NEW JERSEY CITY UNIVERSITY INTERIM POLICY ON SEX-BASED MISCONDUCT

I. POLICY STATEMENT

New Jersey City University ("NJCU") prohibits sex-based misconduct,[1] consisting of sex discrimination and sex-based harassment, as defined herein in any education program or activity that it operates. NJCU's Notice of Nondiscrimination is located at Notice of Non-Discrimination | New Jersey City University (njcu.edu)

This Policy has been drafted to comply with the requirements of Title IX and its implementing regulations, 34 C.F.R. Part 106, including the final Title IX regulations issued by the U.S. Department of Education's Office for Civil Rights in April 2024.[2]

NJCU has adopted procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any action of sex-based misconduct that would be prohibited by Title IX or the Title IX regulations.

This Policy applies to incidents that occur on or after August 1, 2024.

NJCU prohibits discrimination based on all protected characteristics in its New Jersey City University Policy Prohibiting Discrimination in the Workplace. However, sex-based misconduct is addressed through this Policy and process.

Appendix B provides information regarding disability accommodations for the parties.

II. JURISDICTION

This Policy governs the conduct of NJCU students, employees, and third Parties participating in a NJCU education program or activity or engaging in conduct that has reasonable connection to NJCU.[3]

Conduct that occurs under NJCU's education program or activity includes:

[1] All italicized terms are defined within the Policy or in Appendix A.

[2] This Policy has also been drafted to comply with Title VII of the Civil Rights Act of 1964, relevant provisions of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics (Clery Act), as amended by relevant provisions of the Violence Against Women Reauthorization Act of 2013 (VAWVA), and with the New Jersey Law against Discrimination.

- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant or
- NJCU's Title IX Coordinator initiating a complaint on their behalf.

V. PROHIBITED SEX-BASED MISCONDUCT DEFINED

This Policy prohibits the following types of sex-based misconduct: (1) sex discrimination and (2) sex-based harassment , as defined below, based upon the totality of the facts and circumstances involved in the incident.

A. The following conduct constitutes sex discrimination:

1. Discrimination based on Gender Identity

Unwelcome conduct directed toward a person based on their deeply felt, inherent sense of their gender, which may or may not be different than their sex assigned at birth, is prohibited under the Policy.

2. Discrimination based on Past, Present, or Potential Pregnancy or Related Conditions

Subjecting a person to shame, punishment, unwanted sexual attention, or unwanted conduct based on past, present, or potential pregnancy or related conditions is prohibited under the Policy.

For the purposes of this definition, pregnancy or related conditions includes the following as disclosed, without any requirements for documentation:

(i) Pregnancy, childbirth, termination of pregnancy, or lactation;
(ii) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation;
(iii) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions

Further discussion regarding pregnancy or related conditions and NJCU's obligations for pregnancy accommodations are discussed in Appendix C.

3. Discrimination based on Sex Characteristics

Unwelcome conduct directed toward a person based on their physiological sex characteristics, which include a person's anatomy, hormones, chromosomes

associated with male or female bodies, or intersex traits is prohibited under the Policy.

4. Discrimination Based on Sex Stereotypes

Unwelcome conduct directed toward a person based on nonconformity with stereotypical notions of how someone of their sex, or perceived sex, is expected to

NJCUeducation program or activity.

where the victim is incapable of giving consent because of his/her age or because of his/

- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
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2. Counselors, guidance counselors, or other staff members at NJCU's counseling center Gilligan Student Union Building (GSUB), Room 308; counselingcenter@njcu.edu; Phone: 201-200-3165
3. Director, Speicher-Rubin Women's Center for Equity and Diversity, Gilligan Student Union Building (GSUB), Room 318, Phone: 201-200-3189
4. Any other NJCU employee whose communications are privileged or confidential under federal, state, or local law. The employee's confidential status for the purposes of this definition applies only to information received while the

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Mandated Reporters who have themselves engaged in a violation of this Policy are required to report their own misconduct.

IX. EMPLOYEES' OBLIGATIONS WHEN INFORMED OF STUDENT'S PREGNANCY

Employees will provide a student with the contact information for the student's Title IX Coordinator upon being informed by a student that the student is pregnant. They will also inform the student that the Title IX Coordinator can coordinate specific actions to prevent sex-based misconduct and ensure the student's equal access to NJCU's education programs or activities. For more information on accommodation options for pregnant students, please see Appendix C.

X. ALCOHOL AND DRUG USE AMNESTY

NJCU recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) while witnessing or being subjected to sex-based misconduct incidents might be hesitant to report due to fear of potential consequences for their own conduct. Those who report sex-based misconduct either as a reporter or third-party witness will not be subjected to disciplinary action by NJCU for Code of Conduct violations, such as their own personal consumption of alcohol or drugs at or near the time of the incident.

