1. PURPOSE

NJIT, is an institution of higher education and a community dedicated to learning and the advancement of knowledge. NJIT expects and requires the behavior of its students, faculty, staff, officials, visitors and anyone else with a direct link to the University to be compatible with its high standards of scholarship and conduct. NJIT is committed to protecting the university community, the rights of its members, and to cultivating and sustaining a positive living and learning environment for all students. Thus, NJIT does not discriminate on the basis of sex in its educational programs and does not tolerate inappropriate behaviors that compromise our constituents’ ability to pursue their legitimate activities. These inappropriate behaviors include specifically sexual harassment and sexual violence.

The U.S. Department of Education, and its Office for Civil Rights (OCR), emphasizes the importance of providing all students with an educational environment free from discrimination. The sexual harassment of students, including sexual violence interferes with students’ rights to receive an education free from discrimination and, in the case of sexual violence, may be a crime. Title IX of the Education Amendments of 1972 (Title IX), and its regulations, prohibit discrimination on the basis of sex and/or gender in educational programs or activities operated by recipients of Federal financial assistance.

2. DEFINITIONS

A. Sexual Harassment

Sexual Harassment is a form of gender-based discrimination which violates Federal and State law as well as New Jersey Institute of Technology’s policy prohibiting discrimination on the basis of gender. Sexual harassment is unwelcome conduct that occurs based on a person’s sex or gender and that is severe or pervasive that unreasonably interferes with an individuals’ educational performance, or creates an intimidating, hostile or offense educational environment.
Examples of Sexual Harassment:

Some examples of sexual harassment include, but are not limited to the following behavior:

1. Unwelcome pressure for a dating, romantic or intimate relationship.

2. Unwelcome and inappropriate touching, such as hugging, brushing purposely against another’s body, or pinching.

3. Disparaging remarks or other behavior concerning a person’s gender or sexual orientation; inappropriate sexual innuendoes or humor.

4. Offensive sexual graffiti, pictures or written remarks, including content in email and internet usage.

5. Sexually oriented or obscene gestures, verbal expressions, or comments of a sexual nature about a person’s body, clothing or sexual experience.

6. Conduct by a person in a position of authority relative to the student, where there is an implicit or explicit suggestion that submission to the conduct is a condition of an educational benefit.

B. Sexual Violence

Sexual Violence is an actual, attempted, or threatened sexual act with another person without that person’s consent. Sexual violence may include, but is not limited to:

1. Involvement without consent in any sexual act in which there is force, expressed or implied, or use of duress or deception upon the victim. Forced sexual intercourse and acts commonly referred to as date rape are included in this description.

2. Coercing, forcing, or attempting to coerce or force a sexual act on another, as well as participating in or aiding the coercing, forcing or attempting to coerce or force a sexual act on another.

3. Participating in or aiding any sexual act when the recipient of such act is unable to give consent.

4. Intentional, unwelcome and inappropriate touching, or coercing, forcing or attempting to coerce or force another to touch a person.

5. Offensive sexual behavior that is directed at another, including not but limited to indecent exposure, voyeurism, inappropriate communication.
C. Consent

Consent is mutually understood agreement to an activity, which is informed and freely given. If coercion, intimidation, threats and/or physical force are used, there is no consent. If an individual is mentally or physically incapacitated or impaired so that the individual cannot understand the fact, nature, or extent of the sexual situation, there is no consent, including whether the incapacity is due to alcohol or drug ingestion, sleep, or unconsciousness. Silence does not constitute consent. Past consent of sexual activities does not imply ongoing future consent. Sexual assault includes unlawful sexual acts where consent is not relevant, such as sexual contact with an individual under the statutory age of consent, as defined by State law.

3. STUDENT PROCEDURES FOR FILING A COMPLAINT:

A. Students who believe they have been the victim of sexual harassment, sexual violence, or sex or gender based discrimination are encouraged to file a complaint with the Office of the Dean of Students, as soon as possible after the incident takes place. A complaint may also be filed with the Title IX Coordinator and/or a Deputy Title IX Coordinator (contact information for the university's Title IX Coordinator and Deputy Title IX Coordinators is attached as Addendum "A").

B. A copy of the complaint will be forwarded by the individual taking the Complaint to the Dean of Students and the Title IX Coordinator. In actions involving allegations of sexual violence, the complainant may also file a separate complaint and/or a police report with the Department of Public Safety or other appropriate law enforcement agency. If a complaint is first filed in NJIT's Department of Public Safety, the department will forward a copy of the complaint/report to the Title IX Coordinator and the Dean of Students if the complainant or alleged violator is a student.

