforded by Title IX are extended to all on-campus or off-campus University education programs or activities as defined in this normative document.

III. Purpose

The purpose of this normative document is to establish the University norms and procedures to inform and address cases of alleged violations to Title IX. These norms and procedures will promote the best interest of the University and help protect the reputation, integrity, rights and well-being of the university community.

IV. Definitions

For the purpose of this document, the terms below will have the following definitions:

- 4.1 Stalking - A course of conduct directed at a specific person that would cause a reasonable person to fear for his/her safety or the safety of others or to suffer substantial emotional distress.
- 4.2 Sexual assault - Any crime that complies with the definitions of rape, indecent exposure, incest or statutory rape, as defined in the Uniform Crime Reporting Program of the Federal Bureau of Investigation.
- 4.3 Emotional distress - Significant mental suffering or distress that may or may not require professional treatment or counseling.
- 4.4 Hostile environment - A conduct that constitutes sexual harrassment of such a severe, generalized and objectively offensive nature that it results in denying a person, be it a student or an employee, access to equal opportunities or education activities or the conditions or benefits of his/her employment and that contributes in creating an intimidating, threatening or abusive education or work environment in specific terms.
- 4.5 Consent - A free and voluntary expression of personal desire to perform an act or action. Voluntary consent is affected when the consenting individual is under the effects of drugs, alcohol or narcotics, even if he/she decided to ingest these substances or if he/she received them with or without their knowledge from another person.
- 4.6 Title IX Institutional Coordinator - The officer responsible for coordinating compliance with Title IX of the Education Amendments. The Title IX Institutional Coordinator works with and counsels the Title IX Auxiliary Coordinators.
- 4.7 Title IX Auxiliary Coordinator - The designated officer in each academic unit responsible for observing compliance with Title IX in his/her academic unit, establish the training programs required by regulation, and contribute and participate in the preliminary investigation and decision of the grievance process regarding formal complaints filed in relation to an alleged violation to Title IX.
- 4.8 Employee - Any individual who works for the University by means of a contract, with or without compensation, including candidates for employment. For the purpose of the protection conferred by law, the term employee will be interpreted in the broadest way possible.
- 4.9 Standard of evidence - The standard of evidence used to adjudicate a formal Title IX complaint is the preponderance of evidence standard.

- 4.10 Student - All individuals enrolled in any course or program offered by the University, as well as all applicants for enrollment.
- 4.11 Sexual harassment- One of the manifestations of gender discrimination against women or men, infringing upon their dignity as a human being. It consists of any type of undesired approach of a sexual nature, such as requiring sexual favors and any other sexual verbal or physical conduct.
- 4.12 Gender identity - How an individual identifies and recognizes him/herself in terms of his/her gender, which may or may not reflect his/her biological sex or the one assigned at birth. For the purpose of complying with the provisions of this statute, this definition will be interpreted as broadly as necessary to extend its benefits to every citizen exposed to an act or pattern of discrimination.
- 4.13 Examining Officer - Attorney authorized by the Supreme Court of Puerto Rico to exercise the profession and designated to oversee the formal procedures to adjudicate a formal complaint as stipulated in these norms and procedures.
- 4.14 Human Resources Officer - The Human Resources Officer of the unit where the facts occurred.
- 4.15 Sexual orientation - An individual's emotional or sexual attraction to people of the same and/or different gender, or more than one gender. For the purposes of complying with the provisions of this statute, this definition will be interpreted as broadly as necessary to extend its benefits to every citizen exposed to an act or pattern of discrimination.
- 4.16 Respondent - Individual held accountable for violating the provisions of Title IX.
- 4.17 Complainant - Individual who alleges he/she has been the object of a violation of any Title IX provision.
- 4.18 Course of conduct - Two or more acts, including but not limited to, the acts in which the perpetrator directly or indirectly or through a third party, by any action, procedure, device or medium, follows, monitors, surveys, watches, threatens or communicates with a person or interferes with a person's property.
- 4.19 Reasonable person - A person who, in similar circumstances, would act in a manner similar to the person who files a formal complaint for alleged violations to the provisions of Title IX.
- 4.20 President - The President of the Inter American University of Puerto Rico.
- 4.21 Professor - All faculty members of the University.

