

Title 4 - Codification of Board Policy Statements

Chapter 8

**STUDENT RECRUITMENT AND RETENTION POLICY, EQUAL EMPLOYMENT
OPPORTUNITY POLICY AND AFFIRMATIVE ACTION PROGRAM FOR THE NEVADA
SYSTEM OF HIGHER EDUCATION**

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Section 1. Introduction

The Nevada System of Higher Education is guided by the principle that there shall be no difference in the treatment of persons because of race, religion, color, age, sex (including a pregnancy related condition), sexual orientation, military status or military obligations, disability (whether actual or perceived by others to have a disability including veterans with service-connected disabilities, or national origin, and that equal opportunity and access to facilities shall be available to all. Similarly, there shall be no difference in the treatment of persons who file charges of discrimination or harassment, participate in a discrimination or harassment proceeding, or otherwise oppose discrimination or harassment. This principle is applicable to every member of the Nevada System of Higher Education community, both students and employed personnel at every level, and to all units, facilities, and services of the Nevada System of Higher Education.

This principle governs the admission and subsequent treatment of students in all institutions, as well as student participation in extracurricular activities. It is a guiding policy in the employment of students, either by the Nevada System of Higher Education or by outsiders through the System. All student services, including financial aid, placement, tutoring, and counseling, are governed by the concept of equal opportunity. NSHE does not, on the basis of sex or any other protected classification, exclude from participation in, deny the benefits of, or subject to discrimination any person under any education program or activity.

The same principle is applicable in NSHE-owned or NSHE-approved housing, in the use of food services, student unions, and all other Nevada System of Higher Education facilities.

In the employment or reemployment of all personnel, the Nevada System of Higher Education recognizes that all persons regardless of race, religion, color, age, sex (including a pregnancy related condition), sexual orientation, military status or military obligations, disability (including veterans with service-connected disabilities), or national origin shall have equal access to positions in the public service, limited only by their ability to do the job.

In addition, it is the policy of the Nevada System of Higher Education to undertake affirmative action, consistent with its obligations as a federal contractor or where otherwise required to remedy the effects of past discrimination. Such efforts may require more than employment neutrality by making a positive and continuous effort in the recruitment, employment, retention and promotion of qualified women, minorities, persons with military status or military obligations, and persons with disabilities, including veterans with service-connected disabilities. The Nevada System of Higher Education commits itself to apply good faith efforts to achieve full utilization of qualified women, minorities, persons with military status or military obligations, and persons with disabilities (including veterans with service-connected disabilities) in all segments of the workforce where deficiencies exist. These efforts will conform to all current legal and regulatory requirements, and are consistent with NSHE standards of quality and excellence.

(B/R 12/09)

Section 2. General Policy of the Board of Regents on the Recruitment, Admission and Retention of Students

Participation by members of minority groups, women, and members of other protected classes in higher education is a priority issue with the Board of Regents. Increasing student participation and the completion of postsecondary educational programs by persons in these

groups is important and necessary and will require innovative and diverse approaches for their recruitment, admission and retention in the Nevada System of Higher Education. Each institution is encouraged to devote significant resources to support the recruitment and retention of students from these groups. Each institution should prepare and implement a plan of action to provide outreach to potential students, or organizations, which can find such potential students, for their admission to the Nevada System of Higher Education. Financial incentives should be developed for the financially disadvantaged to encourage their admission and retention in the System. Additional resources should be devoted to activities designed to encourage students from these groups to continue their education in the System.

In short, it is the responsibility of the Board of Regents and the officers and employees of the Nevada System of Higher Education to help diversify our society and establish social justice by actively taking measures to ensure that the growing population of minority groups, women and other protected classes are prepared to participate fully in the life of our state and our nation. At the very least, this requires that the Board, its officers and employees take active steps to recruit and retain students from these groups in the postsecondary educational programs of the Nevada System of Higher Education.

(B/R 11/88)

Section 3. General Policy of the Board of Regents on Equal Employment Opportunity

It is hereby resolved that the reaffirmed policy of the Nevada System of Higher Education shall be to promote equal opportunity of employment or reemployment for members of minority groups, women (including women with pregnancy related conditions), persons with disabilities (including veterans with service-connected disabilities), persons with military status or military obligations, and members of other protected classes in all positions. Consistent with statutory and legal requirements, any affirmative action necessary to address deficiencies shall include, but not be limited to, active recruitment among minority groups, women, persons with disabilities (including veterans with service connected disabilities), persons with military status or military obligations, and other protected classes and the creation of programs designed to lead to their qualification for both academic and classified positions.

