

Subject: **Policy Against Discrimination and Harassment**

Applies to: All Faculty, Staff and Students. Bargaining unit members may also refer to their collective bargaining agreements.

1. Preamble and Equal Opportunity Statement

This policy affirms the University of Rochester commitment to nondiscrimination, equal opportunity, and affirmative action in admissions, employment, access to and treatment in University programs and activities, in accordance with federal, state, and local laws and regulations. (Titles VI and VII of the Civil Rights Act of 1964, as amended; Executive Order 11246, as amended by Executive Order 11375; Revised Order No. 4; the Equal Pay Act of 1963, as amended; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1974; Titles VII and VIII of the Public Health Service Act; Title IX of the Education Amendments of 1972; the Americans With Disabilities Act (ADA) of 1990, and all applicable laws and ordinances of the State of New York, the City of Rochester, or other applicable regional governance.)

The success of the University of Rochester depends on an environment that fosters vigorous thought and intellectual creativity. It requires an atmosphere in which diverse ideas can be expressed and discussed. The University of Rochester seeks to provide a setting that respects the contributions of all the individuals composing its community, that encourages intellectual and personal development, and that promotes the free exchange of ideas.

To help establish and perpetuate an inclusive and open environment, all members of the University community are expected to support the University's Equal Opportunity Statement:

The University of Rochester values diversity and is committed to equal opportunity for persons regardless of age, color, disability, ethnicity, gender identity or expression, genetic information, marital status, military/veteran status, national origin, race, religion/creed, sex, sexual orientation, or any other status protected by law. Further, the University complies with all applicable non-discrimination laws in the administration of its policies, admissions, employment, and access to and treatment in University programs and activities.

(Questions on compliance with the Equal Opportunity Statement should be directed to the particular school or department and/or to the University's Equal Opportunity Coordinator, Kathleen Sweetland, University of Rochester, P.O. Box 270039, Rochester, NY 14627-0039. Phone: (585) 275-9125.) -- See HR Policy 100 The Equal Opportunity Coordinator also serves as the coordinator for grievances concerning claims of discrimination arising under Section 504 of the Rehabilitation Act of 1973, and Titles VI and IX of the Civil Rights Act of 1964.

II. Policy Against Discrimination and Harassment

Any behavior, including verbal or physical conduct, that constitutes discrimination against or harassment of any student, faculty or staff member of the University community in any form is prohibited.

Retaliation is prohibited in any form against a person because he or she complained about conduct reasonably believed to be discrimination or harassment.

III. Policy Enforcement

All members of the University community (including faculty, staff and students) and all visitors (including patients and vendors) to University facilities and property (including, but not limited to, the campus, including but not limited to River Campus, the Medical Center campus, Strong Memorial Hospital, Eastman Dental Center, the Laser Laboratory for Energetics, Eastman School of Music, Memorial Art Gallery and offsite offices of faculty physicians) and at University sponsored activities must comply with this Policy Against Discrimination and Harassment while on University premises or at University events.

The University is committed to preventing unlawful discrimination, harassment and retaliation. Upon learning that such conduct has occurred, the University will take the necessary corrective action to prevent such conduct from reoccurring in the future. Violation of the Policy may result in disciplinary action up to and including separation from the University and/or exclusion from University programs and facilities. Individuals who complain about or give information in any form about conduct they reasonably believe to be discrimination or harassment will be protected from retaliation for making a complaint, giving information or filing a Report.

The University can only act to prevent unlawful discrimination, harassment and retaliation from reoccurring in the future if it is aware of such conduct. Therefore, each member of the University community should report discrimination, harassment or retaliation in accordance with the procedures described in Section V.

The Policy is not intended to regulate the content of speech, discussion and debate in the classroom, on Campus or in any University forum. It is not intended to regulate artistic and visual arts expression. The University will protect academic freedom and artistic expression in administering the Policy. Using speech to discriminate against those protected by this policy or speech that creates a hostile learning, working or campus living environment for those protected by this policy is prohibited.

