Section: 60.1.12

Section Title: Universitywide HR Policies & Procedures

Policy Name: Policy Prohibiting Discrimination and Harassment

Formerly Book: 6.4.14

Approval Authority: Senior Vice President for Finance and Administration

Responsible Executive: Senior Vice President for Finance and Administration

Responsible Office: University Human Resources

Originally Issued: 7/1980


Errors or changes? Contact: policies@hr.rutgers.edu

1. Policy Statement
   This Policy outlines the prohibition of discrimination and harassment based upon enumerated protected categories; the scope to which it applies; harassment related definitions; discrimination related definitions; the reporting process; and retaliation violations.

2. Reason for Policy
   To inform university employees, including student employees, that the Policy applies to all areas of university operations and programs.

3. Who Should Read This Policy
   All members of the Rutgers University community

4. Related Documents
   Policy 10.2.11, Code of Student Conduct
   Policy 60.1.1, Employment of Relatives
   Policy 60.1.8, Equal Employment Opportunity and Affirmative Action
   Policy 60.5.1, Academic Freedom

5. Contacts
   University Human Resources
   Office of Employment Equity 732-932-3020, ext. 4030

All regulations and procedures are subject to amendment.
6. The Policy

60.1.12 POLICY PROHIBITING DISCRIMINATION AND HARASSMENT

I. PREAMBLE

It is the policy of Rutgers University to provide equal employment opportunity and to make the benefits and services of its educational program available to employees and students without discrimination on the basis of certain enumerated protected categories. These categories are race, religion, color, national origin, ancestry, age, sex, sexual orientation, 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 category, also violates university policy.

The university recognizes the human dignity of each member of the Rutgers University 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 goals in an open environment, able to participate in the free exchange of ideas, and able to share equally in the benefits of the university's employment and educational opportunities. To achieve this end, the university believes it should foster an academic, work and living environment that is free from discrimination and harassment on the basis of the above protected categories.

Note: Complaints of harassment against students arising out of their conduct as students are addressed by the Code of Student Conduct, Policy 10.2.11 and the University Student Life Policy Against Verbal Assault, Defamation and Harassment referenced in Section 10(h) of the Code of Student Conduct.

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.

II. POLICY

Rutgers University policy prohibits discrimination and harassment based upon the above enumerated protected categories. 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 of the university. The university will respond to allegations of discrimination in employment in accordance with its Discrimination Complaint Process (for employees, student employees and applicants). The university will respond to allegations of harassment in accordance with its Harassment Complaint Process (for employees and student employees) or with the Code of Student Conduct (for students) and will respond appropriately to those who violate this policy.

III. SCOPE

This policy applies to all areas of university operations and programs. As to harassment, it applies to the conduct of all university employees, including student employees with respect to conduct that arises out of their employment status, as well as to the conduct of all vendors, contractors, subcontractors and others who do business with the university. (Those individuals whose conduct is addressed by this policy are "respondents.") Complaints of discrimination or harassment against employees or student employees will be processed according to the

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1 The Office of Student Conduct can be reached at 732-932-9414 or conduct@rci.rutgers.edu.

2 See Policy 60.5.1 concerning Academic Freedom.
IV. DEFINITION

A. Discrimination is defined as an intentional or unintentional act which adversely affects employment opportunities due to one of more of the protected categories. 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, 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, and considers as a basis for selection in employment only those characteristics which are demonstrably related to job performance or requirements.

B. Harassment is defined as any conduct directed toward an individual or group based on one or more of the categories in Section I above that is sufficiently severe or pervasive to alter an individual’s employment conditions, educational environment, living environment or participation in a university activity, and that creates an intimidating, offensive or hostile environment for employment, education, or participation in a university activity.

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. Conduct alleged to constitute harassment will be evaluated according to the objective standard of a reasonable person.

2. The following definition of sexual harassment is included in this Policy. Sexual harassment includes any unwelcome sexual advances, requests for sexual favors, or other unwelcome written, verbal or physical conduct of a sexual nature when:

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3 Under certain circumstances, a student-employee respondent may be required to answer to proceedings concerning both employment and student status.

