

## Recommendation to the Senate

### The Charge:

A-1912: Policy Prohibiting Consensual Relationships in Academic Settings: *Review the draft University Policy Prohibiting Consensual Relationships in Academic Settings and the accompanying Mitigation Plan for Consensual Relationships Template. Make any appropriate recommendations. Respond to the Senate Executive Committee by December 2019.*

### Reason for Policy:

As stated in the draft policy submitted to the Senate,

The University recognizes that consenting adults associated with the University should be free to enter into personal relationships of their choice. At the same time, such relationships must not put at risk the fundamental interest of every member of the University community to participate in University programs free from conflicts of interest, favoritism, and/or exploitation.

Consensual relationships between certain categories of individuals affiliated with the University risk undermining the essential educational purpose of the University and can disrupt the workplace and learning environment, not only for the individuals most immediately involved but also for members of the broader community.

### Background and Summary:

Educational institutions have a unique responsibility to students. When faculty and staff interact with students, their mission is to advance student learning and development. That role requires impartiality and professionalism. When a faculty or staff member enters into a sexual, romantic, or dating relationship with a student, there is a potential conflict of interest between the faculty or staff member's role as an educator and his or her role as a participant in an intimate relationship.

Students are particularly vulnerable to exploitation because of the trust and respect with which they often regard their teachers. A relationship between a student and a faculty or staff member is inherently unequal. Consent given in such circumstances is tainted by the imbalance of power. Even if a teacher intends to allow a student to choose freely whether to enter a relationship, the student may reasonably believe that accepting or rejecting the teacher's overtures will have academic consequences.<sup>1</sup> "In one representative study, almost three-quarters of those who rejected a professor's advances considered them coercive and about half of those who had sexual relationships believed that some degree of coercion was involved."<sup>2</sup> "Faculty whose self-image and self-interest are at stake may underestimate the pressures that students experience.... Given the power disparities involved, even relationships that appear consensual at the outset may become less so over time."<sup>3</sup>

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<sup>1</sup> See Katharine T. Bartlett et al., *Gender and Law: Theory, Doctrine, Commentary* 577 (8<sup>th</sup> ed. 2020).

<sup>2</sup> Id., citing Caroline Forrell, *What's Wrong with Faculty-Student Sex?*, 47 *Journal of Legal Education* 47 (1997).

<sup>3</sup> See Deborah L. Rhode, *Sex in Schools: Who's Minding the Adults*, in *Directions in Sexual Harassment Law* 290, 295 (C. MacKinnon & R. Siegel eds., 2004).

Aside from its impact on the participants, a relationship between a faculty or staff member and a student may be harmful to others. For example, other students may be adversely affected by real or perceived favoritism.

The majority of Rutgers' peer institutions have policies prohibiting some or all romantic, dating, and sexual relationships between faculty and students. The number of such policies has grown rapidly in recent years. The current Rutgers policy "strongly discourages" but does not prohibit such relationships.<sup>4</sup> The current policy lacks an effective enforcement mechanism to ensure that faculty and staff members do not abuse their power over students with whom they have intimate relationships.

The draft policy presented for review would generally prohibit any academic supervisor (as defined in Section V.A) from engaging in a romantic, dating, intimate and/or sexual relationship with an undergraduate, with exemptions available in very rare circumstances. See Section VI.1. It would also generally prohibit any academic supervisor from engaging in such a relationship with a graduate student if any of the following three conditions exist: (i) both parties are in the same academic program, discipline, or department; (ii) the academic supervisor teaches, manages, supervises, advises, or evaluates the other party; or (iii) the academic supervisor is in a position to materially influence the educational opportunities or career of the other party. See Section VI.2. The policy would also generally prohibit internship supervisors, student employees, and postdoctoral fellows from engaging in such a relationship with a student, intern or postdoctoral fellow whom that person teaches, manages, supervises, advises or evaluates. See Section VI.3. Under the draft policy, individuals who wish to engage in a relationship that would otherwise be prohibited are permitted to propose a mitigation plan that would eliminate any conflict of interest. See Section VII. If the plan is approved, the relationship will not be considered a violation of the policy. See Section VII.B.

