

RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY
HARASSMENT COMPLAINT PROCESS

I. INTRODUCTION

This Harassment Complaint Process (“Complaint Process”) is to be followed whenever a complaint of harassment (as described below) is made that alleges conduct that may be in violation of the university’s Policy Prohibiting Discrimination and Harassment (“Policy”).¹ The Policy prohibits harassment based upon certain enumerated protected categories. These categories are race, religion, color, national origin, ancestry, age, sex, sexual orientation, gender identity and expression, disability, 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. The purpose of the Complaint Process is to describe the steps to be followed for reporting and handling complaints of harassment.

II. REPORTING INSTANCES OF HARASSMENT

Members of the university community who believe they have been harassed in violation of the Policy are encouraged to report it immediately to a University Adviser (“Adviser”) or to the Director of the Office of Employment Equity.² In particular, management and supervisory personnel are responsible for responding promptly and thoroughly to any such harassment, and for reporting it to the Director. Complaints against employees, or against students in their role as employees, will be resolved through the process outlined below.³ In appropriate circumstances, the University Police should be consulted. Questions about police assistance and involvement may be directed to the Chief of Police on each campus.

III. COMPLAINT PROCESS

Because harassment may involve a wide range of behaviors, the way in which a given case is best handled will vary. The Complaint Process provides a number of options to those subjected to harassment. An Adviser or the Director of the Office of Employment Equity can explain the options

¹ Policy 60.1.12. Also, note that a separate process, the Discrimination Complaint Process, exists for complaints of discrimination.

² Advisers, who are employees trained in the Complaint Process, are also available to provide information about the Policy and the Complaint Process. The Director of the Office of Employment Equity is the staff employee who is responsible for supervising the operation of the Policy and the Complaint Process. The Director 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.

³ Complaints against students arising out of their conduct as students will not be handled by this process. Rather, they are addressed by other university processes that address student conduct, including the University Student Life Policy against Verbal Assault, Defamation and Harassment, and the University Code of Student Conduct. Assistance may be obtained from the Office of Student Judicial Affairs at 732-932-9414 or <http://judicialaffairs.rutgers.edu>.

available to the complainant.⁴ The option selected will depend on a number of factors, including the seriousness of the offense, the amount of evidence available, the degree of confidentiality sought, and the outcome desired by the complainant.

A complainant may select an informal or formal resolution process. An informal resolution process ("informal resolution") focuses on stopping the harassing behavior without a formal investigation. A formal resolution process ("formal resolution") involves an investigation. Depending on the circumstances, both informal and formal resolution processes may be utilized.

A complaint, whether initiated through the informal or formal resolution process, is to be promptly submitted to the Office of Employment Equity, but no later than within one year of the incident which led the complainant to believe that he or she was subjected to harassment in violation of the Policy. The use of the informal resolution process shall not extend the time limit for initiating a formal complaint. The Director of the Office of Employment Equity shall have the authority to make a reasonable adjustment in the time limit for initiating a formal complaint. In addition, if it appears to the Director that the complainant's allegations do not raise an issue of a violation of the Policy, the Director will so advise the complainant and cease processing the complaint.

A. INFORMAL RESOLUTION

An Adviser or the Director of the Office of Employment Equity will provide guidance and assistance to a complainant interested in informal resolution. There are various methods available to attempt informal resolution, and the method or methods chosen should be tailored to the particular circumstances. Methods may include, but are not limited to: coaching the complainant on how to directly address a situation which is causing a problem with the alleged offender; assisting the complainant and department with the resolution of a real or perceived problem, such as by mediating a resolution within the department or by aiding in the modification of a situation in which the offensive conduct occurred; and arranging a meeting with the alleged offender to discuss the requirements of the Policy. The utilization of the informal resolution process is not a precondition for initiating the formal resolution process.

B. FORMAL RESOLUTION

1. Initiation of Complaint

A complainant may choose to file a formal harassment complaint. The formal complaint resolution process is initiated by submitting a signed, written complaint to the Office of Employment Equity.⁵ A complainant may request that an Adviser provide assistance with writing the complaint.

Following receipt of a complaint, the Director of the Office of Employment Equity shall evaluate the complaint to determine whether the allegations raise an issue of violation of the Policy, and shall

⁴ As used in this document, "complainant" refers to a person who makes a complaint of harassment and "respondent" refers to a person who has been accused of harassment.

⁵ The complainant is encouraged to use the Formal Harassment Complaint Form that may be obtained from the University Human Resources website: <http://uhr.rutgers.edu/GetAForm.htm>. The complaint is to be submitted to the Office of Employment Equity, 57 US Highway 1, ASB II – Cook Campus, New Brunswick, New Jersey 08901. The fax number is 732-932-0049.

have the discretion to conduct a preliminary fact-finding investigation in that regard. If the complaint does not raise an issue of a violation of the Policy, the Director will dismiss the complaint.

If, after evaluating the complaint, the Director of the Office of Employment Equity determines that the allegations in the complaint raise an issue of violation of the Policy, the Director will send a copy of the complaint to the respondent and shall afford the respondent reasonable time to prepare a written response. The respondent may choose an Adviser to assist him/her during the formal complaint process.

