Recognizing and Reporting Sexual Harassment and Related Misconduct

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Objectives

- Define discriminatory harassment (including sexual harassment)
- Review applicable laws and Rutgers’ policies
- Identify what type of conduct may constitute harassment
- Understanding your obligations as a Rutgers’ employee for reporting
- Resources
Federal Laws

Rutgers is subject to federal and state laws regarding sexual and gender-based harassment, discrimination, and misconduct, including:

• Title IX
• Title VII
• Clery Act
• Violence Against Women Act
Title IX

Title IX of the Education Amendments of 1972 is a federal civil rights law that prohibits discrimination on the basis of sex in any federally-funded education program or activity.

- Includes sexual harassment, sexual assault and other types of sexual misconduct, and gender-based discrimination.
Title VII of the Civil Rights Act of 1964

Prohibits employers with 15 or more employees from discriminating on the basis of race, color, sex, religion or national origin.
The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics is a federal statute that requires all colleges and universities that participate in federal financial aid programs to keep and disclose certain timely and annual information about campus crime and security policies.
Violence Against Women Reauthorization Act (VAWA)*

- Amendments to the Clery Act and the collection and reporting of crime statistics:
- Adds stalking, dating violence and domestic violence
- Requires prompt, fair and equitable proceedings to include:
  - Advisor of student’s choice
  - Simultaneous written notice of outcome
- Training and education requirements
  - For all incoming students and staff
  - For those involved in the investigation and adjudication process

* Lapsed as of Dec. 2019
State Law: NJ Law Against Discrimination

Prohibits differential treatment based on:

- Race
- Creed
- Color
- National origin
- Nationality
- Ancestry
- Age
- Sex (including pregnancy)
- Familial status
- Marital status
- Affectional or sexual orientation
- Gender identity and expression
- Domestic partnership and civil union status
- Genetic information
- Atypical hereditary cellular or blood trait
- Liability for military service
- Mental or physical disability, including perceived disability and AIDS and HIV status.
Policy Prohibiting Discrimination and Harassment

Rutgers is committed to a working and learning environment for all faculty, staff and students that is free from discrimination and harassment.

Discrimination and harassment compromise the integrity of the university and unfairly interfere with the opportunity for all persons to fully participate in the academic, work and living environment at Rutgers.

The university recognizes the human dignity of each member of the Rutgers community and believes that each member has a responsibility to promote respect and dignity for others so that all employees and students are free to pursue their educational and work goals in an open environment, participate in the free exchange of ideas, and to share equally in the university’s employment and educational opportunities.
Policy Prohibiting Discrimination and Harassment

• Sex/Gender
• Religion
• Color
• National origin
• Ancestry
• Age
• Race
• Sexual orientation
• Disability
• Marital/veteran status
• Domestic partnership/civil union status
• Gender identity and expression
• Atypical hereditary cellular or blood trait
Student Policy Prohibiting Sexual Harassment, Sexual Violence, Relationship Violence, Stalking and other Related Misconduct

• Covers misconduct committed by a current Rutgers University student that either:
  • occurs on any University campus or in connection with University programs or activities; or
  • creates a hostile environment for University students; or
  • involves a Complainant who is a current University student.

• Articulates an affirmative definition of consent

• Defines all violations covered by the policy

• Defines “responsible employees” and “confidential employees”

• Explains procedures for investigation & adjudication of complaints
Sex Discrimination

Sex discrimination includes all forms of sexual harassment, including verbal sexual harassment and sexual violence. It also includes:

- Unequal pay based on gender
- Discrimination on the basis of pregnancy or parental status
- Unequal distribution of athletic funds
- Unequal admissions policies or practices
- Unequal access to/receipt of financial aid
Sexual Harassment

Sexual harassment is *unwelcome conduct of a sexual nature*. It includes:

