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## UNIVERSITY POLICY

# 60.1.12 Policy Prohibiting Discrimination and Harassment

<b>Section Title:</b>	Human Resources: Universitywide HR Policies & Procedures
<b>Approval Authority:</b>	Sr. V.P. for Human Resources & Organizational Effectiveness
<b>Responsible Office(s):</b>	Univ. Human Resources
<b>Responsible Executive(s):</b>	Sr. V.P. for Human Resources & Organizational Effectiveness
<b>Adopted Date:</b>	07/01/1989
<b>Reviewed Date:</b>	
<b>Contact Information:</b>	policies@hr.rutgers.edu

## 1. Policy Statement

This Policy discusses the University's prohibitions against discrimination and harassment based upon membership in enumerated protected classes, including certain forms of sexual misconduct. This Policy also discusses the University's prohibitions against retaliation based upon the exercise of rights under this Policy.

The University is committed to responding to all forms of prohibited discrimination, harassment, and retaliation. Reports of misconduct outside the scope of this Policy may be addressed under other University Policies. Additional information concerning reporting options and applicable policies is set forth below.

This Policy does not apply to sexual harassment that is prohibited by Title IX of the Education Amendments Act of 1972 ("Title IX") (including sexual assault, dating violence, domestic violence and stalking). Such conduct is covered by University Policy 60.1.33: Title IX Policy and Grievance Procedures.

## 2. Reason for Policy

To foster a safe and non-discriminatory University environment, comply with Title VII of the Civil Rights Act, the New Jersey Law Against Discrimination and other applicable laws, and inform all members of the Rutgers community that this Policy applies to all areas of University operations and programs.

## 3. Who Should Read This Policy

All members of the Rutgers University community.

## 4. Resources

- [Discrimination, Harassment, Workplace Violence, Sexual Misconduct, and Retaliation Complaint Process: Complaints Against University Employees and Third Parties](#)
- [University Policy 60.1.13: Policy Prohibiting Workplace Violence](#)
- [University Policy 60.1.16: Conscientious Employee Protection Policy](#)
- [University Policy 60.1.33: Title IX Policy and Grievance Procedures](#)
- [University Policy 60.1.32: Policy on Consensual Relationships in Academic Settings](#)

- [Third Parties Resources Supplement](#)
- [Office of Employment Equity Formal Complaint Form](#)
- [University Policy 10.2.11: Code of Student Conduct](#)
- [Rutgers Biomedical and Health Sciences \(RBHS\) Students Rights, Responsibilities and Disciplinary Procedures](#)
- [University Policy 60.1.1: Employment of Relatives](#)
- [University Policy 60.1.8: Equal Employment Opportunity and Affirmative Action Policy](#)
- [University Policy 60.5.1: Academic Freedom Policy](#)
- [Staff and Faculty Guidelines for Disability Accommodations](#)
- [University Student Life Policy Against Verbal Assault, Harassment, Intimidation, Bullying and Defamation](#)
- [Staff and Faculty Guidelines for Religious Accommodations](#)
- [University Human Resources](#): 848-932-3020
- [Office of Employment Equity](#): 848-932-3973; [employmentequity@hr.rutgers.edu](mailto:employmentequity@hr.rutgers.edu)
- [Office of Student Conduct](#)
  - New Brunswick: 848-932-9414, [conduct@echo.rutgers.edu](mailto:conduct@echo.rutgers.edu)
  - Newark: 973-353-5063, [communitystandards@newark.rutgers.edu](mailto:communitystandards@newark.rutgers.edu)
  - Camden: 856-225-6050, [deanofstudents@camden.rutgers.edu](mailto:deanofstudents@camden.rutgers.edu)
  - [RBHS Office of Academic & Student Affairs](#): 973-972-5374
- [Rutgers University Police Departments](#):
  - New Brunswick: 732-932-7211
  - Newark: 973-353-5111
  - Camden: 856-225- 6111
  - Health Sciences-Newark: 973-972-4491

## 5. Definitions

A. **Discrimination** is defined as an intentional or unintentional act which adversely affects employment or educational opportunities on the basis of membership in one or more protected classes. Rutgers provides equal employment opportunity to all its employees and applicants for employment regardless of their race, religion, color, national origin, ancestry, age, sex, sexual orientation, pregnancy, gender identity and expression, disability, genetic information, atypical hereditary cellular or blood trait, marital status, civil union status, domestic partnership status, military service, veteran status, and any other category protected by law. Rutgers considers as a basis for selection in employment only those characteristics which are demonstrably related to job performance or requirements.