4 The Director of the Office of Employment Equity is a staff employee who is responsible for supervising the operation of this Policy Prohibiting Discrimination and Harassment, the Discrimination Complaint Process and the Harassment Complaint Process. This person is a resource for all members of the university community. The Director is also responsible for arranging education and training for the Rutgers community regarding the university’s Policy Prohibiting Discrimination and Harassment, the Discrimination Complaint Process and the Harassment Complaint Process.

5 As used in this policy, educational environment refers to the learning environment, academic performance and/or academic opportunities made available by Rutgers.

7 As used in this policy, living environment refers to campus housing accommodations made available by Rutgers.

7 This definition is based upon the United States Equal Employment Opportunity Commission’s definition of sexual harassment. 29 Code of Federal Regulations 1604.11.
• 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;
• 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
• such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance or creating an intimidating, hostile, or offensive environment for that individual's employment, education, or participation in a university activity.

3. Sexual relationships that occur in the student-teacher context or in the context of employment supervision or evaluation present special problems.

The difference in power and the respect and trust that are often present between a teacher and student, supervisor and subordinate, or senior and junior colleague in the same department or unit makes these sexual relationships especially vulnerable to exploitation. Those who abuse their power in such circumstances by, for example, granting preferential treatment to a student who has submitted to sexual favors may be found to have violated this Policy. A student's "voluntary" participation in a sexual relationship does not alone demonstrate that the respondent's conduct was not unwelcome. Therefore, the university strongly discourages sexual relationships between individuals where there is an imbalance of power between the two individuals and where one of the individuals is in a position to make decisions which may affect the career or academic experience of the other.

Because those in positions of power and authority having sexual relationships with their students or subordinates should not abuse or appear to abuse the power and authority with which they are entrusted, those employees or student-employees in such a circumstance should not take any actions which affect that individual's status as a student or employee, such as grading, serving on a thesis committee, or conducting performance reviews.

4. Sexual harassment may occur between members of the same or opposite sex. 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 violates this policy.

5. 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
- Unnecessary or unwanted physical contact
- Blocking someone's path or impeding movement
- Physical interference with work
- Stalking, physical assault or coerced or forced sexual activity
- Deliberate destruction of property

NON-VERBAL CONDUCT
- Display of offensive material or objects
- Suggestive or insulting gestures, sounds or whistles
VERBAL CONDUCT

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

C. The classroom or other instructional settings (e.g., studio, laboratory) present special problems because academic freedom protects the expression of ideas, even where the idea or its expression is perceived to be offensive, if the complained of conduct is 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 AAUP’s 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 the complained of conduct occurs in an instructional context and is 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 complained of conduct is not germane to the subject matter taught and:

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

V. REPORTING DISCRIMINATION AND HARASSMENT

Any member of the university community who has been subject to discrimination or harassment or who has witnessed discrimination or harassment, on the basis of any of the previously cited protected categories, is encouraged to report it immediately to the Office of Employment Equity or to a University Adviser. One does not have to be the direct target of the discrimination or harassment to report it. The university is committed to handling complaints and reports of discrimination and harassment swiftly, fairly, and with sensitivity. Upon completion of the discrimination or harassment process, the university will take appropriate corrective action, consistent with the results of the investigation. Disciplinary action, up to and including discharge, may be taken against employees who violate this policy. The method for reporting discrimination is outlined in the Rutgers University Discrimination Complaint Process. The method for reporting harassment is outlined in the Rutgers University Harassment Complaint Process. A copy of those documents may be obtained from the Office of Employment Equity, http://uhr.rutgers.edu/ee/OEEServices.htm.

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8 University Advisers are employees who are trained in the harassment and discrimination complaint processes. Advisers provide information about the University policy and complaint processes regarding harassment and discrimination. If requested, Advisers may assist either the complainant or the respondent.
VI. RETALIATION

Retaliatory conduct against any individual who has filed a complaint of discrimination or harassment, who has reported witnessing discrimination or harassment, who has participated in the discrimination complaint process or the harassment complaint process, or who has been the subject of an investigation or the subject of a complaint of discrimination or harassment and found not to have engaged in discrimination or harassment is also a violation of this Policy and is grounds for discipline and/or remedial action.