- Requests for sexual favors
- Unwelcome advances
- Sexist comments
- Comments about someone’s body, sexual activity or sexual attractiveness
- Sexually suggestive touching, leering, gestures, sounds, comments, or displays of sexually suggestive objects
Types of Sexual Harassment

1. *Quid Pro Quo* – “This for That”
   ◦ Example: Offering a better grade in exchange for sexual favors

2. Hostile Environment Sexual Harassment
   ◦ In order to give rise to a sexual harassment hostile environment, the harassment must be sufficiently *severe, persistent or pervasive* that it adversely affects an employee or student’s work, education, or creates a hostile or abusive environment.
   ◦ For a one-time incident to rise to the level of harassment, it must be severe.
Examples of Hostile Environment

• Sexual innuendos, jokes, stories or comments
• Pornographic material, posters, and calendars that degrade women or men
• Use of sexual or vulgar language in conversation
• Staring or making suggestive or obscene sexual gestures with hands, face or body movements
• Unwanted letters, gifts or materials of a sexual nature
• Telling lies or spreading rumors about a person’s sex life
• Unwelcome patting, hugging or touching of a person’s body, hair or clothing.
Unwelcome Conduct

• Conduct is considered unwelcome if the person did not request it and considered the conduct to be undesirable or offensive.

• Unwelcome conduct may take various forms, including name calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful or humiliating.

• Unwelcome conduct doesn’t have to include the intent to harm, be directed at a specific target or involve repeated incidents.

• Unwelcome conduct can involve persons of the same or opposite sex.
Title IX does not prohibit discrimination on the basis of sexual orientation, BUT:

- LGBTQ students are protected from sexual harassment and sexual violence the same as all other students.
- Title IX prohibits gender-based harassment, which is harassment based on sex, sex-stereotyping, gender identity and gender-nonconformity.
- Discrimination and harassment based on sexual orientation are prohibited by state law and university policy.
Important Points: Sexual Harassment

• Harassment can occur regardless of biological sex or gender.

• The harasser can be the victim’s supervisor, an agent of the university, the supervisor in another area, a co-worker, a student or a non-employee.

• The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.

• Although the person being harassed may feel comfortable telling the offender that the behavior is unwelcome, doing so is not necessary for a finding of sexual harassment.
Important Points: Sexual Harassment

• There are situations where the victim is not comfortable or able to confront the harasser directly.
  • They have a right to speak with someone else instead (supervisor, unit head, EEO, Violence Prevention and Victim Assistance).

• Dealing with people from a range of different cultures can sometimes result in instances of unintentional sexual harassment.
  • Remember that what may be considered offensive within one culture may not be viewed as offensive within another.
  • In these circumstances, clarification of cultural norms and practices early on may help to prevent later claims of sexual harassment.
Communication

It is important to remember that what one person deems acceptable behavior can make another person uncomfortable.

Rutgers is a diverse community, requiring a sensitivity to and respect for other cultures:

- An older gentleman who is generous with hugs may make some co-workers uncomfortable
- Or a Muslim woman may be uncomfortable with shaking a male supervisor’s hand
Sexual Violence

OCR defines sexual violence as “an extreme form of sexual harassment.” It includes physical sexual acts perpetrated without consent. Examples are:

- Rape
- Sexual assault
- Sexual coercion
- Sexual contact with a person who is unable to consent due to incapacity or impairment
Sexual Intimidation

Sexual intimidation refers to:

◦ threatening behavior of a sexual nature directed at another person or group that reasonably leads that target(s) to fear for their physical well-being or to engage in sexual conduct for self-protection

◦ Examples: threatening to sexually assault another person or engaging in indecent exposure.
Sexual exploitation refers to non-consensual abuse or exploitation of another person’s sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. Examples of sexual exploitation include, but are not limited to:

- observing another individual’s nudity or sexual activity or allowing another to observe nudity or sexual activity without the knowledge and consent of all participants;
- non-consensual streaming of images, photography, video or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all participants;
- exposing one’s genitals in non-consensual circumstances; or
- inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.
Consensual sexual activity requires **clear** and **unambiguous** communication and **mutual agreement** for the act in which the participants are involved. Consent will be assessed objectively from the standpoint of a reasonable person.
Consent is...