B. **Harassment** is conduct directed toward an individual or group based on membership in one or more protected classes. Such conduct must be sufficiently severe or pervasive to alter an individual's employment conditions, or a student's educational opportunities<sup>[1]</sup> which, in turn, creates an unreasonably intimidating, offensive, or hostile environment for employment, education, or participation in University activities.

1. A person does not have to be the direct and immediate target of harassment to complain about it. Harassing behavior toward others may be so offensive, demeaning, or disruptive as to constitute a hostile work or academic environment, though not specifically directed at the observer or individual lodging the complaint. A single, isolated incident of harassment may, based on the facts and circumstances, create a hostile environment. Conduct alleged to constitute harassment will be evaluated according to the objective standard of a reasonable person.

2. Sexual Harassment includes any unwelcome sexual advances, requests for sexual favors, or other unwelcome written, verbal, or physical conduct of a sexual nature when:

- i. submission to such conduct is made, explicitly or implicitly, a term or condition of an individual's education, employment, or participation in a University activity;
- ii. submission to, or rejection of, such conduct by an individual is used as the basis for decisions affecting that individual's academic standing, employment status, or participation in a University activity; or

iii. such conduct is severe or pervasive enough to unreasonably interfere with an individual's academic or work performance or participation in a University activity, or to create an intimidating, hostile, or abusive work or educational environment.

Sexual harassment may be committed by anyone regardless of gender identity and may occur between members of the same or different sexes. Further, harassment based on a person's sex is not limited to instances involving sexual behavior. That is, harassment on the basis of sex may occur without sexual advances or sexual overtones when conduct is directed at individuals or groups because of their sex. This is often referred to as sex or gender harassment, and such conduct violates this Policy.

3. Examples of conduct that may constitute or support a finding of harassment in violation of this Policy include, but are not limited to, the following types of behavior:

#### PHYSICAL CONDUCT

- a. Unnecessary or unwanted physical contact
- b. Blocking someone's path or impeding movement
- c. Physical interference with work
- d. Physical assault
- e. Deliberate destruction of property

#### NON-VERBAL CONDUCT

- a. Display of offensive material or objects
- b. Suggestive or insulting gestures, sounds, or whistles

#### VERBAL CONDUCT

- a. In some instances, innuendo or other suggestive, offensive, or derogatory comments or jokes about sex or a protected group listed in Section I
- b. Extortion, overt threats, or intimidation
- c. Obscene or harassing messages sent via computer or left on an answering machine or voice mail

## 6. The Policy

### I. POLICY

Rutgers University is committed to a working and learning environment for all faculty, staff and students that is free from discrimination and harassment. The University strictly prohibits discrimination and harassment based on membership in certain enumerated protected classes ("protected classes"). These classes are race, religion, color, national origin, ancestry, age, sex, sexual orientation, pregnancy, gender identity and expression, disability, genetic information, atypical hereditary cellular or blood trait, marital status, civil union status, domestic partnership status, military service, veteran status, and any other category protected by law. Harassment is a form of discrimination and, therefore, harassment directed toward an individual or group, or experienced by an individual or group, based on membership in a protected class, also violates University policy.

Discrimination and harassment compromise the integrity of the University and unfairly interfere with the opportunity for all persons to fully participate in the academic, work, and living environment at Rutgers. The University recognizes the human dignity of each member of the Rutgers community and believes that each member has a responsibility to promote respect and dignity for others so that all employees and students are free to pursue their educational and work goals in an open environment, participate in the free exchange of ideas, and share equally in the University's employment and educational opportunities. To achieve this end, the University strives to foster an academic, work, and living environment that is free from discrimination and harassment on the basis of membership in the protected classes referenced above.