This affirmative action is not discrimination in reverse; rather, it is a program designed to expand the group of qualified people from whose ranks appointments can be made.

Further, affirmative action requires that the rank and salary of minorities, women, persons with disabilities (including veterans with service-connected disabilities), persons with military obligations or military status, and other protected classes presently employed by the Nevada System of Higher Education be evaluated annually in order to insure that rank and salary determinations are made in an equitable manner.

(B/R 12/09)

Section 4. Responsibility for Compliance

1. The Board of Regents and the Chancellor have delegated to each President the responsibility for insuring that each administrative unit complies with the terms of the Equal Opportunity and Affirmative Action policies set forth by the Nevada System of Higher Education, as well as all applicable federal and state statutes, laws, orders, and regulations.

2. Vice presidents, deans, and other administrative officers have the direct responsibility for the compliance of the administrative units under their jurisdiction with the System Equal Opportunity and Affirmative Action policies and with the Federal and State statutes, laws, orders, and regulations.
 3. Each Office of Admissions and each department, which admits students, has the specific responsibility for insuring that equal opportunity in education is provided to all.
- (B/R 12/09)

Section 5. NSHE Equity, Diversity, and Inclusion Council

To support the principle established in Section 1 of this Chapter, an Equity, Diversity, and Inclusion Council (EDIC) will be established to review, evaluate, and, as needed, formulate additional proposed NSHE equity, diversity, and inclusion goals, policies, and practices, and provide statewide leadership in best practices. The Equity, Diversity, and Inclusion Council shall report to the Chancellor and shall be appointed in conformity with Title 2, Chapter 1, Section 1.4.11 of the Code, to include representatives from each NSHE institution.

The charge of the Council shall be set by the Chancellor to include the following tasks:

1. Recommend to the Chancellor and the Board of Regents proposed goals, policies, practices, related strategies, and accountability measures on diversity, equity, and inclusion;
2. Conduct a continuing review of existing goals, policies, practices, concerns, and information related to diversity, equity, and inclusion on all NSHE campuses;
3. Provide for opportunities for communication among NSHE institutions to identify and promote best practices for ensuring equity, diversity and inclusion among the students, staff and faculty of the System;
4. Support and monitor the Board of Regents' Master Plan goals and strategies for equity and diversity;
5. Encourage regular collaboration between and among institutional faculty members and staff on issues related to equity, diversity, and inclusion; and
6. Support the Board of Regents' Cultural Diversity Committee with regular reports, supported by current research and related data, on the charges outlined in the Committee's mission related to equity, diversity and inclusion issues.

(B/R 12/10)

Section 6. Dissemination of Policies

1. The NSHE Equal Opportunity Policy Statement, NSHE Affirmative Action Program and the respective institution policies and annual affirmative action plan shall be made available to employees.

2. Information relating to the Nevada System of Higher Education Affirmative Action plan will be communicated in an annual report to the Board of Regents. This information will be available upon request to system employees, community organizations, and federal, state and local agencies, as well as other interested persons.

(B/R 12/09)

Section 7. Implementation Policies

1. At the institutional level, responsible administrators must:
 - a. Identify a person or persons to be responsible for Affirmative Action and Equal Opportunity programs.
 - b. Analyze the composition of the institution's workforce to determine the existence of any under-utilization of women, minorities, persons with disabilities, or other protected classes.
 - c. State steps that will be taken to correct any such under-utilization.
 - d. Set realistic employment, promotional, and programmatic goals (i.e. the recruitment of minority and female students into fields of study that will prepare them for positions in which such persons are currently under-utilized) that will accomplish the general purpose of this Affirmative Action Program.
 - e. Continue the active recruitment of members of minority groups, women, persons with disabilities, and other protected classes. For professional personnel, this effort is not restricted to the demographic areas from which the Nevada System of Higher Education normally draws its personnel but is expanded to include any areas, nationwide, where qualified minorities, women, and persons with disabilities may be located.
 - f. Publicize all available open positions internally and/or externally. Internal and external searches are defined and reported as follows:
 - (1) Internal within a single institution of the Nevada System of Higher Education.
 - (2) Internal among all NSHE institutions.
 - (3) External among the region or nation.
2. It is the objective of the NSHE to conduct internal or external searches for all full-time and half-time professional staff positions (defined in Title 4, Chapter 3, Section 2) with the exception of Temporary Part-time Faculty (defined in Title 4, Chapter 3, Section 44. The institutional President or Chancellor may waive the search requirement where he or she determines the waiver to be in the best interest of the institution or System unit. Each institution and System unit must have an internal process for requesting search waivers and for obtaining the approval of the institutional President or Chancellor. Each institution or System unit will be expected to maintain a list of search waivers and to report to the Chancellor and the Board annually.