IV. Definitions/Examples

A. *Discrimination*

Discrimination is (1) any conduct (2) that adversely affects or impacts an individual's or group's ability to function and participate as a member of the University community (3) because of their age, color, disability, ethnicity, marital status, military status, national origin, race, religion, sex, sexual orientation, veteran status, or other status protected by law, or because of their perceived or actual affiliation or association with such individuals or groups. Discrimination includes any behavior that is unlawful discrimination under applicable New York State and/or federal law.

Examples of prohibited discrimination include, but are not limited to, exclusion from or denial of access to services and/or resources on the grounds of a person's age, color, disability, ethnicity, marital status, military status, national origin, race, religion, sex, sexual orientation, or veteran status.

B. *Harassment*

Harassment is (1) any unwanted conduct (2) that is intended to cause or could reasonably be expected to cause an individual or group to feel intimidated, demeaned, abused or fear or have concern for their personal safety (3) because of their age, color, disability, ethnicity, marital status, military status, national origin, race, religion, sex, sexual orientation, veteran status, or other status protected by law or because of their perceived or actual affiliation or association with individuals or groups identified by such characteristics and (4) that could reasonably be regarded as so severe, persistent, or pervasive as to disrupt the living, learning, and/or working environment of the individual or group. Harassment includes any behavior that is unlawful harassment under applicable New York State and/or federal law.

Examples of harassment can include, but are not limited to, unwanted physical contact or threats of physical contact, intimidation, stalking, degrading and derogatory words, graffiti, pictures, jokes, epithets, statements or stereotyping activities as well as other forms of verbal, visual or written messages of intimidation.

C. *Sexual Harassment*

Sexual Harassment is Harassment as defined in B that involves unwelcome conduct of a sexual nature. Depending on the circumstances, the following types of behavior may constitute Sexual Harassment:

- Unwanted comments about an individual's body, clothing or lifestyle that have sexual implications or demean the individual's sexuality or gender;
- Unwanted sexual flirtations, leering or ogling;
- Unwanted sexual advances and propositions;
- Unwanted display of sexually demeaning objects, pictures or cartoons in areas visible to other members of the University community;
- Threats or insinuations that an individual's refusal or willingness to submit to sexual advances will affect the individual's status, evaluation, grades, wages, advancement, duties or career development;
- Unwanted and intentional sexual touching, patting, pinching, or brushing another's body or clothing;
- Stalking, telephone or computer harassment, dating violence, sexual assault or date rape.

Section III C. of the Faculty Handbook deals with Consensual Relations and reads: "The University of Rochester strongly discourages any sexual or amorous relationships between members of the University community and those students over whom they have a direct, current supervisory or evaluative relationship. Such relationships, even when consensual, are problematic because they may result in favoritism or the perception of favoritism, which imperils the integrity of the educational environment. Such relationships may also lead to charges of sexual harassment."

D. *Retaliation*

Retaliation is any materially adverse action by the University that punishes a person for complaining about, giving information about or filing a Report alleging conduct reasonably believed to be discrimination or harassment. To be prohibited retaliation the action must (i) have occurred because of the complaint, information given or Report filed and (ii) dissuade a reasonable person from complaining about, giving information about or filing a Report concerning harassment or discrimination.

Examples of retaliation can include, but are not limited to, the following actions by the University when taken to punish or disadvantage an individual who has complained about or given information about or filed a Report concerning discrimination or harassment to the University:

- Unfair disciplinary action such as a written reprimand, demotion, or termination;
- An adverse change in work conditions, including a job reassignment or change in job duties or work schedule;
- An unfairly negative course grade;
- Increased or unequal monitoring of activities;
- An unfairly poor job or course evaluation;
- Ostracizing or withholding information from a complaining student or employee by supervisory personnel or faculty.

