



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

**Number:**  
**Date of Issue: May 2013**  
**Updated: March 2015**

***Subject: Sexual Misconduct Policy for Students***

## **1. POLICY**

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, vendors, visitors and anyone else with a direct link to NJIT 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 misconduct, domestic violence, dating violence and stalking.

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. Sexual misconduct of students interferes with students' rights to receive an education free from discrimination and, in some instances, may be a crime. Title IX of the Education Amendments of 1972 (Title IX) and corresponding regulations, prohibit discrimination on the basis of sex and/or gender in educational programs or activities operated by recipients of Federal financial assistance. In addition, NJIT is committed to compliance with other corresponding legislation, including the Clery Act, the Violence Against Women Act, and the Campus Sexual Violence Elimination Act.

This policy applies to (1) students, faculty, staff, officials, vendors, visitors and anyone else with a direct link to NJIT; (2) the conduct listed below; and (3) all NJIT locations, including off campus locations wherein NJIT programs and/or activities occur.

In compliance with the Clery Act, NJIT publishes an Annual Security Report every October. The current report can be found on the NJIT Public Safety's website, <http://www.njit.edu/publicsafety/>.

NJIT will make available to students and employees ongoing training and other educational opportunities regarding the prevention of sexual misconduct, domestic violence, dating violence, and stalking. Specific training programs will be identified that will focus on Title IX and corresponding legislation.

NJIT takes any violation of sexual misconduct, domestic violence, dating violence, and stalking very seriously. A student who violates this policy will be subject to disciplinary action as outlined in the NJIT Code of Student Conduct, which includes expulsion. Employees who violate this policy with respect to students are subject to discipline up to and including termination. NJIT strictly prohibits retaliation against anyone who has reported an allegation of sexual misconduct, domestic violence, dating violence and/or stalking or who has assisted or cooperated in an investigation into the allegation.

## **2. DEFINITIONS**

### **A. Sexual Misconduct**

#### **1. Sexual Harassment**

Sexual harassment is a form of gender-based discrimination which violates Federal and State law as well as NJIT 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 it unreasonably interferes with an individual's educational performance, or creates an intimidating, hostile or offensive educational environment.

Sexual harassment occurs when any one of the following conditions is present:

- a. Submission to or rejection of such conduct is made explicitly or implicitly a term or condition of an individual's educational opportunity.
- b. Submission to or rejection of such conduct is used as the basis for determining academic performance, evaluation, grades, advancement or continuation as a student.
- c. Such conduct that has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile or offensive academic, educational or living environment.
- d. Prohibited conduct includes deliberate, repeated, unsolicited verbal comments; physical gestures or actions of a sexual or physical nature; and solicitations for sexual favors.

#### **2. Sexual Violence**

Sexual violence takes many forms including sexual assault or attempted sexual assault, as well as any unwanted sexual contact or threats, and may additionally constitute a crime under the New Jersey Criminal Code.

Sexual assault is an actual, attempted, or threatened sexual act committed through force, threat, or intimidation with another person without that person's consent. Sexual assault occurs when one person penetrates, attempts to penetrate, or threatens to penetrate the

other by any means, including foreign objects, whether vaginally, anally or orally without the consent of the other person.

Sexual contact occurs when one person touches the intimate parts of another person's body, even through clothes, without that person's consent.

Lewdness involves the perpetrator exposing his/her intimate parts without a person's consent to obtain sexual gratification or to degrade or humiliate the other person or to obtain power and control over the other person.

### **3. Consent**

Consent is a mutual and voluntary agreement to engage in a sexual activity, which is informed and freely given. Consent once given may be withdrawn. 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, unconsciousness, or because of an intellectual or other disability that prevents the individual from having the capacity to give consent. Silence does not constitute consent. Past consent of sexual activities does not imply ongoing future consent; nor does consent to engage in one type of sexual activity imply consent for various other acts of sexual activity. Consent to engage in sexual activity with one person does not imply consent to engaged in sexual activity with another person.