- 4.22 Education program or activity - Programs, activities, settings and facilities over which the University exerts substantial control in relation to the respondent and the context in which the conduct that constitutes sexual harassment is produced.
- 4.23 Formal complaint - A written document presented by a complainant alleging a violation to the provisions of Title IX against a respondent and through which the University is requested to investigate the allegation and where it is declared that, at the moment the formal complaint is filed, the complainant was participating or desiring to participate in an education program or activity or was employed at the University, as defined in this document. The term "written document" refers to any document or electronic message that contains the physical or digital signature of the complainant or that in any other way indicates that the complainant is the person who files the formal complaint.
- 4.24 Contempt - Procedural state in which, being part of a formal complaint, a party does not answer a summons made formally by the Examining Officer or does not comply with the Officer's orders.
- 4.25 Supervisor - Every person that exerts any control or whose recommendation is considered for hiring, classification, termination of labor, promotion, transfer, stipulation of compensation or schedule, workplace or work conditions, or over tasks or functions that are performed or may be performed by an employee or group of employees or over any other terms or conditions for employment, or any person that performs supervision tasks on a daily basis.
- 4.26 Title IX - The provisions and amendments to the federal Higher Education Act that offer protection against discrimination or harassment in any academic, education, extracurricular and athletic activity, or any other program, activity or employment offered by an academic institution that receives federal financial assistance regardless of where the activity takes place, in-campus or off-campus, as long as the activity is sponsored or controlled by the University.
- 4.27 Academic unit - The nine campuses of the University, the Law School, the Optometry School, the Central Offices, and any other college and vocational school, preschool, and elementary and secondary schools belonging to the University system.
- 4.28 University - The system of the Inter American University of Puerto Rico, Inc.
- 4.29 Dating violence - Any violent act committed by a person who is or has been in a social, romantic or intimate relationship with the victim. The existence of this relationship will be determined according to the allegations of the complainant, considering the duration and type of relationship and the frequency of the encounters between the involved individuals. Violent conduct includes, but is not

limited to, sexual or physical abuse and the apprehension of being the object of such abuse. This type of violent act does not include conducts defined as domestic violence.

- 4.30 Domestic violence - A course of conduct in which a current or former cohabitant with whom the victim has or had a romantic or intimate relationship uses physical or sexual force, coercion, threats, intimidation, isolation, or emotional or financial abuse to control the victim. It manifests as physical, sexual or psychological abuse, restriction of liberty, the use of strategies to exert power and control against the victim, among others.

V. Grievance Process to File and Address Alleged Violations to Title IX

5.1 Start of the process

- 5.1.1 Any student or employee that believes to have been the object of a violation to the provisions of Title IX in their academic or work environment has the prerogative to file a formal complaint to the designated Investigator of the academic unit in which the alleged situation happened. The process is initiated by filing the formal complaint (see Attachment A). Students can file the formal complaint at the Dean's Office or their academic unit's Title IX Auxiliary Coordinator, as deemed convenient, however, this implies a change of the officer designated to conduct the initial investigation.

The formal complaint may be filed using any tangible method, physical or digital, and must contain a declaration that the complainant was participating or looking to participate in an academic program or activity or work under substantial control of the University and, in addition, must contain the physical or digital signature of the complainant in order to establish that the complainant is in fact the individual filing the formal complaint. Every formal complaint that complies with these requisites will be addressed according to these norms and procedures even when the corresponding form has not been used (see Attachment A).

The formal complaint must be filed within the jurisdictional period of one hundred and eighty (180) calendar days after the date in which the facts occurred. Upon receipt of the formal complaint, the designated Investigator will open a case file and will notify the Title IX Auxiliary Coordinator of the corresponding academic unit.

- 5.1.2 The formal complaint must contain an account of the alleged conduct incurred by the respondent and must be signed by the complainant.

5.1.3 Investigator - Individual who, in the first instance, is in charge of conducting the preliminary investigation of the formal complaint.

- a. When a formal complaint is filed by a faculty member or employee and by a student at the University against faculty members, employees, contractors and visitors, the Investigator will be the Human Resources Officer of the academic unit in which the facts occurred, or an individual designated by this Officer.
- b. In the formal complaint filed by a student against another student, the Investigator will be the Dean of the academic unit where the facts occurred, or an individual designated by the Dean.

5.2 Investigation

5.2.1 The Investigator will conduct a confidential investigation of the alleged violations with the assistance of the Title IX Auxiliary Coordinator of the corresponding academic unit. This investigation will begin in no more than twenty (20) business days after the date when the formal complaint was filed.

