



New Jersey Institute of Technology

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University Policies

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Sponsoring Functional Areas: Senior Vice President of Human Resources and Institutional Access

Title: Policy Prohibiting Discrimination and Harassment

This Policy Prohibiting Discrimination and Harassment ("Policy") replaces and supersedes the University's Anti-Discrimination and Anti-Discriminatory Harassment Policy (last updated August 31, 2017). This policy reflects NJIT's good faith efforts to synthesize federal anti-discrimination laws with New Jersey state laws.

I. INTRODUCTION

New Jersey Institute of Technology (NJIT) is committed to providing a welcoming living, learning and working environment free from unlawful discrimination and harassment based upon Protected Classes (as defined in Section III). NJIT values civility and believes that all University members share the responsibility to treat one another with dignity and respect. Any form of discrimination or harassment that interferes with opportunities for University members to fully participate in the academic and work environment will not be tolerated. This Policy discusses the University's prohibition against discrimination and harassment as well as retaliation based upon the exercise of rights within this Policy.

II. SCOPE

This Policy applies to all students and employees of the University, and to the extent reasonably possible non-employees who transact business on University grounds, such as contractors, visitors, business partners and third-party vendors. Faculty should additionally refer to the Faculty Handbook. Employee rights and obligations pursuant to applicable collective bargaining agreements are not impaired by these procedures. Reports of misconduct outside the scope of this Policy may be addressed under other University Policies.

This Policy does not apply to sexual harassment as defined by Title IX of the Education Amendments Act of 1972 (Title IX) including sexual assault, dating violence, domestic violence and stalking (collectively, "Prohibited Conduct under Title IX"). Prohibited Conduct under Title IX, and other forms of sexual misconduct, is governed by the University's [Sexual Misconduct and Title IX Policy](#) and is applicable to students, employees, third party vendors and visitors.

III. POLICY

In accordance with Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, the New Jersey Law Against Discrimination (NJLAD), the Americans with Disabilities Act (ADA), and other applicable laws, the University strictly prohibits unlawful discrimination, harassment and retaliation by or against any NJIT student or employee on the basis of race, color, creed, national origin, nationality, ancestry, religion, sex, pregnancy, age, disability, marital status, gender identity or expression, affectional or sexual orientation, military service, veteran status, atypical cellular or blood trait, an individual's

genetic information, status as a domestic violence victim/survivor or any other category protected by federal, state or local laws (collectively referred to as "Protected Classes" or "Protected Characteristics").

The prohibition on discrimination, harassment and retaliation 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. Discrimination, harassment and retaliation are prohibited on campus and at University-sponsored events. Interactions that occur off campus but have an impact on the academic or workplace environment may also be covered by this Policy.

A. PROHIBITED CONDUCT

All NJIT students and employees are entitled to an academic and workplace environment that is free from discrimination, harassment, and retaliation. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include relevant, but controversial or sensitive, subject matters protected by academic freedom. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of this Policy, though supportive measures will be offered to those impacted, and the University will implement remedies addressing the larger community, as appropriate.

1. Discrimination

Discrimination is intentional differential treatment with respect to an individual's employment or participation in a University education program or activity based upon the individual's actual or perceived Protected Class(es) and that:

- Excludes an individual from participation in;
- Denies the individual benefits of; or
- Otherwise adversely affects a term or condition of a person's employment or participation in a University program or activity.

2. Discriminatory Harassment

Discriminatory harassment is unwelcome conduct on the basis of actual or perceived Protected Class(es), which, based on the totality of the circumstances,

- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from employment or an NJIT program or activity.

Additional Guidance on Discriminatory Harassment

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

- a. The Respondent¹ can be Complainant's² supervisor, a supervisor in another area, an agent of the employer, a co-worker, a subordinate, or a non-employee.

¹ "Respondent" is defined as an individual who is alleged to have engaged in Prohibited Conduct.

² "Complainant" is defined as an individual who has allegedly been subjected to conduct that could constitute Prohibited Conduct under this Policy.

- b. The Complainant does not have to be the person harassed but can be anyone impacted by the offensive conduct.
- c. Examples of discriminatory harassment include, but are not limited to,
 - i. Physical conduct including unnecessary or unwanted physical contact, blocking someone's path or impeding movement, physical assault, or deliberate destruction of property.
 - ii. Non-Verbal conduct including display of offensive material or objects, suggestive or insulting gestures or sounds.
 - iii. Verbal conduct including innuendo or other suggestive, offensive, or derogatory comments or jokes about a Protected Class(es); threats; or intimidation.

