

BOARD OF REGENTS

BRIEFING PAPER

1. AGENDA ITEM TITLE: *Handbook* Revisions and Code Amendments, NSHE Policy Against Unlawful Discrimination and Harassment; Complaint Procedures.

MEETING DATE: August 23, 2024

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

Title IX of the Education Amendments Act of 1972 provides: “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 assistance.”

On April 19, 2024, the U.S. Department of Education issued new regulations pertaining to sex discrimination and the enforcement of Title IX of the Education Amendments of 1972. The effective date of the new regulations is August 1, 2024, for TIX conduct occurring on or after August 1, 2024. The regulations were issued after the Department engaged in the formal rule-making process, which consisted of over 1,500 pages of legal analysis, public comment, and discussion.

Following the issuance of these new regulations, NSHE created a working group, consisting of Title IX Coordinators from across the System. This group reviewed and drafted revisions to NSHE *Handbook*, Title 4, Chapter 8, Section 14, the Board of Regents’ policy against unlawful discrimination and harassment, including the complaint procedures. These revisions bring existing policy and procedures into alignment with the new regulations.

The proposed revisions include conforming amendments to the NSHE Code, Title 2, Chapters 6 and 10 of the Code, pertaining to Rules and Disciplinary Procedures for Faculty Except DRI and student code of conduct, respectively.

The amendments to the NSHE Code are being requested on a temporary and emergency 120-day basis pursuant to NSHE Code, Title 2, Chapter 1, Section 1.3.3(b). These amendments will be re-submitted to be permanently codified through normal procedures on a future Board agenda.

Key provisions of the revised Title IX regulations, which are included in the proposed revision to NSHE policy, include:

Definition Expansion: Broadens the definition of sex discrimination to include discrimination or harassment based on sex stereotypes, sex characteristics, marital status, pregnancy or related conditions, sexual orientation, and gender identity.

Harassment Standard: Adjusts the standard for harassment to require it to be unwelcome, sex-based, subjectively and objectively offensive, and so severe or pervasive that it limits or denies participation in the education program or activity.

Scope of Jurisdiction: Requires schools to address sex-based harassment even if it occurs off-campus or online, including conduct outside the United States.

Institutional Responsibilities: Mandates that schools respond promptly and effectively to sex discrimination complaints, prevent recurrence, and remedy effects, and utilize a fair and transparent process.

Supportive Measures: Requires institutions to provide supportive measures to both parties involved in a complaint, whether or not a formal complaint has been filed, and to ensure the measures are not punitive or unreasonably burdensome.

Grievance Process: Allows the use of the single investigator model and allows for but does not require live hearings, ensuring a process for assessing credibility through party questioning.

Complaint Filing: Expands eligibility to file complaints to include individuals who experienced discrimination while participating or attempting to participate in the institution’s program(s), even if they have since left the institution.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

NSHE Chief Human Resources Officer Eric Gilliland will present for approval revisions to Board policy (NSHE *Handbook*, Title 4, Chapter 8, Section 14) necessary to comply with the U.S. Department of Education’s 2024 Title IX regulations governing sex discrimination, and for approval of conforming corollary amendments to disciplinary procedures in NSHE Code, Title 2, Chapters 6 and 10.

4. IMPETUS (WHY NOW?):

New federal regulations were issued in April 2024. Since these regulations were issued, a NSHE Title IX Working Group has been working diligently to craft revisions to the NSHE policy to bring it into compliance with the new regulations.

The new regulations were effective August 1, 2024. NSHE must comply or risk violating federal law and jeopardizing federal funding.

5. CHECK THE NSHE STRATEGIC PLAN GOAL THAT IS SUPPORTED BY THIS REQUEST:

- Access (Increase access to higher education)
 - Success (Improve student success)
 - Close Institutional Performance Gaps
 - Workforce (Meet workforce needs in Nevada)
 - Research (Increase solutions-focused research)
 - Coordination, Accountability, and Transparency (Ensure system coordination, accountability, and transparency)
- Not Applicable to NSHE Strategic Plan Goals

6. INDICATE HOW THE PROPOSAL SUPPORTS THE SPECIFIC STRATEGIC PLAN GOAL

The revisions to the NSHE policy and complaint procedures align with Title IX, which provides that “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 revisions will help increase participation and student success in post-secondary education by reducing discrimination/harassment and providing prompt and fair remedies to those who have been the subject of discrimination/harassment.

7. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- The proposed revisions bring the NSHE policy complaint procedures and corollary disciplinary procedures in line with the Department’s Title IX regulations, which carry the force and effect of federal law.
- The regulations are effective August 1, 2024.

8. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

None identified.

9. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

None have been identified or brought forward.

10. RECOMMENDATION FROM THE CHANCELLOR’S OFFICE:

The Chancellor’s Office supports the revisions as presented herein.

11. COMPLIANCE WITH BOARD POLICY:

Consistent With Current Board Policy: Title # 2 Chapter # 1 Section # 1.3.3(b)
 Amends Current Board Policy: Title 4, Chapter 8, Section 14
Title 2, Chapter 6
Title 2, Chapter 10
 Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____
 Other: _____
 Fiscal Impact: Yes No _____
Explain: Costs to each institution will increase as a result of increased complaints stemming from the expanded definition and standard of sex discrimination, and increased scope of jurisdiction, as well as increased training requirements. It is difficult to quantify accurately the full cost of these increases as the rules and regulations have yet to be implemented.

POLICY PROPOSAL - HANDBOOK
TITLE 4, CHAPTER 8, SECTION 14
Policy of the Board of Regents

Additions appear in *boldface italics*; deletions are [stricken and bracketed]

Section 14. Policy Against Unlawful Discrimination and Harassment; Complaint Procedures

Introduction

~~[This policy is largely based on federal and state anti-discrimination laws and is divided into four subsections. Except as otherwise provided, Subsections A through C do not apply to “sexual harassment” under Title IX of the Education Amendments of 1972 (Title IX), the requirements and procedures of which are stated in Subsection D. Subsection A states the Nevada System of Higher Education (NSHE) policy against unlawful discrimination and unlawful harassment that does not constitute Title IX “sexual harassment” under Subsection D, specifies training requirements, and defines “consent.” Subsection B describes the remedies and interim measures that are available in cases of unlawful discrimination and unlawful harassment that does not constitute “sexual harassment” under Title IX. Subsection C contains the complaint and investigation procedures for complaints of unlawful discrimination and harassment that does not constitute Title IX “sexual harassment” under Subsection D and, when appropriate, instances where the institution has notice of possible unlawful discrimination and/or harassment. Subsection D sets forth NSHE’s sexual harassment policy under Title IX; defines “sexual harassment”; describes the remedies and supportive measures available in a sexual harassment case; and describes the requirements and procedures for a sexual harassment complaint, investigation, informal resolution, live hearing, and appeal. All of these procedures are in addition to disciplinary complaints brought against professional employees or students under Title 2, Chapter 6, Chapter 8 or Chapter 10 of the NSHE Code (or if applicable, institution student codes of conduct), or against classified employees under the Nevada Administrative Code Chapter 284 and/or Chapter 289 or Desert Research Institute Technologists under the Technologists Manual and/or any approved Collective Bargaining Agreement. However, information gathered as part of the complaint and/or investigation processes under this Section may be used in connection with disciplinary proceedings.]~~

~~A. NSHE Policy Against Unlawful Discrimination and Harassment that Does Not Constitute Title IX Sexual Harassment~~

~~1. Policy Applicability and Sanctions~~

~~NSHE is committed to providing a place of work and learning free of discrimination on the basis of a person’s age (40 or older), 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 (including hair texture and protected hairstyles such as natural hairstyles, afros, bantu knots, curls, braids, locks and twists), color, or religion (protected classes). Discrimination on the basis of a protected class, including unlawful harassment, which is a form of discrimination, is illegal under federal and state law. Where unlawful discrimination is found to have occurred, NSHE will act to stop the unlawful discrimination, to prevent its recurrence, to remedy its effects, and to discipline those responsible.~~

~~No employee, student, or other member of the campus community, either in the workplace or in the academic environment, should be subject to unlawful discrimination.~~

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

~~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 and law enforcement personnel, the Nevada Administrative Code and/or any collective bargaining agreement or, in the case of Desert Research Institute (DRI) technologists, the Technologists Manual. Other lesser sanctions may be imposed, depending on the circumstances. Complaints may also be filed against visitors, consultants, independent contractors, volunteers, 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.~~

~~Any employee, student, or other member of the campus community may utilize any of the complaint processes set forth in this policy.~~

~~2. — Distribution of Policy; Training on the Prevention of Unlawful Discrimination and Harassment; and Annual Policy Review~~

~~a. — Distribution of Policy~~

~~Annually, all employees shall be given a copy of this anti-discrimination policy, which may be provided electronically, and each institution shall maintain documentation that each employee received the anti-discrimination 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.~~

~~b. — Training on the Prevention of Unlawful Discrimination and Harassment~~

~~Each institution shall provide ongoing training on the prevention of unlawful discrimination and harassment and shall designate a person(s) or office to be responsible for such training.~~

~~Institutions must provide new students and new employees primary prevention and awareness training that promotes awareness of rape, domestic violence, dating violence, sexual assault and stalking as defined in this policy. The training must address safe and positive options for bystander intervention to prevent harm, including how to intervene in risky situations; the recognition of abusive behavior; and how to avoid potential attacks.~~

~~Within six (6) months after an employee is initially appointed to NSHE, the employee shall receive training regarding the prevention of unlawful discrimination and harassment, including primary prevention and awareness training. At least once every two years after the appointment, an employee shall receive training concerning the prevention of unlawful discrimination and harassment.~~

~~Incoming freshmen and transfer students within their first semester of enrollment shall receive training regarding the prevention of unlawful discrimination and harassment, including primary prevention and awareness training.~~

~~See also Special Training with Regard to Sexual Violence in Subsection C below.~~

~~c. — Annual Policy Review~~

~~No later than the end of each academic calendar year, each institution's Title IX Coordinator shall review and provide to NSHE suggestions for changes to this policy. NSHE shall review and consider the suggested changes and propose policy revisions to the Board of Regents, as appropriate, at the last regular Board meeting of the fiscal year.~~

~~3. — Discriminatory Acts~~

~~It is illegal to discriminate on the basis of age (40 or older), 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 (including hair texture and protected hairstyles such as natural hairstyles, afros, bantu knots, curls, braids, locks and twists), color, or religion in any aspect of employment or education, such as:

- Application, hiring, background checks, discipline, 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 accommodations or leave; or
- other terms and conditions of employment.

Determining what constitutes unlawful 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 within the scope of unlawful discrimination. The specific action taken, if any, in a particular instance depends on the nature and gravity of the conduct reported and may include anti-discrimination related disciplinary processes.

Discriminatory acts also include:

- discrimination on the basis of a person's age (40 or older), 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 (including hair texture and protected hairstyles such as natural hairstyles, afros, bantu knots, curls, braids, locks and twists), color, or religion;
- retaliation against an individual for reporting an incident or filing a charge of unlawful discrimination, including unlawful harassment; participating in an investigation, hearing, or other related administrative process; or opposing discriminatory acts;
- employment or education decisions based on stereotypes or assumptions about the abilities, traits or performance of individuals of a certain age (40 or older), 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, color, or religion; and
- "harassment," which refers to unwelcome conduct that is based on a person's age (40 or older), 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 (including hair texture and protected hairstyles such as natural hairstyles, afros, bantu knots, curls, braids, locks and twists), color, or religion. Harassment becomes unlawful where: 1) enduring the offensive conduct becomes a condition of employment or educational pursuits, or 2) the conduct is severe, persistent, or pervasive enough to create a work or educational environment that a reasonable person would consider intimidating, hostile, offensive, or abusive. Examples of unwelcome conduct that, if severe, persistent, or pervasive could constitute harassment, include but are not limited to: slurs, jokes, graffiti, offensive or derogatory comments, or other verbal or physical conduct that is unwelcome.

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

4. Non-Title IX Sexual Harassment Defined

~~Outside of the Title IX context, unwelcome sexual advances, requests for sexual favors, and/or other visual, verbal or physical conduct of a sexual or gender bias nature constitute sexual harassment when:~~

~~a. In the educational environment:~~

~~i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic status ("quid pro quo"); or~~

~~ii. Conduct, viewed under an objective standard, is sufficiently severe, persistent or pervasive so as to interfere with or limit a student's ability to participate in or benefit from the services, activities or opportunities offered by the institution ("hostile environment").~~

~~b. In the workplace environment:~~

~~i. 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 ("quid pro quo"); or~~

~~ii. Conduct, viewed under an objective standard, is sufficiently severe, persistent or pervasive so as to create an intimidating, hostile or abusive work environment, which may or may not interfere with the employee's job performance ("hostile environment").~~

~~5. Non-Title IX Sexual Harassment Examples~~

~~a. Sexual Harassment Examples Outside of the Title IX Context~~

~~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, which is a severe form of sexual harassment and refers to physical, sexual acts or attempted sexual acts perpetrated against a person's will or where a person is incapable of giving consent, including but not limited to rape, sexual assault, sexual battery, sexual coercion or similar acts in violation of state or federal law. A person may be incapable of giving consent due to the use of drugs or alcohol, age, an intellectual or other disability, or other factors, which demonstrate a lack of consent or inability to give consent.~~

~~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, dating violence, domestic violence, stalking, other sexual violence;~~
- ~~• Stealthing, including the intent to remove or damage a contraceptive device without the knowledge or consent of the other participant while engaging in a sexual act;~~
- ~~• 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 mail, text messages, social media, or other electronic or computer sources for nonconsensual 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, screen savers or electronic files;~~

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

• Indecent exposure.

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

6. Sexual Assault, Dating Violence, Domestic Violence, Stalking, Coercion and Consent Defined

a. Sexual Assault

"Sexual assault" means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the Federal Bureau of Investigation's Uniform Crime Reporting Program.

"Rape" means penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

"Fondling" means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

"Incest" means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

"Statutory rape" means sexual intercourse with a person who is under the statutory age of consent (16 years old).

b. Dating Violence

"Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purpose of complying with the requirements of this Section and 34 CFR 668.41, any incident meeting this definition is considered a crime for the purpose of Clery Act reporting.

c. Domestic Violence

"Domestic violence" means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

d. Stalking

"Stalking" means engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others, or suffer substantial emotional distress.

e. Coercion

"Coercion" means the intent to compel a person to do or abstain from doing an act that the person has the right to do or abstain from doing through words, conduct or pressure by:

• the use of violence or threats of violence against a person or the person's family or property;

• depriving or hindering a person in the use of any tool, implement or clothing;

• attempting to intimidate a person by threats or force;

• compelling another individual to initiate or continue sexual activity against an individual's will; or

~~• threatening to “out” someone based on sexual orientation, gender, identity, or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.~~

~~Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail.~~

~~f. Consent~~

~~Conduct is unwelcomed if it is done in the absence of consent.~~

~~“Consent” means an affirmative, clear, unambiguous, knowing, informed, and voluntary agreement between all participants to engage in sexual activity.~~

~~• Consent is active, not passive. Silence or lack of resistance cannot be interpreted as consent.~~

~~• Seeking and having consent accepted is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.~~

~~• The existence of a dating relationship or past sexual relations between the participants does not constitute consent to any other sexual act.~~

~~• Affirmative consent must be ongoing throughout the sexual activity and may be withdrawn at any time. When consent is withdrawn or cannot be given, sexual activity must stop.~~

~~• Consent cannot be given when it is the result of any coercion, intimidation, force, deception, or threat of harm.~~

~~• Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to fully, knowingly choose to participate in sexual activity. Incapacitation includes impairment due to drugs or alcohol (whether such use is voluntary or involuntary); inability to communicate due to a mental or physical condition; the lack of consciousness or being asleep; being involuntarily restrained; if any of the parties are under the age of 16; or if an individual otherwise cannot consent.~~

~~• The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity or gender expression.~~

~~7. Other Definitions:~~

~~a. “Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.~~

~~b. “Reporting Party” means any person who reports sexual harassment or conduct that could constitute sexual harassment, whether or not the person reporting is the person alleged to be the victim.~~

~~c. “Respondent” means an individual who has been reported by the individual engaging in the conduct that could constitute sexual harassment.~~

~~B. Remedies and Interim Measures for Unlawful Discrimination and Unlawful Harassment that Does Not Constitute Sexual Harassment under Title IX~~

~~It may be necessary or advisable to take actions (as determined by the institution) designed to minimize the chance that either party may either harass or retaliate against the other party and to provide support to the parties, as appropriate. The measures themselves must not amount to retaliation and shall not be deemed to be a sanction. Depending on the specific nature of the problem, interim measures and final remedies may include, but are not limited to:~~

~~For Students:~~

~~a. Issuing mutual no contact directives;~~

~~b. Providing an escort to ensure safe movement between classes and activities;~~

~~c. Not sharing classes or extracurricular activities;~~

~~d. Moving to a different residence hall;~~

~~e. Providing written information regarding institution and community services including but not limited to medical, counseling and academic support services, such as tutoring;~~

~~f. Providing extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;~~

~~g. Restricting to online classes;~~

- ~~h. Providing information regarding campus transportation options;~~
- ~~i. Reviewing any disciplinary actions taken against the complainant or the respondent to see if there is a connection between the sexual misconduct and the misconduct that may have resulted in the complainant or the respondent being disciplined ;~~
- ~~j. Requiring the parties to report any violations of these restrictions;~~
- ~~k. Taking a leave of absence;~~
- ~~l. Submitting a request for a waiver of scholarship or grant requirements pursuant to Title 4, Chapter 18, Section 3; and~~
- ~~m. Submitting a request for a waiver of requirements of the Governor Guinn Millennium Scholarship pursuant to Title 4, Chapter 18, Section 9.23.~~

~~For Employees:~~

- ~~l. Provide an escort to ensure safe movement between work area and/or parking lots/other campus locations;~~
- ~~m. Issuing mutual no contact directives;~~
- ~~n. Placement on leave;~~
- ~~o. Transfer to a different area/department or shift in order to eliminate or reduce further business/social contact;~~
- ~~p. Providing information regarding campus transportation options;~~
- ~~q. Instructions to stop the conduct;~~
- ~~r. Providing information regarding institution and community services including medical, counseling and Employee Assistance Program;~~
- ~~s. Reassignment of duties;~~
- ~~t. Changing the supervisory authority; and~~
- ~~u. Directing the parties to report any violations of these restrictions.~~