V. Procedures

A. *General*

The University takes all complaints of unlawful discrimination, harassment or retaliation very seriously. The University will take appropriate measures to prevent unlawful discrimination, harassment or retaliation.

A person who believes he or she has experienced harassment, discrimination or retaliation or is aware of such conduct occurring to another must report it. The individual may choose formal or informal means to report or address the issue (described in the following sections). However in choosing the approach to use, the reporting or complaining individual should understand that informal resolution processes, although often effective, do not normally result in disciplinary action taken by the University against someone who has violated this Policy. The formal resolution processes do often result in disciplinary action taken by the University against someone found to be a violator of this Policy.

No one will be required to make complaints to or file a Report with a person who may be the subject of the complaint/report or with whom the individual making the complaint or filing the Report is otherwise uncomfortable. There are many choices of people to whom complaints/reports can be directed (see following sections).

A supervisor or person with managerial authority who observes or learns of alleged unlawful harassment, discrimination or retaliation must inform Human Resources and the relevant administrator (see following sections).

The University itself acting through one of its administrators can prepare a Report, initiate an investigation under this Policy or initiate the informal resolution process.

B. *Informal Assistance – Intercessors*

University Intercessors are counselors available to students, staff, or faculty to discuss complaints or questions about discrimination, harassment, retaliation and related issues and to educate the University community about such matters. An Intercessor may be consulted to help further direct an individual with a complaint or mediate or otherwise informally resolve an issue of possible discrimination, harassment or retaliation.

Intercessors may help mediate or facilitate an informal resolution of a problem. However, Intercessors do not have the power themselves to take disciplinary action. Speaking to an Intercessor, although perhaps very helpful in resolving an issue, cannot result in disciplinary or corrective action taken against another individual. Speaking to an Intercessor does not constitute making a formal complaint and is not official notice to the University that there is a potential problem - that can only be done by means of one of the formal Report processes described in the next section.

Intercessors will, to the extent permitted by law, honor requests to keep matters confidential and take no further action, but if the Intercessor determines that there may be threat of future harm or a pattern of discriminatory or harassing behavior, he or she must report the incident to a responsible University administrator with the authority to investigate and take corrective action and may be required to file a Report even without the consent of the individuals directly involved.

C. *Formal Resolution Procedures*

Reporting a Possible Policy Violation

Any University employee, faculty member, student, patient or visitor who believes that he or she has experienced or knows of conduct reasonably believed to be discrimination, harassment or retaliation as defined in this policy should make a formal complaint to the University. To do so, he or she must fill out a Report form or ask an Intercessor, Human Resources, Dean or Department manager to fill out and process a Report.

If a manager, administrator or any other member of the University community has information that he or she reasonably believes indicates that unlawful harassment, discrimination or retaliation has occurred, even if based only on the statements of others, he or she must either fill out and file a Report to initiate an investigation pursuant to this Policy or report the potential violation of this Policy to any Human Resources Office.

Report forms are available on the University's Human Resources web page or from any Human Resources, Intercessor or Dean's Office. Reports under this Policy need not be on the official Report form so long as the report is made in writing and contains the name of the individual making the report, the date and a basic description of the behavior that is believed to violate this Policy. The completed form must be given to: (1) any Human Resources Office (2) any Dean's Office (3) the Office of the Provost or the Office of the Senior Vice President for Health Sciences, (4) any Dean of Students Office or (6) any Intercessor. If the Report is received by an administrator who is not the

relevant administrator to process the Report, the receiving administrator promptly should convey the Report to the appropriate responsible Official (see following paragraph).

Who Determines if the Policy is Violated?

A responsible Official (“the Official”), or a responsible administrative officer designated by the Official, will consider and act on all Reports or credible knowledge received that alleges conduct reasonably believed to be unlawful discrimination, harassment or retaliation in as timely a manner as possible under the circumstances.