3. Disability Discrimination

In accordance with the requirements of Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and NJLAD, discrimination against qualified individuals on the basis of a disability in employment, services, programs or activities is prohibited. Disability discrimination occurs when an employee, applicant, or student with a disability is treated less favorably because of a disability. It also occurs when an employee, applicant or student is treated less favorably because of a history of disability, a perceived physical or mental impairment, or a relationship with a person with a disability.

The University will provide reasonable accommodations to a qualified employee, applicant or student with a disability, unless doing so would be unreasonable in the circumstances ("undue hardship"). Requests for reasonable accommodations are to be processed under the University's Reasonable Accommodation Policy and the procedures outlined by the [Office of Accessibility Resources and Services](#).

B. ENFORCEMENT

The University will fully investigate all reports of Prohibited Conduct in accordance with the procedure outlined below, taking immediate interim and corrective action in cases where the report warrants such action. Individuals found to have engaged in Prohibited Conduct shall be subject to appropriate disciplinary or other corrective action.

All employees who witness or have tangible evidence of Prohibited Conduct 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. 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. All NJIT students are expected to cooperate fully and honestly with the University in its investigation; failure to cooperate may result in disciplinary charges under the Code of Student Conduct.

C. REPORTING

Any member of the University community who believes that they have been subject to Prohibited Conduct, or who has witnessed others being subjected to Prohibited Conduct is encouraged to submit a report immediately after the conduct or as soon as possible thereafter to the following:

Department of Institutional Access (DIA)

Fenster Hall Rooms 158-159

Email: institutional-access@njit.edu

Phone: (973) 596-3446

Online Reporting: njit.edu/access

The Assistant Vice President (AVP) of Institutional Access, or their designee, will inform the Office of the General Counsel of the reported information. If the Respondent is a student, the AVP of Institutional Access, or their designee, will also inform the Office of the Dean of Students (ODOS).

Concerns about NJIT's application of this Policy or compliance with federal civil rights laws may also be addressed to:

Office for Civil Rights (OCR)	Equal Employment Opportunity Commission (EEOC) Newark Office
200 Independence Avenue, S.W. Washington, D.C. 20201 Toll Free Call Center: 1-877-696-6775 Email: ocr@ed.gov Website: https://www.hhs.gov/ocr/index.html	Two Gateway Center 283-299 Market Street, Suite 1703 Newark, NJ 07102 Phone: (800) 669-4000 Email: info@eeoc.gov Website: https://www.eeoc.gov/

1. Mandatory Reporting

Supervisory personnel and employees whose positions involve regular interaction with students must promptly report to DIA any relevant information about Prohibited Conduct that they witness or become aware of. This includes the name(s) of the individual(s) who made the report, the alleged Complainant, the alleged Respondent, and any witnesses, if known.

2. Student Reports

Reports involving student Respondents may be reviewed in coordination with the ODOS to determine the applicable policy(ies) and grievance procedures.

3. Reporting Crimes

Individuals that believe they may be a victim of a crime have the right, and are encouraged, to file a report with the appropriate law enforcement agency and NJIT will assist in contacting law enforcement if requested. Questions on campus may be directed to:

NJIT Department of Public Safety

154 Summit Street

Newark, NJ 07102

Non-Emergency: 973-596-3116

Emergency: 973-596-3111

IV. PROCEDURES

Upon receiving notification of Prohibited Conduct, the AVP of Institutional Access, or their designee, shall assign an investigator to conduct a prompt, thorough, equitable and impartial investigation into the alleged conduct, maintaining confidentiality to the extent possible. The role of the investigator is to gather information through interviews with Complainant, Respondent, and relevant witnesses, as well as collect available evidence, including electronic and social media communications, documents, photographs, and/or communications between the Parties³. A Complainant or Respondent may raise concerns regarding the assigned investigator if there is a perceived or actual bias or conflict of interest. A written request may be sent to the Senior Vice President of Human Resources and Institutional Access, or their designee, within five (5) days of notification of the investigator to assess the concern and determine whether reassignment is appropriate.