5.2.1.1 Prerogative of each party in the initial investigation process

- a. All parties will have equal opportunity to present evidence that may support their allegations in this phase.
- b. During this phase, the parties may compile evidence and make it available to the Investigator, if the initial report has not been completed.
- c. The parties may receive counseling from an individual or their choice, who may be an attorney. However, the right to be represented by an attorney is not recognized in this phase of the process. The attorney is limited to counseling.
- d. The parties will be notified in writing of any summons for interviews or meetings.
- e. The respondent and his/her counselor must be notified at least ten (10) days before being summoned to their initial interview of a summary of the formal complaint filed against him/her.
- f. The respondent and his/her counselor must be notified, at least ten (10) days before being summoned to their initial interview, of a summary of the evidence compiled against him/her.
- g. In this phase, the respondent must present all the evidence in his/her power that may be used to support his/her allegations.

- h. The respondent has the obligation of keeping the Investigator informed of, and put at their disposition, any other evidence that he/she discovers or intends to use in the formal phase of this process.
- i. Complaints that arise regarding the same facts may be combined.
- j. During the investigation process, the Rules of Civil Procedure and the Rules of Evidence will not be applied.

5.2.2 The Investigator must present a confidential report of the investigation within an extendable period of forty-five (45) business days after the date when the investigation was started. Days concerning academic or administrative recesses, closures due to major causes or holidays will not count towards the limit of forty-five (45) business days contemplated in this section.

5.2.3 The report will be submitted with a copy of the case file to the Director of the Office of Federal Affairs and Employment Law Counsel and the Title IX Institutional Coordinator. These officers will evaluate the report and submit their recommendations to the Chief Executive of the academic unit where the complaint was filed within twenty (20) days following the receipt of the report.

5.3 Resolution of the formal complaint without a hearing

5.3.1 If during the investigation process the complainant, freely and voluntarily, withdraws the formal complaint, the process will be terminated, and the case will be filed (see Attachment B).

5.3.2 If the Investigator's report concludes that there isn't sufficient cause to believe that there was a violation to the provisions of Title IX, it will be stated as such to the Office of Federal Affairs and Employment Law Counsel and the Title IX Institutional Coordinator, both of whom will explain to the complainant the determinations of fact and the legal basis that support this conclusion.

5.3.3 The Director of the Office of Federal Affairs and Employment Law Counsel will ratify the Investigator's report via a written resolution to that effect. Said resolution will be notified to the parties involved and the Chief Executive of the academic unit. It is the responsibility of the Office of Federal Affairs and Employment Law Counsel Director, once the report has been ratified and the resolution notified according to the above paragraph, to summon in writing the complainant party to comply with the required process.

5.3.4 If the complainant agrees with the conclusion, the case will be understood to be closed. If, on the contrary, the complainant does not agree with the conclusion, he/she will have the right to appeal before the Chief Executive of the academic unit where the process was initiated.

5.3.5 Alternative dispute resolution methods - The parties may give written informed, voluntary consent to use alternative dispute resolution methods to reach a solution. The person designated to address the issue must be certified in applying alternative dispute resolution methods. Before a resolution has been delivered, any of the parties may withdraw from the process and ask to continue with the formal adjudication process to address the complaint. This process is not available for cases in which an employee has incurred in violations to the provisions of Title IX against a student.

5.3.6 In every other case, the process will proceed according to the Administrative Hearing section of this document.

5.4 Administrative Hearing

5.4.1 Cautionary measures

In cases in which a formal complaint is sent to an Examining Officer for its final adjudication, the Director of the Office of Federal Affairs and Employment Law Counsel and the Title IX Institutional Coordinator may recommend the Chief Executive to take cautionary measures to mitigate the immediate effect of the alleged violation to Title IX. These measures may include, but are not limited to, job and wage suspension, student suspension, prohibiting access to the campus, revoking internet access privileges, among others.

5.4.2 Designation of the Examining Officer

5.4.2.1 Upon receipt of the recommendations from the Office of Federal Affairs and Employment Law Counsel Director and the Title IX Institutional Coordinator, the Chief Executive will designate an Examining Officer to address the formal complaint within the following ten (10) business days.

5.4.3 Formal Complaint Notification

5.4.3.1 The Examining Officer will notify the respondent of the decision within fifteen (15) business days after the date on which he/she was designated.

