

**Bergen Community College  
Board of Trustees  
Section (HR)**

**Policy #** HR: 003-002.2018

**Effective Date:** August 7, 2018

**Responsible Official:**  
Director of Human Resources

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**POLICY PROHIBITING SEXUAL HARASSMENT**

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**Reason for Policy:**

The College recognizes the human dignity of each member of the College community and believes that each member has an obligation to promote respect and dignity for others. Accordingly, the College strives to foster an environment that is free from discrimination and harassment on the basis of membership in the above-referenced protected classes. In keeping with its commitment to provide an environment free from discrimination, the College will not tolerate, condone or allow any conduct by an instructional, supervisory, managerial or administrative personnel, co-workers, independent contractors, vendors or others with whom the College does business, which illegally discriminates against any employee, or student on the basis of an employee's or student's membership in a protected class.

This policy specifically addresses sexual and gender-based discrimination and harassment. The College also prohibits other forms of discrimination and harassment as detailed by its policy Prohibiting Discrimination and Harassment. Depending on the nature of the allegations, additional College policies may be implicated.

This policy specifically applies to conduct committed by College employees and third parties and prohibits a broad range of behaviors focused on sex and/or gender that may or may not be sexual in nature. Sexual harassment, sexual violence and exploitation, gender-based harassment, and all forms of related misconduct are prohibited and will not be tolerated by the College.

The College recognizes its responsibility to increase awareness of such misconduct, prevent its occurrence, support victims, deal fairly and firmly with offenders, and diligently investigate reports of misconduct. In addressing these issues, all members of the College must come together to respect and care for one another in a manner consistent with our deeply held academic and community values.

**Entities Affected by this Policy:** Faculty, staff, students, 3<sup>rd</sup> parties doing business with the College.

## **Policy Statement:**

Bergen Community College (the “College”) is steadfastly committed to cultivating and maintaining a working and learning environment that is free from discrimination and harassment based upon membership in enumerated protected classes and/or characteristics (“protected classes”) as well as from retaliation based upon the exercise of rights pursuant to this policy. Sexual harassment in any form constitutes prohibited, unprofessional and unacceptable conduct, and is a violation of Title VII of the Civil Rights Acts of 1964 and 1990 as amended, Title IX of the Education Amendments of 1972, the New Jersey Law Against Discrimination, established case law and State policies. The College has a separate document outlining the Internal Complaint Procedures and Investigation Protocols. This policy applies to all areas of the College’s operations and programs.

The College will enforce this policy and expects all employees and students to be diligent in preventing, detecting and reporting any incidents of discrimination. The College expects all members of the College community to avoid any acts or statements that may constitute discriminatory behavior and to ensure that his or her conduct complies with this policy. This policy supplements the College’s policy prohibiting discrimination and harassment in furtherance of its unrelenting commitment to fostering an environment that is safe, secure, and free from sexual and gender-based discrimination and harassment, and other related misconduct.

The College acknowledges its responsibility to increase awareness of such misconduct, prevent its occurrence, support victims, deal fairly and firmly with alleged offenders, and diligently investigate reports of misconduct. In addressing these issues, all members of the College must come together to respect and care for one another in a manner consistent with our deeply held academic and community values. This policy sets forth how the College defines and addresses sexual and gender-based harassment and related complaints made against College employees, student employees and third parties doing business with the College.

The College will not tolerate, condone or allow sexual harassment of any of its students or employees, by any instructional, supervisory, managerial or administrative personnel, co-workers, other students, independent contractors, vendors or others with whom the College does business. The College will enforce this policy and expects all employees and students to be diligent in preventing, detecting and reporting any incidents of sexual harassment. The College expects each employee and student to avoid any acts or statements that may constitute sexual harassment and to ensure that his or her conduct complies with this policy. The College will take appropriate disciplinary action when an investigation reveals that an individual has engaged in any such prohibited conduct.

## I. SCOPE OF APPLICATION

This policy shall apply to all areas of the College's operations and programs. This policy governs sexual harassment, assault, exploitation, gender-based harassment, and related misconduct allegedly committed by a current College employee (e.g., faculty, staff, and student employees) and/or third parties (e.g., interns, volunteers, vendors, contractors, and subcontractors) that either:

- A. Occurs on College property, or in connection with any College program(s) or activity (ies).
- B. Creates a hostile environment for College employees or students; or
- C. Involves a complaint by a College employee or student arising out of the respondent's employment status with the College or third party's business or relationship with the College.