~~All institution administrators, academic and administrative faculty, and staff are responsible for carrying out the interim measures and final remedies.~~

~~Interim measures and final remedies may include restraining orders, or similar lawful orders issued by the institution, criminal, civil or tribal courts. Interim measures and final remedies will be confidential to the extent that such confidentiality will not impair the effectiveness of such measures or remedies.~~

~~Final remedies may also include review and revision of institution sexual misconduct policies; increased monitoring, supervision or security at locations where incidents have been reported; and increased and/or targeted education and prevention efforts.~~

~~Any interim measures or final remedies shall be monitored by the Title IX Coordinator throughout the entire process to assess whether the interim measures or final remedies meet the goals of preventing ongoing unlawful discrimination or harassment, protecting the safety of the parties, restoring access to the institution's education programs and activities, and preventing retaliatory conduct.~~

~~Notwithstanding a complainant's request for confidentiality under Subsection 6 of Subsection C, the institution may undertake interim measures.~~

~~C. Complaint and Investigation Procedure for Unlawful Discrimination and Unlawful Harassment that Does Not Constitute Sexual Harassment under Title IX~~

~~Introduction~~

~~This Section provides the complaint and investigation procedures for complaints of unlawful discrimination or unlawful harassment that does not constitute "sexual harassment" under Title IX (except that complaints against students may be referred to student disciplinary processes), including instances where the institution has notice of unlawful discrimination or harassment. 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 Human Resources Officer; or (3) any other officer designated by the President. The President may also designate a primary investigating officer (primary officer) to investigate all complaints. The primary officer may be any of the individuals identified in this paragraph. All complaints, whether received by the Human~~

~~Resources Officer or other designated officer, must immediately be forwarded to the Title IX Coordinator.~~

~~An individual filing a complaint of unlawful discrimination or harassment shall have the opportunity to select an independent advisor for assistance, support, and advice and shall be notified of this opportunity by the Title IX Coordinator or designee. It shall be the choice of the individual filing the complaint to utilize or not utilize an independent advisor and their responsibility to pay any associated fees. An independent advisor may be brought into the process at any time at the request of the complainant. An independent advisor may be any person who does not have a conflict of interest and who is not a witness in the matter.~~

~~An individual against whom a complaint of unlawful discrimination or 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 Title IX Coordinator or designee. It shall be the choice of the individual against whom the complaint is filed to utilize or not utilize an independent advisor and their responsibility to pay any associated fees. An independent advisor may be brought into the process at any time at the request of the respondent. An independent advisor may be any person who does not have a conflict of interest and who is not a witness in the matter.~~

~~The individual filing a complaint of unlawful discrimination or harassment and the individual against whom a complaint is filed must be provided this policy which addresses interim measures and written notification of services available on campus and in the community.~~

~~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 unlawful discrimination or harassment, or observes or becomes aware of conduct that may constitute unlawful discrimination or harassment, the person must immediately contact one of the individuals identified in this Section above to forward the complaint and/or provide information about the conduct, to discuss it and/or to report the action taken.~~

~~Complaints of unlawful discrimination or harassment should be filed as soon as possible with the supervisor, department chair, dean, or one of the administrators listed in this Section above and/or designated by the President (or the Chancellor for NSHE System Administration matters) to receive complaints of alleged unlawful discrimination or harassment.~~

~~1. — Time Frames~~

~~Complaints of unlawful discrimination or harassment that does not constitute sexual harassment under Title IX must be filed within the time frames stated below.~~

~~Holidays and weekends should be included in all calculations. If, however, the deadline falls on a weekend or holiday, the complaint may be filed on the next business day and still considered timely. (Business days are non-weekend and non-holiday days in which NSHE administrative offices are open for business.)~~

~~Resources, to include actions commonly classified as “interim measures,” are available to eligible students and employees notwithstanding the issue of timeliness.~~

~~a. — Employee Complaints~~

~~All employment complaints alleging unlawful discrimination or harassment (to include retaliation) must be received in the appropriate institutional office within 300 calendar days from the day the alleged act took place. If more than one act is alleged, the deadline will apply to each act independently, except in complaints of ongoing unlawful discrimination or harassment. Complaints of ongoing unlawful discrimination or harassment must be filed within 300 calendar days of the last alleged incident of unlawful harassment, although all alleged incidents of ongoing unlawful discrimination or harassment may be considered during the investigation, even if the earlier incidents are alleged to have occurred more than 300 calendar days earlier.~~

~~b. — Student Complaints~~

~~All student complaints alleging unlawful discrimination or harassment (to include retaliation) must be received in the institution’s appropriate office within 180 calendar days from the day the alleged act took place. If more than one act is alleged, the deadline will apply to each event independently, except in complaints of ongoing unlawful discrimination or harassment. Complaints of ongoing unlawful discrimination or harassment must be filed within 180 calendar~~

days of the last alleged incident of ongoing unlawful discrimination or harassment, although all alleged incidents of ongoing unlawful discrimination or harassment may be considered during the investigation, even if the earlier incidents are alleged to have occurred more than 180 calendar days earlier.

~~c. — Other/Campus Visitor/Non-employee~~

~~Complaints alleging unlawful discrimination or harassment (to include retaliation) asserted by individuals who are neither NSHE employees nor students alleging unlawful discrimination or harassment by a NSHE employee during the employee's work hours, or by a NSHE student on campus or at a NSHE sponsored event, must be received in the institution's appropriate office within 180 calendar days from the day the alleged act took place. If more than one act is alleged, the deadline will apply to each act independently, except in complaints of ongoing unlawful discrimination or harassment. Complaints of ongoing unlawful discrimination or harassment must be filed within 180 calendar days of the last alleged incident of ongoing unlawful discrimination or harassment, although all alleged incidents of ongoing unlawful discrimination or harassment may be considered during the investigation, even if the earlier incidents are alleged to have occurred more than 180 calendar days earlier.~~

~~2. — Complaint Procedures~~

~~a. — Employees~~

~~i. — An employee who believes that they have been subjected to unlawful discrimination or 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.~~

~~ii. — The employee may file an unlawful discrimination or harassment complaint with their immediate supervisor, who will in turn immediately contact one of the officials listed in the introduction to this Section above.~~

~~iii. — 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.~~

~~iv. — After receiving any employee's complaint of an incident of alleged unlawful discrimination or harassment, the supervisor will immediately contact any of the individuals listed in the Introduction to this Section 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 the complaint to that supervisor.~~

~~b. — Students~~

~~i. — A student who believes that they have been subjected to unlawful discrimination or 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.~~

~~ii. — The student may file a complaint with their major department chair or director of an administrative unit, who will in turn immediately contact one of the officials listed in the Introduction of this Section above.~~

~~iii. — 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 in the Introduction to this Section or to any chair, dean, or director of an administrative unit who will in turn immediately contact one of the officials listed above in the Introduction to this Section 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. — Training, Investigation and Resolution~~

~~a. — General Requirements. The Title IX Coordinator, executives, administrators designated to receive complaints, and appropriate management level(s) with decision-making authority shall have training or experience in handling unlawful discrimination and misconduct complaints, and in the operation of the NSHE and Nevada Administrative Code disciplinary procedures.~~

~~b. — Special Training With Regard to Sexual Violence.—~~

~~i. — The training for each of the individuals identified in paragraph 3.a above, should include annual training on how to investigate and conduct hearings in a manner that protects the safety of the parties and promotes accountability; information on working with and interviewing persons subjected to sexual violence; information on particular types of conduct that would constitute sexual violence, including stalking and same sex sexual violence; the proper standard of review for sexual violence complaints (preponderance of the evidence); information on risk reduction; information on consent and the role drugs or alcohol can play in the ability to consent; the importance of accountability for individuals found to have committed sexual violence; the need for remedial actions for the respondent, complainant, and institution community; how to determine credibility; how to evaluate evidence and weigh it in an impartial manner; how to conduct investigations; confidentiality; the effects of trauma, including neurobiological change; and cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds.~~

~~ii. — The Director or designee for an institution's campus law enforcement shall ensure annual training, reviewed by the Title IX Coordinator, is provided to its officers that includes: working with and interviewing persons subjected to sexual violence; information on particular types of conduct that would constitute sexual violence, including stalking and same sex sexual violence; information on consent and the role drugs or alcohol can play in the ability to consent; the effects of trauma, including neurobiological change; and cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds.~~

~~iii. — Investigation. After receiving a complaint or information about the incident or behavior, the Title IX Coordinator or the primary officer, or designee, will initiate an investigation to gather information about the incident. If the Title IX Coordinator or primary officer, or designee, 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 a reasonable time from receipt of the complaint or information about the conduct. At the completion of the investigation, findings and a recommendation will be made to the appropriate management level with final decision-making authority regarding the resolution of the matter. The recommendation is advisory only.~~

~~iv. — Standard of Review. The standard for evaluating complaints shall be a preponderance of the evidence (i.e., the evidence establishes that it is more likely than not that the prohibited conduct occurred).~~

~~v. — Management Determination. After the recommendation has been made, a determination will be made by appropriate management level with final decision-making authority regarding the resolution of the matter. If warranted, disciplinary action up to and including involuntary termination or expulsion may be taken. Any such disciplinary action shall be taken, as applicable, in accordance with NSHE Code Chapter 6, Chapter 8 or Chapter 10 (or applicable Student Code of Conduct), or, in the case of classified employees or law enforcement personnel, Nevada Administrative Code (NAC) Chapter 284 or Chapter 289, and/or associated collective bargaining agreement, or in the case of DRI technologists, the Technologists Manual. 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, Chapter 8 or Chapter 10, the applicable Student Code of Conduct, the NAC Chapter 284 or Chapter 289 and/or associated collective bargaining agreement, or Technologists Manual, the investigation conducted pursuant to this policy may be used as part of such investigations. The administrative officer, in their 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, Chapter 6, Chapter 8, Chapter 10, the NAC Chapter 284 or Chapter 289 and/or associated collective bargaining agreement, or Technologists Manual, the standard of evidence shall be by a preponderance of the evidence (i.e., the evidence establishes that it is more likely than not that the prohibited conduct occurred).

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.

vi. ~~Parties to be Informed.~~ Within 14 business days after the appropriate management level with final decision-making authority has made a determination regarding the resolution of the matter, and depending on the circumstances, both parties may be informed concurrently of the resolution (see subparagraph i below). ~~Confidentiality of Actions Taken.~~ In the event actions are taken against an individual under NSHE Code Title 2, Chapter 6, Chapter 8 or Chapter 10 (or applicable Student Code of Conduct) or NAC Chapter 284 or Chapter 289 and/or associated collective bargaining agreement, or the Technologists Manual, such matters generally remain confidential under these 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).

vii. ~~Crime of Violence Exception to the Family Educational Rights and Privacy Act (FERPA).~~ When discriminatory conduct or sexual harassment involves a crime of violence or a non-forcible sexual offense, FERPA permits the institution to disclose to the complainant the final results (limited to the name of the respondent, any violation found to have been committed, and any sanction imposed) of a disciplinary proceeding against the respondent, regardless of whether the institution concluded that a violation was committed. With respect to an institutional disciplinary proceeding alleging sexual violence, domestic violence, dating violence or stalking 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 simultaneously informed of the outcome.

viii. ~~Disclosure of Sanction Imposed.~~ 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.

e. ~~Resignation of Employee or Withdrawal of Student.~~ If a student respondent withdraws from the institution or an employee respondent ends employment (e.g., resigns, retires) while an investigation of a complaint involving unlawful discrimination or harassment is pending under this policy, the Title IX Coordinator shall take appropriate action, which may include completing the investigation to the extent reasonably practicable, in order to prevent the reoccurrence of and to remedy the effects of the alleged misconduct.

d. ~~Title IX Coordinator Monitoring.~~ The institution Title IX Coordinator has primary responsibility for coordinating the institution's efforts to comply with and carry out its responsibilities under this Subsection. The Title IX Coordinator is responsible for monitoring all aspects of the investigation and any interim measures or final remedies to help ensure that:

1. the process is fair and equitable to both the complainant and the respondent;
2. the applicable policies and procedures of NSHE and of the institution are followed; and
3. the interim measures and final remedies are followed.

4. ~~Prompt Attention~~

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

~~5. Confidentiality~~

~~The NSHE recognizes that confidentiality is important. However, in some limited circumstances confidentiality cannot be guaranteed. The administrators, faculty or staff responsible for implementing this policy will respect the privacy of individuals reporting or accused of unlawful discrimination or 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.~~

~~a. Confidentiality in Complaints Involving Unlawful Discrimination or Harassment. In complaints involving unlawful discrimination or harassment the following applies:~~

~~i. Varying Confidentiality Obligations. In situations involving unlawful discrimination or harassment, individuals are encouraged to talk to somebody about what happened in order for them to receive the support they need. Different individuals at the institution have different abilities to maintain an individual's confidentiality:~~

- ~~• Some are required to maintain near complete confidentiality; talking to them is sometimes called a "privileged communication."~~

- ~~• Other employees may talk to an individual in confidence, and generally only report to the institution that an incident occurred without revealing any personally identifying information. Disclosures to these employees will not trigger investigation into an incident against the individual's wishes, except in certain circumstances discussed below.~~

- ~~• Some employees are required to report all the details of an incident (including the identities of all involved) to the Title IX Coordinator. A report to these employees (called "officials with authority") constitutes a report to the institution and generally obligates the institution to investigate the incident and take appropriate steps to address the situation.~~

~~This policy is intended to make employees, students and others aware of the various reporting and confidential disclosure options available to them so they can make informed choices about where to turn should they want to report an act of sexual violence. The institution encourages individuals to talk to someone identified in one or more of these groups.~~

~~ii. Privileged and Confidential Communications. A complainant or respondent may wish to consult with professional counselors, pastoral counselors or others. Certain professionals are not required to report incidents unless they have been granted permission:~~

- ~~• Professional Counselors. Professional, licensed counselors who provide mental health counseling to members of the institution community (and including those who act in that role under the supervision of a licensed counselor) are not required to report any information about an incident to the Title IX Coordinator without a complainant's permission.~~

- ~~• Pastoral Counselors. A complainant and/or a respondent may choose to consult with a non-institution pastoral counselor and is encouraged to discuss confidentiality with that individual.~~

- ~~• Under Nevada law other professionals who may maintain confidentiality include lawyers, psychologists, doctors, social workers, and victim's advocates as defined in NRS 49.2545.~~

- ~~• Off-Campus Counselors and Advocates. Off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and will not share information with the institution unless the individual requests the disclosure and signs a consent or waiver form.~~

~~iii. Complainant Options. A complainant who reports an act of unlawful discrimination or harassment only to a professional listed above in Subsection 2 of Subsection a of Subsection 5 must understand that, if they want to maintain confidentiality, the institution will be unable to conduct a full investigation into the incident and will likely be unable to pursue disciplinary action against the respondent.~~

~~A complainant who at first requests confidentiality may later decide to file a complaint with the institution or report the incident to local law enforcement, and thus have the incident fully investigated. A complainant shall be assisted in reporting the incident to local law enforcement if the complainant requests such assistance.~~

~~Other Reporting Obligations: While professional counselors may maintain a complainant's confidentiality vis-à-vis the institution, they may have reporting or other obligations under state law. For example, there may be an obligation to report child abuse, an immediate threat of harm to self or others, or to report in the case of hospitalization for mental illness.~~

~~NSHE Employee Assistance Program providers would follow these guidelines, as would professionals in NSHE institution student counseling and psychological services areas, and professionals in community health clinics that reside on or are associated with NSHE institutions.~~

~~b. Reporting to "Officials with Authority"~~
~~i. "Officials with Authority" Defined and Duties. An official with authority is the institution's Title IX Coordinator or any official of the institution who has authority to institute corrective measures on behalf of the institution, including the President, Vice Presidents, Provost, Vice Provosts, Human Resources Director, and those designated by the President. When a complainant or other person reports an incident of unlawful discrimination or harassment to an official with authority, they have the right to expect the institution to take prompt and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.~~

~~An official with authority must report to the Title IX Coordinator all relevant details about the alleged unlawful discrimination or harassment shared by the reporting individual and that the institution will need to determine what happened — including the name(s) of the complainant, respondent(s) and any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident. To the extent possible, information reported to an official with authority will be shared only with people responsible for handling the institution's response to the report. An official with authority should not share information with law enforcement without the complainant's consent or unless the complainant has also reported the incident to law enforcement.~~

~~ii. Requesting Confidentiality From the Institution: How the Institution Will Weigh the Request and Respond.~~

~~a. Request for Confidentiality. If a complainant discloses an incident to an official with authority but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the institution will weigh that request against the institution's obligation to provide a safe, non-discriminatory environment for everyone, including the complainant, after the official with authority reports the incident to the Title IX Coordinator. If the institution honors the request for confidentiality, a complainant will be informed that the institution's ability to investigate the incident and pursue disciplinary action against the respondent may be limited.~~

~~There are times when, in order to provide a safe, non-discriminatory environment for all, the institution may not be able to honor a complainant's request for confidentiality. The institution shall designate an individual to evaluate requests for confidentiality made by a complainant.~~

~~b. Factors to Be Considered. When weighing a complainant's request for confidentiality or a complainant's request that no investigation or discipline be pursued, the institution will consider a range of factors, including the following:~~

~~i) The increased risk that the identified respondent will commit additional acts of violence, discrimination or harassment, such as:~~

- ~~• whether there have been other misconduct, violence, discrimination or harassment complaints about the same respondent;~~
- ~~• whether the respondent has a history of arrests or other records indicating a history of violence, discrimination or harassment;~~
- ~~• whether the respondent threatened violence, discrimination or harassment against the complainant or others;~~
- ~~• whether the violence, discrimination or harassment was committed by multiple persons;~~

- whether the circumstances of the incident indicate that the behavior was planned by the respondent or others;
- whether the reported violence, discrimination or harassment was committed with a weapon;
- whether the complainant is a minor;
- whether the institution possesses other means to obtain relevant evidence of the reported violence, discrimination or harassment (e.g., security cameras or personnel, physical evidence);
- whether the complainant's information reveals a pattern of behavior (e.g., illicit use of drugs, alcohol, coercion, intimidation) at a given location or by a particular group;
- other factors determined by the institution that indicate the respondent may repeat the behavior or that others may be at risk.