### **4. Domestic Violence**

Indictable or non-indictable crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

### **5. Dating Violence**

Dating violence is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant and where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

## **6. Stalking**

Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his/her safety or the safety of others or suffer substantial emotional distress.

## **3. TITLE IX COORDINATOR**

The Title IX Coordinator is responsible for the implementation of the Title IX program for NJIT and for coordinating NJIT's compliance with the regulations of Title IX, the Clery Act, the Violence Against Women Act, and the Campus Sexual Violence Elimination Act. The goal of the program administered by the Title IX Coordinator includes the prevention of any student being excluded from participation, being denied the benefits of or, or being subjected to discrimination in any educational program or activity at NJIT. These responsibilities include monitoring NJIT's Sexual Misconduct Policy for Students, which includes publicizing the Title IX Coordinator's contact information, assuring dissemination of the grievance procedures, investigating and/or overseeing the investigation of complaints, and continuous monitoring of overall NJIT activities for compliance with Title IX and corresponding legislation.

The NJIT Title IX Coordinator is listed below:

Dr. Marybeth Boger  
Dean of Students and Campus Life  
Title IX Coordinator  
Campus Center, Room 255  
Office Telephone: 973-596-3466  
Email Address: boger@njit.edu

NJIT's Title IX Coordinator will oversee all investigations of student sexual misconduct, domestic violence, dating violence and stalking complaints, regardless of who they are filed with and/or in which NJIT office they are filed.

## **4. A STUDENT COMPLAINANT'S RIGHTS**

Any student who wishes to report an incident of sexual misconduct, domestic violence, dating violence, or stalking, whether the incident occurred on or off campus, shall have the following rights and options:

- a. Go to Court to file a domestic violence complaint requesting a restraining order against the perpetrator, and/or an order directing the perpetrator to leave your household, building, school, college or workplace.
- b. Sign a criminal complaint with law enforcement for threats, assault and battery, or other related offenses.

- c. Seek medical treatment; the NJIT Department of Public Safety and/or the Title IX Coordinator will arrange transportation for you to the nearest medical facility; NJIT Department of Public Safety is located on Summit Street, and may be contacted at 973-596-3116 for non-emergencies or 973-596-3111 for emergencies.
- d. Request law enforcement to remain at the scene until your safety is secured.
- e. Request that law enforcement assist you by transporting you to a safe place, such as a shelter, or a family or friend's residence.
- f. Request the Title IX Coordinator to assist you in obtaining reasonable accommodations on campus, such as changing residences, adjusting course schedules, or other academic accommodation.
- g. Receive a copy of the police incident report.

NJIT Public Safety: Summit Street  
 Non-Emergency: 973-596-3116  
 Emergency: 973-596-3111

Title IX Coordinator: Dr. Marybeth Boger  
 Campus Center, Room 255  
 Office: 973-596-3466  
 boger@njit.edu

**5. COMPLAINT/INVESTIGATIVE PROCEDURES:**

- a. If a student is a victim of sexual misconduct, domestic violence, dating violence and/or stalking, or has witnessed any of the above acts, it is strongly encouraged that the event be reported immediately. A student may make the report to the Title IX Coordinator located in Fenster Hall Room 480, the Dean of Students Office located on the second floor of the Campus Center, or the NJIT Department of Public Safety. Immediate actions that the complainant may wish to take are outlined in Attachment A.
- b. NJIT, through the Title IX Coordinator or designee shall conduct a prompt, thorough, and impartial inquiry into any reports of sexual misconduct, domestic violence, dating violence, and/or stalking and determine appropriate action to be taken. In the event that an investigation is initiated, the finding will be based on a preponderance of the evidence standard, meaning it will be determined whether it is more likely than not that the allegation of the misconduct occurred.
- c. During the fact-finding, both the complaining student and the accused perpetrator will have equal opportunity to impart any information, including verbal

testimony, written documents, and supporting witnesses, in separate meetings before an investigatory determination is made.