5.4.3.2 The notification may be delivered to the respondent in person with a receipt confirmation or by email or certified

mail with receipt confirmation to the physical address found in the University's files or any other known address.

5.4.3.3 With the notification, the Examining Officer will deliver a copy of the filed formal complaint and will advise the respondent on their right to have legal representation or any other representation he/she chooses. The Examining Officer will also advise the respondent that if he/she does not respond to the formal complaint within the jurisdictional period of ten (10) business days after being notified or within an awarded extension, the Examining Officer will proceed to schedule and hold the case hearing in contempt and forego the rest of their responsibilities under these norms and procedures.

5.4.3.4 If the hearing is held in contempt, the respondent party's participation will be limited to observing the procedures and examining the documentary or physical evidence presented against him/her. The respondent party will not be permitted to present evidence of any type.

5.4.4 Formal Hearing Notification

5.4.4.1 The Examining Officer will notify all involved parties about the date of the administrative hearing within ten (10) business days after receiving a response to the formal complaint filed by the complainant.

5.4.4.2 The notification must be delivered in no less than ten (10) business days before the date scheduled for the hearing, which must be held within a period no longer than thirty (30) business days after the date on which the response to the formal complaint was received.

5.4.4.3 The notification will include the following information:

- a. Date and time of the hearing
- b. Place of the hearing
- c. Purpose of the hearing
- d. Advantages of Attending the Hearing and Disadvantages of Not Attending
- e. Procedural rights, such as: the right to legal representation or any representation of his/her choice, interrogation, cross-examination and presenting testimonial and/or documentary evidence.

5.4.5 Request to Cancel the Hearing

- 5.4.5.1 The purpose of these norms and procedures is for filed formal complaints to be adjudicated promptly and efficiently, and within a fair and equal framework. Because of the above, requests to cancel the procedures will not be favored.
- 5.4.5.2 If any of the parties request for a scheduled hearing to be cancelled, he/she must present the request in writing to the Examining Officer within, at least, five (5) business days before the hearing is held. A copy of the request must be delivered to the other party within the same period. The request must contain supporting arguments that, to the judgment of the requesting party, support the request (see Attachment C).
- 5.4.5.3 The party that requests to cancel the hearing must appear before the Examining Officer in the date and time scheduled for the hearing, unless the Examining Officer had delivered a notification conceding the requested cancellation. If the request for cancellation was not approved, the Examining Officer will hold the hearing as scheduled.

5.4.6 The Hearing

- 5.4.6.1 When the hearing is held, the Examining Officer will guarantee that all parties possess the following rights, except when the hearing is held in contempt.
 - a. Attend the hearing alone, with company and/or with legal representation or any other representation of his/her choosing.
 - b. In the hearing, the Rules of Civil Procedure will not apply, except in a supplementary character at the discretion of the Examining Officer.
 - c. Before the hearing starts, the respondent will receive any additional evidence that was presented after the initial investigation phase was concluded for his/her examination. A reasonable period of time will be allotted to this at the discretion of the Examining Officer. Hearings will not be cancelled by reason of not receiving evidence beforehand.
 - d. Listen to the testimonial evidence and examine the documentary evidence presented in the hearing.

- e. Interrogate and cross-examine the witnesses.
 - f. Present all testimonial and documentary evidence relevant to the formal complaint.
 - g. Have and present as evidence documents relevant to the controversy that are under the custody of the University.
- 5.4.6.2 Procedures held before the Examining Officer will be recorded by him/her.
- 5.4.6.3 The Examining Officer must start the hearing with a summary of the violations alleged in the formal complaint and will explain how the hearing will be held.
- 5.4.6.4 During the hearing, the Examining Officer will have the authority to guarantee that the procedures are performed in a respectful manner, including —without it being interpreted as a limitation to their capacity— order a party, their attorney, representative or any witness to keep silent, and dismiss any person that does not observe a respectful behavior. The exercise of the powers given here to the Examining Officer must be interpreted and applied in a way that guarantees due legal process to all parties.
- 5.4.6.5 Only the involved parties, their representatives and an officer representing the academic unit shall be present at the hearing. The Examining Officer will not allow the presence of individuals alien to the proceedings, except the witnesses when they are providing testimony, and any individual that the Officer designates to assist him/her.
- 5.4.6.6 The University will initiate the presentation of evidence in the hearing. Upon finishing the presentation of evidence, the respondent will present his/her evidence. However, the Examining Officer can alter the order of the proceedings if he/she deems it convenient. The burden of the evidence relevant to the filed formal complaint will correspond to the complainant. The burden of the evidence regarding extenuating circumstances or any defense against the alleged charges will correspond to the respondent.
- 5.4.6.7 The witnesses that will present testimony in the hearing will do so under oath before the Examining Officer. Once under oath, they will leave the room until they are summoned back to give their testimony, unless the parties request the witnesses, or any of them, to stay in the room while others give their testimony.