Based on one or more of these factors, the institution may decide to investigate and, if appropriate, pursue disciplinary action even though the complainant requested confidentiality or requested that no investigation or disciplinary action be undertaken. If none of these factors is present, or if any or all of these factors are present to an insufficient degree, the institution will work to respect the complainant's request for confidentiality.

c. ~~Actions After Decision to Disclose.~~ If the institution decides that a complainant's confidentiality cannot be maintained, the institution will inform the complainant in writing or via email prior to starting an investigation and the institution will, to the extent possible, only share information with people responsible for handling the institution's response. The institution shall inform the respondent that the complainant asked the institution not to take investigative or disciplinary action against the respondent.

The institution will inform any individual involved in the matter that retaliation is prohibited and will take steps to protect such individual(s) from retaliation or harm. Retaliation will not be tolerated. The institution will also:

1. Determine whether interim measures should be implemented in accordance with Subsection B;
2. Inform any individual involved in the matter of the right to report a crime to the institution and/or local law enforcement and to have a criminal investigation proceed simultaneously; and
3. Provide any individual involved in the matter with assistance if they wish to report a crime. The institution will not require any individual involved in the matter to participate in any investigation or disciplinary proceeding.

Because the institution is under a continuing obligation to address the issue of sexual violence institution wide, reports of sexual violence (including non-identifying reports) will also prompt the institution to consider broader remedial action — such as increased monitoring, supervision or security at locations where the reported sexual violence occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/complainant surveys; and/or revisiting its policies and practices.

Issuance of Timely Warning: If the institution determines that any individual involved in the matter poses a serious and immediate threat to the institution community, police or security services may be called upon to issue a timely warning to the community. Any such warning will not include any information that identifies the complainant.

d. ~~Reports to Other NSHE Institutions.~~ If an official with authority receives a complaint about unlawful discrimination or harassment that has occurred at another NSHE institution or to a student or employee of another NSHE institution, the official with authority shall report the information to the institution's Title IX Coordinator, who shall provide the information to the Title IX Coordinator at the other NSHE institution.

e. ~~Public Awareness Events — Not Notice to the Institution.~~ Public awareness events such as "Take Back the Night," the Clothesline Project, candlelight vigils, protests, "survivor speak outs" or other forums in which individuals disclose incidents of unlawful discrimination or harassment, are not considered notice to the institution of unlawful discrimination or harassment for purposes of triggering the institution's obligation to investigate any particular incident(s). Such events may, however, inform the need for institution-wide education and prevention efforts, and the Institution will provide information about individuals' rights at these events.

~~f. Disclosures in written assignments — Not Notice to the Institution. If a student makes a disclosure of an incident of unlawful discrimination or harassment in a written assignment, such disclosure is not considered notice to the institution of unlawful discrimination or harassment for purposes of triggering the institution's obligation to investigate any particular incident(s).~~

~~6. Retaliation~~

~~Retaliation against an individual who in good faith complains of unlawful discrimination or 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 an unlawful discrimination or 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 or reference letter;~~
- ~~• intentionally providing false information.~~

~~a. Employees~~

~~1. An employee who believes that they have been subjected to retaliation may file a retaliation complaint with their immediate supervisor, who will in turn immediately contact the Title IX Coordinator.~~

~~2. 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 the Title IX Coordinator.~~

~~3. After receiving any employee's complaint of an incident of alleged retaliation, the supervisor will immediately contact the Title IX Coordinator 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~~

~~1. A student who believes that they have been subjected to retaliation may file a retaliation complaint with their major department chair or director of an administrative unit, who will in turn immediately contact the Title IX Coordinator.~~

~~2. 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 the Title IX Coordinator.~~

~~7. False Reports~~

~~Because unlawful discrimination and harassment frequently involve interactions between persons that are not witnessed by others, reports of unlawful discrimination or harassment cannot always be substantiated by additional evidence. Lack of corroborating evidence or "proof" should not discourage individuals from reporting unlawful discrimination or 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 institution 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.

8. ~~Supervisor Responsibilities~~

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

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

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

~~c. Stopping any observed acts that may be considered unlawful discrimination or harassment, and taking appropriate steps to intervene, whether or not the involved individuals are within their line of supervision; and~~

~~d. Taking immediate action to minimize or eliminate the work and/or school contact between the involved individuals where there has been a complaint of unlawful discrimination or harassment, pending investigation.~~

~~If a supervisor receives a complaint of unlawful discrimination or harassment, or observes or becomes aware of conduct that may constitute unlawful discrimination or harassment, the supervisor must immediately contact the Title IX Coordinator to provide the information about the conduct, to discuss it and/or to report the action taken.~~

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

9. ~~Amnesty for Reports of Non-Title IX Discrimination and/or Harassment Under Certain Circumstances~~

~~NSHE encourages individuals to report incidents of sexual violence and sexual harassment without fear of negative consequences for other policy violations that occur at or around the same time period of the reported sexual violence or sexual harassment. To support such reporting, an NSHE institution may not subject an individual to a disciplinary proceeding or sanction for a violation of the NSHE Handbook, the NSHE institutional policy, and/or the NSHE institution's applicable Student Code of Conduct unless the NSHE institution determines, in its sole discretion, any report of an alleged incident of sexual misconduct was not made in good faith or the individual's violation of the NSHE Handbook, the NSHE institutional policy, and/or the NSHE institution's applicable Student Code of Conduct was egregious. Examples of egregious violations include, but are not limited to, being the one that initiated the sexual violence or sexual harassment, or through negligence, contributed to the sexual violence or sexual harassment, or other sexual misconduct, driving under the influence, manufacturing/distribution/delivery of illegal drugs, possessing with intent to manufacture/distribute/deliver illegal drugs, relationship violence, stalking, hazing, or other conduct that risked someone's health or safety. The NSHE institution determines, in its sole discretion, whether a report was not made in good faith and what conduct constitutes an egregious violation.~~

~~An individual may be particularly afraid to report certain conduct when alcohol, drugs, or other intoxicants are involved. Except for egregious violations, this amnesty policy applies when alcohol, drugs, or other intoxicants are involved, including underage drinking.~~

~~In circumstances where amnesty is determined to be applicable but there are concerns that an individual's repeat or severe misuse of alcohol or other substances will result in additional harm if unaddressed, the NSHE institution may impose educational and/or other appropriate sanctions to address such concerns.~~

~~This policy only provides amnesty from violations of NSHE Handbook, the NSHE institutional policy, and/or the NSHE institution's applicable Student Code of Conduct. It does not grant amnesty for criminal, civil or other legal consequences for violations of Federal, State or Local law. Civil and/or criminal investigations and other legal processes from governmental agencies outside of the NSHE institution may still proceed at the discretion of the outside governmental agency. Also, in some instances, University Police Services may be required by law to report an~~

incident to local law enforcement agencies. For information regarding legal immunity from certain offenses related to drug or alcohol overdose or other medical emergency, please see NRS 453C.150.

10. Relationship to Freedom of Expression

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. Unlawful discrimination or 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.

D. Sexual Harassment under Title IX

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, 20 U.S.C. § 1861(a), provides:

“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.”

Title IX applies to every single aspect of education, including course offerings, counseling and counseling materials, financial assistance, student health and insurance benefits and/or other services, housing, marital and parental status of students, physical education and athletics, education programs and activities sponsored by the institution, and employment.

IMPACT OF MODIFICATIONS OF THE FINAL RULE UNDER TITLE IX

Should any portion of the Final Rule be stayed or held invalid by a court of law, or should the Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Section process be revoked in this manner, any conduct that would have been covered under the Title IX Section D process shall be investigated and adjudicated under the existing Non Title IX Sections (A), (B), and (C) process.

1. Designation of Coordinator, dissemination of policy, and adoption of complaint procedures
a. Each President of NSHE's eight (8) institutions and the Chancellor for NSHE's System Administration offices shall designate and authorize an individual to serve as the Title IX Coordinator for the institution who shall be tasked with coordinating the institution's efforts to comply with its responsibilities under this Section. The institution must notify applicants for admission or employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the institution, of the name or title, office address, electronic mail address, and telephone number of the individual designated as the Title IX Coordinator.

b. Each institution must prominently display the contact information for the Title IX Coordinator on its website, if any, and in each handbook, or catalog that it makes available to persons entitled to a notification under paragraph (a) of this Section. Each institution must notify persons entitled to a notification under paragraph (a) of this Section that the institution does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX not to discriminate in such a manner. Such notification must state that the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX to the institution may be referred to the institution's Title IX Coordinator, to the Assistant Secretary of the Department of Education, or both.

c. Each institution must adopt and publish complaint procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited under this Section and a complaint process that complies with Subsection 5 for formal complaints as defined in Subsection 2. An institution must provide to persons entitled to a notification under paragraph (a) of this Section notice of the institution's complaint procedures

and complaint process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the institution will respond.

d. — Each institution, in addition to other training specifically outlined in this Subsection D, must ensure that all individuals involved in responding to, investigation of, or the adjudication of any complaint based in sexual violence, have the Specialized training in regards to Sexual Violence outlined in Subsection C, 3(b.)

2. — Definitions

a. — ~~“Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.~~

b. — ~~“Respondent” means an individual who has been reported by the individual engaging in the conduct that could constitute sexual harassment.~~

c. — ~~“Reporting Party” means any person who reports sexual harassment or conduct that could constitute sexual harassment, whether or not the person reporting is the person alleged to be the victim.~~

d. — ~~“Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:~~

i. — ~~An employee of a NSHE institution conditioning the provision of an aid, benefit, or service of the institution on an individual’s participation in unwelcome sexual conduct;~~

ii. — ~~Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution’s education program or activity; or~~

iii. — ~~Sexual assault, as defined by the Clery Act, 34 C.F.R. § 668.46(a), as amended by the Violence Against Women Act of 1994, including but not limited to dating violence, domestic violence, and stalking.~~

~~For the purposes of this definition, “education program or activity” includes locations, events, or circumstances over which an institution exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by an institution, which may include but is not limited to recognized fraternity, sorority, or student organizations. This definition does not apply to persons outside the United States.~~

~~For the purposes of this definition, “sexual assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the Federal Bureau of Investigation’s Uniform Crime Reporting Program.~~

~~“Rape” means penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.~~

~~“Fondling” means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.~~

~~“Incest” means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.~~

~~“Statutory rape” means sexual intercourse with a person who is under the statutory age of consent (16 years old).~~

~~“Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.~~

~~“Domestic violence” means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse~~

or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

"Stalking" means engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others, or suffer substantial emotional distress.

e. — "Formal complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the institution investigate the allegation of sexual harassment.

f. — "Supportive measures" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

g. — "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to an institution's Title IX Coordinator or any official of the institution who has authority to institute corrective measures on behalf of the institution, including the President, Vice Presidents, Provost, Vice Provosts, Human Resources Director, and those designated by the President.

Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the institution with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform an individual about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the institution.

h. — "Institution" means any and all of NSHE's eight (8) institutions, including the College of Southern Nevada; the Desert Research Institute; Great Basin College; Nevada State University; Truckee Meadows Community College; the University of Nevada, Las Vegas; the University of Nevada, Reno; and Western Nevada College, and NSHE's System Administration offices.

i. — "Consent" means an affirmative, clear, unambiguous, knowing, informed, and voluntary agreement between all participants to engage in sexual activity.

- — Consent is active, not passive. Silence or lack of resistance cannot be interpreted as consent.

- — Seeking and having consent accepted is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

- — The existence of a dating relationship or past sexual relations between the participants does not constitute consent to any other sexual act.

- — Affirmative consent must be ongoing throughout the sexual activity and may be withdrawn at any time. When consent is withdrawn or cannot be given, sexual activity must stop.

- — Consent cannot be given when it is the result of any coercion, intimidation, force, deception, or threat of harm.

- — Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to fully, knowingly choose to participate in sexual activity. Incapacitation includes: impairment due to drugs or alcohol (whether such use is voluntary or involuntary); inability to communicate due to a mental or physical condition; the lack of consciousness or being asleep; being involuntarily restrained; if any of the parties are under the age of 16; or if an individual otherwise cannot consent.

- — The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.

3. — Response to Sexual Harassment

An institution with actual knowledge of sexual harassment allegations in an education program or activity of the institution, as all defined in Subsection 2, against a person in the United States must respond promptly in a manner that is not deliberately indifferent. An institution is "deliberately

indifferent” only if its response to sexual harassment allegations is clearly unreasonable in light of the known circumstances.

~~An institution’s response must treat complainants and respondents equitably by offering supportive measures as defined in Subsection f of Subsection 2 to all parties, and by following a complaint process that complies with Subsection 5 before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in Subsection f of Subsection 2 against a respondent.~~

~~An institution shall provide this policy which addresses supportive measures to both complainants and respondents.~~

~~The institution’s Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in Subsection f of Subsection 2, consider the complainant’s wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. An institution’s treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.~~

~~Depending on the specific nature of the problem, supportive measures and remedies may include, but are not limited to:~~

~~For Students:~~

- ~~a. Issuing a mutual no-contact directive(s);~~
- ~~b. Providing an escort to ensure safe movement between classes and activities;~~
- ~~c. Not sharing classes or extracurricular activities;~~
- ~~d. Moving to a different residence hall;~~
- ~~e. Providing written information regarding institution and community services including but not limited to medical, counseling and academic support services, such as tutoring;~~
- ~~f. Providing extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;~~
- ~~g. Taking a leave of absence;~~
- ~~h. Restricting to online classes;~~
- ~~i. Providing information regarding campus transportation options;~~
- ~~j. Reviewing any disciplinary actions taken against the complainant or the respondent to see if there is a connection between the sexual misconduct and the misconduct that may have resulted in the complainant or the respondent being disciplined;~~
- ~~k. Requiring the parties to report any violations of these restrictions;~~
- ~~l. Submitting a request for a waiver of scholarship or grant requirements pursuant to Title 4, Chapter 18, Section 3; and~~
- ~~m. Submitting a request for a waiver of requirements of the Governor Guinn Millennium Scholarship pursuant to Title 4, Chapter 18, Section 9.23.~~

~~For Employees:~~

- ~~n. Providing an escort to ensure safe movement between work area and/or parking lots/other campus locations;~~
- ~~o. Issuing a mutual no-contact directive(s);~~
- ~~p. Placement on leave;~~
- ~~q. Transfer to a different area/department or shift in order to eliminate or reduce further business/social contact;~~
- ~~r. Providing information regarding campus transportation options;~~
- ~~s. Instructions to stop the conduct;~~
- ~~t. Providing information regarding institution and community services including medical, counseling and Employee Assistance Program;~~
- ~~u. Reassignment of duties;~~
- ~~v. Changing the supervisory authority; and~~
- ~~w. Directing the parties to report any violations of these restrictions.~~

~~All institution administrators, academic and administrative faculty, and staff are responsible for carrying out the supportive measures and remedies.~~

~~Supportive measures and remedies may include restraining orders, or similar lawful orders issued by the institution, criminal, civil or tribal courts. Supportive measures and remedies will be confidential to the extent that such confidentiality will not impair the effectiveness of such measures or remedies.~~

~~Remedies may also include review and revision of institution sexual misconduct policies; increased monitoring, supervision or security at locations where incidents have been reported; and increased and/or targeted education and prevention efforts.~~

~~Any supportive measures or remedies shall be monitored by the Title IX Coordinator throughout the entire process to assess whether the supportive measures or remedies meet the goals of preventing harassment or discrimination, protecting the safety of the parties, restoring access to the institution's education programs and activities, and preventing retaliatory conduct.~~

~~In responding to allegations of sexual harassment, an institution shall not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.~~

~~4. Response to a Formal Complaint~~

~~a. In response to a formal complaint, an institution must investigate the allegations contained therein and follow a complaint process that complies with Subsection 5. With or without a formal complaint, an institution must comply with Subsection 3.~~

~~b. Nothing in this Subsection precludes an institution from removing a respondent from the institution's education program or activity on an emergency basis, provided that the institution undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.~~

~~c. Nothing in this Subsection precludes an institution from placing a non student employee respondent on administrative leave during the pendency of a complaint process that complies with Subsection 5. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.~~

~~d. An institution may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a complaint process involves more than one complainant or more than one respondent, references in this Section to the singular "party," "complainant," or "respondent" include the plural, as applicable.~~

~~5. General complaint process requirements. Institutions shall:~~

~~a. Permit any person to report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator;~~

~~b. Promote impartial investigations and adjudications of formal complaints of sexual harassment;~~

~~c. Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a complaint process that complies with this Section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in Subsection f of Subsection 2 against a respondent. Remedies must be designed to~~

~~restore or preserve equal access to the institution's education program or activity. Such remedies may include the same individualized services described in Subsection f of Subsection 2 as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;~~

~~d. — Require an objective evaluation of all relevant evidence — including both inculpatory and exculpatory evidence — and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness;~~

~~e. — Ensure that the Title IX Coordinator, investigator, hearing officer, and any person designated by an institution to facilitate an informal resolution process, does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;~~

~~f. — Ensure that the Title IX Coordinator, investigator, hearing officer, and any person designated by an institution to facilitate an informal resolution process receive training on the definition of sexual harassment in Subsection 2, the scope of the institution's education program or activity, how to conduct an investigation and complaint process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;~~

~~g. — Ensure, in coordination with the NSHE Chief General Counsel, that hearing officers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in Subsection d of Subsection 8;~~

~~h. — Ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in Subsection d of Subsection 8;~~

~~i. — Ensure that any materials used to train Title IX Coordinators, investigators, hearing officers, and any person who facilitates an informal resolution process, do not rely on sex stereotypes;~~

~~j. — Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the complaint process;~~

~~k. — Establish a reasonably prompt time frame for conclusion of the complaint process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the institution offers informal resolution processes, and a process that allows for the temporary delay of the complaint process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The institution must establish a reasonably prompt time frame that complies with the procedures outlined in Chapter 284 of the Nevada Administrative Code for classified employees, Chapter 289 of the Nevada Administrative Code for law enforcement, Chapter 6 of the NSHE Code for professional employees, Chapter 10 of the NSHE Code or applicable code of conduct for students, or any associated collective bargaining agreement. Institutions may establish different time frames for different types of cases (e.g., sexual assault, domestic violence, dating violence, etc.);~~