2. Investigation and Findings

If the Director of the Office of Employment Equity deems it appropriate to proceed with the complaint, the Director will select an individual to investigate the complaint. The investigator will work as expeditiously as possible to conduct a full and fair investigation. The investigator will give the respondent a reasonable opportunity to be heard, orally and/or in writing, with respect to the complaint and to furnish names of witnesses along with information pertaining to their knowledge of the matters set forth in the complaint. Upon completion of the investigation, the investigator will report in writing to the Director, setting forth the steps taken in the investigation and the investigator's findings.

The Director of the Office of Employment Equity will review the report of the investigator. If the Director finds the investigation incomplete or otherwise unacceptable, the Director may request further investigation by the investigator, or may assign a new investigator to the complaint. Once the investigation is complete, the Director shall give the complainant and the respondent a copy of the investigator's report,⁶ a reasonable time to prepare a response, and then a reasonable opportunity to be heard orally or in writing by the Director. If the respondent asserts that an issue of academic freedom is involved, the Director shall consult with appropriate faculty or staff members as the Director determines is advisable.

The Director of the Office of Employment Equity will then make a preliminary determination as to whether the respondent's conduct that is complained of constitutes harassment under the Policy. If the Director determines that a respondent has not engaged in harassment, the Director shall notify the respondent and the complainant in writing of this conclusion, and it shall be noted on all relevant records. If the Director preliminarily determines that the respondent has engaged in harassment, the Director will send a memorandum of preliminary determination and all of the written documents pertaining to the case to the chancellor, dean or vice president of the respondent's unit. In the case of a student employee not covered by a collective negotiations agreement or grievance procedure as set forth in university policy, the role of the chancellor, dean or vice president will be replaced by the student employee's supervisor.⁷ The Director's preliminary determination shall constitute a recommendation of a finding of prohibited harassment, and may include a recommendation concerning corrective action and disciplinary action, to the appropriate chancellor, dean, vice president, or student employee's supervisor. The Director will send a copy of the memorandum of preliminary determination to the complainant and the respondent.

⁶ The Director has the discretion to redact the names of witnesses in order to maintain confidentiality.

⁷ The Director has the discretion to designate other management or supervisory personnel to assume the responsibility assigned herein to the "student employee's supervisor".

The Director of the Office of Employment Equity and the chancellor, dean, vice president, or student employee's supervisor, after giving the respondent an opportunity to be heard (either orally or in writing), will consult with each other and make a final determination as to whether the respondent violated the Policy. The chancellor, dean, vice president, or student employee's supervisor will notify the complainant and the respondent in writing if the determination reached is that the respondent has not violated the Policy.

3. Corrective and/or Disciplinary Action

If the determination reached is that the respondent violated the Policy, the appropriate chancellor, dean, vice-president, or student employee's supervisor will then determine the appropriate corrective action. Disciplinary action, up to and including discharge, may be taken against an employee who violated the Policy.

Corrective and disciplinary actions will be determined on a case-by-case basis. The Director of the Office of Employment Equity will be available to consult with the chancellor, dean, vice president, or student employee's supervisor regarding possible corrective and disciplinary actions which may include, but are not limited to:

- Participation in education sessions on harassment;
- A written reprimand;
- Reassignment of teaching or other responsibilities;
- Suspension without pay; or
- Termination, dismissal⁸

The chancellor, dean, vice-president, or student employee's supervisor shall notify the complainant of the determination that the Policy was violated. The chancellor, dean, vice-president, or student employee's supervisor shall also notify the respondent of the determination that the respondent violated the Policy, and advise the respondent of the appropriate corrective action that will be taken, including of any disciplinary action, including termination, that affects the respondent.

If the action taken results in discipline or termination, the respondent may exercise rights the respondent may have in accordance with applicable collective negotiations agreements or university policies. Student employees who are not covered by such agreements or policies may appeal the discipline or termination to the head of the department in which the student works.

C. INDEPENDENT UNIVERSITY ACTION

The university reserves the right to investigate allegations of harassment in appropriate circumstances even in the absence of a complaint of harassment filed pursuant to the Complaint Process. The university may proceed under either the informal or formal resolution process.

⁸ Nothing in this Policy is intended to abrogate any rights accorded faculty under the university dismissal regulations.

IV. CONFIDENTIALITY

The university shall maintain confidentiality 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 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.

V. 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 the Policy and is grounds for discipline and/or remedial action. Anyone who believes that he/she may be or has been the victim of retaliation should discuss his/her concerns with the Director of the Office of Employment Equity.

VI. FALSE ALLEGATIONS

Knowingly making a material misstatement of fact may subject the complainant to discipline. Anyone who believes that he/she has been the subject of a false complaint of harassment may meet with the Director of the Office of Employment Equity or an Adviser to discuss the allegations. The filing of a complaint that does not result in a finding of prohibited harassment is not alone evidence of the intent to file a false complaint.

VII. RECORD KEEPING

Notice of all reports of harassment, whether a formal written complaint or an informal complaint, must be forwarded to the Director of the Office of Employment Equity by the Adviser or management or supervisory personnel receiving the complaint. The Director will keep a record of all informal and formal complaints. This information will be used to monitor repeated complaints within the same unit or against the same individual. This information will also be used to document the incidence of harassment in the university community.

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