### **Report and Recommendations:**

The Faculty Affairs and Personnel Committee (FAPC) reviewed the draft policy. The FAPC agrees that the academic mission of our University relies on a safe and supportive environment for faculty, staff and students.

The FAPC makes the following observations and recommendations:

- The committee recommends changing the title from "Policy Prohibiting Consensual Relationships in Academic Settings" to "Policy on Consensual Relationships in Academic Settings." The suggested revision more accurately reflects the fact that the policy does not prohibit all such relationships.
- According to Section VIII of the draft policy, an employee who has reasonable cause to believe that a violation of the policy has occurred has an affirmative obligation to report it promptly, and failure to do so is a violation of the policy and may lead to disciplinary action. To avoid placing an inappropriate burden on employees, the committee recommends that Section VIII be

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<sup>4</sup> See Section IV of University Policy 60.1.28 Policy Prohibiting Sexual Harassment, Sexual Violence, Relationship Violence, Stalking, and Related Misconduct by Employees and Third Parties.

amended by removing the references to “affirmative obligation” and “disciplinary action” and adopting the following language instead: *The University strongly encourages all who have reasonable cause to believe that a violation of this Policy has occurred to report it as promptly as possible to the applicable Chancellor, or SVPAA or University Ethics and Compliance, so that the University can investigate and respond effectively.*

- For the sake of clarity, the policy should include a more detailed reference to the Rutgers policy on sexual harassment and sexual violence (60.1.28).

In addition, some members of the FAPC noted the following concerns and suggestions:

- Some committee members felt that the use of the term “discipline” in Section VI.2(i), which describes prohibited relationships between academic supervisors and graduate students, is ambiguous or too broad.
- Some committee members suggested that the procedure for obtaining approval of an exemption or mitigation plan should include an opportunity for appeal to a neutral third party. See Sections VIIB, VIIC.
- Some committee members suggested that the policy should include language affirmatively supporting casual counseling and mentoring.
- Some committee members suggested substituting the following definition of a consensual relationship: *CONSENSUAL RELATIONSHIPS: Because the relationship between supervisor/supervisee is central to the working relationship, it is essential to establish that a standard of expected conduct in that relationship goes beyond the proscription against sexual harassment. With respect to sexual relations in particular, what might appear to be consensual, even to the parties involved, may in fact not be so. On this basis, any sexual relations between supervisor and subordinate of that supervisor are inappropriate. Any person in a supervisory capacity or a position of authority enters at peril into sexual relations with a subordinate.*

### **Resolution:**

*Whereas* consensual relationships between certain categories of individuals affiliated with the University risk undermining the essential educational purpose of the University and can disrupt the workplace and learning environment;

*Whereas* the current Rutgers policy on consensual relationships between teachers and students is inadequate; and

*Whereas* the Rutgers administration has proposed a new draft policy to address this problem,

Be it resolved that the University Senate recommends adoption of the proposed draft policy with the following changes:

1. Change the title from “Policy Prohibiting Consensual Relationships in Academic Settings” to “Policy on Consensual Relationships in Academic Settings.”
2. Amend Section VIII by removing the references to “affirmative obligation” and “disciplinary action” and adopting the following language instead: *The University strongly encourages all who have reasonable cause to believe that a violation of this Policy has occurred to report it as promptly as possible to the applicable Chancellor, or SVPAA or University Ethics and Compliance, so that the University can investigate and respond effectively.*
3. Include a more detailed reference to the Rutgers policy on sexual harassment and sexual violence (60.1.28).
4. Delete the term “discipline” in Section VI.2(i).
5. In Sections VIIB and VIIC, amend the procedure for obtaining approval of an exemption or mitigation plan by adding an opportunity for appeal to a neutral third party.
6. Add language affirmatively supporting casual counseling and mentoring.
7. Substitute the following definition of a consensual relationship: *CONSENSUAL RELATIONSHIPS: Because the relationship between supervisor/supervisee is central to the working relationship, it is essential to establish that a standard of expected conduct in that relationship goes beyond the proscription against sexual harassment. With respect to sexual relations in particular, what might appear to be consensual, even to the parties involved, may in fact not be so. On this basis, any sexual relations between supervisor and subordinate of that supervisor are inappropriate. Any person in a supervisory capacity or a position of authority enters at peril into sexual relations with a subordinate.*