

RUTGERS UNIVERSITY POLICY

Section: 60.1.12

Section Title: Universitywide Human Resources Policies and Procedures

Policy Name: Policy Prohibiting Discrimination and Harassment

Formerly Book: 6.4.14

Approval Authority: Senior Vice President for Administration

Responsible Executive: Senior Vice President for Administration

Responsible Office: University Human Resources

Originally Issued: 7/1980

Revisions: 4/27/1997; 6/30/2006; 2/12/2008; 7/24/2008; 12/9/2010; 8/31/2012; 7/1/2013; 2/6/14

Contact: policies@hr.rutgers.edu

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| Policy Name: | Policy Prohibiting Discrimination and Harassment | | | | |
| Section #: | 60.1.12 | Section Title: | Universitywide Human Resources Policies and Procedures | Formerly Book: | 6.4.14 |
| Approval Authority: | Senior Vice President for Human Resources and Organizational Effectiveness | | Adopted: | 7/1980 | Reviewed: 7/5/2016 |
| Responsible Executive: | Senior Vice President for Human Resources and Organizational Effectiveness | | Revised: | 4/27/1997; 6/30/2006; 2/12/2008; 7/24/2008; 12/9/2010; 8/31/2012; 7/1/2013; 2/6/2014; 7/5/2016 | |
| Responsible Office: | University Human Resources | | Contact: | 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 as well as the prohibitions against retaliation based upon the exercise of rights pursuant to the Policy. The scope of the Policy is set forth herein, as well as definitions of harassment and discrimination. The Policy also references the process for reporting violations of the Policy.

2.—The University has a separate policy that addresses sexual and gender-based discrimination and harassment, Policy 60.1.28, Policy Prohibiting Sexual Harassment, Sexual Violence, Relationship Violence, Stalking and Related Misconduct by Employees and Third Parties.

2. Reason for the Policy

To inform all members of the Rutgers community that this Policy applies to all areas of University operations and programs.

3. 3.—Who Should Read this Policy

All members of the Rutgers University community.

~~All regulations and procedures are subject to amendment.~~

All policies are subject to amendment. Please refer to the Rutgers University Policy Library website (policies.rutgers.edu) for the official, most recent version.

4. **Related Documents**

- a. Policy 10.2.11, Student Code of Conduct
- b. Policy 60.1.1, Employment of Relatives
- c. Policy 60.1.8, Equal Employment Opportunity and Affirmative Action Policy
- d. Policy 60.5.1, Academic Freedom Policy

4. **Resources**

- e. Discrimination and Harassment, Workplace Violence, Sexual Misconduct, and Retaliation Complaint Process:
<http://uhr.rutgers.edu/sites/default/files/userfiles/DiscriminationHarassmentComplaintProcess.pdf>
- f. Title IX Policy for Employees
- g. Staff and Faculty Guidelines for Disability Accommodations
- h. Workplace Violence Policy
- Student Life Policy Complaints Against Verbal Assault, Harassment, Intimidation, Bullying and Defamation University Employees and Third Parties
- i. Staff and Faculty Guidelines for Religious Accommodations

5. **Contacts**

- University Human Policy 60.1.13, Policy Prohibiting Workplace Violence
- Policy 60.1.16, Conscientious Employee Protection Policy
- Policy 60.1.28, Policy Prohibiting Sexual Harassment, Sexual Violence, Relationship Violence, Stalking, and Related Misconduct by Employees and Third Parties
- Policy Prohibiting Sexual Harassment, Sexual Violence, Relationship Violence, Stalking, and Related Misconduct by Employees and Third Parties Resources Supplement
- Office of Employment Equity Formal Complaint Form

- Policy 10.3.12, Student Policy Prohibiting Sexual Harassment, Sexual Violence, Relationship Violence, Stalking, and Related Misconduct
- Policy 10.2.11, Code of Student Conduct
- RBHS Students Rights, Responsibilities and Disciplinary Procedures
- Policy 60.1.1, Employment of Relatives
- Policy 60.1.8, Equal Employment Opportunity and Affirmative Action Policy
- Policy 60.5.1, Academic Freedom Policy
- Staff and Faculty Guidelines for Disability Accommodations
- Student Life Policy Against Verbal Assault, Harassment, Intimidation, Bullying and Defamation
- Staff and Faculty Guidelines for Religious Accommodations

- University Human Resources: 848-932-3020
 - a. Office of Employment Equity: **Resources**
Office of Employment Equity
848-932-3973
- employmentequity@hr.rutgers.edu; employmentequity@hr.rutgers.edu

- Office of Student Conduct
848-932-9414

6. **The Policy**

60.1.12 POLICY PROHIBITING DISCRIMINATION AND HARASSMENT

I. **POLICY**

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~~Rutgers University is committed to a working and learning environment for all faculty, staff and students that is free from discrimination and harassment, including sexual 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 to 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.⁴~~

~~II. SCOPE~~

~~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.~~

~~III. DEFINITIONS~~

- ~~○ New Brunswick: 848-932-9414, conduct@rci.rutgers.edu~~
- ~~○ Newark: 973-353-2772~~
- ~~○ Camden: 856-225-6050, deanofstudents@camden.rutgers.edu~~
- ~~● Rutgers University Police Departments:~~
 - ~~○ New Brunswick: 732-932-7211~~
 - ~~○ Newark: 973-353-5581~~
 - ~~○ Camden: 856-225-6009~~
 - ~~○ 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

⁴-See Academic Freedom Policy 60.5.1.