C. The university's Title IX Coordinator will oversee all investigations of Title IX complaints, regardless of where they are filed and/or with whatever university office they are filed. However, a student may contact the primary Title IX Coordinator at any time. The Title IX Coordinator’s contact information is listed below, and Deputy Title IX Coordinators are listed on Addendum "A", attached.

Title IX Coordinator

Ethics Liaison Officer and Title IX Coordinator
Office of General Counsel, Fenster 480
(973) 642-4285
(973) 803-8579

4. INVESTIGATIVE PROCEDURES:

A. The university’s Title IX Coordinator or designee shall conduct a prompt, thorough, and impartial inquiry into any reports of sexual harassment and/or sexual violence and
determine, consistent with State and local law, whether appropriate law enforcement or other authorities should be notified. During the fact-finding, both the complaining student and the accused individual will have equal opportunity to share any information, including verbal testimony, written documents, and supporting witnesses, in separate meetings before a final determination is made. The student bringing the complaint and the accused individual may each be assisted by an advisor of his or her choice (which may be a union representative). In any judicial hearing or disciplinary proceeding, the hearing administrator may accommodate any student(s) with concerns for the personal safety, well-being, and/or fears of confrontation during the hearing by providing appropriate and equal accommodations in the hearing process as determined to be appropriate.

B. **Time for Completion:** An investigation and/or disposition should generally be completed as soon as possible and generally within 30 to 60 days of the date a complaint is filed with the university. All participants in the investigation shall be informed of the prohibition against retaliation.

C. **Mediated Resolution:** With the consent of both parties, any claim of sexual harassment may be mediated. However, claims of sexual violence shall not be subject to a mediated resolution.

D. **Representation Rights:** The student bringing the complaint and the accused, if a student, may each be assisted by an advisor of his or her choice during any investigative meeting, pre-hearing conference or informal or formal hearing. The role of an advisor is to accompany the student during conferences or hearing proceedings and/or assist him or her with any hearing or conference preparations. The advisor may not participate directly in any proceedings or represent any student involved. Any cost associated with the participation of an advisor is the responsibility of the student.

E. **Steps to Preserve Neutral Environment:** During an investigation, at the request of a complainant, the university may take action to prevent unwanted contact with the accused respondent, including, but not limited to, transfer of the complainant and/or the respondent to alternative classes or a work site, and/or university housing, if such alternatives are available and feasible. Such actions shall not be construed as a predetermination as to the underlying allegations, nor should they disproportionately impact the complainant. The university also may determine that interim action(s) may be necessary to stop or prevent any further harassment from occurring or preserving a neutral environment.

F. **Cooperation of Complainant:** The university will attempt to obtain consent from the individual filing the complaint before beginning an investigation. However, there may be some instances when the university may pursue an investigation regardless of the requests of the complaining party not to proceed, if it is necessary to provide a safe and nondiscriminatory environment. If the complaining party chooses not to, or is unable to participate in the investigation process, the university's ability to respond to the complaint may be limited.
G. **Prohibition Against Knowingly Filing False Information:** Any individual who knowingly provides false information regarding the filing of a complaint or report of sexual harassment and/or sexual violence or during the investigation of such a complaint or report may be subject to discipline or legal action. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated in the investigation.

H. **Ability to Proceed with Investigation:** The university reserves the right to determine whether the University is not able to pursue alleged violations of this policy under appropriate circumstances, including, but not limited to, a determination that an effective investigation is not feasible because of the passage of time, because the respondent is no longer a NJIT student or employee and it lacks the ability to proceed with an investigation, or because it is determined by the Title IX Coordinator and the Dean of Students, in consultation with the investigator that there is no basis to proceed.

I. **Confidentiality of Proceedings:** While the University cannot guarantee complete confidentiality, it will make every effort to respect the privacy of the parties consistent with its obligation to investigate and respond appropriately to charges of sexual harassment and sexual violence. The University strives to treat all students with equal care, respect, and dignity and will to the best of its ability, preserve the privacy of all students involved.

Anonymous complaints (those where the complaining party does not identify him or herself) may be processed under this Policy unless the university makes the determination that the available information, or lack thereof, renders an investigation impossible or unfeasible. As appropriate, complaints will also be reported to the Department of Public Safety for inclusion in the annual campus crime report.