3. This shall not be interpreted as requiring a search within the institution in order to fill positions by internal institutional promotion, transfer, positions of academic department chairs or positions of directors in a community college who serve in the same capacity as academic chairs do in the universities or state college. Such internal institutional promotions, transfers, and positions of academic department chair or positions of directors in a community college must be approved by the President or the Chancellor, as the case may be. This also shall not be interpreted as altering the 1971 agreement between the NSHE and the U.S. Department of Agriculture related to the Cooperative Extension Service.
4. The Chancellor's Office shall collect and maintain information on (1) the number of minorities, women, and members of other protected classes employed in professional and classified positions; (2) the number of minorities, women, and members of other protected classes enrolled as students; and (3) any additional information necessary to determine the impact of policy changes on the number of minorities, women, and members of other protected classes enrolled or employed in an NSHE institution. Annually this information shall be reported to the Board of Regents.
5. It is the policy of the System to establish and maintain programs whereby women, minority group members, persons with disabilities (including veterans with service-connected disabilities), persons with military status or military obligations, and members of other protected classes will be trained in internally conducted training programs for the purpose of employee development. The Nevada System of Higher Education encourages the establishment of appropriate plans in all its administrative units so that regular evaluations can be made to determine what, if any, changes are needed in these programs and what has been accomplished.

(B/R 12/09)

Section 8. Academic Reporting and Monitoring

The administrative units must utilize checklists and summaries of the steps of affirmative action taken in the recruitment process and submit them with the employment document to the appointing authorities. These checklists and summaries must identify all final candidates interviewed for the position by sex and race, and also identify the person nominated for the position by name, race, and sex. If minorities, women, persons with disabilities (including veterans with service connected disabilities), persons with military status or military obligations, or members of other protected classes were referred as final candidates for the position and not hired, an explanation must be given as to the reason they were not hired. All unit files must include a list of recruitment sources.

(B/R 12/09)

Section 9. Monitoring and Reporting

Departments are required to report the reasons that a woman, a minority, a person with a disability (including a veteran with a service-connected disability), a person with military status or military obligations, or a member of a protected class was not hired or promoted. These reports will be monitored to insure that the hiring or the promoting is made on the basis of job-related criteria and is not discriminatory.

(B/R 12/09)

Section 10. Reviews

Each institution's affirmative action efforts will be reviewed annually by the Board of Regents and are subject to review by federal officials of the U.S. Department of Labor Office of Federal Contract Compliance Programs and the U.S. Department of Health and Human Services Regional Office of the U.S. Commission of Civil Rights, and state agencies as well.

(B/R 11/88)

Section 11. Participation in Community Affairs

The Nevada System of Higher Education pledges its participation in and support of community programs which relate to the advancement of women, minorities, persons with disabilities (including veterans with service-connected disabilities), persons with military status or military obligations, and other protected classes through education, training, and employment.

(B/R 12/09)

Section 12. Contract Compliance for Construction, Skilled Trades and Purchasing

1. The federal and state governments require that all contractors working on Nevada System of Higher Education projects provide effective Equal Employment and Affirmative Action programs. On projects contracted for by the State Public Works Board, the responsibility for monitoring compliance will be with appropriate state agencies. Compliance monitoring and enforcement review for all other projects will be the responsibility of institutional affirmative action officers.
2. Each purchasing department within the Nevada System of Higher Education will require each vendor with a contract or subcontract in excess of \$7,500 to certify that it is an Equal Opportunity Employer. Businesses that are women, disadvantaged and minority owned will be identified and will be given an opportunity to bid on Nevada System of Higher Education contracts.