- Freely given & informed
  - A sexual interaction is considered consensual when individuals willingly and knowingly engage in the interaction.

- Affirmative
  - Someone who is incapacitated cannot consent.
  - Silence or the absence of resistance is not the same as consent.

- Specific
  - Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Previous consent for sexual activity is not consent to sexual activity on a different occasion.
  - Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.
  - Consent can be withdrawn at any time.
Culture & Impact

- 2018 report finds that 20-50% of women students and >50% of women faculty/staff experience sexually harassing behavior in academia.

- Studies show SH undermines professional & educational attainment; mental & physical health.
Relationship violence refers to any act of physical, sexual, and/or psychological harm against an individual by a current or former intimate or romantic partner, or by a person with whom the victim shares a child in common. Intimate or romantic partners may be dating, cohabitating, married, separate or divorced, and may be of the same or different sex. Dating violence and domestic violence are both considered “relationship violence.”
Stalking refers to any course of conduct directed at a specific person that would cause a reasonable person to be fearful of serious harm or danger to themselves or to individuals close to them. Examples of stalking include:

- non-consensual communication and physical contact
- following or pursuing the other person
- waiting or showing up at locations visited by the other person
- spying in person or via cyber resources/social media
- trespassing or vandalism
- gathering of information about a person from others
- or manipulating and controlling behaviors such as threats to harm oneself or threats to harm someone close to the victim.
Important Points: Stalking & Relationship Violence

1. Stalking includes repeated harassment or threats that cause a target to feel fear.

2. Relationship violence is any pattern of abusive behavior against a current or former partner used to maintain control over that person.

3. Individuals stalked by a partner are more likely to face physical or sexual violence from that partner.

4. Ending all contact with someone who engages in stalking behavior is usually best.

5. Underrepresented students and employees such as LGBTQ, men, international and undocumented survivors experience unique issues associated with violence.
Sexual relationships that occur in the context of employment supervision or evaluation present special problems.

- The university strongly discourages sexual relationships between individuals where there is an imbalance of power in which one individual is in a position to make decisions which may affect the educational opportunities or career of the other.

- A supervisee’s "voluntary" participation in a sexual relationship with an individual in a position of power or authority does not alone demonstrate that the conduct was welcome.
Supervisor/Supervisee and Faculty/Student Relationships

Employees in romantic relationships must recuse themselves from decision making when the decisions at issue may have an impact on the employee or student with whom they are romantically involved.

Any individual who engages in consensual romantic or sexual relationship with someone over whom he or she has supervisory or educational responsibility must inform his or her immediate supervisor of the consensual relationship, so that the university can take action to make changes that eliminate the conflict of interest. *

*Policy currently under review
What is my role as an Employee?

- Support students and help them understand what resources are available if they or a friend report an incident.

- Report incidents of sexual harassment, sexual violence, relationship violence and stalking.
  - Any employee who is not a confidential employee must report observed, experienced, or known incidents to the Title IX Coordinator.
    - Via phone call, email, online reporting form, in-person meeting
  - Report all information you have, but do not do your own investigation.
  - Do not share details with your supervisor, co-workers, etc.
How do I support a student who discloses?