XI. SUPPORTIVE MEASURES

When a Title IX Coordinator learns of a report of sex-based misconduct, the Title IX Coordinator will promptly contact the complainant to inform the complainant of the availability of supportive measures, inform the complainant that supportive measures and accommodations are available even if the complainant does not wish to proceed with an investigation and/or informal resolution, and discuss the complainant's wishes regarding supportive measures.

Supportive measures and accommodations are non-disciplinary, non-punitive individualized services designed to restore or preserve equal access to education and to ensure safety, prevent retaliation and avoid an ongoing hostile environment. Supportive measures are available to complainants, respondents, and other affected individuals. NJCU will implement supportive measures in a way that does not unreasonably burden any party.

Where no complaint has been filed but supportive measures impacting a respondent have been requested, the respondent will be provided an unsigned Notice of Allegations which will contain, if known: (a) the name of the Parties; (b) the date, time, and location of the alleged sex-based misconduct; (c) the underlying factual allegations; and (d) each type of sex-based misconduct alleged by the complainant.

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No Contact Orders may be issued to complainant• U respondents U v } š Z Œ] v] À] µ o •
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NJCU will maintain the presumption that the respondent is not responsible for the reported sex-based misconduct until a determination is made and the appeal process has been exhausted.

The Title IX Coordinator, investigator, or decision-maker must not have a conflict or bias for or against complainants or respondents or an individual complainant or respondent. A decision-maker may be the same person as the Title IX Coordinator or investigator provided that there is no bias or conflict of interest.

If a party believes that an NJCU official who is administering any portion of the grievance process has a conflict of interest or bias for or against 4n-11 <00FaTc2 (a c)1y3 (o)1 (82aD)s

Within ten (10) days of receiving notice, complaint, or knowledge of alleged misconduct, the Title IX Coordinator will have scheduled an intake with the complainant in a live question and answer format and made an initial evaluation in whether the reported conduct may reasonably constitute a violation of the Policy. This initial evaluation will be documented by the Title IX Coordinator in writing.

If it is determined that the matter would not constitute a violation of the Policy, it will be dismissed. Supportive measures for the Parties will still be provided.

If the conduct falls within NJCU's jurisdiction, and the complainant wishes to initiate a complaint, the Title IX Coordinator will work with the complainant to determine whether the complainant wishes to follow an Informal Resolution process or the investigative process described in the Policy.

If the complainant does not wish to file a complainant

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The dismissal decision is appealable by any party and appeals must be filed within three (3) business days of the notification of the dismissal. The grounds for dismissal are set forth below.

Upon receipt of a dismissal appeal in writing, the Title IX Coordinator will share the petition with all of the parties and provide five days for other parties to respond. The Title IX Coordinator has the opportunity to respond and his or her response statement will be shared with the parties. The parties do not have an opportunity to provide further response.

The Title IX Coordinator will designate an official not connected to the decision-making process, involved in the dismissal, to review the appeal and to issue an appeal decision to the parties, their advisors, where applicable, aTf 0.l s 75J750 Td [(ppe)-MC ET-1 (a)9 (t(h)558 0 Tc

3. Acknowledged Accountability . When the Respondent is willing to accept responsibility for violating Policy and is willing to agree to actions that will be enforced similarly to sanctions, and the complainant(s) and NJCU are agreeable to the resolution terms.

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- The parties' motivation to participate
- Civility of the parties
- Results of a violence risk assessment/ongoing risk analysis
- Respondent's disciplinary history
- Whether an emergency removal or other interim action is needed
- Facilitator's skill
- Complaint complexity
- Goals of the Parties
- Adequate resource (e.g., time, staff, etc.)

The Title IX Coordinator has the authority to determine whether this resolution is available or successful, to facilitate a resolution that is acceptable to all parties, and/or to accept the parties' proposed resolution.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in this type of informal resolution process.

The Title IX Coordinator maintains records of any resolution that is reached under this process and will provide notification to the parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the resolution process, referral to the conduct process for failure to comply). The results of complaints resolved by thus resolution are not appealable.

XXI. INVESTIGATIVE RESOLUTION PROCEDURE

Following the intake with the complainant, the Title IX Coordinator will issue a Notice of Allegations to the parties within 10 (ten) days, unless there are reasonable grounds for delays or extensions, such as addressing safety concerns.

A. Written Notice of Allegations

The Notice of Allegations will be mailed to the parties' official NJCU email and will include:

- A meaningful summary of all allegations
- The identity of the involved parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence

vacation), number of witnesses, volume of information provided by the parties, compliance with requests by law enforcement involvement, and other factors.