In certain circumstances, and with the voluntary agreement of all Parties in a complaint, the AVP of Institutional Access, or their designee, may determine that informal or alternate resolution is more appropriate than the formal investigation process.

A. ADVISOR⁴

Employees: A Party who is represented by a labor union may elect to have their respective union representative present during any stage of the resolution process. A Party who is a non-aligned employee may elect to have a non-attorney advisor present during any stage of the resolution process.

Students: A Party may elect to have a non-attorney Advisor present during any stage of the resolution process.

Advisors should help the Parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so. NJIT may remove or dismiss Advisors who do not abide by the restrictions on their participation or who are otherwise disruptive. The Advisor may meet with the AVP of Institutional Access or designee in advance of any participation in any meeting or proceedings to understand the expectations of the role, privacy, and appropriate decorum. Advisors are expected to maintain the confidentiality of the records NJIT shares with them. NJIT may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by NJIT's confidentiality expectations.

³ "Parties" are defined as the Complainant(s) and Respondent(s), collectively.

⁴ The Advisor cannot have institutionally conflicting roles, such as serving as an administrator with an active role in the matter or as a supervisor responsible for monitoring and implementing sanctions. An Advisor who is also a witness in the process may present a risk of bias or conflict of interest. A Party who chooses an Advisor who is also a witness can anticipate that issues of potential bias may be explored by the Decision-Maker.

B. ACCOMMODATIONS DURING THE RESOLUTION PROCESS

NJIT is committed to providing reasonable accommodations and support to students, employees, or others with disabilities to ensure equal access to NJIT's resolution process. Anyone needing such accommodations or support should contact the AVP of Institutional Access who will work with the Office of Accessibility Resources and Services (OARS) to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

C. FORMAL INVESTIGATION

1. When possible, the investigator will interview Complainant, identify any witnesses to the allegations, and review any additional evidence prior to interviewing Respondent.
2. The investigator will provide notice of allegation(s) to Respondent and respective Union representative, if applicable. The investigator will interview Respondent and provide an opportunity to respond to Complainant's allegations, provide additional evidence, and identify relevant witnesses to the allegations.
3. The investigator will conduct additional fact gathering as warranted. This may include:
 - a. Follow-up interviews with Complainant and/or Respondent;
 - b. Interviews of witnesses with relevant information; and
 - c. Reviews of documents, communications, records, or other inculpatory or exculpatory evidence.
4. At the conclusion of investigation, the AVP of Institutional Access, or their designee, shall determine whether Prohibited Conduct occurred based on the preponderance of the evidence standard (or more likely than not). The determination with the substantiating basis will be provided in writing to the Senior Vice President for Human Resources and Institutional Access and the Vice President(s) of Complainant and Respondent. If the allegation involves a student, the determination will be forwarded to the Senior Vice President of Student Affairs. The AVP of Institutional Access, or their designee, will notify Complainant, Respondent, and the Union representatives (if any) of the determination in writing. The determination will be inclusive of an executive summary of the findings. It is expected that the investigation phase will take up to thirty (30) business days but may be extended for good cause with notice to the Parties.
5. **Withdrawal of Allegations**

If Complainant decides to withdraw allegation(s) of Prohibited Conduct or requests to take no action throughout the procedures outlined in this Policy, the request 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. The AVP of Institutional Access or their designee will determine whether to initiate or continue with a formal process based on the nature of the allegations, whether there is a pattern of allegations, and the availability of evidence.

Complainant will be notified if the University is continuing with the grievance procedures but will not be required to participate in the process.

D. INFORMAL RESOLUTION

Informal resolution is a voluntary process that may result in the Parties and NJIT agreeing on a resolution of the allegations of a formal complaint in lieu of an investigation and/or adjudication under the formal investigation process. Informal resolution is a process whereby Parties can participate in a search for fair and workable solutions. The Parties may agree upon a variety of resolutions, including but not limited to modification of work assignments, training for a department, or an apology.

NJIT will not require the Parties to participate in an informal resolution process. Either Party can decide to terminate the informal resolution process at any time before it is completed and then the formal process to determine responsibility will resume. Any information obtained during the informal resolution process may be used during the resumed formal process.

Informal resolution may only take place with the consent of the AVP of Institutional Access or their designee, and with written consent from the Parties of their voluntary participation. If the informal resolution process is successful, then the matter will be considered closed. If a mutually acceptable resolution cannot be reached during a period of up to thirty (30) business days, which may be extended for good cause, the formal process may resume.

