



**New Jersey Institute of Technology
University Policies and Procedures**

Date: August 31, 2017

***Subject:* HUMAN RESOURCES ANTI - DISCRIMINATION
AND ANTI- DISCRIMINATORY HARASSMENT POLICY**

I. PURPOSE

NJIT is committed to equal opportunity, diversity and inclusion, and affirmative action in employment, and in providing a work environment free from unlawful discrimination and discriminatory harassment.

II. APPLICABILITY

This Policy and Procedure applies to all employees of the University, and to the extent possible to non-employees who transact business on University grounds, such as contractors, visitors, business partners and vendors.

Student complaints on sexual misconduct are not governed by this Policy and Procedure, but are governed by the Sexual Misconduct Policy for Students.

Student complaints of discrimination or harassment are governed by this policy.

Procedures outlined herein shall apply to all members of the university community and employees. Faculty should additionally refer to the Faculty Handbook. Employee rights and obligations pursuant to applicable collective bargaining agreements are not impaired by these procedures.

III. POLICY

The University prohibits unlawful discrimination or discriminatory harassment (including sexual harassment) by or against any NJIT employee on the basis of race, color, national origin, nationality, ancestry, religion, sex, pregnancy, age, sexual orientation, disability, marital status, gender identity and expression, disability, affectional or sexual orientation, military service, veteran status, atypical cellular or blood trait, an individual's genetic information or any other category protected by federal, state or local laws (collectively "protected categories" or "protected status").

The prohibition on discrimination and discriminatory harassment as outlined above applies to all terms and conditions of employment, including, but not limited to, hiring, training, assignments, promotions, demotions, transfers, discipline, compensation, benefits, and termination of employment.

Discriminatory harassment and discrimination is prohibited both at the workplace and at university-sponsored events. Social interactions between employees that occur off campus, but have a nexus to the workplace are also covered by this policy.

A. Selected Definitions and Guidance:

1. Discrimination: Discrimination occurs when an individual suffers an adverse employment decision/ and or action based on an individual's protected status.
2. Discriminatory Harassment:¹ Discriminatory Harassment is defined as unwelcome conduct that is based on an individual's protected status and where: 1) enduring the offensive conduct becomes a condition of continued employment; or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.
3. Additional Guidance on Discriminatory Harassment: Discriminatory Harassment can occur in a variety of circumstances, including, but not limited to, the following:
 - i. The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
 - ii. The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.
 - iii. Unlawful harassment may occur without economic injury to, or discharge of, the victim.
4. Sexual Harassment:² Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. Sexual Harassment may include quid pro quo harassment or hostile work environment harassment.
 - i. *Quid Pro Quo Harassment*: Unwelcome sexual advances, requests or demands for sexually based favors or other gender-based verbal or physical conduct by a person in a position of power and/or authority where submission to or rejection of such conduct by an individual is used by the person in authority/power as a basis for employment, academic or institutional environment decisions and/or actions affecting such individual.
 - ii. *Hostile Environment*: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where such conduct is sufficiently severe or pervasive and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment and/or academic environment. This harassment may arise independent of the supervisor/subordinate relationship.
 - a. Petty slights, annoyances, and isolated incidents (unless extremely serious) are usually not considered severe or pervasive. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.

¹ See U.S. Equal Employment Opportunity Commission, *Harassment*, <https://www1.eeoc.gov/laws/types/harassment.cfm?renderforprint=1>.

² See U.S. Equal Employment Opportunity Commission, *Policy Guidance on Current Issues of Sexual Harassment* (Mar. 19, 1990), <https://www.eeoc.gov/policy/docs/currentissues.html>.

B. Additional Guidance on Sexual Harassment:

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

1. The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
2. The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
3. The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
4. Unlawful sexual harassment may occur without economic injury to or discharge of the victim.

Illustrative examples of prohibited conduct include, but are not limited to:

1. Verbal (for example: epithets, derogatory statements, slurs, sexual or offensive comments or jokes, unwelcome sexual advances or requests for sexual favors);
2. Physical (for example: assault or inappropriate contact);
3. Visual (for example: displaying sexually suggestive or derogatory posters cartoons or drawings, sending inappropriate adult-themed gifts, leering, or making sexual or derogatory gestures).

C. Disability Discrimination:

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990, as amended, the University will not discriminate against qualified individual on the basis of a disability in services, programs or activities.

The Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, as amended and the New Jersey Law against Discrimination prohibit employment discrimination against individuals with disabilities. Disability discrimination occurs when an employee or applicant for employment, who is an otherwise qualified individual with a disability, is treated unfavorably because he or she has a disability. It also occurs when an applicant or employee is treated less favorably because he or she has a history of a disability, because he or she is believed to have a physical or mental impairment, or because he or she has a relationship with a person with a disability.

The University will provide reasonable accommodation to a qualified employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the University ("undue hardship"). Request for reasonable accommodations are to be processed under the University's Reasonable Accommodation Policy.

