

**RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY
DISCRIMINATION, HARASSMENT, WORKPLACE VIOLENCE, SEXUAL MISCONDUCT
AND RETALIATION COMPLAINT PROCESS: COMPLAINTS AGAINST UNIVERSITY
EMPLOYEES AND THIRD PARTIES**

I. INTRODUCTION

This Complaint Process is to be followed when a complaint alleges conduct by University employees, including student employees, and/or third parties, in violation of the University’s Policy Prohibiting Discrimination and Harassment, 60.1.12 (the “Discrimination Policy”); the Policy Prohibiting Workplace Violence, 60.1.13; the Policy Prohibiting Sexual Harassment, Sexual Violence, Relationship Violence, Stalking and Related Misconduct by Employees and Third Parties, 60.1.28 (the “Sexual Misconduct Policy”); or the Conscientious Employee Protection Policy, 60.1.16 (referred to collectively as “Covered Policies”).¹ Information on the prohibited conduct and scope of the Covered Policies is set forth in the respective Policies.

This Complaint Process identifies individuals responsible for receiving, reporting, and handling complaints that fall under the Discrimination Policy, Policy Prohibiting Workplace Violence, Sexual Misconduct Policy, and Conscientious Employee Protection Policy and the steps to be followed regarding such complaints.²

II. REPORTING A COMPLAINT: RESPONSIBILITY FOR RECEIVING AND REPORTING COMPLAINTS

Any member of the University community who believes that he or she has been subject to conduct that violates the Discrimination Policy, Workplace Violence Policy, Sexual Misconduct Policy, and Conscientious Employee Protection Policy is encouraged to initiate a report with the individual responsible for receiving, reporting and handling his or her specific complaint. Information on how to report conduct prohibited by the Covered Policies is set forth in the respective Policies. Individuals with questions about how to report prohibited conduct should contact the Office of Employment Equity.³

¹ See Policy 60.1.12, the Policy Prohibiting Discrimination and Harassment; Policy 60.1.13, the Policy Prohibiting Workplace Violence; Policy 60.1.28, the Policy Prohibiting Sexual Harassment, Sexual Violence, Relationship Violence, Stalking and Related Misconduct by Employees and Third Parties; and Policy 60.1.16, the Conscientious Employee Protection Policy.

² In cases involving an allegation of conduct prohibited by the Covered Policies against a member of the Rutgers University Police Department (“RUPD”), the RUPD may investigate the matter concurrently through its Internal Affairs process, with written notice to the Office of Employment Equity of the complaint and its disposition.

³ The Director of the Office of Employment Equity (“Director”) supervises the operation of the Discrimination Policy (Policy 60.1.12), the Workplace Violence Policy (Policy 60.1.13), the Sexual Misconduct Policy (Policy 60.1.28) and the Conscientious Employee Protection Policy (Policy 60.1.16), as well as this Complaint Process, and also serves as the Title IX Coordinator for employees.

The Director and the Office of Employment Equity staff also are a resource for all members of the University community with regard to questions involving harassment and discrimination and will arrange education and training regarding Policies 60.1.12 and 60.1.28, and the Complaint Process. The Office may be contacted at 848-932-3973 or at employmentequity@hr.rutgers.edu.

A complaint against a student arising out of his or her conduct as a student should be reported to the Office of Student Conduct.⁴ A complaint alleging that a student has committed a sexual assault, sexual harassment, sexual exploitation, stalking, relationship violence, or other form of sexual misconduct, may also be submitted to the Title IX Coordinator, Office of Student Affairs.⁵

III. PROCESS THROUGH THE OFFICE OF EMPLOYMENT EQUITY

Because conduct implicating the Covered Parties may involve a wide range of behaviors, the way in which a given case is best handled may vary and there are a number of options available to those who believe that they have been subjected to such conduct. An individual may contact the Office of Employment Equity to discuss options available to him or her. These options will depend on a number of factors, including the seriousness of the offense, the amount of evidence presented, the degree of confidentiality sought, and the outcome desired by the individual. The Director, or his or her designee, will provide guidance and assistance to an individual interested in alternative options to a formal complaint and investigation process.

A complainant may also discuss with the Director any interim measures that he or she feels are necessary during the pendency of OEE's resolution process (as set forth below).

A complainant may select an informal or formal resolution process, as described below. An informal resolution process ("informal resolution") focuses on stopping the discriminatory or harassing, or other 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.

Note that additional information pertaining to investigations of alleged violations of the Sexual Misconduct Policy are set forth in that Policy (60.1.28).

A. INFORMAL RESOLUTION

The Director, or his or her designee, will provide guidance 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; 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;⁶ and/or 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.