~~l. — Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the institution may implement following any determination of responsibility;~~

~~m. — State that the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard, and must apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and must apply the same standard of evidence to all formal complaints of sexual harassment. "Preponderance of the evidence" means the evidence establishes that it is more likely than not that the prohibited conduct occurred;~~

~~n. — Include the procedures and permissible bases for the complainant and respondent to appeal a written determination;~~

- ~~o. Describe the range of supportive measures available to complainants and respondents;~~
- ~~p. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege; and~~
- ~~q. Require any party to assert that the Title IX Coordinator, investigator(s), or hearing officer(s) has a conflict of interest or bias against complainants or respondents generally or the individual complainant or respondent at the time the party knew or should have known of such conflict of interest or bias.~~
- ~~6. Complaint Procedures~~
 - ~~a. Upon receipt of a formal complaint, an institution must provide the following written notice to the parties who are known:
 - ~~i. Notice of the institution's complaint process that complies with this Section, including any informal resolution process; and~~
 - ~~ii. Notice of the allegations potentially constituting sexual harassment as defined in Subsection 2, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. "Sufficient details" include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under Subsection 2, and the date and location of the alleged incident, if known. This written notice also must:
 - ~~a) Include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process;~~
 - ~~b) Inform the parties that they may have an advisor of their choice under Subsection d of Subsection 7 who may be, but is not required to be, an attorney, and may inspect and review evidence under Subsection 7; and~~
 - ~~c) Consistent with Section 13, inform the parties of the prohibition against knowingly making false statements or knowingly submitting false information during the complaint process.~~~~~~
 - ~~b. If, in the course of an investigation, the institution decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to Subsection a of Subsection 6, the institution must provide notice of the additional allegations to the parties whose identities are known.~~
- ~~7. Dismissal of formal complaint~~
 - ~~a. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in Subsection 2 even if proved, did not occur in the institution's education program or activity, or did not occur against a person in the United States, then the institution must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. Such a dismissal does not preclude action under another provision of the Board of Regents' Handbook, NSHE Code, or institution's code of conduct.~~
 - ~~b. The institution may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:
 - ~~i. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;~~
 - ~~ii. The respondent is no longer enrolled or employed by the institution; or~~
 - ~~iii. Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.~~~~
 - ~~c. Upon a dismissal required or permitted pursuant to Subsections i and ii of Subsection b of Subsection 6, the institution must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.~~
- ~~8. Investigation of a Formal Complaint. The institution investigating a formal complaint must:
 - ~~a. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the institution and not on the parties, provided that the institution cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that~~~~

capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the institution obtains that party's voluntary, written consent to do so for a complaint process under this Section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the institution must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3);

b. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

c. Avoid restricting the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

d. Provide the parties with the same opportunities to have others present during any complaint proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or complaint proceeding. However, an institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to all parties;

e. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

f. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation;

g. Prior to completion of the investigative report, send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The institution must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and

h. Create an investigative report that fairly summarizes relevant evidence and, at least ten (10) days prior to a hearing (if a hearing is required under this Section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. Each party's written response, if any, shall be submitted to the investigator at least three (3) days prior to the live hearing.

9. Live Hearings

a. An institution must hold a live hearing over which a hearing officer presides. The hearing officer cannot be the same person as the Title IX Coordinator or the investigator(s) and must be selected in consultation with the NSHE Chief General Counsel.

b. At the live hearing, the hearing officer must permit each party's advisor during cross-examination to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the institution under Subsection d of Subsection 7 to otherwise restrict the extent to which advisors may participate in the proceedings.

c. The live hearing may be conducted with all parties physically present in the same geographic location or, at the institution's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. At the request of either party, the institution must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the hearing officer(s) and parties to simultaneously see and hear the party or the witness answering questions.

d. ~~Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the hearing officer(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. For the purposes of this Section, "relevant" means a question or evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the question or evidence. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.~~

e. ~~If a party does not have an advisor present at the live hearing, the institution must provide, without fee or charge to that party, an advisor of the institution's choice, who shall not be an attorney, to conduct cross-examination on behalf of that party. Such advisors need not be provided with specialized training because the essential function of such an advisor provided by the institution is not to "represent" a party but rather to relay the party's cross-examination questions that the party wishes to have asked of other parties or witnesses so that parties never personally question or confront each other during a live hearing.~~

f. ~~If a party or witness does not submit to cross-examination at the live hearing, to the extent permitted by law and not otherwise subject to exclusion under this policy, the hearing officer may consider those statements of a person who was not present at the hearing, or a person who was present at the hearing but who was not subject to cross-examination if the statement is deemed reliable and relevant by the hearing officer. This includes, but is not limited to, opinions and statements in police reports or other official reports, medical records, court records and filings, investigation notes of interviews, emails, written statements, affidavits, text messages, emails, social media postings, and the like.~~

~~The hearing officer(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.~~

g. ~~Institutions must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.~~

h. ~~Nothing in this Subsection shall be construed to impair rights under the U.S. Constitution, including but not limited to the Fifth Amendment, or privileges recognized by statute or common law.~~

10. ~~Determination Regarding Responsibility.~~

a. ~~The decision maker, or hearing officer(s) as appropriate, must issue a written determination regarding responsibility under the preponderance of the evidence standard within 14 calendar days of the live hearing.~~

b. ~~The written determination must include:~~

i. ~~Identification of the allegations potentially constituting sexual harassment as defined in Subsection 2;~~

ii. ~~A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;~~

iii. ~~Findings of fact supporting the determination;~~

iv. ~~Conclusions regarding the application of the institution's code of conduct to the facts;~~

v. ~~A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the institution imposes on the respondent, and whether remedies designed to restore or preserve equal access to the institution's education program or activity will be provided by the institution to the complainant; and~~

vi. ~~The institution's procedures and permissible bases for the complainant and respondent to appeal.~~

c. The institution must provide the written determination regarding responsibility to the parties simultaneously. The written determination becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

11. Appeals

a. Within seven (7) calendar days, any party may appeal from a determination regarding responsibility, and from an institution's dismissal of a formal complaint or any allegations therein, on the following bases:

i. Procedural irregularity that affected the outcome of the matter;

ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;

iii. The Title IX Coordinator, investigator(s), or hearing officer(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; and

iv. Any additional basis offered by an institution.

b. As to all appeals, the institution must:

i. Immediately notify the other party in writing when an appeal is filed;

ii. Ensure that the decision maker for the appeal is not the same person as the hearing officer(s) or decision maker that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

iii. Ensure that the decision maker(s) for the appeal complies with the standards set forth in Subsections e-i of Subsection 5;

iv. Give all parties an equal opportunity to submit a written statement in support of, or challenging, the outcome within seven (7) calendar days of the outcome;

v. Issue a written decision within ten (10) calendar days of receiving a written statement in support of, or challenging, the outcome describing the result of the appeal and the rationale for the result; and

vi. Provide the written decision simultaneously to all parties.

c. The review on appeal is limited to the record, except in appeals based on newly discovered evidence that could affect the outcome of the matter and that was not reasonably available at the time the determination regarding responsibility or dismissal was made. In such appeals, newly discovered evidence may be considered on appeal notwithstanding its absence from the record.

12. Provides Informal Resolution

a. If a formal complaint of sexual harassment is filed, and at any time prior to reaching a determination regarding responsibility, an institution may offer the parties the option of informal resolution and may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the institution:

i. Provides to the parties a written notice disclosing the allegations; setting forth the requirements of the informal resolution process, including the circumstances under which the process's agreed upon resolution precludes the parties from resuming a formal complaint arising from the same allegations; and explaining that any statements made or documentation or information provided by a party during the informal resolution process shall not be used or relied upon in a subsequent complaint process or live hearing without the permission of the party who made the statement or provided the documentation or information;

ii. Obtains the parties' voluntary, informed written consent to the informal resolution process; and

iii. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

b. Institutions must provide the parties with a written notice explaining that, at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the complaint process with respect to the formal complaint, and withdraw from any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

~~c.—An institution shall not require the parties to participate in an informal resolution process for any reason, and shall not require waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this Section as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right.~~

~~d.—An individual serving as a facilitator of an informal resolution process shall not be the Title IX Coordinator, Title IX investigator, Title IX hearing officer, witness, or other institutional employee that has a duty to disclose allegations of sexual harassment to the institution.~~

~~13.—Recordkeeping~~

~~a.—An institution must maintain for a period of at least seven (7) years records of:~~

~~i.—Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under Subsection g of Subsection 8, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the institution's education program or activity;~~

~~ii.—Any appeal and the result therefrom;~~

~~iii.—Any informal resolution and the result therefrom; and~~

~~iv.—All materials used to train Title IX Coordinators, investigators, hearing officers, decision-makers, and any person who facilitates an informal resolution process. An institution must make these training materials publicly available on its website, or if the institution does not maintain a website the institution must make these materials available upon request for inspection by members of the public;~~

~~v.—For each response required under Subsections 3 and 4, an institution must create, and maintain for a period of seven (7) years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the institution must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the institution's education program or activity. If an institution does not provide a party with supportive measures, then the institution must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the institution in the future from providing additional explanations or detailing additional measures taken.~~

~~14. 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 knowingly make false reports or submit false information during the complaint process may be subject to disciplinary action under the applicable institution 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.~~

~~15.—Retaliation~~

~~a.—Retaliation Prohibited.—No institution or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation. The institution must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to have engaged in sex~~

~~discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the complaint procedures for sex discrimination under Subsection C.~~

~~b. — Specific circumstances~~

~~i. — The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under Subsection a of this Subsection.~~

~~ii. — Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a complaint proceeding under this part does not constitute retaliation prohibited under Subsection a of this Subsection, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.~~

~~16. — Amnesty for Reports of Title IX Discrimination and/or Harassment Under Certain Circumstances~~

~~NSHE encourages individuals to report incidents of sexual violence and sexual harassment without fear of negative consequences for other policy violations that occur at or around the same time period of the reported sexual violence or sexual harassment. To support such reporting, an NSHE institution may not subject an individual to a disciplinary proceeding or sanction for a violation of the NSHE Handbook, the NSHE institutional policy, and/or the NSHE institution's applicable Student Code of Conduct unless the NSHE institution determines, in its sole discretion, any report of an alleged incident of sexual misconduct was not made in good faith or the individual's violation of the NSHE Handbook, the NSHE institutional policy, and/or the NSHE institution's applicable Student Code of Conduct was egregious. Examples of egregious violations include, but are not limited to, being the one that initiated the sexual violence or sexual harassment, or through negligence, contributed to the sexual violence or sexual harassment, or other sexual misconduct, driving under the influence, manufacturing/distribution/delivery of illegal drugs, possessing with intent to manufacture/distribute/deliver illegal drugs, relationship violence, stalking, hazing, or other conduct that risked someone's health or safety. The NSHE institution determines, in its sole discretion, whether a report was not made in good faith and what conduct constitutes an egregious violation.~~

~~An individual may be particularly afraid to report certain conduct when alcohol, drugs, or other intoxicants are involved. Except for egregious violations, this amnesty policy applies when alcohol, drugs, or other intoxicants are involved, including underage drinking.~~

~~In circumstances where amnesty is determined to be applicable but there are concerns that an individual's repeat or severe misuse of alcohol or other substances will result in additional harm if unaddressed, the NSHE institution may impose educational and/or other appropriate sanctions to address such concerns.~~

~~This policy only provides amnesty from violations of NSHE Handbook, the NSHE institutional policy and/or the NSHE institution's applicable Student Code of Conduct. It does not grant amnesty for criminal, civil or other legal consequences for violations of Federal, State or Local law. Civil and/or criminal investigations and other legal processes from governmental agencies outside of the NSHE institution may still proceed at the discretion of the outside governmental agency. Also, in some instances, University Police Services may be required by law to report an incident to local law enforcement agencies. For information regarding legal immunity from certain offenses related to drug or alcohol overdose or other medical emergency, please see NRS 453C.150.~~

~~17. — Relationship to Freedom of Expression~~

~~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. Unlawful discrimination or 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 12/21)}~~

Effective August 1, 2024, this policy applies to allegations of conduct constituting TIX sex discrimination which occurred on or after August 1, 2024. With respect to all other allegations of discriminatory conduct, the applicable policy in place at the time of the alleged conduct will govern an institution's investigation and adjudication of the complaint.¹

Largely based on federal and state anti-discrimination laws, this policy covers nondiscrimination in both employment and access to educational opportunities. Any member of an institution community whose acts deny, deprive, or unreasonably interfere with or limit the education or employment, residential and/or social access, benefits, and/or opportunities of any member of an institution community, guest, or visitor on the basis of that person's actual or perceived protected characteristics, is in violation of this policy.

This policy is divided into four subsections. Except as otherwise provided, Subsections A and B do not apply to sex discrimination under Title IX of the Education Amendments of 1972 and its implementing regulations (Title IX),² the requirements and procedures of which are stated in Subsection C. Subsection A states the NSHE policy against unlawful discrimination and unlawful harassment that does not constitute Title IX sex discrimination, specifies training requirements, and defines consent. Subsection B describes the remedies and interim measures that are available in cases of unlawful discrimination and unlawful harassment that does not constitute sex discrimination under Title IX. Subsection C sets forth NSHE's sex discrimination policy under Title IX, which defines sex-based harassment and describes the remedies and supportive measures available in Title IX cases of sex discrimination. Subsection D contains the complaint and investigation procedures for unlawful discrimination and harassment, including Title IX sex discrimination. Within subsection D, there are two complaint and investigation processes: (1) the complaint and investigation procedures for complaints of unlawful discrimination and harassment including Title IX sex discrimination except for complaints of sex-based harassment that involve a student as either a complainant or respondent (and, when appropriate, instances where the institution has notice of possible unlawful discrimination and/or harassment or Title IX sex discrimination other than sex-based harassment that involves a student as complainant or respondent); and (2) the complaint and investigation procedures for complaints of Title IX sex-based harassment that involve a student as either a complainant or respondent (and, when appropriate, instances where the institution has notice of possible Title IX sex-based harassment involving a student as a complainant or respondent).

All of these procedures are in addition to disciplinary complaints brought against professional employees or students under Title 2, Chapter 6, Chapter 8 or Chapter 10 of the NSHE Code (or if applicable, institution student codes of conduct), or against classified employees under the Nevada Administrative Code Chapter 284 and/or Chapter

¹ Some provisions in this policy are based on the ATIXA 2024 One Policy, One Procedure (1P1P) Model. © 2024 ATIXA. Used with permission.

² Under Title IX and its implementing regulations (20 U.S.C. §1681 et seq.; 34 C.F.R. Part 106), discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

289, or Desert Research Institute (DRI) Technologists under the Technologists Manual, and/or any applicable collective bargaining agreement. However, information gathered as part of the complaint and/or investigation processes under this policy may be used in connection with disciplinary proceedings.

A. NSHE Policy Against Unlawful Discrimination and Harassment that Does Not Constitute Title IX Sex Discrimination

1. Policy Applicability and Sanctions

NSHE is committed to providing a place of work and learning free of discrimination on the basis of a person's age (40 or older), disability, whether actual or perceived by others (including service-connected disabilities), sex (including pregnancy or related conditions), military status or military obligations, sexual orientation, gender identity or expression, genetic information, national origin, race (including hair texture and protective hairstyles such as natural hairstyles, afros, bantu knots, curls, braids, locks and twists), color, or religion. Discrimination on the basis of a protected class, including unlawful harassment, which is a form of discrimination, is illegal under federal and state law. Where unlawful discrimination is found to have occurred, NSHE will act to stop the unlawful discrimination, to prevent its recurrence, to remedy its effects, and to discipline those responsible.

No employee, student, or other member of the campus community, either in the workplace or in the academic environment, should be subject to unlawful discrimination.

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

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 and law enforcement personnel, the Nevada Administrative Code and/or any collective bargaining agreement or, in the case of Desert Research Institute (DRI) technologists, the Technologists Manual. Other lesser sanctions may be imposed, depending on the circumstances. Complaints may also be filed against visitors, consultants, independent contractors, volunteers, 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.

Any employee, student, or other member of the campus community may utilize any of the complaint processes set forth in this policy.

2. Distribution of Policy; Training on the Prevention of Unlawful Discrimination and Harassment; and Annual Policy Review

a. Distribution of Policy

Annually, all employees shall be given a copy of this anti-discrimination policy, which may be provided electronically, and each institution shall maintain documentation that each employee received the anti-discrimination 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.

b. Training on the Prevention of Unlawful Discrimination and Harassment

Each institution shall provide ongoing training on the prevention of unlawful discrimination and harassment and shall designate a person(s) or office to be responsible for such training.

Institutions must provide new students and new employees primary prevention and awareness training that promotes awareness of rape, domestic violence, dating violence, sexual assault and stalking as defined in this policy. The training must address safe and positive options for bystander intervention to prevent harm, including how to intervene in risky situations; the recognition of abusive behavior; and how to avoid potential attacks.

Promptly upon hiring, but no later than within six (6) months of hiring, an employee shall receive training regarding the prevention of unlawful discrimination and harassment, including primary prevention and awareness training. Annually thereafter, an employee shall receive training concerning the prevention of unlawful discrimination and harassment.

Incoming freshmen and transfer students within their first semester of enrollment shall receive training regarding the prevention of unlawful discrimination and harassment, including primary prevention and awareness training.

(See also Special Training with Regard to Sexual Violence in subsection C(7)(b) below.)

c. Annual Policy Review

No later than the end of each calendar year, each institution's Title IX Coordinator shall review and provide to NSHE suggestions for changes to this policy. NSHE shall review and consider the suggested changes and propose policy revisions to the Board of Regents, as appropriate, at the last regular Board meeting of the fiscal year.

3. Discriminatory Acts

It is illegal to discriminate on the basis of age (40 or older), disability (including service-connected disabilities), sex (including pregnancy or related conditions), military status or military obligations, sexual orientation, gender identity or expression, genetic information, national origin, race (including hair texture and protective hairstyles such as natural hairstyles, afros, bantu knots, curls, braids, locks and twists), color, or religion in any aspect of employment or education, such as:

- **Application, hiring, background checks, discipline, 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 accommodations or leave; or*
- *other terms and conditions of employment.*

Determining what constitutes unlawful 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 within the scope of unlawful discrimination. The specific action taken, if any, in a particular instance depends on the nature and gravity of the conduct reported and may include anti-discrimination related disciplinary processes.