If the complaint is against a staff person, the Official will be the Dean if employed in a school or the libraries, the Director is employed in Laboratory for Laser Energetics or the Memorial Art Gallery, the Chief Executive Officer of Strong Memorial Hospital if employed in the hospital, or the Provost or Vice-President of the division if employed in an administrative unit (or the Official’s designee). If the complaint is against the relevant Official (or designee) or he/she may be seen as having a conflict of interest, the Provost will appoint a responsible administrator without a conflict who does not report to the relevant Official to act as the Official to consider the allegations.

If the complaint is against a faculty member or concerns a faculty process or department, the Official will be the Dean of the school where the faculty member complained about holds a primary appointment or where the process occurred or department resides (or the Dean’s designee). If the complaint is against the Dean (or designee) or he/she may be seen as having a conflict of interest, the Provost or the Senior Vice President for Health Sciences will appoint a responsible administrator without a conflict who does not report to the relevant Dean to act as the Official to consider the allegations.

If the complaint is against a student, the Official will be the Dean of Students or other administrator designated as responsible for student discipline in the school where the student is enrolled. If the complaint is against the Dean of Students or administrator so acting or he/she may be seen as having a conflict of interest, the Dean of the School will appoint a responsible administrator without a conflict who does not report to the Dean of Students or administrator acting as a dean of students.

If the complaint is against the Provost or the Senior Vice President for Health Sciences, the Official will be the President. If the complaint is against the President, the complaint should be given to the Chair of the Board of Trustees and will be decided by the Board as it deems appropriate.

If the complaint is against a patient or visitor to the hospital, the Official will be the Chief Executive Officer of Strong Memorial Hospital (or designee).

If the complaint is against a visitor or vendor, the Official will be the Sr. Vice President for Finance and Administration (or designee).

Temporary Protective Measures

If under the circumstances it appears advisable in order to protect the working, learning, patient care or living environment for members of the University community or public confidence in the integrity of the University, temporary actions may be taken by the relevant Official (or designee) during the period after the incident through the final determination including any appeals by the University or relevant court, law enforcement or other governmental agency. Such actions include, but are not

limited to, placing an individual on temporary leave of absence, excluding from programs and/or facilities, changing working, learning, patient care or living arrangements, or imposing conditions in the relevant University environment during the period after the incident or allegations through the final determination including any of any appeal by the University or relevant court, law enforcement or other governmental agency.

Procedures for Considering Allegations against Students

The Deans of Students (or administrator designated to handle student discipline) will follow established student disciplinary procedures to resolve complaints against students.

Notifying Human Resources and Office of Counsel

When a complaint, Report or alleged information indicates that a staff, faculty member, visitor or patient may have violated this Policy, as promptly as possible under the circumstances after receiving the information, the person receiving the information should inform Human Resources and the Office of Counsel.

Procedures for Considering Allegations against Employees and Faculty undertaken by Human Resources and the Supervising Administrator

There are three circumstances under which an investigation and action concerning possible violation of this Policy can be taken by Human Resources and the Supervising Administrator, including Department Chairs, of the person accused of violating the Policy without further investigation by or under the direction of the Office of Counsel, specifically:

1. An initial assessment by the Supervising Administrator in consultation with Human Resources determines that there has been no harassment, discrimination or retaliation assuming all of the facts are true as alleged by the complainant or other person reporting the behavior.
2. An initial assessment by the Supervising Administrator in consultation with Human Resources determines that there is no dispute about what happened or that the behavior constituted a violation of this Policy.
3. An initial assessment by the Supervising Administrator in consultation with Human Resources determines that the allegations constitute misconduct but not harassment, discrimination or retaliation prohibited by this Policy assuming all the facts are true as alleged by the complainant or other person reporting the behavior.