D. Enforcement:

1. Any member of the University community who believes that he or she has been subject to conduct that violates this Policy, or who has witnessed others being subjected to such conduct is encouraged to initiate a report in writing immediately after the conduct or as soon as possible thereafter with the office designated in this Policy.
2. The University will fully investigate all reports of discrimination and/or discriminatory harassment in accordance with the procedure outlined below, taking immediate interim and corrective action in cases where the record warrants such action.
3. Individuals found to have engaged in unlawful discrimination or discriminatory harassment shall be subject to appropriate disciplinary or other corrective action.
4. Supervisory personnel who witness what they believe to be discriminatory conduct or discriminatory harassment by subordinates or colleagues or are in receipt of formal or informal allegations of such conduct are obligated to report such conduct to the University office designated in this Policy.
5. All employees who witness or have tangible evidence of potentially discriminatory conduct or discriminatory harassment have a duty to cooperate fully and honestly with the University in its investigation of such alleged conduct. Failure to do so impedes the University's search for facts necessary for appropriate determination and, in itself, may lead to disciplinary or other corrective action for failure to cooperate.
6. Employees who fully, honestly and forthrightly cooperate with the University in its investigation and the enforcement of this Policy shall be deemed to be operating within the scope of employment as set out in the University's indemnification policy.

IV. PROCEDURES

The University's anti-discrimination and anti-discriminatory harassment policy must be adhered to by all employees, students and affiliated business partners³ of the University. An employee or student who honestly feels subjected to or has witnessed discrimination or discriminatory harassment, as outlined in the policy and elaborated upon in educational sessions provided by the University, should immediately report the conduct to the University designated intake agent(s) as follows:

- A. Employees report the conduct to the Director of Labor and Employee Relations in the Department of Human Resources. The Director of Labor and Employee Relations shall inform the Office of the General Counsel of the reported information. If the accused is a student, the Director of Labor and Employee Relations shall also inform the Dean of Students Office and Campus Life. The Director of Labor and Employee Relations, or his/her designee, shall serve as the intake agent.
- B. Students report the conduct to the Dean of Students Office and Campus Life. The Dean of Students and Campus Life, if applicable, shall promptly inform the Director of Labor and

³ Including, but not limited to: NJII; tenants of the EDC; and NJIT contractors and vendors.

Employee Relations in the Department of Human Resources. The Director of Labor and Employee Relations, or his/her designee, shall serve as the intake agent.

- C. Immediately upon receiving notification of conduct alleged to be discrimination or discriminatory harassment, the Office identified above, or its designee shall commence an investigation into the alleged conduct, maintaining confidentiality to the extent possible.
- D. If the claim involves a request for disability accommodation, the claim shall be referred to the Department of Human Resources for processing and resolution under NJIT's Reasonable Accommodation Policy.

E. **Step 1 - Investigation:**

The investigation process shall include the following:

1. The intake agent shall interview the accuser setting forth the allegations, then identify any witnesses to the allegations, any documents or other information to be reviewed prior to interviewing the accused and any response to the information provided by the accused.
2. The intake agent shall also interview the accused, setting forth the allegations made, recording the response to the allegations complete with specific information as to rebuttal witnesses and other information offered that is relevant to the investigation.
3. The Director of Labor and Employee Relations, or his/her designee, shall investigate the allegation(s) further as warranted. This investigation, as illustrative of the search for credible facts, could include:
 - a. re-examination of the accuser and/or accused as warranted;
 - b. examination and testimony of witnesses; and
 - c. examination of documentation and other credible non-testimonial evidence corroborating or rebutting the allegation(s), response and testimonial evidence.
4. At the conclusion of review, the Director of Labor and Employee Relations, or his/her designee, shall determine either:
 - a. There is no cause for a finding of discrimination or discriminatory harassment; OR
 - b. There is cause to find discrimination or discriminatory harassment; AND / OR
 - c. There has been a malicious filing of a discrimination or discriminatory harassment complaint.
5. The Director of Labor and Employee Relations or his/her designee's, determination, with the substantiating basis, shall be set forth in writing and forwarded to the Vice President for Human Resources and the Vice President(s) of the accused and the accuser. If the allegation involves a student as accuser, accused or both, an official, sealed copy will also be forwarded to the Dean of Students and Campus Life. The Director of Labor and Employee Relations will also notify the accuser, the accused, and the union representatives

(if any) of the determination in writing. This documentation may contain the full investigative findings or an executive summary, at the discretion of the Director of Labor and Employee Relations

F. Step 2 - Sanctions:

Should there be a finding of discrimination or discriminatory harassment or malicious filing of such charge(s) following Step 1 herein, the matter will be referred to the Vice President of Human Resources following consultation with the appropriate University officers will provide counsel as to appropriate sanction(s) and the implementation thereof. Sanctions may include, by way of illustration but not limitation, termination, suspension, probation, reprimand, warning, directed counseling and/or mandatory education and training.

G. Step 3 - Appeal:

Appeal of a finding accompanied by disciplinary sanctions shall be processed pursuant to the appropriate grievance procedure contained in the governing Collective Bargaining Agreement, if any, or the Student Handbook. Non-aligned employees have the right to request reconsideration by the Vice President of Human Resources, whose decision shall be final and binding. The request shall be submitted in writing to the Director of Labor and Employee Relations no later than fifteen (15) days after notice of the disciplinary sanction was given.