E. SANCTIONS

Employees: Should an employee be found responsible for engaging in Prohibited Conduct, the matter will be referred to the Senior Vice President of Human Resources and Institutional Access following consultation with the appropriate University officers who will provide counsel as to appropriate sanction(s). Sanctions may include, but are not limited to, termination, suspension, probation, reprimand, warning, directed counseling and/or mandatory education and training.

Students: Should a student be found responsible for engaging in Prohibited Conduct, the AVP of Institutional Access or their designee may consult with the ODOS for sanction consideration, including but not limited to disciplinary record review. Sanctions may include, but are not limited to, expulsion, suspension, university standing at risk (USAR), loss of privileges, restitution, disciplinary probation, disciplinary warning, and/or educational or restorative sanctions.

F. APPEALS

A Complainant or Respondent may appeal the written determination issued at the conclusion of an investigation and/or disciplinary sanction. An appeal is not a rehearing of the matter. The appeal process is limited to a review of the record to determine whether specific grounds for appeal are met.

1. Filing an Appeal

- a. The appeal must be submitted in writing to the AVP of Institutional Access no later than five (5) business days after notice of determination.

- b. The appeal must clearly state the ground(s) for appeal and include a written explanation supporting each asserted ground.
 - c. Appeals that do not identify one or more permissible grounds will be dismissed.
- The non-appealing party will be provided with a copy of the appeal and an opportunity to submit a written response within five (5) business days.

2. Grounds for Appeal

An appeal may be filed on one or more of the following bases:

- a. Procedural Irregularity that affected the outcome of the matter;
- b. Newly acquired evidence, which was not reasonably available at the time of the decision regarding responsibility, that could affect the outcome of the matter; or
- c. Conflict of interest or bias by the investigator(s) and/or decision-maker that affected the outcome of the matter.

All appeals will be reviewed within ten (10) business days by the Senior Vice President for Human Resources and Institutional Access, or their designee, whose decision shall be final and binding.

Nothing in this Policy prevents a unionized employee from utilizing the applicable grievance process set forth in the governing Collective Bargaining Agreement to challenge disciplinary action or violations of the terms of the Collective Bargaining Agreement.

G. PROHIBITION AGAINST RETALIATION

No one will be subject to any form of discipline, reprisal, intimidation or retaliation for good faith reporting of incidents of discrimination or harassment of any kind, including but not limited to, pursuing a formal or informal complaint, or cooperating in investigations. Any University member, regardless of position or title, whom the Department of Institutional Access or their designee 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.

H. FALSE ALLEGATIONS AND ACTIONS

All Parties and witnesses are prohibited from knowingly making materially false statements or submitting materially false information in connection with a report, complaint or investigation. A person who makes a materially false statement or knowingly submits materially false information may be subject to discipline under applicable University policies. A complaint that is dismissed, not substantiated, or results in a finding of no violation does not, by itself, establish that a report was made in bad faith. Repeated submissions of allegations that the University determines were knowingly false may support a finding of bad faith and be subject to applicable University policies.

V. ADDITIONAL CONSIDERATIONS

A. EDUCATION AND TRAINING

As a necessary, proactive measure of policy integrity and enforcement, the University will provide annual and continuing education and training for members of the community to ensure an understanding of this Policy and applicable laws. University efforts regarding education and training on discrimination, harassment, retaliation, and related topics as well as information and guidance related to this Policy may be obtained from the Department of Institutional Access.

B. CONFIDENTIALITY

While all reasonable efforts will be made to respect the privacy of all Parties and the evidence associated with the investigation and/or review of Prohibited Conduct, the University is obligated to fully address all charges of such conduct and cannot guarantee complete confidentiality. A comprehensive investigation often requires the University to discuss information while interviewing the Parties.

C. ELECTION OF REMEDIES

This Policy and its procedures do not prevent a Complainant from filing a complaint with an external agency or pursuing any rights available under the law. If a Complainant initiates an external process at any point, the University's Office of General Counsel will manage the University's response. The University's process will continue to operate through to resolution as set forth in this Policy.

D. EMPLOYEE CONDUCT NOT PROHIBITED BY THIS POLICY

This Policy is not intended to preclude or dissuade employees from engaging in legally protected activities including the New Jersey Employer-Employee Relations Act, 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.