Procedures for Considering Allegations against Employees, Faculty, Patients and Visitors undertaken by or under the direction of the Office of Counsel

In all other cases, Office of Counsel will conduct an initial assessment of the allegations and advise the Official (or designee) whether or not the facts as alleged could constitute a violation of this Policy. If merited, Office of Counsel will assign an Investigator(s), a neutral person or persons charged with responsibility for conducting an impartial investigation of the facts. The Investigator will undertake the investigation on behalf of the University. The Investigator will inform anyone suspected of violating this Policy about any allegations or information indicating that he or she

violated the Policy and will give him or her the opportunity to present information, including suggesting the names of those who might have additional relevant information.

The Investigator will interview such people and review such information as the Investigator deems relevant. Individuals are strongly encouraged to assist the Investigator, as the agent of the University and Official, by answering questions and giving information. Anyone who gives information to an Investigator will be protected from retaliation. The Investigator will ask people interviewed to sign written statements. If an individual refuses to sign a written statement, the Investigator will document the information received from the individual by means of a written summary.

The Investigator may interview anyone who the Investigator believes has knowledge of facts and circumstances relevant to determining the issues raised in the investigation. If the facts warrant, the Investigator can amend the allegations to reflect more accurately the behavior(s) that indicate a possible violation of this Policy.

Generally within 45 business days after being asked to conduct an investigation, the Investigator will make a written report of findings to the Official (or designee). The Investigator's role is not to recommend a response to the Report or a sanction, but to present the facts based on the investigation, including a full copy of any written statements gathered.

The Official (or designee) may ask the Investigator to find further facts, or may make a decision based on the Investigator's report. The Official (or designee) generally should act within fifteen (15) business days of receiving the Investigator's report. The Official (or designee) will inform the complainant, the person(s) alleged to have violated the Policy, Human Resources and the Office of Counsel of the decision. The determination, including any intended corrective action, will be shared with both the complainant and person alleged to have violated the Policy. The decision must be communicated in writing even if the decision is also communicated orally.

Appeals

Any party may appeal the decision, within 15 business days of that decision. Appeals for cases in which the accused is a staff member, visitor or patient are to the Vice President and Secretary of the University. Appeals for cases in which the accused is a faculty member are to the Provost. Appeals for cases in which the accused is an officer are to the President. The purpose of the appeal is not to have a second investigation or review all the facts, but is limited to considering (1) evidence not previously available to the Investigator or the Official (or designee); (2) material defects in the process leading to the decision; or (3) severity or appropriateness of the imposed corrective action. An appeal must take the form of a written request delivered to the Office of the Vice President/Secretary, the Provost or President, as the case may be, stating the basis for the appeal. The Vice President/Secretary, Provost or President, as the case may be, will obtain the written record of the investigation and decision from the deciding Official. A decision on the appeal will be issued in writing normally within 15 business days after the day the appeal document is received. The decision of the Vice President/Secretary, the Provost or the President, as the case may be, shall be final. A copy of the decision on the appeal will be given to the person alleged to have violated the Policy, the complainant or person alleged to have been the subject of harassment, discrimination or retaliation, the Official who made the original decision, Human Resources, the Office of Counsel and any person with a need to know for purposes of implementing the decision.

A copy of the decision shall be placed in the personnel file maintained by Human Resources of any individual found to have violated this Policy.

Staff and faculty may not use the Human Resources Grievance Procedure (policy 160) or the Faculty Handbook grievance procedures to complain about harassment, discrimination or related retaliation or to challenge a decision on such matters by the Official, the Vice President and Secretary, Provost or President. All complaints or Reports involving harassment, discrimination or related retaliation are to be handled under the processes set forth in this Policy. However, no faculty member's tenure can be revoked or contract abrogated without following the tenure revocation process outlined in the *Faculty Handbook*.

Confidentiality

University administrators and staff dealing with allegations of harassment, discrimination or retaliation understand the importance of confidentiality and will not disclose information learned in connection with an allegation or investigation except on a need to know basis in order to investigate and resolve the allegations or Report. Investigations, however, generally require obtaining information from people who know about the alleged event.