5.4.6.8 The Examining Officer will deliver his/her decision within a period of forty-five (45) calendar days after the date on which the hearing was concluded. This decision must contain, among other information, the following:

- a. The date and place in which the hearing was held, the parties involved and/or representatives and witnesses that were present.
- b. The allegations of the formal complaint stated clearly and concisely.
- c. The determinations of fact based on the hearing's record.
- d. The conclusions of law.
- e. The decision based on the determinations of fact and the conclusions of law.
- f. The recommendations regarding the sanctions to be imposed, if any.

5.4.6.9 The Examining Officer is responsible for notifying the decision to the Chief Executive of the academic unit, the Director of the University Legal Counseling Office, the Title IX Institutional Coordinator, the parties involved and the legal representative of the respondent, if any. The notification may be delivered by mail or email.

5.4.6.10 If the formal complaint was decided in favor of the complainant, the Chief Executive will notify the respondent and his/her legal representative, if applicable, of the decision and the disciplinary sanctions that will be imposed within ten (10) calendar days, by mail with confirmation of receipt.

5.4.7 Disciplinary sanctions

5.4.7.1 The sanctions that may be imposed upon an individual found to have violated the provisions of Title IX are the following:

5.4.7.2 Faculty members, employees and visiting faculty

- a. Written warning
- b. Suspension from employment and wage for a period that will not exceed three (3) months.

- c. Termination of employment will be considered depending on the severity of the violation committed, in accordance with the Examining Officer's decision.

5.4.7.3 Students

- a. Suspension from the University for a period no greater than one (1) year.
- b. Suspension for a period greater than one (1) year, but not greater than two (2) years.
- c. Permanent expulsion from the University.

5.4.7.4 If at the moment that the sanction is determined it involves suspension and the respondent was previously suspended, the final suspension period will start to count from the date on which the preventive suspension began.

5.4.8 Appeals

5.4.8.1 Any party that does not agree with the final decision may present a writ of appeal before the President of the University within the following ten (10) business days after having received a copy of the decision. This period is jurisdictional.

5.4.8.2 The President of the University must deliver his/her decision within ten (10) business days after having received the writ of appeal. If he/she delivers any decision, it will be considered as final and not subject to further appeal. If the President does not take any action regarding the appeal after the ten (10) allotted days, it will be understood that it was rejected.

5.4.9 Contractors

5.4.9.1 The University will not be responsible for the actions of contractors, suppliers, guests or visitors, except under the following conditions:

- a. an improper conduct was notified;
- b. the University is in a position to take action about said conduct; and
- c. the University does not take immediate and adequate corrective action regarding the situation;

- d. in any case, the amount of control that the University can exert effectively over the perpetrator will be taken into consideration.

5.4.10 Interpretation

5.4.10.1 The dispositions of these norms and procedures must be interpreted in the broadest way possible considering its purpose and the norms in the document, and in harmony with the purpose of Title IX.

VI. Prohibition of Retaliation

Federal regulation expressly prohibits retaliating against individuals who file formal complaints for alleged violations to Title IX. Initiating a disciplinary procedure according to the applicable institutional regulation against any person that offered false testimony or representations, or did it in lack of good faith, in a procedure under this normative document does not constitute retaliation. However, a simple determination of responsibility in that procedure will not necessarily be considered sufficient to state that the person offered false testimony or representation, or did it in lack of good faith.

VII. Severability Clause

The provisions in these norms and procedures are severable, because of which declaring any of them null will not affect the others, and they will maintain their validity and efficacy independently from the ones declared null.

VIII. Derogation and Amendments

These norms and procedures repeal Normative Document G-2016-043 and any other regulations that come into conflict with what is stated here. These norms and procedures may be amended by the President of the University.

IX. Validity

These norms and procedures become valid immediately.

X. Approval

Signed on August 10, 2020

Manuel J. Fernós
President

Date (MM-DD-YYYY)

Attachments