At the same time, the University is committed to the principles of academic freedom and believes that vigorous discussion and debate, as well as free inquiry and free expression, are an integral part of the University community. [\[2\]](#)

### II. SCOPE

This Policy will apply to complaints of discrimination and harassment including certain forms of sexual misconduct, as defined above, except as specifically excluded below. This Policy applies to all areas of University operations and programs, including the conduct of all University employees and student employees that arises out of their employment status, as well as to the conduct of all interns, volunteers, vendors, contractors, subcontractors, and others who do business with the University.

#### A. Sexual Harassment Prohibited by Title IX

Title IX prohibits discrimination on the basis of sex in education programs and activities. This includes certain forms of sexual harassment and sexual violence that interfere with a person's equal access to the University's educational programs and activities. Related federal regulations mandate a specific grievance process that the University must follow in cases in which sexual harassment prohibited by Title IX is alleged.

The [Title IX Policy and Grievance Procedures, Policy 60.1.33](#) the forms of sexual harassment that are prohibited by Title IX ("Covered Sexual Harassment") and describes the ways in which Rutgers will respond to reported instances of Covered Sexual Harassment, as required by law. As discussed in further detail in the Title IX Policy, Covered Sexual Harassment includes:

1. An employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., "quid pro quo" harassment);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies a person equal access to the University's education program or activity;
3. Sexual assault;
4. Dating violence;
5. Domestic violence; and
6. Stalking

In order for the Title IX Policy to apply, the alleged conduct must: (i) meet the definition of Covered Sexual Harassment; (ii) have occurred in the United States; and (iii) have occurred in a Rutgers education program or activity (which may include conduct that occurs in the workplace or in the course of performing one's job duties at Rutgers). The Title IX Policy applies in all cases that meet these parameters, regardless of whether the parties to the complaint are students, employees (faculty and staff) or third parties.

Allegations of sexual harassment that fall within the scope of the Title IX Policy must be handled in accordance with the Title IX Policy and are excluded from the scope of this Policy (the Discrimination Policy). However, this Policy utilizes a broader definition of sexual harassment than the Title IX Policy, set forth above, consistent with other State and federal laws that also prohibit sexual harassment. Therefore, complaints of sexual harassment alleged to have been committed by employees or third parties that do not fall within the scope of the Title IX Policy may still be investigated under this Policy.

All reports and complaints of alleged sexual harassment will be evaluated by the Director of the Office of Employment Equity (the Title IX Coordinator for Employees) to determine whether the alleged conduct falls within the scope of the Title IX Policy. If some or all of the reported conduct falls within the scope of the Title IX Policy, such allegations will be handled in accordance with the Title IX Policy. If not, the Director will determine whether the alleged conduct, if true, would constitute prohibited sexual harassment under this Policy, and, if so, proceed in accordance with the [Discrimination, Harassment, Workplace Violence, and Retaliation Complaint Process: Complaints Against University Employees and Third Parties \("Complaint Process"\).](#)<sup>[3]</sup>

### **III. DESIGNATION OF UNIVERSITY OFFICES AND EMPLOYEES**

Throughout this Policy, the University office and/or employee(s) who will typically perform certain roles or duties are identified. However, the University may designate other University offices or employees to perform any roles or duties described in this Policy where necessary to effectuate this Policy.

### **IV. ROMANTIC, DATING, INTIMATE AND/OR SEXUAL RELATIONSHIPS**

Romantic, dating, intimate, and/or sexual relationships that occur in the student-teacher context or in the context of employment supervision or evaluation present special problems. These types of relationships are especially vulnerable to exploitation due to the difference in power and the respect and trust that are often present between a teacher and a student, a supervisor and a subordinate, or a senior and junior colleague in the same unit. As a result of this power differential, a student or subordinate's "voluntary" participation in a romantic, dating, intimate and/or sexual relationship with an individual in a position of power or authority does not alone demonstrate that the conduct was welcome. The attempts of a teacher to show a romantic interest in a student may constitute sexual harassment. Similarly, a supervisor's display of a romantic interest in a subordinate may constitute sexual harassment.