This policy applies whether conduct occurs on campus or off campus, if the continuing effects of the conduct have the potential to unreasonably interfere with or limit an individual's work, academic performance, personal security, or participation in any College activity.

The College's Director of Human Resources or his/her designee shall serve as the College's central intake officer for all matters involving discrimination, harassment, sexual harassment, and sexual misconduct. The College may designate other College offices or employees to perform any roles or duties described in this Policy where necessary to effectuate the intent and purpose of this Policy.

## II. DEFINITIONS OF PROHIBITED CONDUCT

**The College prohibits the following conduct, as well as attempts to commit and/or aid or incite others to commit these acts. PLEASE NOTE THAT THESE DEFINITIONS ARE BEHAVIORAL DESCRIPTIONS, NOT LEGAL OR CRIMINAL DEFINITIONS.**

A. **Sexual Harassment** includes any unwelcome sexual advances, requests for sexual favors, or other unwelcome written, verbal, or physical conduct of a sexual nature when:

- i. Such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance or creating an intimidating, hostile, or offensive environment for that individual's employment, education, or participation in a College activity; or

ii. Submission to, or rejection of, such conduct by an individual is used as the basis for decisions affecting the individual's academic standing, employment status, or participation in a College activity; or

iii. Submission to such conduct is made, explicitly or implicitly, a term or condition of an individual's education, employment, or participation in a College activity.

Sexual harassment may be committed by anyone regardless of gender identity and may occur between members of the same or opposite sex.

**B. Hostile Environment.** A "hostile environment" exists when unwelcome conduct of a sexual or gender-based nature has the purpose or effect of unreasonably interfering with an individual's academic or work performance or creating an intimidating, hostile, or offensive environment for that individual's employment, education, living environment or participation in a College activity. A person does not have to be the target of harassment to complain about it. Harassing behavior toward others may be so offensive, demeaning, or disruptive as to constitute a hostile work or academic environment, even if the harassment is not specifically directed at the observer or individual lodging the complaint. Alleged harassment will be evaluated according to the objective standard of a reasonable person. A single, isolated incident of sexual or gender-based harassment may, based on the facts and circumstances, create a hostile environment.

Hostile environment sexual harassment includes, but is not limited to:

- Generalized gender-based remarks and behavior;
- Inappropriate, unwanted, offensive physical or verbal sexual advances and comments;
- Solicitation of sexual activity or other sex-linked behavior by promise of reward;
- Coercion of sexual activity by threat of punishment; and
- Gross sexual imposition such as touching, fondling, grabbing or assault.

The above-referenced conduct committed by any instructional, supervisory, managerial or administrative personnel, co-workers, independent contractors, vendors or others with whom the College does business constitutes prohibited sexual harassment when a reasonable person of the same sex as the aggrieved individual would consider it sufficiently severe or pervasive to alter the conditions of employment or education or to create an intimidating, hostile or offensive working or educational environment.

It shall be the responsibility of each administrator, support staff, faculty member, student to:

- Ensure that the college environment is free from acts of sexual harassment by supervisors, employees, non-employees and students;

- Make all employees and students aware of the policy against sexual harassment and of the procedure for filing complaints when sexual harassment has potentially occurred; and/or
- Immediately report any incident alleging sexual harassment to the Director of Human Resources;

**B. Gender-based Harassment.** Gender-based harassment refers to acts of aggression, intimidation, stalking, or hostility based on gender, gender identity, or gender stereotyping. Gender-based harassment can occur if individuals are harassed either for exhibiting what is perceived as a stereotypical characteristic of their sex, or for failing to conform to stereotypical notions of masculinity or femininity. To constitute harassment, the conduct must unreasonably interfere with an individual's employment, education, or participation in a College activity, or create an unreasonably intimidating, hostile, demeaning or offensive work, academic, or living environment.

**C. Sexual Intimidation.** Sexual intimidation refers to threatening behavior of a sexual nature directed at another person or group that reasonably leads the target(s) to fear for their physical well-being or to engage in sexual conduct for self-protection. Some examples of sexual intimidation are threatening to sexually assault another person or engaging in indecent exposure

**D. Sexual Exploitation.** 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.

**E. Sexual Assault or Non-Consensual Sexual Contact.** Sexual assault or non-consensual sexual contact refers to any one or more of the following acts:

- Touching or penetrating of an unwilling or non-consenting person's intimate parts (under or over a person's clothes);
- Forcing an unwilling person to touch another's intimate parts; or
- Touching or penetrating an unwilling person or non-consenting person with one's own intimate parts.