Discriminatory acts also include:

- *discrimination on the basis of a person's age (40 or older), disability (including service-connected disabilities), sex (including pregnancy or related conditions), military status or military obligations, sexual orientation, gender identity or expression, genetic information, national origin, race (including hair texture and protective hairstyles such as natural hairstyles, afros, bantu knots, curls, braids, locks and twists), color, or religion;*
- *retaliation against an individual for reporting an incident or filing a charge of unlawful discrimination, including unlawful harassment; participating in an investigation, hearing, or other related administrative process; or opposing discriminatory acts;*
- *employment or education decisions based on stereotypes or assumptions about the abilities, traits or performance of individuals of a certain age (40 or older), disability (including service-connected disabilities), sex (including pregnancy or related conditions), military status or military obligations, sexual orientation, gender identity or expression, genetic information, national origin, race, color, or religion; and*
- *"harassment," which refers to unwelcome conduct that is based on a person's age (40 or older), disability (including service-connected disabilities), sex (including pregnancy or related conditions), military status or military obligations, sexual orientation, gender identity or expression, genetic information, national origin, race (including hair texture and protective hairstyles such as natural hairstyles, afros, bantu knots, curls, braids, locks and twists), color, or religion. Harassment becomes unlawful where: 1) enduring the offensive conduct becomes a condition of employment or educational pursuits, or 2) the conduct is severe, persistent, or pervasive enough to create a work or educational environment that a reasonable person would consider intimidating, hostile, offensive, or abusive. Examples of unwelcome conduct that, if severe, persistent, or pervasive could constitute harassment, include but are not limited to slurs, jokes, graffiti, offensive or derogatory comments, or other verbal or physical conduct that is unwelcome.*

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

4. Non-Title IX Sexual Harassment Defined (Sexual Harassment Outside of Title IX Context)

Outside of the Title IX context, unwelcome sexual advances, requests for sexual favors, and/or other visual, verbal or physical conduct of a sexual or gender bias nature constitute sexual harassment when:

- a. *In the educational environment:*
 - i. *Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic status ("quid pro quo"); or*
 - ii. *Conduct, viewed under an objective standard, is sufficiently severe, persistent or pervasive so as to interfere with or limit a student's ability to participate in or benefit from the services, activities or opportunities offered by the institution ("hostile environment").*
- b. *In the workplace environment:*
 - i. *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 ("quid pro quo"); or*
 - ii. *Conduct, viewed under an objective standard, is sufficiently severe, persistent or pervasive so as to create an intimidating, hostile or abusive work environment, which may or may not interfere with the employee's job performance ("hostile environment").*

5. Non-Title IX Sexual Harassment Examples

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, which is a severe form of sexual harassment and refers to physical, sexual acts or attempted sexual acts perpetrated against a person's will or where a person is incapable of giving consent, including but not limited to rape, sexual assault, sexual battery, sexual coercion or similar acts in violation of state or federal law. A person may be incapable of giving consent due to the use of drugs or alcohol, age, an intellectual or other disability, or other factors, which demonstrate a lack of consent or inability to give consent.*

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, dating violence, domestic violence, stalking, other sexual violence;*
- *Stealthing, including the intent to remove or damage a contraceptive device without the knowledge or consent of the other participant while engaging in a sexual act;*
- *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 mail, text messages, social media, or other electronic or computer sources for nonconsensual 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, screen savers or electronic files;*
- *Inquiries, remarks, or discussions about an individual's sexual experiences or activities and other written or oral references to sexual conduct;*
- *Indecent exposure.*

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

6. Sexual Assault, Dating Violence, Domestic Violence, Stalking, Coercion and Consent Defined

a. Sexual Assault

"Sexual assault" means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the Federal Bureau of Investigation's Uniform Crime Reporting Program.

"Rape" means penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

"Fondling" means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

"Incest" means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

"Statutory rape" means sexual intercourse with a person who is under the statutory age of consent (16 years old).

b. Dating Violence

"Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purpose of complying with the requirements of this Section and 34 CFR 668.41, any incident meeting this definition is considered a crime for the purpose of Clery Act reporting.

c. Domestic Violence

“Domestic violence” means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

d. Stalking

“Stalking” means engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others or suffer substantial emotional distress.

e. Coercion

“Coercion” means the intent to compel a person to do or abstain from doing an act that the person has the right to do or abstain from doing through words, conduct or pressure by:

- *the use of violence or threats of violence against a person or the person’s family or property;*
- *depriving or hindering a person in the use of any tool, implement or clothing;*
- *attempting to intimidate a person by threats or force;*
- *compelling another individual to initiate or continue sexual activity against an individual’s will; or*
- *threatening to “out” someone based on sexual orientation, gender, identity, or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.*

Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail.

f. Consent

Conduct is unwelcomed if it is done in the absence of consent.

“Consent” means an affirmative, clear, unambiguous, knowing, informed, and voluntary agreement between all participants to engage in sexual activity.

- *Consent is active, not passive. Silence or lack of resistance cannot be interpreted as consent.*
- *Seeking and having consent accepted is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.*
- *The existence of a dating relationship or past sexual relations between the participants does not constitute consent to any other sexual act.*
- *Affirmative consent must be ongoing throughout the sexual activity and may be withdrawn at any time. When consent is withdrawn or cannot be given, sexual activity must stop.*
- *Consent cannot be given when it is the result of any coercion, intimidation, force, deception, or threat of harm.*

- **Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to fully, knowingly choose to participate in sexual activity. Incapacitation includes impairment due to drugs or alcohol (whether such use is voluntary or involuntary); inability to communicate due to a mental or physical condition; the lack of consciousness or being asleep; being involuntarily restrained; if any of the parties are under the age of 16; or if an individual otherwise cannot consent.**
- **The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.**

7. Other Definitions:

- "Complainant" means an individual who is alleged to have been subjected to conduct that could constitute unlawful discrimination or harassment.**
- "Reporting Party" means any person who reports unlawful discrimination or harassment, whether or not the person reporting is the person alleged to have been subjected to the conduct.**
- "Respondent" means an individual who is alleged to have violated the policy's prohibition on unlawful discrimination or harassment.**

B. Remedies and Interim Measures for Unlawful Discrimination and Harassment that Does Not Constitute Sex Discrimination under Title IX

It may be necessary or advisable to take actions (as determined by the institution) designed to minimize the chance that either party may either harass or retaliate against the other party and to provide support to the parties, as appropriate. The measures themselves must not amount to retaliation and shall not be deemed to be a sanction. Depending on the specific nature of the problem, interim measures and final remedies may include, but are not limited to:

1. For Students:

- Issuing mutual no contact directives;**
- Providing an escort to ensure safe movement between classes and activities;**
- Not sharing classes or extracurricular activities;**
- Moving to a different residence hall;**
- Providing written information regarding institution and community services including but not limited to medical, counseling and academic support services, such as tutoring;**
- Providing extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;**
- Restricting to online classes;**
- Providing information regarding campus transportation options;**
- Reviewing any disciplinary actions taken against the complainant or the respondent to see if there is a connection between the misconduct and the misconduct that may have resulted in the complainant, or the respondent being disciplined³;**
- Requiring the parties to report any violations of these restrictions;**
- Taking a leave of absence;**

³ For example, if one party was disciplined for skipping a class in which the other party was enrolled, the institution should review the incident to determine if class was skipped to avoid contact with the other party.

- l. Submitting a request for a waiver of scholarship or grant requirements pursuant to Title 4, Chapter 18, Section 3; and*
- m. Submitting a request for a waiver of requirements of the Governor Guinn Millennium Scholarship pursuant to Title 4, Chapter 18, Section 9.23.*

2. For Employees:

- a. Provide an escort to ensure safe movement between work area and/or parking lots/other campus locations;*
- b. Issuing mutual no contact directives;*
- c. Placement on leave;*
- d. Transfer to a different area/department or shift in order to eliminate or reduce further business/social contact;*
- e. Providing information regarding campus transportation options;*
- f. Instructions to stop the conduct;*
- g. Providing information regarding institution and community services including medical, counseling and Employee Assistance Program;*
- h. Reassignment of duties;*
- i. Changing the supervisory authority; and*
- j. Directing the parties to report any violations of these restrictions.*

All institution administrators, academic and administrative faculty, and staff are responsible for carrying out the interim measures and final remedies.

Interim measures and final remedies may include restraining orders, or similar lawful orders issued by the institution, criminal, civil or tribal courts. Interim measures and final remedies will be confidential to the extent that such confidentiality will not impair the effectiveness of such measures or remedies.

Final remedies may also include review and revision of institution unlawful discrimination or harassment policies, increased monitoring, supervision or security at locations where incidents have been reported; and increased and/or targeted education and prevention efforts.

Any interim measures or final remedies shall be monitored by the Title IX Coordinator or designee throughout the entire process to assess whether the interim measures or final remedies meet the goals of preventing ongoing unlawful discrimination or harassment, protecting the safety of the parties, restoring access to the institution's education programs and activities, and preventing retaliatory conduct.

Notwithstanding a complainant's request for confidentiality under subsection D(2)(4)(c), the institution may undertake interim measures.

C. NSHE Policy Against Title IX Sex Discrimination; Supportive Measures and Remedies for Title IX Sex Discrimination

NSHE and its member institutions do not discriminate on the basis of sex and prohibit sex discrimination in their education programs and activities, including in admissions and employment as required by Title IX, which provides:

"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."

Under Title IX, discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

This policy applies to an institution's education programs and activities (defined as including locations, events, or circumstances in which the institution exercises substantial control over both the respondent and the context in which the conduct occurred), circumstances where the institution has disciplinary authority, and to misconduct occurring within any building owned or controlled by an institution's recognized student organization.

This policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to an institution's education programs or activities.

1. Designation of Coordinator, dissemination of policy, and adoption of complaint procedures

- a. Each institution President and the Chancellor shall designate and authorize at least one individual to serve as the Title IX Coordinator for the institution who shall be tasked with coordinating the institution's efforts to comply with its responsibilities under Title IX. If an institution has more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight over those responsibilities and ensure consistent compliance with the institution's responsibilities under Title IX. The institution must notify applicants for admission or employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the institution, the name or title, office address, electronic mail address, and telephone number of the institution's Title IX Coordinator.***
- b. Each institution must prominently display the contact information for the Title IX Coordinator on its website, if any, and in each handbook, or catalog, announcement, bulletin, and application form that it makes available to persons entitled to a notification under paragraph (a). Each institution must notify persons entitled to a notification under paragraph (a) that the institution does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX not to discriminate in such a manner. Such notification must state that the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX to the institution may be referred to the institution's Title IX Coordinator, to the Office of Civil Rights, or both.***
- c. Each institution must adopt written complaint procedures that provide for the prompt and equitable resolution of student and employee complaints alleging sex discrimination prohibited under Title IX.***
- d. An institution must provide to persons entitled to a notification under paragraph (a) notice of the institution's complaint procedures and complaint process, including how to report or file a complaint that may constitute sex discrimination under Title IX, how to locate the institution's nondiscrimination policy, and how the institution will respond.***
- e. Each institution must ensure that all employees, investigators, decisionmakers, and other persons who are responsible for implementing the complaint procedures or have authority to modify or terminate supportive measures, facilitators of the informal resolution process, and Title IX Coordinators and their designees have training, which does not rely on sex stereotypes as provided for in Title IX and outlined in this policy.***

2. Definitions

- a. ***“Complaint” means an oral or written request to the institution that objectively can be understood as a request to investigate and make a determination about alleged sex discrimination under Title IX.***
- b. ***“Complainant” means (i) a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or (ii) a person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX and who was participating or attempting to participate in an institution’s education program or activity at the time of the alleged sex discrimination. This definition includes a parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant. The Title IX Coordinator may also be a complainant.***
- c. ***“Confidential employee” means: (i) an employee whose communications are privileged or confidential under federal or state law. The employee’s confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; (ii) an employee designated as confidential for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee’s confidential status is only with respect to information received about sex discrimination in connection with providing those services; or (iii) an employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination, but the employee’s confidential status is only with respect to information received while conducting the study. This policy also defines campus ombudspersons as confidential employees.***
- d. ***“Consent” has the meaning set forth in Subsection A(6)(f).***
- e. ***“Failure to comply” means intentional failure to: comply with the reasonable directives of the Title IX Coordinator or designee in the performance of their official duties, including with the terms of a no contact order, comply with the emergency removal or interim suspension terms, comply with sanctions, adhere to the terms of an agreement achieved through informal resolution, comply with mandated reporting duties as defined in policy, or intentional interference with the Title IX resolution process including but not limited to destruction of or concealing of evidence, actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence, or intimidating or bribing a witness or party. Disciplinary sanctions for violations range from warning through expulsion/termination.***
- f. ***“Institution” means any and all of NSHE’s eight (8) institutions, including the College of Southern Nevada; the Desert Research Institute; Great Basin College; Nevada State University; Truckee Meadows Community College; the University of Nevada, Las Vegas; the University of Nevada, Reno; and Western Nevada College, and NSHE’s System Administration offices.***
- g. ***“Pregnancy or related conditions” means (i) pregnancy, childbirth, termination of pregnancy, or lactation; (ii) medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or (iii) recovery from pregnancy, childbirth, termination of pregnancy, or lactation or related medical conditions.***
- h. ***“Preponderance of the evidence” means the evidence establishes that it is more likely than not that the alleged misconduct occurred.***

- i. ***“Recipient” means the Nevada System of Higher Education and its institutions and units to whom federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof.***
- j. ***“Relevant” means related to the allegations of sex discrimination under investigation as part of complaint procedures of this policy. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid an investigator or decisionmaker in determining whether sex discrimination occurred.***
- k. ***“Reporting party” means any person who reports sex discrimination or conduct that could reasonably constitute sex discrimination, whether or not the person reporting is the person alleged to have been subject to the conduct.***
- l. ***Respondent” means a person who is alleged to have violated the policy’s prohibition on sex discrimination.***
- m. ***“Retaliation” means intimidation, threats, coercion, or discrimination against any person by the institution, a student, or an employee or other person authorized by the institution to provide aid, benefit, or service under the institution’s education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part, including in an informal resolution process, in complaint procedures, and in any other actions taken by an. Nothing in this definition precludes an institution from requiring an employee or other person authorized by an institution to provide aid, benefit, or service under the institution’s education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.***
- n. ***“Student” means a person who has gained admission to an institution.***
- o. ***“Sex-based harassment” is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity that is:***
 - i. ***Quid pro quo harassment. An employee, agent, or other person authorized by an institution to provide an aid, benefit or service under an education program or activity conditioning the provision of an aid, benefit, or service of the institution on an individual’s participation in unwelcome sexual conduct;***
 - ii. ***Hostile environment harassment. Unwelcome conduct on the basis of sex that, based on the totality of the circumstances, is subjectively and objectively offensive and, is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the institution’s education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following: (i) the degree to which the conduct affected the complainant’s ability to access the institution’s education program or activity; (ii) the type, frequency, and duration of the conduct; (iii) the parties’ ages, roles***

within the institution's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct; (iv) the location of the conduct and the context in which the conduct occurred; and (v) other sex-based harassment in the institution's education program or activity; or

- iii. Specific offenses. Sexual assault, as defined by the Clery Act, 34 C.F.R. § 668.46(a), as amended by the Violence Against Women Act of 1994, including but not limited to dating violence, domestic violence, and stalking.**

For the purposes of this definition, "sexual assault" means a forcible or nonforcible sex offense that meets the definition of rape, fondling, incest, or statutory rape as used in the Federal Bureau of Investigation's Uniform Crime Reporting Program.

"Rape" means penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

"Fondling" means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

"Incest" means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

"Statutory rape" means sexual intercourse with a person who is under the statutory age of consent (16 years old).

"Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

"Domestic violence" means felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

"Stalking" means engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others, or suffer substantial emotional distress.

- p. "Supportive measures" means. non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available,**

without unreasonably burdening a complainant or the respondent and without fee or charge to the complainant or the respondent to restore or preserve access to the institution's education program or activity, including measures designed to protect the safety of all parties and/or the institution's educational environment and/or to deter discrimination, harassment, and/or retaliation.

- q. *"Unauthorized disclosure" means distributing or otherwise publicizing materials created or produced during an investigation or resolution process except as required by law or as expressly permitted by the institution; or publicly disclosing a party's personally identifiable information without authorization or consent.*

3. Response to Title IX Sex Discrimination

An institution with knowledge of conduct that reasonably may constitute sex discrimination in an education program or activity of the institution will respond promptly and effectively. An institution will address sex discrimination in an education program or activity. Further, TIX Coordinators are required to monitor an institution's education program or activity for barriers to reporting information about conduct that reasonably may constitute sex discrimination and take steps reasonably calculated to address such barriers.

Upon notice to the Title IX Coordinator of student's pregnancy or related conditions, an institution must take specific actions to promptly and effectively prevent sex discrimination and ensure equal access to the institution's education program or activity. After consultation with the student and based on the student's individualized needs, the institution may offer reasonable modifications to its policies, practices or procedures to prevent sex discrimination and ensure equal access to the institution's education program or activity so long as the modification would not fundamentally alter the nature of its education program or activity.