[University Policy 60.1.32: Policy on Consensual Relationships in Academic Settings](#) prohibits certain consensual relationships involving students and sets forth the required procedures employees must follow to report certain relationships and avoid/eliminate any related conflicts of interest.

In addition, the University also strongly discourages romantic, dating, intimate and/or sexual relationships between University employees where there is an imbalance of power because one individual is in a position to make decisions which may affect the educational opportunities, employment or career of the other. These relationships include supervisor/subordinate relationships and any other relationships between individuals wherein one individual has the power to make decisions that may have an impact, either direct or indirect, on the employment, career or educational opportunities of the other.

Employees in romantic, dating, intimate and/or sexual relationships must recuse themselves from decisions that may have a direct or indirect impact on the employee with whom they are in a relationship. Those who fail to do so and/or abuse their power in such circumstances may be found to have violated this Policy. An abuse of power may be, but is not limited to, promising an employee a promotion, or providing preferential academic or employment opportunities to an individual based on a romantic, dating, intimate and/or sexual relationship.

Any individual who engages in a romantic, dating, intimate and/or sexual relationship with someone over whom he or she has supervisory responsibility must inform his or her immediate supervisor of the relationship, so that the University can take action to make changes that eliminate the conflict of interest. If the University determines it is unable to eliminate the conflict of interest in a relationship between employees, the employees will be provided with the opportunity to decide which of the two will resign their employment. Failure to give proper notice to the appropriate supervisor may result in disciplinary action and/or the denial of legal representation and indemnification in the event that a lawsuit based on the relationship is filed.

## V. ACADEMIC FREEDOM

The classroom and other instructional settings (e.g., studio, laboratory) present special problems because academic freedom protects the expression of ideas, even when the idea or its expression may be perceived to be offensive, if conduct or statements which are the subject of a complaint are germane to the subject matter taught. The educational process is predicated upon the free exchange of ideas, and this Policy shall not be interpreted to prohibit free expression protected by the First Amendment. The National American Association of University Professor's (AAUP) Statement on Professional Ethics provides that professors should avoid any exploitation, harassment, or discriminatory treatment of students. The 1940 Statement of Principles on Academic Freedom and Tenure provides that Professors should not introduce into their teaching controversial matter which has no relation to their subject. Accordingly, if conduct or statements which are the subject of a complaint occur in an instructional context and are germane to the subject matter being taught, wide latitude is required for professional judgment in determining the appropriate content and presentation of the academic material being taught. Therefore, harassment in violation of this Policy will not be found to exist in an instructional setting unless the conduct or statements which are the subject of a complaint are not germane to the subject matter taught and:

- are directed toward an individual or group based on one or more of the protected classes listed in Section I above;
- are sufficiently severe or pervasive to alter an individual's educational environment;
- create an objectively hostile learning environment; and
- are, in fact, perceived as hostile by the complainant.

## VI. REPORTING DISCRIMINATION AND HARASSMENT

Any member of the University community alleging discrimination or harassment on the basis of membership in any of the protected classes is encouraged to report it immediately to the Office of Employment Equity.<sup>[4]</sup>

University supervisors and managers are required to inform the Office of Employment Equity of any reported conduct prohibited by this Policy involving other employees. This means that these individuals are required to report all relevant details, including the names of the individual who made the report, the alleged victim, the alleged Respondent, any witnesses, and other known relevant facts. One does not have to be the direct target of the discrimination or harassment to report it. Complaints against students, arising out of their conduct as students, are addressed by [University Policy 10.2.11: Code of Student Conduct](#) and the [RBHS Students Rights, Responsibilities, and Disciplinary Procedures Policy](#).<sup>[5]</sup>

Any individual who believes that he or she has been the victim of a crime (including but not limited to forced physical contact and/or sexual violence) also has a right, and is encouraged, to report the incident to the appropriate law enforcement agency. Questions about law enforcement assistance and involvement may be directed to the Chief of Police at Rutgers University–New Brunswick, Rutgers University–Newark, and Rutgers University–Camden.