F. **Retaliation.** Retaliation refers to any act of intimidation against an individual who, in good faith, asserts their right to bring a complaint under this Policy, including individuals who file a third-party report, participate in an investigation, or protest the alleged conduct or retaliation. Retaliation can arise in various forms including, but not limited to, sustained abuse or violence, threats, and intimidation. Any individual or group of individuals, not just a Respondent or Complainant, can be liable for retaliation. Retaliation is considered a separate offense from the original complaint, and will be considered independently from the merits of the underlying complaint. Individuals who believe they have been subjected to retaliation should report the conduct to the Director of Human Resources or his/her designee.

### III. CONSENSUAL RELATIONSHIPS

Consensual romantic and sexual relationships between supervisors and employees or between faculty and student are strongly discouraged. These relationships may be subject to concerns about the validity of consent, conflicts of interest, and unfair treatment of other students or employees. Further, such relationships can undermine the atmosphere of trust essential to the educational process and the employment relationship. A person involved in a consensual relationship cannot have a direct responsibility for evaluating the employment or academic performance or for making decisions regarding the promotion, tenure, or compensation of the other party to the relationship.

A subordinate'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. Accordingly, a supervisor's display of a romantic interest in a subordinate might constitute sexual harassment. Any individual who engages in a 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 College can take action to make changes that eliminate the conflict of interest and that impacted employees are recused from making decisions that have an impact, either directly or indirectly, on the individuals involved. In the case of a relationship between two employees in which the College determines it is unable to eliminate the conflict of interest, the employees will be provided with the opportunity to decide which of the two will resign their employment. Failure to give proper notice to the appropriate supervisor may result in the denial of legal representation and indemnification in the event that a lawsuit based on the relationship is filed. In addition, failure to give proper notice to the appropriate supervisor may result in disciplinary action.

#### **IV. STUDENT-ON-STUDENT HARASSMENT**

Unwelcome sexual conduct by another student, student-on-student harassment, that disrupts a student's ability to learn or conduct that creates a hostile learning environment will be handled through the College's policies that address student conduct, including the rules and regulations found in the policies governing student conduct, not the Complaint Process for resolving Sexual Harassment Complaints.

Student-on-student harassment is a violation of the College's Sexual Harassment Policy. A complaint alleging that a student has committed a sexual assault, sexual harassment, sexual exploitation, stalking, relationship violence, or other form of sexual misconduct, may also be submitted to the Title IX Deputy Coordinator, Office of Student Life and Conduct or the Title IX Deputy Coordinator of the Office of Human Resources.

#### **V. REPORTING PROHIBITED CONDUCT**

All members of the College community are encouraged to report all conduct prohibited by this policy immediately to the Director of Human Resources or designee so that a thorough and prompt investigation can ensue. If administrators, managers, and/or supervisors receive reports of conduct prohibited by this policy, they are required to refer them immediately to the Director of Human Resources or his/her designee. Failure to do so may lead to disciplinary action. Administrators, managers, and/or supervisors should not investigate complaints they receive nor evaluate whether the complaint rises to the level of a College policy violation.

An individual does not have to be the direct target of conduct prohibited by this Policy in order to report it. The individual instead may show that other individuals were sexually harassed and that this harassment created a hostile or intimidating work or academic environment.

The College is committed to responding to reports and complaints of conduct prohibited by this policy promptly and fairly. Upon completion of the Complaint Process, the College will take appropriate corrective action consistent with the results of the investigation. Disciplinary action, up to and including termination, may be taken against an employee who violates this policy.

The College will maintain confidentiality as to complaints, and the investigation of those complaints, to the extent possible. Only those with a need to know will be informed of the identity of the parties to a complaint. Any manager, supervisor or other employee who violates confidentiality as to a complaint of discrimination and/or harassment will be subject to appropriate discipline. All questions or concerns regarding confidentiality should be directed to the Director of Human Resources or his/her designee.

Knowingly making a material misstatement of fact may subject the complainant to discipline. Anyone who believes that he or she has been the subject of a false complaint may meet with the Director of Human Resources or his/her designee to address the allegations. The filing of a complaint that does not result in a finding of prohibited conduct is not alone evidence of the intent to file a false complaint.

## Procedures

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### Related Documents/Policies:

Policy Prohibiting Discrimination  
Student Code of Conduct  
Employee Code of Conduct  
Title IX Policy  
Policy on Internal Complaint Process

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### Policy History: (adopted/amended)

Section B: BH: BHA (listed in binder index as Section B: BMA)  
Adopted: 10/21/86, 2/2/94  
Resolution: P8  
Replaced: 12/4/96  
REVISED: 8.7.18