Individuals who want to discuss a possible incident of discrimination, harassment or retaliation with more assurance of confidentiality should contact:

- University Counseling Center (students or student spouses)
- Chaplains
- Employee Assistance Program (employees)

These counseling sources do not have the authority to investigate or officially take action to resolve complaints.

Individuals who want to discuss a possible incident of discrimination, harassment or retaliation in order to determine whether to report the incident for investigation may want to contact an Intercessor. Intercessors are counselors who understand the importance of confidentiality and who will, to the extent permitted by law, honor requests to take no further action. However, if the Intercessor determines that there may be some threat of future harm or a pattern of unlawful discriminatory, harassing or retaliatory behavior, he or she may report the incident to an administrator with the authority to take corrective action. Intercessors do not themselves investigate complaints or take corrective action, although they can mediate resolutions between involved parties with the parties assent.

Records

The Office of Human Resources is charged with the responsibility to keep written records of all complaints and Reports alleging harassment or discrimination or related alleged retaliation against staff and faculty and their resolution. The Official (or designee) and, if there is an appeal, the Vice President/Secretary or Provost must also provide Human Resources with a copy of their written decisions. A copy of the decision will be kept in the Human Resources personnel file of a faculty or staff member found to have violated this Policy. A copy of the decision may be kept in the

individual's departmental file. Investigation records will be kept in the Office of Counsel. Any disciplinary action taken will be reflected in the personnel file of the individual being disciplined. Records of complaints and Reports against students will be kept in the office of the administrator in the relevant school charged with oversight of student affairs.

Records will be maintained for six years.

Time Limits

Where specific times are mentioned in this Policy within which actions are to occur, the specific times are not meant to be rigid limits. Variations in the time it takes to handle or decide matters may occur for different reasons, depending on availability of witnesses, information, or other valid factors. All personnel charged with acting on complaints or Reports under this policy shall use good faith to accomplish their work as quickly as time and circumstances allow.

Harassment or Discrimination by Non-University Personnel

The University has the right to remove individuals from University property and events and to bar individuals from future access to University property or attendance at University events. This right includes, but is not limited to, circumstances in which the individual has been accused of, or found responsible for, discrimination, harassment or retaliation while on University property or in attendance at a University event.

D. Committee on Inclusion and Diversity.

The Committee on Inclusion and Diversity is an ad hoc committee that can be convened by the President in response to apparent incidents of discrimination or harassment. The membership of this Committee normally includes people from the following list: Intercessor, Representative of the Dean or Director of the division in which the alleged incident occurred or to which the individuals involved are most closely related, Associate Vice President for Human Resources, Human Resources Manager for Diversity and Inclusion, Chair of the College Diversity Roundtable (if the event involves the College) or person holding a similar position in another School, Vice Provost for Faculty Development and Diversity, Chair of the Campus Safety Advisory Committee, Director of the Interfaith Chapel, Director of University Facilities and Services and such other individual student, staff or faculty representatives as the President considers appropriate to the specific circumstances.

The Committee can meet with interested members of the University community to provide an opportunity for those who wish to express publicly their concerns and reactions to the incident, to decide if a community response is appropriate and to recommend such response, and to make a report to the President and the greater University community. The report may include recommendations for educational programs and efforts to facilitate understanding of the issues and circumstances that can lead to discrimination, harassment and misunderstanding in our diverse University environment and other initiatives to advance the Institution's educational mission and an inclusive environment.

Referral of an incident to the Committee will occur only with the consent of the complainant(s) involved or following the incident becoming a matter of widespread community knowledge and

concern. Consideration by the Committee will not replace or limit the University investigation and action pursuant to this Policy.

See also: #154 Corrective Disciplines
 #160 Grievance Procedures

See also: Faculty Handbook
 Student Handbook
 Graduate Student Handbook
 Medical Student Handbook
 Residents/Fellows Manual for Medical and Dental Programs