(B/R 11/88)

Section 13. Policy Against Discrimination and Sexual Harassment; Complaint Procedure

Introduction

This policy is divided into three parts. Section A states the NSHE policy against discrimination. Section B states the NSHE policy against sexual harassment. Section C contains the complaint and investigation procedure for discrimination and sexual harassment complaints. These procedures are in addition to disciplinary complaints brought against professional employees or students under Title 2, Chapter 6 or Chapter 10 of the NSHE Code (or if applicable, institution student codes of conduct), or against classified employees under the *Nevada Administrative Code*. However, information gathered as part of the complaint process under this section may be used in connection with disciplinary proceedings.

Title IX Notice of Non-Discrimination

NSHE and its member institutions do not discriminate on the basis of sex in their education programs and activities; Title IX of the Education Amendments Act of 1972 is a federal law that states at 20 U.S.C. §1681(a):

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

The Chancellor and each President shall designate an administrator to serve as the Title IX Coordinator, whose duties shall include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints.

Inquiries concerning the application of Title IX may be referred to each member institution's Title IX Coordinator or the Office for Civil Rights of the United States Department of Education. Each member institution shall include on its website and in its general catalog, its Title IX Coordinator's name, office address, telephone number, and email address.

Member institutions shall notify all students and employees of the name or title and contact information of its Title IX Coordinator.

A. NSHE Non-Discrimination Policy

1. Policy Applicability and Sanctions.

The Nevada System of Higher Education (NSHE) is committed to providing a place of work and learning free of discrimination on the basis of a person's age, disability, whether actual or perceived by others (including service-connected disabilities), gender (including pregnancy related conditions), military status or military obligations, sexual orientation, gender identity or expression, genetic information, national origin, race, or religion. Where discrimination is found to have occurred, the NSHE will act to stop the discrimination, to prevent its recurrence, to remedy its effects, and to discipline those responsible.

No employee or student, either in the workplace or in the academic environment, should be subject to discrimination.

It is expected that students, faculty and staff will treat one another and campus visitors with respect.

2. Policy Applicability and Sanctions.

All students, faculty, staff, and other members of the campus community are subject to this policy. Students, faculty, or staff who violate this policy are subject to discipline up to and including termination and/or expulsion, in accordance with the NSHE Code (or in the case of students, any applicable student code of conduct) or, in the case of classified employees, the *Nevada Administrative Code*. Other lesser sanctions may be imposed, depending on the circumstances. Complaints may also be filed against visitors, consultants, independent contractors, service providers and outside vendors whose conduct violates this policy, with a

possible sanction of limiting access to institution facilities and other measures to protect the campus community.

3. Training.

All employees shall be given a copy of this policy and each institution's Human Resources Office shall maintain documentation that each employee received the policy. New employees shall be given a copy of this policy at the time of hire and each institution's Human Resources Office shall maintain documentation that each new employee received the policy.

Each institution shall provide this policy to its students at least annually and may do so electronically.

Each institution shall include this policy and complaint procedure on its website and in its general catalog.

Each institution shall have an ongoing non-discrimination training program and shall designate a person or office to be responsible for such training.

4. Discriminatory Practices.

It is illegal to discriminate in any aspect of employment or education, such as:

- hiring and firing;
- compensation, assignment, or classification of employees;
- transfer, promotion, layoff, or recall;
- job advertisements;
- recruitment;
- testing;
- grading;
- acceptance or participation in an academic program or school activity;
- use of employer's facilities;
- training programs;
- fringe benefits;
- pay, retirement plans, and disability leave; or
- other terms and conditions of employment.

Determining what constitutes discrimination under this policy will be accomplished on a case-by-case basis and depends upon the specific facts and the context in which the conduct occurs. Some conduct may be inappropriate, unprofessional, and/or subject to disciplinary action, but would not fall under the definition of discrimination. The specific action taken, if any, in a particular instance depends on the nature and gravity of the conduct reported, and may include non-discrimination related disciplinary processes as stated above.

Discriminatory practices also include:

- discrimination on the basis of a person's age, disability (including service-connected disabilities), gender (including pregnancy related conditions), military status or military obligations, sexual orientation, gender identity or expression, genetic information, national origin, race, or religion;
- retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;

- employment or education decisions based on stereotypes or assumptions about the abilities, traits or performance of individuals of a certain age, disability (including service-connected disabilities), gender (including pregnancy related condition), military status or military obligations, sexual orientation, gender identity or expression, genetic information, national origin, race, or religion; and
- conduct that has the purpose or effect of substantially interfering with an individual's academic or work performance, or of creating an intimidating, hostile or offensive environment in which to work or learn.