The University is committed to responding to reports and complaints of discrimination and harassment promptly, fairly, and with sensitivity, as outlined in the [Discrimination, Harassment, Workplace Violence, Sexual Misconduct, and Retaliation Complaint Process: Complaints Against University Employees and Third Parties \("Complaint Process"\)](#).<sup>[6]</sup> Upon completion of the Complaint Process, the University will take appropriate corrective action consistent with the results of the investigation. Sanctions may include discipline up to and including termination of employment, consistent with the terms of all University Policies concerning personnel actions and the terms of all applicable collective negotiations agreements. In addition to any sanction, the University may also recommend training, counseling or other support services to the Respondent.<sup>[7]</sup>

The University will maintain confidentiality as to discrimination and harassment complaints, and the investigation of those complaints, to the extent possible. Only those who have a need to know will be told the identity of the parties to a complaint.

In some instances, a complainant may choose to take no action (including filing a formal complaint) or to defer action until a later date in order to maintain anonymity. In these instances, the University reserves the right to determine whether it is necessary to initiate a University Action and investigate the reported conduct in order to protect the University community. The Director of the Office of Employment Equity will consider various factors in this assessment, such as the availability of independent evidence of the allegations, the nature of the allegations and/or whether there have been similar complaints about the same Respondent. If the Director initiates a University Action, the Director will notify the Complainant, but the Complainant will not be required to participate in the process.

## VII. RETALIATION

The University prohibits retaliation against individuals who, in good faith, assert their rights to bring a complaint of discrimination or harassment as

defined in this Policy, participate in a discrimination or harassment investigation, or protest the alleged discrimination, harassment, or retaliation. No person may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege under this Policy.

Retaliation is an offense separate from the original complaint of discrimination, and will be considered independently from the merits of the underlying complaint. Individuals who believe they have been subjected to retaliation should report the conduct to the Office of Employment Equity.

### VIII. **FALSE STATEMENTS**

All parties and witnesses to a complaint and/or investigation are prohibited from knowingly making false statements and from knowingly submitting false information during the complaint and investigation process. Knowingly making a false statement or knowingly submitting false information may subject the party or witness to discipline.

Anyone who believes that he or she has been the subject of a false complaint may meet with the Director of the Office of Employment Equity to discuss the allegations. The filing of a complaint that does not result in a finding of prohibited conduct is not alone evidence of the intent to file a false complaint.

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[1] A student's educational opportunities refer to his or her learning environment (academic performance and/or academic opportunities), living environment (campus housing accommodations), and ability to participate in activities made available by Rutgers.

[2] Depending on the nature of the alleged misconduct, claims of sexual harassment made against University employees or third parties may be covered by this Policy or the Title IX Policy.

[3] Note that if the Complaint is initially filed under the Title IX Policy, but is determined by the Title IX Coordinator not to meet any of the elements set forth above, the dismissal procedures set forth in the Title IX Policy will apply, and the matter may be referred for review under this Policy.

[4] The Director of the Office of Employment Equity supervises the operation of the [Discrimination, Harassment, Workplace Violence, Sexual Misconduct, and Retaliation Complaint Process: Complaints Against University Employees and Third Parties](#). The Office is also a resource for all members of the University community, and is responsible for arranging education and training for the community regarding the Policy and the Complaint Process. Contact information for the Director is 848-932-3973 or [employmentequity@hr.rutgers.edu](mailto:employmentequity@hr.rutgers.edu).

[5] Additional information about complaints against students can be found at <http://studentconduct.rutgers.edu/> or by contacting the Office of Student Conduct, which responds to such complaints, and can be reached at 732-932-9414 or [conduct@echo.rutgers.edu](mailto:conduct@echo.rutgers.edu).

[6] Available at <https://uhr.rutgers.edu/sites/default/files/userfiles/DiscriminationHarassmentComplaintProcess.pdf>. Information is also available at <http://uhr.rutgers.edu/policies-resources/policies-procedures/policy-and-compliance-guidelines/discrimination-and->

[7] Complaints of discrimination or harassment against vendors, contractors, subcontractors, and others who do business with the University will be handled by the Director of the Office of Employment Equity.