A short delay in its investigation (several days to a few weeks) is allowed if circumstances require. Such circumstances include but are not limited to a request from law enforcement to delay the investigation temporarily, the need for language assistance, the absence of parties and/or witnesses, and/or health conditions. NJCU will promptly resume its resolution process as soon as feasible. During such a delay, NJCU will implement and maintain supportive measures for the parties as deemed appropriate and notify the parties of the delay. The Title IX Coordinator must notify the parties in writing, indicate the reason for the delay, and provide a timeframe for completing the investigation.

If a party or witness chooses not to participate in the resolution process or becomes unresponsive, NJCU reserves the right to continue it without their participation to ensure a prompt resolution. Non-participatory or unresponsive parties retain the rights outlined in this Policy and the opportunity to participate in the resolution process.

C. Resolution Process – Investigation and Report

The resolution process involves an objective evaluation of all available relevant, and not otherwise impermissible evidence, that supports that the respondent engaged in a p

redact irrelevant information from the investigative report when that information is contained in documents or evidence that is/are otherwise relevant.

The Title IX Coordinator will simultaneously provide the preliminary investigative report to the decision-maker and to the parties, and their advisors, where applicable, as well as an opportunity to inspect and review all relevant evidence obtained as part of the investigation for a review and comment period of 15 days from receipt so that each party may meaningfully respond to the evidence. The parties may elect to waive all or part of the review period.

Each party will have the right to review the other party's response.

The written response cannot be more than 5 pages, single-spaced, size 12 font. The response can address:

- Information in the report that the parties want emphasized
- Inconsistencies in the testimony that should be highlighted
- Information in the report that the parties believe is inaccurate
- Information in the report that the parties believe is mischaracterized or taken out of context
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Any such meetings will be recorded and the recording or transcriptof the meetingswill be shared with parties.

Theparties will be notified of any delays.

D. D

about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based misconduct;
(d) Expert witnesses who are not approved by the investigator
(e) The social security number, home address, or similar highly sensitive information pertaining to a party, witness, or other person referenced in the grievance process, and
(f) Any other materials prohibited by federal, state, or local law.

If the decision-maker is not persuaded based upon a preponderance of the evidence that sex-based misconduct occurred, whatever the quantity of the evidence is, the decision maker will not determine that sex-based misconduct occurred.

The decision-maker will notify the parties simultaneously, or without significant time delay between notifications in writing for the determination whether sex-based misconduct occurred under this Policy using their NJCU designated email addresses, and will include:

(a) A description of the alleged sex-based misconduct
(b) Information about the policies and procedures that the University used to evaluate the allegations
(c) The decision-maker's evaluation of the relevant and not otherwise impermissible evidence and determination whether sex-based misconduct occurred
(d) Information regarding sanctions that NJCU is permitted to share pursuant to state or federal law
(e) The rationale for the written determination
(f) NJCU's procedures for the complainant and respondent to appeal.

If there is a determination that sex-based misconduct occurred, the Title IX Coordinator will, as appropriate:

- coordinate the provision and implementation of remedies to a complainant and other people NJCU identifies as having had equal access to NJCU's education program or activity limited or denied by sex-based misconduct
- coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary actions, and
- take other appropriate prompt and effective steps to ensure that sex-based misconduct does not continue or recur within NJCU's program or activity
- comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent, and
- not discipline a

The determination of responsibility will be sent by email using the parties' NJCU email address or any other email address known to NJCU.

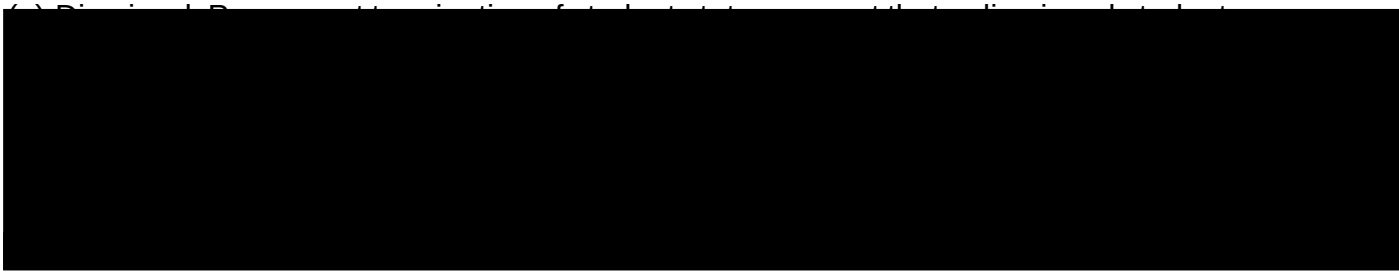
The determination of responsibility becomes final either on the date on which the decision on appeal is issued, or, if no party appeals, the date on which an appeal would no longer be considered timely.

