

**RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY**  
**POLICY PROHIBITING 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 or traits.<sup>1</sup> These categories or traits are race, religion, color, national origin, ancestry, age, sex, sexual orientation, disability, marital or veteran status. 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 harassment on the basis of the above protected categories or traits.

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.<sup>2</sup>

**II. POLICY**

Rutgers University policy prohibits harassment based upon the above enumerated protected categories or traits. Harassment compromises the integrity of the university and unfairly interferes with the opportunity for all persons to fully participate in the academic, work and living environment of the university. The university will respond to instances of harassment in accordance with its Harassment Complaint Process (for employees and student employees) or with the University 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. 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. (These individuals whose conduct is addressed by this policy are "respondents.") Complaints of harassment against employees or student

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<sup>1</sup>University Regulation 60.1.8. This administrative Policy Prohibiting Harassment implements the University's non-discrimination policy.

<sup>2</sup>See University Regulation 60.5.1 concerning Academic Freedom.

employees will be processed according to the Rutgers University Harassment Complaint Process. Complaints of 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<sup>3</sup>. Complaints of harassment against students arising out of their conduct as students are addressed by other university policies addressing student conduct, including the University Student Life Policy Against Verbal Assaults, Defamation and Harassment, and the University Code of Student Conduct.<sup>4</sup>

#### **IV. DEFINITION**

A. Harassment is defined as any conduct directed toward an individual or group based on one or more of the traits in Section I above that is sufficiently severe or pervasive to alter an individual's employment conditions, educational environment<sup>5</sup>, living environment<sup>6</sup> or participation in a university activity, and that creates an intimidating, offensive or hostile environment for employment, education, or participation in a university activity.

B. Whether particular physical, non-verbal, or verbal conduct constitutes harassment in violation of this policy will depend upon all of the circumstances involved, the context in which the conduct occurred<sup>7</sup>, and the frequency, severity, and pattern of the conduct.<sup>8</sup> Conduct does not constitute harassment in violation of this policy unless it occurs based on a protected trait listed in

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<sup>3</sup>The Director of the Office of Employment Equity is a staff employee who is responsible for supervising the operation of this Policy Prohibiting Harassment 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 Harassment and the Harassment Complaint Process.

<sup>4</sup>Under certain circumstances, a student-employee respondent may be required to answer to proceedings concerning both employment and student status.

<sup>5</sup>As used in this policy, educational environment refers to the learning environment, academic performance and/or academic opportunities.

<sup>6</sup>As used in this policy, living environment refers to campus housing accommodations made available by Rutgers.

<sup>7</sup>See Section D below for guidance on how this Policy is to be applied in circumstances involving conduct in an instructional context.

<sup>8</sup>The Equal Employment Opportunity Commission discusses the issue of isolated instances of harassment in its Policy Guidance on Sexual Harassment. The Policy Guidance provides in part:

Unless the conduct is quite severe, a single incident or isolated incidents of offensive sexual conduct or remarks generally do not create an abusive environment ... A "hostile environment" claim generally requires a showing of a pattern of offensive conduct. In contrast, in "quid pro quo" cases a single sexual advance may constitute harassment if it is linked to the granting or denial of employment benefits. But a single unusually severe incident of harassment may be sufficient to constitute sexual harassment; the more severe the harassment, the less need to show a repetitive series of incidents. This is particularly true when the harassment is physical. (E.E.O.C. Compliance Manual, Vol. 3., No. 137)

Section I above and 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. Conduct alleged to constitute harassment will be evaluated according to the objective standard of a reasonable person. Thus, conduct that is objectionable to some, but that is not severe or pervasive enough to create an objectively intimidating, offensive or hostile environment, is beyond the purview of this policy.

1. 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, gender-specific traits, 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.

2. Depending upon the same factors in Section IV.B. above, the following conduct is not, or probably is not, harassment in violation of this policy:

- Everyday administrative action taken by supervisors with respect to assignment of work and deployment of personnel.
- Everyday evaluations of student or employee performance.
- Discussion in an instructional setting of controversial or even offensive material that is relevant to the subject matter being taught. (See also Section D.)
- Social situations and interactions which, while perhaps uncomfortable or even unwelcome, are not sufficiently severe or pervasive to rise to the level of constituting a hostile environment.

C. Because sexual harassment has been more thoroughly defined in the law than harassment based upon other protected categories, the following definition of sexual harassment is included in this policy.<sup>9</sup>

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:

- a) submission to such conduct is made, explicitly or implicitly, a term or condition of an individual's education, employment, or participation in university activity;
- b) 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
- c) 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. (This third situation is commonly known as hostile environment sexual harassment.)

2. 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.

3. A person does not have to be the direct and immediate target of sexual 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 of the same sex as the victim.

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

- a) The difference in power and the respect and trust that is 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

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<sup>9</sup>This definition is based upon the United States Equal Employment Opportunity Commission's definition of sexual harassment. 29 Code of Federal Regulations 1604.11.

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.

- b) 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.

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

- An employee complains to her supervisor that co-workers direct sexually suggestive remarks and gestures at her and the supervisor tells her that she is overreacting and such conduct is to be expected as part of the job. The employee's submission to the sexually harassing conduct is thereby made an explicit term or condition of her employment and she is a victim of sexual harassment.
- A student is informed that she will get a good grade if she grants certain sexual favors. The student is a victim of sexual harassment whether or not she complies and whether or not her grade is affected.
- A female graduate assistant makes persistent unwelcome sexual advances toward a male graduate assistant. Her conduct may, depending on the totality of the circumstances, unreasonably interfere with his ability to do his work. Likewise, her conduct may unreasonably interfere with the work or education of employees or students of either sex.
- A manager persists in calling women by their first names while addressing men as "Mr.", makes jokes disparaging women, reproaches women for conduct in which both men and women are engaged, and permits the display of sexually suggestive pictures in the workplace.

D. 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. 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:

1. is directed toward an individual or group based on one or more of the traits listed in Section I above,
2. is sufficiently severe or pervasive to alter an individual's educational environment,
3. creates an objectively hostile learning environment, and
4. is, in fact, perceived as hostile by the complainant.

## **V. REPORTING HARASSMENT**

Any member of the university community who has been subject to harassment or who has witnessed harassment, on the basis of any of the previously cited protected categories, is encouraged to report it immediately to the Director of the Office of Employment Equity or to a Harassment Advisor.<sup>10</sup> One does not have to be the direct target of the harassment to report it. The university is committed to handling complaints and reports of harassment swiftly, fairly, and with sensitivity.

The method for reporting harassment is outlined in the Rutgers University Harassment Complaint Process. A copy of that document may be obtained from the following locations:

Office of Employment Equity  
Dean of Students office at each college or school  
Personnel Offices on the Newark and New Brunswick campuses  
The Campus Provost in Newark and Camden  
Department of Sexual Assault Services and Crime Victim Assistance  
University Libraries  
Office of Labor Relations  
Office of Diverse Community Affairs and Lesbian and Gay Concerns  
Rutgers University Police Departments  
Campus Counseling Centers  
Judicial Affairs Offices  
Residence Life Offices  
Center for International Faculty and Student Services  
Student Health Offices

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<sup>10</sup>The Harassment Advisor provides general information about the university policy and complaint process regarding harassment and discrimination. Advisors may assist either the complainant or the respondent during the complaint process.

Office of Compliance and Student Policy Concerns  
Deans' Offices  
Rutgers INFO

**VI. RETALIATION**

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

Dated: December 23, 2005

Effective Date: September 1, 1997