This behavior is unacceptable in the work place and the academic environment. Even one incident, if it is sufficiently serious, may constitute discrimination. One incident, however, does not necessarily constitute discrimination.

B. Policy Against Sexual Harassment

1. Sexual Harassment is Illegal Under Federal and State Law.

The Nevada System of Higher Education (NSHE) is committed to providing a place of work and learning free of sexual harassment, including sexual violence. Where sexual harassment is found to have occurred, the NSHE will act to stop the harassment, to prevent its recurrence, to remedy its effects, and to discipline those responsible in accordance with the NSHE Code or, in the case of classified employees, the *Nevada Administrative Code*. Sexual harassment, including sexual violence, is a form of discrimination; it is illegal.

No employee or student, either in the workplace or in the academic environment, should be subject to unwelcome verbal or physical conduct that is sexual in nature. Sexual harassment does not refer to occasional compliments of a socially acceptable nature. It refers to behavior of a sexual nature that is not welcome, that is personally offensive, and that interferes with performance.

It is expected that students, faculty and staff will treat one another with respect.

2. Policy Applicability and Sanctions

All students, faculty, staff, and other members of the campus community are subject to this policy. Individuals who violate this policy are subject to discipline up to and including termination and/or expulsion, in accordance with the NSHE Code (or applicable Student Code of Conduct) or, in the case of classified employees, the *Nevada Administrative Code*. Other, lesser sanctions may be imposed, depending on the circumstances.

3. Training.

All employees shall be given a copy of this policy and each institution's Human Resources Office shall maintain documentation that each employee received the policy. New employees shall be given a copy of this policy at the time of hire and each institution's Human Resources Office shall maintain a record that each new employee received the policy.

Each institution shall provide this policy to its students at least annually and may do so electronically.

Each institution shall include this policy and complaint procedure on its website and in its general catalog.

Each institution shall have an on-going sexual harassment training program for employees.

4. Sexual Harassment Practices.

Under this policy, unwelcome sexual advances, requests for sexual favors, and other visual, verbal or physical conduct of a sexual or gender bias nature constitute sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic status;
2. Submission to or rejection of the conduct is used as a basis for academic or employment decisions or evaluations, or permission to participate in an activity; or
3. The conduct has the purpose or effect of substantially interfering with an individual's academic or work performance, or of creating an intimidating, hostile or offensive environment in which to work or learn.

Sexual harassment may take many forms—subtle and indirect, or blatant and overt. For example,

- It may occur between individuals of the opposite sex or of the same sex.
- It may occur between students, between peers and/or co-workers, or between individuals in an unequal power relationship (such as by a supervisor with regard to a supervised employee or an instructor regarding a current student).
- It may be aimed at coercing an individual to participate in an unwanted sexual relationship or it may have the effect of causing an individual to change behavior or work performance.
- It may consist of repeated actions or may even arise from a single incident if sufficiently severe.
- It may also rise to the level of a criminal offense, such as battery or sexual violence.
- Sexual violence is a physical act perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. Sexual violence includes, but is not limited to, rape, sexual assault, sexual battery, and sexual coercion.

Determining what constitutes sexual harassment under this policy is dependent upon the specific facts and the context in which the conduct occurs. Some conduct may be inappropriate, unprofessional, and/or subject to disciplinary action, but would not fall under the definition of sexual harassment. The specific action taken, if any, in a particular instance depends on the nature and gravity of the conduct reported, and may include disciplinary processes as stated above.

Examples of unwelcome conduct of a sexual or gender related nature that may constitute sexual harassment may, but do not necessarily, include, and are not limited to:

Rape, sexual assault, sexual battery, sexual coercion or other sexual violence;

Sexually explicit or gender related statements, comments, questions, jokes, innuendoes, anecdotes, or gestures;

Other than customary handshakes, uninvited touching, patting, hugging, or purposeful brushing against a person's body or other inappropriate touching of an individual's body;

Remarks of a sexual nature about a person's clothing or body;

Use of electronic mail or computer dissemination of sexually oriented, sex-based communications;

Sexual advances, whether or not they involve physical touching;

Requests for sexual favors in exchange for actual or promised job or educational benefits, such as favorable reviews, salary increases, promotions, increased benefits, continued employment, grades, favorable assignments, letters of recommendation;

Displaying sexually suggestive objects, pictures, magazines, cartoons, or screen savers;

Inquiries, remarks, or discussions about an individual's sexual experiences or activities and other written or oral references to sexual conduct.