E. Sanctions

Sanctions refer to the consequences imposed on a respondent following a determination they are responsible for violating the Policy. When determining which sanction to impose, NJCU will consider the following factors: (1) the specific sex-based misconduct at issue; (2) the circumstances accompanying the lack of consent (such as force, threat, coercion, incapacitation); (3) the sanctions imposed on the respondent in other matters involving similar conduct; (4) the impact of the offense on the parties and the broader NJCU community, including the safety of the NJCU community; (5) the respondent's prior disciplinary history; (6) the need for sanctions/responsive actions to bring an end to the conduct at issue and to remedy their effects; and (7) any other information deemed relevant by the decision-maker.

Sanction ranges for prohibited conduct are provided in Appendix E.

1. The following sanctions may be imposed on a student-r



- Performance Improvement Plan/Management Process
- Enhanced Supervision, Observation, or Review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Transfer
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exercise their discretion and dismiss the complaint. If the complaint is dismissed, NJCU may still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

In the event that the resolution process continues, any decision and sanction will be binding, pending appeal. NJCU will place a notation on the respondent's transcript that the respondent "withdrew with conduct charges pending."

If the respondent is subsequently found not responsible at the end of grievance process, the transcript notation will be removed. If the respondent is subsequently found responsible after the sanction process and the sanction is either suspension or expulsion, the transcript

APPENDIX A: DEFINITIONS

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totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances.

Whether the Respondent knew nor should have the complainant to be physically or mentally incapacitated is significant in determination of consent in incapacitation cases. "Should have known" is an objective, reasonable person standard that

13. Sex-based or "on the basis of sex" means conduct that is sexual in nature, or that is directed to the Complainant because of his/her/their actual or perceived sex or gender identity.

14. Sex-based misconduct, consisting of "sex discrimination" and "sex-based harassment" is defined in Section V of the Policy.

15. Student means a person who has gained admission. Only a student party can make a complaint of sex-based harassment. When the student is also an employee of NJCU, a fact-specific determination must be made whether the student party's primary relationship was to receive an education and whether the alleged sex-based harassment occurred while the student was performing employment-related work.

16. Violence Risk Assessment (VRA) is the process of evaluating the immediacy of violence posed by an individual or group following a threat. This involves an evidence

APPENDIX B

DISABILITY ACCOMMODATIONS

APPENDIX C

PREGNANCY AND RELATED CONDITIONS

Rights to lactation space for NJCU students and employees: NJCU will ensure students and employees can access a lactation space, which will be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a(e)Y10 (4( )Tj EMC

hospital benefit, service, plan, or policy that NJCU administers, operates, offers, or participates in with respect to admitted students.

Finally, NJCU will not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in a class, program, or extracurricular activity unless: (1) the certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity; (2) NJCU requires such certification of all students participating in the class, program, or extracurricular activity; and (3) the information obtained is not used as a basis for discrimination prohibited by the Policy.

B. EMPLOYEES

Pregnancy or related conditions will be treated as any other temporary medical condition for all job-related purposes, including commencement, duration and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment.

In the case of an employee with insufficient leave or accrued employment time to qualify for leave, NJCU will treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time, at the conclusion of which the employee will be reinstated to the status held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

Employees requesting accommodation based on pregnancy, childbirth, or a related medical condition should contact the Office of Human Resources at their school, college, or unit. The employee and the Director of Human Resources, or a designee, will engage in an interactive process, also called a cooperative dialogue, which may include a consideration of a number of factors, such as the employee's limitations and the job functions and requirements, with the goal of finding a ð

APPENDIX E: SANCTION RANGES

Sanction Ranges The following sanction ranges apply for sex-based misconduct under this Policy. Sanctions can be assigned outside of the specified ranges based on aggravating or mitigating circumstances, or the respondent's cumulative conduct record.

- Sex Discrimination: warning through expulsion or termination.
- Quid Pro Quo Harassment: warning through expulsion or termination.
- Hostile Environment Harassment: warning through expulsion or termination.
- Rape: suspension through expulsion or termination.
- Fondling: warning through suspension (termination for employees).
- Incest: warning through probation.
- Statutory Rape: warning through suspension (termination for employees).
- Stalking: probation through expulsion or termination.
- Dating/Domestic Violence: probation through expulsion or termination.
- Sexual Exploitation: warning through expulsion or termination.
- Retaliation: warning through expulsion or termination.
- Unauthorized Disclosure: warning through expulsion or termination.
- Failure to Comply/Process Interference: warning through expulsion or termination.