- d. The student bringing the complaint and the accused perpetrator may each be assisted by an advisor of his or her choice. 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 concerns regarding confrontation during the hearing by providing appropriate and equal accommodations in the hearing process as determined to be appropriate.
- e. Regardless of whether or not a student chooses to make an official report, participate in NJIT's disciplinary process, or file a criminal complaint, the following lists resources that are available to the victim. No student is required to utilize these resources, but NJIT provides them to offer help and support. NJIT will make every effort in helping students reporting sexual misconduct to securing the assistance that they request.

- 1. NJIT Center for Counseling and Psychological Services  
Campbell Hall, Room 205  
(973) 596-3414
- 2. NJIT Student Health Services  
Estelle and Zoom Fleisher Athletic Center, First Floor  
(973) 596-3621
- 3. Rutgers University Behavioral Health Care Crisis Counseling  
215 South Orange Avenue  
Newark, New Jersey 07103  
(973) 972-1325
- 4. Essex County Rape Care Center  
204 Claremont Avenue  
Montclair, New Jersey 07042  
(973) 746-0800

Essex County Rape Crisis Center: 1-877-733-CARE (2273)

Domestic Violence Hotline: 1-800-799-SAFE (7233)

National Dating Abuse Hotline: Text: LOVEIS (77054)

- f. The investigation and resolution of cases conducted at NJIT involving sexual misconduct, domestic violence, dating violence and/or stalking are maintained confidentially, subject to disclosure as provided in subpart (g). Information is shared internally on a need to know basis. Privacy of the records specific to the investigation is maintained in accordance with New Jersey law and the Federal

FERPA Act (Family Educational Rights and Privacy Act of 1974). The release of information to comply with the timely warning provisions of the Clery Act will not include the names of the victims or information that could easily lead to a victim's identity .

- g. At the conclusion of the investigative process, the complainant and accused perpetrator will be informed of the outcome of the investigation , including the finding, sanctions that may have been imposed, and the rationale for the findings. The complainant and the accused perpetrator should be notified as simultaneously as possible, and be advised of the appeal process as outlined in the NJIT Code of Student Conduct.
- h. Victims of sexual misconduct are not required to report an incident to law enforcement authorities. A student wishing to officially report an incident of sexual misconduct with the Title IX Coordinator, rather than law enforcement may do so by contacting the Title IX Coordinator.
- 1. Anyone with knowledge about an event of sexual misconduct is strongly encouraged to report it immediately to the Title IX Coordinator. All NJIT officers, deans, administrators, faculty, and other individuals who exercise, or who are perceived to exercise authority are required to report known incidents to the Title IX Coordinator immediately.

## **6. TRAINING**

The Title IX Coordinator will identify and oversee the implementation of mandatory training for students, faculty, staff, and administrators that will focus on Title IX and corresponding legislation. These programs will be offered continuously throughout the year, and will include awareness education, prevention and risk reduction techniques, bystander intervention information, and recognition of warning signals.

## **7. PROHIBITION ON RETALIATION:**

Retaliation against an individual for reporting a complaint or cooperating in an investigation is strictly prohibited by NJIT. Retaliation is a serious violation which may subject the offender(s) to sanctions, regardless of whether or not the original complaint has been substantiated.

**REVIEW:**

Holly C. Stea | jfr & 16  
General Counsel | Date

[Signature] | 3-24-15  
President | Date

**APPROVAL:**

[Signature] | \_\_\_\_\_  
Vice President for Human Resources | Date

[Signature] | 3/17/14  
Senior Vice President for Administration & Treasurer | Date

[Signature] | 3/17/15  
Provost and Senior Executive Vice President | Date

[Signature] | \_\_\_\_\_  
Technology & Business Development | Date

[Signature] | 3/17/15  
Vice President for Academic Support & Student Affairs | Date

[Signature] | 3-23-15  
Vice President for Real Estate Development & Capital Operations | Date

\*Policy amended 7/20/15 to reflect updated information regarding Title IX Coordinator.