J. **Notification of Findings:** The investigation will result in a written report which shall state the allegations and the issues, the positions of the parties, a summary of the evidence, findings of fact, and a determination as to whether the Complaint has been substantiated and whether university policy has been violated. The standard to be employed for complaints of sexual misconduct of any type shall be by a preponderance of the evidence, (e.g. is it more likely than not that the alleged misconduct occurred.) The report shall be referred to the Dean of Students (if the accused is a student) or the President of NJIT or his designee (if the accused is an employee). If the investigation was conducted by the Dean of Students Office, the report shall be referred to the Vice President of Academic and Student Services. Disciplinary measures shall be considered by the Dean of Students, or the Vice President of Human Resources, as appropriate.

K. **Sanctions:** Sanctions that may be imposed if a finding is made that sexual harassment and/or sexual violence has occurred include, but are not limited to, suspension, expulsion of student(s) or termination from university employment. Additionally, the

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1 Information on reports of incidents of sexual violence that are made to the Department of Public Safety shall be documented in accordance with the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act. Such information will be used to report campus crime statistics as required by the Act.
investigator and/or the hearing officer may recommend education and training, and/or remedial measures such as separation of the parties.

If the accused is a student, any disciplinary action shall be processed through the Student Professional Conduct Code. If the accused is an employee, such employee may challenge any determination and/or the sanctions imposed through the applicable grievance procedure.

L. **Right of Appeal:** The student bringing a complaint of sexual harassment and/or sexual violence, and the accused student shall each be afforded one single opportunity to appeal decisions by the investigator, to the Vice President of Academic and Student Services or his/her designee.

M. **Written Records to be Maintained:** The Title IX Coordinator shall maintain a written record of sexual violence and harassment complaints received. Such records shall be maintained as confidential records to the extent lawful and appropriate. The Federal Education Rights and Privacy Act (FERPA) permits the university to disclose the outcome of any student conduct proceedings to a complaining party without prior written consent when the disclosure is to a victim of an alleged crime of violence including sexual violence. Furthermore, FERPA permits the university to notify the student filing the complaint of any sanctions assigned to another student that may affect him or her.

5. **COORDINATION WITH LAW ENFORCEMENT:**

In cases of possible criminal behavior including sexual violence, individuals are also encouraged to promptly file a report by contacting NJIT’s Department of Public Safety at (973) 596-3111, or by visiting its campus headquarters. The Department of Public Safety is not a confidential resource, therefore any report may require a criminal investigation. Although complete confidentiality cannot be guaranteed, the Department of Public Safety strives to treat all persons with equal care, respect, and dignity and will to the best of its ability, preserve the privacy of all persons involved.

In situations where an arrest is made, the Dean of Students will work in conjunction with the Department of Public Safety and/or the Essex County Prosecutor’s Office to support any relevant court mandates which affect the campus or accused student’s status. However, student conduct proceedings may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus at the discretion of the Dean of Students. Prior determinations made or sanctions imposed under these procedural standards are final. Determinations or sanctions will not be subject to change because criminal charges arising out of the same facts giving rise to violation of university policies, rules, and/or regulations are later dismissed, reduced, or resolved in favor of or against the criminal law defendant.
6. **PROHIBITION ON RETALIATION:**

Retaliation against an individual for reporting a complaint or an individual cooperating in an investigation is strictly prohibited by NJIT and Title IX. Retaliation is a serious violation which may subject the offenders to sanctions, regardless of whether or not the complaint has been substantiated.

7. **CONFIDENTIAL RESOURCES/COUNSELING:**

NJIT provides opportunities for support and assistance and encourages students who are the victims of sexual harassment and/or sexual violence to seek professional help and support. Available confidential resources are listed below. Reporting any allegations of sexual harassment or sexual violence to any of the resources below will not result in an investigation without the consent of the student providing the information, but may be forwarded to Department of Public Safety anonymously for inclusion in the annual campus crime report.

NJIT Center for Counseling and Psychological Services
Campbell Hall, Room 205
(973) 596-3414

NJIT Student Health Services
323 Martin Luther King Blvd.
Newark, NJ 07102-1982
(973) 596-3621

UMDNJ Crisis Counseling
215 South Orange Avenue
Newark, NJ 07103
(973) 972-1325

The confidentiality of information provided to these sources is protected by law and a student’s personal information will not be disclosed without the student’s permission.

**REVIEW:**

Holly Cotton  5/6/13  
General Counsel  

President  5/7/13  