- **LISTEN.** Give them your undivided attention.
- **VALIDATE.** Acknowledge it might be difficult to share this information and thank them for telling you.
- **BE TRANSPARENT.** Share your reporting obligations/limits to confidentiality.
- **EMPOWER.** Allow them to lead the conversation.
- **REFER & REACH OUT.** Connect to a confidential resource:
  - VPVA, Student Wellness/Counseling, Health Services, Student Legal Services
- **CHECK IN.** Follow up on how they are.
Confidential resources exist for students to receive support services without requiring details to be reported. **RBHS has a new confidential resource with the Office for Violence Prevention & Victim Assistance.**

The RBHS VPVA can provide support to the RBHS community through:

- Confidential counseling in person and emotional support via phone
- Information about interpersonal violence, navigating the reporting process, and options to receive additional assistance and accommodations
- Information about how to support a victim/survivor
- Referral to other resources that best fit the student

VPVA can provide all available options and support the student in making an informed decision, while ensuring the student has a safe and confidential space to talk. **Call VPVA at 973-972-4636 or speak to the Confidential Counselor at kerry.camerer@rutgers.edu**
Confidential Resources

**On-campus:**
- RBHS Office for Violence Prevention & Victim Assistance (VPVA)
  
  [http://rbhs.rutgers.edu/uroweb/vpva](http://rbhs.rutgers.edu/uroweb/vpva)
  973-972-4636

- Student Wellness Program/Counseling
  
  [https://ubhc.rutgers.edu/swp/index](https://ubhc.rutgers.edu/swp/index)
  Newark: 973-972-5429
  New Brunswick: 732-235-5933

- Rutgers Health Services
  
  [https://www.rutgers.edu/health/student-health-services](https://www.rutgers.edu/health/student-health-services)
  Newark: 973-972-8219
  New Brunswick: 732-235-8993

- Student Legal Services
  
  [http://rusls.rutgers.edu](http://rusls.rutgers.edu)
  848-932-7402

**Off-campus:**
- Local off-campus sexual violence programs

- Middlesex County Center for Empowerment

- SAVE of Essex County

- Licensed mental health professionals

- Clergy

*If you’re not sure of someone’s ability to keep information confidential, ask them.*
The student asked me not to tell anyone. What should I do?

- Refer the student to a confidential resource.
- Explain your obligations as soon as they share a disclosure.
- Assure them that although you cannot promise confidentiality, you can promise privacy.
- You still must report all known information to the Title IX Coordinator.
- The Title IX Coordinator will only share details or personal on a need-to-know basis.
I reported, now what?

- Check in with the student and continue to provide support.

- The Title IX Coordinator will contact the student (usually via email) and inform them of:
  - Available medical services, counseling, and academic support services, whether on or off-campus
  - Options to file a criminal complaint and campus disciplinary procedures
  - Available interim remedies, such as housing and academic accommodations, no-contact order, campus ban
Will there be an investigation?

• Privacy is protected to the extent possible under the law.
• The University is required by law to respond/investigate, but that investigation will be limited by the information provided by the victim, and the victim’s interest in pursuing the complaint process.
• The Title IX Coordinator must balance confidentiality with the safety of other members of the University community.
  • Repeat offenders
  • Accused poses an imminent threat of danger to the complainant or the community
  • Accused has access to a vulnerable community
Retaliation against ANY participants in the process—accused, survivor, witnesses, reporting individuals—is prohibited.

- Retaliation refers to any act of intimidation against individuals who, in good faith, assert their rights to bring a complaint under University policy, including individuals who file a third-person report, or participate in an investigation, or protest the alleged conduct or retaliation.
- Retaliation can take many forms, including sustained abuse or violence, threats, and intimidation.
- Any individual or group of individuals, not just a Respondent or Complainant, can be responsible for retaliation.
- Retaliation is considered a separate offense from the original complaint, and will be considered independently from the merits of the underlying complaint.
How (else) can you help?

- Put VPVA/Title IX information on course syllabi
- Add VPVA resources in presentations
- Encourage students to attend VPVA events
- Invite VPVA to classes for discussions and presentations
- Reach out to collaborate
Title IX Coordinators

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Additional Title IX Resources

• WeRHere University Wide Sexual Violence Response
  Werhere.Rutgers.edu

• U.S. Department of Education, Office for Civil Rights (OCR)
  www2.ed.gov/about/offices/list/ocr/index.html

• Center for Changing our Campus Culture
  http://changingourcampus.org/