Even one incident, if it is sufficiently serious, may constitute sexual harassment. One incident, however, does not necessarily constitute sexual harassment.

C. Complaint and Investigation Procedure.

This section provides the complaint and investigation procedure for complaints of discrimination or sexual harassment, including sexual violence (except that complaints against students may be referred to student disciplinary processes). The Chancellor (for the System Office) and each president shall designate no fewer than two administrators to receive complaints. The administrators designated to receive the complaints may include the following: (1) the Title IX Coordinator; (2) the Affirmative Action Program Officer; (3) the Human Resources Officer; or (4) any other officer designated by the president. The President shall also designate a primary investigating officer (Primary Officer) to process all complaints. The Primary Officer may be any of the individuals identified above. All complaints, whether received by the Affirmative Action Officer, Human Resources Officer or other designated officer, must immediately be forwarded to the Primary Officer. All Title IX complaints must be immediately forwarded to the Title IX Coordinator.

An individual filing a complaint of alleged discrimination or sexual harassment shall have the opportunity to select an independent advisor for assistance, support, and advice and shall be notified of this opportunity by the Primary Officer, or the Primary Officer's designee. It shall be the choice of the individual filing the complaint to utilize or not utilize the independent advisor. The independent advisor may be brought into the process at any time at the request of the alleged victim. The means and manner by which an independent advisor shall be made available shall be determined by each institution or unit.

An individual against whom a complaint of alleged discrimination or sexual harassment is filed shall have the opportunity to select an independent advisor for assistance, support, and advice and shall be notified of this opportunity by the Primary Officer, or by the Primary Officer's designee. It shall be the choice of the individual against whom the complaint is filed to utilize or not utilize the independent advisor. The independent advisor may be brought into the process at any time at the request of the alleged perpetrator. The means and manner by which an independent advisor shall be made available shall be determined by each institution or unit.

If anyone in a supervisory, managerial, administrative or executive role or position, such as a supervisor, department chair, or director of a unit, receives a complaint of alleged discrimination or sexual harassment, or observes or becomes aware of conduct that may constitute discrimination or sexual harassment, the person must immediately contact one of the individuals identified above to forward the complaint, to discuss it and/or to report the action taken. Title IX complaints must be immediately provided to the Title IX Coordinator.

Complaints of discrimination or sexual harassment should be filed as soon as possible with the supervisor, department chair, dean, or one of the administrators listed above and/or designated by the president to receive complaints of alleged sexual harassment or discrimination.

1. Employees.

- a. An employee who believes that he or she has been subjected to discrimination or sexual harassment by anyone is encouraged—but it is neither necessary nor required, particularly if it may be confrontational—to promptly tell the person that the conduct is unwelcome and ask the person to stop the conduct. An employee is not required to do this before filing a complaint. A person who receives such a request must immediately comply with it and must not retaliate against the employee.
- b. The employee may file a discrimination or sexual harassment complaint with his or her immediate supervisor, who will in turn immediately contact one of the officials listed above.
- c. If the employee feels uncomfortable about discussing the incident with the immediate supervisor, the employee should feel free to bypass the supervisor and file a complaint with one of the other listed officials or with any other supervisor.
- d. After receiving any employee's complaint of an incident of alleged discrimination or sexual harassment, the supervisor will immediately contact any of the individuals listed above to forward the complaint, to discuss it and/or to report the action taken. The supervisor has a responsibility to act even if the individuals involved do not report to that supervisor.

2. Students.

- a. A student who believes that he or she has been subjected to discrimination or sexual harassment by anyone is encouraged—but it is neither necessary nor required particularly if it may be confrontational—to promptly tell the person that the conduct is unwelcome and ask the person to stop the conduct. A student is not required to do this before filing a complaint. A person who receives such a request must immediately comply with it and must not retaliate against the student.
- b. The student may file a complaint with his or her major department chair or director of an administrative unit, who will in turn immediately contact one of the officials listed above.
- c. If the student feels uncomfortable about discussing the incident with the department chair or director of an administrative unit, the student should feel free to bypass the person and file a complaint with one of the above officials or to any chair, dean, or director of an administrative unit who will in turn immediately contact one of the officials listed above to forward the complaint, to discuss it and/or to report the action taken. The chair, dean or director of an administrative unit has a responsibility to act even if the individuals involved do not report to that person.