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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 opportunities² which, in turn, creates an unreasonably intimidating, offensive, or hostile environment for employment, education, or participation in University activities.

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.

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

- ~~▪ 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 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 often is referred to as sex or gender harassment, and such conduct violates this policy.~~

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 or sexual assault, or coerced or forced sexual activity~~
- Stalking, Deliberate destruction of property

² A student's educational opportunities ~~refer~~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.

³ ~~This definition is based upon the United States Equal Employment Opportunity Commission's definition of sexual harassment, at 29 Code of Federal Regulations 1604.11.~~

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NON-VERBAL CONDUCT

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

VERBAL CONDUCT

- In some instances, innuendo or other suggestive, offensive, or derogatory comments or jokes about sex, or other a protected categories group 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. Sexual **violence**, ~~also referred to as harassment~~, sexual assault, is an extreme form of sexual harassment. It involves nonconsensual sexual contact and may involve the use of force or coercion, or sexual contact with a person who is unable to consent due to incapacity or impairment. Sexual violence may occur between members of the same or opposite sex.

IV. SEXUAL HARASSMENT AND ROMANTIC RELATIONSHIPS

Sexual relationships that occur in the student-teacher context or in the context of employment supervision or evaluation present special problems. These types of sexual 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 a subordinate's "voluntary" participation in a sexual, gender-based harassment, stalking, 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.

Therefore, the university strongly discourages sexual relationships between individuals where there is an imbalance of power where one individual is in a position to make decisions which may affect the educational opportunities⁴ or career of the other. These relationships include student/teacher and supervisor/subordinate sexual relationships, and any other sexual relationship between two individuals wherein one individual has the power to make decisions that may have an impact, either direct or indirect, violence (including dating and domestic violence), and related misconduct committed are also acts of discrimination on the career or educational opportunities of the other. basis of sex and are governed by the Policy Prohibiting Sexual Harassment, Sexual Violence, Relationship Violence, Stalking, and Related Misconduct by Employees in romantic relationships must recuse themselves from decisionmaking when the decisions at issue may have an impact, either direct or indirect, on the employee with whom they

⁴ Title IX of the Education Amendments of 1972 is a federal law that prohibits sex discrimination in education programs or activities that receive Federal financial assistance. Rutgers is subject to Title IX, which provides: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." To report sexual harassment, sex discrimination, or sexual violence in violation of Title IX, see <http://compliance.rutgers.edu/discrimination/title-ix-compliance>. See also the Workplace Violence Policy, at <http://policies.rutgers.edu/view-policies/human-resources-hr-%E2%80%93-section-60>

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~~are romantically involved. Those who abuse their power in such circumstances may be found to have violated this Policy.⁵ and Third Parties. [\(Insert Link\)](#)~~

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, sex⁶, 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 to 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.⁷

II. SCOPE

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.

~~In light of the above, any individual with supervisory or educational responsibility for an employee, faculty member or student must inform his or her immediate supervisor of the consensual relationship, so that the university can take action to make changes that eliminate the conflict of interest. If the university is unable to eliminate this conflict of interest, 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 the denial of legal representation and~~

~~⁵ An abuse of power may be, but is not limited to, inflating a student’s grade, promising an employee a promotion, or providing preferential academic or employment opportunities to an individual based on a romantic or sexual relationship.~~

⁶ Claims of discrimination on the basis of sex made against University employees or third parties may be covered by this policy or the Policy Prohibiting Sexual Harassment, Sexual Violence, Relationship Violence, Stalking and Related Misconduct by Employees and Third Parties (60.1.28).

⁷ See Academic Freedom Policy 60.5.1.

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indemnification in the event that a lawsuit based on the relationship is filed. In addition, failure to give proper notice to the appropriate supervisor may result in disciplinary action.

VIII. 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. 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 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 conduct or statements which are the subject of a complaint ~~occurs~~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;
- ~~creates~~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.⁸ If managers and supervisors receive reports of discrimination or harassment, they are required to refer them immediately to the Office of Employment Equity. 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 the Code of Student Conduct, Policy 10.2.11.⁹

⁸ The Director of the Office of Employment Equity supervises the operation of the ~~Policy and the Discrimination and 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~~ employmentequity@hr.rutgers.edu.

⁹ 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@rci.rutgers.edu~~ conduct@rci.rutgers.edu.

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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 ~~on each campus 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 and Harassment, Workplace Violence, Sexual Misconduct, and Retaliation~~ Complaint Process: Complaints Against University Employees and Third Parties (“Complaint Process”).¹⁰ Upon completion of the Complaint 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 an employee who violates this Policy.¹¹

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. Any manager, supervisor or other employee who violates confidentiality as to a complaint of discrimination and/or harassment will be subject to appropriate sanctions. Please contact the Office of Employment Equity with any questions regarding confidentiality.

In some instances, a complainant may choose to take no action or to defer action until a later date in order to maintain anonymity. In these instances, the University reserves the right to limited disclosure and to take appropriate action in order to ensure the safety and well-being of members of the University community.

VIII. 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. 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 ACCUSATIONS

~~Anyone who knowingly makes a false accusation of discrimination, harassment, or retaliation will be subject to appropriate sanctions which may include, but are not limited to, written warning, demotion, transfer, suspension or termination. Knowingly making a material misstatement of fact may subject the complainant 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.~~

¹⁰ Available at <http://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->~~ <http://uhr.rutgers.edu/policies-resources/policies-procedures/policy-and-compliance-guidelines/discrimination-and->

¹¹ 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.

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