An institution's response must:

- *treat complainants and respondents equitably;*
- *offer and coordinate supportive measures;*
- *notify a complainant or reporting party of the complaint procedures and if available and appropriate, the informal resolution process;*
- *if a complaint is made, notify the respondent of the complaint procedures and if available and appropriate, the informal resolution process;*
- *initiate the complaint procedures and if available and appropriate, the informal resolution process;*
- *in the absence of a complaint, withdrawal of allegations in a complaint or in the absence or termination of an informal resolution process, make a fact-specific determination⁴ whether to initiate a complaint of sex*

⁴*A fact specific determination includes consideration of the complainant's request not to proceed with initiation of a complaint and reasonable safety concerns regarding initiation of a complaint; the risk that additional acts of sex discrimination would occur if a complaint is not initiated; the severity of the alleged sex discrimination, and whether if established would require removal of the respondent from campus another disciplinary sanction to end the discrimination and prevent its recurrence; the age and relationship of the parties, including whether respondent is an employee; the scope of the alleged sex discrimination (e.g., a pattern or impact to multiple individuals); the availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and whether the institution could end the alleged sex discrimination and prevent its recurrence without initiating complaint procedures.*

discrimination unless the conduct as alleged could not constitute sex discrimination under Title IX;

- *if initiating a complaint, the Title IX Coordinator must notify the complainant, address reasonable concerns about their safety and the safety of others, including by providing supportive measures;*
- *regardless of whether a complaint is initiated, the Title IX Coordinator must take appropriate prompt and effective steps to effectuate remedies and ensure that sex discrimination does not continue or recur within the institution education program or activity.*

- 4. Supportive Measures and Remedies; Opportunity to Seek Modification or Reversal**
Upon notice of alleged sex discrimination or retaliation, the Title IX Coordinator will promptly offer and coordinate, as appropriate, reasonably available supportive measures to all parties. At the time that supportive measures are offered, if a complaint has not been filed, the Title IX Coordinator will inform the complainant, in writing, that they may file a complaint with the Title IX Coordinator either at that time or in the future. The Title IX Coordinator will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The institution will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the Title IX Coordinator's ability to provide those supportive measures. The Title IX Coordinator will act to ensure as minimal an academic/occupational impact on the parties as possible, implementing measures in a way that does not unreasonably burden any party.

An institution shall provide this policy which addresses supportive measures to both complainants and respondents.

If a complaint is initiated by the Title IX Coordinator, or an informal resolution has been offered, the Title IX Coordinator shall offer and coordinate supportive measures, as appropriate, for the respondent.

The parties are provided seven (7) business days to seek a modification or reversal of the institution's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Title IX Coordinator or designee. An impartial employee other than the employee who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide deny, modify, or terminate supportive measures if they are inconsistent with the definition of supportive measures. The institution will also provide the parties with the opportunity to seek additional modifications or termination of supportive measures applicable to them if circumstances change materially. The institution typically renders decisions on supportive measures within seven (7) business days of receiving a request and provides a written determination to the impacted party(ies) and Title IX Coordinator or designee.

Supportive measures and remedies may include, but are not limited to:

For Students:

- Issuing a mutual no-contact directives;*
- Providing an escort to ensure safe movement between classes and activities;*
- Not sharing classes or extracurricular activities;*
- Moving to a different residence hall;*

- e. *Providing written information regarding institution and community services including but not limited to medical, counseling and academic support services, such as tutoring;*
- f. *Providing extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;*
- g. *Taking a leave of absence;*
- h. *Restricting to online classes;*
- i. *Providing information regarding campus transportation options;*
- j. *Increased security or monitoring of certain areas of campus;*
- k. *Reviewing any disciplinary actions taken against the complainant or the respondent to see if there is a connection between the misconduct and the misconduct that may have resulted in the complainant or the respondent being disciplined⁵;*
- l. *Requiring the parties to report any violations of these restrictions;*
- m. *Submitting a request for a waiver of scholarship or grant requirements pursuant to Title 4, Chapter 18, Section 3; and*
- n. *Submitting a request for a waiver of requirements of the Governor Guinn Millennium Scholarship pursuant to Title 4, Chapter 18, Section 9.23.*
- o. *Training and education related to sex-based harassment.*

For Employees:

- a. *Providing an escort to ensure safe movement between work area and/or parking lots/other campus locations;*
- b. *Increased security or monitoring of certain areas of campus;*
- c. *Issuing a mutual no-contact directive(s);*
- d. *Placement on leave;*
- e. *Transfer to a different area/department or shift in order to eliminate or reduce further business/social contact;*
- f. *Providing information regarding campus transportation options;*
- g. *Instructions to stop the conduct;*
- h. *Providing information regarding institution and community services including medical, counseling and Employee Assistance Program;*
- i. *Reassignment of duties;*
- j. *Changing the supervisory authority; and*
- k. *Directing the parties to report any violations of these restrictions.*
- l. *Training and education related to sex-based harassment.*

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as additional misconduct allegations to an ongoing complaint.

All institution administrators, academic and administrative faculty, and staff are responsible for carrying out the supportive measures and remedies.

Supportive measures and remedies may include restraining orders, or similar lawful orders issued by the institution, criminal, civil or tribal courts. Supportive measures and remedies will be confidential to the extent that such confidentiality

⁵ For example, if one party was disciplined for skipping a class in which the other party was enrolled, the institution should review the incident to determine if class was skipped to avoid contact with the other party.

will not impair the ability to provide the supportive measure or restore or preserve the party's access to an education program or activity.

Remedies may also include review and revision of institution sex discrimination misconduct policies, increased monitoring, supervision or security at locations where incidents have been reported; and increased and/or targeted education and prevention efforts.

The institution's Title IX Coordinator shall document the supportive measures and maintain such records pursuant to the recordkeeping provisions of this policy.

In responding to allegations of sex discrimination, an institution shall not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.

- 5. Emergency Removal. An institution may remove a respondent from the institution's education program or activity on an emergency basis, provided that the institution undertakes an individualized safety and risk analysis, determines that an imminent and serious threat to the health or safety of a complainant or any students, employees, or other individual arising from the allegations of sex discrimination justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.***
- 6. Administrative Leave. An institution may place a non-student employee respondent on administrative leave during the pendency of its complaint process. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.***
- 7. Training. An institution will ensure training, which does not rely on sex stereotypes, is provided to employees related to their duties under Title IX. Training shall be provided promptly upon hiring or change of position that alters the employee's duties under Title IX, and annually thereafter, as follows:***

All employees must be trained on: (i) the institution's obligation to address sex discrimination in its education program or activity; (ii) the scope of conduct that constitutes sex discrimination, including sex-based harassment; (iii) all applicable notification and information requirements regarding student pregnancy; and (iv) all applicable notification and information requirements regarding sex discrimination.

Investigators, decisionmakers, and other persons who are responsible for implementing an institution's complaint procedures or who have the authority to modify or terminate supportive measures must be trained on: (i) the above-listed topics on which employees must be trained; (ii) the institution's obligations in response to its knowledge of conduct that reasonably may constitute sex discrimination in its education programs and activities and to address sex discrimination in its education programs or activities; (iii) the institution's complaint procedures; (iv) how to serve impartially, including by avoiding prejudgment of the facts, conflicts of interest, and bias; and (vi) the meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under the Title IX.

Informal Resolution Facilitators must be trained on: (i) the same above-listed topics on which employees must be trained; (ii) the institution's informal resolution process; and (iii) how to serve impartially, including by avoiding prejudgment of the facts, conflicts of interest, and bias.

Title IX Coordinators and designees must be trained on: (i) the same topics on which employees must be trained; (ii) the same topics on which investigators, decisionmakers, and other persons who are responsible for implementing an institution's complaint procedures or who have the authority to modify or terminate supportive measures must be trained; (iii) the same topics on which Informal Resolution Facilitators must be trained; (iv) the institution's responsibilities to pregnant students or students with a pregnancy related condition; (v) The TIX Coordinator's role and requirements; (vi) supportive measures; (vii) the institution's recordkeeping system and recordkeeping requirements; and (viii) any other training necessary to coordinate the institution's compliance with Title IX.

a. General Training Requirements.

The TIX training requirements are in addition to general training requirements that an institution's Title IX Coordinator, executives, and other administrators designated to receive complaints, and appropriate management level(s) with resolution authority shall have training or experience in handling non-Title IX and Title IX unlawful discrimination and harassment complaints and in the operation of the NSHE and Nevada Administrative Code disciplinary procedures.

b. Specialized Training With Regard to Sexual Violence.

- i. The training for each of the individuals identified in paragraph a above, should include annual training on how to investigate and conduct hearings in a manner that protects the safety of the parties and promotes accountability; information on working with and interviewing persons subjected to sexual violence; information on particular types of conduct that would constitute sexual violence, including stalking and same-sex sexual violence; the proper standard of review for sexual violence complaints (preponderance of the evidence); information on risk reduction; information on consent and the role drugs or alcohol can play in the ability to consent; the importance of accountability for individuals found to have committed sexual violence; the need for remedial actions for the respondent, complainant, and institution community; how to determine credibility; how to evaluate evidence and weigh it in an impartial manner; how to conduct investigations; confidentiality; the effects of trauma, including neurobiological change; and cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds.**
- ii. The Director or designee for an institution's campus law enforcement shall ensure annual training is provided to its officers that includes: working with and interviewing persons subjected to sexual violence; information on particular types of conduct that would constitute sexual violence, including stalking and same-sex sexual violence; information on consent and the role drugs or alcohol can play in the ability to consent; the effects of trauma, including neurobiological change; and cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds.**

D. Complaint Procedures for Unlawful Discrimination and Harassment, including Title IX Sex Discrimination

This subsection provides the complaint and investigation procedures for unlawful discrimination and harassment, including Title IX sex discrimination. There are two

complaint and investigation processes: (1) the complaint and investigation procedures for complaints of unlawful discrimination and harassment including Title IX sex discrimination except for complaints of sex-based harassment that involve a student as either a complainant or respondent (and, when appropriate, instances where the institution has notice of possible unlawful discrimination and/or harassment or Title IX sex discrimination other than sex-based harassment that involves a student as complainant or respondent); and (2) the complaint and investigation procedures for complaints of Title IX sex-based harassment that involve a student as either a complainant or respondent (and, when appropriate, instances where the institution has notice of possible Title IX sex-based harassment involving a student as a complainant or respondent).

The Chancellor (for the System Office) and each President shall designate at least two administrators to receive complaints. The administrators designated to receive the complaints may include the following: (1) the Title IX Coordinator; (2) the Human Resources Officer; or (3) any other officer designated by the President or Chancellor. The President or Chancellor may also designate a primary officer to investigate all complaints. The primary officer may be any of the individuals identified in this paragraph. All complaints must immediately be forwarded to the Title IX Coordinator.

An individual filing a complaint of unlawful discrimination or harassment, including Title IX sex discrimination shall have the opportunity to select an independent advisor for assistance, support, and advice and shall be notified of this opportunity by the Title IX Coordinator or designee. It shall be the choice of the individual filing the complaint to utilize or not utilize an independent advisor and their responsibility to pay any associated fees. An independent advisor may be brought into the process at any time at the request of the complainant. An independent advisor may be any person who does not have a conflict of interest and who is not a witness in the matter.

An individual who is alleged to have violated the policy against unlawful discrimination or harassment, including Title IX discrimination, shall have the opportunity to select an independent advisor for assistance, support, and advice and shall be notified of this opportunity by the Title IX Coordinator or designee. It shall be the choice of the individual against whom the complaint is filed to utilize or not utilize an independent advisor and their responsibility to pay any associated fees. An independent advisor may be brought into the process at any time at the request of the respondent. An independent advisor may be any person who does not have a conflict of interest and who is not a witness in the matter.

Both complainants and respondents will be provided this policy which addresses interim or supportive measures and written notification of services available on campus and in the community.

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 unlawful discrimination or harassment, or observes or becomes aware of conduct that may constitute unlawful discrimination or harassment, the person must immediately contact one of the individuals identified in this subsection above to forward the complaint and/or provide information about the conduct, to discuss it and/or to report the action taken.

Complaints of unlawful discrimination or harassment should be filed as soon as possible with the supervisor, department chair, dean, or one of the administrators listed in this subsection above and/or designated by the President or the Chancellor to receive complaints of alleged unlawful discrimination or harassment.

1. Time Limits⁶

Complaints of unlawful discrimination or harassment that do not constitute sex discrimination under Title IX must be filed within the time frames stated below. Holidays and weekends should be included in all calculations. If the deadline falls on a weekend or holiday, the complaint may be filed on the next business day and still be considered timely. (Business days are non-weekend and non-holiday days on which NSHE administrative offices are open for business.). Interim measures are available to eligible students and employees notwithstanding the issue of timeliness.

Employee Complaints

All employment complaints alleging unlawful discrimination or harassment (to include retaliation) must be received in the appropriate institutional office within 300 calendar days from the day the alleged act took place. If more than one act is alleged, the deadline will apply to each act independently, except in complaints of ongoing unlawful discrimination or harassment. Complaints of ongoing unlawful discrimination or harassment must be filed within 300 calendar days of the last alleged incident of unlawful harassment, although all alleged incidents of ongoing unlawful discrimination or harassment may be considered during the investigation, even if the earlier incidents are alleged to have occurred more than 300 calendar days earlier.

Student Complaints

All student complaints alleging unlawful discrimination or harassment (to include retaliation) must be received in the institution's appropriate office within 180 calendar days from the day the alleged act took place. If more than one act is alleged, the deadline will apply to each event independently, except in complaints of ongoing unlawful discrimination or harassment. Complaints of ongoing unlawful discrimination or harassment must be filed within 180 calendar days of the last alleged incident of ongoing unlawful discrimination or harassment, although all alleged incidents of ongoing unlawful discrimination or harassment may be considered during the investigation, even if the earlier incidents are alleged to have occurred more than 180 calendar days earlier.

Other/Campus Visitor/Non-employee

Complaints alleging unlawful discrimination or harassment (to include retaliation) asserted by individuals who are neither NSHE employees nor students alleging unlawful discrimination or harassment by a NSHE employee during the employee's work hours, or by a NSHE student on campus or at a NSHE-sponsored event, must be received in the institution's appropriate office within 180 calendar days from the day the alleged act took place. If more than one act is alleged, the deadline will apply to each act independently, except in complaints of ongoing unlawful discrimination or harassment. Complaints of ongoing unlawful discrimination or harassment must be filed within 180 calendar days of the last alleged incident of ongoing unlawful discrimination or harassment, although all alleged incidents of ongoing unlawful discrimination or harassment may be considered during the

⁶ These time limits do not apply to complaints of conduct that constitute sex discrimination under Title IX.

investigation, even if the earlier incidents are alleged to have occurred more than 180 calendar days earlier.

2. Complaint Procedures for Unlawful Discrimination and Harassment; Sex Discrimination Under Title IX (Except Sex-Based Harassment Where a Student Is a Party)⁷

a. Employees

i. An employee who believes that they have been subjected to unlawful discrimination or 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.

ii. The employee may file an unlawful discrimination or harassment complaint with their immediate supervisor, who will in turn immediately contact one of the officials listed in this subsection above.

iii. 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.

iv. After receiving any employee's complaint of an incident of alleged unlawful discrimination or harassment, the supervisor will immediately contact any of the individuals listed in this subsection 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 the complaint to that supervisor.

b. Students

i. A student who believes that they have been subjected to unlawful discrimination or 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.

ii. The student may file a complaint with their major department chair or director of an administrative unit, who will in turn immediately contact any of the individuals listed in this subsection above.

iii. 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 in this subsection 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. Written Notice of Allegations. Upon initiation of complaint procedures, an institution will notify the parties of the following:

⁷ These procedures established by 34 C.F.R. §106.45.

- i. The institution's applicable complaint procedures and any informal resolution process; and*
- ii. Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination under Title IX or other unlawful discrimination or harassment, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to the institution;*
- iii. Retaliation is prohibited; and*
- iv. The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. If the institution provides a description of the evidence, the parties are entitled to an equal opportunity for access to the relevant and not otherwise impermissible evidence upon the request of any party.*

Respondents are presumed not responsible for alleged sex discrimination, until a determination is made at the conclusion of the complaint procedures. If, in the course of an investigation, the institution decides to investigate additional allegations of sex discrimination or other unlawful discrimination or harassment by the respondent toward the complainant that are not included in the notice or that are included in a consolidated complaint, the institution will notify the parties of the additional allegations.

- d. Extension of timeframes. The Title IX Coordinator or designee has discretion to extend any timeframe contained in the complaint procedures for good cause⁸ and upon doing so will simultaneously provide written notice to the parties. Parties may request an extension of a timeframe in writing to the Title IX Coordinator, designee, investigator, or decisionmaker prior to the expiration of the timeframe stating the reason for the requested extension.*
- e. Dismissal of a Complaint. An institution may dismiss a complaint if:*
 - i. The institution is unable to identify the respondent after taking reasonable steps to do so;*
 - ii. The respondent is not participating in the institution's education program or activity and is not employed by the institution;*
 - iii. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the institution determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX, or other unlawful discrimination or harassment, even if proven.*
 - iv. The institution determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Prior to dismissing the complaint under this paragraph, the institution*

⁸ Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

must make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, the institution must notify the complainant in writing of the basis for the dismissal, that a dismissal may be appealed in writing within seven (7) business days and state the bases for appeal.

If the dismissal occurs after the respondent has been notified of the allegations, then the institution must also simultaneously notify the respondent in writing of the basis for the dismissal, that a dismissal may be appealed in writing within seven (7) business days and state the bases for appeal.

f. Appeal From Dismissal of Complaint.

Within seven (7) business days of issuance of the notice of dismissal, any party may appeal on the following bases:

- i. Procedural irregularity that would change the outcome;**
- ii. New evidence that would change the outcome and was not reasonably available at the time the dismissal was made; and**
- iii. The Title IX Coordinator, investigator(s), or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.**

If the dismissal is appealed, the institution will:

- i. Implement appeal procedures equally for the parties;**
- ii. Notify the parties of the appeal, including notice of the allegations if notice was not previously provided to the respondent;**
- iii. Ensure that the decisionmaker for the appeal did not take part in the investigation and has been trained in accordance with this policy;**
- iv. Allow both parties seven (7) business days of issuance of the notice of the appeal to submit to the Title IX Coordinator or designee a written statement in support of or challenging the dismissal;**
- v. In its discretion, submit a written statement to the appeal decisionmaker in support of the dismissal;**
- vi. Within fourteen (14) business days of receiving a written statement in support of, or challenging, the dismissal, provide written notification to the parties simultaneously of the result of the appeal and the rationale for the result.**

An institution that dismisses a complaint will, at a minimum:

- offer supportive measures to the complainant;**
 - for dismissals in which the respondent has been notified of the allegations, offer supportive measures to the respondent; and**
 - require its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the institution's education program or activity.**
- g. Investigation. Each institution shall provide for an adequate, reliable, and impartial investigation, and shall identify the appropriate management level administrator with final authority regarding the resolution of the matter. The Title IX Coordinator or designee will initiate an investigation to gather information about the alleged conduct. If the Title IX Coordinator or designee, 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 will:

i. ensure that the burden is on the institution – not on the parties – to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination, or other unlawful discrimination or harassment, occurred;

ii. provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible;

iii. review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance; and

iv. provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination, or other unlawful discrimination or harassment, and not otherwise impermissible, in the following manner:

- provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence. If the institution provides a description of the evidence, it must further provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party;**
- provide a reasonable opportunity to respond to the evidence or to the accurate description of the evidence; and**
- take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the complaint procedures.⁹**

An institution will provide a process that enables the investigator to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination, or other unlawful discrimination or harassment.