3. Non-Employees and Non-Students

Individuals who are neither NSHE employees nor NSHE students and who believe they have been subjected to discrimination or sexual harassment by a NSHE employee during the employee's work hours or by a NSHE student on campus or at a NSHE-sponsored event may utilize any of the complaint processes set forth above in this section.

4. Investigation and Resolution.

- a. After receiving a complaint of the incident or behavior, the Primary Officer, or designee, will initiate an investigation to gather information about the incident. If the Primary Officer is unable to initiate an investigation, due to a conflict or for any other reason, the President shall designate another individual to act as Primary Officer for the matter. Each institution may set guidelines for the manner in which an investigation shall be conducted. The guidelines shall provide for the prompt, thorough, impartial, and equitable investigation and resolution of complaints, and shall identify the appropriate management level with final decision-making authority. The guidelines shall, at a minimum, provide the person subject to the complaint with information as to the nature of the complaint, and shall further provide that the person filing the complaint and the person who is the subject of the complaint have equal rights to be interviewed, identify witnesses and provide documentation pertaining to the complaint. In most cases, an investigation should be completed within 45 calendar days of receipt of the complaint..

- b. The standard for evaluating complaints shall be a preponderance of the evidence. At the completion of the investigation, a recommendation will be made to the appropriate management regarding the resolution of the matter. The recommendation is advisory only.
- c. After the recommendation has been made, a determination will be made by appropriate management regarding the resolution of the matter. If warranted, disciplinary action up to and including involuntary termination or expulsion will be taken. Any such disciplinary action shall be taken, as applicable, in accordance with NSHE Code Chapter 6 or Chapter 10 (or applicable Student Code of Conduct), or, in the case of classified employees, *Nevada Administrative Code* (NAC) Chapter 284. Other appropriate actions will be taken to correct problems and remedy effects, if any, caused by the conduct, if appropriate. If proceedings are initiated under Title 2, Chapter 6 or Chapter 10, the applicable Student Code of Conduct, or the NAC, the investigation conducted pursuant to this policy may be used as part of such investigations. The administrative officer, in his or her discretion, may also supplement the investigation with additional investigation. In any disciplinary hearings conducted pursuant to a Student Code of Conduct or under Title 2, Ch. 6 or Chapter 10, the burden of proof shall be by a preponderance of the evidence. In connection with any such disciplinary hearings, the person filing the complaint and the person who is the subject of the complaint have equal rights to be interviewed, identify witnesses, and provide and receive documentation and witness lists pertaining to the complaint, and if an appeal is provided, to appeal the decision.
- d. After the appropriate management has made a determination regarding the resolution of the matter, and depending on the circumstances, both parties may be informed concurrently of the resolution.
- e. In the event actions are taken against an individual under NSHE Code Title 2, Chapter 6 or Chapter 10 (or applicable Student Code of Conduct) or NAC Chapter 284, such matters generally remain confidential under those sections, except that final decisions following hearings or appeals of professional employees and State of Nevada personnel hearings involving classified employees are public records. Student matters generally remain confidential under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g, 34 CFR Part 99 (FERPA).
- f. When discriminatory conduct or sexual harassment involves a crime of violence or a non-forcible sex offense, FERPA permits the institution to disclose to the alleged victim the final results (limited to the name of the alleged perpetrator, any violation found to have been committed, and any sanction imposed) of a disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed. With respect to an institutional disciplinary proceeding alleging a sex offense, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. §1092 (f). 34 CFR 668.46 (Clery Act) requires that the accuser and the accused must be informed of the outcome.

- g. In the event a student is found to have engaged in sexual harassment of another student, the institution shall disclose to the student who was harassed, information about the sanction imposed on the student who was found to have engaged in harassment when the sanction directly relates to the harassed student.

5. Prompt Attention.

Complaints of discrimination or sexual harassment are taken seriously and will be dealt with promptly, thoroughly, impartially, and equitably. Where discrimination is found to have occurred, the NSHE institution or unit where it occurred will act to stop the discrimination or sexual harassment, to prevent its recurrence, to remedy its effects, if any, and to discipline those responsible.

6. Confidentiality.

The NSHE recognizes that confidentiality is important. However, confidentiality cannot be guaranteed. The administrators, faculty or staff responsible for implementing this policy will respect the privacy of individuals reporting or accused of discrimination or sexual harassment to the extent reasonably possible and will maintain confidentiality to the extent possible. Examples of situations where confidentiality cannot be maintained include, but are not limited to, necessary disclosures during an investigation, circumstances where the NSHE is required by law to disclose information (such as in response to legal process), or when an individual is in harm's way.