⁴ Such complaints are addressed by Policy 10.2.11, Code of Student Conduct. The Office of Student Conduct may be reached at 732-932-9414, or conduct@rci.rutgers.edu.

⁵ A Title IX Coordinator can be reached on each campus:
New Brunswick: 848-932-2406; Newark: 973-353-5541; Camden: 856-225-6422; RBHS: 973-972-0777.

⁶ Mediation will never be used to resolve complaints of sexual assault.

B. FORMAL RESOLUTION

1. Initiation of Complaint

The formal complaint process is initiated by submitting a signed, written complaint to the Office of Employment Equity.⁷ Upon receipt and review of a complaint, the Director may request additional information from the complainant if it is unclear whether the complainant's allegations raise an issue of a violation of a Covered Policy. If additional information is received and the Director determines that the allegations do not raise an issue of violation of a Covered Policy, the Director will so advise the complainant in writing and close the case. The complainant may appeal the Director's decision to close the case to the Associate Vice President for Labor Relations.

If the Director requests additional information from a complainant, and the complainant does not submit additional information, the Director may cease processing the complaint and will inform the complainant in writing that the case has been closed, and that he or she may resubmit the written complaint with the supplemental information at a later date if he or she wishes to proceed with a complaint at that time.

If the Director accepts the complaint as drafted, he or she will notify the complainant that the case has been assigned for investigation and simultaneously send a copy of the complaint to the respondent⁸ and the chancellor, dean, or vice president of the respondent's department, as applicable.⁹ The Office of Employment Equity may investigate possible violations of the Discrimination Policy, Workplace Violence Policy, Sexual Misconduct Policy, or Conscientious Employee Protection Policy, regardless of whether the specific policy is identified in the complaint. The Office of Employment Equity will advise the respondent as to which Policies are at issue in the investigation.

2. Investigation and Findings

The Director will instruct an Investigations Specialist in the Office of Employment Equity, or other designee, to investigate the complaint. The investigator will work as expeditiously as possible to conduct a full and fair investigation. 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 will review the report of the investigator. If the Director finds that the investigation is 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 will make a determination as to whether the respondent violated a Covered Policy (or Covered Policies). At this time, the Director shall

⁷ The individual initiating the complaint (the "complainant") is encouraged to use the Office of Employment Equity Complaint Form that may be obtained from the University Human Resources website: <http://uhr.rutgers.edu/policies-resources/forms>. 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.

⁸ The "respondent" is the individual whose conduct is the subject of the complaint.

⁹ The Office of Employment Equity may determine that it is necessary to provide a redacted version of the complaint if the Director determines that providing the respondent with a copy of the unredacted complaint would create a risk of harm to the complainant.

forward a copy of the investigation report,¹⁰ along with his or her letter of determination, to the parties and the chancellor, dean, or vice president involved, as applicable.

3. Appeal of the Decision – Discrimination Policy and Sexual Misconduct Policy

In cases arising under the Discrimination Policy and/or Sexual Misconduct Policy, both parties are afforded one appeal of the Director’s determination as to whether or not a violation of the Discrimination and/or Sexual Misconduct Policy occurred, which must be directed to the Associate Vice President for Labor Relations (“Associate Vice President”).¹¹ The parties are given ten (10) working days from the date of the decision letter to submit an appeal in writing. Failure to submit an appeal to the Associate Vice President by the appropriate deadline will render the decision final and conclude the process. The parties only can appeal on the following grounds:

- a. Unsupported Conclusion: The decision made by the Director is not supported by the facts of the case.
- b. Procedural Error: The investigation was conducted unfairly and not in conformity with prescribed procedures. The error committed must be determined to have substantially impacted the fairness of the investigation process.
- c. New Information: There is new information available that was not available when the investigation was pending that is sufficient to alter the original decision.

The Associate Vice President will review all information and make one of the following determinations:

- a. Affirm the finding.
- b. Overturn the finding.
- c. Remand the case for subsequent investigation.

At this time, the Associate Vice President shall notify the parties and the chancellor, dean, or vice president involved of his or her decision in writing.

4. Corrective and/or Disciplinary Action

If the Director reaches a determination that the respondent violated a Covered Policy, and either no appeal is available, the respondent has opted not to appeal, or the Director’s determination has been affirmed on appeal, the chancellor, dean, or vice president will determine the appropriate corrective action. Disciplinary action, up to and including termination, may be taken against an employee who is found to have violated a Covered Policy.

¹⁰ The Office of Employment Equity may determine that it is necessary to provide a redacted version of the report if the Director determines that providing the respondent with a copy of the unredacted report would create a risk of harm to the complainant. The Director also has the discretion to redact the names of witnesses in order to maintain confidentiality.

¹¹ The Director’s decision as to whether or not a violation of the Workplace Violence Policy or the Conscientious Employee Protection Policy occurred is not appealable.