An institution will take reasonable steps to protect the privacy of the parties and witnesses provided that the steps do not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with family members, confidential resources, or advisors; or otherwise prepare for or participate in the complaint procedures.

In most cases, an investigation should be completed within ninety (90) business days of receipt of the complaint. The standard for evaluating complaints is the preponderance of the evidence (i.e., the evidence establishes that it is more likely than not that the alleged conduct occurred).

Investigators will objectively evaluate the inculpatory and exculpatory evidence that is relevant and not otherwise impermissible and will not base any credibility determinations on a person's status as a complainant, respondent or witness.

⁹ For purposes of this paragraph, disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination, or other unlawful discrimination or harassment, are authorized.

The following types of evidence, and questions seeking these types of evidence, will be excluded as impermissible:

- **evidence protected under privilege as recognized by state or federal law**
- **evidence provided to a confidential employee (unless the privilege/confidentiality is voluntarily waived)**
- **a party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment of the party or witness unless the party or witness provides voluntary, written consent**
- **evidence that relates to the complainant's sexual interests or prior sexual conduct unless offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to provide consent to the alleged sex-based harassment.**

The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

At the completion of the investigation, findings with respect to a determination whether Title IX sex discrimination or other unlawful discrimination or harassment occurred, and a recommendation will well as credibility be made to the appropriate management level administrator with final authority regarding resolution of the matter. The recommendation is advisory only.

Within fourteen (14) business days after the determination is made, the parties will be notified in writing of the determination (i.e., whether unlawful discrimination, including Title IX sex discrimination, or harassment occurred) and the rationale for such determination.

When an investigation determines that Title IX sex discrimination occurred, the Title IX Coordinator is required to coordinate the provision and implementation of remedies to a complainant and other person(s) the institution identifies as having had equal access to its education program or activity limited or denied by sex discrimination, coordinate the imposition of disciplinary sanctions, including notification to the complainant of any such disciplinary sanctions and take other prompt and effective steps to ensure that sex discrimination does not continue or recur within the institution's education program or activity.

- h. Management Resolution. After the recommendation has been made, a determination will be made by appropriate management level administrator regarding the resolution of the matter. If warranted, disciplinary action up to and including involuntary termination or expulsion may be taken. Any such disciplinary action shall be taken, as applicable, in accordance with NSHE Code Chapter 6, Chapter 8 or Chapter 10 (or applicable Student Code of Conduct), or, in the case of classified employees or law enforcement personnel, Nevada**

Administrative Code (NAC) Chapter 284 or Chapter 289, and/or associated collective bargaining agreement, or in the case of DRI technologists, the Technologists Manual. 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 NSHE Code Title 2, Chapter 6, Chapter 8 or Chapter 10, the applicable Student Code of Conduct, the NAC Chapter 284 or Chapter 289 and/or associated collective bargaining agreement, or Technologists Manual, the investigation conducted pursuant to this policy may be used as part of such investigations. The administrative officer in a disciplinary proceeding, in their discretion, may also supplement the investigation with additional investigation. In any disciplinary hearings conducted pursuant to a Student Code of Conduct or under NSHE Code, Title 2, Chapter 6, Chapter 8, Chapter 10, the NAC Chapter 284 or Chapter 289 and/or associated collective bargaining agreement, or Technologists Manual, the standard of evidence shall be by a preponderance of the evidence (i.e., the evidence establishes that it is more likely than not that the prohibited conduct occurred).

In connection with any such disciplinary hearings, the complainant 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.

An institution may not discipline a party, witness or others participating in institution's grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on institution's determination whether sex discrimination occurred.

- i. Confidentiality of Actions Taken. In the event actions are taken against an individual under NSHE Code Title 2, Chapter 6, Chapter 8 or Chapter 10 (or applicable Student Code of Conduct) or NAC Chapter 284 or Chapter 289 and/or associated collective bargaining agreement, or the Technologists Manual, such matters generally remain confidential under those Sections, except that final decisions following hearings or appeals of professional employees and, in limited circumstances 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).**
- j. Crime of Violence Exception to the Family Educational Rights and Privacy Act (FERPA). When discriminatory conduct or sexual harassment involves a crime of violence or a non-forcible sexual offense, FERPA permits the institution to disclose to the complainant the final results (limited to the name of the respondent, any violation found to have been committed, and any sanction imposed) of a disciplinary proceeding against the respondent, regardless of whether the institution concluded that a violation was committed. With respect to an institutional disciplinary proceeding alleging sexual violence, domestic violence, dating violence or stalking 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 simultaneously informed of the outcome.

- k. Resignation of Employee or Withdrawal of Student. If a student respondent withdraws from the institution or an employee respondent ends employment (e.g., resigns, retires) while an investigation of a complaint involving unlawful discrimination or harassment is pending under this policy, the Title IX Coordinator shall take appropriate action, which may include completing the investigation to the extent reasonably practicable, in order to prevent the reoccurrence of and to remedy the effects of the alleged misconduct.**
- l. Title IX Coordinator Monitoring. The institution Title IX Coordinator has primary responsibility for coordinating the institution's efforts to comply with and carry out its responsibilities under this subsection. The Title IX Coordinator is responsible for monitoring all aspects of the investigation and any interim measures or final remedies to help ensure that: (i) the process is fair and equitable to both the complainant and the respondent; (ii) the applicable policies and procedures of NSHE and of the institution are followed; and (iii) the interim measures and final remedies are followed.**

4. Confidentiality

NSHE recognizes that confidentiality is important. However, in some limited circumstances confidentiality cannot be guaranteed. The administrators, faculty or staff responsible for implementing this policy will respect the privacy of individuals reporting or accused of unlawful discrimination or harassment including Title IX sex discrimination 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.

- a. Varying Confidentiality Obligations. In situations involving unlawful discrimination or harassment, including Title IX discrimination, individuals are encouraged to talk to somebody about what happened in order for them to receive the support they need. However, it is important to understand that different individuals at the institution have different abilities to maintain an individual's confidentiality:**
 - Some are required to maintain near complete confidentiality; talking to them is sometimes called a "privileged communication."**
 - Other employees may talk to an individual in confidence, and generally only report to the institution that an incident occurred without revealing any personally identifying information. Disclosures to these employees will not trigger investigation into an incident against the individual's wishes, except in certain circumstances discussed below.**
 - Some employees are required to report all the details of an incident (including the identities of all involved) to the Title IX Coordinator. A report to these employees constitutes a report to the institution – and generally obligates the**

institution to investigate the incident and take appropriate steps to address the situation.

This information is intended to make employees, students and others aware of the various reporting and confidential disclosure options available to them so they can make informed choices about where to turn should they want to report an act of unlawful discrimination or harassment, including Title IX sex discrimination, or retaliation. The institution encourages individuals to talk to someone identified in one or more of these groups.

- i. ***Privileged and Confidential Communications.*** *To enable complainants access to support and services without filing a complaint, the institution has designated specific employees as confidential resources known as confidential employees who are not required to report actual or suspected discrimination, harassment, and/or retaliation in a way that identifies a party. They will provide the complainant with the Title IX Coordinator's contact information and how to make a complaint and offer options and resources without any obligation to inform an outside agency or the institution unless the complainant requests the information is shared. In these instances, a complainant may wish to consult with:*
 - ***Professional Counselors.*** *Professional, licensed counselors who provide mental-health counseling to members of the institution community (and including those who act in that role under the supervision of a licensed counselor) are not required to report any information about an incident to the Title IX Coordinator without a complainant's permission.*
 - ***Pastoral Counselors.*** *A complainant and/or a respondent may choose to consult with a non-institution pastoral counselor and is encouraged to discuss confidentiality with that individual.*
 - ***Campus Ombudspersons.*** *Campus Ombudspersons are not required to report any information about an incident to the Title IX Coordinator without a complainant's permission;*
 - ***Off-Campus Counselors and Advocates.*** *Off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and will not share information with the institution unless the individual requests the disclosure and signs a consent or waiver form.*
 - ***Institution employees conducting human subjects research as a part of a study approved by the institution's Institutional Review Board are also confidential employees.***¹⁰

¹⁰ *However, if a student otherwise makes a disclosure of unlawful discrimination or harassment, including Title IX discrimination, in a written assignment, such disclosure is not confidential and may trigger the institution's obligation to investigate the incident.*

- *Under Nevada law other professionals who may maintain confidentiality include lawyers, psychologists, doctors, social workers, and victim’s advocates as defined in NRS 49.2545, when these individuals are in a confidential relationship with the person reporting and are within the scope of their licensure at the time they receive the notice.*
- ii. **Complainant Options.** *A complainant who reports an act of unlawful discrimination or harassment, including TIX sex discrimination, only to a professional listed above in Subsection 4(a)(i) must understand that, if they want to maintain confidentiality, the institution will be unable to conduct a full investigation into the incident and will likely be unable to pursue disciplinary action against the respondent.*

A complainant who at first requests confidentiality may later decide to file a complaint with the institution or report the incident to local law enforcement, and thus have the incident fully investigated. A complainant shall be assisted in reporting the incident to local law enforcement if the complainant requests such assistance.

Other Reporting Obligations: *While professional counselors may maintain a complainant’s confidentiality vis-à-vis the institution, they may have reporting or other obligations under state law. For example, there may be an obligation to report child abuse, an immediate threat of harm to self or others, or to report in the case of hospitalization for mental illness.*

NSHE Employee Assistance Program providers would follow these guidelines, as would professionals in NSHE institution student counseling and psychological services areas, and professionals in community health clinics that reside on or are associated with NSHE institutions.

b. Reporting to Mandatory Reporters and Confidential Employees¹¹

Institution faculty and employees, other than those who are deemed confidential employees, are mandated reporters and are expected to promptly report all known details of actual or suspected discrimination, harassment, and/or retaliation to appropriate officials immediately, with limited exceptions. Supportive measures may be offered as a result of such disclosures.

If a complainant expects formal action in response to their allegations, reporting to any mandated reporter can connect them with the resources to report alleged crimes and/or policy violations; these employees will immediately pass notice to the Title IX Coordinator, who will act on the report.

- i. **Mandated reporters (non-confidential employees) are:**

Employees with responsibility for administrative leadership, teaching, and advising in an institution’s education program or activity¹² and employees with the authority to institute corrective

¹¹ *Note: Campus Security Authorities, who are designated by the institutions in accordance with Clery Act requirements, have an independent responsibility to report sexual and other crimes (which may be reported anonymously) to campus police.*

measures must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX and provide the contact information of the Title IX Coordinator as well as information about how to make a complaint to any person who provides the employee information about conduct that reasonably may constitute sex discrimination.

In addition, all other employees who are not confidential employees must also notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX and provide the contact information of the Title IX Coordinator and information about how to make a complaint to any person who provides the employee with information about conduct that reasonably may constitute sex discrimination.

Failure of a mandated reporter to report an incident of discrimination, harassment and/or retaliation of which they become aware is a violation of institution policy and can be subject to disciplinary proceedings and sanctions for failure to comply and/or failure to report. This also includes situations where the mandated reporter is a harasser; such individuals are obligated to report their own misconduct and failure to do so is in violation of policy. A mandated reporter who themselves is a target of harassment or other misconduct is not required to report their own experience but is encouraged to do so.

c. Requesting Confidentiality From the Institution: How the Institution Will Weigh the Request and Respond.

i. Request for Confidentiality. If a complainant discloses an incident to a mandated reporter but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the institution will weigh that request against the institution's obligation to provide a safe, non-discriminatory environment for everyone, including the complainant, after the mandatory reporter reports the incident to the Title IX Coordinator. If the institution honors the request for confidentiality, a complainant will be informed that the institution's ability to investigate the incident and pursue disciplinary action against the respondent may be limited.

There are times when, in order to provide a safe, non-discriminatory environment for all, the institution may not be able to honor a complainant's request for confidentiality. The institution shall designate an individual to evaluate requests for confidentiality made by a complainant.

ii. Factors to Be Considered. When weighing a complainant's request for confidentiality or a complainant's request that no investigation or discipline be pursued, the institution will consider a range of factors, including the following:

A) The increased risk that the identified respondent will commit additional acts of violence, discrimination or harassment, such as:

- whether there have been other misconduct, violence, discrimination or harassment complaints about the same respondent;**

- *whether the respondent has a history of arrests or other records indicating a history of violence, discrimination or harassment;*
- *whether the respondent threatened violence, discrimination or harassment against the complainant or others;*
- *whether the violence, discrimination or harassment was committed by multiple persons;*
- *whether the circumstances of the incident indicate that the behavior was planned by the respondent or others;*
- *whether the reported violence, discrimination or harassment was committed with a weapon;*
- *whether the complainant is a minor;*
- *whether the institution possesses other means to obtain relevant evidence of the reported violence, discrimination or harassment (e.g., security cameras or personnel, physical evidence);*
- *whether the complainant's information reveals a pattern of behavior (e.g., illicit use of drugs, alcohol, coercion, intimidation) at a given location or by a particular group;*
- *other factors determined by the institution that indicate the respondent may repeat the behavior or that others may be at risk.*

Based on one or more of these factors, the institution may decide to investigate and, if appropriate, pursue disciplinary action even though the complainant requested confidentiality or requested that no investigation or disciplinary action be undertaken. If none of these factors is present, or if any or all of these factors are present to an insufficient degree, the institution will work to respect the complainant's request for confidentiality.

iii. Actions After Decision to Disclose. If the institution decides that a complainant's confidentiality cannot be maintained, the institution will inform the complainant in writing or via email prior to starting an investigation and the institution will, to the extent possible, only share information with people responsible for handling the institution's response. The institution shall inform the respondent that the complainant asked the institution not to take investigative or disciplinary action against the respondent.

The institution will inform any individual involved in the matter that retaliation is prohibited and will take steps to protect such individual(s) from retaliation or harm. Retaliation will not be tolerated. The institution will also:

- 1. Determine whether interim or supportive measures should be implemented;*
- 2. Inform any individual involved in the matter of the right to report a crime to the institution and/or local law enforcement and to have a criminal investigation proceed simultaneously; and*

3. **Provide any individual involved in the matter with assistance if they wish to report a crime.**

The institution will not require any individual involved in the matter to participate in any investigation or disciplinary proceeding.

Because the institution is under a continuing obligation to address the issue of sex discrimination institution-wide, reports of sexual violence (including non-identifying reports) will also prompt the institution to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported sexual violence occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/complainant surveys; and/or revisiting its policies and practices.

Issuance of Timely Warning: If the institution determines that any individual involved in the matter poses a serious and immediate threat to the institution community, police or security services may be called upon to issue a timely warning to the community. Any such warning will not include any information that identifies the complainant.

d. Reports to Other NSHE Institutions. If a mandated reporter receives a complaint about unlawful discrimination or harassment that has occurred at another NSHE institution or to a student or employee of another NSHE institution, the mandated reporter shall report the information to the institution's Title IX Coordinator, who shall provide the information to the Title IX Coordinator at the other NSHE institution.

e. Public Awareness Events – Not Notice to the Institution. Public awareness events such as “Take Back the Night,” the Clothesline Project, candlelight vigils, protests, “survivor speak outs” or other forums in which individuals disclose incidents of sex-based harassment, are not considered notice to the institution of conduct that reasonably may constitute sex-based discrimination unless it indicates an imminent and serious threat to the health or safety of the complainant, any students, employees, or other persons. Such events may, however, inform the institution's efforts to prevent sex-based harassment in a particular part of its education program or activity or at a specific location when information indicates there may be multiple incidents of sex-based harassment.

f. Pregnancy or related conditions. When a student informs any employee of the student's pregnancy or related conditions, the employee will promptly provide the Title IX Coordinator's contact information and inform the student that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the institution's education program and activity.

5. Supervisor Responsibilities

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

- a. **Monitoring the work and school environment for signs that unlawful discrimination or harassment may be occurring;**
- b. **Refraining from participation in, or encouragement of actions that could be perceived as unlawful discrimination or harassment (verbal or otherwise);**
- c. **Stopping any observed acts that may be considered unlawful discrimination or harassment, and taking appropriate steps to intervene,**

whether or not the involved individuals are within their line of supervision; and

- d. Taking immediate action to minimize or eliminate the work and/or school contact between the involved individuals where there has been a complaint of unlawful discrimination or harassment, pending investigation.*

If a supervisor receives a complaint of unlawful discrimination or harassment or observes or becomes aware of conduct that may constitute unlawful discrimination or harassment, the supervisor must immediately contact the Title IX Coordinator to provide the information about the conduct, to discuss it and/or to report the action taken.

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

6. Complaint Procedures for Title IX Sex-Based Harassment Where a Student Is Either a Complainant or a Respondent¹³

- a. Student-Employees. When a complainant or respondent is both a student and employee, the institution will make a fact-specific inquiry to determine whether the requirements of this section apply. The institution will consider:
 - i. whether the party's primary relationship with the institution is to receive an education; and*
 - ii. whether the alleged sex-based harassment occurred while the party was performing employment-related work.**
- b. Role of Advisor. The parties may be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. An institution may not limit the choice or presence of an advisor for the complainant or respondent in any meeting or proceeding. However, an institution may establish restrictions regarding the extent to which the advisor may participate so long as such restrictions apply equally to the parties' advisors.*
- c. Written Notice of Allegations. Upon initiation of these sex-based harassment complaint procedures, an institution will notify the parties whose identities are known with sufficient time for the parties to prepare a response before any initial interview. The written notice will include the following:
 - i. The institution's applicable complaint procedures and any informal resolution process; and*
 - ii. Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex-based harassment, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to the institution; and*
 - iii. Retaliation is prohibited; and*
 - iv. The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigative report that accurately summarizes this evidence; and**

¹³ *These complaint procedures are established by 34 C.F.R. §106.46 in addition to 34 C.F.R. §106.45.*

if the institution provides access to the report, the parties are entitled an equal opportunity to access to the relevant and not otherwise impermissible evidence upon the request of any party; and

- v. The respondent is presumed not responsible for the alleged sex-based harassment until a determination is made at the conclusion of the complaint procedures, and prior to the determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker; and*
- vi. The parties are entitled to an advisor of their choice who may be, but is not required to be, an attorney; and*
- vii. This policy and the NSHE Rules of Conduct and Procedures for Students of the Nevada System of Higher Education, NSHE Code, Title 2, Chapter 10, prohibits knowingly making false statements or knowingly submitting false information during the complaint procedure.*

If, in the course of an investigation, the institution decides to investigate additional allegations of sex-based harassment by the respondent toward the complainant that are not included in the written notice or that are included in a consolidated complaint, the institution will notify the parties whose identities are known of the additional allegations.