V. ADDITIONAL CONSIDERATIONS

A. Education and Training:

1. As a necessary, proactive measure of policy integrity and enforcement, the University will provide mandatory education and training for members of the University community to ensure an understanding and appreciation of the Policy, the laws as amended and re-interpreted from time-to-time. Education and training will be coordinated through the University's Department of Human Resources.
2. Information regarding University education and training on anti-discrimination and anti-discriminatory harassment as well as information and guidance related to this Policy and its procedures may be obtained from the Department of Human Resources.

B. Confidentiality:

While all reasonable efforts will be made to respect the confidentiality of all parties and the evidence associated with the investigation and/or review of discrimination and discriminatory harassment reports, the University is obligated to address fully all charges of such conduct and cannot guarantee total confidentiality. A thorough investigation, including discussing witnesses' accounts and confronting the accused will often transpire. A charge of discrimination or discriminatory harassment is most serious, and cannot and will not be taken lightly, and cannot and will not be "off the record".

C. Retaliation:

No one will be subject to, and the University prohibits, any form of discipline, reprisal, intimidation or retaliation for good faith reporting of incidents of discrimination or discriminatory harassment of any kind, pursuing any discriminatory harassment claim or cooperating in related investigations. Any employee, regardless of position or title, whom the Department of Human Resources or the Office of

the General Counsel determines has engaged in retaliation in violation of this policy, will be subject to corrective action and/or discipline, up to and including termination of employment.

D. Malicious Allegations/Actions:

False charges of discrimination and/or discriminatory harassment made knowingly or with wanton reckless disregard for the truth and veracity of the charge, shall be considered malicious charges and are not within the scope of anyone's employment. The University reserves the right to impose sanctions against the accuser. Repeated filing of frivolous charges will be considered a reckless disregard for the truth and veracity of such charges. Neither failure to substantiate a discrimination/ discriminatory harassment charge nor a University finding that discrimination/discriminatory harassment did not occur, in and of itself, constitutes malicious charge(s).

E. Conduct Not Prohibited by this Policy:

This policy is not intended to preclude or dissuade employees from engaging in legally protected activities/activities protected by state or federal law, including the the New Jersey Employer-Employee Relations, and where applicable, the National Labor Relations Act, such as discussing wages, benefits or terms and conditions of employment, forming, joining or supporting labor unions, bargaining collectively through representatives of their choosing, raising complaints about working conditions for their and their fellow employees' mutual aid or protection or legally required activities.

F. Election of Remedies:

Neither this Policy nor its associated Procedures preclude the accuser from filing charges with any external agency or otherwise seeking redress pursuant to law. At such time, or at any stage of the process, the external procedures will be handled directly by the University's Office of General Counsel, but shall otherwise continue to operate through to resolution as set out under "PROCEDURES" below.

G. Withdrawal of Allegation(s):

If the accuser determines to withdraw the allegation(s) of discrimination or discriminatory harassment at any time during any step in the procedure, the withdrawal must be in writing and specify voluntary retraction of the complaint. This action will not necessarily preclude further investigation, findings or sanctions as imposed by the University.

VI. CROSS REFERENCES

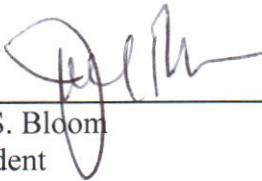
Sexual Misconduct Policy for Students
Student Handbook
Reasonable Accommodation Policy

REVIEW:

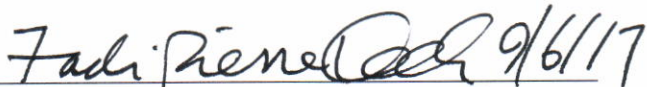
Holly C Stern 9/5/17

Holly C. Stern, Esq. Date
General Counsel
Vice President for Legal Affairs

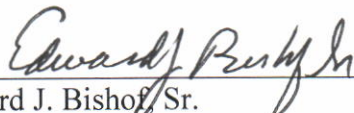
APPROVAL:

 9.7.17


Joel S. Bloom Date
President

 9/6/17

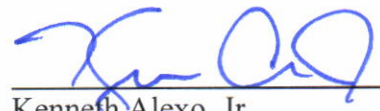
Fadi P. Deek Date
Provost and
Senior Executive Vice President

 8/31/17

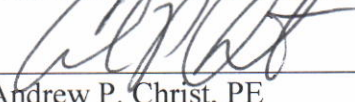
Edward J. Bishop, Sr. Date
Senior Vice President for Finance and
Chief Financial Officer

 9/7/17

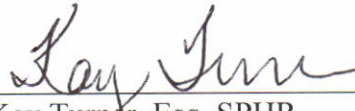
Donald H. Sebastian Date
Senior Vice President for Technology and
Business Development / President and
CEO of NJII

 7/5/17

Kenneth Alexo, Jr. Date
Vice President, Development and Alumni
Relations / President of the Foundation at NJIT

 9/7/17

Andrew P. Christ, PE Date
Vice President for Real Estate
Development and Capital Operations

 8/31/17

Kay Turner, Esq. SPHR Date
Vice President for Human Resources