Corrective and disciplinary actions will be determined on a case-by-case basis. Prior violations of the applicable Policy as well as prior disciplinary action may be considered in determining the appropriate corrective and disciplinary action for a respondent who is found to have violated a Covered Policy. The Director of the Office of Employment Equity will be available to consult with the chancellor, dean, or vice president regarding possible corrective and disciplinary actions, but does not make the final decision on the action to be imposed. Similarly, the Office of Labor Relations will be available to consult with the chancellor, dean, or vice president regarding the respondent's previous discipline, the appropriate level of corrective action, and discipline generally.

Possible corrective and disciplinary actions include, but are not limited to:

- Participation in education sessions on discrimination or harassment;
- A written reprimand or written warning;
- Reassignment of teaching or other responsibilities;
- Suspension without pay; or
- Termination¹²

The chancellor, dean, or vice president shall notify the complainant of any corrective or disciplinary action against the respondent that involves or concerns the complainant, for example, any directive that the respondent is prohibited from initiating contact with the complainant. The chancellor, dean, or vice president shall also notify the respondent of the appropriate corrective action that will be taken, inclusive of any disciplinary action, including termination. A determination that a Covered Policy was violated, including corrective and disciplinary actions taken in response, will be documented in an employee's personnel file.

The University may take any other appropriate corrective action to prevent recurring conduct and to correct its effects on the complainant and others. The Director may make appropriate inquiries to ascertain the effectiveness of any corrective or disciplinary action.

C. INDEPENDENT UNIVERSITY ACTION

The University reserves the right to investigate allegations of conduct prohibited by the Covered Policies in appropriate circumstances, at the discretion of the Director, even in the absence of a formal written complaint filed by a complainant pursuant to the Complaint Process. In such cases, the University will follow the Complaint Process set forth in Section III.B above, but the University will serve as the complainant.

IV. CONFIDENTIALITY

The OEE respects the confidentiality of all parties and limits disclosure of complaints to only those who have a need to know the facts and the parties to a complaint. Reporting and disclosure requirements required by law may present limitations to such confidentiality. Nonetheless, the university will treat all parties with equal care, respect, and dignity and will make every effort to preserve the privacy of all parties involved.

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

¹² The review and imposition of discipline in this Policy will continue to be in accordance with University policies, practices, and collectively negotiated agreements.

take appropriate action in order to ensure the safety and well-being of members of the University community. If a complainant refuses to cooperate with an investigation or asks that his or her identity not be revealed to the respondent or witnesses, the Office of Employment Equity in its discretion will investigate to the extent possible based on the information provided, but its ability to respond may be limited.

OEE expects that all parties, witnesses and support persons involved in an investigation respect the confidentiality of the investigation as well. Any manager, supervisor or other employee who violates confidentiality as to a complaint of an alleged violation of a Covered Policy will be subject to appropriate sanctions. Please contact the Office of Employment Equity with any questions regarding confidentiality.

V. RETALIATION

The university prohibits retaliation against individuals who, in good faith, assert their right to bring a complaint, participate in an investigation, or protest conduct prohibited by the Covered Policies. Retaliation is an offense that is separate from the original complaint, and it will be considered independent 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 for investigation under the aforementioned procedures.

VI. FALSE ALLEGATIONS

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.

VII. RECORDKEEPING AND RECORDS DISCLOSURE

Notice of all verbal and written reports of discrimination, harassment, workplace violence, sexual misconduct, and/or retaliation must be forwarded to the Director or Employment Equity by the administrator, supervisor, or faculty member receiving the complaint.

In addition, a federal law called the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) requires the University to record and report certain information about campus safety, including the number of crimes involving prohibited conduct which occur on or near campus. Many employees (including some who are otherwise considered “confidential”) are required by the Clery Act to notify University Public Safety about such incidents for statistical reporting purposes. These notifications may include the classification and location of the reported crime but do not identify the parties involved. The Clery Act also requires the University to issue a “timely warning” when it receives a report of certain crimes that pose a serious or continuing threat. Such reports do not contain information identifying individual parties. The University publishes an annual comprehensive security report known as “Safety Matters.”

VIII. SUPPORT PERSONS

The complainant and the respondent are permitted to have one support person present for any meetings they attend with investigators at the Office of Employment Equity to discuss a pending complaint filed by or against them, as applicable. A support person may include a union representative, a friend, a family member, or an attorney. However, support persons are not permitted to participate in the investigation

process. They may sit in on meetings with the investigator, but they are not permitted to comment and/or ask questions during those meetings.

The only exception would occur in instances in which the complainant or the respondent requires the services of a translator in order to communicate effectively with the investigator. Support person availability shall not be sufficient grounds for postponing meetings.