To the extent an institution has reasonable concerns for the safety of any person as a result of providing this notice, it may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

- d. Extensions of timeframes. The Title IX Coordinator or designee has discretion to extend any timeframes contained in the complaint procedures for good cause and upon doing so will simultaneously provide written notice to the parties, which includes the reason for delay. Parties must submit a request for an extension of a timeframe in writing to the Title IX Coordinator, designee, investigator, or decisionmaker prior to the expiration of the timeframe stating the reason for the requested extension.*
- e. Dismissal of a Complaint. An institution may dismiss a complaint if:*
 - i. The institution is unable to identify the respondent after taking reasonable steps to do so;*
 - ii. The respondent is not participating in the institution's education program or activity and is not employed by the institution;*
 - iii. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and the institution determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX, or other unlawful discrimination or harassment, even if proven; or*
 - iv. The institution determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Prior to dismissing the complaint under this paragraph, the institution*

must make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, the institution must simultaneously notify the parties in writing of the basis for the dismissal, that a dismissal may be appealed in writing within seven (7) business days and state the bases for appeal; except if the dismissal occurs before the respondent has been notified of the allegations, then the institution must provide written notice only to the complainant.

If the complainant voluntarily dismisses a complaint or allegations, the withdrawal must be in writing.

f. Appeal From Dismissal of Complaint.

Within seven (7) business days of issuance of the notice of dismissal, any party may appeal on the following bases:

- iv. Procedural irregularity that would change the outcome;**
- v. New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and**
- vi. The Title IX Coordinator, investigator(s), or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.**

If the dismissal is appealed, the institution will:

- vii. Implement appeal procedures equally for the parties;**
- viii. Notify the parties of the appeal, including notice of the allegations if notice was not previously provided to the respondent;**
- ix. Ensure that the decisionmaker for the appeal did not take part in the investigation and has been trained in accordance with this policy;**
- x. Allow both parties seven (7) business days of issuance of the notice of the appeal to submit to the Title IX Coordinator or designee a written statement in support of or challenging the dismissal;**
- xi. In its discretion, submit a written statement to the appeal decisionmaker in support of the dismissal;**
- xii. Within fourteen (14) business days of receiving a written statement in support of, or challenging, the dismissal, provide written notification to the parties simultaneously of the result of the appeal and the rationale for the result.**

An institution that dismisses a complaint will, at a minimum:

- offer supportive measures to the complainant;**
- for dismissals in which the respondent has been notified of the allegations, offer supportive measures to the respondent; and**
- require its Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the institution's education program or activity.**

g. Investigation. Each institution shall provide for an adequate, reliable, and impartial investigation. The investigating institution:

- i. Will ensure that the burden is on the institution – not on the parties – to conduct an investigation that gathers sufficient evidence to determine whether sex-based harassment occurred;**

- ii. Will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible;*
- iii. Will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance;*
- iv. Must provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate;*
- v. Must provide the parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of the advisor for the complainant or respondent in any meeting or proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the meeting or proceeding, as long as the restrictions apply equally to the parties;*
- vi. Has discretion to determine whether the parties may present expert witnesses as long as the determination applies equally to the parties; and*
- vii. Must provide each party and the party's advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of sex-based harassment and not otherwise impermissible in the following manner: (a) an institution must provide an equal opportunity to access the same written investigative report that accurately summarizes this evidence. The institution further will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party; (b) an institution must provide the parties with a reasonable opportunity to review and respond to the investigative report in advance of the live hearing; (c) An institution must take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the sex-based harassment complaint procedures. For purposes of this paragraph, disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex-based harassment are authorized.*

h. Live Hearings

- i. An institution will hold a live hearing over which a hearing officer presides. The hearing officer cannot be the same person as the Title IX Coordinator or the investigator(s).*
- ii. The live hearing may be conducted with all parties physically present in the same geographic location or, at the institution's discretion, it may, or upon the request of either party, conduct the live hearing with parties physically present in separate locations, with technology enabling the hearing officer and the parties to simultaneously see and hear the party or the witness while that person is speaking.*

iii. Each party is allowed to propose relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses and have those questions asked by the hearing officer; such questioning must never be conducted by a party personally.

iv. The hearing officer will determine whether a proposed question is relevant and not otherwise impermissible before the question is posed and will explain any decision to exclude a question as not relevant or otherwise impermissible.

The following types of evidence, and questions seeking these types of evidence, will be excluded as impermissible:

- **evidence protected under privilege as recognized by state or federal law**
- **evidence provided to a confidential employee (unless the privilege/confidentiality is voluntarily waived)**
- **a party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment of the party or witness unless the party or witness provides voluntary, written consent**
- **evidence that relates to the complaint's sexual interests or prior sexual conduct unless offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to provide consent to the alleged sex-based harassment.**

The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude a determination that sex-based harassment occurred.

vi. Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The decisionmaker will give a party an opportunity to clarify or revise a question that the hearing officer determines is unclear or harassing. If the party sufficiently clarifies or revises the question, the question will be asked.

vii. The hearing officer may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The hearing officer must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.

viii. Institutions must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

ix. Nothing in this subsection shall be construed to impair rights under the U.S. Constitution, including but not limited to the Fifth Amendment, or privileges recognized by statute or common law.

i. Determination Whether Sex-Based Harassment Occurred.

i. The institution must provide the hearing officer's determination (made under the preponderance of the evidence standard) whether sex-based harassment occurred in writing to the parties simultaneously within fourteen (14) business days of the conclusion of the live hearing.

ii. The written determination must include:

- A description of the alleged sex-based harassment;**
- Information about the policies and procedures that the institution used to evaluate the allegations;**
- The hearing officer's evaluation of the relevant and not otherwise impermissible evidence and determination whether sex-based harassment occurred;**
- When the hearing officer finds that sex-based harassment occurred, any disciplinary sanctions the institution will impose on the respondent, whether remedies other than the imposition of disciplinary sanctions will be provided by the institution to the complainant, and, to the extent appropriate, other students identified by the institution to be experiencing the effects of the sex-based harassment; and**
- The institution's procedures for the complainant and respondent to appeal.**

iii. The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.

j. Appeal

Within seven (7) business days, any party may appeal from a determination whether sex-based harassment occurred on the following bases:

- i. Procedural irregularity that would change the outcome;**
- ii. New evidence that would change the outcome of the matter and that was not reasonably available when the determination whether sex-based harassment occurred was made;**
- iii. The Title IX Coordinator, investigator, or hearing officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.**

If the determination is appealed, the institution will:

- i. Implement appeal procedures equally for the parties;**
- ii. Notify the parties of the appeal, including notice of the allegations if notice was not previously provided to the respondent;**
- iii. Ensure that the appeal decisionmaker for the appeal did not take part in the investigation or live hearing and has been trained in accordance with this policy;**
- iv. Allow both parties seven (7) business days of issuance of the notice of the appeal to submit to the Title IX Coordinator or designee a written statement in support of or challenging the determination;**

- v. ***Within fourteen (14) business days of receiving a written statement in support of, or challenging, the determination, provide written notification to the parties simultaneously of the result of the appeal and the rationale for the result.***

An institution may not discipline a party, witness, or others participating in complaint procedures for making a false statement or for engaging in consensual sexual conduct based solely on a determination whether sex-based harassment occurred.

- k. ***Disclosure of Sanction Imposed. In the event a student is found to have engaged in sex-based 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 sex-based harassment when the sanction directly relates to the harassed student.***
- l. ***Confidentiality of Actions Taken. In the event actions are taken against an individual under NSHE Code Title 2, Chapter 6, Chapter 8 or Chapter 10 (or applicable Student Code of Conduct) or NAC Chapter 284 or Chapter 289 and/or associated collective bargaining agreement, or the Technologists Manual, such matters generally remain confidential under those Sections, except that final decisions following hearings or appeals of professional employees, and in limited circumstances 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).***
- m. ***Crime of Violence Exception to the Family Educational Rights and Privacy Act (FERPA). When discriminatory conduct or sexual harassment involves a crime of violence or a non-forcible sexual offense, FERPA permits the institution to disclose to the complainant the final results (limited to the name of the respondent, any violation found to have been committed, and any sanction imposed) of a disciplinary proceeding against the respondent, regardless of whether the institution concluded that a violation was committed. With respect to an institutional disciplinary proceeding alleging sexual violence, domestic violence, dating violence or stalking 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 simultaneously informed of the outcome.***
- n. ***Resignation of Employee or Withdrawal of Student. If a student respondent withdraws from the institution or an employee respondent ends employment (e.g., resigns, retires) while an investigation of a complaint involving unlawful discrimination or harassment is pending under this policy, the Title IX Coordinator shall take appropriate action, which may include completing the investigation to the extent reasonably practicable, in order to prevent the reoccurrence of and to remedy the effects of the alleged misconduct.***
- o. ***Title IX Coordinator Monitoring. The Title IX Coordinator or designee is responsible for monitoring all aspects of the investigation and any supportive measures or final remedies to help ensure that: (i) the process is fair and equitable to both the complainant and the respondent; (ii) the applicable policies and procedures of NSHE and of the institution are followed; and (iii) the supportive measures and final remedies are***

followed. Specifically, when a determination of sex-based harassment has been made against a respondent, the Title IX Coordinator or designee shall coordinate the provision and implementation of remedies to a complainant and other persons the institution identifies as having had equal access to the institution's education program or activity limited or denied by sex-based harassment, coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions, and take other appropriate prompt and effective steps to ensure that sex-based harassment does not continue or recur within the institution's education program or activity.

p. Supportive Measures; Disciplinary Sanctions; Remedies. As detailed in this policy, an institution will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to the institution's education program or activity or provide support during the Title IX grievance procedures or during the informal resolution process. For complaints of sex-based harassment, these supportive measures may include those described in subsection C(4). Following a determination that sex-based harassment occurred, an institution may impose disciplinary sanctions, which may include those up to and including involuntary termination or expulsion, as described in NSHE Code Chapter 6, Chapter 8 or Chapter 10, any applicable institution Student Code of Conduct, or, in the case of classified employees or law enforcement personnel, NAC Chapter 284 or Chapter 289, the NSHE Prohibitions and Penalties, and/or associated collective bargaining agreement, or in the case of DRI technologists, the Technologists Manual. An institution may also provide remedies, which may include those described in subsection C(4).

7. Informal Resolution of Complaints of Title IX Sex Discrimination, including Sex-Based Harassment involving a Student as Complainant or Respondent

a. Whenever an institution receives a complaint of sex discrimination or has information about conduct that reasonably may constitute sex discrimination, it may, at its discretion and at any time prior to reaching a determination whether sex discrimination occurred, inform the parties in writing of the option of informal resolution and may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the institution:

i. Provides to the parties a written notice that explains:

- the allegations;**
- the requirements of the informal resolution process;**
- that prior to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume complaint procedures arising from the same allegations;**
- that the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming the**

complaint procedure arising from the same allegations;

- the potential terms that may be requested or offered in an informal resolution agreement, including notice that an information resolution is binding only on the parties; and*
- what information the institution will maintain and whether and how it could disclose such information for use in the complaint procedure if that process is initiated or resumed.*

ii. Obtains the parties' voluntary, informed written consent to the informal resolution process.

- b. An institution shall not require or pressure the parties to participate in an informal resolution process for any reason and shall not require waiver of the right to an investigation and adjudication of complaints of sex discrimination consistent with this subsection as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right.*
 - c. An institution may decline to offer informal resolution despite one or more of the parties' wishes.*
 - d. An individual serving as a facilitator of an informal resolution process shall not be the same person as the Title IX Coordinator, Title IX investigator, decisionmaker, witness, or other institutional employee that has a duty to disclose allegations of sex discrimination to the institution.*
 - e. An individual designated by the institution to facilitate an informal resolution process must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.*
 - f. If informal resolution is provided, the Title IX Coordinator must, to the extent necessary, take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the institution's educational program or activity.*
- 8. False Reports.** *Because unlawful discrimination and harassment, including Title IX sex discrimination, frequently involve interactions between persons that are not witnessed by others, reports cannot always be substantiated by additional evidence. Lack of corroborating evidence or "proof" should not discourage individuals from reporting unlawful discrimination and harassment, including Title IX sex discrimination. However, individuals who knowingly make false reports or submit false information during the complaint process may be subject to disciplinary action under the applicable institution 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. Amnesty for Reports of Unlawful Discrimination, including Title IX sex discrimination, and Harassment Under Certain Circumstances.** *NSHE encourages individuals to report incidents of unlawful discrimination and harassment, including Title IX sex discrimination without fear of negative consequences for other policy violations that occur at or around the same time period of the reported conduct. To support such reporting, an NSHE institution may not subject an individual to a disciplinary proceeding or sanction for a*

violation of the NSHE Handbook, the NSHE institutional policy, and/or the NSHE institution's applicable Student Code of Conduct unless the NSHE institution determines, in its sole discretion, any report of an alleged incident of unlawful discrimination and harassment, including Title IX sex discrimination was not made in good faith or the individual's violation of the NSHE Handbook, the NSHE institutional policy, and/or the NSHE institution's applicable Student Code of Conduct was egregious. Examples of egregious violations include, but are not limited to, being the one that initiated the unlawful discrimination and harassment, including Title IX sex discrimination or through negligence contributed to the unlawful discrimination and harassment, including Title IX sex discrimination, or other sexual misconduct, driving under the influence, manufacturing/distribution/delivery of illegal drugs, possessing with intent to manufacture/distribute/deliver illegal drugs, relationship violence, stalking, hazing, or other conduct that risked someone's health or safety. The NSHE institution determines, in its sole discretion, whether a report was not made in good faith and what conduct constitutes an egregious violation.

An individual may be particularly afraid to report certain conduct when alcohol, drugs, or other intoxicants are involved. Except for egregious violations, this amnesty policy applies when alcohol, drugs, or other intoxicants are involved, including underage drinking.

In circumstances where amnesty is determined to be applicable but there are concerns that an individual's repeat or severe misuse of alcohol or other substances will result in additional harm if unaddressed, the NSHE institution may impose educational and/or other appropriate sanctions to address such concerns. This policy only provides amnesty from violations of NSHE Handbook, the NSHE institutional policy, and/or the NSHE institution's applicable Student Code of Conduct. It does not grant amnesty for criminal, civil or other legal consequences for violations of Federal, State or Local law. Civil and/or criminal investigations and other legal processes from governmental agencies outside of the NSHE institution may still proceed at the discretion of the outside governmental agency. Also, in some instances, University Police Services may be required by law to report an incident to local law enforcement agencies. For information regarding legal immunity from certain offenses related to drug or alcohol overdose or other medical emergency, please see NRS 453C.150.

- 10. Retaliation prohibited. Retaliation, including peer retaliation, against an individual who in good faith complains of unlawful discrimination or harassment, including Title IX sex discrimination, 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 up to and including termination and/or expulsion. Retaliation is prohibited in an institution's education program or activity. Any employee or student bringing an unlawful discrimination or harassment, including Title IX sex discrimination, 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 or reference letter;*
- *intentionally providing false information.*

a. Employees

1. *An employee who believes that they have been subjected to retaliation may file a retaliation complaint with their immediate supervisor, who will in turn immediately contact the Title IX Coordinator.*
2. *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 the Title IX Coordinator.*
3. *After receiving any employee's complaint of an incident of alleged retaliation, the supervisor will immediately contact the Title IX Coordinator 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

1. *A student who believes that they have been subjected to retaliation may file a retaliation complaint with their major department chair or director of an administrative unit, who will in turn immediately contact the Title IX Coordinator.*
2. *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 the Title IX Coordinator.*

When an institution has information about conduct that reasonably may constitute retaliation, it is obligated to respond as to any other complaint of sex discrimination or other unlawful discrimination or harassment. Upon receipt of a complaint of retaliation, an institution must initiate complaint procedures or, as appropriate, an informal resolution process.

Complaints alleging retaliation may be filed according to the complaint procedures for unlawful discrimination or harassment or sex discrimination under Title IX. If a retaliation complaint is consolidated with a complaint of sex-based harassment involving a student complainant or student respondent, the complaint procedures set forth at subsection D(6) must be followed for all consolidated complaints.

The exercise of rights protected under the First Amendment does not constitute retaliation. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a complaint proceeding does not constitute retaliation prohibited herein

provided; however, that a determination of whether unlawful discrimination or harassment or sex discrimination under Title IX occurred, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

11. Relationship to Freedom of Expression. *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. However, unlawful discrimination, Title IX sex discrimination, and harassment, are 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.*

12. TIX Recordkeeping Requirements.

a. An institution must maintain for a period of at least seven (7) years records:

- i. For each complaint of sex discrimination, sex-based harassment, and retaliation, investigation, records documenting the informal resolution process or the complaint procedures, any appeal, and the resulting outcome including any determination regarding responsibility and any audio or audiovisual recording or transcript required under Subsection g of Subsection 8, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the institution's education program or activity;**
- ii. For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX, records documenting the actions taken by the institution to respond to sex discrimination;**
- iii. All materials used to train, employees, Title IX Coordinators, investigators, hearing officers, decision-makers, any person responsible for implementing an institution's complaint procedures or who have authority to modify or terminate supportive measures, and Informal Resolution Facilitators. An institution must make these training materials available upon request for inspection by members of the public.**