7. Retaliation

Retaliation against an individual who in good faith complains of alleged discrimination or sexual harassment or provides information in an investigation about behavior that may violate this policy is against the law, will not be tolerated, and may be grounds for discipline. Retaliation in violation of this policy may result in discipline up to and including termination and/or expulsion. Any employee or student bringing a discrimination or sexual harassment complaint or assisting in the investigation of such a complaint will not be adversely affected in terms and conditions of employment and/or academic standing, nor discriminated against, terminated, or expelled because of the complaint. Intentionally providing false information is also grounds for discipline.

"Retaliation" may include, but is not limited to, such conduct as:

- the denial of adequate personnel to perform duties;
- frequent replacement of members of the staff;
- frequent and undesirable changes in the location of an office;
- the refusal to assign meaningful work;
- unwarranted disciplinary action;
- unfair work performance evaluations;
- a reduction in pay;
- the denial of a promotion;
- a dismissal;
- a transfer;
- frequent changes in working hours or workdays;
- an unfair grade;

- an unfavorable reference letter.

a. Employees

- I. An employee who believes that he or she has been subjected to retaliation may file a retaliation complaint with his or her immediate supervisor, who will in turn immediately contact one of the officials listed above.
- II. If the employee feels uncomfortable about discussing the alleged retaliation with the immediate supervisor, the employee should feel free to bypass the supervisor and file a complaint with one of the other listed officials or with any other supervisor.
- III. After receiving any employee's complaint of an incident of alleged retaliation, the supervisor will immediately contact any of the individuals listed above to forward the complaint, to discuss it and/or to report the action taken. The supervisor has a responsibility to act even if the individuals involved do not report to that supervisor.

b. Students

- i. A student who believes that he or she has been subjected to retaliation may file a retaliation complaint with his or her major department chair or director of an administrative unit, who will in turn immediately contact one of the officials listed above.
- ii. If the student feels uncomfortable about discussing the alleged retaliation with the department chair or director of an administrative unit, the student should feel free to bypass the person and file a complaint with one of the above officials or to any chair, dean, or director of an administrative unit who will in turn immediately contact one of the officials listed above to forward the complaint, to discuss it and/or to report the action taken. The chair, dean or director of an administrative unit has a responsibility to act even if the individuals involved do not report to that person.

c. Complaints of retaliation under Title IX must be immediately provided to the Title IX Coordinator.

8. False Reports

Because discrimination and sexual harassment frequently involve interactions between persons that are not witnessed by others, reports of discrimination or sexual harassment cannot always be substantiated by additional evidence. Lack of corroborating evidence or "proof" should not discourage individuals from reporting discrimination or sexual harassment under this policy. However, individuals who make reports that are later found to have been intentionally false or made maliciously without regard for truth, may be subject to disciplinary action under the applicable University and Board of Regents disciplinary procedures. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by subsequent investigation.

9. Supervisors' Responsibilities.

Every supervisor has responsibility to take reasonable steps intended to prevent acts of discrimination or sexual harassment, which include, but are not limited to:

Monitoring the work and school environment for signs that discrimination or harassment may be occurring;

Refraining from participation in, or encouragement of actions that could be perceived as discrimination or harassment (verbal or otherwise);

Stopping any observed acts that may be considered discrimination or harassment, and taking appropriate steps to intervene, whether or not the involved individuals are within his/her line of supervision; and

Taking immediate action to minimize or eliminate the work and/or school contact between the two individuals where there has been a complaint of sexual harassment, pending investigation.

If a supervisor receives a complaint of alleged discrimination or sexual harassment, or observes or becomes aware of conduct that may constitute discrimination or sexual harassment, the supervisor must immediately contact one of the individuals identified above to forward the complaint, to discuss it and/or to report the action taken.

Failure to take the above action to prevent the occurrence of or stop known discrimination or harassment may be grounds for disciplinary action.

10. Relationship to Freedom of Expression.

The NSHE is committed to the principles of free inquiry and free expression. Vigorous discussion and debate are fundamental rights and this policy is not intended to stifle teaching methods or freedom of expression. Discrimination or sexual harassment, however, is neither legally protected expression nor the proper exercise of academic freedom; it compromises the integrity of institutions, the tradition of intellectual freedom and the trust placed in the institutions by their members.

(B/R 6/13)